

141 FERC ¶ 61,024  
FEDERAL ENERGY REGULATORY COMMISSION  
WASHINGTON, D.C. 20426

October 12, 2012

In Reply Refer To:  
Kern River Gas Transmission Company  
Docket No. RP12-1033-000

Kern River Gas Transmission Company  
Attention: Mary Kay Miller  
2755 East Cottonwood Parkway  
Salt Lake City, UT 84121

Dear Ms. Miller:

1. On September 13, 2012, Kern River Gas Transmission Company (Kern River) filed revised tariff records<sup>1</sup> to provide Kern River and a shipper with the option to mutually agree to waive a trial by jury in connection with litigation related to transportation service agreements. Kern River has revised the General Terms and Conditions (GT&C) as well as all of the *pro forma* service agreements in its tariff to reflect this mutually agreeable option to waive a trial by jury. For the reasons discussed below, the revised tariff records listed in footnote no. 1 are accepted, effective October 14, 2012, as requested.
2. Kern River proposes to include a new section 11.17 in its GT&C to state the following:

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<sup>1</sup> Kern River Gas Transmission Company, FERC NGA Gas Tariff, Gas Tariff, [Sheet No. 158, GT&C Service Agreement and Service Conditions, 3.0.0](#); [Sheet No. 302, Firm Transportation Service Agreement KRF-1, 2.0.0](#); [Sheet No. 312, Interruptible Transportation Service Agreement KRI-1, 1.0.0](#); [Sheet No. 322, Firm Transportation Service Agreement KRF-L1, 1.0.0](#); [Sheet No. 332, Interruptible Transportation Service Agreement KRI-L1, 1.0.0](#); [Sheet No. 341, Park and Loan Service Agreement, PAL, 1.0.0](#); [Sheet No. 368, Released Transportation Service Agreement Form, 1.0.0](#).

When Transporter and Shipper mutually agree, the following provision shall be added to the applicable Transportation Service Agreement(s). To the fullest extent permitted by law, Shipper and Transporter waive any right they may have to a trial by jury in respect of litigation directly or indirectly arising out of, under or in connection with any agreement entered into pursuant to the tariff. Each party further waives any right to consolidate any action in which a jury trial has been waived with any other action in which a jury trial cannot be or has not been waived.

Kern River proposes to use this same tariff language in all of its service agreements.

3. Kern River states that in the rare instance where a disagreement is taken before the court system, litigation before a judge is a better alternative for all parties and results in a more reasoned application of the facts and law than litigation before a jury. Kern River contends that litigation before a judge is less expensive to both parties and generally less time consuming. In an effort to avoid time-consuming jury trials and unpredictable verdicts, Kern River states that it would like the ability to agree with a shipper to waive the use of a jury trial.

4. Kern River argues that the Commission has allowed a provision requiring waiver of jury trials in disputes regarding corporate guarantees.<sup>2</sup> Kern River also cites three pipeline tariffs that provide for jury trial waivers.<sup>3</sup> Kern River acknowledges that the Commission has not permitted a waiver of jury trial to be a condition of obtaining the basic service that the pipeline is obligated by its certificate to provide.<sup>4</sup> However, Kern River states that parties should be given the opportunity to mutually agree to waive a jury trial and include the applicable provision in a transportation service agreement without causing the agreement to be non-conforming.

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<sup>2</sup> Kern River Transmittal Letter at 2 (citing *New England Power Pool*, 87 FERC ¶ 61,353, at 62,357 (1999)).

<sup>3</sup> *Id.* (listing Cameron Interstate Pipeline, LLC, Elba Express Company, L.L.C. and Saltville Gas Storage Company L.L.C).

<sup>4</sup> *Id.* (citing *Monroe Gas Storage Co., LLC*, 130 FERC ¶ 61,113, at P 24 (2010)).

5. Public notice of the filing was issued on September 14, 2012. Interventions and protests were due as provided in section 154.210 of the Commission's regulations (18 C.F.R. § 154.210 (2012)). Pursuant to Rule 214 (18 C.F.R. § 385.214 (2012)), all timely filed motions to intervene and any unopposed motion to intervene out-of-time filed before the issuance date of this order are granted. Granting late intervention at this stage of the proceeding will not disrupt the proceeding or place additional burdens on existing parties. Indicated Customers filed a protest.<sup>5</sup>

6. Indicated Customers state that Kern River has failed to provide a reasonable basis for its proposed tariff provisions, and therefore, urge the Commission to reject them. Indicated Customers contend that Kern River's proposal is unnecessary, and that the timing, expense, and potential complexity of a proceeding are not sufficient reasons to justify allowing Kern River to be exempt from jury trials. Indicated Customers also contend that standard rules of civil procedure provide more than enough opportunities for the parties to waive a jury trial.

7. Indicated Customers state that while Kern River cites three natural gas companies whose tariffs include trial by jury waiver provisions, there is no evidence that these proposed tariff provisions were contested. Indicated Customers also note that Commission precedent prohibits pipelines from making a jury trial waiver "a condition of obtaining the basic service that [the pipeline] is obligated by its certificate to provide."<sup>6</sup> Accordingly, Indicated Customers argue that Kern River provides no support for its proposal.

8. For the reasons discussed herein, we accept Kern River's proposed tariff records, to be effective October 14, 2012. Indicated Customers suggest that Kern River's proposed tariff records seek to exempt Kern River from jury trials arising in connection with transportation service agreements. This suggestion, however, is without merit. Kern River's proposal would simply allow Kern River and a shipper to mutually agree to waive their respective rights to a jury trial. While the Commission will not allow a jury trial waiver to be a condition of obtaining the basic service that a pipeline is obligated by its certificate to provide,<sup>7</sup> the

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<sup>5</sup> Indicated Customers include Aera Energy LLC, Shell Energy North America (US), L.P., and Southwest Corporation.

<sup>6</sup> Indicated Customers Protest at n.6 (citing *Monroe Gas Storage Co., LLC*, 131 FERC ¶ 61,056, at 61,286, at P 4 (2010); *New England Power Pool*, 87 FERC at 62,357).

<sup>7</sup> *Monroe Gas Storage Co., LLC*, 130 FERC ¶ 61,113 (2010), *order on compliance*, 131 FERC ¶ 61,056, at P 4 (2010).

Commission has previously accepted an *optional* waiver of jury trial provision such as the one at issue here.<sup>8</sup> In that case, the Commission accepted the optional waiver of jury trial provision because it did not require potential shippers to give up their jury trial rights in order to obtain any services.<sup>9</sup> Similarly here, we accept Kern River's tariff proposal because it provides that only if both parties mutually agree, would a trial by jury be waived, and it does not preclude a shipper who does not so agree from receiving the basic service that Kern River is obligated to provide under its certificate. Accordingly, Kern River's proposed tariff records are accepted, effective October 14, 2012.

By direction of the Commission.

Kimberly D. Bose,  
Secretary.

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<sup>8</sup> *Id.* P 5.

<sup>9</sup> *Id.*