

132 FERC ¶ 61,226  
UNITED STATES OF AMERICA  
FEDERAL ENERGY REGULATORY COMMISSION

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

Kern River Gas Transmission Company

Docket No. CP10-14-000

ORDER ISSUING CERTIFICATE

(Issued September 16, 2010)

1. On November 2, 2009, Kern River Gas Transmission Company (Kern River) filed an application pursuant to section 7(c) of the Natural Gas Act (NGA) requesting authorization to construct and operate facilities to expand the summer design capacity of its pipeline system by 266,000 dekatherms per day (Dth/d) (the Apex Expansion). Additionally, Kern River requests approval of incremental transportation rates and fuel factors, and approval of regulatory asset/liability accounting for the differences between book and regulatory depreciation resulting from use of Kern River's levelized rate design.<sup>1</sup> This order grants the requested authorizations, subject to conditions, as discussed below.

**I. Background**

2. Kern River is a general partnership formed under the laws of Texas and doing business in Wyoming, Utah, Nevada, and California. Kern River is a natural gas company under the NGA engaged in the interstate transportation of natural gas.

3. Kern River's system originates at a receipt point interconnect with Williams Gas Processing Company's Opal plant about six miles north of Kern River's Muddy Creek

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<sup>1</sup> Kern River also requests Commission acceptance of its pro forma tariff sheets in Exhibit P of its application implementing the incremental rates. The Commission does not accept pro forma tariffs as part of the NGA section 7 certification process. As discussed herein, Kern River's incremental rates are approved and Kern River will be required to file actual tariff records prior to those rates going into effect.

compressor station in Lincoln County, Wyoming. In the vicinity of the Muddy Creek compressor station, Kern River has interconnects with several gas processing plants, with other interstate pipelines, including Northwest Pipeline Corporation, Colorado Interstate Gas Company, and Questar Pipeline Company (Questar), and with an intrastate pipeline, Overland Trail Transmission Company.

4. Kern River's system extends nearly 900 miles from its receipt points in southwestern Wyoming, through Utah and Nevada, to the San Joaquin Valley near Bakersfield, Kern County, California. In the Kern County area, Kern River has a number of delivery points serving enhanced oil recovery and cogeneration markets. At the Daggett-PG&E and Wheeler Ridge delivery points, respectively, Kern River interconnects with Pacific Gas and Electric Corporation (PG&E) and Southern California Gas Company, local distribution companies in California.<sup>2</sup>

5. Near the Daggett delivery point in San Bernardino County, California, Kern River also interconnects with the interstate pipeline system of Mojave Pipeline Company (Mojave). From the Daggett interconnect, Kern River and Mojave jointly own 300 miles of pipeline extending into the Bakersfield, California area, including a 42-inch diameter mainline, two laterals, and delivery meters, referred to as the Common Facilities.<sup>3</sup>

#### **History of Kern River's System**

6. The Kern River system was originally constructed to provide up to 700,000 Mcf/d of year-round firm transportation service from Wyoming receipt points to California delivery points. The Kern River system was placed into service in February 1992.<sup>4</sup> In 2000, Kern River filed an application (the 2002 Expansion Project), requesting authorization to construct and operate additional compression and metering facilities to expand its Wyoming-to-California capacity by 124,500 Dth/d.

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<sup>2</sup> In addition to its delivery points in California, Kern River has delivery points accessing various markets in Utah, southern Nevada, and Arizona.

<sup>3</sup> A construction operation and maintenance agreement between Kern River, Mojave and Mojave Pipeline Operating Company (MPOC) dated August 29, 1989 (the COM Agreement), gives Mojave a 25 percent ownership interest in the Common Facilities and gives MPOC the right to construct and operate the Common Facilities and to participate in any expansions/additions thereto. The expansion proposed in this proceeding extends only to southern Nevada and does not impact the Common Facilities.

<sup>4</sup> *Kern River Gas Transmission Co.*, 50 FERC ¶ 61,069 (1990).

7. In 2001, while its application for the 2002 Expansion Project was still pending, the Commission authorized Kern River to construct and operate compression and metering facilities required to provide up to 135,000 Dth/d of limited-term, incremental transportation capacity from Wyoming to California (the California Action Project).<sup>5</sup> Of the capacity that became temporarily available due to the California Action Project, 114,000 Dth/d was subsequently incorporated into the 2002 Expansion Project. As a result, Kern River amended its 2002 Expansion application to construct facilities to provide only an additional 10,500 Dth/d of capacity. On July 26, 2001, the Commission authorized Kern River's revised 2002 Expansion Project.<sup>6</sup> The remaining 21,000 Dth/d of the California Action Project capacity was added to the 2003 Expansion capacity.

8. In 2002, the Commission authorized Kern River to construct and operate facilities needed to expand its transportation capacity by an additional 885,626 Dth/d in order to provide up to 906,626 Dth/d (including the 21,000 Dth/d of California Action Project capacity) of long-term incrementally-priced firm transportation service (the 2003 Expansion Project).<sup>7</sup> The 2003 Expansion's additional compression and pipeline loops more than doubled Kern River's existing summer design-day capacity to 1,731,126 Dth/d.

9. In 2009, the Commission authorized Kern River to construct and operate facilities needed to expand its transportation capacity by an additional 145,000 Dth/d (the 2010 Expansion Project).<sup>8</sup> The 2010 Expansion Project allowed Kern River to increase its summer design capacity from 1,731,126 Dth/d to 1,876,126 Dth.

## II. Proposal

### A. Open Season

10. On August 26, 2008, Kern River commenced an open season pursuant to its tariff, offering new firm backhaul transportation service utilizing existing mainline capacity from an interconnect with Mojave (the Dag Moj receipt point) to delivery points in southern Nevada, with a proposed in-service date of April 1, 2009. As part of the same open season, Kern River also offered 266,000 Dth/d of firm forward-haul transportation service from Wyoming receipt points to delivery points including and upstream of the

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<sup>5</sup> *Kern River Gas Transmission Co.*, 95 FERC ¶ 61,022 (2001).

<sup>6</sup> *Kern River Gas Transmission Co.*, 96 FERC ¶ 61,137 (2001).

<sup>7</sup> *Kern River Gas Transmission Co.*, 100 FERC ¶ 61,056 (2002).

<sup>8</sup> *Kern River Gas Transmission Co.*, 127 FERC ¶ 61,223 (2009).

Pecos meter station in southern Nevada, with a proposed in-service date of November 1, 2011 (the Apex Expansion).<sup>9</sup> The stated bid evaluation criteria for this open season was the highest total economic value, as established by the combined total reservation revenues generated by the bid for both the backhaul and the Apex Expansion forward-haul capacity, for the period from April 1, 2009, through the 20-year term following the in-service date of the Apex Expansion, or October 31, 2031. Following evaluation of the bids received, Kern River determined Nevada Power Company d/b/a NV Energy (NVE) to be the successful bidder. Results of the open season were posted on Kern River's electronic bulletin board and web site on September 18, 2008.

11. Kern River states that it has executed a precedent agreement and a long-term, firm transportation service agreement with NVE for a total of 266,000 Dth/d of forward-haul firm transportation service.<sup>10</sup> The initial term of the transportation service agreement commences on the in-service date of the Apex Expansion facilities, expected to be November 1, 2011, and extends for 20 years.

### **B. New Facilities**

12. To provide the service for NVE, Kern River seeks authorization to: (1) construct and operate approximately 28 miles of 36-inch-diameter pipeline loop on an unlooped portion of Kern River's existing mainline system across the Wasatch Mountains in Morgan, Davis and Salt Lake Counties in northern Utah; (2) install a 16,000 ISO-rated horsepower (hp) gas-fired turbine compressor unit and restage existing compressor units at three existing compressor stations - Coyote Creek compressor station in Uinta County, Wyoming; Elberta compressor station in Utah County, Utah; and Dry Lake compressor station in Clark County, Nevada; (3) replace a compressor unit at Kern River's existing Fillmore compressor station in Millard County, Utah; and (4) construct the new Milford compressor station with a single unit 30,000 ISO-rated hp gas-fired turbine compressor in Beaver County, Utah. The proposed facilities will add a net total of 78,000 ISO-rated hp to the Kern River system, increasing the system's summer design capacity from 1,876,126 Dth/d to 2,142,126 Dth/d.<sup>11</sup>

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<sup>9</sup> Kern River also solicited offers from existing shippers to relinquish capacity. No offers to relinquish existing capacity were received.

<sup>10</sup> These agreements have been reviewed and accepted by the Commission. *See Kern River Gas Transmission Co.*, 127 FERC ¶ 61,203 (2009).

<sup>11</sup> Kern River states that it has investigated potential waste heat recovery opportunities as part of the Apex Expansion, as well as elsewhere on its system. Kern River states that eight gas turbine facilities on its existing system are nominally rated at

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13. The estimated project capital cost of the proposed Apex Expansion is \$373.4 million, which will be financed with a combination of internally generated funds and new debt.

**C. Rates**

14. Kern River proposes an incremental recourse rate under Rate Schedule KRF-1 for the Apex Expansion. The proposed incremental recourse rate for firm service is a \$0.4444 per Dth reservation rate and a \$0.0044 per Dth commodity rate. These rates are based on an estimated Apex Expansion capital cost of approximately \$373.4 million plus compressor engine replacement, a debt/equity ratio of 70 percent/30 percent, a return on equity of 11.55 percent, and a debt cost of 6.75 percent.<sup>12</sup> For purposes of the proposed recourse rate, the cost of service has been levelized over 20 years, corresponding to the term of NVE's transportation service agreement. Kern River states that the Apex Expansion produces an incremental reservation rate that is higher than the rate for Kern River's Rolled-in shippers<sup>13</sup> and 2003/2010 Expansion shippers, when applying a comparable levelized period.<sup>14</sup> Therefore, Kern River proposes that the Apex Expansion be treated as an incrementally-priced transportation service.

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15,000 ISO-rated hp or greater and operate at load factors higher than 60 percent, making them potential sites for waste heat recovery projects. Kern River has entered into an agreement (unrelated to the Apex Expansion) allowing NVE to build a six-megawatt waste heat recovery renewable energy project at Kern River's Goodsprings compressor station approximately 35 miles south of Las Vegas, Nevada. Kern River's existing Dry Lake compressor station, at which Kern River is proposing to add a 16,000 ISO-rated hp gas-fired turbine compressor, may become a more attractive waste heat recovery site upon completion of the Apex Expansion. The Dry Lake compressor station is located in proximity to a major power corridor approximately 20 miles from the city of Las Vegas. At this time, no waste heat recovery unit is planned as part of the Apex Expansion project. However, Kern River contends that it will continue to evaluate its feasibility.

<sup>12</sup> See Kern River's Application at Exhibit N.

<sup>13</sup> Rolled-in shippers are mainline system shippers, including 2002 Expansion and California Action Project shippers.

<sup>14</sup> See Kern River's Data Response No. 4 filed on January 18, 2010.

#### **D. Fuel Reimbursement**

15. Kern River currently has in place established weighting factors at each compressor station in order to allocate fuel usage between Rolled-in shippers and 2003/2010 Expansion shippers. The weighting factor at each compressor station is the ratio derived by dividing the fuel reimbursement percentage applicable to Expansion shippers by the fuel reimbursement percentage applicable to Rolled-in shippers.<sup>15</sup> As a result of the Apex Expansion, Kern River has revised its currently-effective weighting factors as calculated in Exhibit P, Schedule 2, of its application.

16. Kern River states that based on design day studies, transportation service for Apex Expansion shippers will consume relatively more fuel per Dth than transportation service for Rolled-in shippers or 2003/2010 Expansion shippers. Kern River proposes an average Apex Expansion fuel factor of 2.815 percent,<sup>16</sup> which exceeds the average fuel factor for 2003/2010 Expansion shippers of 2.772 percent, as well as the average Rolled-in shipper factor of 1.582 percent. Therefore, Kern River requests approval of its proposed incremental treatment for the proposed fuel reimbursement factor.

#### **E. Accounting Treatment**

17. Kern River's proposed rates are determined by the use of a levelized cost of service. For rate purposes, Kern River's depreciation rate is adjusted in each cost-of-service year to derive a levelized cost of service. However, for book purposes, Kern River applies a straight line depreciation rate. Kern River requests approval to account for the differences between book and rate depreciation as regulatory assets or liabilities, as appropriate.

### **III. Notice and Interventions**

18. Notice of Kern River's application was published in the *Federal Register* on November 23, 2009 (74 Fed. Reg. 61,143). Aera Energy LLC, BP Energy Company,

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<sup>15</sup> See Kern River's FERC Gas Tariff, Second Revised Volume No. 1, General Terms and Conditions, Section 12, Reimbursement of Fuel Used and Lost and Unaccounted-For Gas. The Commission notes that this same provision is contained in Kern River's proposed Order No. 714 compliance tariff entitled "FERC NGA Gas Tariff, Gas Tariff."

<sup>16</sup> This initial fuel reimbursement factor is an average of the August and January design day fuel factors for Apex transportation service from the Muddy Creek compressor station through the Dry Lake compressor station.

Calpine Energy Services, L.P., NVE, Questar Overthrust Pipeline Company, Questar, Southwest Gas Corporation, and Wyoming Pipeline Authority filed timely, unopposed motions to intervene. The timely, unopposed motions to intervene are granted by operation of Rule 214 of the Commission's Rules of Practice and Procedure.<sup>17</sup>

#### IV. Discussion

19. Since the proposed facilities will be used to transport natural gas in interstate commerce subject to the jurisdiction of the Commission, Kern River's proposals are subject to the requirements of subsections (c) and (e) of section 7 of the NGA.

##### A. Certificate Policy Statement

20. The Certificate Policy Statement provides guidance for evaluating proposals to certificate new construction.<sup>18</sup> The Certificate Policy Statement established criteria for determining whether there is a need for a proposed project and whether the proposed project will serve the public interest. The Certificate Policy Statement explained that in deciding whether to authorize the construction of major new pipeline facilities, the Commission balances the public benefits against the potential adverse consequences. The Commission's goal is to give appropriate consideration to the enhancement of competitive transportation alternatives, the possibility of overbuilding, subsidization by existing customers, the applicant's responsibility for unsubscribed capacity, the avoidance of unnecessary disruptions of the environment, and the unneeded exercise of eminent domain in evaluating new pipeline construction.

21. Under this policy, the threshold requirement for pipelines proposing new projects is that the pipeline must be prepared to financially support the project without relying on subsidization from its existing customers. The next step is to determine whether the applicant has made efforts to eliminate or minimize any adverse effects the project might have on the applicant's existing customers, existing pipelines in the market and their captive customers, or landowners and communities affected by the route of the new pipeline. If residual adverse effects on these interest groups are identified after efforts have been made to minimize them, we will evaluate the project by balancing the evidence of public benefits to be achieved against the residual adverse effects. This is essentially

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<sup>17</sup> 18 C.F.R. § 385.214 (2010).

<sup>18</sup> *Certification of New Interstate Natural Gas Pipeline Facilities*, 88 FERC ¶ 61,227 (1999), *order on clarification*, 90 FERC ¶ 61,128, *order on clarification*, 92 FERC ¶ 61,094 (2000) (Certificate Policy Statement).

an economic test. Only when the benefits outweigh the adverse effects on economic interests will the Commission proceed to complete the environmental analysis where other interests are considered.

### **1. Subsidization by Existing Customers**

22. As noted above, the threshold requirement is that the pipeline must be prepared to financially support the project without relying on subsidization from its existing customers. Kern River states that the Apex Expansion will cost approximately \$373 million. Kern River also explains that the cost of service for the Apex Expansion yields a rate that is higher than those of Kern River's Rolled-in shippers or the 2003/2010 Expansion shippers, justifying incremental rates. The Commission finds that since Kern River will charge a firm incremental transportation rate under Rate Schedule KRF-1,<sup>19</sup> the Apex Expansion will not result in subsidization by existing customers.

23. Exhibit P of Kern River's application shows the estimated fuel reimbursement factor for the Apex Expansion shippers and compares it to the approved 2003/2010 Expansion fuel factor, as well as the approved Rolled-in fuel factor.<sup>20</sup> The Commission's review of Exhibit P indicates that the proposed Apex Expansion fuel reimbursement factor is higher than the approved fuel factor for the 2003/2010 Expansion shippers and Rolled-in shippers. Thus, with authorization of the proposed fuel factor, these existing shippers will not subsidize the proposed project. Accordingly, the Commission finds that an incremental fuel reimbursement factor for the Apex Expansion is appropriate.

### **2. Effect on Existing Customers, Competing Pipelines, and Captive Customers**

24. Kern River's proposals will have no adverse impact on its existing customers, since the proposals will not result in any degradation of their service. Kern River's proposed pipeline looping will provide enhanced operational flexibility for Kern River, while minimizing any impact to existing firm customer service. No existing customers

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<sup>19</sup> See Kern River's Application at Exhibit P.

<sup>20</sup> Pursuant to section 12.2 of Kern River's General Terms and Conditions, fuel used and lost and unaccounted-for gas will be furnished by shippers in-kind each day by applying a fuel reimbursement factor to receipt point nominations, as provided in North American Energy Standards Board Standard 1.3.16. Section 12.10 requires Kern River to file an annual report with the Commission that supports the fuel and lost and unaccounted-for gas factors used for the 12-month period beginning January 1 of the prior year.

have raised concerns in protests or comments. Further, the Commission finds that there should be no adverse impacts on interconnecting pipelines, since Kern River's proposal for new incremental transportation service is to provide new service to NVE's electric load and is not intended to replace existing service on any other existing pipeline. Additionally, no pipeline has protested Kern River's application.

### **3. Effect on Landowners and Communities**

25. We also find that Kern River's proposed Apex Expansion has been designed to have minimal effects on landowners and communities. Three of the four proposed new compressor units will be installed within Kern River's existing facilities, and 69 percent of the proposed pipeline route is located within or adjacent to existing pipeline rights-of-way.

### **4. Conclusion**

26. The Commission concludes that any potential adverse effects of the project are outweighed by the benefits of the project. Kern River has demonstrated substantial market demand for the project, which is fully subscribed, under long-term contracts. Kern River's existing customers will not subsidize the project and there will be no degradation of service to Kern River's existing customers or any adverse effects on other existing pipelines or their customers. Finally, adverse impacts on landowners and neighboring communities will be minimal. For these reasons, the Commission finds, consistent with the Certificate Policy Statement and section 7(c) of the NGA, that the public convenience and necessity requires approval of Kern River's proposal.

### **B. Rates**

27. As discussed above, the Commission will approve Kern River's request for incremental recourse rates for the Apex Expansion. The incremental recourse rate for transportation service under Rate Schedule KRF-1 is \$0.4444/Dth and the commodity rate is \$0.0044/Dth.<sup>21</sup> The projected annual cost of service is \$43.5 million, levelized over 20 years. This term corresponds to the term of the precedent agreement between

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<sup>21</sup> Kern River proposes to charge Apex Expansion shippers the same rate charged to other shipper groups for authorized overrun service (i.e. a maximum rate of \$0.4394/Dth and a minimum rate of \$0.0037/Dth) and the same electric compressor fuel surcharge (i.e. \$0.000/Dth determined annually) as that charged to the 2003/2010 Expansion shippers. See footnote No. 18 of Kern River's application and pro forma Tariff Sheet No. 5-C.

Kern River and NVE.<sup>22</sup> Kern River's levelized cost of service, which reflects a 70 percent debt and 30 percent equity capital structure and a 11.55 percent return on equity, is consistent with the rate design methodology approved by the Commission in Kern River's general rate case proceeding in Docket No. RP04-274-000.<sup>23</sup> The Commission also finds that the cost of service for the Apex Expansion produces an incremental reservation rate that is higher than the rate for Kern River's Rolled-in shippers and 2003/2010 Expansion shippers when applying a comparable levelized period.<sup>24</sup> Accordingly, the Commission finds incremental rate treatment for the Apex Expansion is appropriate.

28. The Commission's policy when approving incremental rates is to require the pipeline to isolate the incremental costs, keeping separate books and records, so that parties during a rate case can examine such records to ensure that customers are not subsidizing a facility from which they are not receiving service.<sup>25</sup> By requiring Kern River to isolate the costs associated with its existing service for its Rolled-in shippers and 2003/2010 Expansion shippers from those associated with the new incremental service to NVE on the Apex Expansion, and to keep separate books and accounting of the costs attributable to the proposed incremental service, the Commission can protect the existing customers. Therefore, the Commission will require that the books be maintained with applicable cross-reference as required by section 154.309 of the Commission's regulations. This information must be in sufficient detail so that the data can be identified in Statements G, I, and J in any future NGA section 4 or 5 proceedings.

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<sup>22</sup> See *Kern River Gas Transmission Co.*, 127 FERC ¶ 61,203.

<sup>23</sup> See *Kern River Gas Transmission Co.*, Opinion No. 486, 117 FERC ¶ 61,077 (2006), Opinion No. 486-A, 123 FERC ¶ 61,056 (2008), Opinion No. 486-B, 126 FERC ¶ 61,034 (2009), Opinion No. 486-C, 129 FERC ¶ 61,240 (2009).

<sup>24</sup> See Kern River's Data Response No. 4 filed on January 18, 2010.

<sup>25</sup> *Dominion Cove Point LNG, LP*, 120 FERC ¶ 61,213, at P 18 (2007); *Dominion Transmission, Inc.*, 120 FERC ¶ 61,235, at P 23 (2007); *Empire State Pipeline*, 116 FERC ¶ 61,074, at P 115 (2006); *El Paso Natural Gas Co.*, 104 FERC ¶ 61,303, at P 36 (2003); *Iroquois Gas Transmission System, L.P.*, 100 FERC ¶ 61,275, at P 37 (2002).

### **C. Fuel Reimbursement**

29. As noted above, Kern River has also proposed an average initial incremental fuel reimbursement factor for Apex Expansion shippers of 2.815 percent, based on the August and January design day fuel factors for transportation service from the Muddy Creek compressor station through the Dry Lake compressor station. We find that Kern River has appropriately calculated this proposed incremental factor and, since it exceeds the average fuel factors of both the 2003/2010 Expansion shippers and the Rolled-in shippers, we will approve the use of an incremental fuel reimbursement factor in connection with the Apex Expansion service.

30. In addition, as also noted above, Kern River proposes to revise the currently-effective compressor station weighting factors used to allocate fuel usage between the Rolled-in shippers and the 2003/2010 Expansion shippers to reflect operation of the Apex Expansion. The revised factors are calculated in Exhibit P, Schedule 2 of Kern River's application and listed in section 12.6 of its pro forma Tariff Sheet No. 110.

31. For interruptible and authorized overrun service, the compressor fuel factors will be determined monthly. Each factor will be a blended fuel rate derived from the monthly fuel factors applicable to rolled-in rate service and incremental rate service. The incremental-service factor will apply to the Apex Expansion shippers. The blended fuel rates are based on demand maximum daily quantities (DMDQ). Currently, Kern River's DMDQ are 45 percent for rolled-in rate service and 55 percent for incremental rate service. As a result of the Apex Expansion, the DMDQ changed to 39.6 percent for rolled-in rate service and 60.4 percent for incremental rate service. Kern River has reflected these DMDQ percentage changes on pro forma Tariff Sheet No. 110-B.

32. Kern River's proposed changes to its existing compressor station weighting factors and fuel reimbursement percentages appear to be in accord with the provisions of its tariff. However, changes to existing rates cannot be approved in this section 7 proceeding. Therefore, Kern River is required to file actual tariff records at least 30 days and not more than 60 days prior to the in-service date of the Apex Expansion.

### **D. Accounting**

#### **1. Depreciation**

33. For rate purposes, Kern River's depreciation rate is adjusted in each cost-of-service year to derive a levelized cost of service. However, for book purposes, Kern River applies a straight line depreciation rate.

34. Kern River requests approval to account for the differences between book and rate depreciation as regulatory assets or liabilities, as appropriate. This treatment is consistent

with the Commission's Uniform System of Accounts and the accounting treatment approved previously by the Commission for Kern River's 2010 Expansion.<sup>26</sup> Thus, the Commission will approve Kern River's proposed depreciation treatment.

## 2. Allowance for Funds Used During Construction

35. Kern River proposes to capitalize a total allowance for funds used during construction (AFUDC) of \$21,975,056 as part of the Apex Expansion. Kern River represents that it commenced AFUDC in April 2009 following its request to use the pre-filing process for the Apex Expansion in Docket No. PF09-7-000. Kern River also contends that capital expenditures for the project began in late 2008 and continued through early 2009 as preparation work for the actual construction began. Kern River states preparation work is continuing in anticipation of receiving a certificate from the Commission.<sup>27</sup>

36. The Commission revised its policy on the commencement of AFUDC in *Florida Gas Transmission Company LLC* and *Southern Natural Gas Company*,<sup>28</sup> to allow natural gas pipelines to begin accruing AFUDC when the following conditions are met: (1) capital expenditures for the project have been incurred and (2) activities that are necessary to get the construction project ready for its intended use are in progress. Based on Kern River's representations, its accrual of AFUDC for the Apex Expansion is consistent with the revised policy conditions.

## V. Environment

37. The Commission's staff began its initial review of the project following the Director of Office of Energy Project's approval of Kern River's request to use the pre-filing process on March 13, 2009, in Docket No. PF09-7-000. As part of the pre-filing review, the Commission issued a *Notice of Intent to Prepare an Environmental Impact Statement for the Apex Expansion Project, Request for Comments on Environmental Issues, and Notice of Joint Public Scoping Meetings* (NOI) on May 15, 2009. This notice was published in the *Federal Register* on May 26, 2009,<sup>29</sup> and sent to 2,584 interested

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<sup>26</sup> *Kern River Gas Transmission Co.*, 127 FERC ¶ 61,223.

<sup>27</sup> See June 11 Data Response.

<sup>28</sup> See 130 FERC ¶ 61,194 (2010); 130 FERC ¶ 61,193 (2010).

<sup>29</sup> 74 Fed. Reg. 24,842 (2009).

parties, including federal, state, and local agencies; elected officials; environmental and public interest groups; Native American tribes; potentially affected landowners; local libraries; newspapers; and other interested parties. Commission staff, in cooperation with the Bureau of Land Management (BLM), United States Forest Service (Forest Service), and Bureau of Reclamation, held two public scoping meetings in June 2009 to provide the public with an opportunity to learn more about the Apex Expansion and to comment on environmental issues that should be addressed in the draft EIS.<sup>30</sup>

38. In total, approximately 100 people attended the public scoping meetings, excluding representatives from Kern River, the Commission, and cooperating agencies. A total of 27 individuals provided oral comments on the project at the scoping meetings. In addition, 30 federal, state, and local agencies; elected officials; environmental and public interest groups; Native American tribes; potentially affected landowners; and other interested stakeholders filed written scoping comments.<sup>31</sup>

39. The Commission's staff issued a draft Environmental Impact Statement (draft EIS) on March 26, 2010, that addressed the issues raised during the scoping period, with a 45-day public comment period.<sup>32</sup> The draft EIS was mailed to the environmental mailing list that was expanded to include affected landowners who were added to the mailing list after issuance of the NOI and landowners potentially affected by some of the alternatives being considered. Two public meetings were held in April 2010 to receive comments on the draft EIS.<sup>33</sup> One person provided oral comments and one person provided written comments at the meetings, and 14 stakeholders submitted letters in response to the draft EIS.

40. On July 23, 2010, the Commission's staff issued a final Environmental Impact Statement (final EIS) that evaluated the potential environmental impacts of the proposed Apex Expansion in order to satisfy the requirements of the National Environmental

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<sup>30</sup> The public scoping meetings were held in Bountiful, Utah and Morgan, Utah during the evenings of June 9 and 10, 2009, respectively.

<sup>31</sup> Table 1.3-1 of the final EIS provides a detailed and comprehensive list of issues raised during scoping.

<sup>32</sup> 75 Fed. Reg. 16,450 (2010).

<sup>33</sup> The draft EIS comment meetings were held in Bountiful, Utah and Morgan, Utah on the evenings of April 27 and 28, 2010, respectively.

Policy Act of 1969 (NEPA).<sup>34</sup> Public notice of the availability of the final EIS was published in the *Federal Register* on August 2, 2010.<sup>35</sup> The BLM, Forest Service, and Bureau of Reclamation participated in the preparation of the final EIS as cooperating agencies. The final EIS addressed geology; soils; water resources; wetlands; vegetation; wildlife and fisheries; special status species; land use, recreation, and visual resources; socioeconomics; cultural resources; air quality and noise; reliability and safety; cumulative impacts; and alternatives. The final EIS also addressed timely comments received on the draft EIS.<sup>36</sup> The final EIS was mailed to the same parties as the draft EIS, as well as to parties that commented on the draft EIS and landowners newly identified as affected by proposed route alternatives and variations.<sup>37</sup>

41. The final EIS concludes that if the project were constructed and operated in accordance with applicable laws and regulations, the project would result in some adverse environmental impact. However, these impacts would be reduced to less-than-significant levels with the implementation of Kern River's proposed mitigation and the Commission's staff's recommendations (as adopted in the appendix of this order). Major issues of concern that were addressed in the final EIS are summarized below.

**A. Major Environmental Issues Addressed in the Final EIS**

42. As described in the final EIS, both federally- and state-listed special status species potentially occur in the vicinity of the proposed project. The final EIS found that two federally-listed species (Utah prairie dog and Ute ladies'-tresses) may be affected by construction and operation of the project. The Commission's staff prepared and submitted to the Fish and Wildlife Service (FWS) a biological assessment initiating informal consultation as required under section 7 of the Endangered Species Act (ESA).<sup>38</sup> Staff concluded in the biological assessment that the project is not likely to adversely affect either of these species. By letter dated April 27, 2010, the FWS concurred with staff's determinations. Thus, ESA section 7 consultation with FWS has been completed.

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<sup>34</sup> 42 U.S.C. §§ 4321-4370f (2006).

<sup>35</sup> 75 Fed. Reg. 45,109 (2010).

<sup>36</sup> Appendix Q of the final EIS includes responses to comments on the draft EIS.

<sup>37</sup> The distribution list is provided in Appendix A of the final EIS.

<sup>38</sup> See 16 U.S.C. § 1536 (2006).

43. Kern River provided a Biological Resource Mitigation Plan that details measures that would be implemented to minimize impacts on sensitive species. Mitigation measures for the sensitive species in the project area continue to be developed by Kern River in consultation with the relevant agencies. The final EIS described some biological surveys that remain to be completed and included a recommendation that Kern River file the survey results and update the Biological Resources Mitigation Plan with any additional mitigation measures developed in consultation with FWS, BLM, Forest Service, and Utah Division of Wildlife Resources (UDWR), as applicable. Since the issuance of the final EIS, Kern River has filed the outstanding American pika, amphibian, and plant surveys. Kern River has also filed a record of consultation with the agencies that must concur with Kern River's mitigation measures presented in the Biological Resources Mitigation Plan. Therefore, the Commission has revised the final EIS-recommended environmental condition no. 12 to only require the information that remains outstanding.

44. The Commission received several scoping comments expressing concern regarding revegetation monitoring. As described in the final EIS, Kern River's Reclamation Plan discusses a minimum of three years of monitoring of the post-construction revegetation. The monitoring reports submitted to the Commission and applicable land managing agencies must document the success of revegetation and any required remedial actions should the thresholds not be met. Additional revegetation efforts would be required if the cover and density of non-noxious vegetation within the construction right-of-way was not similar to the adjacent undisturbed land at the end of three years.

45. A similar concern was raised regarding impact on riparian areas. The final EIS discussed the additional mitigation and maintenance measures that Kern River has agreed to implement. Kern River will leave riparian vegetation at a height of two feet within the bankfull channel and at a height of one foot within the floodplain/backwater area, conduct selective plantings of tree species, and limit right-of-way maintenance in riparian areas. The final EIS concluded that these additional measures will minimize impacts and ensure timely revegetation of native species in riparian areas.

46. Several commentors were concerned about the crossing of East Canyon Creek. Kern River has agreed to cross East Canyon Creek by utilizing a site-specific crossing method. The final EIS was revised to include Kern River's proposal to consult with the Weber Basin Water Conservancy District or the Davis and Weber Canal Company prior to finalizing the schedule for water withdrawal to ensure that adequate base flow is maintained in East Canyon Creek. In addition, as discussed in sections 4.6 and 4.7 of the final EIS, Kern River will adhere to the UDWR's recommended construction timing window of between July 15 to February 28 for the Bonneville cutthroat trout, to avoid crossing the East Canyon Creek during the spawning season. The final EIS concluded that Kern River's proposed mitigation measures adequately protect the waterbody.

47. To address the Forest Service's concerns with the potential impact on two roadless areas regulated under the Roadless Area Conservation Act, Kern River adopted the draft EIS' recommendations that it utilize two alternative pipeline routes to avoid impacts on the Hogsback Roadless Area and limit the crossing of the Mueller Park Roadless Area (the Mueller Park and North Salt Lake III Route Variations). No reasonable alternative was identified to completely avoid the Mueller Park Roadless Area, but with implementation of Kern River's Reclamation Plan, approximately 11 acres of forested land within this roadless area will be able to re-grow upon completion of pipeline construction.

48. The final EIS also addressed concerns regarding visual impact from the project. Kern River's Reclamation Plan contains measures to ensure that visual impacts are reduced and returned to pre-existing conditions if possible. Section 4.8 of the final EIS was revised to include Kern River's draft visual assessment report. The final EIS recommended that Kern River file a final visual assessment report prior to construction that includes specific mitigation strategies for the Uinta-Wasatch-Cache National Forest (as required herein by environmental condition no. 13).

49. Kern River has completed cultural resources surveys of the project area. Kern River has filed and provided to the Utah State Historic Preservation Office (SHPO) revised crossing plans for the Reclamation Ditch, a National Historic Preservation Act of 1966 (NHPA)-listed resource, indicating that the crossing method for the ditch will be switched from an open cut to a bored crossing. The revised crossing technique would avoid a direct impact and result in "no adverse effect" to the ditch. Kern River has also filed the Utah SHPO's concurrence that the project would have no adverse effect and the Forest Service's comments on the Mueller Park Route Variation survey report. Therefore, the Commission's responsibilities under section 106 of NHPA are complete and there is no reason to require the final EIS's recommendation number 14 as an environmental condition to this order.

## **B. Comments on the Final EIS**

50. In response to the final EIS, the Commission received comments from Wasatch County,<sup>39</sup> the Environmental Protection Agency (EPA), and Kern River. The EPA commented on the outstanding information that Kern River has committed to file prior to construction, wetland monitoring, and compensatory mitigation for greater sage-grouse

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<sup>39</sup> Wasatch County's letter stated their support for Kern River's use of local labor and local purchases for the proposed Apex Expansion and describes the socioeconomic impact of the proposed project; it raises no issues requiring Commission response.

habitat. The EPA indicated that its concerns on the draft EIS about missing information were adequately addressed in the final EIS. However, the EPA requests that this information be fully disclosed before construction begins. Environmental condition nos. 12 and 13 require that the additional species surveys and the final visual assessment report shall be filed and reviewed by the appropriate agencies for comment before construction can proceed.

51. The EPA supports the measures that Kern River is taking to minimize impacts on riparian and wetland areas, but maintains its previous recommendation that Kern River use a five-year monitoring and reporting period for revegetation. As stated in the final EIS, Kern River will monitor wetland revegetation for a minimum of three years following construction and it is required to then file a report with the Commission identifying the status of wetland revegetation efforts. Should the success criteria not meet requirements after three years, a remedial revegetation plan will be implemented to actively revegetate wetlands as required, and monitoring would continue until the success criteria are met. Therefore, we will not require an initial five-year monitoring and reporting period as suggested by EPA.

52. The EPA also indicates that the final EIS should include more details regarding any compensatory mitigation that Kern River would provide for impact on greater sage-grouse habitat. The EPA states that it has learned through conversations with the FWS the amount of compensation agreed to and EPA recommends that the final EIS clearly describe the amount of funding to be provided, how Kern River will ensure this funding, and the intentions for its use. Although the Commission does not require project applicants to commit monetary compensation for project-related impact on specific resources, the final EIS does discuss (EPA accurately notes) that Kern River has voluntarily agreed to provide such compensation for the temporary loss and fragmentation of sage-grouse habitats along the Wasatch Loop. However, we note that any compensation agreement Kern River has with the FWS is the result of direct negotiation between the parties. We disagree that the details of such an agreement must be described in the final EIS. The final EIS describes Kern River's proposed measures to avoid and minimize impact on the greater sage-grouse in section 4.7.1.1. The final EIS concludes that Kern River's proposed measures (exclusive of any privately agreed to compensation) will ensure that the project construction and operation does not result in population-level effects on sage grouse.

53. Kern River submitted comments on the final EIS, clarifying its need for an expansion of the permanent easement at a site-specific location to address safety concerns and to maintain the integrity of the Wasatch Fault crossing ramp near milepost 25.15. Kern River states that it will be necessary to increase the size of the permanent right-of-way at this location for a total length of approximately 900 feet, resulting in an additional 1.72 acres, to expand the protective berm (the fault crossing ramp). This segment of the loop will be installed on top of an earthen berm that was constructed for the existing Kern

River pipeline. The berm was created to protect the pipeline from the encroachment hazards from the adjacent open pit gravel mine and to mitigate for the crossing of the Wasatch Fault. Kern River states that the extra permanent easement is necessary to create and maintain the lateral support and slope stability necessary to allow for reliable operation of the pipeline.

54. While Kern River's original alignment sheets show a 50-foot-wide permanent easement near milepost 25, the final EIS contemplated the expansion of the protective berm. Specifically, the final EIS indicated that the special construction measures utilized during the construction of the existing Kern River pipeline would be required for the loop, such as utilization and expansion of the berm (fault crossing ramp). In Kern River's Analyses for Seismic Hazards Mitigation, which is part of the public record for this project, Kern River indicated that the berm would need to be expanded southward in the immediate vicinity of the fault crossing and that final grading of the slope must be at an inclination no steeper than 3:1 (horizontal to vertical). Kern River states that its easement negotiations with the landowner for the additional permanent right-of-way agreement are ongoing. The Commission finds that Kern River's request for the expanded easement in this location is essential to preserve the integrity of the pipeline. Prior to construction and as part of its implementation plan, Kern River shall file updated alignment sheets in accordance with environmental condition no. 4.

55. Kern River also commented that it can no longer use its planned Access Road 31 (Hidden Lake Drive) because the landowner has indicated that the road intercepts a building lot where he is commencing construction in the spring of 2011. Alternatively, Kern River requested a new 0.28-mile-long permanent access road, called Access Road 32B, that would add approximately 0.47 acre of permanent land disturbance.

56. The Commission typically requires evidence of landowner notification and approval for project modifications after the NEPA review of the project is complete. Because this information was not in the environmental analysis, the Commission has no record that the landowner was able to review the proposed changes and give concurrence to the new access road. Thus, the Commission will deny this project modification. If at a later date landowner agreements are reached for Access Road 32B, Kern River can file a request in accordance with environmental condition no. 5 for approval to create and use Access Road 32B.

### **C. Conclusion**

57. The Commission has reviewed the information and analysis contained in the final EIS regarding potential environmental effects of the project. Based on the consideration of this information and the discussion above, the Commission agrees with the conclusions presented in the final EIS and finds that the Apex Expansion, if constructed

and operated as described in the final EIS, is an environmentally acceptable action. This conclusion is also based on the environmental mitigation measures required in the appendix to this order.

58. Any state or local permits issued with respect to the jurisdictional facilities authorized herein must be consistent with the conditions of this certificate. The Commission encourages cooperation between interstate pipelines and local authorities. However, this does not mean that state and local agencies, through application of state or local laws, may prohibit or unreasonably delay the construction or operation of facilities approved by this Commission.<sup>40</sup>

59. At a hearing held on September 16, 2010, the Commission on its own motion received and made part of the record in this proceeding all evidence, including the application and exhibits thereto, submitted in support of the authorizations sought herein, and upon consideration of the record,

The Commission orders:

(A) A certificate of public convenience and necessity under section 7(c) of the NGA is issued to Kern River to construct and operate its Apex Expansion as described herein and more fully in its application.

(B) The certificate authorization granted in Ordering Paragraph (A) is conditioned on Kern River's compliance with all applicable Commission regulations under the NGA, particularly, the general terms and conditions set forth in Parts 154, 157, and 284, and paragraphs (a), (c), (e), and (f) of section 157.20 of the regulations.

(C) The certificate authorization granted in Ordering Paragraph (A) is conditioned on Kern River's compliance with the environmental conditions listed in the appendix to this order.

(D) Kern River is directed to execute firm contracts equal to the level of service represented in its precedent agreements with NVE prior to the commencement of construction.

(E) Kern River shall notify the Commission's environmental staff by telephone, e-mail, and/or facsimile of any environmental noncompliance identified by other federal,

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<sup>40</sup> See, e.g., *Schneidewind v. ANR Pipeline Co.*, 485 U.S. 293 (1988); *National Fuel Gas Supply v. Public Service Comm'n*, 894 F.2d 571 (2d Cir. 1990); *Iroquois Gas Transmission System, L.P.*, 52 FERC ¶ 61,091 (1990), *order on reh'g*, 59 FERC ¶ 61,094 (1992).

state, or local agencies on the same day that such agency notifies Kern River. Kern River shall file written confirmation of such notification with the Secretary within 24 hours.

(F) Kern River shall file actual revised tariff records incorporating the incremental reservation and usage rates to be assessed Apex Expansion shippers as well as other related changes, at least 30 days and not more than 60 days prior to the in-service date of the Apex Expansion, as discussed in the body of this order.

(G) Kern River and its representations made with respect to AFUDC accrual are subject to audit to determine whether it is in compliance with the revised policy and related Commission rules and regulations.

(H) Pursuant to section 157.20(b) of the Commission's regulations, the facilities authorized in Ordering Paragraph (A) must be constructed and placed in service within one year of the date of the order in this proceeding.

By the Commission.

( S E A L )

Nathaniel J. Davis, Sr.,  
Deputy Secretary.

## APPENDIX

### Environmental Conditions

As recommended in final EIS and otherwise amended herein, this authorization includes the following conditions.

1. Kern River shall follow the construction procedures and mitigation measures described in its application and supplemental filings (including responses to staff information and data requests), and as identified in the final EIS, unless modified by the Order. Kern River must:
  - a. request any modification to these procedures, measures, or conditions in a filing with the Secretary;
  - b. justify each modification relative to site-specific conditions;
  - c. explain how that modification provides an equal or greater level of environmental protection than the original measure; and
  - d. receive approval in writing from the Director of OEP before using that modification.
2. The Director of OEP has delegated authority to take whatever steps are necessary to ensure the protection of all environmental resources during construction and operation of the project. This authority shall allow:
  - a. the modification of conditions of the Order; and
  - b. the design and implementation of any additional measures deemed necessary (including stop-work authority) to assure continued compliance with the intent of the environmental conditions as well as avoidance or mitigation of adverse environmental impact resulting from project construction and operation.
3. **Prior to any construction**, Kern River shall file with the Secretary an affirmative statement, certified by a senior company official, that all company personnel, Environmental Inspectors (EI), and contractor personnel will be informed of the EI's authority and have been or will be trained on the implementation of the environmental mitigation measures appropriate to their jobs **before** becoming involved with construction and restoration activities.
4. The authorized facility locations shall be as shown in the final EIS, as supplemented by filed alignment sheets. **As soon as they are available, and before the start of construction**, Kern River shall file with the Secretary any revised detailed survey alignment maps/sheets at a scale not smaller than 1:6,000 with station positions for all facilities approved by the Order. All requests for

modifications of environmental conditions of the Order or site-specific clearances must be written and must reference locations designated on these alignment maps/sheets.

Kern River's exercise of eminent domain authority granted under NGA section 7(h) in any condemnation proceedings related to the Order must be consistent with these authorized facilities and locations. Kern River's right of eminent domain granted under NGA section 7(h) does not authorize it to increase the size of its natural gas pipeline to accommodate future needs or to acquire a right-of-way for a pipeline to transport a commodity other than natural gas.

5. Kern River shall file with the Secretary detailed alignment maps/sheets and aerial photographs at a scale not smaller than 1:6,000 identifying all route realignments or facility relocations, and staging areas, pipe storage yards, new access roads, and other areas that would be used or disturbed and have not been previously identified in filings. Approval for each of these areas must be explicitly requested in writing. For each area, the request must include a description of the existing land use/cover type, documentation of landowner approval, whether any cultural resources or federally listed threatened or endangered species would be affected, and whether any other environmentally sensitive areas are within or abutting the area. All areas shall be clearly identified on the maps/sheets/aerial photographs. Each area must be approved in writing by the Director of OEP **before construction in or near that area.**

This requirement does not apply to extra workspace allowed by the Kern River's Upland Erosion Control, Revegetation, and Maintenance Plan, and/or minor field realignments per landowner needs and requirements which do not affect other landowners or sensitive environmental areas such as wetlands.

Examples of alterations requiring approval include all route realignments and facility location changes resulting from:

- a. implementation of cultural resources mitigation measures;
  - b. implementation of endangered, threatened, or special concern species mitigation measures;
  - c. recommendations by state regulatory authorities; and
  - d. agreements with individual landowners that affect other landowners or could affect sensitive environmental areas.
6. **Within 60 days of the acceptance of the certificate and before construction begins**, Kern River shall file with the Secretary an Implementation Plan for review and written approval by the Director of OEP. Kern River must file with the Secretary revisions to the plan as schedules change. The plan shall identify:

- a. how Kern River will implement the construction procedures and mitigation measures described in its application and supplements (including responses to staff data requests), identified in the final EIS, and required by the Order;
  - b. how Kern River will incorporate these requirements into the contract bid documents, construction contracts (especially penalty clauses and specifications), and construction drawings so that the mitigation required at each site is clear to onsite construction and inspection personnel;
  - c. the number of EIs assigned for the Wasatch Loop and aboveground facility sites, and how the company will ensure that sufficient personnel are available to implement the environmental mitigation;
  - d. company personnel, including EIs and contractors, who will receive copies of the appropriate material;
  - e. the location and dates of the environmental compliance training and instructions Kern River will give to all personnel involved with construction and restoration (initial and refresher training as the project progresses and personnel change), with the opportunity for OEP staff to participate in the training session(s);
  - f. the company personnel (if known) and specific portion of Kern River's organization having responsibility for compliance;
  - g. the procedures (including use of contract penalties) Kern River will follow if noncompliance occurs; and
  - h. for each discrete facility, a Gantt or PERT chart (or similar project scheduling diagram), and dates for:
    - (1) the completion of all required surveys and reports;
    - (2) the environmental compliance training of onsite personnel;
    - (3) the start of construction; and
    - (4) the start and completion of restoration.
7. Kern River shall employ a team of two or more EIs for the Wasatch Loop. The EIs shall be:
- a. responsible for monitoring and ensuring compliance with all mitigation measures required by the Order and other grants, permits, certificates, or other authorizing documents;
  - b. responsible for evaluating the construction contractor's implementation of the environmental mitigation measures required in the contract (see condition 6 above) and any other authorizing document;
  - c. empowered to order correction of acts that violate the environmental conditions of the Order, and any other authorizing document;
  - d. a full-time position, separate from all other activity inspectors;

- e. responsible for documenting compliance with the environmental conditions of the Order, as well as any environmental conditions/permit requirements imposed by other federal, state, or local agencies; and
  - f. responsible for maintaining status reports.
8. Beginning with the filing of its Implementation Plan, Kern River shall file with the Secretary updated status reports **on a weekly basis until all construction and restoration activities are complete**. On request, these status reports will also be provided to other federal and state agencies with permitting responsibilities. Status reports shall include:
- a. an update on Kern River's efforts to obtain the necessary federal authorizations;
  - b. the construction status of the project work planned for the following reporting period, and any schedule changes for stream crossings or work in other environmentally-sensitive areas;
  - c. a listing of all problems encountered and each instance of noncompliance observed by the EIs during the reporting period (both for the conditions imposed by the Commission and any environmental conditions/permit requirements imposed by other federal, state, or local agencies);
  - d. a description of the corrective actions implemented in response to all instances of noncompliance, and their cost;
  - e. the effectiveness of all corrective actions implemented;
  - f. a description of any landowner/resident complaints which may relate to compliance with the requirements of the Order, and the measures taken to satisfy their concerns; and
  - g. copies of any correspondence received by Kern River from other federal, state, or local permitting agencies concerning instances of noncompliance, and Kern River's response.
9. **Prior to receiving written authorization from the Director of OEP to commence construction of any project facilities in each state**, Kern River shall file with the Secretary documentation that it has received all authorizations required under federal law (or evidence of waiver thereof) in each respective state.
10. Kern River must receive written authorization from the Director of OEP **before placing the project facilities into service**. Such authorization will only be granted following a determination that rehabilitation and restoration of the right-of-way and other areas affected by the project are proceeding satisfactorily.
11. **Within 30 days of placing the authorized facilities in service**, Kern River shall file with the Secretary an affirmative statement, certified by a senior company official:

- a. that the facilities have been constructed in compliance with all applicable conditions, and that continuing activities will be consistent with all applicable conditions; or
  - b. identifying which of the Certificate conditions Kern River has complied with or will comply with. This statement shall also identify any areas affected by the project where compliance measures were not properly implemented, if not previously identified in filed status reports, and the reason for noncompliance.
12. **Prior to construction**, Kern River shall file with the Secretary the results of the preconstruction raptor surveys and update the Biological Resources Mitigation Plan including any additional mitigation measures developed in consultation with UDWR, Fish and Wildlife, BLM, and the Forest Service, as applicable.
  13. **Prior to construction**, Kern River shall complete and file with the Secretary and the Forest Service, the final visual assessment report developed in consultation with the Forest Service that contains the specific-mitigation strategies for the USFS-managed lands.

All material filed with the Commission that contains **location, character, and ownership** information about cultural resources must have the cover and any relevant pages therein clearly labeled in bold lettering —**CONTAINS PRIVILEGED INFORMATION – DO NOT RELEASE**.

14. Kern River shall file with the Secretary noise surveys no later than 60 days after placing the Milford Compressor Station and the authorized units at the Coyote Creek and Elberta Compressor Stations in service. If the noise attributable to the operation of all of the equipment at the identified compressor stations at full load exceeds a day-night sound level of 55 decibels on the A-weighted scale at any nearby noise-sensitive areas, Kern River shall install additional noise controls to meet the level within one year of each station's in-service date. Kern River shall confirm compliance with the above requirement by filing a second set of noise surveys no later than 60 days after it installs the additional noise controls.