131 FERC ¶ 61,060
UNITED STATES OF AMERICA
FEDERAL ENERGY REGULATORY COMMISSION

Before Commissioners: Jon Wellinghoff, Chairman;
Marc Spitzer, Philip D. Moeller,
and John R. Norris.

Kern River Gas Transmission Company Docket No. RP09-466-004

ORDER ON MOTION FOR CLARIFICATION

(Issued April 22, 2010)

1. On July 24, 2009, Williams Gas Marketing, Inc. (Williams) filed a motion requesting that the Commission clarify the May 1, 2009 Order[1] in this proceeding. Specifically, Williams requests that the Commission clarify that the Standard and Poor's (S&P) investment grade corporate credit rating of The Williams Companies, Inc.,[2] together with the investment grade credit ratings of the two other ratings agencies[3] and the short-term and long-term Outlook or CreditWatch of Stable or Positive from each such agency, satisfy the creditworthiness criteria in section 29.1 of Kern River Gas Transmission Company's (Kern River) tariff. The Commission approved section 29.1 of Kern River's tariff in the May 1 Order, along with other modifications to Kern River's creditworthiness tariff provisions. As discussed below, the Commission provides the clarification sought by Williams.

I. Background

2. On March 20, 2009, Kern River filed revised tariff sheets to modify the creditworthiness standards in its rate schedules and to merge those creditworthiness provisions into one section of the tariff's General Terms and Conditions (GT&C). In particular, Kern River proposed to modify the criteria for determining creditworthiness

[1] *Kern River Gas Transmission Co.*, 127 FERC ¶ 61,103 (2009) (May 1 Order).

[2] The Williams Companies, Inc. is the parent guarantor of Williams.

[3] Moody's Investor Service (Moody's) and Fitch Ratings (Fitch).

by adding Fitch to the ratings agencies used to determine creditworthiness and to require shippers rated by multiple agencies to meet the investment grade criteria for each.[4]

3. In the May 1 Order, the Commission largely approved Kern River's proposed changes, finding it reasonable for Kern River to consider all three ratings agencies when evaluating a shipper's creditworthiness and to take Outlooks and CreditWatches into account. Requests for rehearing of the May 1 Order are pending. However, none of those rehearing requests address the specific issue presented in this motion.

II. Motion for Clarification

4. In its Motion for Clarification, Williams explains that after the issuance of the May 1 Order, Kern River sent a letter to Williams stating that its parent guarantor[5] was no longer creditworthy because its S&P senior unsecured debt rating does not meet the minimum investment grade requirement in section 29.1 of Kern River's tariff. Williams states that as a result, Kern River requested collateral or an irrevocable letter of credit in the amount of $19.6 million, representing one year of reservation charges under Williams' Transportation Service Agreements (TSA) with Kern River.[6]

---

[4] Section 29.1 of the GT&C of Kern River's tariff states in relevant part:

> For purposes herein, the determination of Shipper's creditworthiness will be based upon the level of service requested by shipper and: (a) to the extent rated by the following agencies, a credit rating of investment grade from each, where a minimum investment grade rating is defined as a rating of "BBB-" by Standard and Poor's Corporation, a rating of "Baa3" by Moody's Investors Service, a rating of "BBB-" by Fitch Ratings, and, if rated at the minimum investment grade by any agency, a Short-Term and Long-Term Outlook or CreditWatch of Stable or Positive from that agency…

[5] The Williams Companies, Inc. guaranteed Williams' obligations of $157 million under four long-term firm TSAs pursuant to section 7.1 of Kern River's tariff, which was superseded by the new creditworthiness tariff provisions accepted in the May 1 Order.

[6] Kern River made its request for a year's worth of reservation charges pursuant to section 29.2 of the GT&C of Kern River's tariff. Section 29.2 provides:

> If shipper otherwise fails to establish creditworthiness as provided herein, Shipper may still receive long term firm

(continued…)

5. Williams states that in response to the letter, it advised Kern River that while The Williams Companies, Inc. has a *senior unsecured debt* rating of BB+ from S&P, which is one notch below investment grade, it also has a *corporate credit* rating of BBB- from S&P, which is investment grade. Thus, Williams argues it has a credit rating of investment grade from S&P. Williams contends that because it also has investment grade credit ratings from the other two ratings agencies, and short-term and long-term Outlook or CreditWatch of Stable or Positive from each such agency, Williams' parent meets the creditworthiness criteria in section 29.1. Williams explains that the language in section 29.1 states that a shipper (or in this case, the shipper's parent guarantor) must have "a credit rating of investment grade" from each of the agencies rating the company. Williams also explains that section 29.1 does not mention or distinguish between a *senior unsecured debt* rating and a *corporate credit* rating.

6. Williams states that Kern River did not provide any discussion in its March 20, 2009 transmittal letter accompanying its filing in this docket that explains, or mentions, which of S&P's credit ratings Kern River will use in cases where there is both a corporate credit rating and a senior unsecured credit rating. Williams argues it is unjust and unreasonable for Kern River to attempt to unilaterally narrow the meaning of its tariff beyond what it clearly states. Williams asserts that if it is Kern River's intent to only accept senior unsecured ratings, Kern River can file with the Commission to seek a tariff change to that effect. William states that until that time, Kern River should be required to abide by the clear language of its tariff.

7. Williams explains that it engaged in additional discussions with Kern River and the parties entered into an interim settlement agreement specifying the type and amount of credit security that Williams will provide Kern River pending the Commission's decision on this motion.[7] In addition to establishing an interim security amount, the Settlement provides that if the Commission rules in favor of Williams, Kern River will release the interim security it provided and Williams will leave the $157 million parent guarantee in place. The Settlement also provides that if the Commission decides in favor of Kern River, Williams will provide the $19.6 million letter of credit requested by

---

> service provided it either (a) furnishes and maintains for the term of the Transportation Service Agreement a written guarantee in a form satisfactory to Transporter from a third party that is creditworthy as determined above; or (b) furnishes other security acceptable to Transporter's lenders.

[7] The Settlement states that while the motion for clarification is pending, Williams will provide Kern River with an irrevocable letter of credit in an amount equal to six months of reservation charges.

Kern River and Kern River will release The Williams Companies, Inc. from its obligations under its $157 million parent guarantee.

III. Kern River's Answer

8. On August 5, 2009, Kern River filed an answer to Williams' motion. Kern River states that it is not unusual for an entity to have multiple credit ratings and different credit ratings from the same ratings agency. Kern River states that when determining whether such an entity is creditworthy, Kern River uses the credit rating that is the most relevant to Kern River's status. Kern River states that here, its status is that of a general, unsecured creditor of The Williams Companies, Inc. Therefore, Kern River asserts the senior unsecured credit rating is the most appropriate rating for Kern River to use to assess the creditworthiness of The Williams Companies, Inc. under section 29.1.

9. Kern River argues Williams' position is unreasonable because it would require Kern River to accept a rating that is not relevant to Kern River simply because it is a "credit rating of investment grade." Kern River also disagrees with Williams' suggestion that Kern River should have explained in its initial filing how it intended to apply its tariff in cases where a shipper has both a corporate credit rating and a senior unsecured credit rating. Kern River contends that predetermining which rating would be used could foreclose Kern River from using the most relevant rating. Moreover, Kern River asserts that not every shipper has a given rating and if Kern River were specific about which rating would be used, the result could be inequitable for the shipper.

10. Kern River further states that the Commission has accepted as just and reasonable other pipeline tariffs that reference a "senior unsecured" rating in their definitions of creditworthiness.[8] Moreover, Kern River states that the Commission routinely acknowledges that pipelines interpret and apply their tariffs to various situations.[9]

IV. Discussion

11. The Commission clarifies that the S&P investment grade *corporate credit* rating of the Williams Companies, Inc., together with the investment grade credit ratings of the two other ratings agencies and the short-term and long-term Outlook or CreditWatch of

---

[8] *See* Attachment 6 to Kern River's August 5, 2009 Answer to Motion for Expedited Clarification (setting forth excerpts from the tariffs of Natural Gas Pipeline Company of America, Inc., Columbia Gas Transmission Corporation, and Gulf South Pipeline Company, LP).

[9] *See, e.g., Tennessee Gas Pipeline Co.*, 74 FERC ¶ 61,181 (1996); *Shell Energy North America (US), L.P.*, 126 FERC ¶ 61,120 (2009).

Stable or Positive from each such agency, satisfy the creditworthiness criteria in section 29.1 of Kern River's tariff.

12. Williams is a long-term firm shipper on the Kern River system. Currently, Williams is guaranteed by its parent, The Williams Companies, Inc., for its obligations to Kern River, which total $157 million. However, Kern River argues that under the new creditworthiness standards in its tariff, which the Commission approved in the May 1 Order, The Williams Companies, Inc. is no longer creditworthy.

13. New section 29.1 of Kern River's tariff states that to be creditworthy, a shipper (or in this case, a shipper's parent guarantor) must have "a credit rating of investment grade" from each agency that rates it, and, if rated at the minimum investment grade by any agency, a Short-Term and Long-Term Outlook or CreditWatch of Stable or Positive from that agency. The Williams Companies, Inc. has investment grade credit ratings from Fitch and Moody's and short-term and long-term Outlook or CreditWatch of Stable or Positive. The Williams Companies, Inc. also has two credit ratings from S&P: (1) a corporate credit rating of BBB-, which is investment grade, and (2) a senior unsecured debt credit rating of BB+, which is below investment grade.

14. Kern River argues that although its tariff does not specify which credit rating it will use in the case of multiple ratings from one agency, Kern River should have the discretion to choose the rating that is most relevant. Kern River states that here, it is an unsecured creditor of The Williams Companies, Inc., so the most appropriate credit rating for Kern River to use is the senior unsecured credit rating, which is below investment grade for The Williams Companies, Inc.

15. The Commission disagrees. The Commission reads section 29.1 as requiring only that shippers (or their parent guarantors) have "a credit rating of investment grade" from each agency that rates it. In section 29.1 of Kern River's tariff, there is no mention of, or distinction between, a *senior unsecured debt* rating and a *corporate credit* rating. Nor does section 29.1 specify that Kern River will only accept certain types of credit ratings from the ratings agencies. Accordingly, the Commission finds that a *corporate credit* rating of investment grade meets the standard set forth in that section. Kern River argues its interpretation of section 29.1 is correct because the Commission has accepted creditworthiness tariff provisions from other pipelines that require *senior unsecured debt* ratings. However, this argument misses the point. The issue here is not whether a pipeline may require a shipper to have a *senior unsecured debt* rating of investment grade to be creditworthy. The issue is that Kern River is seeking to impose a requirement on a shipper that is not specified in its tariff.

16. Kern River also argues that if it were to specify in its tariff the credit rating(s) it will accept, this could foreclose Kern River from using the most relevant rating. However, Kern River may seek to modify its tariff to specify which type of credit rating it will accept for which type of shipper. While pipelines have discretion in interpreting

their tariff, this does not allow them to read clarifying language into their tariffs that is not present, particularly where other pipelines have specified such language when it was their intention.

17. For these reasons, the Commission finds that the S&P investment grade *corporate credit* rating of the Williams Companies, Inc., together with its other investment grade credit ratings from the other rating agencies, satisfy the creditworthiness criteria in section 29.1 of Kern River's tariff.

The Commission orders:

Williams' request for clarification is granted, as discussed in the body of this order.

By the Commission.

(S E A L)

Kimberly D. Bose,
Secretary.