

127 FERC ¶ 61,223  
UNITED STATES OF AMERICA  
FEDERAL ENERGY REGULATORY COMMISSION

Before Commissioners: Jon Wellinghoff, Chairman;  
Sudeen G. Kelly, Marc Spitzer,  
and Philip D. Moeller.

Kern River Gas Transmission Company

Docket No. CP08-429-000

ORDER ISSUING CERTIFICATE

(Issued June 4, 2009)

1. On June 20, 2008, Kern River Gas Transmission Company (Kern River) filed an application pursuant to section 7(c) of the Natural Gas Act (NGA) requesting authorization to construct, modify, and operate the facilities necessary to increase the certificated maximum allowable operating pressure (MAOP) on its pipeline from Lincoln County, Wyoming to Kern County, California in order to expand the firm capacity of the pipeline by 145,000 dekatherms per day (Dth/d) (2010 Expansion). Additionally, Kern River seeks a predetermination that the costs and fuel usage associated with the 2010 Expansion may be rolled into those of its 2003 Expansion<sup>1</sup> for transportation rate and fuel reimbursement purposes. This order grants the requested authorizations, subject to conditions, as discussed below.

**I. Background**

2. Kern River is a general partnership formed under the laws of the State of Texas and doing business in the States of Wyoming, Utah, Nevada, and California. Kern River is a natural gas company under the NGA engaged in the interstate transportation of natural gas.

3. Kern River's system originates at a receipt point interconnect with Williams Gas Processing Company's Opal plant about six miles north of Kern River's Muddy Creek compressor station in Lincoln County, Wyoming. In the general vicinity of the Muddy Creek compressor station, Kern River has interconnects with several gas processing plants, with other interstate pipelines including Northwest Pipeline Corporation (NWP),

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<sup>1</sup> *Kern River Transmission Co.*, 100 FERC ¶ 61,056 (2002).

Colorado Interstate Gas Company (CIG), and Questar Pipeline Company (Questar), and with an intrastate pipeline, Overland Trail Transmission Company.

4. Kern River's system extends nearly 900 miles from its receipt points in southwestern Wyoming, through Utah and Nevada, to the San Joaquin Valley near Bakersfield, Kern County, California. In the Kern County area, Kern River has a number of delivery points serving enhanced oil recovery and cogeneration markets. At the Daggett-PG&E and Wheeler Ridge delivery points, respectively, Kern River interconnects with Pacific Gas and Electric Corporation (PG&E) and Southern California Gas Company (SoCalGas), local distribution companies in California.<sup>2</sup>

5. Near the Daggett delivery point in San Bernardino County, California, Kern River also interconnects with the interstate pipeline system of Mojave Pipeline Company (Mojave). From the Daggett interconnect, Kern River and Mojave jointly own 300 miles of pipeline extending into the Bakersfield, California area, including a 42-inch mainline, two laterals, and delivery meters, referred to as the Common Facilities.<sup>3</sup> Kern River's proposed MAOP increase applies only to its wholly-owned and operated system, and not to the Common Facilities.

#### **Kern River's Original System**

6. The Kern River system was originally constructed to provide up to 700,000 Mcf/d of year-round firm transportation service from Wyoming receipt points to California delivery points and was placed into service in February 1992.<sup>4</sup> The original system design included three mainline compressor stations with 50,400 ISO-rated horsepower and a MAOP of 1,200 pounds per square inch gauge (psig), Kern River's currently certificated MAOP. In response to market demand, Kern River subsequently expanded its system through its 2002 Expansion Project, interim California Action Project, and 2003 Expansion Project, more than doubling its initial design capacity.

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<sup>2</sup> In addition to its delivery points in California, Kern River has delivery points accessing various markets in Utah, southern Nevada, and Arizona.

<sup>3</sup> A construction operation and maintenance agreement between Kern River, Mojave and Mojave Pipeline Operating Company (MPOC) dated August 29, 1989 (the COM Agreement), gives Mojave a 25 percent ownership interests in the Common Facilities and gives MPOC the right to construct and operate the Common Facilities and to participate in any expansions/additions thereto. In a June 10, 2008 notification from Mojave and MPOC, Mojave confirms its election not to participate in this expansion. Kern River's application at Exhibit M.

<sup>4</sup> *Kern River Gas Transmission Co.*, 50 FERC ¶ 61,019 (1990).

### **2002 Expansion Project and California Action Project**

7. In 2000, Kern River filed an application (the 2002 Expansion Project), requesting authorization to construct and operate additional compression and metering facilities to expand its Wyoming-to-California capacity by 124,500 Dth/d.

8. In 2001, while its application for the 2002 Expansion was still pending, Kern River filed an application (the California Action Project) proposing to construct and operate compression and metering facilities required to provide up to 135,000 Dth/d of limited-term, incremental transportation capacity from Wyoming to California. On April 6, 2001, the Commission authorized the California Action Project.<sup>5</sup> Of the capacity that became temporarily available due to the California Action Project, 114,000 Dth/d was subsequently incorporated into the 2002 Expansion. As a result, Kern River amended its 2002 Expansion application to construct facilities to provide only an additional 10,500 Dth/d of capacity. On July 26, 2001, the Commission authorized Kern River's revised 2002 Expansion Project.<sup>6</sup> The remaining 21,000 Dth/d of the California Action Project capacity was added to the 2003 Expansion capacity.

### **2003 Expansion Project**

9. In 2002, the Commission authorized Kern River to construct and operate facilities needed to expand its transportation capacity by an additional 885,626 Dth/d in order to provide up to 906,626 Dth/d (including the 21,000 Dth/d of California Expansion project capacity) of long-term incrementally-priced firm transportation service (the 2003 Expansion).<sup>7</sup> The 2003 Expansion's additional compression and pipeline loops more than doubled Kern River's existing summer design day capacity to 1,731,126 Dth/d.

## **II. Proposal**

### **A. New Facilities**

10. Kern River seeks authorization to: (1) install a new 20,500 ISO-rated horsepower turbine-driven compressor and related appurtenances at the Muddy Creek compressor station B Plant in Lincoln County, Wyoming; and (2) restage five compressors at the Muddy Creek compressor station and two compressors at the Painter compressor station

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<sup>5</sup> *Kern River Gas Transmission Co.*, 95 FERC ¶ 61,022 (2001).

<sup>6</sup> *Kern River Gas Transmission Co.*, 96 FERC ¶ 61,137 (2001).

<sup>7</sup> *Kern River Gas Transmission Co.*, 100 FERC ¶ 61,056 (2002).

in Uinta County, Wyoming.<sup>8</sup> The additional compression at the Muddy Creek compressor station will increase Kern River's operating pressures to allow more gas to flow through the existing Kern River pipeline system. The proposed new facilities and modifications to existing facilities will add 20,500 horsepower to the Kern River system, increasing its summer design capacity from 1,731,126 Dth/d to 1,876,126 Dth/d.<sup>9</sup>

11. The estimated total cost of the proposed 2010 Expansion is \$62.1 million, which will be financed with internally generated funds.

### **B. MAOP Uprate**

12. Kern River requests that the Commission amend its existing certificate authority to allow it to increase the MAOP of its pipeline facilities from 1,200 psig to 1,333 psig, and the MAOP of its meter stations and compressor stations from 1,250 psig to 1,350 psig.<sup>10</sup> On November 6, 2008, the U.S. Department of Transportation's Pipeline and Hazardous Materials Safety Administration (PHMSA) issued a special permit to Kern River authorizing the MAOP increases.<sup>11</sup> Kern River asserts that the PHMSA's review and authorization of the proposed MAOP increases provides a basis upon which the

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<sup>8</sup> Kern River asserts that construction of various auxiliary facilities will be required for the 2010 Expansion, but that it is not seeking Commission authorization for such facilities in this application. For example, Kern River states that the installation of additional metering facilities at the Opal meter station (Lincoln County, Wyoming) and Kramer junction meter station, part of the Common Facilities operated by MPOC (San Bernardino County, California) is integral to the 2010 Expansion, but that it intends to perform these activities under section 2.55(a) of the Commission's regulations. *See* 18 C.F.R. § 2.55(a) (2008).

<sup>9</sup> Of the 145,000 Dth/day total increase in mainline capacity, capacity will increase by 95,000 Dth/d for deliveries to Dagget-PG&E, and by 50,000 Dth/d for deliveries to Kramer Junction. Kern River intends to upgrade the Kramer Junction meter station, part of the Common Facilities, but does not request authorization to do so in this proceeding. Mojave and MPOC's Exhibit M letter reflects that MPOC has waived the requirements of the COM Agreement to permit Kern River to make the Kramer Junction meter station modifications.

<sup>10</sup> *See* Kern River's application at 16 for a description of the specific compressor stations for which Kern River proposes an increase in MAOP.

<sup>11</sup> *See* PHMSA Special Permit, issued in Docket No. PHMSA-2007-29078 (Nov. 6, 2008).

Commission may find the MAOP increase consistent with the continued safe and reliable operation of the Kern River system.

13. Kern River indicates that it will install certain auxiliary facilities and appurtenances associated with increasing the MAOP on its existing transmission facilities. Kern River also indicates that due to the operating pressure increase, facilities downstream of Kern River may require modification. For example, interconnecting facilities at receipt and delivery points may need to be modified for those facilities to operate at the higher pressures. Kern River asserts that it plans to perform these auxiliary construction tasks and upgrades related to the MAOP uprate under its blanket certificate authority prior to receipt of an order in this proceeding. However, Kern River states that pursuant to section 157.20(f) of the Commission's regulations,<sup>12</sup> it will not increase the actual operating pressure at its facilities until all regulatory approvals are received.

14. Kern River states that it conducted several open seasons in 2007 and 2008 for the purpose of obtaining commitments for the 145,000 Dth/d of firm transportation requested in its 2010 Expansion. Kern River states that as a result of the open seasons, the 2010 Expansion is fully subscribed and that it has executed eleven long-term firm transportation agreements for 145,000 Dth/d under Rate Schedule KRF-1 with terms of either 10 or 15 years.

15. Kern River contends that the 2010 Expansion's new capacity is needed to meet increasing residential and commercial market demand, as well as to provide a reliable supply of additional natural gas to existing and new power generation facilities. Kern River reports that peak-day residential and commercial natural gas requirements in Utah, Nevada and California, the area to be served by Kern River's proposal, are projected to increase by approximately 368,000 Dth/d by 2010.<sup>13</sup>

## **C. Rates**

### **1. Incremental Transportation Rates**

16. Kern River proposes to roll the costs associated with the 2010 Expansion into the incremental rates applicable to Kern River's 2003 Expansion service in its next rate case,

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<sup>12</sup> 18 C.F.R. § 157.20(f) (2008).

<sup>13</sup> Kern River's application at 9. Kern River cites Questar Gas Company, "Integrated Resource Plan," May 1, 2007; Southwest Gas Corporation, "2007 Nevada Annual Resource Planning Information report," May 16, 2007; and San Diego Gas and Electric's, Southern California Gas Company's, and Pacific Gas and Electric Company's 2006 Federal Energy Regulatory Commission Form 2, Page 518.

and requests that the Commission grant a preliminary determination that it may do so. Kern River asserts that the 2010 Expansion revenues will exceed the cost of service of the 2010 Expansion and therefore rolling in the costs will not result in subsidization of the 2010 Expansion by existing 2003 Expansion shippers.<sup>14</sup>

17. Consistent with the anticipated roll-in of the 2010 Expansion costs, Kern River proposes to charge its 2010 Expansion shippers as initial rates the firm incremental transportation rates under Rate Schedule KRF-1 established in Docket No. CP01-422-000 for the 2003 Expansion service.<sup>15</sup> The levelized cost of service for the 2010 Expansion facilities is estimated to be approximately \$10.4 million annually. Kern River proposes to use the same rate design methodology that was implemented for its 2003 Expansion, reflecting a 70 percent debt and 30 percent equity capital structure, a 13.25 percent return on equity, and regulatory depreciation levelized over the 10- and 15-year terms of the contracts.

18. Kern River notes that the outcome of its current section 4 rate case in Docket No. RP04-274-000 will affect the rates set forth in the *pro forma* tariff sheets proposed in Exhibit P to its application. However, Kern River states that the 2010 Expansion service agreements provide that if the rate for 2003 Expansion shippers under Rate Schedule KRF-1 “steps down” during the primary term of the shipper’s service agreement, the 2010 Expansion shippers will not be entitled to receive the step-down rates that will be applicable to 2003 Expansion shippers.

## **2. Expansion Fuel Reimbursement Rates**

19. Kern River also requests the Commission grant a preliminary determination that the fuel attributable to the 2010 Expansion may be rolled in with 2003 Expansion fuel reimbursement rates. Kern River contends that Exhibit P of its application demonstrates that there will be no subsidization by either the 2003 Expansion shippers or the Rolled-in shippers as a result of rolling the 2010 Expansion fuel costs into the 2003 Expansion fuel reimbursement rates. Kern River states that the 2010 Expansion will increase fuel consumption at the Muddy Creek compressor station for all existing shippers due to the installation of the new compressor. However, Kern River asserts that the new compressor (and compressor modifications) will be more fuel efficient, resulting in a

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<sup>14</sup> See Kern River’s application at Exhibit N.

<sup>15</sup> See *Kern River Gas Transmission Co.*, 98 FERC ¶ 61,205 (2002). Kern River proposes that when the 2010 Expansion is placed into service, the 2003 Expansion shippers and 2010 Expansion shippers will be combined into one group referred to as the “2003/2010 Expansion shippers.” The current shippers are designated as “Rolled-in shippers,” consisting of the original system and 2002 Expansion shippers.

simultaneous lowering of fuel consumption rates for all existing shippers at the seven compressor stations downstream of the Muddy Creek station.

### **III. Notice and Interventions**

20. Notice of Kern River's application was published in the *Federal Register* on July 14, 2008 (73 Fed. Reg. 40,333). The parties listed in Appendix A filed timely, unopposed motions to intervene. The timely, unopposed motions to intervene are granted by operation of Rule 214 of the Commission's Rules of Practice and Procedure.<sup>16</sup>

21. BP Energy Company, City of Victorville, California, Questar Overthrust Pipeline Company, Questar Pipeline Company, and Howard Hughes Properties, Inc. and the Howard Hughes Corporation (Hughes Properties) filed untimely motions to intervene. These parties have demonstrated an interest in this proceeding and granting their late interventions will not unduly delay or disrupt this proceeding or otherwise prejudice other parties. Therefore, for good cause shown, we are granting these late motions to intervene pursuant to Rule 214(d).<sup>17</sup>

22. The motion to intervene of Nevada Power Company included a protest which was subsequently withdrawn.<sup>18</sup> The motion to intervene of SoCalGas and San Diego Gas & Electric Company included comments in support of Kern River's proposal. Hughes Properties' late-filed motion to intervene included comments opposing Kern River's proposal to increase the MAOP of its facilities located in the vicinity of Hughes Properties' master-planned community in Summerlin, Clark County, Nevada.

23. On January 30, 2009, Kern River filed a response to Hughes Properties' comments, and on February 23, 2009, Hughes Properties filed a reply to Kern River's response. On April 15, 2009, Hughes Properties filed with the Commission a copy of a Complaint and Application for Declaratory and Permanent Injunctive Relief that Hughes Properties filed in the United States District Court for the District of Nevada, seeking to prohibit Kern River from increasing the MAOP of its pipeline in Summerlin, Nevada. On April 21, 2009, Kern River filed a letter with the Commission advising that it did not oppose Hughes Properties' April 15 filing. Kern River stated, however, that the complaint filed in federal court had no bearing on this proceeding because the

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<sup>16</sup> 18 C.F.R. § 385.214 (2008).

<sup>17</sup> 18 C.F.R. § 385.214(d) (2008).

<sup>18</sup> In its protest, Nevada Power Company opposed Kern River's request for a predetermination favoring rolled-in rate treatment for the 2010 Expansion. Nevada Power Company withdrew this protest in an October 1, 2008 filing.

Commission has exclusive jurisdiction to determine whether Kern River's proposal is required by the public convenience and necessity.

#### **IV. Discussion**

24. Since the proposed facilities will be used to transport natural gas service in interstate commerce, Kern River's proposals are subject to the jurisdiction of the Commission and subject to the requirements of sections 7(c) and (e) of the NGA.

##### **A. Certificate Policy Statement**

25. The Certificate Policy Statement provides guidance as to how we will evaluate proposals for certificating new construction.<sup>19</sup> The Certificate Policy Statement established criteria for determining whether there is a need for a proposed project and whether the proposed project will serve the public interest. The Certificate Policy Statement explains that in deciding whether to authorize the construction of major new pipeline facilities, the Commission balances the public benefits against the potential adverse consequences. Our goal is to give appropriate consideration to the enhancement of competitive transportation alternatives, the possibility of overbuilding, subsidization by existing customers, the applicant's responsibility for unsubscribed capacity, and the avoidance of the unnecessary exercise of eminent domain or other disruptions of the environment.

26. Under this policy, the threshold requirement for pipelines proposing new projects is that the pipeline must be prepared to financially support the project without relying on subsidization from its existing customers. The next step is to determine whether the applicant has made efforts to eliminate or minimize any adverse effects the project might have on the applicant's existing customers, existing pipelines in the market and their captive customers, or landowners and communities affected by the route of the new pipeline. If residual adverse effects on these interest groups are identified after efforts have been made to minimize them, we will evaluate the project by balancing the evidence of public benefits to be achieved against the residual adverse effects. This is essentially an economic test. Only when the benefits outweigh the adverse effects on economic interests will we proceed to complete the environmental analysis where other interests are considered.

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<sup>19</sup> *Certification of New Interstate Natural Gas Pipeline Facilities*, 88 FERC ¶ 61,227 (1999), *order on clarification*, 90 FERC ¶ 61,128, *order on clarification*, 92 FERC ¶ 61,094 (2000) (Certificate Policy Statement).

## 1. Subsidization by Existing Customers

27. As noted above, the threshold requirement is that the pipeline must be prepared to financially support the project without relying on subsidization from its existing customers. As stated, Kern River proposes to charge as initial rates for the 2010 Expansion service its existing firm incremental transportation rates under Rate Schedule KRF-1 applicable to the 2003 Expansion shippers.<sup>20</sup> Since none of the 2010 Expansion Project costs are included in those rates, accepting Kern River's proposal to charge them as initial rates for the 2010 Expansion service will not result in subsidization by existing customers. Further, the Commission finds, as shown in Exhibit N to Kern River's application, that the estimated total annual revenues of \$34.3 million from the 2010 Expansion service at the 2003 Expansion rates will exceed the \$10.4 million total annual costs of the project.<sup>21</sup> Thus, absent a significant change in circumstance, rolling the 2010 Expansion costs into those of the 2003 Expansion for rate purposes will not result in subsidization of the 2010 Expansion by the 2003 Expansion shippers, but, rather, should provide a benefit to the 2003 Expansion shippers.<sup>22</sup> Accordingly, the Commission finds that a predetermination in favor of rolled-in rate treatment for the 2010 Expansion costs is appropriate.

28. In addition, based on Kern River's showing in Exhibit P of its application that there would be no subsidization by either the 2003 Expansion shippers or the Rolled-in shippers as a result of rolling in the 2010 Expansion fuel costs into the 2003 Expansion fuel reimbursement rates, the Commission will grant Kern River's request for a predetermination to roll the costs of fuel for the 2010 Expansion into the 2003 Expansion rates. Exhibit P lists the estimated fuel reimbursement factors for 2010 Expansion shippers by compressor station and compares them with the approved 2003 Expansion fuel factors. The Commission's review of Exhibit P indicates an overall decrease in fuel

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<sup>20</sup> See Kern River's Application at Exhibit P. These rates are the 2003 Expansion shipper motion rates accepted by the Commission in Docket No. RP04-274-003 (*see* unpublished director letter order issued on October 27, 2004). These rates are subject to the outcome of the pending rate case in Docket No. RP04-274-000, *et al.* See *Opinion No. 486, Kern River Gas Transmission Co.*, 117 FERC ¶ 61,007 (2006).

<sup>21</sup> This reflects the annual revenues which would be generated from the volume of new service under the 2010 Expansion contracts. Kern River has executed nine transportation service agreements with 10-year terms and two transportation service agreements with 15-year terms for a total of 145,000 Dth/d of expansion capacity.

<sup>22</sup> Nor will rolling-in the 2010 Expansion costs into the 2003 Expansion rates in Kern River's next rate case result in subsidization by the Rolled-in shippers, since the 2003 Expansion rates under Rate Schedule KRF-1 are incremental rates.

reimbursement factors when the estimated 2010 Expansion fuel reimbursement factors are compared with the 2003 Expansion fuel factors approved in Docket No. CP01-422-000.<sup>23</sup> Further, the Commission finds an overall decrease in fuel reimbursement factors when estimated 2010 Expansion fuel reimbursement factors in Exhibit P are compared with Kern River's most recently approved fuel factor filing in Docket No. RP08-300-000.<sup>24</sup> Therefore, the Commission finds that overall no subsidization will result from rolling 2010 Expansion fuel into 2003 Expansion fuel reimbursement rates.

## **2. Effect on Existing Customers, Competing Pipelines, and Captive Customers**

29. Kern River's proposal will have no adverse impact on its existing customers since the proposal will not result in any degradation of service to them. We note that no existing customers have raised any such concerns in protests or comments. Further, as supported by Exhibit M to Kern River's application, we find that there will be no adverse impacts on Mojave, the only existing pipeline serving the same market,<sup>25</sup> or its captive customers because the proposal is for new incremental service and is not intended to replace existing service on any other existing pipeline. Additionally, no pipeline has protested Kern River's application.

## **3. Effect on Landowners and Communities**

30. The impact of Kern River's proposal to increase its MAOP from 1,200 psig to 1,333 psig on landowners and communities is the one contested issue in this case. Specifically, Hughes Properties, developers of a residential community in Summerlin, Clark County, Nevada, oppose an increase in the MAOP of Kern River's pipeline running through Summerlin. According to Hughes Properties, Summerlin is a 22,500-acre, mixed-use, master-planned community of residential neighborhoods, employment centers, business parks, shopping centers, parks, and schools, with a population of more than 97,500 residents as of January 2008, and which is projected to have more than 200,000 residents when completed.

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<sup>23</sup> See Kern River's application, Exhibit P, Attachment 1 at 2, footnotes 3 and 4.

<sup>24</sup> Approved by delegated authority in a letter order issued on May 14, 2008, in Docket No. RP08-300-000.

<sup>25</sup> See Kern River's application at Exhibit M. Mojave and MPOC's letter in Exhibit M confirming Mojave's desire not to participate in the 2010 Expansion also reflects Mojave's agreement with Kern River that Mojave's capacity rights will be preserved when the 2010 Expansion is completed.

31. Hughes Properties asserts that when Kern River first obtained certificate authorization to construct and operate its 36-inch diameter natural gas pipeline in 1990, Kern River had to initiate eminent domain proceedings against Hughes Properties' predecessor-in-interest, Howard Hughes Properties, Limited Partnership (Hughes LP), in order to obtain the easements necessary to construct, operate, and maintain the pipeline across the Summerlin, Nevada community.<sup>26</sup> Hughes Properties claims that its predecessor was greatly concerned about the level of operating pressure of Kern River's pipeline through the planned Summerlin community. Hughes Properties states that this concern led Hughes LP and Kern River to negotiate a 1993 easement agreement in settlement of the eminent domain proceeding wherein Kern River agreed that its pipeline through Summerlin would have a maximum MAOP of 1,200 psig.

32. Hughes Properties argues that it is not prudent to locate high-pressure pipelines in densely populated areas. Hughes Properties cites *Columbia Gas Transmission Corp.*<sup>27</sup> as support for its claim that the Commission should not permit Kern River to increase its MAOP from 1,200 psig to 1,333 psig in the vicinity of Summerlin.

33. Hughes Properties asserts that in addition to the impacts that Kern River's proposal would have on the landowners in the Summerlin community, Kern River fails to meet the standard established in section 7(e) of the NGA which requires that "the applicant is able and willing properly to do the acts and to perform the services proposed."<sup>28</sup> According to Hughes Properties, the 1993 easement agreement limiting the MAOP of the pipeline to 1,200 psig renders Kern River not presently "able" to operate its pipeline facilities through Summerlin at a higher psig. Consequently, Hughes Properties asserts that the Commission should deny the requested authorization. In any event, Hughes Properties asserts that any certificate issued to Kern River should be conditioned upon a requirement that Kern River continue to operate the portions of its pipeline running through Summerlin at an MAOP not to exceed 1,200 psig, as specified in the 1993 easement agreement.

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<sup>26</sup> *Kern River Gas Transmission Co. v. 54.61 Acres, More or Less, in Clark County, Nevada, et al.*, No. CV-S-90-938-PMP-LRL (D. Nev. Dec. 21, 1990).

<sup>27</sup> 44 FERC ¶ 61,151, at 61,446 (1988) (in approving the abandonment of a pipeline and issuing a certificate to re-route a pipeline, the Commission stated that "[w]hile the pipeline could be replaced within the existing right-of-way, this would result in a high pressure pipeline in a highly dense residential area. The more prudent approach would be to route the new pipeline through less populated areas.") (*Columbia Gas*).

<sup>28</sup> 15 U.S.C. § 717f(e) (2006). *See* Hughes Properties' February 23, 2009 reply at 3-4.

34. On April 15, 2009, Hughes Properties filed with the Commission a copy of the Complaint and Application for Declaratory and Permanent Injunctive Relief that it filed in the United States District Court for the District of Nevada on April 13, 2009. In that complaint, Hughes Properties seeks, among other things: (1) an order of specific performance of Kern River's obligations under the 1993 easement agreement and (2) a declaration that the terms of the 1993 easement agreement (a) are valid and enforceable against Kern River; (b) prohibit Kern River from operating its pipeline within Summerlin at an MAOP in excess of 1,200 psig; (c) prohibit Kern River from further pursuing an application with the Commission to increase the MAOP of its pipeline within Summerlin; and (d) prohibit Kern River from acting and/or implementing any certificate granted by the Commission to commence a condemnation action, or otherwise acting to increase the pipeline's MAOP within Summerlin beyond the level specified in the easement.

35. Kern River contends that the 2010 Expansion Project's addition of compression and meters at existing sites and increase in system MAOP will have no impact on property owners along the system. Kern River asserts that while the Commission actively works with other agencies with safety and security responsibilities, jurisdiction over matters of pipeline safety or security lies with the Department of Transportation (DOT), not the Commission. In this regard, Kern River cites the DOT's PHMSA's November 6, 2008 issuance to Kern River of a special permit to allow the increase in MAOP of its facilities to 1,333 psig, contending that the PSMSA's review of its proposed MAOP increase and grant of the permit subject to Kern River's compliance with rigorous safety and other standards distinguishes Kern River's proposal from the situation in *Columbia Gas*, where Columbia Gas's pipeline had become both "ineffective and unsafe."<sup>29</sup> Kern River also contends that any issues surrounding the siting of Kern River's facilities were resolved when the Commission issued Kern River its original certificate in 1990. Finally, Kern River contends that the 1993 easement agreement's 1,200 psig MAOP should not prevent the Commission from finding that the 2010 Expansion is in the public convenience and necessity.

36. Hughes Properties' concerns over safety risks to the Summerlin community are addressed in the environmental section of this order. As for Hughes Properties' civil action in federal district court to preclude Kern River from operating its pipeline within Summerlin at an MAOP in excess of 1,200 psig, that action has no bearing on the Commission's authority to process Kern River's application and issue any certificate that

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<sup>29</sup> *Columbia Gas*, 44 FERC ¶ 61,151 at 61,446 (1988). In *Columbia Gas*, the Commission approved a request to abandon a pipeline built in 1949 and having an operating pressure of 450 psig (350 psig less than the 800 psig of other segments of the Columbia system) due to the age of the pipeline and the population density. See Kern River's January 30, 2009 comments at 2-3.

the Commission deems required by the public convenience and necessity. Congress has conferred upon the Commission the exclusive jurisdiction to determine whether a certificate of public convenience and necessity is in the public interest,<sup>30</sup> and “courts are not authorized to interfere by injunction or declaratory order with the conduct of pending administrative proceedings.”<sup>31</sup>

37. Furthermore, we do not agree with Hughes Properties’ contention that the 1993 easement agreement acts as a legal bar to disqualify Kern River as a certificate applicant in this proceeding. Pursuant to section 7(c) of the NGA, the Commission is required to authorize a pipeline when, as here, we find that it is required by the public convenience and necessity. Under section 7(h) of the NGA, a certificate of public convenience and necessity confers on a certificate holder the right to acquire property rights by exercising the right of eminent domain in a court action if the certificate holder cannot acquire the property rights by contract or is unable to agree with the property owner on the amount of compensation. It is incumbent upon the applicant to make good faith efforts to negotiate with landowners for any needed rights. We note that issues to which the parties cannot agree that are related to the existing easement agreement, or, if relevant, to compensation for land taken under the eminent domain provisions of the NGA are matters for state or federal court.

38. Hughes Properties alludes in its comments to economic impacts that will result from the proposed increase in operating pressures of Kern River’s pipeline and compressors. In its federal district court action Hughes Properties alleges that while it expended millions of dollars to develop the Summerlin infrastructure in reliance of Kern River’s 1,200 psig MAOP pipeline, “a higher-pressure pipeline may contribute to marketplace concerns about safety, the mere perception of which could have an immeasurable negative impact on Summerlin’s viability and appeal as a residential community.”<sup>32</sup>

39. Hughes Properties’ concerns regarding the impact of the proposed MAOP increase on the marketability of its Summerlin development are very speculative. As discussed below, the PHMSA has determined that the MAOP can be safely increased and granted Kern River a special permit authorizing the requested MAOP increase. There is no

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<sup>30</sup> See *Williams v. City of Oklahoma City*, 890 F.2d 255 (10<sup>th</sup> Cir. 1989); see, also, *City of Takoma v. Taxpayers of Tacoma*, 357 U.S. 320 (1958).

<sup>31</sup> *Riss & Co. v. I.C.C.*, 179 F.2d 810, 811 (D.C. Cir. 1950) (citing *Macaulay v. Waterman Steamship Corp.*, 327 U.S. 540, 545 (1946)).

<sup>32</sup> Complaint, paragraph 21.

evidence supporting Hughes Properties' allegation that Kern River's proposal will adversely impact the economic health of the affected communities. The issue of the adequacy of the compensation for such impacts on Hughes Properties will be addressed, if relevant, in eminent domain proceedings in state or federal court. Given the above, the Commission finds that the benefits of the 2010 Expansion Project, which is, as noted, fully subscribed, outweigh any negative economic impacts the project may have on the interests of Hughes Properties.

40. Apart from the alleged economic impact on Hughes Properties and its Summerlin community, there will be little or no impact on other landowners and communities. All of the proposed construction will take place at Kern River's existing compressor station sites, within the existing fenced station yards, and will use existing roads.<sup>33</sup>

#### **4. Conclusion**

41. The Commission concludes that any potential adverse effects of the project are outweighed by the substantial benefits of the project. The Commission also concludes that there is substantial market demand for the project since the project is fully subscribed, as evidenced by shipper commitments, under long-term contracts, for the 145,000 Dth/d of new capacity to be provided. Kern River's existing customers will not subsidize the project and there will be no degradation of service to Kern River's existing customers or any adverse effects on existing pipelines or their customers. Finally, adverse impacts on landowners and neighboring communities will be minimal. For these reasons, the Commission finds, consistent with the Certificate Policy Statement and section 7(c) of the NGA, that the public convenience and necessity requires approval of Kern River's proposal.

#### **B. Rates**

42. As discussed above, the Commission will grant Kern River's request for a predetermination that rolling the costs for the 2010 Expansion into the incremental 2003 Expansion rates, as well as rolling fuel attributed to the 2010 Expansion into the 2003 Expansion fuel reimbursement rates, subject to the conditions set forth herein, is appropriate. The Commission also finds that Kern River's levelized cost of service consisting of a 70 percent debt and 30 percent equity capital structure, a 13.25 percent return on equity, and regulatory depreciation levelized over 10- and 15-year term

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<sup>33</sup> The new turbine at the Muddy Creek compressor station will be installed in an extension of an existing building at the station.

contracts is consistent with the rate design methodology for the 2003 Expansion approved by the Commission in Docket No. CP01-422-000.<sup>34</sup>

43. The initial firm transportation rates proposed for the 2010 Expansion are the same rates currently applicable to the 2003 Expansion shippers, accepted by the Commission in Kern River's motion rate compliance filing in Docket No. RP04-274-003. However, since the 2003 Expansion rates are subject to the outcome of Kern River's rate case proceeding in Docket No. RP04-274-000, *et al.*, the proposed 2010 Expansion rates are also subject to the outcome of the rate proceeding. Further, since Kern River is proposing that the 2010 Expansion shippers pay the same rates as the 2003 Expansion shippers and that the 2010 Expansion costs be rolled into the 2003 Expansion rates in a future rate case, the Commission finds that the 2010 Expansion shippers should also pay any lower, "step-down" rates afforded to 2003 Expansion shippers. Therefore, the Commission will require Kern River to file actual revised tariff sheets incorporating the initial reservation and usage rates to be assessed the 2010 Expansion shippers, as well as any step-down rates to be assessed 2003/2010 Expansion shippers, thirty days prior to the date the rates go into effect. These rates will be subject to refund and the outcome of the pending section 4 rate case proceeding in Docket No. RP04-274-000, *et al.*

### C. Tariff Revisions

#### 1. Weighting Factors

44. Kern River currently has in place established weighting factors at each compressor station in order to allocate fuel usage between system (Rolled-in) shippers and 2003 Expansion shippers. The weighting factor at each compressor station is the ratio derived by dividing the fuel reimbursement percentage applicable to the 2003 Expansion shippers by the fuel reimbursement percentage applicable to the Rolled-in shippers. As a result of combining the 2003/2010 Expansion fuel factors and reallocating the Rolled-in fuel factors, Kern River has revised its currently effective weighting factors as set forth in its workpapers and listed in section 12.6 of its *pro forma* sheet No. 110. Kern River states that it anticipated the weighting factors would need to be adjusted once another expansion project was placed into service, since the additional volumes transported would impact the fuel used at each compressor.

45. The Commission will accept the proposed revised weighting factors listed in section 12.6 of Kern River's *pro forma* sheet No. 110. The Commission's review of Page 3 of Attachment 1 to Exhibit P finds Kern River has supported the new weighting factors for the combined 2003/2010 Expansion fuel factors. The revised weighting

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<sup>34</sup> 98 FERC ¶ 61,205 (2002).

factors were correctly calculated by dividing the fuel reimbursement percentage applicable to the 2003/2010 Expansion shippers by the fuel reimbursement percentage applicable to the Rolled-in shippers for each compressor station.

## 2. Interruptible and Authorized Overrun Factors

46. Kern River explains that for interruptible and authorized overrun service, both the Daggett electric compressor fuel surcharge and the gas compressor fuel rates are blended rates based on demand maximum daily quantities (DMDQ). Kern River's current DMDQ percentages are 48 percent for Rolled-in shippers and 52 percent for 2003 Expansion shippers. Kern River states that rolling the 2010 Expansion fuel into the 2003 Expansion changes the DMDQ percentages to 45 percent for Rolled-in shippers and 55 percent for 2003/2010 Expansion shippers. Kern River has reflected these DMDQ percentage changes on *pro forma* sheet Nos. 110 and 110-B.

47. The Commission will accept the revised DMDQ percentages of 45 percent for Rolled-in shippers and 55 percent for 2003/2010 Expansion shippers as reflected on *pro forma* sheet Nos. 110 and 110-B. The Commission finds that Kern River has correctly calculated the revised DMDQ percentage of 45 percent for Rolled-in shippers by dividing DMDQ of 848,949 Dth/d for Rolled-in shippers by total system DMDQ of 1,900,575 Dth/d,<sup>35</sup> and 55 percent for the 2003/2010 Expansion shippers by dividing DMDQ of 1,051,626 Dth/d for 2003/2010 Expansion shippers by total system DMDQ of 1,900,575 Dth/d.<sup>36</sup> The Commission also finds the DMDQ percentages are derived consistent with the Commission's decision in Opinion No. 486 to weight fuel consumption for interruptible and authorized overrun services by a factor that compares each service's billing determinants to the total system billing determinants.<sup>37</sup>

### D. Accounting

#### 1. Depreciation

48. Kern River's rates are determined by the use of a levelized cost of service. For rate purposes, Kern River's depreciation rate is adjusted in each cost-of-service year to derive a levelized cost of service. However, for book purposes, Kern River applies a straight line depreciation rate.

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<sup>35</sup> See Kern River's application at 25.

<sup>36</sup> *Id.*

<sup>37</sup> See *Kern River Gas Transmission Co.*, 117 FERC ¶ 61,077, at 61,358-369 (2006).

49. Kern River requests approval to account for the differences between book and rate depreciation as regulatory assets or liabilities, as appropriate. This treatment is consistent with the Commission's Uniform System of Accounts and the accounting treatment approved previously by the Commission for Kern River's 2003 Expansion.<sup>38</sup> Thus, the Commission will approve Kern River's proposed depreciation treatment.

## 2. Contributions in Aid of Construction

50. As noted above, the requested MAOP increase will necessitate modifications to some downstream facilities. Kern River indicates that, in certain cases, it may provide a contribution in aid of construction (CIAC) to interconnect operators to modify their facilities (instead of Kern River modifying facilities on its side of the meter). Kern River proposes to account for such CIACs in Account 303, Miscellaneous Intangible Plant. Further, Kern River proposes to amortize the CIACs by debiting Account 404.3, Amortization of Other Limited-Term Gas Plant, and crediting Account 111, Accumulated Provision for Amortizations and Depreciation of Gas Utility Plant, over the service life of the 2010 Expansion facilities.<sup>39</sup>

51. This accounting treatment is consistent with the Commission's Uniform System of Accounts and is approved for accounting purposes only.<sup>40</sup> Kern River is advised that any proposal to include the CIAC in its rate base will not be automatic, but will be subject to scrutiny in a future rate case, just like any other cost. In other words, Kern River will be required to show that the CIAC was reasonable and prudent.<sup>41</sup>

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<sup>38</sup> *Kern River Gas Transmission Co.*, 98 FERC ¶ 61,205 (2002).

<sup>39</sup> See Kern River's December 22, 2008, response to data request question No. 4.

<sup>40</sup> See, e.g., *Kern River Gas Transmission Co.*, 99 FERC ¶ 61,085 (2002); *Georgia Strait Crossing Pipeline LP*, 98 FERC ¶ 61,271 (2002); *Kern River Gas Transmission Co.*, 98 FERC ¶ 61,205 (2002); *Horizon Pipeline Co., L.L.C.*, 92 FERC ¶ 61,205 (2000).

<sup>41</sup> See, e.g., *Southern Natural Gas Co.*, 82 FERC ¶ 61,249, at 61,995 (1998); *Trunkline Gas Co., LLC*, 122 FERC ¶ 61,050 (2008).

## E. Environment

52. On July 21, 2008, the Commission staff issued a *Notice of Intent to Prepare an Environmental Assessment* (NOI).<sup>42</sup> Six responses to the NOI were received.<sup>43</sup> Five of the responses raised no substantive environmental concerns. However, Sun City (a homeowners association) raised concerns about the safety of the pipeline and geologic hazards in the project area. As noted above, Hughes Properties also raised safety concerns related to the proposed increase in operating pressure of the pipeline through Summerlin.

53. To satisfy the requirements of the National Environmental Policy Act, staff prepared an environmental assessment (EA) for the 2010 Expansion Project. The EA was issued for a 30-day comment period and placed in the public record of this proceeding on November 24, 2008. The EA was noticed in the *Federal Register* on December 2, 2008,<sup>44</sup> and mailed to federal, state, and local agencies, elected officials, public libraries, intervenors in this proceeding, and other interested parties. Subsequent to the date of issuance, Kern River notified staff of an error with the company's landowner list. Therefore, the EA was re-issued on January 9, 2009, with a comment period extending until February 9, 2009.

54. The EA addresses geology and soils, water resources and wetlands, fisheries, vegetation and wildlife (including threatened and endangered species), land use, visual resources, cultural resources, air and noise quality, safety and reliability, cumulative impacts, and alternatives. The EA also addresses the substantive issues raised in the scoping comments.

55. In response to Hughes Properties' and Sun City's concerns, the EA explains that the pipeline and aboveground facilities associated with the 2010 Expansion must be designed, constructed, operated, and maintained in accordance with the DOT's Minimum Federal Safety Standards.<sup>45</sup> The EA points out that PHMSA's permit granted to

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<sup>42</sup> The NOI was re-issued on August 28, 2008, in response to an updated list of affected landowners and corrected addresses filed by Kern River on August 15, 2008.

<sup>43</sup> Responses were received from the Natural Resources Conservation Service in Salt Lake City, Utah, the Lincoln County [Wyoming] Commissioners, the City of Mesquite, Nevada, the Sun City Summerlin Associations, Inc. (Sun City), and two private landowners.

<sup>44</sup> 73 Fed. Reg. 73,322.

<sup>45</sup> See 49 C.F.R. § 192 (2008).

Kern River to increase the MAOP of its pipeline was subject to 56 conditions, including the institution of a fracture control plan, right-of-way management program, and periodic in-line inspections.<sup>46</sup> The EA specifically requires Kern River to comply with these conditions in order to uprate the MAOP of its pipeline.<sup>47</sup> The EA also lists a number of additional reliability and safety measures Kern River currently implements in addition to DOT's Minimum Federal Safety Standards.<sup>48</sup> The EA concludes that safe operation of the proposed project will be accomplished by Kern River's compliance with the DOT's standards and the conditions imposed by PHMSA in its special permit.<sup>49</sup>

56. The EA also addressed Sun City's concerns regarding the potential for below-ground shifting of the pipeline caused by earthquakes or other ground movement. The EA referenced a study of earthquake performance data for steel transmission pipelines and the required mitigation imposed on Kern River, as described in our environmental impact statement for the Kern River 2003 Expansion Project.<sup>50</sup> The EA concludes that compliance with the proper design standards for project facilities in seismically active areas and Kern River's mitigation measures for surface fault rupture/displacement hazards would reduce the potential effects of ground shaking associated with earthquakes to less than significant levels.

57. We find, consistent with the discussion in the EA, that there will be no adverse safety impacts resulting from Kern River's operation of its facilities at the proposed higher MAOP because Kern River must operate its upgraded system in accordance with the DOT standards and the conditions imposed by PHMSA in its special permit order.

58. In response to the EA, the Lincoln County [Wyoming] Commissioners, the Wyoming Game and Fish Department (WGFD), Hughes Properties, the U.S. Army Corps of Engineers (COE), Clark County [Nevada] Department of Air Quality and Environmental Management (DAQEM), and Kern River filed comment letters. The Lincoln County Commissioners support the project. The remainder of the comment letters pertained to environmental concerns which we address below.

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<sup>46</sup> EA at 22.

<sup>47</sup> *Id.* at 23.

<sup>48</sup> *Id.* at 22.

<sup>49</sup> *Id.* at 21-23. The findings of the EA are also responsive to the safety concerns of Hughes Properties.

<sup>50</sup> EA at 6-7. *See* Final Environmental Impact Statement for the Kern River 2003 Expansion Project issued on June 20, 2002.

59. The WGFD filed three letters, on December 2, 2008, and January 13 and 28, 2009, pertaining to erosion control and the prevention of sediment from entering nearby waterways during project construction. The 2010 Expansion Project, however, does not involve any ground disturbance or construction other than limited activity within existing compressor station and meter station facilities which are not close to any natural surface waterbodies. Kern River will adhere to the requirements of our *Upland Erosion Control, Revegetation, and Maintenance Plan* and *Wetland and Waterbody Construction and Mitigation Procedures* during construction. Therefore, no impacts on surface water would be expected as a result of construction or operation of the project.

60. The COE commented that the EA should consider impacts on the Utah prairie dog and other threatened and endangered sensitive species that could be present in the project area. As stated in the EA, Utah prairie dog habitat would not be affected by the 2010 Expansion and there would be no affect on this species or any other federally-listed species.<sup>51</sup> Kern River consulted with the U.S. Fish and Wildlife Service (FWS) on the Commission's behalf regarding threatened and endangered species within the project area. Although Kern River's pipeline system consists of hundreds of miles of pipeline crossing multiple states and counties, the 2010 Expansion Project does not involve any ground disturbance or construction other than limited activity within existing compressor station and meter station facilities.

61. The COE also requested a more comprehensive listing and discussion of threatened and endangered species, based on county-wide database information. Staff concurred with the FWS that the Utah prairie dog and the desert tortoise were the only threatened and endangered species in the project vicinity; thus, the discussion in the EA was limited to these two species. According to section 7 of the Endangered Species Act, once the responsible agency has determined a proposed action would have no affect on a listed species, no further consultation is necessary. Given the limited ground disturbance from the project and based on our consultation with the FWS, we believe the 2010 Expansion Project would not affect any sensitive species.

62. Comments from the Clark County DAQEM addressed Kern River's adherence to the Clean Water Act, air quality permits, and Clark County codes and regulations dealing with water quality management and storm sewer discharge. The 2010 Expansion Project only involves an increase in MAOP of Kern River's pipeline across Nevada. No construction in Nevada is proposed. Thus, there will be no impacts on water, air quality, or sewer discharge.

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<sup>51</sup> EA at 10.

63. Kern River filed comments on the EA requesting a correction of Section A.1 of the EA describing the proposed action. Section A.1., Introduction, states that “Kern River would also increase the MAOP of 1,680 miles of pipeline” and section 4, Proposed Facilities, states that the “increase in MAOP is proposed for both the Kern River system and the Common Facilities [jointly owned by Kern River and Mojave].” This order corrects these facts, finding that Kern River’s proposal (the 2010 Expansion) seeks an MAOP increase of the facilities wholly-owned by Kern River, and excludes the facilities jointly owned with Mojave.

64. Kern River also requested clarification of the greenhouse gas emissions figures and whether these figures also include construction emissions from the Opal meter station. Table 3 on page 17 of the EA refers to the construction emissions for only the Muddy Creek compressor station and Kramer Junction meter station and does not include the construction emissions for the Opal meter station. The statement on page 16 shows the similarities in construction emissions for the Kramer Junction and Opal meter stations and was provided only for comparison purposes. As stated above, Kern River does not seek authority in its application for the upgrade to the Kramer Junction meter station.

65. Based on the discussion in the EA, we conclude that approval of this proposal would not constitute a major federal action significantly affecting the quality of the human environment if the facilities are constructed and operated in accordance with Kern River’s application and supplements and the conditions imposed herein.

66. Any state or local permits issued with respect to the jurisdictional facilities authorized herein must be consistent with the conditions of this certificate. The Commission encourages cooperation between interstate pipelines and local authorities. However, this does not mean that state and local agencies, through application of state or local laws, may prohibit or unreasonably delay the construction or operation of facilities approved by this Commission.<sup>52</sup>

67. The Commission on its own motion, received and made part of the record in this proceeding all evidence, including the application and exhibits thereto, submitted in support of the authorizations sought herein, and upon consideration of the record,

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<sup>52</sup>See, e.g., *Schneidewind v. ANR Pipeline Co.*, 485 U.S. 293 (1988); *National Fuel Gas Supply v. Public Service Commission*, 894 F.2d 571 (2d Cir. 1990); and *Iroquois Gas Transmission System, L.P., et al.*, 52 FERC ¶ 61,091 (1990) and 59 FERC ¶ 61,094 (1992).

The Commission orders:

(A) A certificate of public convenience and necessity under section 7(c) of the Natural Gas Act is issued to Kern River to construct and operate facilities and to increase its certificated pipeline system MAOP, as well as its certificated compressor and meter station MAOP, as described herein and more fully in its application.

(B) The certificate authorization granted in Ordering Paragraph (A) is conditioned on Kern River's compliance with all applicable Commission regulations under the NGA, particularly, the general terms and conditions set forth in Parts 154, 157, and 284, and paragraphs (a), (c), (e), and (f) of section 157.20 of the regulations.

(C) The certificate authorization granted in Ordering Paragraph (A) is conditioned on Kern River's compliance with the environmental conditions listed in Appendix B to this order.

(D) Kern River shall notify the Commission's environmental staff by telephone, e-mail, and/or facsimile of any environmental noncompliance identified by other federal, state, or local agencies on the same day that such agency notifies Kern River. Kern River shall file written confirmation of such notification with the Secretary of the Commission (Secretary) within 24 hours.

(E) Kern River's request for a predetermination that, absent a significant change in circumstances, rolling the costs for the 2010 Expansion into the incremental 2003 Expansion rates in Kern River's next rate case is appropriate, is granted.

(F) Kern River's request for a preliminary determination that fuel attributed to the 2010 Expansion may be rolled in with 2003 Expansion fuel reimbursement rates is granted.

(G) Kern River shall file actual revised tariff sheets incorporating the initial reservation and usage rates to be assessed the 2010 Expansion shippers, and any step-down rates assessed the 2003/2010 Expansion Shippers, thirty days prior to the date rates go into effect, as discussed in the body of this order.

(H) Kern River's proposed revised weighting factors listed in section 12.6 of its *pro forma* sheet No. 110 are accepted.

(I) The revised DMDQ percentages of 45 percent for Rolled-in shippers and 55 percent for 2003/2010 Expansion shippers as reflected on *pro forma* sheet Nos. 110 and 110-B are accepted.

(J) Pursuant to section 157.20(b) of the Commission's regulations, the facilities authorized in Ordering Paragraph (A) must be constructed and placed in service within one year of the date of the order in this proceeding.

By the Commission.

( S E A L )

Kimberly D. Bose,  
Secretary.

## **Appendix A**

### **Interventions – Kern River CP08-429-000**

Questar Gas Company  
Williams Gas Marketing, Inc.  
Gas Transmission Northwest Corporation  
Colorado Interstate Gas Company  
Mojave Pipeline Company  
Nevada Power Company  
Occidental Energy Marketing, Inc.  
Anadarko Petroleum Corporation  
Chevron U.S.A. Inc.  
Southern California Gas Company and San Diego Gas & Electric  
Southwest Gas Corporation  
Reliant Energy Services, Inc.  
Calpine Energy Services, L.P.

### **Interventions Out-of-Time**

BP Energy Company  
City of Victorville, California  
Questar Overthrust Pipeline Company  
Questar Pipeline Company  
Howard Hughes Properties, Inc. and the Howard Hughes Corporation

## Appendix B

### Environmental Conditions for Kern River 2010 Expansion

1. Kern River shall follow the construction procedures and mitigation measures described in its application and supplements (including responses to staff data requests) and as identified in the environmental assessment (EA), unless modified by the Commission Order. Kern River must:
  - a. request any modification to these procedures, measures, or conditions in a filing with the Secretary;
  - b. justify each modification relative to site-specific conditions;
  - c. explain how that modification provides an equal or greater level of environmental protection than the original measure; and
  - d. receive approval in writing from the Director of the Office of Energy Projects (OEP) before using that modification.
2. The Director of OEP has delegated authority to take whatever steps are necessary to ensure the protection of all environmental resources during construction and operation of the project. This authority shall allow:
  - a. the modification of conditions of the Commission Order; and
  - b. the design and implementation of any additional measures deemed necessary (including stop-work authority) to assure continued compliance with the intent of the environmental conditions as well as the avoidance or mitigation of adverse environmental impact resulting from project construction and operation.
3. **Prior to any construction**, Kern River shall file an affirmative statement with the Secretary, certified by a senior company official, that all company personnel, environmental inspectors (EI), and contractor personnel will be informed of the EI's authority and have been or will be trained on the implementation of the environmental mitigation measures appropriate to their jobs **before** becoming involved with construction and restoration activities.
4. **Within 60 days of the acceptance of this certificate and before construction** begins, Kern River shall file an initial Implementation Plan with the Secretary for review and written approval by the Director of OEP. Kern River must file revisions to the plan as schedules change. The plan shall identify:
  - a. how Kern River will implement the construction procedures and mitigation measures described in its application and supplements (including responses to staff data requests), identified in the EA, and required by this Order;

- b. how Kern River will incorporate these requirements into the contract bid documents, construction contracts (especially penalty clauses and specifications), and construction drawings so that the mitigation required at each site is clear to onsite construction and inspection personnel;
  - c. the number of environmental inspectors assigned per spread, and how the company will ensure that sufficient personnel are available to implement the environmental mitigation;
  - d. company personnel, including environmental inspectors and contractors, who will receive copies of the appropriate material;
  - e. the training and instructions Kern River will give to all personnel involved with construction and restoration (initial and refresher training as the project progresses and personnel change);
  - f. the company personnel (if known) and specific portion of Kern River's organization having responsibility for compliance;
  - g. the procedures (including use of contract penalties) Kern River will follow if noncompliance occurs; and
  - h. for each discrete facility, a Gantt or PERT chart (or similar project scheduling diagram), and dates for:
    - (1) the completion of all required surveys and reports;
    - (2) the mitigation training of onsite personnel;
    - (3) the start of construction; and
    - (4) the start and completion of restoration.
5. Beginning with the filing of its initial Implementation Plan, Kern River shall file updated status reports with the Secretary on a monthly basis until all construction and restoration activities are complete. On request, these status reports will also be provided to other federal and state agencies with permitting responsibilities. Status reports shall include:
- a. an update on Kern River's efforts to obtain the necessary federal authorizations;
  - b. the construction status of the project, work planned for the following reporting period, and any schedule changes for stream crossings or work in other environmentally sensitive areas;
  - c. a listing of all problems encountered and each instance of noncompliance observed by the environmental inspector(s) during the reporting period (both for the conditions imposed by the Commission and any environmental conditions/permit requirements imposed by other federal, state, or local agencies);
  - d. a description of the corrective actions implemented in response to all instances of noncompliance, and their cost;
  - e. the effectiveness of all corrective actions implemented;

- f. a description of any landowner/resident complaints which may relate to compliance with the requirements of the Order, and the measures taken to satisfy their concerns; and
  - g. copies of any correspondence received by Kern River from other federal, state, or local permitting agencies concerning instances of noncompliance, and Kern River's response.
6. Kern River must receive written authorization from the Director of OEP **before commencing service** from the project. Such authorization will only be granted following a determination that rehabilitation and restoration of the areas of project-related disturbance are proceeding satisfactorily.
7. **Within 30 days of placing the certificated facilities in service**, Kern River shall file an affirmative statement with the Secretary, certified by a senior company official:
  - a. that the facilities have been constructed in compliance with all applicable conditions, and that continuing activities will be consistent with all applicable conditions; or
  - b. identifying which of the certificate conditions Kern River has complied with or will comply with. This statement shall also identify any areas affected by the project where compliance measures were not properly implemented, if not previously identified in filed status reports, and the reason for noncompliance.
8. Kern River shall file a noise survey with the Secretary **no later than 60 days** after placing the authorized equipment at the Muddy Creek Compressor Station in service. If the noise attributable to the operation of all of the equipment at the Muddy Creek Compressor Station at full load exceeds a day-night sound level of 55 decibels on the A-weighted scale at any nearby noise-sensitive areas, Kern River shall file a report on what changes are needed and install the additional noise controls to meet the level **within one year** of the in-service date. Kern River shall confirm compliance with the above requirement by filing a second noise survey with the Secretary **no later than 60 days** after it installs the additional noise controls.