

158 FERC ¶ 61,078
FEDERAL ENERGY REGULATORY COMMISSION
WASHINGTON, DC 20426

January 27, 2017

In Reply Refer To:
Kern River Gas
Transmission Company
Docket No. RP17-248-000

Kern River Gas Transmission Company
Vice President, Regulatory
and Government Affairs
1111 South 103rd Street
Omaha, NE 68124-1000

Attention: Laura Demman

Dear Ms. Demman:

1. On December 1, 2017, Kern River Gas Transmission Company (Kern River) submitted, pursuant to Rules 207(a)(5)¹ and 602,² a petition for approval of a Stipulation and Agreement (Settlement) proposing a reduced rate option for Period Two shippers (Alternate Period Two rates). Kern River proposes that the Alternative Period Two rate option become effective May 1, 2017. Kern River filed *pro forma* tariff sheets with its proposal and states that after a final Commission order approving the instant proposal it would file actual tariff records consistent with its proposal. Kern River represents that the Settlement is uncontested, inasmuch as all Kern River shippers support or do not oppose the terms of the Settlement.

¹ 18 C.F.R. § 385.207(a)(5) (2016).

² Filings pursuant to Rule 602 address settlements of proceedings pending before the Commission. 18 C.F.R. § 385.602(a) (2016). Kern River did not, however, identify any specific proceeding that the proposed Settlement would resolve. Rule 207(a)(5) is the vehicle for submitting settlements in lieu of a filing to initiate a rate proceeding; such a settlement, if uncontested, may be approved consistent with the criteria for approving uncontested settlements under Rule 602. 18 C.F.R. § 385.207(a) (5) (2016).

2. Kern River states that it engaged in discussions with its long-term firm shippers to seek support for a rate proposal that would provide an option for Eligible Shippers to pay lower, more competitive, transportation rates. The Settlement offers Eligible Shippers an option to become an Alternate Period Two Shipper.³ The Alternate Period Two rate is a lower rate than the current Period Two rate because it is based on a regulatory depreciation levelization period of twenty-five (25) years. Other than this extended depreciation levelization period, the Alternate Period Two rates are designed in accordance with the Certificate Authorization and the ending balances, rate base, cost of service and billing determinants established in the last Kern River rate case in Docket No. RP04-274-000.⁴ Commensurate with the extension of the regulatory depreciation levelization period is an extension of the book depreciable life of Kern River's transmission facilities to December 31, 2056.

3. Specifically, an Eligible Shipper may elect service at the Alternate Period Two rate by electing an initial contract term (Period 2A) of 10 years or 15 years. At the conclusion of Period 2A, the shipper may elect service at the same rate for a subsequent term (Period 2B), which shall be either the 15 years or the 10 years remaining in the 25-year Period Two. After receiving service for Period 2B, such Alternate Period Two Shipper shall be eligible to elect service for Period Three.

4. The Settlement also provides that any shipper that prefers to retain its rights under the current terms and conditions for Period Two service under Kern River's tariff, i.e., existing Period Two rate and existing Period Two term (10 years or 15 years), may do so. Other than as specifically set forth, the Settlement will not have any effect on Period One

³ The existing Kern River framework of Period One, Two, and Three rates is developed from prior Kern River proceedings. In sum, in 1990, the Commission granted certificate authorization to Kern River to construct its Original System and approved initial rates based on, among other things, a levelized cost of service and a 25-year depreciation life. *Kern River Gas Trans.*, 50 FERC ¶ 61,069 (1990) (Certificate Authorization). The Commission also authorized Kern River to charge separate levelized rates for three different periods: (1) the 15-year term of the firm shippers' initial contracts (Period One); (2) the period from the expiration of those contracts to the end of Kern River's depreciable life (Period Two); and (3) the period thereafter (Period Three). *Kern River Gas Transmission Co.*, Opinion No. 486, 117 FERC ¶ 61,077 (2006), *order on reh'g*, Opinion No. 486-A, 123 FERC ¶ 61,056 (2008), *order on reh'g*, Opinion No. 486-B, 126 FERC ¶ 61,034 (2009), *order on reh'g*, Opinion No. 486-C, 129 FERC ¶ 61,240 (2009), Opinion No. 486-D, 133 FERC ¶ 61,162 (2010), *order on initial decision*, Opinion No. 486-E, 136 FERC ¶ 61,045 (2011), *order on reh'g*, Opinion No. 486-F, 142 FERC ¶ 61,132 (2013), Opinion No. 486-G, 145 FERC ¶ 61,042 (2013).

⁴ *Kern River Gas Trans. Co.*, 136 FERC ¶ 61,241 (2011).

rates for any shipper group and will not impact the rates, the beginning dates, or any of the other terms and conditions of service for Period Two.

5. Public notice of the filing was issued on December 5, as corrected on December 6, 2016, allowing for comments to be filed by December 19, 2017. No protests or adverse comments were filed.

6. Consistent with the Commission's guidance for filing settlements outside the context of an existing proceeding set forth in *Dominion Transmission, Inc.*,⁵ the Settlement will consider the instant filing as filed pursuant to Rule 207(a)(5), and finds that it provides Eligible Shippers an additional rate option without the need for protracted litigation and hearings.

With respect to the standard of review for proposed modification to the settlement after approval, Article XIV D. of the Settlement provides as follows: The standard for review of proposed changes to the provisions of this Stipulation by Kern River or a Settling Party shall be the "public interest" standard for review set forth in *United Gas Pipe Line Co. v. Mobile Gas Service Corp.*⁶ and *Federal Power Commission v. Sierra Pacific Power Co.*⁷ (Mobile-Sierra doctrine). The standard of review for any change to the Stipulation proposed by a non-party to the Stipulation, a Contesting Party or the Commission acting *sua sponte*, shall be the most stringent standard permitted by law.

7. Because the Settlement appears to provide that the standard of review applicable to modifications to the Settlement proposed by third parties and the Commission acting *sua sponte* is to be "the most stringent standard permissible under applicable law," we clarify the framework that would apply if the Commission were required to determine the

⁵ *Dominion Transmission, Inc.*, 111 FERC ¶ 61,285 (2005) (*Dominion*). The Commission explained in *Dominion* that when a pipeline negotiates an agreement with its customers and others to change its rates or terms and conditions of service, and it desires approval of the agreement before making an actual NGA section 4 tariff filing, it may file, pursuant to Rule 207(a)(5), a petition for approval of the agreement, along with *pro forma* tariff sheets reflecting how the agreement will be implemented.

⁶ *United Gas Pipe Line Co. v. Mobile Gas Service Corp.*, 350 U.S. 332 (1956).

⁷ *Federal Power Commission v. Sierra Pacific Power Co.*, 350 U.S. 348 (1956).

standard of review in a later challenge to the Settlement Agreement by a third party or by the Commission acting *sua sponte*.

8. The *Mobile-Sierra* “public interest” presumption applies to an agreement only if the agreement has certain characteristics that justify the presumption. In ruling on whether the characteristics necessary to justify a *Mobile-Sierra* presumption are present, the Commission must determine whether the agreement at issue embodies either: (1) individualized rates, terms, or conditions that apply only to sophisticated parties who negotiated them freely at arm’s length; or (2) rates, terms, or conditions that are generally applicable or that arose in circumstances that do not provide the assurance of justness and reasonableness associated with arm’s-length negotiations. Unlike the latter, the former constitute contract rates, terms, or conditions that necessarily qualify for a *Mobile-Sierra* presumption. In *New England Power Generators Association v. FERC*,⁸ however, the D.C. Circuit determined that the Commission is legally authorized to impose a more rigorous application of the statutory “just and reasonable” standard of review on future changes to agreements that fall within the second category described above.

9. The Commission finds that the instant Settlement appears fair and reasonable and in the public interest, and it is hereby approved. The Commission’s approval of this Settlement does not constitute approval of, or precedent regarding, any principle or issue in this proceeding. Kern River is directed to file a compliance filing with actual tariff records in eTariff format,⁹ no later than 30-days prior to the May 1, 2017 effective date.

By direction of the Commission.

Nathaniel J. Davis, Sr.,
Deputy Secretary.

⁸ *New England Power Generators Ass’n, Inc. v. FERC*, 707 F.3d 364, 370-71 (D.C. Cir. 2013).

⁹ *Electronic Tariff Filings*, Order No. 714, FERC Stats. & Regs. ¶ 31,276 (2008).