

133 FERC ¶ 61,105  
UNITED STATES OF AMERICA  
FEDERAL ENERGY REGULATORY COMMISSION

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

Kern River Gas Transmission Company

Docket No. RP10-1406-000

ORDER ACCEPTING AND SUSPENDING TARIFF SHEETS

(Issued October 29, 2010)

1. On September 30, 2010, Kern River Gas Transmission Company (Kern River) filed revised tariff records<sup>1</sup> establishing and implementing a limited term Periodic Rate Adjustment – Regulatory Asset Surcharge (PRA) mechanism pursuant to section 154.403 of the Commission’s regulations. The proposed PRA mechanism will allow Kern River to collect the regulatory asset associated with depreciation of compressor engine and general plant replacements incurred after the end of the test period<sup>2</sup> through the end of Period One<sup>3</sup> in the pending general rate case in Docket No. RP04-274-000.<sup>4</sup> The Commission accepts and suspends the revised tariff records proposed for the full five-month statutory period with an effective date of April 1, 2011.

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<sup>1</sup> Sheet No. 5, Statement of Rates, Schedules KRF-1, CH-1, UP-1, MO-1, SH-1, 1.0.0; Sheet No. 5A, Statement of Rates, Firm Incremental Service, 1.0.0; Sheet No. 101, General Terms & Conditions Index, 2.0.0; Sheet No. 237, GT&C Periodic Rate Adjustment-Regulatory Asset Surcharge, 1.0.0; Sheet No. 238, GT&C Periodic Rate Adjustment-Regulatory Asset Surcharge, 1.0.0; and Sheet No. 239, GT&C Periodic Rate Adjustment-Regulatory Asset Surcharge, 1.0.0; to Gas Tariff, FERC NGA Gas Tariff.

<sup>2</sup> The test period ends October 31, 2004.

<sup>3</sup> The term “Period One” refers to the primary terms of shippers’ existing contracts. See *Kern River Gas Transmission Company*, 92 FERC ¶ 61,061 (2000).

<sup>4</sup> Kern River states that to the extent that its motion for clarification filed on September 28, 2010 in Docket No. RP04-274-000 is granted as requested, Kern River will withdraw the instant proposal as moot.

## **Background**

2. On April 30, 2004, Kern River filed a general Natural Gas Act (NGA) section 4 rate case in Docket No. RP04-274-000. Kern River's proposed rates, which are pending, are based on a levelized rate methodology initially approved by the Commission in Kern River's optional certificate order.<sup>5</sup> Under a levelized rate methodology, Kern River recovers less of the depreciation expense in the early years of service (as compared to a traditional cost-of-service) and then recovers more in the later years of service. The change in timing of recovery, in combination with a declining total rate base, provides a level annual cost-of-service. In the section four rate case in Docket No. RP04-274-000, the Commission accepted Kern River's proposal for levelized rates for Period One (i.e. the term of the shippers' initial contracts).<sup>6</sup> In Opinion Nos. 486, 486-A, and 486-B, the Commission made merits holdings on all issues concerning Period One rates, resulting in refunds for the locked-in period and a prospective section five reduction in Period One rates.<sup>7</sup> In Opinion No. 486-C, the Commission accepted Kern River's compliance filing for Period One prospective rate reduction as of the date of the order.<sup>8</sup> Rehearing of Opinion No. 486-C is now pending. The rates for Period Two (the period from the expiration of those contracts to the end of Kern River's depreciable life) are currently under review in the hearing in Docket No. RP04-274-000.

3. On September 28, 2010, Kern River requested clarification from the Commission pertaining to Opinion Nos. 486, 486-A, 486-B, and 486-C in the general rate case in Docket No. RP04-274-000. Kern River seeks confirmation that the determination of whether Kern River has under-collected book depreciation expense in Period One will be based on Kern River's aggregate book depreciation accruals relative to the aggregate depreciation expense included in Kern River's levelized rates.

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<sup>5</sup> See *Kern River Gas Transmission Company*, 50 FERC ¶ 61,069 (1990) (Optional Certificate Order).

<sup>6</sup> Since there are many different groups of shippers (i.e. ten year and fifteen years shippers) on Kern River's system, the first group of shippers' Period One rates will expire on October 1, 2011. See *Kern River Gas Transmission Company*, Opinion No. 486, 117 FERC ¶ 61,077 at n.46 (2006).

<sup>7</sup> See *Kern River Gas Transmission Company*, order on rehearing, Opinion No. 486-A, 123 FERC ¶ 61,056 (2008), order on rehearing, Opinion No. 486-B, 126 FERC ¶ 61,034 (2009).

<sup>8</sup> See *Kern River Gas Transmission Company*, Opinion No. 486-C, 129 FERC ¶ 61,240 (2009).

**Instant Filing**

4. Kern River proposes to establish and implement a limited term PRA mechanism. The proposed PRA mechanism will allow Kern River to collect the regulatory asset associated with depreciation of compressor engine and general plant replacements incurred after the end of the test period through the end of Period One in the pending general rate case in Docket No. RP04-274-000. The proposed PRA is a reservation surcharge based on maximum daily contract demand for transportation capacity held through the remaining term of each group of affected shippers' Period One transportation service agreements. Kern River explains that the PRA will be calculated and stated separately for each group of affected shippers and will be revised annually. Kern River also explains that the initial PRA will include the balance of any unrecovered depreciation expense related to compressor engine and general plant replacements made from November 1, 2004, through August 31, 2010.

5. Kern River asserts that it is entitled to recover deferred depreciation through its Period Two rates as those rates become effective over the next several years. Kern River states that Opinion No. 486 acknowledged that compressor engines and general plant are replaced more frequently than other transmission plant. Kern River further states that the Commission in Opinion No. 486 authorized Kern River to use a higher book depreciation rate for compressor engines and general plant and continue to recover the difference between its book and regulatory depreciation in its levelized rates. However, Kern River states that if the Commission grants its request for clarification in Docket No. RP04-274-000, it will withdraw the instant PRA filing as unnecessary.

**Notice**

6. Public notice of the filing was issued on October 4, 2010. Interventions and protests were due on or before October 12, 2010. Pursuant to Rule 214, 18 C.F.R. § 385.214 (2010), 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. Numerous parties filed a protest. Those parties include Rolled-In Customer Group (RCG),<sup>9</sup> Morgan Stanley Capital Group Inc. (MSCG), Calpine Energy Services, L.P. (CES), BP Energy Company (BP), Nevada Power Company (NVE), Southern California Generation Coalition (SCGC), and a joint protest from

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<sup>9</sup> Rolled-In Customer Group includes Aera Energy LLC, Anadarko E&P Company LP and Anadarko Petroleum Corporation, Chevron USA Inc. (On its own behalf and on behalf of Nevada Cogeneration Associates #1 and #2), Occidental Energy Marketing Inc., Shell Energy North America (US) LP, Southwest Gas Corporation, and Williams Gas Marketing Inc.

Southern California Gas Company (SoCalGas) and San Diego Gas & Electric Company (SDG&E). Kern River filed an answer to protests, which the Commission will accept for filing.

7. The protesting parties make several arguments for rejection of the PRA rate adjustment mechanism. RCG argues that the Commission has never approved a surcharge to collect unrecovered depreciation amounts because this would be inconsistent with the Commission's regulations requiring rates be based on projected units of service.<sup>10</sup> RCG states that Kern River is attempting to collect under-recoveries pertaining to compressor engines and general plant by means of a surcharge without shippers receiving the benefits of any offsetting credits due to decreased costs or increased throughputs. RCG requests the summary rejection of the proposed surcharge. MSCG argues that allowing Kern River to establish separate dockets to litigate cherry-picked issues in isolation from the pending rate proceedings in Docket No. RP04-274-000 would only result in confusion of the issues and would unnecessarily burden the parties. Like RCG, MSCG asserts that Opinion No. 486-A held that Kern River is at risk for any depreciation it fails to recover through its Period One rates.

8. CES states that the proper forum for considering any modification to depreciation included in Kern River's Period One rates is in a full NGA section 4 rate proceeding, not a filing that focuses on a single component of Kern Rivers' total cost of service. CES contends that Kern River's PRA rate adjustment filing is not permissible pursuant to section 154, subpart E of the Commission's regulations which permits limited rate changes to address research and development expenditures, annual charge adjustment expenditures and changes to gas reimbursement percentages, items that involve significant changes from year to year and that are difficult to project.<sup>11</sup> CES further argues that the PRA rate adjustment is unduly discriminatory since the surcharge would only apply to affected shippers even though the compressor engine and general plant investments that underlie the PRA surcharge benefit all of Kern River's shippers. CES states that the surcharge is unnecessary as the same issues are before the Commission in Kern River's Period One compliance filing. CES therefore requests that if the Commission does not reject the PRA mechanism, that the Commission suspend it for the maximum five-month period permitted under the NGA and set it for hearing.

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<sup>10</sup> See *ANR Pipeline Company*, 70 FERC ¶ 61,143, at 61,431 (1995). See also *Florida Gas Transmission Company*, 105 FERC ¶ 61,171, at P 47 (2003).

<sup>11</sup> CES cites to *Destin Pipeline Company, L.L.C.*, 89 FERC ¶ 61,116, at 61,316 (1999) where the Commission rejected a proposed limited rate adjustment that reflected, in part, a reduced depreciation rate, finding that Destin's filing does not pertain to any of the limited changes set forth in section 154.403 in Subpart E of the Commission's regulations. (Citing 18 C.F.R. § 154.403 (2010)).

9. BP likewise contends that Kern River's proposal is asymmetrical since Kern River seeks to impose what it claims to be costs associated with compressor engines, while denying shippers the benefit of increased revenues during the same period that are the result of higher throughput and compressor usage. BP states that Kern River's PRA rate surcharge would increase rates by a range of \$0.008/Dth to \$0.0397/Dth (depending on the remaining contract duration) for each shipper group. BP also asserts that these facts represent why rate decisions should not be based on a single component of a pipeline cost of service. BP also argues that Kern River is attempting to delay review of its Period One compliance filing and that this imposes additional and unwarranted delay on its shippers. NVE also argues that the proposed surcharge does not conform to the Commission's regulations and a number of interpretations and policies related to those regulations. SoCalGas and SDG&E also argue that the surcharge is inappropriate under the Commission's cost of service protocols and that it is untimely.

10. Kern River responds to the above protests by stating that its proposed PRA surcharge will ensure that Kern River will have a timely means to collect deferred depreciation expense associated with Period One investments in compressor engine and general plant.<sup>12</sup> Kern River asserts that its proposed PRA: (1) supports the Commission's rulings in Opinion Nos. 486 and 486-A; (2) does not violate the Commission's policies or regulations; and (3) is neither prejudicial nor unduly discriminatory. Kern River explains that the deferred depreciation expense will either have to be recovered in Period One rates, or that expense must be reflected in the aggregate regulatory asset/liability balance that will be included in Period Two rates. Kern River states that it is entitled to certainty on this issue and that confirmation is necessary to avoid additional and unnecessary litigation.

### **Discussion**

As Kern River states, its proposal to establish a limited term PRA mechanism could be rendered moot depending upon how the Commission rules on its pending motion for clarification in Docket No. RP04-274-000. Kern River's proposed PRA mechanism also raises numerous issues under the Commission's regulations and policies governing periodic rate adjustment filings to recover a single cost item.<sup>13</sup> As such, Kern River has not established that its proposed mechanism is just and reasonable. Accordingly, the proposed PRA mechanism listed in footnote 1 is accepted and suspended, subject to refund, for the full five-month statutory period effective April 1, 2011. The Commission

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<sup>12</sup> Kern River estimates the deferred depreciation expense to be \$37 million (See page 13 of Kern River's answer filed on October 20, 2010 in Docket No. RP10-1406-000).

<sup>13</sup> 18 C.F.R. § 154.403 (2010).

will consider what further action to take with respect to this filing in conjunction with its consideration of Kern River's motion for clarification.

### **Suspension**

11. Based upon a review of the filing, the Commission finds that Kern River's proposed tariff has not been shown to be just and reasonable, and may be unjust, unreasonable, unduly discriminatory, or otherwise unlawful. Accordingly, the Commission shall accept the tariff for filing and suspend its effectiveness for the period set forth below, and permit it to become effective as set forth below. The Commission's policy regarding rate suspensions is that rate filings generally should be suspended for the maximum period permitted by statute where preliminary study leads the Commission to believe that the filing may be unjust, unreasonable, or that it may be inconsistent with other statutory standards.<sup>14</sup> It recognizes, however, that shorter suspensions may be warranted in circumstances where suspension for the maximum period may lead to harsh and inequitable results.<sup>15</sup> Such circumstances do not exist here. Therefore, the tariff filed in this docket is accepted and suspended for the full five months, to be effective April 1, 2011, and subject to further Commission order.

### **The Commission orders:**

The proposed tariff listed in footnote one is accepted and suspended, subject to refund, for the full five-month statutory period, effective on April 1, 2011, and subject to further order.

By the Commission.

( S E A L )

Kimberly D. Bose,  
Secretary.

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<sup>14</sup> See *Great Lakes Gas Transmission Co.*, 12 FERC ¶ 61,293 (1980) (five month suspension).

<sup>15</sup> See *Valley Gas Transmission, Inc.*, 12 FERC ¶ 61,197 (1980) (one day suspension).