136 FERC ¶ 61,141
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. RP11-2356-000

ORDER ON COMPLIANCE TARIFF RECORDS

(Issued August 29, 2011)

1. On August 5, 2011, Kern River Gas Transmission Company (Kern River) filed revised tariff records[1] to comply with the Commission's July 21, 2011 Opinion No. 486-E in Docket No. RP04-274-023.[2] Kern River states that the instant filing reflects (1) eligibility requirements for shipper to pay Period Two rates, to be effective September 1, 2011,[3] and (2) rates for Period Two shipper groups and tariff records for Period Two rates, to be effective October 1, 2011.[4] As discussed below, the Commission accepts the tariff records, listed in Appendix A, addressing Period Two shipper eligibility requirements, subject to conditions to be effective September 1, 2011. The Commission will address the tariff record concerning the rates for Period Two, listed in Appendix B, in a subsequent Commission order.

[1] *See* Appendix.

[2] *Kern River Gas Transmission Co*., Opinion No. 486-E, 136 FERC ¶ 61,045 (2011). Kern River's compliance filing was given a new docket number because the underlying filing pre-dates the effective date of eTariff. *See Electronic Tariff Filings,* 130 FERC ¶ 61,047, at P 9-17 (2010).

[3] The tariff records to be effective on September 1, 2011 are listed in Appendix A.

[4] The tariff record proposed to be effective on October 1, 2011 is listed in Appendix B.

Background

2. In January 1990, the Commission issued a certificate for Kern River to construct its Original System under the optional expedited certificate regulations.[5] In that order, the Commission approved initial rates based on, among other things, a levelized cost of service and a 25-year depreciation life. The Commission also authorized Kern River to charge separate levelized rates for three different periods: (1) the 15-year term of the firm shippers' initial contracts (Period One); (2) the period from the expiration of those contracts to the end of Kern River's depreciable life (Period Two); and (3) the period thereafter (Period Three). The levelized rates for Period One (Period One Rates) were designed to recover approximately 70 percent of Kern River's original investment, an amount about equal to the portion of its invested capital funded through debt.[6] Since the Period One rates allowed Kern River to recover more invested capital during Period One than Kern River would under ordinary straight-line depreciation for the depreciable life of the project, the rates for the second two periods (the Period Two rates and Period Three rates) would be lower than the Period One Rates.[7]

3. In May 2000, Kern River proposed to lower its rates by refinancing its debt and providing for longer debt recovery periods by extending the terms of its firm contracts. The Commission accepted a settlement containing this proposal (the Extended Term (ET) Settlement).[8] The ET Settlement provided each of Kern River's firm shippers on the Original System an option to extend their contracts for either five or ten years. Some customers chose the five-year option and entered into revised contracts with ten-year terms (October 1, 2001 to September 30, 2011), while the rest of the Original System firm shippers extended their contract terms by ten years and entered into revised contracts with 15-year terms (October 1, 2001 to September 30, 2016). The ET Settlement provided that the firm shippers' rates under these contracts would be designed consistent

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[5] *Kern River Gas Transmission Co.*, 50 FERC ¶ 61,069, at 61,150 (1990) (Original Certificate Order).

[6] *See* Original Certificate Order, 50 FERC at 61,144.

[7] *Kern River Gas Transmission Co.*, 58 FERC ¶ 61,073, at 61,244 n.38 (1992) (January 1992 Amended Original Certificate Order), *order on reh'g*, 60 FERC ¶ 61,123 (1992) (August 1992 Order).

[8] *Kern River Gas Transmission Co.*, 92 FERC ¶ 61,061 (2000), *order on reh'g*, 94 FERC ¶ 61,115 (2001).

with the principles stated in the Original Certificate Order, permitting Kern River to recover 70 percent of the costs of the plant being depreciated by the end of the new repayment periods.[9]

4. In May 2002, Kern River completed an expansion project by adding additional compression to its system (2002 Expansion Project).[10] The costs associated with the 2002 Expansion were rolled into the Original System costs, creating the Rolled-in System. As before, each of the 2002 Expansion Project shippers were permitted to choose 10-year or 15-year terms for this additional capacity. In May 2003, Kern River completed another expansion project (2003 Expansion).[11] Kern River priced these services on an incremental basis and again permitted each shipper participating in the 2003 Expansion to choose either 10-year or 15-year firm contracts. Therefore, after the 2003 Expansion, there were six groups of levelized rate contracts. The shippers under all those contracts are still paying Period One rates, but the Original System ten-year shipper contracts will expire on September 30, 2011.[12]

5. On April 30, 2004, Kern River filed a general rate case under section 4 of the NGA in Docket No. RP04-204-000 (Original Rate Case Filing). Kern River proposed to

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[9] *Kern River Gas Transmission Co.*, 92 FERC at 61,059.

[10] *Kern River Gas Transmission Co.*, 96 FERC ¶ 61,137 (2001) (2002 Expansion Certificate Order).

[11] *Kern River Gas Transmission Co.*, 100 FERC ¶ 61,056 (2002) (2003 Expansion Certificate Order), *order on reh'g*, 101 FERC ¶ 61,042 (2002).

[12] The expiration dates of the various contracts are as follows:

> Original system – 10-year contracts (expires September 30, 2011); Original system – 15-year contracts (expires September 30, 2016); 2002 Expansion – 10-year contracts (expires April 30, 2012); 2002 Expansion – 15-year contracts (expires April 30, 2017); 2003 Expansion – 10-year contracts (expires April 30, 2013); 2003 Expansion – 15-year contracts (expires April 30, 2018). The rates for the Big Horn Lateral and the High Desert Lateral are not at issue in this phase of this proceeding.

See Kern River Gas Transmission Co., Opinion No. 486, 117 FERC ¶ 61,077 at P 487-8 (2006).

continue to continue to design its rates based on the levelized rate design methodology approved in Original Certificate Order, as modified in subsequent proceedings. Because Kern River's firm contracts expire on seven different dates, in its April 30, 2004 rate case filing, Kern River proposed different levelized Period One rates for each of the six groups of contracts. While the rates approved in the original certificate proceeding included separate, levelized rates for three periods, Kern River's tariff only included rates for Period One, the term of its firm shippers' initial contracts, and Kern River did not propose in this rate case to add Period Two or Three rates to its tariff.

6. In Opinion No. 486,[13] the Commission found that Kern River's proposal to continue its levelized methodology did not result in just and reasonable rates unless the pipeline included tariff sheets reflecting the Period Two step down rates, in addition to its proposed Period One rates. The Commission explained that the Period One Rates are designed to recover 70 percent of Kern River's invested capital, an amount approximately equal to the portion of its invested capital funded through debt. This fact allows Kern River to recover more invested capital during Period One than it would under ordinary straight-line depreciation for the depreciable life of its system. Because Kern River will have an excess recovery of its depreciation expense as of the end of Period One, the Commission held that it could only find the Period One rates to be just and reasonable, if Kern River's tariff also provides for the return of that excess recovery in its Period Two rates.

7. In Opinion No. 486-C, the Commission reaffirmed its holdings in earlier orders that Kern River must include in its tariff levelized rates for Period Two. However, the Commission also established a hearing to determine how levelized Period Two rates should be calculated and what conditions the shipper must satisfy in order to be eligible for the levelized Period Two rates.[14] On April 14, 2011, the Presiding ALJ issued an Initial Decision regarding the Period Two rates.[15]

8. In Opinion No. 486-E, the Commission affirmed the April 14, 2011 Initial Decision on all matters, with the exception of its rejection of Kern River's proposal to require all shippers contracting for Period Two service to do so under Rate Schedule

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[13] Opinion No. 486, 117 FERC ¶ 61,077 at P 37, *reh'g*, Opinion No. 486-B, 126 FERC ¶ 61,034 (2009).

[14] *Kern River Gas Transmission Co.*, Opinion No.486-C, 129 FERC ¶ 61,240, at P 247 (2009).

[15] *Kern River Gas Transmission Co.*, 135 FERC ¶ 63,003 (2011) (Period Two ID).

KRF-1.[16] The Commission held that Kern River may require Period One shippers to enter into Period Two contracts with terms of either 10 or 15 years at the shipper's election and that the entire remaining balance of Kern River's original capital investments may be levelized during the term of those contracts. The Commission clarified that, when those Period Two contracts expire, the shippers will be eligible for reduced Period Three rates. The Commission affirmed the ALJ's approval of Kern River's other proposed eligibility requirements, with the exception of his holding that Kern River may require shippers to take service under Rate Schedule KRF-1, instead of the other open access firm transportation rate schedules under which they are currently taking service. This finding was without prejudice to Kern River filing under NGA section 4 to propose elimination of its other firm service rate schedules in a not unduly discriminatory manner.

9. In the balance of Opinion No. 486-E, the Commission affirmed the ALJ's findings concerning the cost of service and billing determinants to be used in calculating Kern River's Period Two rates. The Commission directed Kern River to file revised tariff records including both the Period Two rates and the eligibility requirements for those rates, consistent with the holdings in this order, on or before August 5, 2011. The Commission determined that the tariff records setting forth the Period Two rates would be effective on October 1, 2011 and the tariff records setting forth the eligibility requirements were determined to be will be effective September 1, 2011.[17]

10. On August 22, 2011, all parties filed requests for rehearing of Opinion No. 486-E.

<u>Details of the Instant Filing</u>

11. Kern River states that the instant filing incorporates the determinations of Opinion No. 486-E into Kern River's Period Two rates and Kern River's tariff. First, Kern River states that its proposed Period Two rates return the excess recovery of depreciation projected to occur during Period One. Second, Kern River states that the proposed Period Two rates reflect an 11.55 percent rate of return on equity. Kern River also states that: (1) the Period Two reservation rates are calculated based on billing determinants equal to 100 percent load factor subscription and utilization of Kern River's firm, mainline capacity; (2) the Period Two rates are based on a 100 percent equity capital structure; (3) the Period Two rates do not include adjustments to the regulatory asset/liability for deferred depreciation associated with replacements of compressor engines and general

[16] Opinion No. 486-E, 136 FERC ¶ 61,045 at P 1.

[17] *Id*. at Ordering Para. B.

plant after the end of the test period for this proceeding (October 31, 2004); (4) the Period Two rates do not reflect an adjustment for inflation.

12. Kern River also states that its proposal incorporates eligibility requirements for Period Two rates in a new section 30 to its General Terms and Conditions (GT&C), entitled "Contracting for Service Subject to Period Two Rates." Kern River proposes in section 30.2(b) to require that each respective shipper group must have a 10- or 15-year contract term for Period Two, and that such contracts will be coterminous with the applicable levelization period. In addition, Kern River proposes that, in order to be eligible for Period Two rates, an existing shipper (other than the 10-year Original System shippers) must (1) provide a binding request for service to Kern River at least 12 months prior to the end of the primary term of their existing Period One contract; (2) execute a new transportation service agreement; and (3) have taken service at maximum applicable tariff rates for the full Period One contract term. Kern River proposes that these contracts may only be for amounts up to the shipper's respective Period One maximum daily contract quantity.

13. Kern River states that to provide transparency for the election of service process, it has added a provision to address shipper election of Period Two rates. Specifically, Kern River proposes that to the extent that all the shippers within a respective shipper group do not select the same 10 or 15-year term, Kern River will provide such shippers with a 20 business day period to mutually agree upon a term of service for that group. If the shippers fail to agree within the 20 days, the default term for the purposes of contracting will be a 10-year term.[18] Kern River asserts that this provision is consistent with the Initial Decision and Opinion No. 486-E.

14. Kern River also states that, depending upon the elections for contract term made by the 2002 Expansion shipper group, the rolled-in Period Two rates for both the Original

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[18] Kern River states that Appendix A to the instant filing contains revised tariff records setting forth Period Two rates calculated as described above, as well as contracting procedures and eligibility requirements for all Period Two shipper groups. Kern River asserts that it has also set forth the combination of rate scenarios that result for each shipper group at each point in time based on the Period Two terms selected. Kern River states that Appendix B contains supporting data and calculations for the rates as required by Opinion No. 486-E. Kern River also filed the electronic spreadsheets supporting Appendix B.

System and the 2002 Expansion shipper groups will change. As described further below, the rolled-in rates for the Original System include a credit for revenues Kern River receives from the 2002 Expansion Project shippers, and that credit will be affected by the contract term elections by the 2002 Expansion Project shippers. Therefore, Kern River states it is proposing to include in section 30.6 a matrix showing all the possible Period Two rate scenarios for all of the shipper group contract term elections.

15. Lastly, Kern River states that the enclosed tariff records also provide on Sheet No. 299D the requirement that Kern River shall file *pro forma* Period Three rates at the times specified by the Commission in Opinion No. 486-E. In addition, Kern River states that this section provides for Period Two rates to be adjusted to reflect reductions in revenue credits applicable to rolled-in shippers that will result from the implementation of Period Three rates.

Public Notice and Protests

16. Public notice of the instant filing was issued on August 9, 2011. Comments were due as provided in section 154.210 of the Commission's regulations. Pursuant to Rule 214 of the Commission's regulations, 18 C.F.R. §385.214 (2011) timely motions to intervene are granted unless an answer in opposition is filed within 15 days of the date such motion is filed. Any timely filed motions or notices not listed here are also granted in accordance with the conditions of Rule 214. On August 16, the Public Utilities Commission of Nevada filed a notice of intervention. The Rolled-in Customer Group (RCG), Nevada Power Company, (NVE), Calpine Energy Services, L.P., (Calpine), Southern California Gas Company (SoCalGas), and BP Energy Company (BP) protested the instant filing. The parties protesting the instant filing address several aspects of Kern River's filing chiefly regarding its proposed section 30 and the eligibility of shippers for Period Two Rates.

17. BP argues that proposed section 30.2 contains an improper 12 month notice requirement with respect to the notice and contract provisions for Period Two Rates. BP argues that the twelve month notice period is undermined by Kern River's effort, in section 30.4, to create a piecemeal ratemaking mechanism that would allow Kern River to change rates six months prior to the onset of Period Two for certain shipper classes.

18. BP, RCG, NVE, Calpine, and SoCalGas also argue that proposed section 30.2(b), would force shippers within each class to agree to the same 10 or 15-year contract term, and would impose a default of a 10-year contract term (with the associated higher rate) upon all shippers within a class in the event unanimous agreement cannot be reached is contrary to Opinion No. 486-E. RCG and NVE also protest the proposed requirement that a shipper obtain a new contract to qualify for Period Two rates.

19. BP also protests and suggests modifications regarding the provisions set forth in section 30.2(a), 30.2(c), and 30.2(d) with respect to the Original System 10-Year

Shippers and the need for binding requests for service by a time certain. BP argues that proposed sections 30.2(a) and 30.2(c) should include explicit exceptions for Original System 10-Year Shippers. RCG and Calpine also protest the binding nature of the commitment required by section 30.2(d)

20. BP protests the prefatory language in section 30.4 with respect to the provision that appears to allow Kern River to file on a special procedural basis for acceptance tariff sheets setting forth the applicable Period Two reservation rate(s) no less than six (6) months prior to the effective date of such rates (with the exception of rates to be effective October 1, 2011). BP argues that this provision is unjust and unreasonable and discriminates against Kern River's shippers because under proposed section 30.2, shippers are required to submit binding transportation service agreements for Period Two not less than twelve (12) months prior to the expiration of Period One shippers will be making irrevocable commitments for a full 10 or 15 years prior to seeing the updated rate(s). BP argues that no special proceedings outside of a general NGA Section 4 or Section 5 proceeding should be authorized for modifying Period Two rates.

21. RCG argues that additional language should be included in section 30.3 to clarify which existing agreements are eligible for Period Two Rates, including a list of those Period One transportation service agreements that are eligible for Period Two Rates.

22. BP, NVE and RCG also request that the Commission clarify that the provisions set forth in section 30.4(a) or 30.4(c) will not be deemed to create for Kern River rights beyond those granted by NGA Section 4, nor will the inclusion of these provisions be interpreted as eliminating or otherwise limiting any rights held by Kern River's shippers, such as the right to file a protest or complaint pursuant to NGA section 5, or any request for relief in response to Kern River's tariff or future filings.

23. RCG argues that Kern River desires to adjust the rates prospectively to account for the loss of the credit associated with the 2002 rolled-in expansion, but without having to file a general section 4 rate case to do so. RCG asserts that the Commission should reject this proposal and these related tariff provisions. NVE also states that section 30.4(d) should be rejected. With respect to proposed section 30.5, BP seeks the same clarification as relates to section 30.4(d) and contends that section 30.5 should not be interpreted as authorizing Kern River to undertake a limited NGA section 4 proceeding or otherwise allow for the independent or piecemeal adjustment of Kern River's rates.

24. In section 30.6, BP states that Kern River sets forth multiple potential Period Two rate scenarios and the Period Two rates that would result for each shipper class pending contract elections. BP asserts that Kern River seeks to include in this section language that "[a]ll rates will reflect adjustments for leap years and any applicable current or future surcharges," which also appears in section 30.4(a). BP understands that this language will not allow Kern River to override or otherwise repudiate the findings set forth in Opinion Nos. 486, *et seq.*, by including surcharges relating to issues that have already

been resolved and for which costs have been rejected and states that the language should be so clarified.

25. Lastly, regarding the derivation of the Period Two rates, BP argues that the Period Two rates proposed by Kern River are unjust, unreasonable and unduly discriminatory with respect to the Original System 10-Year Shippers. BP argues that the rates for the Original System 10-Year Shippers are excessive and require the Original System 10-Year Shippers to pay higher rates than the Original System 15-Year Shippers for Period Two contracts of the same duration. In sum, BP requests that the Commission direct Kern River to establish Period Two rates that result in the Original System 10-Year Shippers paying no more for Period Two service than the Original System 15-Year Shippers under Period Two contracts of the same duration. Calpine adds that Kern River's proposed Period Two reservation rates for 15-Year 2003 Expansion shippers appear to be based on reduced billing determinants in contravention of Opinion No. 486-E where the Commission directed the pipeline to derive Period Two rates based on the same billing determinants as used to derive Period One rates.

Discussion

26. Kern River's filing to comply with Opinion No. 486-E raises issues related to both the eligibility requirements for Period Two rates and the level of those rates. In the instant order, the Commission will address the eligibility requirements in proposed section 30 of Kern River's GT&C in order to place the tariff records setting forth that section into effect on September 1, 2011, as required by Opinion No. 486-E. The Commission will issue a subsequent order to discuss the issues surrounding the derivation of the Period Two rates. In light of the fact the requests for rehearing of Opinion No. 486-E filed on August 23, 2011 are pending before the Commission, our rulings in this order are subject to the outcome of our consideration of the issues raised on rehearing.

Election of Contract Terms

27. Proposed section 30.2(a) provides that Period One shippers (other than 10-year Original System shippers and 10-year 2002 Expansion shippers) must submit a binding request for Period Two service not less than twelve months before the expiration of their contracts.[19] That request must specify either a 10 or 15-year contract term. Section 30.2(b) further provides that:

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[19] The 10-year contracts of 2002 Expansion Projects shippers expire on April 30, 2012, less than a year from now. Accordingly, proposed section 30.2(a) provides that they must submit a binding request for Period Two service by November 1, 2011.

> All Eligible Shippers that wish to retain their DMDQs at Period Two rates at the end of the primary term of their Period One transportation service agreements must enter into a new transportation service agreement for a term of either 10 or 15 years. If all Eligible Shippers within a respective Shipper group do not request the same Period Two term, Transporter will notify the Eligible Shippers within 10 business days of receipt of binding requests for transportation service from all Eligible Shippers in the respective Shipper group. If the Eligible Shippers do not agree on the same term within 20 business days of Transporter's notice, the term for all Eligible Shippers in the group will be 10 years. If an Eligible Shipper with a Period One transportation service agreement has not provided notice at the time the contract term is determined for such Eligible Shipper's shipper group, the Period Two term for such Eligible Shipper shall be the same as previously determined for its Shipper group.

28. Proposed section 30.2(d) provides that the Original System shippers whose 10-year contracts expire on September 30, 2011 must submit a binding request for transportation service no later than September 1, 2011. Section 30.2(d) then provides:

> Transporter will notify Eligible Shippers if they did not request the same Period Two term by September 2, 2011. Eligible Shippers will have until September 7, 2011 to agree on the same term. If the Eligible Shippers do not agree on the same term by September 7, 2011, the term for all Eligible Shippers in the group will be 10 years.

29. All protests to the instant filing object to the proposal to require all shippers whose Period One contracts expire on the same date to agree to the same 10 or 15-year contract term, and to impose a default 10-year contract term if unanimous agreement within each shipper group is not reached. They argue that this proposal is contrary to Opinion No. 486-E which requires that eligible shippers be offered the option of entering into either a 10 or 15-year contract for service during Period Two.[20] Protesters generally assert that Opinion No. 486-E does not authorize Kern River to force agreement within each shipper class, much less mandate agreement at the shorter contract duration and higher rate offered. The protesters also argue that Kern River has not provided any evidence demonstrating the reasonableness or need for its proposal. Further, the protesters point out that Section 154.203(b) of the Commission's regulations provides that compliance filings must include only those changes required to comply with the

[20] *Citing,* Opinion No. 486-E, 136 FERC ¶ 61,045 at P 60.

order directing the filing[21] and argue that the Commission's policy provides that the Commission will not accept any compliance filing that contains any substantive difference from the underlying order.[22]

30. In particular, SoCalGas argues that this proposal is a departure from Kern River's longstanding practice of offering individual shippers a choice between 10-year and 15-year contract terms. It argues that this proposal would deny a shipper's choice of a lower rate under a 15-year contract term unless all other eligible shippers holding capacity of the same vintage and Period One contract term agree on the 15-year Period Two contract term. SoCalGas maintains that this proposal is merely a ploy by Kern River to reduce the amount of capacity for which it must offer the lower Period Two 15-year term rates.

31. The Commission rejects Kern River's proposal to require all shippers whose Period One contracts expire on the same date to have the same Period Two contract term. First, Kern River's sole justification for this proposal appears to be its assertion that "[T]hese provisions are consistent with the initial decision and Opinion No. 486-E."[23] However, the Commission did not, in Opinion No. 486-E, authorize such a requirement. Opinion No. 486-E expressly found that, "Kern River may require Period One shippers to enter into Period Two contracts with terms of either 10 or 15 years *at the shipper's election* and that the entire remaining balance of Kern River's original capital investments may be levelized during the term of those contracts."[24] Moreover, elsewhere in Opinion No. 486-E, the Commission emphasized that "[T]he shippers participating in the original allocation of risk and entering into contracts for Period One service did so as individuals,"[25] not as a group. For that reason, the Commission agreed with Kern River

[21] *Citing*, 18 C.F.R. §154.203(b) (2011).

[22] *See e.g.*, BP Protest at 3 (citing Order No. 582, *Filing and Reporting Requirements for Interstate Natural Gas Company Rate Schedules and Tariffs*, FERC Stats. and Regs. Regulations Preambles ¶ 31,025, at 31,399 (1995)).

[23] Kern River Transmittal Letter at 4.

[24] Opinion No. 486-E, 136 FERC ¶ 61,045 at P 25. (emphasis added) The Commission also found that:

> Therefore, the Commission concludes that Kern River's proposal to give shippers the option of paying Period Two rates levelized over either 10 or 15 years is reasonably consistent with the rate design principles approved in the original certificate proceeding. *Id*. P 68.

[25] *Id.* P 98

that, if one Period One shipper did not contract for Period Two service, other Period One shippers should not be given a preferential right to obtain the turned back capacity at Period Two rates. The Commission explained that, "there is no group right to receive any excess payments of depreciation in Period One paid by other members of the group." *Id*. The fact shippers entered into contracts for Period One service as individuals also supports permitting them to enter into Period Two contracts on the same basis.

32. As the protesters point out, on each previous occasion when a particular group of shippers has been given the option to choose either 10 or 15 year contracts, each shipper has been free to make its own individual choice, without any constraint based on the choices of the other shippers in the group. For example, the ET Settlement provided each Original System shipper the option to enter into a 10-year or 15-year contract, and some shippers chose the 10-year option, while other shippers chose the 15-year option. In Opinion No. 486-E, the Commission intended this same approach to be followed when each set of existing Period One contracts expire. For example, there are two Original System shippers with 10-year contracts expiring on September 30, 2011. The Commission intended that each of those shippers be given the option to choose a 10-year Period Two contract or a 15-year Period Two contract, without regard to the choice of the other shipper as to its contract term. Individual shippers have different commercial needs depending upon the type of customers they serve and numerous other factors. Therefore, it is not just and reasonable for the contract term choice of one shipper to be subject to modification, because other shippers in the same group with different commercial needs prefer a different length contract.

33. The Commission recognizes that at the hearing Kern River expressed concern about the administrative complications that would arise from multiple contract terms, requiring the creation and maintenance of levelization models for each of the unlimited contract durations shippers might choose.[26] Limiting individual shipper's contract term choices to either 10 or 15 years recognizes this concern while at the same time giving each individual shipper some flexibility to choose a contract term that most nearly meets its needs. Kern River has not provided any viable reason for its proposal to require that a shipper either choose the same term as all the other shippers or receive a default 10-year term. The Commission cannot find merit in requiring that a shipper, having made the requisite payments for Period One capacity and now eligible for Period Two service, must agree with all other shippers in its situation regarding an upcoming Period Two term in order to receive service at Period Two rates. Accordingly the Commission rejects this proposal. Therefore, the Commission's acceptance of the tariff sheets listed in Appendix A effective September 1, 2011 is subject to the requirement that Kern River

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[26] Ex. KR-P2-3 at 9-11.

revise sections 30.2(a) and 30.2(d) to remove all provisions related to the requirement that all shippers whose Period One contracts expire on the same date must enter into Period Two contracts of the same duration.

34. The Commission acknowledges that this finding results in necessary adjustments to Kern River's proposed rates for shippers under various rate scenarios such as those set forth on Sheet Nos. 299E, 299F, and 299G. In these tariff sheets, Kern River proposes to devise rates based on its restriction of shippers to a class rather than permitting individual choices concerning the term of the Shippers Period Two Rates and Kern River's gradual Roll-in of 2002 Expansion shippers to its system. While the Commission finds that Kern River must permit its eligible Period Two shippers to choose either a 10-year or 15-year term without regard to the decisions of other shippers on its system, the Commission finds that Kern River's attempt include rate adjustments for the incorporation of 2002 Expansion shippers onto its general system is appropriate.

Period Two Rate Matrix

35. Proposed section 30.2(a) includes a rate matrix, showing the Period Two rates of the Original System and 2002 Expansion shippers. Kern River asserts that there are sixteen different rate scenarios, which may result from the various contract duration elections those shippers may make. Kern River states that these different rate scenarios arise from the method used to determine rolled-in rates for the Original System and the 2002 Expansion.

36. As explained in Opinion No. 486-A,[27] Kern River's 2002 Expansion Project provided a greater proportional increase in its billing determinants than in its overall costs, with the result that rolling in the costs of the 2002 expansion would reduce the rates for shippers on the Original System.[28] Therefore, in the certificate proceeding for the 2002 Expansion Project, the Commission approved Kern River's proposal to roll the costs associated with the 2002 Expansion project into the Original System costs. As with the Original System, shippers on the 2002 Expansion Project were permitted to choose 10 or 15-year terms for this additional capacity. However, since the contract expiration dates were different from the dates in the original system shipper contracts, Kern River did not combine the cost-of-service and revenues for the Original System and the 2002 Expansion Project together to derive the rates, as would ordinarily be done. Rather, Kern

[27] *Kern River Gas Transmission Co.,* Opinion No. 486-A, 123 FERC ¶ 61,056, at P 330-336 (2008).

[28] Opinion No. 486-A, 123 FERC ¶ 61,056 at P 330, (citing *Kern River Gas Transmission Co*., 96 FERC ¶ 61,137).

River elected to calculate a rate reduction on an equal per unit basis for all Original System shippers, regardless of whether they had 10-year or 15-year contracts, in order to reflect the benefit of rolling in the cost and volumes of the 2002 Expansion Project.[29]

37. Opinion No. 486-A approved Kern River's proposal to continue to use the same rolled-in rate methodology in this rate case, providing the same per unit rate reduction to Original System shippers without regard to the duration of their contracts. The Commission explained,

> The Commission sees no reason why the rate reduction benefits to shippers on the Original System from rolling in the costs and volumes of the 2002 Expansion should be tied to the terms of their current contracts. The Original System shippers with ten-year contracts pay higher per-unit rates than the shippers with fifteen-year contracts, because each class of Original System shipper agreed to pay 70 percent of the facility costs of the Original System over the terms of their initial contracts. As Kern River's witness testified, that choice only related to the recovery of the costs of the Original System. It had nothing to do with the 2002 Expansion or the allocation of the overall unit cost reduction the 2002 Expansion provided to shippers on the Original System. The per-unit cost reduction resulting from rolling in the costs and volumes of the 2002 Expansion extends beyond the terms of the Original System shippers' current contracts. Thus, rolling in the 2002 Expansion billing determinants and costs not only reduces the current Period One rates of the ten-year and fifteen-year Original system shippers, it will also reduce their subsequent Period Two rates. The Commission finds that if the ten-year extended term shippers remain on the system after their current contracts expire, over time such shippers will receive an identical benefit resulting from the roll-in of the 2002 Expansion, on an equal per unit basis.[30]

38. In the instant compliance filing, Kern River points out that rate reduction benefit provided to the Original System shippers is based on crediting a portion of the revenues collected from the 2002 Expansion Project shippers to the Original System shippers. Kern River states that, as the 2002 Expansion Project shippers step down to Period Two rates, their respective costs of service decline, and thus the revenues received from the 2002 Expansion service go down. As a result, the credit to the Original System will

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[29] *Id*. (citing Ex. KR-45 at 5).

[30] *Id*., P 342.

decline when the lower, Period Two rates for the 2002 Expansion Project shippers become effective, and, Kern River asserts, the Period Two rates of the Original System shippers should be correspondingly increase.[31]

39. Kern River's proposed rate matrix in section 30.2(a) shows the potential increases in the Original System Period two rates that will occur on (1) May 1, 2012, when the 10-year 2002 Expansion shippers commence Period Two and (2) October 1, 2016 when the 15-year Period One 2002 Expansion shippers commence Period Two. Because the revenues Kern River will collect during Period Two from the 2002 Expansion shippers depend upon whether they elect 10-year or 15-year Period Two contracts, the exact level of the reduced credit to the Original System shippers and corresponding increase in their Period Two rates cannot be known until after the 2002 Expansion shippers have made their contract duration elections for Period Two. Based on its proposal to require all shippers with contracts expiring on the same date to enter into Period Two contracts of the same 10 or 15-year duration, Kern River asserts that the rate matrix in section 30.2(a) sets forth all possible rate scenarios that could result from the rate elections of each group of Original System and 2002 Expansion shippers.

40. Various protesters object to Kern River's proposed rate matrix, on the ground that Kern River should not be permitted in this proceeding to make any modifications to the $ .0345 per dt rate reduction for the Original System shippers approved in Opinion No. 486-A for Period One. They argue that Kern River should be required to maintain that rate reduction throughout Period Two, unless it files a general section 4 rate case to modify all its rates, and Kern River should not receive any special procedural options to change its rates.

41. The Commission rejects this contention. In Opinion No. 486-D, the Commission held that the starting point for calculating Period Two rates in this proceeding must be the cost of service we have already determined for Period One based upon the 2004 test period. However, the Commission stated it was appropriate to make adjustments "where there are circumstances unique to the transition from Period One to Period Two that justify an adjustment to the cost of service underlying the Period One rates."[32] The reduction in revenue collected from the 2002 Expansion Project shippers when they step down to Period Two rates is a circumstance unique to the transition from Period One to Period Two. Therefore, the Commission finds that it is appropriate to reduce the revenue

[31] Ex. No. KR-P2-3, p.10,11

[32] *Kern River Gas Transmission Co.*, Opinion No. 486-D, 135 FERC ¶ 61,162 at P 194 (2010).

credit reflected in the Original System shippers' Period Two rates when the 2002 Expansion Project shippers commence Period Two service.

42. However, as described above, Kern River's proposed rate matrix in section 30.2(a) is premised on its proposal to require all shippers whose contracts expire on the same date, including the 10-year and 15-year 2002 Expansion shippers, to enter into Period Two contracts of the same duration. In the preceding section, we have rejected that proposal. The Commission recognizes that the rejection of that proposal significantly increases the potential ways in which the 2002 Expansion Project shippers' contract duration choices could affect the level of revenues Kern River collects from those shippers during Period Two. That is because each 2002 Expansion Project shipper with Period One contracts expiring on April 30, 2012 or April 30, 2017 may choose either a 10-year or a 15-year Period Two contract, without regard to the contract duration choices of other 2002 Expansion shippers with contracts expiring on the same date. Therefore, it is not practical for Kern River to include in its tariff a rate matrix showing all the potential adjustments to the Original System shippers' contracts as of the effective dates of the 2002 Expansion Project shippers' Period Two contracts.

43. Accordingly, the Commission requires Kern River to eliminate the rate matrices set forth in section 30.2(a). Instead, Kern River may revise that section to include the 10-year and 15-year Period Two rates for each group of Original System and 2002 Expansion Project shippers upon the commencement of Period Two for that shipper group, in the same manner as section 30.2(b) sets forth the Period Two rates of the different groups of 2003 Expansion shippers. Kern River may also include in its tariff a mechanism under which it may file for approval an appropriate adjustment to the Period Two rates of the Original System shippers within a reasonable time after each group of 2002 Expansion Project shippers have made their contract duration election.

44. Accordingly, Kern River is directed to remove the tariff records incorporating its rate matrix and file revised tariff records consistent with this discussion which will contain language to permit it to make the appropriate rate adjustment after each individual shipper in each 10 or 15-year rate class has made its individual choice concerning the rate term it desires in Period Two. This adjustment may take the form of a limited section 4 filing consistent with this discussion.[33]

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[33] Proposed section 30.4(a) provides that Kern River may adjust the Period Two rates as necessary to reflect to leap years and any current or future surcharges. Section 30.4(c) provides that Kern River may change the Period Two rates from time to time in accordance with the Natural Gas Act. Several protesters request clarification that these, and other similar provisions in other provisions of section 30, only authorize Kern River to propose rate adjustments under NGA section 4 and do not affect the shippers' rights to

(continued…)

Timing of Period Two Contracting Process

45. As previously described, the Period One contracts for the six groups of shippers affected by Kern River's instant tariff filing expire on six different dates, with the first set of contracts expiring on September 30, 2011 and the last set of contracts expiring on April 30, 2018. Proposed section 30.2(a) provides that Period One shippers desiring Period Two rates must make a binding request to Kern River at least 12 months before the expiration of their Period One contracts, provided, however, that 10-year 2002 Expansion Project shippers whose contract expire on April 30, 2012, must submit a binding request for Period Two service by November 1, 2011. Proposed section 30.2(c) provides that, within 90 days of receipt of the Period One shipper's request, Kern River will tender a Period Two contract and the shippers must execute and return the contract within ten business days.

46. Neither sections 30.2(a) nor (c) mention the 10-year Original System shippers, whose contracts expire on September 30, 2011. However, proposed section 30.2(d) provides that those shippers must submit a binding request for Period Two service no later than September 1, 2011. That section also provides the Kern River will tender Period Two contracts to those shippers on September 17, 2011, and those shippers must execute and return their contracts by September 29, 2011.

47. BP requests that sections 30.2(a) and (c) be modified to expressly exempt the 10-year Original System shippers from the requirements of those sections. BP argues that the proposed language of those sections does not or cannot apply to Original System 10 year shippers, because of the near date for the expiration of their contracts.

48. The Commission finds that the additional explicit language requested by BP for inclusion in Kern River's tariff regarding is unnecessary. Proposed section 30.2(a) expressly addresses the contracting process for the 10-year Original System shippers whose contracts expire on September 30, 2011, requiring that they submit a binding request for Period Two service by September 1, 2011. Therefore, the Commission finds that Kern River's tariff proposal is sufficiently clear that the contracting deadlines for the 10-year Original System shippers are set forth in section 30.2(d) and not in section 30.2(a) and (c). Moreover, the requirement that the 10-year Original system shippers make a binding commitment to execute a Period Two contract by September 1, 2011 is

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protest any such section 4 proposal or to seek changes in Kern River's rates pursuant to NGA section 5. The Commission does not interpret these tariff provisions as limiting shippers' rights to protest any rate adjustment Kern River proposes under NGA section 4 or limiting their rights under NGA section 5.

consistent with Opinion No. 486-E. In that Opinion, the Commission specifically addressed timing issues related to 10-year Original System Shippers and stated:

> Kern River must make a compliance filing calculating Period Two rates consistent with the holdings of this order on or before August 5, 2011. In these circumstances, the Commission finds that the 10-year Original System shippers will have sufficient information concerning Period Two contract rates and conditions of service, so that *it is just and reasonable to require them to make a binding and non-conditional commitment on or before September 1, 2011 to execute a service agreement for Period Two service with a term of either 10 or 15 years.*[34]

49. Accordingly, the Commission finds that proposed section 30.2(d), as modified above to remove the requirements concerning agreement among that group of shippers concerning contract duration, is consistent with Opinion No. 486-E.

50. Parties have also protested the deadlines in sections 30.2(a) and 30.2(c) for other groups of shippers to make binding requests for Period Two service 12 months before the expiration of their Period One contracts. The Commission is still considering that issue and will address it in a subsequent order.

Self-Contained Rate Schedule

51. NVE argues that Kern River's proposal would improperly require Period Two shippers to enter into new Rate Schedule KRF-1 contracts for Period Two service. NVE receives service from Kern River pursuant to Rate Schedule MO-1 referred to as a Self-Contained Rate Schedule under Contract No.7650.[35] This contract ends on September 30, 2011. NVE states that it also receives service pursuant to Rate Schedule KRF-1

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[34] Opinion No. 486-E, 136 FERC at P 84.

[35] The Kern River Self-Contained Rate Schedules were established as a result of firm service agreements that were negotiated around the time when Kern River's original system was certificated in 1990. Subsequently, the Commission directed Kern River to incorporate the terms of the Self-Contained firm service agreements within the General Terms and Conditions (GT&C) of its tariff so all shippers that requested such service might receive service under the same terms and conditions that were available under the terms of the service agreements. *Kern River Gas Transmission Co.*, 53 FERC ¶ 61,172, at 61,632-3 (1990), *order on reh'g*, 55 FERC ¶ 61,089, at 61,270 (1991); *Kern River Gas Transmission Co.*, 60 FERC ¶ 61,128, at 61,456 (1992).

under Contract No. 7665. NVE states that both contracts are eligible for Period Two step down rates on September 1, 2011.

52. In Opinion No. 486-E the Commission rejected Kern River's proposal that all Period One Shippers that wished to contract for Period Two Rates must enter into a new standard for firm transportation service agreements under Rate Schedule KRF-1.[36] The Commission stated that:

> While the Commission finds that it cannot approve Kern River's proposal in this section 5 proceeding to require shippers contracting for Period Two service to do so under Rate Schedule KRF-1, that finding is without prejudice to Kern River proposing under section 4 of the NGA to eliminate the rate schedules with the Self Contained Contracts pursuant to just and reasonable terms and conditions. In such a proceeding, the Commission may assess the effects of Kern River's proposals against the current status to determine whether Kern River's proposals are just and reasonable.[37]

53. Further in Opinion No. 486-E, in its instructions for implementation the Commission stated that Kern River was to "eliminate any requirement that Period Two shippers must only obtain service under Rate Schedule KRF-1 . . ..."[38]

54. Consistent with Opinion No. 486-E, GT&C section 30, as proposed in Kern River's August 5, 2011 compliance filing contains no requirement that Period One shippers currently served under one of the Self Contained Rate Schedules must enter into Period Two service agreements under Rate Schedule KRF-1. However, on July 29, 2011, Kern River filed revised tariff records to amend several provisions under its Self-Contained Rate Schedules in Docket No. RP11-2328-000. Kern River proposed to limit service under these rate schedules exclusively to the currently effective contracts of shippers taking service under those rate schedules until their current contracts expire. Kern River stated that that service to existing customers would continue under the Self-Contained Rate Schedules, but that all new service, including Period Two service, will be offered exclusively under Kern River's Rate Schedule KRF-1.

55. On August 29, 2011, the Commission accepted and suspended Kern River's Docket No. RP11-2328-000 proposal to be effective February 1, 2012, subject to the

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[36] Opinion No. 486-E at P 117-121.

[37] *Id*. P 120.

[38] *Id*. P 219.

outcome of a technical conference.[39] Therefore, the revised tariff records proposed in that docket are not currently in effect. Accordingly, NVE or any similarly situated shipper with an expiring Self-Contained Contract may choose to receive Period Two service on September 1, 2011, subject to the terms and conditions of service contained within its existing Self-Contained Contract and the corresponding rate schedule. However, Period Two service under this Self Contained Rate Schedule will remain subject to the Commission's action in Docket No. RP11-2328-000, as well as the outcome of the Commission's consideration of the requests for rehearing of Opinion No. 486-E, including Kern River's request for rehearing of that opinion's holdings on this issue.

Conclusion

56. The Commission accepts the tariff records listed in Appendix A effective September 1, 2011, subject to Kern River filing revised tariff records consistent with the discussion above within seven days of the issuance of this order. The acceptance of these tariff records is subject to the outcome of the Commission's consideration of the requests for rehearing of Opinion No. 486-E. The Commission will address the tariff records listed in Appendix B in a subsequent order.

The Commission orders:

(A) The tariff records listed in Appendix A are accepted effective September 1, 2011.

(B) Kern River must file revised tariff records consistent with the discussion above within seven days of the issuance of this order.

By the Commission.

(S E A L)

Nathaniel J. Davis, Sr.,
Deputy Secretary.

[39] *Kern River Gas Transmission Co.*,136 FERC ¶ 61,140 (2011).

Appendix A

Kern River Gas Transmission Company
FERC NGA Gas Tariff

Tariff Records Accepted to be Effective September 1, 2011,
Subject to Conditions

Sheet No. 101, General Terms & Conditions Index, 3.0.0
Sheet No. 299, Contracting for Service Subject to P2 (Step-Down) Rates, 1.0.0
Sheet No. 299A, Contracting for Service Subject to P2 (Step-Down) Rates, 0.0.0
Sheet No. 299B, Contracting for Service Subject to P2 (Step-Down) Rates, 0.0.0
Sheet No. 299C, Contracting for Service Subject to P2 (Step-Down) Rates, 0.0.0
Sheet No. 299D, Contracting for Service Subject to P2 (Step-Down) Rates, 0.0.0
Sheet No. 299E, Contracting for Service Subject to P2 (Step-Down) Rates, 0.0.0
Sheet No. 299F, Contracting for Service Subject to P2 (Step-Down) Rates, 0.0.0
Sheet No. 299G, Contracting for Service Subject to P2 (Step-Down) Rates, 0.0.0

Appendix B

Kern River Gas Transmission Company
FERC NGA Gas Tariff

Tariff Record to be Addressed by Subsequent Commission Order

Sheet No. 5.01, Statement of Rates, Period Two (Step-Down) Rates, 0.0.0