

130 FERC ¶ 61,273  
FEDERAL ENERGY REGULATORY COMMISSION  
WASHINGTON, D.C. 20426

March 31, 2010

In Reply Refer To:  
Kern River Gas Transmission Company  
Docket No. RP04-274-000

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

Attention: J. Gregory Porter, Vice President and  
General Counsel

Reference: Motion for Expedited Order Authorizing Provisional Payment of Refunds

Dear Mr. Porter:

1. On March 5, 2010, Kern River Gas Transmission Company (Kern River) filed a motion with the Commission requesting the authorization of provisional payment of refunds and implementation of reduced billing rates in compliance with Opinion No. 486-C.<sup>1</sup> Kern River states that authorization to make certain additional provisional refunds at this time will benefit shippers by providing them with refunds earlier than they might otherwise receive them. As discussed below, the Commission finds the provisional payment of refunds provides immediate financial relief to all affected shippers and, therefore, accepts Kern River's motion for expedited provisional payment of refunds and implementation of reduced billing rates subject to the conditions discussed herein.

2. On April 30, 2004, Kern River filed a general rate case under section 4 of the Natural Gas Act (NGA). On May 28, 2004, the Commission accepted and suspended the rates to be effective November 1, 2004 and set the case for hearing.<sup>2</sup> Subsequently, the

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<sup>1</sup> *Kern River Gas Transmission Co.*, 129 FERC ¶ 61,240 (2009) (*Opinion No. 486-C*).

<sup>2</sup> *Kern River Gas Transmission Company*, 107 FERC ¶ 61,215, *order on rehearing*, 109 FERC ¶ 61,060 (2004).

Presiding Administrative Law Judge (ALJ) issued an Initial Decision on March 2, 2006.<sup>3</sup> On October 19, 2006, the Commission issued Opinion No. 486, affirming in part, and rejecting in part, the Initial Decision,<sup>4</sup> and on April 18, 2008, in Opinion No. 486-A, the Commission generally denied rehearing of Opinion No. 486 and established a paper hearing on the issue of return on equity. On September 30, 2008, Kern River filed a contested Settlement. The Settlement required Kern River to refund to the settling parties the amounts it had collected in excess of the Settlement rates since November 1, 2004. On October 28, 2008, the Commission accepted the tariff sheets implementing the reduced Settlement rates, on an interim basis beginning October 1, 2008, subject to the Commission's decision on the merits of the Settlement.<sup>5</sup>

3. On January 15, 2009, the Commission issued Opinion No. 486-B, which established Kern River's return on equity and also rejected the contested Settlement filed by Kern River on September 30, 2008.<sup>6</sup> The Commission directed Kern River to cancel the interim rates filed with the Settlement and recapture the refunds made under the Settlement as soon as was practical. While Opinion No. 486-B authorized Kern River to recapture all of those refunds, Kern River, pursuant to Article V section 2(c) of its Settlement, gave the settling parties the option to defer repayment of the refunds in order to allow the refund amount to be offset against any amount Kern River may be obligated to refund in accordance with the Commission's final order in this proceeding. The Commission found this method to be administratively efficient. *Kern River Gas Transmission Company*, 127 FERC ¶ 61,033, at P 20 (2009). The Commission also found that Kern River's proposal not to bill and collect from settling parties the difference between the settlement rates and the motion rates for the period October 1 through December 31, 2008 was reasonable. The Commission permitted Kern River to use such uncollected amounts to offset any additional refunds that it may be obligated to

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<sup>3</sup> *Kern River Gas Transmission Co.*, 114 FERC ¶ 63,031 (2006) (*Order on Initial Decision*).

<sup>4</sup> *Kern River Gas Transmission Co.*, 117 FERC ¶ 61,077 (2006) (*Opinion No. 486*), *order on rehearing*, 123 FERC ¶ 61,056 (2008) (*Opinion No. 486-A*), *order on rehearing*, 126 FERC ¶ 61,034 (2009) (*Opinion No. 486-B*), *order on rehearing*, 129 FERC ¶ 61,240 (2009) (*Opinion No. 486-C*).

<sup>5</sup> *Kern River Gas Transmission Co.*, 125 FERC ¶ 61,108 (2008).

<sup>6</sup> *Kern River Gas Transmission Co.*, 126 FERC ¶ 61,034 (2008).

make to the settling parties as a result of collecting the reinstated motion rates after January 1, 2009 and determined that such a procedure benefitted Kern River's settling parties in the same manner as Kern River's proposed refund offset procedures for the period from November 1, 2004 through September 30, 2008. *Id.* at P 21.

4. Lastly, in Opinion No. 486-C, the Commission denied rehearing of Opinion No. 486-B, and accepted Kern River's filing to comply with Opinion No. 486-B, subject to conditions. The Commission also required that Kern River file tariff sheets concerning Kern River's Period One rates and established a hearing concerning Kern River's Period Two rates.<sup>7</sup>

5. On January 29, 2010, Kern River filed a compliance filing (January 29 Compliance Filing) reflecting revised Period One tariff rates pursuant to Ordering Paragraph (C) of the Commission's Opinion No. 486-C. Kern River states that its shippers have been paying for transportation service for nearly six years under rates that are, in many instances, higher than the rates reflected in Kern River's January 29 Compliance Filing. As a result, Kern River proposes to issue provisional refunds before a final order is issued in this proceeding subject to the following refund methodology.

6. Kern River proposes that any such refunds be issued to all shippers, except those shippers that notify Kern River in writing of their intention to opt out of the provisional refund. Kern River proposes to distribute the provisional refunds based on the following criteria, while protecting Kern River's rights in light of the ongoing proceeding in this docket. First, for those shippers who were parties to the Settlement, Kern River proposes to issue Provisional Refunds, with interest, where the principal amount of the refund is the sum of:

(1) The difference (if any) between the net amounts previously collected after refunds were issued based on the locked-in Period One rates submitted in the Proposed Settlement and the amounts that would have been collected based on the locked-in Period One rates submitted in the January Compliance Filing from November 1, 2004 through September 30, 2008;

(2) the difference between the amounts previously collected based on the Motion Rates and the amounts that would have been collected based on the locked-in Period One rates stated in the January

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<sup>7</sup> The Period One rates for the locked-in period begin on November 1, 2004 and continue through the end of the appropriate shipper contract.

Compliance Filing, from January 1, 2009 [the effective date of reinstatement of the Motion Rates after the Commission's rejection of the Settlement] through March 31, 2009; and

(3) the difference (if any) between the amounts previously collected based on the locked-in Period One rates submitted in the March 2, 2009 compliance filing and the amounts that would have been collected based on the locked-in Period One rates submitted in the January Compliance filing, from April 1, 2009 until the first day of the next billing cycle after the Commission issues an order approving Kern River's motion. Motion Letter at 6 (footnotes omitted).

7. Kern River states that the principal refund amount calculated in accordance with (1) through (3) above will be reduced by the difference between the amounts collected based on the Settlement rates and the amounts that would have been collected based on the locked-in Period One rates set forth in the January 29 Compliance Filing for the period from October 1, 2008 through December 31, 2008.

8. For those shippers that were not parties to the Settlement, Kern River proposes to issue provisional refunds, with interest, where the principal amount is the sum of:

(1) The difference between the amounts previously collected based on the Motion Rates and the amounts that would have been collected based on the locked-in Period One rates submitted in the January Compliance Filing for the period from November 1, 2004 through March 31, 2009; and

(2) the difference (if any) between the amounts previously collected based on the locked-in Period One rates submitted in the March 2, 2009 compliance filing and the amounts that would have been collected based on the locked-in Period One rates submitted in the January Compliance filing, from April 1, 2009 until the first day of the next billing cycle after the Commission issues an order approving Kern River's motion. Motion Letter at 7 (footnotes omitted).

9. Kern River states that in accordance with § 154.501(e) of the Commission's regulations,<sup>8</sup> within 30 days after provisional refunds are issued, Kern River will file a refund report showing the refund derivation for each shipper. Kern River proposes to

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<sup>8</sup> 18 C.F.R. § 154.501(e) (2009).

begin billing and collecting from all its shippers the locked-in period rates from the January 29 Compliance Filing, effective on the first day of the next billing cycle after the Commission issues an order approving Kern River's motion and ending when the Commission issues its final order in this proceeding.

10. Kern River states that its request to distribute provisional refunds is conditioned on receiving several protections from the Commission. First, Kern River states that the Commission must acknowledge that neither Kern River's proposal nor the payment of provisional refunds by Kern River will constitute a waiver by Kern River with respect to any issue raised by Kern River on rehearing or, if applicable, on judicial review of Opinion No. 486, *et seq.* Kern River also requests that the Commission's approval of the proposed refunds will be granted without prejudice to Kern River's rights under section 19 of the NGA to seek rehearing and/or to petition for judicial review of any or all of the Commission's subsequent orders in this proceeding. Further, Kern River states that the Commission should find that if any aspect of the Commission's rulings in Opinion No. 486-C concerning Kern River's Period One rates is changed on rehearing, judicial review, or on the Commission's own motion, such that the resulting Period One rates are higher than those contained in the January Compliance Filing, Kern River will have the right to recoup any excess refunds it paid pursuant to the instant proposal, with interest at the Commission's prescribed interest rate. Kern River states that if the Commission declines to accept these conditions as set forth above, the instant motion shall be deemed withdrawn by Kern River.

11. Notice of Kern River's filing issued on March 15, 2010. Comments were due on March 17, 2010, as provided in section 154.210 of the Commission's regulations (18 C.F.R. § 154.210 (2008)). No protests or adverse comments were filed.

12. The Commission finds Kern River's unopposed motion to distribute provisional payment of refunds provides immediate financial relief to all affected shippers. Therefore, the Commission accepts Kern River's motion, subject to these conditions as requested by Kern River described above, and subject to the final outcome of the instant proceeding.

By direction of the Commission.

Nathaniel J. Davis, Sr.,  
Deputy Secretary.