

127 FERC ¶ 61,079
UNITED STATES OF AMERICA
FEDERAL ENERGY REGULATORY COMMISSION

April 24, 2009

In Reply Refer To:
Kern River Gas Transmission
Company
Docket Nos. RP09-465-000
RP09-465-001
RP09-465-002

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

Attention: Billie L. Tolman, Manager
Regulatory Affairs

Reference: Revised Tariff and Related General Terms and Conditions

Dear Ms. Tolman:

1. On March 20, 2009, Kern River Gas Transmission Company (Kern River) filed revised tariff sheets¹ in Docket No. RP09-465-000 to reflect changes in the *pro forma* service agreements in Kern River's tariff and to add a form of agreement for amendments. In addition, the revised tariff sheets reflect related changes to the General Terms and Conditions (GT&C) of Kern River's tariff. On March 25, 2009, Kern River filed substitute tariff sheets to correct errors in its initial filing. On March 27, 2009, Kern River made a supplemental filing to correct pagination errors. For the reasons discussed below, the revised tariff sheets listed in Appendix A are accepted effective April 20, 2009, as proposed. The tariff sheets listed in Appendix B are rejected as moot since they have been superseded.

¹ Tariff sheets filed in Docket No. RP09-465-000 have been withdrawn by a subsequent filing in Docket No. RP09-465-001 and, therefore, are not listed.

2. Kern River's instant filings were noticed with interventions and protests due as provided in section 154.210 of the Commission's regulations (18 C.F.R. § 154.210 (2008)). Nevada Power Company (NVE) timely moved to intervene and filed comments. BP Energy Company (BP) filed a motion to intervene and protest out of time. Pursuant to Rule 214 of the Commission's Rules of Practice and Procedure,² all timely filed notices of intervention and motions to intervene and any motions to intervene out of time filed before 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. Kern River filed an answer to the protests. The Commission accepts the answer pursuant to section 385.213 of the Commission's regulations (18 C.F.R. § 154.213(a)(2) (2008)) since it assisted the Commission in its decision-making process.

3. Kern River proposes to revise its *pro forma* service agreements under Rate Schedules KRF-1, KRF-L1, KRI-1, KRI-L1, and PAL to provide flexibility for standard transactions entered into between Kern River and its shippers pursuant to the tariff. Kern River proposes to modify or expand certain "fill-in-the-blank" items or "choose-an-option" areas that are used to set forth specific terms and conditions of each transaction. Specifically, Kern River proposes to expand the scope of information provided in the "fill-in-the-blank" items by capturing details of the term of service, including construction contingencies such as rollover rights, evergreen provisions, and termination rights. A new section of the *pro forma* service agreement has been added to list the priority of service date for a particular service agreement. The priority of service date is currently defined in section 1.23 of Kern River's GT&C and is used to determine scheduling priorities for authorized overrun and interruptible service when two shippers are paying the same rate. Kern River proposes the following language to its *pro forma* service agreements consistent with section 12.9 of the GT&C of Kern River's tariff: "backhaul shippers will reimburse Transporter for system-wide lost and unaccounted-for gas, but will not reimburse Transporter for compressor fuel."

4. Kern River proposes to revise Exhibit A to its *pro forma* service agreement under Rate Schedule KRF-L1 to include multiple date ranges to allow for variations in maximum daily quantities and changes in receipt and delivery point entitlements. Exhibit A has also been revised to now reflect the minimum pressure at which Transporter is obligated to deliver gas rather than the current maximum pressure requirement. An optional Exhibit A has been added under Rate Schedules KRI-1, KRI-L1 and PAL to reflect the way Kern River conducts business by allowing shippers to request a discounted rate for service from specific receipt points and/or to specific delivery points for finite time periods. Kern River

² 18 C.F.R. § 385.214 (2008).

proposes to add an optional Exhibit B to the *pro forma* service agreement under Rate Schedule KRF-L1 that will be used to show applicable rate provisions. Finally, Kern River proposes to add a standard form of amendment to its tariff to allow Kern River to make routine changes to provisions such as quantity, term, receipt and/or delivery points or rates without having to submit revisions for filing with the Commission.

5. Kern River proposes to revise section 11 of its GT&C to add language pertaining to governmental bodies, electronic signatures, and multiple counterparts, so as to preclude any possibility of these terms being inadvertently changed in service agreements. Kern River proposes to move sections from its *pro forma* service agreements to section 11 of its GT&C pertaining to notices, successors and assigns, as well as governing law, in order to improve readability and make references more universal.

6. Kern River states it proposed to revise the *pro forma* service agreements in its tariff to add fill-in-the-blank flexibility to reflect negotiations between Kern River and its shippers pursuant to its tariff. NVE requests the Commission to convene a technical conference to permit shippers to discuss the proposed changes with Kern River. In addition, NVE states that it wants assurance that the proposed change will not permit Kern River to compel a shipper to remove or modify a contract provision of value to that shipper. Second, it wants assurance that the integration clause in new section 4.1 of the *pro forma* service agreements constitutes the entire agreement between the parties and does not invalidate existing agreements to the detriment of a shipper. In its answer Kern River states that it has no intention of unilaterally invalidating current agreements, or any provision contained therein. Kern River states that the new *pro forma* agreements will apply only to new agreements entered into between Kern River and its shippers, including restatements of, or amendments to, existing agreements where Kern River and a shipper mutually agree. As a result, Kern River states that there is no need for a technical conference to discuss the comments proposed by NVE.

7. The Commission accepts Kern River's proposed changes to its *pro forma* service agreements and related GT&C, and sees no need for a technical conference. The Commission finds that Kern River has satisfactorily explained why the changes are necessary since a number of legacy contracts previously accepted by the Commission contain provisions that differ from Kern River's *pro forma* service agreements. Kern River states that the *pro forma* agreements generally lacked the flexibility necessary to reflect transactions actually entered into between Kern River and its shippers pursuant to its tariff.³ Kern River also

³ See pages 1 and 2 of Kern River's transmittal sheet.

states that revisions were required to the *pro forma* agreements in its tariff in order to assure that Kern River could accurately represent standard transactions entered into between it and its shippers in a conforming document.⁴ The Commission finds that Kern River has satisfied NVE's concerns by explaining (1) that it has no intention of unilaterally modifying current agreements and (2) any restatement of or amendments to existing agreements will be made only when Kern River and a shipper mutually agree. *Pro forma* service agreements are merely templates that allow the parties to agree to service agreements without having to file with the Commission in advance. Nothing in the Kern River tariff requires the use of the *pro forma* service agreement. Therefore, NVE's request for a technical conference is rejected for the reasons discussed above.

8. BP filed comments stating that while it does not protest the revisions proposed by Kern River to section 11.7 of its GT&C⁵ titled "successors and assigns," it has a concern which it requests the Commission to address. BP requests that the Commission require Kern River to clarify section 11.7 to state that unless a case-specific waiver is granted by the Commission, any assignments will take place in a manner consistent with Section 284.8 of the Commission's capacity release policies and regulations.⁶ BP expresses concern that newly revised section 11.7 may be read to permit the assignment of capacity from one shipper to a replacement shipper without requiring the pipeline to post information regarding the capacity, and to solicit bids if appropriate. Kern River responds that BP's request for clarification is unclear as to what specific changes BP is suggesting be made to Kern River's tariff and the Commission should disregard the request as irrelevant to this proceeding.

9. The Commission finds that no clarification to newly revised section 11.7 is necessary because Kern River must adhere to Section 284.8 of the Commission's regulations. This regulation requires a firm shipper seeking to release capacity to provide such information to the pipeline pertaining to the terms and conditions under which the shipper will release such capacity and the name of the replacement shipper if applicable. The pipeline must then post this relevant information on its website for review by potential replacement shippers. Accordingly, BP's requested clarification is dismissed as unnecessary.

⁴ See page 2 of Kern River's transmittal sheet.

⁵ Section 11.7 states in part that "No assignment or transfer by either Transporter or Shipper thereunder will be made without the written consent of the other party..."

⁶ Release of firm capacity on interstate pipelines, 18 C.F.R. § 284.5 (2008).

10. BP also takes issue with newly revised section 2.3 of the applicable *pro forma* service agreements that requires a shipper to make payment of the monthly reservation charge in full. BP argues that Commission policy does not require payment of the full reservation in all events because in certain instances, such as interruption of service, it is not just and reasonable to require payment of the full reservation charge.⁷ BP states that Kern River's tariff could be read to obligate payment of reservation charges in full, without any exception. Therefore, BP requests that the Commission require Kern River to include a provision in its tariff to provide for the crediting of reservation charges when Commission policy requires crediting. Kern River responds that the Commission should disregard the request as irrelevant since BP does not indicate what section of Kern River's tariff is unjust and unreasonable, and is unclear as to what specific changes BP is suggesting should be made to Kern River's tariff.

11. The Commission finds that no further revision to Kern River's tariff is necessary. First, newly revised section 2.3 in question makes no substantive changes. Kern River included the phrase "of Transporter's Tariff" to the following provision which states in part:

"Notwithstanding Section 5.5 of the General Terms and Conditions of *Transporter's Tariff*, and subject to any negotiated credit, Shipper will make payment of the Monthly Reservation Charge pursuant hereto in full irrespective of (but without prejudice to the rights otherwise of Shipper with respect to) any dispute relative to the amounts invoiced..."

Second, it appears that section 2.3 already provides for negotiated credits when appropriate. Finally, BP even acknowledges that section 5.6 of Kern River's GT&C titled "Failure to Pay Invoices" recognizes that payment of the full reservation charge is not required in all instances such as when invoices are in dispute, or when such payment would contravene Commission policy. Accordingly, BP's request to require Kern River to include a provision in its tariff to provide for the crediting of reservation charges in certain circumstances is dismissed as unnecessary.

12. The Commission finds the proposed revisions (1) provide more flexibility for standard transactions entered into between Kern River and its shippers, (2) provide more clarity as to what the "fill-in-the-blank" items may include when commencing service and (3) allow Kern River to make routine changes to

⁷ BP cites to *Entrega Gas Pipeline, Inc.*, 112 FERC ¶ 61,177, at 61,980 (2005). See also *Ingleside Energy*, 112 FERC ¶ 61,101, at 58-59 (2005) and *Tennessee Gas Pipeline Company*, 71 FERC ¶ 61,399, at 62,580 (1995).

provisions such as quantity, term, receipt and/or delivery points or rates without having to submit revisions for filing with the Commission. In addition, the Commission finds the proposed changes are not unduly discriminatory since these provisions apply equally to all shippers receiving service under Kern River's various rate schedules and, therefore, do not provide preferential treatment to any one shipper.

By direction of the Commission.

Nathaniel J. Davis, Sr.,
Deputy Secretary.

Kern River Gas Transmission Company
Docket No. RP09-465-001
Second Revised Volume No. 1
Tariff Sheets Accepted
Effective April 20, 2009

Fourth Revised Sheet No. 108
Second Revised Sheet No. 108-A
Original Sheet No. 108-B
Third Revised Sheet No. 300
Fifth Revised Sheet No. 302
Third Revised Sheet No. 303
Second Revised Sheet No. 304
Sheet Nos. 305-319
Third Revised Sheet No. 320
Second Revised Sheet No. 321
Fourth Revised Sheet No. 322
Third Revised Sheet No. 323
Sheet Nos. 324-325
Second Revised Sheet No. 326
Fourth Revised Sheet No. 328
Second Revised Sheet No. 329
Original Sheet No. 329-A
Second Revised Sheet No. 330
Fourth Revised Sheet No. 331
Fourth Revised Sheet No. 332
Second Revised Sheet No. 333
Second Revised Sheet No. 334
Third Revised Sheet No. 335
Second Revised Sheet No. 336
Second Revised Sheet No. 337
Second Revised Sheet No. 338
Second Revised Sheet No. 339
Second Revised Sheet No. 340
First Revised Sheet No. 341
Sheet Nos. 342-358
Original Sheet No. 359
Original Sheet No. 360
Original Sheet No. 361
Sheet Nos. 362-369

Kern River Gas Transmission Company
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Fourth Revised Sheet No. 301
Third Revised Sheet No. 327

Appendix B

**Kern River Gas Transmission Company
Docket No. RP09-465-001
Second Revised Volume No. 1
Tariff Sheets Rejected**

Third Revised Sheet No. 301
Second Revised Sheet No. 327