

UNITED STATES OF AMERICA
FEDERAL ENERGY REGULATORY COMMISSION

Before Commissioners: Pat Wood, III, Chairman;
William L. Massey, and Nora Mead Brownell.

Kern River Gas Transmission Company

Docket No. RP01-411-000

ORDER ACCEPTING TARIFF SHEETS SUBJECT TO CONDITIONS

(Issued July 29, 2003)

1. On May 7, 2001, Kern River Transmission Company (Kern River) filed tariff sheets¹ to comply with a Commission order issued April 6, 2001 in Docket No. CP01-106-000 (April 6 Order), regarding capacity reservation.² Paragraph (J) of the April 6 Order required Kern River to file a tariff provision reserving capacity for planned future expansions within 30 days. Kern River proposes an effective date of June 7, 2001. The Commission accepts the tariff sheets, effective June 7, 2001, subject to conditions. This order benefits customers because it is consistent with the Commission's policy of allowing flexibility to meet the needs of the customer and the pipeline, while at the same time ensuring that such flexibility occurs without undue discrimination.

Background

2. On March 15, 2001, Kern River filed an application for its California Action Project in Docket No. CP01-106-000, seeking temporary and permanent certificates of public convenience and necessity to construct and operate emergency facilities. Kern River proposed to provide up to 135,000 Mcf/day of limited-term, incremental transportation capacity from Wyoming to California to help meet the urgent need for additional energy in California.

3. Kern River explained that a proposed upgrade of the Wheeler Ridge delivery point, which interconnects Kern River and Southern California Gas Company (SoCalGas) in California, associated with the construction of this incremental capacity, would result in

¹See Appendix.

²See 95 FERC ¶ 61,022 (2001), reh'g denied, 97 FERC ¶ 61,083 (2002).

excess capacity becoming available at Wheeler Ridge that Kern River planned to reserve for use in the design of a future expansion project. Kern River stated that although its tariff does not preclude such reservation of capacity, it would file a tariff provision providing for capacity reservations for planned future expansions. In issuing a certificate for the California Action Project, the April 6 Order directed Kern River, among other things, to file its tariff provision reserving capacity for planned future expansions within 30 days.

The Instant Filing

4. Proposed Section 27 of the General Terms and Conditions (GT&C) of Kern River's tariff contains the new provision for reserved capacity. Kern River notes the importance of being able to reserve unsubscribed capacity in the early stages of a planned expansion, and states the design, construction and regulatory approvals needed may span several months or years. Kern River states it must be able to reserve specific capacity for such projects to ensure that the plans for the expansion can be executed as designed and that projected costs do not increase significantly. Kern River also states that the Commission has recognized that reserving capacity serves to enhance the efficient utilization of capacity.³

5. Proposed Section 27 provides that Kern River may reserve for future expansion projects any existing or potential unsubscribed capacity at receipt points, delivery points or on the mainline, or any such capacity under expiring or terminating service agreements where such agreements do not have a right of first refusal. The section also states if Kern River elects to reserve capacity, it will notify shippers of its intent on or after (1) the date that Kern River executes a letter of intent with a prospective shipper that requires the reservation of capacity, or (2) the date that Kern River announces its intent to hold an open season for a related project. Kern River has also updated the Index to the GT&C to include new Section 27 and has incorporated this section by reference in Rate Schedules CH-1, UP-1, MO-1 and SH-1.

6. Proposed Section 27 also provides that Kern River may reserve capacity for up to one year prior to filing for certificate approval for construction of the proposed expansion and thereafter until the project is placed into service. In addition, it specifies that Kern

³Kern River cites Tennessee Gas Pipeline Company (Tennessee), 82 FERC ¶ 61,288 (1997); Texas Eastern Transmission Corporation (Texas Eastern), 80 FERC ¶ 61,270 (1998); and Northwest Pipeline Corporation (Northwest), 85 FERC ¶ 61,335 (1998).

River will make reserved capacity available on an interim basis. Finally, it provides that if certificate approval is not granted or if Kern River determines that an expansion project should not or cannot be completed, then Kern River will post such previously reserved capacity on its Designated Site on the Internet.

Notice, Interventions and Protests

7. Public notice of the filing was issued on May 10, 2001, with interventions and protests due as provided in Section 154.210 of the Commission's regulations. (18 C.F.R. § 154.210 (2001)). Pursuant to Rule 214 of the Commission's Rules of Practice and Procedure (18 C.F.R. § 385.214 (2001)), all timely filed motions to intervene and any motions to intervene out of time filed before the issuance date of this order are granted.

8. The proposal is protested by the Firm Customers.⁴ They state that the proposed tariff language is not sufficiently conditioned to prevent Kern River from reserving or reselling capacity on an interim basis, where there is no excess capacity to reserve or resell, particularly objecting to the language to the extent it would permit Kern River to withhold capacity and/or sell incremental capacity on an interim basis at the Wheeler Ridge delivery point. The Firm Customers argue that this point is significantly constrained.

9. The Firm Customers assert that the new provision, especially as it affects the Wheeler Ridge delivery point, would permit Kern River to reserve excess capacity that it does not have and recapture what it has already sold (*i.e.*, primary firm capacity held by existing firm customers) for sale to others. They state that such a result violates the Commission's regulations, as well as Order No. 636, and is contrary to due process, fairness and the sanctity of contracts.

10. The Firm Customers argue there is extensive evidence of scheduling cuts currently occurring at Wheeler Ridge, as documented in their request for rehearing of the April 6 Order, noting that the Commission incorrectly concluded there is excess capacity at Wheeler Ridge. They contend that Wheeler Ridge is already constrained and that permitting additional shippers to access the point will exacerbate the problem. Thus, they assert that Kern River should not be allowed to reserve or sell capacity at Wheeler Ridge until there is excess primary delivery point capacity and sufficient downstream take-away

⁴The Firm Customers consist of Aera Energy, LLC, Amoco Production Company, Chevron, U.S.A. Inc., Coral Energy, RME Petroleum Company and Texaco Natural Gas, Inc.

capacity at Wheeler Ridge such that there are no cuts in existing firm shippers' scheduling nominations for primary points.⁵

11. The Firm Customers assert that the Commission should reject the filing to the extent it allows reservation, or incremental interim sale, of capacity at the Wheeler Ridge delivery point. Further, they state that Kern River should not be permitted to withhold excess capacity from the market at any point on its system where there are shippers who are willing to pay maximum tariff rates for such capacity under long-term contracts. Finally, the Firm Customers argue that the language is overly broad and requires certain clarification regarding notice and posting requirements.

Discussion

12. The Commission will deny the Firm Customers' request for rejection of the filing because it allows reservation of capacity at Wheeler Ridge. Part 284 of the regulations requires that all pipelines offer and grant service requests (at maximum rates) up to the capacity of the pipeline. The Commission has recognized that the problems of over-nominations and scheduling cuts at Wheeler Ridge are functions of the lack of downstream capacity on SoCalGas and the lack of firm transportation path rights on that intrastate pipeline. However, the Commission has repeatedly held that a contractual right to interstate transportation service on Kern River for delivery at Wheeler Ridge does not carry with it a right to downstream, intrastate capacity on SoCalGas' California system.⁶

13. In addition to their concerns about Wheeler Ridge, the Firm Customers state that language should be added to the new provision providing that Kern River may not reserve or resell capacity, on an interim basis, unless (1) no long-term interest has been exhibited for the capacity prior to the proposed reservation of the capacity, as evidenced by an open season; (2) the capacity is unsubscribed (i.e., no existing firm shipper with primary firm

⁵On October 24, 2001, the Commission issued an order denying rehearing in Docket No. CP01-106-001. See 97 FERC ¶ 61,083 (2001). Among other things, the Commission acknowledged the problem of pro rata allocations of firm shippers' delivery rights at Wheeler Ridge and stated that adding interstate capacity to that point may exacerbate the situation. However, that situation notwithstanding, the Commission refused to endorse as the way to fix the problem the preclusion of additional supplies from moving to the California market or granting current shippers a preference over new shippers.

⁶See Order Denying Rehearing and Issuing Certificate on July 17, 2002, in Docket Nos. CP01-422-000 and CP01-422-001, 100 FERC ¶ 61,056 (2002).

rights at the related points or mainline is being curtailed), and (3) the capacity is not subject to a right-of-first-refusal.

14. The Firm Customers also state that Kern River's proposed notice of its intent to reserve capacity should be followed by an opportunity for competitive bidding to determine if there is current demand for the capacity before Kern River is given the ability to take the capacity off the market. They note that the notice of reservation as currently drafted would not be provided to existing shippers until on or after the date that Kern River has either executed a letter of intent with a prospective shipper that requires the reservation of capacity or it announces its intent to hold an open season for a related expansion project. The Firm Customers assert by that time it would be too late for the capacity to serve current markets. Accordingly, the Firm Customers state that Kern River should be required to satisfy existing demand at maximum tariff rates with all available capacity before withholding capacity for future demand.

15. The Commission agrees with these concerns. Kern River's proposal does not conform to Commission policy and should be revised to ensure that reserved capacity is offered in a not unduly discriminatory manner. Consistent with Commission policy on reserved capacity,⁷ before reserving capacity, Kern River is required to post all its available capacity so that shippers can bid on such capacity. Kern River is not permitted to set aside or withhold capacity solely for expansion shippers, but must provide all parties with the opportunity to bid on available capacity. In addition, the posting should be sufficiently detailed to ensure that shippers will have a reasonable opportunity to bid on available capacity and be awarded such capacity before the pipeline may reserve it, including how long before the reservation of capacity will be posted and the process to be used for bidding on the capacity.⁸

16. As stated in Columbia Gas, because the Commission only permits pipelines to reserve for a future expansion capacity that is currently unsubscribed or not subject to a right-of-first-refusal, in other words capacity that the pipeline has been unable to sell in its current configuration, Kern River must give other customers, before reserving capacity, the opportunity to obtain the capacity on a long-term basis. Such action is

⁷See Columbia Gas Transmission Corporation (Columbia Gas), 100 FERC ¶ 61,136 (2002), re'hearing granted, 101 FERC ¶ 61,380 (2002); Columbia Gulf Transmission Company, 100 FERC ¶ 61,133 (2002), re'hearing granted, 101 FERC ¶ 61,355 (2002); and Crossroad Pipeline Company, 100 FERC ¶ 61,131 (2002), re'hearing granted, 101 FERC 61,307 (2002).

⁸See Columbia Gas, re'hearing granted, 101 FERC ¶ 61,380 (2002).

consistent with the findings in Tennessee, in which the Commission determined that capacity "subject to being reserved is necessarily that capacity for which no long term demand interest has been exhibited."⁹

17. Second, Kern River is required to revise its tariff to provide that for any reserved capacity assigned to a Section 7(c) project that does not go forward, whether or not the project's failure is because Kern River does not file an application within one year or because the pipeline ultimately does not receive Commission authorization, Kern River is required to post such capacity within 30 days of the date the capacity becomes available on its Internet Web Site as generally available capacity.

18. Third, consistent with Commission policy on reserved capacity as accepted both in Tennessee and Natural Gas Pipeline Company of America (Natural),¹⁰ Kern River is required to provide more information for the posting of reserved capacity, such as (a) a description of the expansion project for which the capacity will be reserved; (b) the total quantity of capacity to be reserved; (c) the location of the proposed reserved capacity on the pipeline system; (d) whether, and if so, when Kern River anticipates that an open season for the capacity will be held or it will otherwise be posted for bids under the expansion; (e) the projected in-service date of the expansion project, and (f) on a rolling basis, how much of the reserved capacity has been sold on a limited-term basis. Such information will better enable shippers to monitor capacity availability and potential future options.

19. Fourth, in accordance with Tennessee, Kern River is required to solicit turnback capacity as part of the capacity reservation process that will assist parties in determining the size of an expansion project, which could reduce the size of the expansion and the potential rate impact.¹¹ Further, to ensure that solicitation of capacity turnback occurs in the same general time frame as the reservation, Kern River is required to incorporate a turnback solicitation requirement comparable to Tennessee's solicitation requirement.

⁹Tennessee, 84 FERC ¶ 61,304 (1998) at 62,397.

¹⁰See the capacity release provisions in Natural's FERC Gas Tariff, Sixth Revised Volume No. 1, at GT&C Section 5.1(c)(11)(iv) and Tennessee's FERC Gas Tariff, Fifth Revised Volume No. 1, at GT&C Section 5.8 of Article XXVIII.

¹¹Tennessee, 86 FERC ¶ 61,066 (1999) at 61,259, citing, Pricing Policy for New and Existing Facilities Constructed By Interstate Natural Gas Pipelines, 71 FERC ¶ 61,241 (1995).

20. Finally, the Firm Customers note that the new provision would give Kern River the ability to reserve any existing or "potential" unsubscribed capacity. The Firm Customers assert there is no rationale for permitting Kern River to reserve "potential" unsubscribed capacity for future use, as all capacity by definition is potentially unsubscribed at some point in time in the future. The Commission agrees. The term potential unsubscribed capacity is redundant. Kern River is required to revise its tariff to delete reference to potential unsubscribed capacity.

The Commission orders:

(A) Kern River's tariff sheets are accepted to be effective June 7, 2001, subject to conditions as discussed in the body of this order and the ordering paragraphs below.

(B) Within 20 days of the date of this order, Kern River is directed to file revised tariff sheets reflecting the revisions discussed in the body of this order.

By the Commission.

(S E A L)

Magalie R. Salas,
Secretary.

Kern River Gas Transmission Company
Docket No. RP01-411-000

Tariff Sheets Accepted, Effective June 7, 2001, Subject to Conditions

FERC Gas Tariff, Second Revised Volume No. 1

Third Revised Sheet No. 71
Sheet Nos. 187-204 (Reserved)
Original Sheet No. 205
Sheet Nos. 206-299 (Reserved)
Third Revised Sheet No. 501
Third Revised Sheet No. 601
Third Revised Sheet No. 701
Third Revised Sheet No. 901