

UNITED STATES OF AMERICA
BEFORE THE UTAH PUBLIC
FEDERAL ENERGY REGULATORY COMMISSION SERVICE COMMISSION

Kern River Gas Transmission Company)
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2009 FEB -2 A 10:19
Docket Nos. RP04-274-000 609251
RP04-274-009
RECEIVED RP00-157-015

**MOTION FOR EXTENSION OF TIME
AND REQUEST FOR EXPEDITED CONSIDERATION**

Pursuant to Rules 212 and 2008 of the Federal Energy Regulatory Commission's ("Commission") Rules of Practice and Procedure (18 CFR §385.212 and §385.2008) Nevada Power Company ("Nevada Power") hereby requests that the Commission grant an extension of time for Kern River Gas Transmission Company ("Kern River") to cancel the interim rates, to recapture interim refunds from settling parties and to make final refunds in the captioned proceeding. Nevada Power also requests that the Commission provide for expedited consideration of this motion. In support hereof, Nevada Power states as follows:

I.

BACKGROUND

On September 30, 2008, Kern River filed a settlement offer in this proceeding that would be binding and effective on all parties and persons on the date of a final Commission order that approved the settlement without unacceptable conditions. For purposes of the settlement a "final commission order" was defined by Article 11 of the settlement as an order that was no longer subject to rehearing pursuant to the Natural Gas Act.

As a part of the Settlement, Kern River agreed to provide early refunds for settling parties for the period from November 1, 2004 until August 31, 2008, to calculate invoices for settling parties for service in September 2008 using the settlement rates, and to immediately place in

effect settlement rates on October 1, 2008. However, Article 12 of the settlement provided that in the event any issue was resolved by a final Commission order in any manner contrary to the settlement, the settlement would be void. After such a final Commission order, the settlement provided that Kern River would have the right to reinstate the higher motion rates effective October 1, 2008, to recoup the early refunds, and to be made whole for the difference between the amounts collected from the settling parties prior to reinstatement of the motion rates and the higher motion rates. Further, Article 5 of the settlement provided that if the settlement did not become effective in accordance with Article 11, that Kern River and a settling party could agree to offset any early refunds paid to that party against any amount Kern River may be obligated to refund in accordance with a final order of the Commission.

As a settling party, Nevada Power received early refunds from Kern River that exceeded \$17 million and it has paid the lower interim settlement rates from and after October 1, 2008. The benefit of the refunds and the lower settlement rates has already been credited to Nevada Power's retail customers through deferred energy accounting adjustments.

On January 15, 2009, the Commission issued its Opinion No. 486-B, Order on Rehearing, Proposed Settlement and Paper Hearing ("Opinion 486-B")¹ in which it, *inter alia*, rejected the September 30, 2008 settlement proposal and resolved the outstanding issue of return on equity. Opinion 486-B also directed Kern River to cancel the interim rates filed with the settlement and to recapture the interim refunds previously made at the earliest practical date.² At this time Opinion 486-B is not a final Commission order.

¹ 125 FERC ¶ 61,034.

² *Id.* at P. 192 and Ordering Paragraph (E).

Kern River has advised settling parties that it is willing to implement the provisions of Article 5 of the settlement and offset early refunds it paid against the amount it may be obligated to refund in accordance with a final order of the Commission. Despite repeated verbal requests for clarification from Nevada Power Company, Kern River has not addressed the issue of the collection of the difference between the interim settlement rates and the motion rates for the period from October 1, 2008 to the date the Commission issues a final order and accepts Kern River's compliance filing conforming to such final order, except to verbally indicate that effective January 1, 2009 forward, Shippers will be billed at the motion rates.

II.

MOTION

Nevada Power respectfully requests that the Commission extend the time for Kern River to cancel the interim rates filed with the settlement and to recapture the interim refunds previously made to settling parties until a date certain after the Commission's order becomes final and no longer subject to rehearing. Granting this request would be consistent with the contractual obligations contained in the settlement, with the Commission's regulations and prior practice, and with the public interest.

First, as noted above, Article 12 of the settlement provides that the settlement becomes void only upon issuance of a final Commission order that resolves an issue (return on equity for example) in a manner contrary to its treatment by the settlement. Article 12 goes on to provide that the right of Kern River to recoup early refunds and to reinstate and collect the motion rates is not triggered unless and until the stipulation does not become effective in accordance with Article 11, *i.e.*, upon the issuance of a final Commission order, an event which has not yet

occurred. Thus, at this time there appears to be no effective contractual authority for Kern River to recoup early refunds or to reinstate the motion rates.

Second, Nevada Power submits that granting its requested extension of time would be consistent with the Commission's general rule contained in Section 154.501(a)(1) of its regulations that refunds must be made "within 60 days of a final order." A final order is defined in that section as "an order no longer subject to rehearing." In response to this provision of its regulations, the Commission has frequently granted requests for stays or extensions of time to make refunds pending issuance of an order on rehearing.³

Third, the public interest would be furthered by the Commission extending its mandate that Kern River recoup refunds and reinstate higher rates until some time after a final order is issued in this proceeding. Under current conditions, some settling parties may have difficulty accessing credit markets for the cash necessary to return the refunds to Kern River. Also, Order 486-B modified only one part of the proposed settlement, the return on equity, by lowering the return. Accordingly, if the order is upheld on rehearing the result will be that Kern River will be required to refund an amount that exceeds the amount of the early refunds. Thus, it would be far less costly and disruptive to all parties to delay those refunds until a final order is issued, rather than requiring parties to return the early refunds only to require Kern River to reissue those refunds plus additional amounts at a later date. Non-settling parties would not be harmed by a

³ See: *Northern Pump Company*, 49 FERC ¶61,045 (1989); *City of Lebanon, Ohio v. Cincinnati Gas & Electric Company*, 62 FERC ¶61,233 (1993); *Public Service Company of New Mexico*, 75 FERC ¶ 61,146 (1996); *Tennessee Gas Pipeline Company*, 80 FERC ¶ 61,256 (1997); *Transcontinental Gas Pipe Line Corporation*, Docket No. RP83-137-030, unpublished Notice issued July 2, 2002; *Transcontinental Gas Pipeline Corporation*, Docket No. RP92-149-001, unpublished Notice issued March 13, 1995; *Northern Natural Gas Company*, Docket No. RP93-206-017, unpublished Notice issued March 20, 1998; *Williams Natural Gas Company*, Docket No. RP93-109-013, unpublished Notice issued October 13, 1998; *Transcontinental Gas Pipe Line Corporation*, Docket No. RP97-71-012, unpublished Notice issued December 22, 1999; *Williston Basin Interstate Pipeline Company*, Docket No. RP00-107-003, unpublished Notice issued December 23, 2005; *Westar Energy Inc.*, Docket No. ER03-9-004, unpublished Notice issued September 15, 2006; *Columbia Gulf Transmission Company*, Docket No. RP08-347-002, unpublished Notice issued January 15, 2009.

delay in the refund obligation because they will receive additional interest on the refund amounts through the date the refunds are made.⁴

Nevada Power acknowledges that Kern River has offered to allow settling parties to elect to delay repayment of the early refunds and to offset those refunds against the amount that Kern River is ultimately obligated to refund in accordance with a final Commission order in this proceeding. However, this offer comes with conditions and it is based upon the provisions of Article 5 of the settlement, which arguably is triggered only upon issuance of a final Commission order. Also, not all settling parties may elect this offset, which raises the potential for differing treatment of the early refunds among settling parties. Nevada Power submits that it would be more efficient for the Commission to delay the recapture of the early refunds until after it issues a final order on rehearing and to provide that Kern River may offset refunds already made against its ultimate refund obligation. This course of action would achieve uniform treatment for all settling parties.

For similar reasons, Nevada Power requests that the Commission delay the effectiveness of the requirement that Kern River immediately cancel the interim rates filed with the settlement. Any adjustment to those rates should be delayed until the Commission issues its final order in this case.⁵ Settling parties have been paying the lower interim rates effective from and after October 1, 2008. If Kern River is required to reinstate the higher motion rates effective retroactively to that date, then settling parties presumably will be billed for the difference between those rates and the interim settlement rates, perhaps with the addition of interest. As noted, they will have to make a cash payment to Kern River and, for companies such as Nevada

⁴ The Commission has noted this protection in orders extending the time for making refunds. See for example: *Transcontinental Gas Pipe Line Corporation*, Docket No RP83-137-030, unpublished Notice issued July 2, 1992.

⁵ Kern River's offer to delay repayment of the early refunds does not address the question of reinstatement of the higher motion rates.

Power, collect those costs from and increase rates to their retail customers. Having done that, after the Commission issues its order on rehearing, perhaps in only a few months, customers will again receive refunds from Kern River attributable to the post October 1, 2008 period which will have to be accounted for and once again credited to retail customers.

Nevada Power submits that such back and forth transfers of cash would be costly for all parties to undertake and administratively inconvenient and burdensome on retail consumers. The rates paid by non-settling parties would not change until a final order is issued but they would be protected by continuation of Kern River's refund obligation and by payment of interest on the refunds calculated for the entire RP04-274-000 rate period until revised rates are made effective pursuant to a final Commission order.

III.

REQUEST FOR EXPEDITED TREATMENT

Opinion No. 486-B required Kern River to cancel the interim rates filed with the settlement, apparently immediately, and to recapture refunds previously made "at the earliest practical date after this order issues." Nevada Power respectfully requests expedited action on this motion in order to provide certainty for Kern River and its customers.⁶

IV.

REQUEST FOR ACTION BY THE SECRETARY

Nevada Power submits that the Secretary of the Commission has the authority to grant this request pursuant to Sections 375.302(f) or 375.302(j) of the Commission's regulations (18 C.F.R. §375.302(f) or §375.302(j)). For this purpose, a *pro forma* draft notice of extension of time is attached.

⁶ Kern River's offer to provide an election to delay and offset refunds expires on February 6, 2009

V.

CONCLUSION

WHEREFORE, Nevada Power Company respectfully requests that the Commission expeditiously grant this request for an extension of time for Kern River to cancel the interim settlement rates, to recapture refunds previously made and to make final refunds until after the Commission issues an order on rehearing, consistent with Section 154.501(a)(1) of its regulations (18 C.F.R. §154.501(a)(1)).

Respectfully submitted,

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January 28, 2009

Pro Forma

UNITED STATES OF AMERICA
FEDERAL ENERGY REGULATORY COMMISSION

Kern River Pipeline Company) Docket Nos. RP04-274-000
) RP04-274-____
) RP00-157-____

NOTICE OF EXTENSION OF TIME

(January __, 2009)

On January 28, 2009, Nevada Power Company (“Nevada Power”) filed a motion for extension of time for Kern River Pipeline Company (“Kern River”) to cancel the interim settlement rates, to recapture refunds previously made and to make final refunds as required by the Commission’s “Order on Rehearing, Proposed Settlement and Paper Hearing,” issued on January 15, 2009, in the above-docketed proceeding. In its motion, Nevada Power asks that the time for those actions be extended until a date certain following issuance of a final Commission order denying rehearing, consistent with Section 154.501(a)(1) of the Commission’s regulations (18 C.F.R. §154.501(a)(1)). The motion also states that such an extension will allow parties to offset refunds previously made by Kern River without having to first return amounts to Kern River and will avoid parties having to pay the higher motion rates pending issuance of a final Commission order addressing any requests for rehearing. The motion also states that Kern River’s non-settling customers would not be harmed by this delay because they will receive additional interest on refund amounts through the date the refunds are made.

Upon consideration, notice is hereby given that an extension of time for Kern River to cancel the interim settlement rates, to recapture refunds previously made and to make final refunds as directed by the Commission’s January 15, 2009 Order is granted to and including _____ days after Commission action on requests for rehearing.

Kimberly D. Bose,
Secretary

CERTIFICATE OF SERVICE

I hereby certify that I have this 28th day of January 2009 served the foregoing document upon each person designated on the official service list compiled by the Secretary in this proceeding.

Roy R. Robertson, Jr.

Roy R. Robertson Jr.