

127 FERC ¶ 61,033
UNITED STATES OF AMERICA
FEDERAL ENERGY REGULATORY COMMISSION

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

Kern River Gas Transmission Company	Docket Nos. RP04-274-014
	RP04-274-013
	RP04-274-012
	RP04-274-011
	RP00-157-023
	RP00-157-022
	RP00-157-021

ORDER ACCEPTING TARIFF SHEETS
AND DENYING MOTION FOR EXTENSION OF TIME

(Issued April 10, 2009)

1. On January 30, 2009, Kern River Gas Transmission Company (Kern River) filed revised tariff sheets¹ to cancel the interim rates filed with its proposed September 30, 2008 Settlement in this rate case proceeding. The revised tariff sheets will reinstate the motion rates previously approved when Kern River made a section 4 rate filing on April 30, 2004. Kern River filed the revised tariff sheets to comply with paragraph 192 of the Commission's order on rehearing in Opinion No. 486-B.² The Commission finds that Kern River has complied with paragraph 192 of Opinion No. 486-B by canceling the interim rates filed with the Settlement, and that its proposed method for addressing its refund obligations is also consistent with Opinion No. 486-B. Therefore, the Commission will accept the revised tariff sheets listed in the Appendix, to be effective as proposed.

2. On January 28, 2009, Nevada Power Company (Nevada Power) filed a Motion for Extension of Time for Kern River to cancel its interim rates, recapture interim refunds from the settling parties, and for Kern River to make final refunds in this proceeding. Kern River filed an answer to Nevada Power's motion

¹ See Appendix.

² *Kern River Gas Transmission Co.*, 126 FERC ¶ 61,034 (2009) (Opinion No. 486-B).

requesting rejection of the motion. For the reasons discussed below, the Commission will reject Nevada Power's Motion for Extension of Time and will accept Kern River's refund procedures as proposed.

Background

3. On April 30, 2004, Kern River submitted a general rate case in Docket No. RP04-274-000. Kern River proposed to continue using the rate levelization methodology and cost of service rate principles previously approved in other Kern River rate proceedings. The Commission accepted and suspended the rates for five months, and Kern River moved the rates into effect on November 1, 2004, subject to refund and hearing.³ The Presiding Administrative Law Judge issued her Initial Decision (ID) on March 2, 2006,⁴ addressing numerous cost of service and rate design issues, including Kern River's continuation of its levelized rate methodology and its proposed return on equity (ROE).

4. On October 19, 2006, the Commission issued Opinion No. 486,⁵ addressing the briefs on and opposing exceptions to the ID. On April 18, 2008, the Commission issued Opinion No. 486-A,⁶ addressing the requests for rehearing of Opinion No. 486. In those opinions the Commission resolved most of the merits issues in this proceeding. The only issue which the Commission did not finally resolve concerned Kern River's ROE to be used in designing its levelized rates. Opinion No. 486-A therefore set the ROE issues for paper hearing.

5. In May of 2008, Kern River and the majority of its firm shippers reached an agreement in principle in this rate case proceeding. On September 30, 2008, Kern River filed a Settlement on behalf of those settling parties, together with revised tariff sheets to implement the settlement rates for the settling parties on an interim basis effective October 1, 2008. The settlement also required Kern River to refund

³ *Kern River Gas Transmission Co.*, 107 FERC ¶ 61,215 (2004), *order on rehearing*, 109 FERC 61,100 (2004).

⁴ *Kern River Gas Transmission Co.*, 114 FERC ¶ 63,031 (2006).

⁵ *Kern River Gas Transmission Co.*, 117 FERC ¶ 61,077 (2006) (Opinion No. 486).

⁶ *Kern River Gas Transmission Co.*, 123 FERC ¶ 61,056 (2008) (Opinion No. 486-A).

to the settling parties the amounts it had collected in excess of the settlement rates since November 1, 2004.

6. On October 28, 2008, the Commission accepted the tariff sheets implementing the reduced Settlement rates on an interim basis, subject to the Commission's decision on the merits of the settlement.⁷ On October 31, 2008, Kern River filed its first of three refund reports in Docket Nos. RP04-274-011 and RP00-157-021 pursuant to Article 5 of its Offer of Settlement in this proceeding. On November 19, 2008, Kern River filed its second refund report in Docket Nos. RP04-274-012 and RP00-157-022 to reflect refunds to additional settling parties. On December 10, 2008, Kern River filed its third and final refund report in Docket Nos. RP04-274-013 and RP00-157-023 to reflect refunds to additional settling parties. Refunds to settling parties are based on the difference between the motion rates that were placed into effect on November 1, 2004, for each respective rate group and the corresponding locked-in period⁸ rates shown on Appendix A to the Offer of Settlement. Refunds to settling parties reflected in the first refund report total \$120,027,843 including interest. Refunds to additional settling parties reflected in the second and third refund reports total \$58,891,468 including interest.

7. On January 15, 2009, the Commission issued Opinion No. 486-B which held that Kern River's ROE should be 11.55 percent and therefore rejected the Settlement on the ground that its 12.5 percent ROE was too high. It also 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. Opinion No. 486-B also required Kern River to submit a compliance filing by March 2, 2009 revising its rates consistent with the Commission's merits findings in Opinion Nos. 486, 486-A, and 486-B.

8. Article V, section 2(c) of the Settlement provides that Kern River and each Settling Party may mutually agree that the shipper will retain the previously paid refunds for the period November 1, 2008 through August 31, 2008 pending reconciliation of the total refund owed by Kern River after a final Commission order establishes new rates for Kern River's services. The Settlement also contemplates that Kern River may collect the difference between the Settlement rates and the motion rates for the October 1 through December 31, 2008 period the

⁷ *Kern River Gas Transmission Co.*, 123 FERC ¶ 61,108 (2008).

⁸ The locked-in period is from November 1, 2004, until the date the Period 1 rates become effective October 1, 2008.

Settlement was in effect, and for reinstatement of the motion rates until the Commission issues its final order.

9. On January 22, 2009, Kern River sent a letter to the settling parties asking them to advise Kern River by February 6 whether they desired to repay the previously refunded amounts or defer repayment 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.

Instant Filings

10. On January 30, 2009, Kern River filed in Docket No. RP04-274-014 to comply with the requirement in P 192 of Opinion No. 486-B that it cancel its currently effective interim settlement rates and reinstate the motion rates initially approved in this proceeding. Kern River proposes that the reinstatement of the motion rates take effect on October 1, 2008, the date the interim rates took effect.⁹ Kern River proposes to reflect the motion rates in its monthly invoices to the settling parties for January 2009 business, the first billing cycle after Opinion No. 486-B.

11. Kern River also states that it does not propose at this time 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, when the interim settlement rates were in effect. Instead, Kern River proposes to use such uncollected amounts to offset any additional refunds that Kern River may be obligated to make to the settling parties from collecting the reinstated motion rates between January 1, 2009, and the effective date of the rates the Commission requires by its final order in this proceeding.¹⁰ Kern River therefore requests the Commission's authorization to use this offset procedure in calculating the final refunds due to the settling parties. Kern River states that its proposed offset procedure is beneficial to both its customers and to Kern River because it is administratively efficient. Finally, Kern River states that it will submit a further

⁹ Kern River has also made rate adjustments for non-leap year 2009 in designing the motion rates.

¹⁰ Kern River notes that the offset it is proposing will be applied after interest on any amounts Kern River must refund for the period commencing January 1, 2009.

compliance filing on March 2, 2009, revising its rates consistent with the Commission's merits findings in Opinion Nos. 486, 486-A, and 486-B.¹¹

12. On February 5, 2009, Kern River filed a letter, providing additional information concerning how it proposes to implement Opinion No. 486-B's rejection of the Settlement. Kern River reiterates that it will bill all customers at the motion rates for January 2008 business through invoices that will be delivered on or about February 9, 2009. Kern River states on or before March 2, 2009, it will make its compliance filing setting forth its revised rates based on the merits rulings in Opinion Nos. 486, 486-A, and 486-B. After that filing, Kern River states that, subject to the Commission's approval, it will begin billing its customers the higher of its rates in effect before this rate case or the rates proposed in the compliance filing. Kern River explains that the rates required by Opinion No. 486 for all customer classes other than the 10-year rolled-in rate shippers are lower than the rates in effect before Kern River made its April 30, 2004 section 4 filing in this case.

13. Kern River states that, consistent with NGA section 5, it will bill its non-10-year rolled-in rate shippers the rates in effect before this rate case, until the Commission approves the compliance filing thereby fixing the new just and reasonable rates to be applied prospectively.¹² Kern River states that it will begin billing the 10-year rolled-in rate customers the revised rates in the compliance filing right away. Finally, Kern River states that it will recalculate its billings to the settling parties for the period from October 1, 2008 through January 31, 2009 at the so-called "locked in period rates," and will pay refunds or bill customers as appropriate to resolve any difference between the amount Kern River actually collected from each settling party for October-January services and the amount it would have collected at the locked-in period rates.

¹¹ Kern River made that filing on March 2, 2009. Pursuant to Opinion No. 486-B, comments on that filing are due on March 31, 2009 and reply comments are due on April 15. The Commission will address Kern River's March 2 filing after the comments and reply comments have been filed.

¹² Kern River refers to the period from November 1, 2004 through the date of the Commission's final order in this proceeding, when it states the revised lower rates required by Opinion No. 486 will take effect, as the "locked-in period," and it refers to the rates it will charge each of its customer classes during that period as the "locked-in period rates."

Public Notice and Comments

14. The three refund reports in this proceeding were noticed on November 7, 2008, November 24, 2008, and December 17, 2008, respectively, with comments, protests or interventions to be filed in accordance with section 154.210 of the Commission's regulations. No protests or adverse comments were filed. Kern River's January 30, 2008 compliance filing was noticed on February 3, 2009, with comments, protests or interventions to be filed in accordance with section 154.210 of the Commission's regulations. On February 12, 2009, Rolled-In Customer Group¹³ (RCG) filed an answer to Kern River's February 5 letter requesting the Commission require Kern River to provide further clarification of its proposed billing procedures. RCG argues that Kern River has not sufficiently explained why it is treating its 10-year rolled-in shippers differently from its other shippers. Notices of intervention and unopposed timely filed motions to intervene are granted pursuant to the operation of Rule 214 of the Commission's Rules of Practice and Procedure (18 C.F.R. § 385.214 (2003)). Any opposed or untimely filed motion to intervene is governed by the provisions of Rule 214.

Nevada Power's Motion for Extension of Time

15. On January 28, 2009, two days before Kern River's January 30 filing to cancel the Settlement interim rates, Nevada Power filed a motion for extension of time for Kern River to cancel its interim rates, recapture interim refunds from settling parties, and for Kern River to make final refunds in this proceeding. Nevada Power states that as a party to the Settlement, it has received early refunds from Kern River that exceeded \$17 million and it has paid the lower interim Settlement rates starting on October 1, 2008.

16. Nevada Power states that Article 12 of the Settlement provides that the Settlement becomes void only upon issuance of a final Commission order. Article 12 also provides that the right of Kern River to recoup early refunds and to reinstate and collect the motion rates is not triggered unless and until the Settlement becomes void in accordance with Article 11, i.e., upon the issuance of a final Commission order, an event which Nevada Power states has not yet occurred. Nevada Power states that granting its requested extension of time is also

¹³ The RCG includes the following companies: Area Energy LLC; Anadarko Petroleum Corporation; Anadarko E&P Company, LP; Chevron U.S.A. Inc.; Occidental Energy Marketing, Inc.; Shell Energy North America; and Shell Rocky Mountain Production, LLC.

consistent with the Commission's general rule contained in section 154.501(a)(1) of its regulations that refunds must be made within 60 days of a final order. Nevada Power asserts that it would be far less costly and disruptive to all parties to delay those refunds until a final order is issued, rather than requiring parties to return the early refunds only to require Kern River to reissue the same refunds plus an additional amount at a later date.

17. Nevada Power acknowledges that Kern River has offered to allow settling parties to elect to delay repayment of the early refunds and to offset those refunds against the amount that Kern River is ultimately obligated to refund in accordance with a final Commission order in this proceeding. However, this offer comes with conditions and is based upon the provisions of Article 5 of the Settlement, which Nevada Power asserts is triggered only upon issuance of a final Commission order. Nevada Power notes that Kern River's offer to provide an election to delay and offset refunds expires on February 6, 2009.

18. On February 2, 2009, Kern River filed an answer to Nevada Power's motion requesting rejection of the motion. Kern River states that the Settlement provides that Kern River and each settling party may mutually agree that the shipper will retain the previously paid refunds pending reconciliation of the total refund owed by Kern River after a final Commission order establishes new rates for Kern River's services. Kern River also states that delaying the reinstatement of the motion rates and eliminating the settling parties' option whether to repay the refunds that were implemented pursuant to the Settlement, as Nevada Power requests, would constitute a stay of the effectiveness of Opinion No. 486-B. Kern River states that the Commission disfavors and will routinely deny stays in order to assure definiteness and finality in Commission proceedings.¹⁴ Kern River states that it is entitled to collect, at a minimum, its last clean rates for all periods from November 1, 2004, until the Commission's final order, since those rates are not subject to refund in the context of this proceeding.

Discussion

19. The Commission finds that Kern River's January 30, 2009 filing, together with its other actions to date, reasonably implement Opinion No. 486-B's rejection of the Settlement. The Commission will address Kern River's March 2 filing to

¹⁴ Kern River cites *Islander E. Pipeline Co.*, 102 FERC ¶ 61,054 at 31 (2003).

revise its rates consistent with the Commission's merits findings in Opinion Nos. 486, 486-A, and 486-B in a future order.

20. As described above, pursuant to the Settlement, Kern River refunded to the settling parties the amounts in excess of the Settlement rates which it had collected from November 1, 2004 through the October 1, 2009 interim implementation of the Settlement. While Opinion No. 486-B authorized Kern River to recapture all of those refunds, Kern River has given 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. That is consistent with Article V, section 2(c) of the Settlement, which provides the settling parties that option in the event the Commission rejects the Settlement, as it has done. This option benefits Kern River's settling customers by affording them the opportunity to delay the return of refunds. It is also more administratively efficient and less disruptive to customers than making immediate repayments to Kern River, which are then likely to be refunded back to the customers upon the conclusion of this case.

21. As has been discussed, Paragraph 192 of Opinion No. 486-B also required Kern River to cancel the interim Settlement rates effective October 1, 2008. Kern River's January 30 filing complies with that requirement by removing the interim settlement rates effective October 1, 2008 and reinstating the higher motion rates in this proceeding on that date. The Commission also finds reasonable Kern River's proposal in its January 30 filing 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. Instead, Kern River will use such uncollected amounts to offset any additional refunds that it may be obligated to make to the settling parties as a result of collecting the reinstated motion rates after January 1, 2009. This offset procedure benefits 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.

22. The Commission finds that Kern River's refund offset procedures proposed in its January 30 filing appear to satisfy Nevada Power's concern that it is more efficient to delay the repayment of refunds owed to Kern River until a final Commission order is issued in this proceeding. Nevada Power's Motion for Extension of Time is rejected.

23. Finally, in its February 5 letter to the Commission in this proceeding, Kern River stated that after it made its compliance filing revising its rates consistent the merits holdings in Opinion Nos. 486, 486-A, and 486-B, it would begin billing its

customers the higher of its rates in effect before this rate case or the rates proposed in the compliance filing. Those so-called “locked-in period rates” would remain in effect until the Commission issues its final order in this rate case. Kern River also stated that it would recalculate its billings to the settling parties for the period from October 1, 2008 through January 31, 2009 at the locked in period rates, and will pay refunds or bill customers as appropriate. On March 2, 2009, Kern River made its compliance filing. As Kern River stated in its February 5 letter would be the case, the locked-in period rates in the March 2 compliance filing for all customer classes other than the 10-year rolled-in rate shippers are the rates in effect before Kern River made its April 30, 2004 section 4 filing in this case. The locked-in period rates for the 10-year rolled-in rate shippers are somewhat above those shippers’ rates in effect before this rate case, but lower than the motion rates.

24. In its response to Kern River’s February 5 letter, RCG stated that letter proposes billing procedures, which differ from those in Kern River’s January 30 compliance filing, and which differ from Opinion No. 486-B. RCG argued that Kern River had not explained why it is treating its 10-year rolled-in shippers differently from its other customer classes. RCG also argued that it was not clear what specific rates Kern River proposed to bill since they were not specified in the February 5 letter. RCG contended that it was not clear what assumptions would be used to calculate the specific rates it was proposing to bill after it made its compliance filing. Finally, RCG stated that it was not clear what the refund implications would be for each shipper class under Kern River’s proposal. As a result, RCG requested the Commission require Kern River to respond to the above before considering Kern River’s proposed alternative.

25. The Commission will deny RCG’s request for further clarification. All issues concerning Kern River’s proposed rates in the March 2 compliance filing may be raised in comments or protests to that filing, and the Commission will address any concerns pertaining to “locked-in” period rates, or the related refund implications, when it acts on that compliance filing. In the meantime, Kern River states it will bill its non-10-year rolled-in rate shippers the rates in effect before this rate case until the Commission approves the compliance filing thereby fixing the new just and reasonable rates to be applied prospectively. Kern River will also begin billing the 10-year rolled-in rate customers the revised locked-in period rate in the compliance filing right away, because while that rate is higher than the prior “clean rate,” it is substantially below the motion rate that became effective in November 2004. The Commission accepts this proposal, because it will result in an immediate rate reduction for all customers, including the 10-year rolled-in rate customers, and simplify the future calculation of refunds. The approval of the interim billing of the 10-year rolled in rate is subject to whatever adjustments the

Commission may require in its review of Kern River's March 2, 2009 compliance filing in this proceeding.

The Commission orders:

(A) The tariff sheets listed in the Appendix are accepted effective as proposed.

(B) Kern River's refund offset procedures discussed herein are accepted as proposed.

(C) Nevada Power's request for Extension of Time is denied.

By the Commission.

(S E A L)

Nathaniel J. Davis, Sr.,
Deputy Secretary.

Appendix

Second Revised Volume No. 1 Tariff Sheets Accepted Effective October 1, 2008

2nd Sub 6th Rev 18th Revised Sheet No. 5
2nd Sub Original Sheet No. 5.01
2nd Sub 6th Rev 14th Rev Sheet No. 5-A
2nd Sub Original Sheet No. 5-B
2nd Sub 3rd Rev 5th Revised Sheet No. 7
Sub Original Sheet No. 7-A
Sub Ninth Revised Sheet No. 496

Second Revised Volume No. 1 Tariff Sheets Accepted Effective January 1, 2009

2nd Rev 19th Revised Sheet No. 5
2nd Rev 15th Revised Sheet No. 5-A
2nd Rev Sixth Revised Sheet No. 7