

UNITED STATES OF AMERICA
FEDERAL ENERGY REGULATORY COMMISSION

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

Reliant Energy Services, Inc. and
CenterPoint Energy Resources Corp.

v.

Docket No. RP06-408-000

Kern River Gas Transmission Company

ORDER REQUIRING SUBMISSION OF FURTHER INFORMATION

(Issued August 29, 2006)

1. Reliant Energy Services, Inc. (Reliant) and CenterPoint Energy Resources Corp. (CenterPoint) (collectively, Complainants), via a complaint filed on June 30, 2006, have asked the Commission to order Kern River Gas Transmission Company (Kern River) to accept a letter of credit from Reliant as a substitute for a payment guaranty that CenterPoint issued in favor of Kern River in 2001. As further described below, there is insufficient information in the record for us to rule on the merits of the complaint. This order will require Kern River to make a further filing to provide us with certain factual information that Complainants have requested to examine, and that the Commission will need to review in order to make a reasoned determination.

I. Background

2. Briefly, the facts of this case are as follows: Reliant has four transportation agreements with Kern River. Three relate to Kern River's 2002 expansion capacity and one to its 2003 expansion capacity. Reliant was not creditworthy when it signed the agreements, so its affiliate, CenterPoint,¹ guaranteed those contracts for Kern River.

¹ At the time the agreements were signed, CenterPoint was known as Reliant Energy Resources Corporation and was an affiliate of Reliant. It has since been spun off and has become a subsidiary of CenterPoint Energy, Inc.

CenterPoint subsequently disaffiliated from Reliant, and, according to Complainants, is exposed to significant potential liability as a result of having made the guaranty without any offsetting benefit. As such, CenterPoint wants Kern River to release it from the guaranty (CenterPoint Guaranty).

3. Although the parties disagree somewhat as to the sequence of events, there is no real dispute that Reliant asked Kern River to substitute a letter of credit for the guaranty. Reliant alleges that Kern River's tariff allows it to do this. Kern River answers that the CenterPoint Guaranty is pledged to its lenders as collateral for the loans it used to build its project-financed pipeline, and its lending agreements will not permit the substitution of collateral Reliant is seeking.

II. Notice and Responsive Pleadings

4. Notice of the Complaint was published in the *Federal Register*, 71 Fed. Reg. 39,087 (2006), with the answer and interventions due on or before July 20, 2006. Calpine Energy Services, L.P., Nevada Power Company and PSEG Energy Resources & Trade LLC filed motions to intervene. Kern River filed an answer. Reliant filed a reply, and Kern River filed an answer to Reliant's reply.

5. Pursuant to Rule 214 of the Commission's Rules of Practice and Procedure, 18 C.F.R. § 385.14 (2006), the timely, unopposed motions to intervene serve to make the entities that filed them parties to this proceeding.

6. Rule 213(a)(2) of the Commission's Rules of Practice and Procedure, 18 C.F.R. § 385.213(a)(2) (2006), prohibits an answer to an answer unless otherwise ordered by the decisional authority. We will accept Reliant's reply and Kern River's answer because they have provided information that assisted us in our decision-making process.

III. Discussion

7. Kern River argues that its project financing arrangements prevent it from allowing Reliant to substitute a letter of credit for the guaranty. As evidence, it provides copies of excerpts from three interrelated contracts, all dated August 13, 2001: (1) an Assignment of Contracts, Pledge and Security Agreement between Kern River and Chase Manhattan Bank (Assignment of Contracts); (2) a Trust Indenture among Kern River Funding Corporation, Kern River, and Chase Manhattan Bank (Indenture); and (3) a Collateral Agency Agreement among Kern River Funding Corporation, Kern River, and Chase Manhattan Bank (Collateral Agency Agreement). These contracts contain internal references to one another.

8. Complainants argue that because Kern River has provided only excerpts of these documents, the Commission cannot conclude that Kern River would breach the agreements if it were to permit the substitution of collateral that Complainants request. In particular, Complainants argue that the Assignment of Contracts generally prohibits the waiver, subordination, or surrender of any “Assigned Agreement,” but that it admits an exception to this prohibition where permitted by the Indenture or Collateral Agency Agreement.

9. We agree with Complainants that the excerpts of the contracts that Kern River provided do not provide enough information for us to thoroughly analyze its arguments and reach a reasoned decision. For example, Kern River quotes the Assignment of Contracts to establish that it provided a continuing security interest in certain “Assigned Agreements” to the Partnership Collateral Agent for the benefit of the Partnership Senior Parties.² The Assignment of Contracts states that the “Assigned Agreements” are listed in Schedule A to the Assignment of Contracts, but Kern River has not provided Schedule A.³ Kern River also has not provided enough of the Indenture or the Collateral Agency Agreement for us to fully understand what they may provide regarding exceptions to the Assignment of Contracts’s prohibition on waiver, subordination, or surrender of Assigned Agreements.

10. As such, we will require Kern River to file, within 15 days of the date of this order, complete copies of the Indenture, Collateral Agency Agreement, and Assignment of Contracts, including all appendices and schedules to each. These documents all identify Chase Manhattan Bank as the Partnership Collateral Agent with respect to these agreements. Kern River must indicate whether these agreements, and the pledge of collateral, apply to all 87 of its lenders, and provide any other documents that bear on Kern River’s obligations to pledge the Guaranty or the transportation service agreements to its lenders. If any of these documents have been revised, amended, or otherwise modified, Kern River must also file complete copies of the documents in which the modifications were made.⁴ To the extent that Kern River requests privileged or

² Answer at 6 (quoting Assignment of Contracts at § 2).

³ It has, however, provided Schedule A with Amendment No. 1 to the Assignment of Contracts, which is dated May 1, 2003.

⁴ Even if Amendment No. 1 to the Assignment of Contracts has been provided in full in Kern River’s Answer, we will require Kern River to re-file it along with its other project finance documents so that all relevant information is presented together.

confidential treatment for any portion of the contract documents,⁵ it must comply with section 385.206 and provide unredacted copies of the documents to the parties pursuant to a protective order.

The Commission orders:

Kern River is hereby required to make a supplemental filing as described in the body of this order.

By the Commission.

(S E A L)

Magalie R. Salas,
Secretary.

⁵ 18 C.F.R. § 385.213(c)(5) (2006). *See also* 18 C.F.R. § 388.113 (2006).