

127 FERC ¶ 61,203
UNITED STATES OF AMERICA
FEDERAL ENERGY REGULATORY COMMISSION

May 29, 2009

In Reply Refer To:
Kern River Gas Transmission
Company
Docket No. RP09-457-000

Kern River Gas Transmission Company
2755 E. Cottonwood Parkway
Suite 300
Salt Lake City, Utah 84121

Attention: Patricia M. French
Vice President & Ass't. General Counsel

Reference: Non-Conforming Service Agreements

Dear Ms. French:

1. On March 17, 2009, Kern River Gas Transmission Company (Kern River) filed two non-conforming agreements (i.e. Contract Nos. 1617 and 1830) for service with Nevada Power Company (NVE) and a precedent agreement between Kern River and NVE containing terms and conditions of service that affect these two agreements. Kern River states that the above two contracts along with the precedent agreement constitute one unitary, unseverable agreement that together memorialize the terms and conditions of a single transaction. Kern River has also filed Fifth Revised Sheet No. 490 to FERC Gas tariff, Second Revised Volume No. 1 listing the above two non-conforming agreements.

2. The Commission finds the non-conforming provisions included in the contracts and the precedent agreement are unique to the service provided to NVE and do not result in undue discrimination to any of Kern River's other shippers. Therefore, the Commission will accept non-conforming agreement No. 1617, the precedent agreement, and Fifth Revised Sheet No. 490 to be effective June 1, 2009, as proposed. In addition, the Commission will accept non-conforming agreement No. 1830 to become effective upon commencement of service of the Apex Expansion Project subject to the issuance by the Commission of a certificate

order necessary for the construction of the Apex Expansion Project. Finally, the Commission will grant privileged treatment of the precedent agreement.

3. Kern River's instant filing was noticed on March 19, 2009, with interventions and protests due as provided in section 154.210 of the Commission's regulations (18 C.F.R. § 154.210 (2009)). NVE filed comments in support of Kern River's proposal. Southwest Gas Corporation filed a conditional protest in order to reserve its right to file supplemental comments after further review of the confidential agreements recently provided to them. Indicated Shippers¹ filed a protest requesting the Commission reject Kern River's request for confidential treatment and to provide parties additional time to review the terms of agreements. Kern River filed a letter stating that an agreement had been reached with Indicated Shippers regarding their concern over disclosure of confidential information. As a result of the agreement reached with Kern River over disclosure of confidential information, Indicated Shippers filed a notice of withdrawal of their protest. BP Energy Company as well as Southern California Gas Company and San Diego Gas & Electric Company filed a motion to intervene out of time. Pursuant to Rule 214 of the Commission's Rules of Practice and Procedure,² all timely filed notices of intervention and motions to intervene and any motions to intervene out of time filed before 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.

4. Kern River states that NVE, a Nevada based integrated electric utility company, issued a request for proposals to several interstate pipeline companies that currently either had operations serving Southern Nevada or had provided interstate gas transportation service to and through Clark County, Nevada in the past. NVE was seeking responses designed to meet certain transportation requirements to serve NVE's need for fuel for power generation to service its retail electric load. NVE solicited proposals for 400,000 Dth/d of natural gas transportation service from the El Paso and Transwestern pipelines near Topock, Arizona on a path to designated delivery points located at NVE's power generation facilities northeast of Las Vegas, Nevada. Kern River's proposal was chosen to meet NVE's needs by constructing a 28-mile pipeline named the Apex Expansion Project that will provide a part of 266,000 Dth/d of incremental firm forward haul transportation service from receipt points in southwestern Wyoming

¹ Indicated Shippers include Aera Energy LLC, Anadarko E&P Company LP, and Shell Energy North America (US), L.P.

² 18 C.F.R. § 385.214 (2008).

to delivery points in Las Vegas, Nevada area. The remaining capacity needed to meet NVE's need for 400,000 Dth/d will be provided by backhaul service on Kern River's system. Kern River states that it conducted an open season for the backhaul capacity and the Apex Expansion capacity and determined that NVE was the successful bidder based on the highest total economic value. Contract Nos. 1617 and 1830 along with the precedent agreement meet the needs required by NVE.

5. Kern River filed a letter stating an agreement had been reached with Indicated Shippers regarding the disclosure of confidential information. Kern River states in its letter that Indicated Shippers have agreed to execute a non-disclosure agreement for purposes of reviewing the precedent agreement at this time. For purposes of the Commission's review of Kern River's request for acceptance of Contract No. 1617, the parties agree that the precedent agreement filed on March 17, 2009, may remain protected from public disclosure as a privileged document. The precedent agreement will be posted publicly on Kern River's website with notice to all participants in this docket within 30 days of the in-service date of the Apex Expansion Project on the condition that Contract No. 1830 is approved by the Commission on terms satisfactory to both Kern River and NVE. Kern River states that it has agreed to remove this claim of privilege over Contract No. 1617 and Contract No. 1830 and immediately post these two contracts on its website. The protest filed by Southwest Gas Corporation pertains only to disclosure of confidential information and does not raise any substantive issues.

6. The unique non-conforming provisions at issue pertain to (1) individual background to the contract; (2) contract start date; (3) service that is subject to regulatory approval; (4) termination in the event of changed demand maximum daily quantity, contract cessation, or failure of regulatory approvals; (5) acknowledgement of responsibility for assuring capacity on facilities delivering to Kern River; (6) reference to the precedent agreement; (7) commencement of backhaul service to NVE is not dependent upon the later construction of the projects forward haul facilities; (8) dispute resolution process in the event the Commission finds any provision to be discriminatory or otherwise impermissible; (9) a finding that Contract Nos. 1617 and 1830 along with the precedent agreement are one unified document and together constitutes the entire transaction; (10) electronic retention of the precedent agreement and contracts if necessary; (11) varying entitlements over different time periods under the contracts; (12) reimbursement of fuel used and lost and unaccounted-for gas to

be calculated based on factors applicable to incremental rate service associated with the Apex Expansion Project;³ and (13) right of first refusal upon the expiration of the initial term.⁴

7. The Commission finds the non-conforming provisions included in the contracts and the precedent agreement are unique to the service provided to NVE and do not result in undue discrimination to any of Kern River's other shippers.

By direction of the Commission.

Nathaniel J. Davis, Sr.,
Deputy Secretary.

³ Kern River states that this provision points to the appropriate incremental rate service, but provides for a fuel reimbursement factor not yet established by Kern River. Kern River further states that otherwise the provision conforms to its *pro forma* Rate Schedule KRF-1.

⁴ The Commission has approved pipeline proposals to provide for contractual right of first refusal for shippers that would otherwise not qualify. *See Colorado Interstate Gas Company and Cheyenne Plains Gas Pipeline Company*, 105 FERC ¶ 61,095, at P 55 (2003); and *ANR Pipeline Company*, 103 FERC ¶ 61,084, at P 3 (2003).