

126 FERC ¶ 61,176
UNITED STATES OF AMERICA
FEDERAL ENERGY REGULATORY COMMISSION

February 26, 2009

In Reply Refer To:
Kern River Gas Transmission Company
Docket No. RP09-306-000

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

Attention: Billie L. Tolman, Manager
Regulatory Affairs

Reference: Order Nos. 712 and 712-A Compliance

Dear Ms. Tolman:

1. On January 27, 2009, Kern River Gas Transmission Company (Kern River) filed revised tariff sheets¹ to comply with the Commission's directives in Order Nos. 712 and 712-A.² In Order Nos. 712 and 712-A, the Commission revised its regulations to promote a more efficient capacity release market by lifting the maximum rate ceiling on capacity releases of one year or less. The Commission also sought to facilitate retail open access programs and the use of asset management agreements by exempting associated capacity releases from bidding requirements. The revised tariff sheets are generally in compliance with the Commission's directives in Order Nos. 712 and 712-A. Therefore, the revised tariff sheets listed in footnote No. 1 are accepted, effective July 30, 2008, subject to the condition discussed herein.

¹ Eighth Revised Sheet No. 140, Third Revised Sheet No. 143, Sixth Revised Sheet No. 144, Original Sheet No. 144-A, and Fifth Revised Sheet No. 161 to FERC Gas Tariff, Second Revised Volume No. 1.

² *Promotion of a More Efficient Capacity Release Market*, Order No. 712, 73 Fed. Reg. 37,058 (June 30, 2008), FERC Stats & Regs. ¶ 31,271 (2008), *order on reh'g*, Order No. 712-A, 73 Fed. Reg. 72,692 (December 1, 2008), FERC Stats & Regs. ¶ 31,284 (2008).

2. Kern River also filed revised tariff sheets³ to more accurately reflect the Commission's shipper must have title policy.⁴ The revised language provides that shipper will have title to the gas at the time the gas is delivered to Kern River and while the gas is being transported by Kern River. The revised tariff language is consistent with the Commission's shipper must have title policy. Therefore, the revised tariff sheets listed in footnote No. 3 are accepted, effective March 1, 2009, as proposed.

3. Kern River's filing was noticed on January 29, 2009, with interventions and protests due on or before February 9, 2009. Nevada Power Company (Nevada Power) filed a limited protest as discussed below. Notices of intervention and unopposed timely filed motions to intervene are granted pursuant to the operation of Rule 214 of the Commission's Rules of Practice and Procedure (18 C.F.R. § 385.214 (2003)). Any opposed or untimely filed motion to intervene is governed by the provisions of Rule 214.

4. The Commission finds that the revised tariff sheets filed herein are generally in compliance with the Commission's directives in Order Nos. 712 and 712-A. However, some provisions pertaining to removal of the rate cap for short term capacity releases as well as posting and bidding requirements for asset management arrangements (AMAs) and retail open access programs require further modification as discussed below.

5. Order No. 712 amends section 284.8 of the Commission's regulations by eliminating the price ceiling for short term capacity release transactions of one year or less.⁵ The Commission found that this action will improve shipper options and market efficiency, particularly during peak periods, by allowing the prices of short term capacity release transactions to reflect short term variations in the market value of that capacity.

6. Kern River revised section 15.11(d) of the General Terms and Conditions (GT&C) of its tariff to state any release of one year or less that is to take effect on or before one year from the date Transporter is notified of the release and that is not exempt from the bidding under section 15.3(a), (b), (c), or (d) of its GT&C, shall be subject to market-based bidding and not subject to any rate ceiling.

³ First Revised Sheet Nos. 134, 641, and 742 to FERC Gas Tariff, Second Revised Volume No. 1.

⁴ *Consolidated Gas Transmission Corp.*, 38 FERC ¶ 61,150, at 61,408 (1987) ("all shippers shall have title to the gas at the time the gas is delivered to the transporter and while it is being transported by the transporter"); *Texas Eastern Transmission Corporation*, 37 FERC ¶ 61,260, at 61,683 – 61,685 (1986).

⁵ Order No. 712 at 30 (2008).

7. Nevada Power filed a limited protest arguing that Kern River's tariff appears to be inconsistent with Order No. 712. First, Nevada Power states that Order No. 712 eliminates all rate caps for released capacity that has a term of one year or less, including in situations where the release qualifies for the exemptions from bidding for releases of 31 days or less, releases to asset managers, and releases to marketers participating in a state regulated retail unbundling program.⁶ Nevada Power states that section 15.11(d) of Kern River's tariff improperly eliminates the rate cap only for biddable releases of one year or less, but not for non-biddable releases. Second, Nevada Power contends that proposed section 15.10(b) of Kern River's tariff is inconsistent with Order No. 712 since it appears to limit the usage charge that may be assessed to a replacement shipper to the maximum rate.

8. The Commission finds that Kern River's proposed section 15.11(d) of its tariff is inconsistent with Order No. 712. Nevada Power is correct that Order No. 712 removed the rate cap for all short term capacity release transactions of one year or less, regardless of whether they are biddable. Therefore, the Commission will require Kern River to revise section 15.11(d) of its tariff to state that any release of one year or less that is to take effect on or before one year from the date Transporter is notified of the release is not subject to any rate ceiling.

9. However, the Commission rejects Nevada Power's assertion that Kern River should be required to remove any price cap on the usage charge. Order No. 712 only removed the price cap on the rate the releasing shipper may seek for a release of its capacity. That rate is limited to the reservation charge component of the pipeline's rate. As the Commission held in *El Paso Natural Gas Co.*⁷ "Under Order Nos. 636 and 636-A, the bids requested by the releasing shipper relate only to the reservation charge portion of El Paso's rate. The usage charge to be paid by the replacement shipper is a matter between El Paso and the replacement shipper, and the releasing shipper cannot bind El Paso, through the competitive bidding process, to accept any particular usage charge from the replacement shipper." In addition, the releasing shipper is not entitled to any credits for usage charge amounts paid by the replacement shipper in excess of the usage charge amounts that would have been paid by the releasing shipper. The pipeline retains the entire usage charge amount paid by the replacement shipper, and only credits to the releasing shipper reservation charge amounts paid by the replacement shipper.⁸ Order Nos. 712 and 712-A refused to remove the maximum recourse rate applicable to pipeline

⁶ 18 C.F.R. § 284.8(h)(1)(i)(ii) and (iv).

⁷ 61 FERC ¶ 61,333 at 62,293 (1992).

⁸ *Id.* at 62,309-10.

short-term capacity services, holding among other things that maintenance of the recourse rate for pipeline short term transactions is necessary to protect against the potential exercise of market power.⁹ That holding is equally applicable to the usage charge negotiated solely between the pipeline and the replacement shipper, as to the pipeline's direct sales of their capacity. Therefore, Nevada Power's request to remove the maximum rate limit of Kern River's usage charge is denied.

10. As described above, Order No. 712 exempts both releases to asset managers and releases to marketers participating in state regulated retail access programs from bidding. In addition, Order No. 712 added subsection (x) to section 284.13(b) of the Commission's regulations to require that, no later than the first nomination under a transaction, the pipeline post whether a capacity release is to an asset manager, and the delivery or purchase obligation of the AMA, in addition to the information required to be posted for all capacity releases.¹⁰ Order No. 712 also added subsection (xi), requiring the pipeline to post whether a capacity release is to a marketer participating in a state-regulated retail access program.

11. Kern River revised section 15.3(c) of its GT&C to provide that prior posting and bidding will not be required for any pre-arranged release to an asset manager. In addition, Kern River has revised section 15.3(d) of its GT&C to provide that prior posting and bidding will not be required for any pre-arranged capacity release that will be utilized by the replacement shipper to provide the gas supply requirement of retail consumers pursuant to a retail access program.

12. Nevada Power argues that Kern River has failed to revise its tariff to provide for the posting of limited information regarding the provisions of an AMA or a state retail unbundling plan that is necessary to comply with Order No. 712. Nevada Power states that Kern River's revised section 15.3 appears to be inconsistent with Order No. 712 as it provides that the releasing shipper of certain non-biddable release may elect to implement a capacity release without following the prior posting procedures.

13. The Commission denies Nevada Power's request to require Kern River to revise its tariff to provide for prior posting of capacity release transactions that involve an asset manager or a marketer participating in a state-regulated retail access program. Order Nos. 712 and 712-A exempted such releases from any prior posting and bidding requirements, and therefore revised sections 15.3(c) and (d) of Kern River's GT&C properly provide that prior posting of those releases is not required. Revised sections

⁹ Order No. 712-A at P 17-20.

¹⁰ Order No. 712 at 175 (2008).

284.13(x) and (xi) of the Commission's regulations only require that Kern River post the required information concerning these types of releases no later than the first nomination under a transaction. Therefore, such posting may occur after the subject releases have taken place.

14. While we deny Nevada Power's protest concerning prior posting, we will require Kern River to modify section 15.3(a) of its tariff, consistent with 284.13(x) and (xi). Section 15.3(a) currently provides that "in the event the releasing shipper elects to release its transportation rights under this section 15.3(a) without prior posting and bidding, then Transporter will post the terms and conditions of the release and the identity of the replacement shipper on its designated site no later than 9:00 a.m. CCT," and Kern River did not propose any revision to that section. Kern River must, within 30 days of the date of this order, file a revised section 15.3(a), providing for posting the necessary information about releases to asset managers and to marketers in retail access programs in accordance with revised sections 284.13(x) and (xi) of the Commission's regulations.

By direction of the Commission. Commissioner Kelliher is not participating.

Kimberly D. Bose,
Secretary.