

127 FERC ¶ 61,034
FEDERAL ENERGY REGULATORY COMMISSION
WASHINGTON, D.C. 20426

April 10, 2009

In Reply Refer To:
Kern River Gas Transmission
Company
Docket No. RP09-374-000

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

Attention: Billie L. Tolman, Manager
Regulatory Affairs

Reference: Order Granting Waiver to Permit Permanent Release of Negotiated
Rate Agreement

Dear Ms. Tolman:

1. On February 19, 2009, Kern River Gas Transmission Company (Kern River) filed a request for waiver of Section 284.8(h)(1) of the Commission's regulations and section 15.3(b) of the General Terms and Conditions (GT&C) of Kern River's tariff in order to allow High Desert Power Trust (HDPT) to permanently release capacity to its affiliate High Desert Power Project (HDPP) at a rate above Kern River's maximum rate under Rate Schedule KRF-L1. The Commission will grant waiver of Section 284.8(h)(1) of its regulations and section 15.3(b) of Kern River's tariff to allow HDPT to permanently release the negotiated rate agreement to HDPP to be effective April 1, 2009, as proposed, for the reasons discussed herein.

2. HDPT is an affiliate of HDPP, and was formed for purposes of a lease financing for the High Desert power generation facility in Victorville, California. HDPP operates the facility. HDPT has a negotiated rate agreement with Kern River that provides for transportation service to the High Desert power generation

facility for a term expiring August 31, 2023.¹ Currently, HDPP has acquired capacity under the agreement via a temporary capacity release that expires March 31, 2009. HDPT and HDPP have reached an agreement to permanently assign the capacity to HDPP at the negotiated rate HDPT pays to Kern River. This negotiated rate is higher than Kern River's maximum tariff recourse rate under Rate Schedule KRF-L1.

3. Specifically, Kern River requests waiver of section 284.8(h)(1) of the Commission's regulations and section 15.3(b) of the GT&C of its tariff in order to permit HDPT's permanent release of the negotiated rate agreement to HDPP to be treated similar to prearranged maximum rate releases, which can be implemented without posting for bids from other shippers. Kern River's request for waiver would allow the release to occur even though it is a release above Kern River's maximum tariff recourse rate. Section 284.8(h)(1) provides that a prearranged release for more than one year at the maximum rate need not comply with the bidding requirements of paragraphs (c) through (e) of this section. Section 15.3(b) of Kern River's GT&C provides that prior posting and bidding procedures will not be required for releases of one year or more if the releasing shipper has agreed to pay the maximum recourse tariff rate.

4. Kern River asserts that the following circumstances support granting such a waiver: (1) the sole purpose for the permanent release is to transfer capacity from one affiliated entity to another, while continuing to serve the same market; (2) the permanent capacity release will allow HDPP to receive firm transportation service it needs to operate its generation facility; (3) the transaction between HDPT and HDPP leaves Kern River economically indifferent; (4) the lease financing has been fully repaid so that there is no longer any reason or need to maintain HDPT as a party under the negotiated rate agreement; and, (5) the Commission has previously granted such a waiver under similar circumstances in *Transcontinental Gas Pipeline Corporation (Transco)*² and *Northern Natural Gas Company (Northern)*.³

5. Kern River's filing was noticed on February 23, 2009, with interventions and protests due on or before March 3, 2009. No protests or adverse comments

¹ See unpublished Director's letter order issued on July 3, 2003, in Docket No. RP00-157-013.

² See *Transcontinental Gas Pipe Line Corp.*, 113 FERC ¶ 61,331 (2005).

³ See *Northern Natural Gas Co.*, 117 FERC ¶ 61,354 (2006).

were filed. Pursuant to Rule 214 of the Commission's Rules of Practice and Procedure,⁴ the notices of intervention and timely, unopposed motions to intervene serve to make the entities that filed them parties to this proceeding. Granting late intervention at this stage of the proceeding will not disrupt this proceeding or place additional burdens on existing parties.

6. In *Transco* and in *Northern*, the Commission addressed the circumstances where a releasing shipper obtained a prearranged replacement shipper, who had agreed to pay the full negotiated rate that the releasing shipper was paying, which was above the maximum recourse rate, and the transferred capacity was used to serve the same market. The Commission explained in *Transco* that:

“the real issue presented in the present case [is] whether it should waive the maximum rate cap provisions of section 284.8(h)(1) in order to permit the instant prearranged capacity releases to be treated similarly to prearranged maximum rate releases, which can be implemented without posting for bids from other shippers. The Commission finds that in the particular circumstances of this case such a waiver is appropriate.”

7. The Commission finds the circumstances in the instant filing are similar to those the Commission addressed in *Transco* and *Northern*. In particular, as explained in *Transco*, if another shipper obtained the released capacity, it would defeat the purpose of this prearranged capacity release, which is to provide for the transfer of capacity that will be used to serve the same market. Moreover, in the instant filing, the release will be to the same end-user, the generation facility operator HDPP. And finally, Kern River is financially indifferent since the waiver allows it to charge the same rates it did under the original agreement. Accordingly, the Commission finds that granting waiver of section 284.8(h)(1) of its regulations and section 15.3(b) of the GT&C of Kern River's tariff is appropriate in support of the associated permanent release of the negotiated rate agreement in the instant filing. Therefore, the Commission will grant Kern River's request for waiver of section 284.8(h)(1) of the Commission's regulations and section 15.3(b) of the GT&C of Kern River's tariff in order to permit Kern

⁴ 18 C.F.R. § 385.214 (2008).

River to permanently release its negotiated rate agreement with HDPT to HDPP effective April 1, 2009.

By direction of the Commission.

Nathaniel J. Davis, Sr.,
Deputy Secretary.