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. RP01-411-001

ORDER ACCEPTING TARIFF SHEETS SUBJECT
TO CONDITIONS

(Issued October 24, 2003)

1. On August 15, 2003, Kern River Gas Transmission Company (Kern River) filed tariff sheets[1] clarifying its rights and obligations with respect to reserving capacity for future expansion projects, in compliance with the Commission's July 29, 2003 Order in this proceeding.[2] The Commission accepts the tariff sheets, effective June 1, 2002, subject to conditions. This order benefits customers and this pipeline because it permits efficient planning of pipeline expansions and reasonably allows all customers access to pipeline capacity consistent with Commission policy.

I. The Instant Filing

2. On August 15, 2003, Kern River filed revised tariff sheets to comply with the Commission's July 29 Order. Kern River states that Section 27 of the General Terms and Conditions of its currently effective tariff contains provisions for posting, bidding on, and awarding available capacity, including time frames for posting unsubscribed capacity (Section 27.2 (a)) and time frames for posting capacity under expiring or terminating service agreements (Section 27.2(b)).[3] Kern River proposes to add language to both of these sections, as well as to Section 27.2(d), which pertains to reservation of capacity, to clarify that prior to Kern River reserving capacity for future expansion projects, such capacity will be posted for bid. Under these new tariff provisions, if no bids are received that meet Kern River's minimum acceptable price and terms, Kern River may elect to reserve all or a portion of the capacity for future expansion projects as provided in Section 27.2(f).

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[1] Second Revised Sheet No. 205, First Revised Sheet Nos. 206 and 207, and Original Sheet No. 207-A to FERC Gas Tariff, Second Revised Volume No. 1.

[2] Kern River Gas Transmission Company, 104 FERC ¶ 61,155 (2003).

[3] See id. at Paragraph 15, which required Kern River to post all of its available capacity so that shippers may have a reasonable opportunity to bid on it before it is reserved. The post must include time frames and the process to be used for bidding.

3. Kern River proposes to revise Section 27.2(f) to include language that would allow Kern River to specify a minimum term for capacity that is posted for bid in those situations where Kern River wishes to reserve the capacity for a future expansion project. Kern River states that its proposed language is based on the provision that the Commission approved in Tennessee Gas Pipeline Company (Tennessee),[4] wherein the Commission allowed the pipeline to impose the same minimum terms and conditions on expired contract capacity as it received in commitments from shippers in an expansion open season. Kern River contends that its proposed language is designed to ensure that capacity is not committed to a short-term agreement when it could be used in an expansion project by a shipper willing to meet a long-term commitment, thereby avoiding overbuilding capacity and unnecessarily increasing the cost to expansion shippers.

4. Proposed Section 27.2(f) includes the following language:

> "For available capacity that Transporter wishes to reserve for a future expansion project, Transporter may also establish a minimum acceptable term that is comparable to the minimum term that will be required of shippers that participate in the expansion project."

5. Kern River proposes to revise Section 27.2(d) to: (1) clarify that capacity that is available only at receipt or delivery points must be posted on Kern River's Designated Site before Kern River could reserve it for future expansion projects; (2) for any reserved capacity assigned to a Section 7(c) project that does not go forward, Kern River will post such capacity within 30 days of when it becomes available pursuant to Paragraph 17 of our July 29 Order; (3) solicit turn back capacity within 90 days of holding an open season for an expansion project for which capacity has been reserved pursuant to Paragraph 19 of our July 29 Order; and (4) delete the reference to "potential unsubscribed capacity" pursuant to Paragraph 20 of our July 29 Order.

6. Kern River proposes to modify Sheet No. 207 to reflect the required information in its posting of reserved capacity pursuant to Paragraph 18 of our July 29 Order. The required information is as follows: (a) a description of the expansion project; (b) the total quantity of capacity to be reserved; (c) the location of the proposed reserved capacity on the pipeline system; (d) whether Kern River intends to hold an open season and when the open season would be held; (e) the proposed in-service date for the expansion project; and (f) on a rolling basis, how much of the reserved capacity has been sold on a limited-term basis.

7. Kern River explains that its proposed June 1, 2002 effective date is logical because that is the effective date of other tariff provisions that are intrinsically related to reserving

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[4] 84 FERC ¶ 61,304 at 62,397 (1998); reh'g and clarified, 86 FERC ¶ 61,066 (1999).

capacity for future expansion projects.[5] Kern River states that establishing a June 1, 2002 effective date would have no impact on Kern River's shippers and would eliminate unnecessary administrative changes that could lead to confusion.

II. Notices, Interventions and Protests

8. Public notice of the filing was issued on August 20, 2003, with interventions and protests due as provided in Section 154.210 of the Commission's regulations (18 C.F.R. § 154.210 (2002)). Pursuant to Rule 214 of the Commission's Rules of Practice and Procedure (18 C.F.R. § 385.214 (2002)), all timely motions to intervene and any motions to intervene out of time filed before the issuance date of this order are granted. A protest was filed by the Firm Customers.[6] Kern River filed an answer to the Firm Customers' protest. The Firm Customers filed a motion in response to the answer. The Commission is not accepting the answer, or the motion in response to the answer, because such pleadings are not permitted by the Commission's regulations and good cause has not been shown to grant waiver of the regulations.

9. The Firm Customers protest Kern River's proposed tariff provision to the General Terms and Conditions at Section 27 which would allow Kern River to specify a minimum term for capacity that is posted for bid in those situations where Kern River wishes to reserve capacity for a future expansion project. The Firm Customers state that this proposal is contrary to Commission policy, as the Commission recently stated in Transwestern Pipeline Company (Transwestern).[7] The Firm Customers contend that in Transwestern the Commission required pipelines to "sell all available capacity to shippers willing to pay the maximum rate . . . Section 284.7(b) of the Commission's regulations prohibits pipelines from discriminating unduly in, among other things, the duration of service."[8] The Firm Customers also state that the Commission has allowed other pipelines to establish minimum contract duration requirements for bids on the premise that the service without term restriction could be obtained by any shipper willing to bid the maximum rate.

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[5] See Kern River Gas Transmission Company, 99 FERC ¶ 61,233 (2002).

[6] The 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.

[7] 102 FERC ¶ 61,013 (2002).

[8] Id. at P 12.

10. The Firm Customers argue that the provision approved in Tennessee[9] differs from what Kern River has proposed. The Firm Customers state that in Tennessee, the Commission permitted Tennessee "to impose the same minimum terms and conditions on the posting of expired contract capacity that is made prior to reservations of that capacity for a particular project, as Tennessee has received in commitments from shippers as a result of the expansion open season."[10] The Firm Customers state that Tennessee's approved language required Tennessee to obtain commitments from expansion shippers before requiring other shippers to match the agreed upon term.

11. The Firm Customers state that Kern River's proposed language would permit Kern River to establish a minimum acceptable term for available capacity that would be comparable to the minimum term that would be required of shippers that would participate in the expansion project. Consequently, Kern River could set a minimum term for available capacity before it even has commitments from expansion shippers that would be willing to contract for the minimum term. The Firm Customers believe that this proposal is clearly in violation of the Commission's policy in that it would prevent shippers, willing to pay the maximum rate for available capacity, from obtaining that capacity unless they agreed to Kern River's minimum term.

12. In addition, the Firm Customers believe that Kern River's proposal to impose a minimum term is improper because it would impose an unfair requirement on shippers to subscribe to capacity for longer terms than the shippers might actually need in order to acquire or retain available capacity. The Firm Customers assert that this proposal would also remove available primary firm capacity from the market unless a shipper agreed to bid a minimum term, set by Kern River, at Kern River's sole discretion.

III. Discussion

13. Commission policy allows pipelines to reserve unsubscribed capacity for use in expansion projects and establish minimum contract terms. However, Kern River's proposed tariff provisions are not consistent with our policy in Tennessee.[11] Kern River's proposed tariff language under Sections 27.2(a) and 27.2 (b) indicates that Kern River will post unsubscribed capacity for bid as now required, but if bids do not meet a minimum acceptable price and term, Kern River proposes that it may reject the bid and reserve that capacity for a future project. Kern River's provision does not explain where in the expansion timeline it may impose the new restrictive provision. We find that this provision is too broad in that it allows Kern River to impose a minimum term in circumstances where Kern River may not have even announced an expansion project.

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[9] Supra, n. 3.

[10] 84 FERC ¶ 61,304 at 62,397 (1998) (emphasis added).

[11] 86 FERC ¶ 61,066.

14. In Tennessee, the Commission found that if a pipeline has already announced an expansion project, the Commission will allow the pipeline to impose the same minimum terms and conditions on the posting of unsubscribed capacity that it anticipates it will impose in the future expansion project open season. Accordingly, Kern River's proposed language in Sections 27.2(a) and 27.2(b) must be revised to conform to the Commission's policy as set forth in Tennessee.

15. Further, in the event that the subsequent expansion project open season imposes minimum terms and conditions that are materially different from the terms and conditions imposed in the previous available reservation capacity open season, the pipeline shall hold another open season for the available reservation capacity that uses the same minimum terms and conditions as were imposed for the expansion project open season. If the expansion project open season is held prior to or during the available reservation capacity open season, the pipeline shall use the same minimum terms and conditions as used for the expansion project open season. Kern River's proposed Section 27.2(f) complies in part with our policy in Tennessee, but does not provide for a new open season if the subsequent expansion project open season imposes materially different terms and conditions. Accordingly, we will require Kern River to revise Section 27.2(f) consistent with our policy in Tennessee.

16. The Commission finds that Kern River has satisfactorily complied with the other directives of our July 29 Order. Accordingly, the Commission will accept the proposed tariff sheets, subject to the conditions noted above.

17. Kern River requested waiver of the Commission's 30-day notice requirement. The Commission's regulations require a company to present good cause for waiver of it's regulations. Kern River has indicated that it would be administratively easier for them to have one effective date and would not disadvantage anyone because the provision has not arisen to date. The Commission finds Kern River has demonstrated good cause and agrees there would be no harm to anyone from the earlier effective date. Therefore, we will grant waiver of the Commission's notice requirements and permit Kern River's tariff sheets to become effective June 1, 2002.

The Commission orders:

(A) Waiver of the Commission's 30-day notice requirement is granted. Kern River's tariff sheets, as described herein, are accepted, effective June 1, 2002, as proposed.

(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.

(C) Kern River's answer is not accepted.

By the Commission.

(S E A L)

Linda Mitry,
Acting Secretary.