

128 FERC ¶ 61,073
FEDERAL ENERGY REGULATORY COMMISSION
WASHINGTON, D.C. 20426

July 22, 2009

In Reply Refer To:
Kern River Gas Transmission
Company
Docket No. RP09-774-000

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

Attention: Patricia M. French
Vice President & Assistant General Counsel

Reference: Non-Conforming Transportation Service Agreement Amendments

Dear Ms. French:

1. On June 22, 2009, Kern River Gas Transmission Company (Kern River) filed non-conforming service agreements and amendments.¹ In addition, Kern River filed revised tariff sheets² to include these contracts in the list of non-conforming agreements in its tariff and to make other minor updates. For the reasons discussed below, the Commission accepts the non-conforming agreements filed by Kern River, and the tariff sheets listed in footnote No. 2 effective July 22, 2009, as proposed.

¹ The agreements were with BP Energy Company, Shell Energy North America (US) L.P., Nevada Cogeneration Associates #1 and #2, RRI Energy Services, Inc., Nevada Power Company (Nevada Power), Williams Gas Marketing, Inc., the Department of Water and Power of the City of Los Angeles (LADWP), and Southwest Gas Corporation.

² Sixth Revised Sheet No. 490, Original Sheet No. 491, Original Sheet No. 492, and Sheet Nos. 493-494 to FERC Gas Tariff, Second Revised Volume No. 1.

2. Kern River explains that following the Commission's order in *Southern Star*,³ it commenced a review of all its active transportation service agreements (TSAs) to determine whether Kern River had administered each agreement in a manner consistent with the Commission's policies and regulations. During this review, Kern River states that it identified restatements of and amendments to its Vintage Contracts⁴ that do not conform to the currently effective *pro forma* service agreement in its tariff. Kern River explains that the purpose of this filing is to submit these agreements for acceptance by the Commission. Kern River states that the filed agreements contain provisions pertaining to (1) changes to receipt and delivery point entitlement, (2) extended term rate, (3) most favored nation, (4) maximum daily quantity (MDQ) revisions, and (5) incremental expansion capacity.⁵ Kern River asserts that these provisions are permissible material deviations from its form of service agreement.

3. Kern River has also filed a non-conforming September 2008 security agreement with Nevada Power.⁶ Kern River states that the security agreement affects seven transportation service agreements relating to contracts for original mainline system construction or expansion capacity. According to the agreement, it was negotiated after Nevada Power's senior secured ratings had been upgraded to creditworthy status by Moody's Investor Service, Inc. (Moody's) and Standard and Poor's (S&P) while Nevada Power's unsecured or issuer credit ratings were

³ *Southern Star Central Gas Pipeline, Inc.*, 125 FERC ¶ 61,082 (2008).

⁴ Following the issuance of an optional expedited certificate authorizing construction of the original Kern River pipeline, but prior to the pipeline's construction in the early 1990s, Kern River states that it entered into what it calls Vintage Contracts with firm shippers under Rate Schedule KRF-1. Kern River states that these Vintage Contracts were based on the standard form of service agreement included by Kern River in its certificate compliance filing. Kern River explains that the Commission accepted these Vintage Contract agreements in Kern River's compliance filing to the certificate proceeding. *Citing Kern River Gas Transmission Co.*, 53 FERC ¶ 61,172 (1990).

⁵ Kern River explains that due to timing considerations related to gaining approval from the Los Angeles City Council, the contract agreement with LADWP for additional 2003 Expansion capacity was entered into as an amendment to LADWP'S Vintage Contract.

⁶ See Appendix E-1 Part IV titled Security Agreement attached to Kern River's filing.

not creditworthy. The agreement also states that Kern River's tariff did not specify which credit rating to use, and thus it was unclear whether Nevada Power qualified as creditworthy under Kern River's tariff. At the time of the execution of the agreement, the agreement required that Nevada Power provide a letter of credit equivalent to three months worth of reservation/demand charges. The security agreement also provides that if Nevada Power's unsecured or issuer credit rating falls below BB by S&P or Ba3 by Moody's, Nevada Power must provide a letter of credit equivalent to twelve months of reservation/demand charges. The non-conforming agreement provides that if Nevada Power's unsecured or issuer credit rating is BBB- or higher from S&P or Baa3 or higher from Moody's, Kern River must release the letter of credit within three business days.

4. Kern River states that it also filed revised tariff sheets to list as non-conforming agreements the Vintage Contracts and all their active amendments. Kern River states that it added to its list the service agreements with Nevada Power that were affected by the security agreement. Kern River states that it is also updating the name of the shipper for contract No. 1005 from Union Pacific Resources Company to Anadarko E&P Company, L.P.

5. Notice of Kern River's filing issued on June 25, 2009. Interventions and protests were due on July 6, 2009, as provided in section 154.210 of the Commission's regulations (18 C.F.R. § 154.210 (2008)). Pursuant to Rule 214 (18 C.F.R. § 385.214 (2008)), all timely filed motions to intervene and any motion to intervene out-of-time filed before the issuance date of this order are granted. Granting late interventions at this stage of the proceeding will not disrupt the proceeding or place additional burdens on existing parties. No protests or adverse comments were filed.

6. Review of the filing shows that the amended agreements at issue here include permissible material deviations from Kern River's form of service agreement.⁷ The Commission finds these non-conforming provisions do not affect the substantive rights of the parties and do not present the potential for a

⁷ It appears that contrary to the requirements of section 154.1(d) of the Commission's regulations, 18 C.F.R. § 154.1(d) (2008), Kern River failed to file the non-conforming contracts in a timely manner. Kern River is reminded that it must submit required filings on a timely basis or face possible sanctions by the Commission.

significant risk of undue discrimination among customers.⁸ The Commission accepts the security agreement with Nevada Power because the creditworthiness provisions are consistent with Kern River's tariff effective at the time the agreement was executed by the parties in September 2008. Section 7.1 of Rate Schedule KRF-1 to Kern River's tariff provided a long-term shipper with the option to establish and/or maintain credit by furnishing other security acceptable to Kern River's lenders.⁹

7. The Commission accepts the tariff sheets listed in footnote No. 2 to be effective July 22, 2009, as proposed. The Commission also accepts the non-conforming agreements filed by Kern River.¹⁰

By direction of the Commission.

Nathaniel J. Davis, Sr.,
Deputy Secretary.

⁸ Similar non-conforming provisions filed by Kern River have been previously accepted via delegated order, including (1) changes in receipt and delivery point entitlement, (2) extended term rate, (3) most favored nation, and (4) MDQ revisions. *See Kern River Transmission Company*, Docket No. RP09-503-000, (April 30, 2009) (unpublished letter order).

⁹ This provision in Section 7.1 of Rate Schedule KRF-1 has since been moved to section 29.2 of the General Terms and Conditions of Kern River's tariff. Section 29.2 is currently under review by the Commission in another Kern River proceeding in Docket No. RP09-466-000. *See Kern River Transmission Company*, 127 FERC ¶ 61,103 (2009). However, resolution of whether this provision may remain in Kern River's tariff will be effective prospectively, and therefore will not retroactively affect the creditworthiness provisions in the 2008 security agreement.

¹⁰ The filing requested a July 22, 2009 effective date for the filed tariff sheets, which provided the Commission one-day less than the 30-day notice required by Commission regulations. 18 C.F.R. § 154.207 (2008). The Commission grants waiver of the 30-day notice requirement.