

127 FERC ¶ 61,103
UNITED STATES OF AMERICA
FEDERAL ENERGY REGULATORY COMMISSION

Before Commissioners: Jon Wellinghoff, Chairman;
Sudeen G. Kelly, Marc Spitzer,
and Philip D. Moeller.

Kern River Gas Transmission Company

Docket Nos. RP09-466-000
RP09-466-001

ORDER ACCEPTING TARIFF SHEETS SUBJECT TO CONDITIONS

(Issued May 1, 2009)

1. On March 20, 2009, Kern River Gas Transmission Company (Kern River) filed revised tariff sheets¹ to modify the creditworthiness provisions in Rate Schedules KRF-1, KRI-1, KRF-L1, KRI-L1, and PAL and merge these creditworthiness provisions into one new section of the General Terms and Conditions (GT&C).² For the reasons discussed below, the Commission accepts the revised tariff sheets subject to conditions, to be effective April 20, 2009, as proposed.

I. Filing

A. Establishment of Creditworthiness

2. Kern River proposes to revise and consolidate its creditworthiness provisions into a new section 29 of the tariff GT&C. Kern River asserts that this consolidation will standardize the administration of the creditworthiness provisions and make it easier for shippers to access information regarding Kern River's credit requirements. Kern River explains that under its proposal, section 29.1 describes how Kern River will determine if a shipper is creditworthy, sections 29.2 and 29.3 detail alternate security requirements for non-creditworthy shippers, and section 29.4 addresses the maintenance of credit for all shippers.

¹ See Appendix.

² On April 1, 2009, Kern River filed revised tariff sheets in Docket No. RP09-466-001 to correct the pagination of a tariff sheet in the original filing. This filing changes the Commission's required date of action to May 1, 2009. See 18 e-C.F.R. § 154.205(b) (April 9, 2009).

3. Kern River's current tariff sets forth the criteria for determining a shipper's creditworthiness in several different rate schedules depending on the service requested. For short-term firm and interruptible service, the tariff provides that Kern River will perform a credit appraisal to determine a shipper's creditworthiness.³ For park and loan service, the tariff states that a shipper is creditworthy if that shipper is deemed creditworthy under any other rate schedule.⁴ For long-term firm service,⁵ the tariff states that a shipper's creditworthiness is based on the level of service requested and (1) a credit rating of investment grade from Standard and Poor's Corporation (S&P) or Moody's Investors Service (Moody's);⁶ or (2) an equivalent rating of investment grade as determined by Kern River based upon the financial rating methodology, criteria, and ratios for the shipper's industry as published by the above rating agencies; or (3) approval by Kern River's lenders.⁷

4. In section 29.1, Kern River proposes to unify these creditworthiness provisions so that if a shipper is deemed creditworthy for one type of service, that shipper will be deemed creditworthy for all types of service. Kern River explains that it based its new creditworthiness criteria on the long-term firm creditworthiness standards found in the current tariff. Kern River asserts that this framework is appropriate because a shipper that is deemed creditworthy for long-term firm service should also be deemed creditworthy for other, less-costly services.

5. In addition to consolidating its credit provisions, Kern River proposes to modify certain criteria for determining creditworthiness. Kern River proposes to add Fitch Ratings (Fitch) to the list of rating agencies used to determine creditworthiness.⁸ Kern River contends doing so will provide a more comprehensive and objective basis on which to determine creditworthiness. Kern River also proposes to eliminate all references in the tariff to the Canadian Bond Rating Service because it has been acquired by S&P.

³ See section 7.2, Sheet Nos. 21-23, of Rate Schedule KRF-1; section 7.2, Sheet Nos. 36-38, of Rate Schedule KRF-L1; section 3.2(b), Sheet Nos. 54-55, of Rate Schedule KRI-1; section 3.2(b), Sheet Nos. 65-66, of Rate Schedule KRI-L1.

⁴ See Sheet No. 69-F.

⁵ Long-term service is service for one-year or longer.

⁶ For S&P this is a rating of BBB-, while for Moody's this is a rating of at least Baa3.

⁷ See section 7.1, Sheet No. 20, of Rate Schedule KRF-1; section 7.1, Sheet No. 35, of Rate Schedule KRF-L1.

⁸ An investment grade rating from Fitch is BBB-.

6. In addition, Kern River proposes to require shippers rated by multiple agencies to meet the investment grade criteria for each agency that rates them. Kern River argues that if any of the rating agencies rates a shipper below investment grade, then that agency has identified a financial risk, and Kern River should be permitted to take that risk into consideration. In addition, Kern River proposes to require shippers with a minimum investment grade rating to also have a short-term and long-term Outlook⁹ or CreditWatch¹⁰ of Stable or Positive from each agency rating it at that level. Kern River argues that this requirement will protect against situations where a rating agency may be aware of a downward trend or adverse circumstance for a particular shipper, but has not yet taken the formal downward grade action. Kern River argues this provision is reasonable because the Commission has approved the use of short-term and long-term Outlook opinions when evaluating creditworthiness.¹¹

B. Alternate Determinations of Creditworthiness

7. Kern River's current tariff provides alternative options for shippers to receive service even if they do not meet the creditworthiness criteria described above. For a shipper seeking long-term firm service, the shipper may establish its creditworthiness by either (1) furnishing and maintaining for the term of the Transportation Service Agreement (TSA) a written guarantee from a third party that is creditworthy; or (2) furnishing other security that is acceptable to Kern River's lenders. Kern River does not propose any substantive changes to this section.

⁹ S&P's Outlook ratings assess the potential direction of a long-term credit rating over the intermediate term (typically six months to two years). In determining a rating outlook, consideration is given to any changes in the economic and/or fundamental business conditions. The Outlook ratings are (1) Positive, which means that a rating may be raised; (2) Negative, which means that a rating may be lowered; (3) Stable, which means that a rating is not likely to change; or (4) Developing, which means a rating may be raised or lowered. *See* S&P's Ratings Definitions at 11.

¹⁰ CreditWatch highlights the potential direction of a short-term or long-term rating. It focuses on identifiable events and short-term trends that cause ratings to be placed under special surveillance by S&P. Ratings appear on CreditWatch when such an event or a deviation from an expected trend occurs and additional information is necessary to evaluate the current rating. The CreditWatch ratings are (1) Positive, which means that a rating may be raised; (2) Negative, which means a rating may be lowered; or (3) Developing, which means that a rating may be raised, lowered, or affirmed. *Id.* at 11-12.

¹¹ Kern River cites *Northern Natural Gas Co.*, 126 FERC ¶ 61,155, at P 11 (2009); *Columbia Gas Trans. Co.*, 119 FERC ¶ 61,041 (2007); *Columbia Gulf Trans. Co.*, 117 FERC ¶ 61,073 (2006).

8. For a shipper seeking short-term firm, interruptible, or park and loan service, the shipper may establish creditworthiness by (1) prepaying in advance for one month of service; or (2) providing an irrevocable letter of credit. For both interruptible service and short-term service under Rate Schedule KRF-L1, the required letter of credit must be for an amount equal to three months of service. For short-term service under Rate Schedule KRF-1, the letter of credit must be for an amount equal to sixty days of service. Kern River proposes to modify its tariff to require shippers seeking short-term firm service under Rate Schedule KRF-1 to provide a letter of credit in an amount equal to three months of service, instead of sixty days. Kern River contends that this change is consistent with Commission policy and will make the letter of credit requirements consistent across rate schedules for short-term firm and interruptible service.

9. Kern River's current tariff also provides that a long-term shipper who does not have a rating of investment grade may request that an independent accountant or financial consultant prepare an equivalent evaluation based on the financial rating methodology, criteria, and ratios for the shipper's industry as published by the above credit rating agencies.¹² Kern River proposes to eliminate this option because no shipper has ever requested an evaluation under the current provision. Moreover, Kern River asserts that such an evaluation would not provide the assurance of creditworthiness needed by Kern River. Kern River also proposes to eliminate the provisions stating that Kern River will perform a credit appraisal to determine creditworthiness for those requesting short-term service.¹³ Kern River argues that eliminating these tariff provisions will promote consistency amongst rate schedules by ensuring that all shippers will be required to have a rating (or equivalent rating) of investment grade in order to be deemed creditworthy.

C. Maintenance of Credit

10. Kern River's current tariff states that Kern River is not required to (1) execute a transportation service agreement on behalf of a shipper that fails to meet the creditworthiness standards; (2) initiate service to shipper that fails to meet the creditworthiness standards; or (3) continue service to a shipper that fails to timely pay for transportation service. Kern River proposes to expand section (2) above to state that Kern River will not be required to initiate or continue service to a shipper that fails to meet Kern River's creditworthiness standards.

11. Pursuant to Kern River's new section 29.4, entitled "Maintenance of Credit," Kern River may determine that a shipper is no longer creditworthy if a shipper suffers a

¹² See Sheet No. 20 of Rate Schedule KRF-1 and Sheet No. 35 of Rate Schedule KRF-L1.

¹³ See sections 7.2(a), (b), (c), and (d) of Rate Schedules KRF-1 and KRF-L1; sections 3.2(a) and (b) of Rate Schedules KRI-1 and KRI-L1.

material adverse change in financial condition, such that the shipper's (or its guarantor's) ability to perform its financial obligations to Kern River may be materially impaired.

12. If Kern River determines that a shipper is no longer creditworthy, Kern River may require the shipper to provide security under the following conditions: (1) the shipper will have at least five business days from Kern River's written request to prepay for one month of service; and (2) the shipper will have at least thirty days to provide additional security as required by tariff section 29.2 for long-term service and tariff section 29.3 for short-term or interruptible service. Failure to provide the required security may result in service being suspended, provided Kern River gives the shipper a minimum of five days notice before service is suspended. Failure to provide the required security may also result in permanent termination of service, provided Kern River gives the shipper and the Commission a minimum of thirty days notice before terminating service. Kern River may provide notices of suspension or termination on or after the date Kern River requests security. Under this provision, shippers may at any time request that Kern River reevaluate their creditworthiness to determine if the security requirements can be eliminated.

D. Termination of Service for Non-Payment

13. Kern River's tariff currently provides that if a shipper fails to pay an invoice within thirty days of when payment is due, Kern River may discontinue service after a minimum of fifteen days notice.¹⁴

14. Kern River proposes to modify this section to allow for suspension of service until the full amount of all outstanding invoices (including interest) is paid, provided that Kern River gives the shipper a minimum of five days notice before suspending service. Under its proposal, Kern River may also permanently terminate transportation service for failure to pay, provided Kern River gives the shipper and the Commission a minimum of thirty days notice before terminating service. Kern River explains that it may issue suspension or termination notices anytime after the date the payment is due and the shipper has not made the payment in full.

II. Notice and Protests

15. Notice of Kern River's original filing was issued on March 24, 2009. Notice of Kern River's supplemental filing was issued on April 6, 2009. Interventions and protests were due as provided in section 154.210 of the Commission's regulations.¹⁵ Pursuant to

¹⁴ See section 5.5 of the GT&C.

¹⁵ 18 C.F.R. § 154.210 (2008).

Rule 214 of the Commission's Rules of Practice and Procedure,¹⁶ 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. Nexen Marketing U.S.A. Inc. (Nexen), Nevada Power Company d/b/a NV Energy (NV Energy), Reliant Energy Services, Inc. (Reliant), Williams Gas Marketing, Inc. (Williams), and BP Energy Company (BP) filed protests.

16. On April 20, 2009, Kern River filed an answer to the protests. Rule 213(a)(2) of the Commission's rules of Practice and Procedure¹⁷ prohibits an answer to protests unless otherwise ordered by the decisional authority. We will accept Kern River's answer because it has provided information that assisted us in our decision-making process.

17. Williams argues that taken together, Kern River's proposed tariff revisions are unjust, unreasonable, and unnecessarily burdensome. Williams explains that despite its long history of paying its invoices on time, under Kern River's proposal that a shipper must have a credit rating of investment grade from every rating agency that ranks the shipper, Williams would be deemed not creditworthy.¹⁸ Williams explains that as a result, under Kern River's proposed Maintenance of Credit provision, Kern River would require Williams to provide security acceptable to Kern River's lenders, which Williams objects is a level of security unbounded by any objective criteria or limitations, and should be limited to three months reservation charges. Williams argues that deeming Williams uncreditworthy under the new standard is unjust and unreasonable because it ignores Williams' positive payment history, the investment grade status of Williams' parent with two of the three credit ratings agencies, the absence of negative CreditWatch or Outlook notices, and the absence of material adverse change in Williams' or its parent's financial condition.

18. Williams further argues that Kern River has an incentive to terminate service for existing long-term firm rolled-in rate shippers, such as Williams, under the proposed creditworthiness provisions. Williams explains that under Kern River's multi-period levelized rate program, Kern River may in the future have a substantial liability to its long-term firm rolled-in rate shippers for the difference between the accelerated rate recovery under the levelized program and its book depreciation. Williams argues that if

¹⁶ 18 C.F.R. § 385.214 (2008).

¹⁷ 18 C.F.R. § 385.213(a)(2) (2008).

¹⁸ Williams explains that it provides credit support for its long-term firm service through a guarantee from its parent, The Williams Companies, Inc. (TWC). Williams states that while TWC is currently rated as investment grade by Moody's and Fitch, S&P has not yet returned TWC to investment grade.

some of these long-term firm rolled-in shippers are eliminated under the proposed unduly restrictive creditworthiness requirements, Kern River would benefit because it could remarket the freed-up capacity at a higher firm recourse rate and eliminate the liability described above under the levelized rate program. As such, Williams requests that the Commission reject or revise the unreasonable provisions of Kern River's proposal.

19. NV Energy requests that the Commission establish a technical conference to examine Kern River's proposal. NV Energy, along with Reliant, Williams, and BP Energy, also protest specific provisions of Kern River's proposal, such as the lack of objective criteria for defining "material adverse change" in a shipper's financial condition. These protests are discussed in more detail below.

III. Discussion

20. The Commission accepts the tariff sheets, subject to modifications set forth below, to be effective April 20, 2009, as proposed. The Commission finds that some of Kern River's proposed tariff modifications are just and reasonable, including, but not limited to,¹⁹ consolidating the creditworthiness criteria into one section of the GT&C, unifying the creditworthiness criteria for all services, adding Fitch to the list of rating agencies used to determine creditworthiness, requiring shippers rated by multiple agencies to meet the investment grade criteria for each agency, using short-term and long-term Outlook opinions when evaluating creditworthiness, making the letter of credit requirements consistent across rate schedules, requiring security from shippers who are no longer creditworthy, and allowing suspension of service for non-payment.

21. While the Commission accepts many of Kern River's tariff revisions, the Commission finds certain other revisions to be unjust and unreasonable and accepts the filing conditioned on Kern River submitting a compliance filing within 30 days of the date of this order reflecting the modifications discussed below.

22. The Commission denies NV Energy's request for a technical conference. The issues raised here can be resolved based on the information in the record. Therefore, the Commission finds that a technical conference is unnecessary.

A. Establishment of Creditworthiness

1. Protests

23. Williams and NV Energy argue that requiring shippers to have a credit rating of investment grade from all ratings agencies is too restrictive. NV Energy asserts that Kern

¹⁹ All tariff revisions not specifically discussed in the body of this order are accepted.

River's other requirement that a shipper must have a stable or positive short and long term Outlook and CreditWatch from the ratings agency that gives the shipper a minimum investment grade provides Kern River with sufficient protection. Williams requests that the Commission require Kern River to consider a shipper creditworthy if (1) at least two of the three credit ratings agencies show an investment grade rating for the shipper; or (2) one investment grade rating is shown, and the shipper has a positive payment history and no negative CreditWatches or Outlooks.

24. Nexen opposes Kern River's proposal to require shippers with a minimum investment grade rating to have both Stable or Positive Outlooks and CreditWatches. Nexen contends this proposal imposes excessive collateral requirements on creditworthy, investment-grade shippers. Nexen argues that a shipper's placement on CreditWatch is sufficient to protect Kern River from a short-term credit downgrade and that shippers should not also be required to have Stable or Positive Outlook ratings. Nexen argues that a Negative Outlook does not mean a ratings change is inevitable, and that if a ratings change does occur, it is not likely to happen for another six months to two years. Nexen further points out that companies with Negative Outlooks are almost always given a Negative CreditWatch within ninety days of a credit downgrade. For these reasons, Nexen requests that Kern River only deem a minimum-rated investment-grade shipper not creditworthy if that shipper receives a Negative CreditWatch rating.

2. Kern River's Answer

25. Kern River argues that considering the ratings from all of the agencies, as well as the Outlook and CreditWatch ratings, is reasonable and consistent with other proposals previously accepted by the Commission.²⁰ Kern River explains that the purpose of including both the Outlook and CreditWatch ratings is to indentify, as early as possible, any significant negative trend in a company's credit standing. Kern River further clarifies that it is not proposing to deem shippers at the minimum investment grade not creditworthy. Rather, Kern River states that it proposes to require minimum investment grade shippers to possess a Stable or Positive Outlook or CreditWatch.

3. Commission Determination

26. The Commission accepts Kern River's proposed section 29.1. The Commission finds it reasonable for Kern River to consider the ratings of all three credit ratings agencies listed in its tariff when establishing a shipper's creditworthiness and to take into account Outlooks and CreditWatches for shippers with a minimum credit rating. A rating below investment grade and a Negative Outlook or CreditWatch all indicate that the

²⁰ *Columbia Gas Transmission Corp.*, 119 FERC ¶ 61,041 (2007); *Columbia Gulf Transmission Co.*, 117 FERC ¶ 61,073 (2006); *Northern Natural Gas Co.*, 126 FERC ¶ 61,155 (2009).

shipper may pose a financial risk, and Kern River should be able to take that risk into consideration when determining a shipper's creditworthiness. While the Commission recognizes that Outlooks are longer-term evaluations than CreditWatches, the Commission believes that both ratings are useful in determining if a shipper has become not creditworthy. Moreover, Kern River's proposed tariff language is consistent with tariff provisions previously accepted by the Commission.²¹ If a shipper's Negative Outlook or CreditWatch or less-than investment grade rating is revised, the shipper will return to creditworthy status and no longer have to maintain collateral.

B. Alternate Determinations of Creditworthiness

1. Protests

27. NV Energy argues that section 29.2 grants Kern River too much discretion in determining when to require shippers to provide security. NV Energy contends that this section should state that Kern River must use methods to evaluate credit that are objective and non-discriminatory and that result in collateral requirements that are reasonably related to the risk posed by the non-creditworthy shipper, consistent with the *Policy Statement*.²²

28. Reliant, Nexen, and Williams argue that Kern River should limit the security requirements in sections 29.2 and 29.3 to no more than three months of reservation charges, as required by the *Policy Statement*.²³ Williams specifically objects to the requirement in section 29.2(b) that a shipper who otherwise fails to establish creditworthiness may still receive long term firm service if it furnishes "other security acceptable to Transporter's lenders for existing capacity." Williams argues that contrary to the directives in the *Policy Statement*, this section places no limits on what lenders may demand as their acceptable security requirement. Williams requests that Kern River replace subsection (b) of section 29.2 with the following language: "(b) furnishes other security in an amount not to exceed three months of firm reservation charges."

2. Kern River's Answer

29. Kern River argues that the protests of Reliant, Williams, and Nexen regarding section 29.2 should be denied. Kern River asserts that the Commission has found that project-financed pipelines may seek greater amounts of collateral from potential shippers

²¹ See *Northern Natural Gas Co.*, 126 FERC ¶ 61,155, at P 6, 11 (2009).

²² See *Policy Statement on Creditworthiness for Interstate Natural Gas Pipelines*, FERC Stats. & Regs. ¶ 31,191, at P 16 (2005) (*Policy Statement*).

²³ *Id.* at P 14.

on new construction projects than three months of reservations charges.²⁴ Kern River asserts that in *Reliant*, the Commission reviewed Kern River's financing documents and found that Kern River's proposed security requirements were consistent with the terms of those documents and Commission policy.²⁵

3. Commission Determination

30. The Commission accepts Kern River's proposed sections 29.2 and 29.3, subject to conditions. Kern River's proposed section 29.4 (discussed below) provides that if Kern River determines a shipper is no longer creditworthy, Kern River may require the shipper to provide additional security as required under sections 29.2 and 29.3. The protestors argue that Kern River's requirement under section 29.2(b) that a non-creditworthy shipper furnish "other security acceptable to Transporter's lenders," is vague and does not comply with the Commission's directives in the *Policy Statement*.

31. The Commission agrees that this provision is ambiguous. The Commission's general policy is that a pipeline may not require uncreditworthy shippers to provide as collateral any more than the equivalent of three months of reservation charges.²⁶ However, as Kern River points out, the Commission has recognized that certain project-financed pipelines²⁷ and their lenders may require more than three months of collateral from non-creditworthy shippers to better ensure debt repayment.²⁸ The Commission's policy is that collateral requirements in the precedent agreements apply to the initial shippers on projects and continue in effect after the pipeline goes into service.²⁹ The Commission also finds that issues relating to collateral for construction projects should be determined in the precedent agreements at the certificate stage, and collateral requirements for new construction projects should not ordinarily be included in the

²⁴ *Reliant Energy Services, Inc. and CenterPoint Energy Resources Corp. v. Kern River Gas Transmission Co.*, 120 FERC ¶ 61,056 (2007) (*Reliant*). Kern River states that Reliant, Williams, and NV Energy have all contracted for expansion capacity on Kern River's system.

²⁵ *Id.* P 35.

²⁶ *Policy Statement* at P 14.

²⁷ Project-financed pipelines are projects in which the lender secures its loans to the pipeline by the service agreements negotiated with the contract shippers.

²⁸ *See e prime, inc. v. PG&E Transmission, Northwest Corp.*, 102 FERC ¶ 61,062, at P 27 (2003).

²⁹ *Policy Statement* at P 19.

pipeline's tariff.³⁰ For all other shippers, the collateral requirement generally would be three months of reservation charges, as directed by the Commission in the *Policy Statement*.³¹ Kern River's current tariff provides that collateral requirements for new shippers will be determined based on the conditions established by its lenders. Kern River, however, has not demonstrated that its existing lending agreements would justify such a collateral provision for new shippers.

32. Kern River asserts that the Commission reviewed Kern River's financing documents in *Reliant* and determined that its security requirements are consistent with these documents and Commission policy. However, in the *Reliant* proceeding, the Commission only examined the specific financing documents relevant to that matter. It is possible that Kern River's other financing documents include different criteria.

33. Therefore, the Commission directs Kern River to show cause, pursuant to section 5 of the Natural Gas Act, that its current lending agreements justify the application of its existing tariff provision to new shippers. Kern River must provide its current loan agreements or other relevant documentation supporting the need for a collateral requirement in excess of three months of reservation charges, or in the alternative, revise its tariff sheets to limit the security requirements applicable to existing capacity to no more than the equivalent of three months of reservation charges.

C. Maintenance of Credit

1. Protests

34. BP Energy and Reliant argue that section 29.4 grants Kern River too much discretion in determining whether a shipper is no longer creditworthy. The parties contend that section 29.4 should specify what qualifies as a "material adverse change" in financial condition. The parties argue that the *Policy Statement* and Commission precedent require pipelines to include in their tariffs objective criteria for use in determining whether a shipper is creditworthy or becomes non-creditworthy³² and that section 29.4 does not meet this standard.

35. BP Energy argues that the applicability of section 29.4 should be limited to those shippers who are downgraded from investment to non-investment grade. BP Energy

³⁰ *Id.* P 18.

³¹ *Id.* P 14.

³² *Id.* P 10. See also *Tennessee Gas Pipeline Co.*, 102 FERC ¶ 61,075, at P 41 (2003), *order on reh'g*, 103 FERC ¶ 61,275, at P 40-41 (2003); *PG&E Gas Transmission, Northwest Corp.*, 103 FERC ¶ 61,137, at P 67 (2003).

states that under Kern River's current proposal, any degradation in a shipper's (or guarantor's) credit quality could trigger the application of section 29.4 and impose a security requirement, regardless of whether the degradation causes the shipper (or guarantor) to fall below investment grade.

36. NV Energy contends that section 29.4 should be clarified to state that if Kern River suspends service due to credit issues, Kern River should also stop billing the shipper for reservation charges.

2. Kern River's Answer

37. Kern River states that it is willing to revise its proposal to incorporate the following definition of material adverse change:

The determination of "material adverse change" shall be based upon objective, publicly available information or a clearly defined event, such as a default or threat of default on indebtedness, decrease in value of publicly-traded debt, restatement of financials, nonpayment or threat of nonpayment, or decrease in market capitalization.

38. Kern River argues that its originally proposed language makes clear that materiality is required. Kern River asserts that the additional language will address the protestors' concerns that a shipper (or guarantor) whose credit rating is downgraded, for example, from AAA to AA, would continue to be considered creditworthy, as long as the shipper's ability to pay is not materially affected.

3. Commission Determination

39. The Commission accepts Kern River's proposed section 29.4, as modified in Kern River's answer, subject to the conditions described below. In the *Policy Statement*, the Commission stated that pipelines must use objective criteria for determining creditworthiness.³³ The Commission finds that Kern River's revised definition of "material adverse change" provides objective criteria for determining whether a shipper is no longer creditworthy, consistent with the *Policy Statement*. In addition, the revised language Kern River proposes in its answer is similar to tariff language previously approved by the Commission.³⁴ Further, by revising the definition of "material adverse change" to include objective criteria, Kern River addresses the concerns raised by BP Energy and Reliant that the definition was overly broad and vague. However, in the

³³ *Id.*

³⁴ See *Northern Natural Gas Co.*, 103 FERC ¶ 61,276, at P 22-24 (2003).

interest of transparency, the Commission will require Kern River to notify a shipper in writing the reason for the change in the shipper's creditworthiness status, should a material adverse change in financial condition occur.³⁵

40. The Commission also finds that section 29.4 should be modified to state that if Kern River suspends service for creditworthiness problems, it must also suspend reservation charges. The Commission reaffirmed its position on this issue in the *Policy Statement*,³⁶ and the Commission agrees with NV Energy that it would be helpful for Kern River to specifically state this requirement in its tariff. The Commission directs Kern River to file a revised tariff sheet incorporating the changes to section 29.4 discussed herein.

The Commission orders:

(A) Kern River's proposed tariff revisions are accepted, subject to the modifications discussed in the body of the order.

(B) Kern River is directed to make a compliance filing within thirty (30) days of the date of this order, as discussed in the body of the order.

By the Commission.

(S E A L)

Kimberly D. Bose,
Secretary.

³⁵ See *Policy Statement* at P 10. See also *Tennessee Gas Pipeline Co.*, 102 FERC ¶61,075, at P 44 (2003) (requiring pipeline to disclose to the shipper the basis for its determination of credit status).

³⁶ *Policy Statement* at P 24.

Appendix

**Kern River Gas Transmission Company
Second Revised Volume No. 1
Tariff Sheets Accepted Subject to Conditions
Effective April 20, 2009**

Third Revised Sheet No. 12
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