

131 FERC ¶ 61,269  
UNITED STATES OF AMERICA  
FEDERAL ENERGY REGULATORY COMMISSION

Before Commissioners: Jon Wellinghoff, Chairman;  
Marc Spitzer, Philip D. Moeller,  
and John R. Norris.

Kern River Gas Transmission Company

Docket Nos. RP10-817-000

ORDER ACCEPTING TARIFF SHEETS

(Issued June 25, 2010)

1. On May 28, 2010, Kern River Gas Transmission Company (Kern River) filed revised tariff sheets<sup>1</sup> to clarify the creditworthiness criteria in section 29 of the General Terms and Conditions (GT&C) of its tariff. The Commission accepts the revised tariff sheets in footnote one, effective June 28, 2010, as proposed.

**I. Background**

2. On March 20, 2009, Kern River filed revised tariff sheets in Docket No. RP09-466-000, *et al.*, to modify the creditworthiness provisions of its tariff. The Docket No. RP09-466-000, *et al.* proceeding is related to the instant filing because in both proceedings Kern River sought to modify its creditworthiness tariff provisions. In Docket No. RP09-466-000, *et al.*, Kern River proposed, among other changes, to modify section 29.1 of its GT&C, which sets forth the criteria a shipper must meet to be creditworthy. Kern River proposed to: (1) add Fitch Ratings to the list of ratings agencies used to determine creditworthiness;<sup>2</sup> (2) require shippers rated by multiple credit ratings agencies to meet the investment-grade criteria for each agency that rates them; and (3) require shippers with a minimum investment-grade rating to also have a short-term and long-term Outlook and CreditWatch of Stable or Positive from each agency rating it at that level.

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<sup>1</sup> First Revised Sheet Nos. 215 and 217 to FERC Gas Tariff, Second Revised Volume No. 1.

<sup>2</sup> The other two credit ratings agencies in section 29.1 are (1) Moody's Investors Service and (2) Standard and Poor's Corporation (S&P).

3. On May 1, 2009, the Commission accepted Kern River's proposed changes, subject to conditions.<sup>3</sup> While the Commission found that Kern River's changes to section 29.1 were just and reasonable, the Commission decided it needed more information on section 29.2(b). The Commission ordered Kern River, pursuant to section 5 of the Natural Gas Act, to produce its current lending documents to support the language in section 29.2(b), which states that non-creditworthy shippers must furnish "other security acceptable to Transporter's lenders."

4. On May 29, 2009, Kern River submitted its current lending documents to comply with the May 1 Order. On June 2, 2009, several parties filed requests for rehearing of the May 1 Order.

5. On July 24, 2009, Williams Gas Marketing, Inc. (Williams) filed a motion requesting the Commission to clarify the May 1 Order. Specifically, Williams requested clarification that the S&P investment-grade *corporate* credit rating of its parent, The Williams Companies, Inc., together with the investment-grade credit ratings of two other ratings agencies and the short-term and long-term Outlook or CreditWatch of Stable or Positive from each agency, satisfies the creditworthiness criteria in section 29.1 of Kern River's tariff. Kern River, on the other hand, argued that The Williams Companies, Inc. was not creditworthy under section 29.1 because its *senior unsecured* debt rating was below investment grade. Kern River asserted that because of its status as an unsecured creditor, the senior unsecured debt rating is the most appropriate rating for Kern River to use to assess the creditworthiness of The Williams Companies, Inc.

6. On April 22, 2010, the Commission issued an order providing clarification.<sup>4</sup> The Commission stated that because Kern River's tariff did not distinguish between *senior unsecured* debt ratings and *corporate* credit ratings, Williams' investment-grade corporate credit rating satisfied the creditworthiness criteria in Kern River's tariff. The Commission explained that the issue was not whether a pipeline could require a shipper to have a senior unsecured debt rating of investment grade to be creditworthy, but that Kern River was seeking to impose a requirement on a shipper that was not specified in its tariff.<sup>5</sup> The Commission explained that Kern River may seek to modify its tariff to specify which type of credit rating it will accept for each type of shipper.<sup>6</sup>

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<sup>3</sup> See *Kern River Gas Transmission Company*, 127 FERC ¶ 61,103 (2009) (May 1 Order).

<sup>4</sup> See *Kern River Gas Transmission Company*, 131 FERC ¶ 61,060 (2010) (April 22 Order).

<sup>5</sup> *Id.* P 15.

<sup>6</sup> *Id.* P 16.

## II. Details of the Filing

7. In the instant filing, Kern River revised the introduction to section 29 of its GT&C to state that Kern River will apply consistent evaluation practices to all similarly-situated shippers when determining each shipper's ability to satisfy its payment obligations. Kern River also revised section 29.1(a) to clarify that an investment-grade credit rating will be based on a shipper's *senior unsecured* debt rating if available; otherwise, it will be based on a shipper's issuer rating. Kern River asserts this revision is just and reasonable because senior unsecured debt ratings most appropriately reflect the credit risk faced by Kern River as an unsecured creditor.

8. In addition, Kern River proposes to revise section 29.1(b) to identify the types of financial analysis criteria Kern River may consider in determining whether a shipper who does not have an investment-grade rating is creditworthy. Kern River also revised section 29.4 to clarify that Kern River may determine that a shipper is no longer creditworthy "based on the provisions of section 29.1." Finally, Kern River incorporated certain other, non-substantive changes to correct proper names and to revise sentence structure and placement.

## III. Notice and Protests

9. Public notice of Kern River's filing was issued on June 3, 2010. Interventions and protests were due as provided in section 154.210 of the Commission's regulations, 18 C.F.R. § 154.210. Pursuant to Rule 214, 18 C.F.R. § 385.214 (2009), all timely filed motions to intervene and any motions 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 this proceeding or place additional burdens on existing parties.

10. On June 9, 2010, Williams filed a protest. Williams requests that the Commission reject Kern River's filing because Kern River offers no meaningful justification for its proposed changes to the creditworthiness criteria. Williams argues Kern River's clarification in section 29.1(a) that an investment grade credit rating must be "senior unsecured" is not necessary. Williams states that it is not aware of any other shipper on the Kern River system that is similarly-situated with Williams from a credit perspective, and that Kern River has not presented any evidence that its change to section 29.1(a) affects any other shipper. Williams thus concludes that Kern River is targeting Williams, causing it to incur significant additional credit costs, even though its payment history is excellent and its parent guarantor has investment-grade credit ratings (including the corporate rating from S&P).

11. Williams disagrees with Kern River's assertion that senior unsecured credit ratings most appropriately reflect the credit risk faced by Kern River as an unsecured creditor. Williams argues the *Policy Statement* found that a pipeline's generic status as an unsecured creditor is adequately protected by a collateral requirement of three months of

reservation charges.<sup>7</sup> Williams contends that is not what Kern River's proposal will require of Williams. Williams explains that Kern River's proposed change to section 29.1(a) will trigger a finding that Williams is no longer creditworthy, which in turn will trigger the collateral requirements in section 29.2, which will result in Williams having to post a letter of credit equal to 12 months of reservation charges. Williams argues that because Kern River is a project-financed pipeline, this collateral can only be justified in the context of benefitting "Transporter's lenders," and Kern River must demonstrate that its proposed tightening of the creditworthiness provisions in section 29.1(a) is expressly required by its financing documents and is consistent with the original shippers' precedent agreements.

12. Williams also contends Kern River's proposal to apply the stricter creditworthiness criteria in section 29.1(a) to original shippers alters the collateral provisions in the original shippers' precedent agreements. Williams asserts that criteria for creditworthiness and the consequences of not meeting those criteria, i.e., collateral requirements, are inextricably intertwined, and together represent the contractual agreement amongst the project lenders, the pipeline, and original shippers. Williams contends the Commission has recognized the importance of contractual stability in its past orders.<sup>8</sup> Moreover, Williams states that while it has not reviewed Kern River's financing documents, it is confident there is nothing in those agreements that explicitly required Kern River to submit this filing to change the creditworthiness criteria applicable to original shippers. Williams asserts that in the absence of such a requirement in the lending documents, Kern River's proposed revisions to the creditworthiness criteria should be rejected as an inappropriate attempt by Kern River to improve upon what it must now consider to be a "bad deal" regarding creditworthiness and collateral for original shippers.

13. William states that if the Commission does not reject Kern River's proposal outright, the Commission should require Kern River to maintain the former creditworthiness criteria for its original shippers. Williams states that this will preserve the original credit and collateral "deal" that was made between Kern River and its original shippers for the benefit of the project lenders. In the alternative, Williams argues Kern River should remove the collateral requirement of "other security acceptable to Transporter's lenders" and replace it with the requirement approved in the *Policy Statement* of collateral in the amount of three months of reservation charges.

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<sup>7</sup> Williams' June 9, 2010 Protest at 6 (citing *Policy Statement on Creditworthiness for Interstate Natural Gas Pipelines*, 111 FERC ¶ 61,412, at P 16 (2005) (*Policy Statement*)).

<sup>8</sup> *Id.* at 7 (citing *Reliant Energy Services, Inc. v. Kern River Gas Transmission Co.*, 120 FERC ¶ 61,056 (2007) (*Reliant*)).

14. In addition, Williams argues that Kern River has an affirmative obligation under section 29.1(c) to seek shipper credit approval from its lenders before requesting collateral. Section 29.1(c) states that a shipper's creditworthiness will be based on "approval by Transporter's lenders." Williams argues that section 29.1(c) provides an alternate means for a shipper to qualify as creditworthy and can only be interpreted to mean that Kern River is required to present to its lenders for a finding of acceptable creditworthiness all shippers that do not meet the requirements of section 29.1(a) or 29.1(b). Williams argues that without such a presentation to its lenders, Kern River cannot make a determination that a shipper is no longer creditworthy. Moreover, Williams argues that Kern River should provide information on the procedures it uses, and would use going forward, to seek shipper credit approval from its lenders.

15. Williams also contends that the collateral requirement in section 29.2(b) is no longer just and reasonable for shippers nearing the end of Period One or entering Period Two.<sup>9</sup> Section 29.2(b) states that non-creditworthy shippers must furnish "other security acceptable to Transporter's lenders."

16. Williams explains that Kern River is in Period One of its levelized rates program, and that for some shippers, Period One will end as early as October 2011. Williams states that the levelized rates in Period One are designed to fully pay off the original project financing of the pipeline, which represented 70 percent of the total project capital. Thus, Williams asserts that the original project debt is substantially paid down. Williams argues that it is unreasonable for Kern River to collect a 12-month letter of credit from shippers with Period One 10-year contracts that will expire in 18 months.

17. Moreover, Williams explains that when Period One ends and Period Two begins, Kern River has taken the position in Docket No. RP04-274 that Period Two rates will be designed using 100 percent equity capital.<sup>10</sup> Williams states that should the Commission approve rates for Period Two on that basis, section 29.2(b) would become moot and should be deleted. Accordingly, Williams asks the Commission to find that section 29.2(b) is no longer just and reasonable for those contracts nearing the end of Period One and require Kern River to either: (1) replace section 29.2(b) with the collateral requirement approved in the *Policy Statement* of three months of reservation charges, or (2) make a compliance filing presenting evidence supporting a new, more appropriate and less burdensome provision that Kern River's lenders have reasonably determined to be

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<sup>9</sup> Kern River uses levelized rates, which are divided into three periods: (1) the 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).

<sup>10</sup> Williams' June 9, 2010 Protest at 13 (citing Kern River's February 1, 2010 Period Two Filing in Docket No. RP04-274).

acceptable to them for the balance of Period One. Further, Williams requests the Commission to find that section 29.2(b) may not be applied to any shipper that enters Period Two paying rates that are based on 100 percent equity capital.

#### IV. Discussion

18. The Commission accepts Kern River's modifications to the creditworthiness provisions of its tariff.

19. Kern River proposes to specify in section 29.1(a) that an investment-grade credit rating will be based on the shipper's senior unsecured debt rating if available, and if not, it will be based on a shipper's issuer rating. Williams argues this modification is unnecessary and unjustly targets Williams. The Commission disagrees. Kern River's proposal provides objective criteria for establishing creditworthiness that applies to all Kern River shippers on a non-discriminatory basis, consistent with the *Policy Statement*.<sup>11</sup> It is reasonable for Kern River to consider a shipper's senior unsecured debt rating because that rating most appropriately reflects Kern River's risk as an unsecured creditor to its shippers. Moreover, Kern River's proposal is consistent with other Commission-approved creditworthiness tariff provisions.<sup>12</sup> Kern River need not demonstrate that its proposed tariff revision impacts more than one shipper to make it objective and non-discriminatory.

20. Williams argues that in order for the Commission to approve the proposed changes to section 29.1(a), Kern River's financing documents must specifically require those revisions to the creditworthiness criteria.<sup>13</sup> Williams' argument is misplaced. While Kern River's lending documents enumerate certain collateral requirements, they do not

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<sup>11</sup> *Policy Statement*, 111 FERC ¶ 61,412 at P 10 (2005).

<sup>12</sup> See Natural Gas Pipeline Company of America LLC's FERC Gas Tariff, Seventh Revised Volume No. 1, Original Sheet No. 398; Columbia Gas Transmission, LLC's FERC Gas Tariff, Third Revised Volume No. 1, Original Sheet No. 311; Gulf South Pipeline Company LP's FERC Gas Tariff, Sixth Revised Volume No. 1, Fourth Revised Sheet No. 1201.

<sup>13</sup> Williams also argues that by tightening the creditworthiness criteria in section 29.1(a), Kern River is altering the collateral provisions in the original shippers' precedent agreements. However, Williams neither provided a copy of such an agreement to the Commission, nor cited to any provision of a precedent agreement that conflicts with the creditworthiness criteria in Kern River's proposal. Thus, it is unclear whether a precedent agreement exists between Williams and Kern River and if that agreement sets forth any specific creditworthiness criteria. Without the precedent agreement before us, the Commission is unable to make a determination on this issue.

specify criteria for determining whether a shipper is creditworthy. In the absence of such specification, Kern River developed the criteria in section 29.1, and herein seeks to modify those criteria. The modification Kern River proposes – to specify that an investment-grade rating will be based on a shipper’s senior unsecured debt rating, if available – is a just, reasonable, and objective modification that is consistent with other pipelines’ tariffs, as discussed above.

21. Moreover, shippers seeking a creditworthiness determination also have the option of receiving one from Kern River’s lenders under section 29.1(c). Section 29.1(c) states that a determination of a shipper’s creditworthiness will be based upon “approval by Transporter’s lenders.” Williams argues this section provides an alternative means for a shipper to qualify as creditworthy and that Kern River has an affirmative obligation under section 29.1(c) to seek shipper credit approval from its lenders before requesting collateral. The Commission agrees that this section provides another option for a shipper to establish creditworthiness if it is unable to do so under sections 29.1(a) and 29.1(b) and that Kern River is obligated to seek a creditworthiness determination from its lenders before deeming a shipper non-creditworthy.

22. Williams also objects to section 29.2(b) of Kern River’s tariff, which states that non-creditworthy shippers must furnish “other security acceptable to Transporter’s lenders.” Williams contends the collateral requirements in that section are no longer just and reasonable for shippers nearing the end of Period One or entering Period Two of Kern River’s levelized rates. The Commission finds that Williams’ argument is outside the scope of the instant proceeding. Kern River’s filing does not propose any modifications to section 29.2(b). Moreover, the Commission is currently reviewing the justness and reasonableness of section 29.2(b) in the Docket No. RP09-466-000, *et al.*, proceeding, wherein the Commission requested Kern River to produce its lending documents to support the language in that section. If Williams has concerns about the applicability of section 29.2(b) to shippers nearing the end of Period One or entering Period Two, those concerns are more appropriately addressed in the Docket No. RP09-466-000 proceeding.

The Commission orders:

The tariff sheets referenced in footnote one are accepted, as discussed in the body of this order.

By the Commission.

( S E A L )

Kimberly D. Bose,  
Secretary.