95 FERC ¶ 61,022
UNITED STATES OF AMERICA
FEDERAL ENERGY REGULATORY COMMISSION

Before Commissioners: Curt Hébert, Jr., Chairman;
William L. Massey, and Linda Breathitt.

Kern River Gas Transmission Company | Docket No. CP01-106-000

ORDER ISSUING CERTIFICATE

(Issued April 6, 2001)

On March 15, 2001, Kern River Transmission Company (Kern River) filed an application pursuant to section 7(c) of the Natural Gas Act (NGA) and Subpart A of Part 157 of the Commission's regulations for temporary and permanent certificates of public convenience and necessity authorizing Kern River to construct and operate facilities to provide up to 135,000 Mcf per day of limited-term, incremental transportation capacity from Wyoming to California to help address the urgent need for additional energy in California. The proposal (the California Action Project), which will add a total of 53,900 horsepower (h.p.) to Kern River's system, includes three new compressor stations (two of which are located at existing Kern River facility sites), and upgraded facilities at three existing compressor stations and an existing meter station.

For the reasons discussed below, we will issue Kern River's requested certificate authorization, subject to the incremental rate, environmental, and other conditions set forth herein.

I. BACKGROUND

A. Description of Existing System and Common Facilities

Kern River's pipeline system originally was constructed pursuant to an optional certificate of public convenience and necessity issued January 24, 1990, in Docket No. CP89-2048, to provide up to 700,000 Mcf/d of year-round firm transportation services.

Kern River's system extends nearly 900 miles from its Wyoming receipt points,[1] through Utah and Nevada, to the San Joaquin Valley near Bakersfield, Kern County, California. Kern River's system has delivery points accessing various markets in Utah and southern Nevada. At its terminus, Kern River has a number of delivery points serving enhanced oil recovery and associated cogeneration markets. At its Daggett and Wheeler Ridge delivery points, respectively, Kern River interconnects with the two major California gas distributors, Pacific Gas & Electric Company (PG&E) and Southern California Gas Company (SoCalGas).

The main transmission line consists of approximately 680 miles of 36-inch pipe from Kern River's Muddy Creek Compressor Station in Lincoln County, Wyoming to a point of convergence near Daggett, San Bernardino County, California (Daggett Interconnect) where the system interlinks with another pipeline system owned by Mojave Pipeline Company (Mojave). From the Daggett Interconnect, Kern River and Mojave jointly own a 42-inch mainline, two laterals (Eastside and Westside), and common delivery meter stations thereon, extending into the Bakersfield area. The jointly-owned facilities are commonly referred to as the "Common Facilities."[2]

B. <u>2002-03 Expansion Plans</u>

On November 15, 2000, Kern River filed an application in Docket No. CP01-31-000 for authority to construct and operate its 2002 Expansion Project. This project involves additional compression and metering facilities required to expand Kern River's system capacity from Wyoming to California to serve 124,500 Dth per day of new, firm, long-term contract demand, commencing May 1, 2002. Kern River proposes to treat the

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[1]Kern River's system originates at a receipt point interconnect with the Williams Gas Processing Company's Opal Plant about six miles north of its Muddy Creek Compressor Station in Lincoln County, Wyoming. In the general vicinity of the Muddy Creek Compressor Station, Kern River has interconnects with other processing plants in the Rocky Mountain supply basin and with other interstate pipelines, including Northwest Pipeline Corporation, Colorado Interstate Pipeline Company, and Questar Pipeline Company.

[2]Under a "Construction, Operation and Maintenance (COM) Agreement" between Kern River, Mojave, and Mojave Pipeline Operating Company (MPOC), the parties established the initial ownership interest in the Common Facilities as 63.636% for Kern River and 36.364% for Mojave. The COM Agreement establishes MPOC as being responsible for constructing and operating the Common Facilities, including any expansion/additions thereto.

2002 Expansion Project on a rolled-in basis. The primary markets for the shippers in the 2002 Expansion Project are existing and new electric generation markets in California.[3]

According to Kern River, increasing growth in California electric generation requirements, coupled with on-going development of several new electric power generation projects that may be directly connected to Kern River's system in southern Nevada and California, indicated a need for a further expansion of its system by 2003.[4] Accordingly, from November 30, 2000 to January 31, 2001, Kern River held an open season to solicit commitments for new, long-term firm service to be made available on or about May 1, 2003. Based upon the response to the open season, Kern River states that it has prepared preliminary designs for a 2003 Expansion Project at various incremental capacity levels. Kern River has determined that its 2003 Expansion Project will be incrementally priced. Kern River expects to file an application with the Commission for its 2003 Expansion Project later this year.

C. California Action Project

In its application for the California Action Project, Kern River contends that the energy shortages experienced by California during the past few months, and the associated escalation of energy prices, demonstrate the need for immediate actions to increase energy supplies to California. Kern River asserts that it determined that a compression-only expansion could accelerate the availability of expansion capacity to California. Kern River states that it has designed its California Action project to use a combination of new permanent and temporary facilities, with the temporary facilities intended to be subsequently replaced by permanent 2002 Expansion Project facilities, and the proposed permanent facilities intended to be subsequently incorporated into the design of its 2002 and 2003 Expansion Projects.

According to Kern River, it needs expedited processing of all necessary construction permits and authorizations in order to be able to provide service by July 1, 2001. Kern River states that it has been meeting with affected permitting agencies and governmental entities to explain the urgency of the project and to solicit cooperation in expediting the permitting and approval process.

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[3]We take official notice of the record in Docket No. CP01-31-000, some of which bears on issues raised in this case. We note that all of the parties in this case are parties in Docket No. CP01-31-000.

[4]See Application, Docket No. CP01-106-000, at p. 8.

On March 12, 2001, Kern River announced an open season to solicit commitments for up to 135,000 Mcf per day of incremental firm transportation service to California at incremental rates, with an anticipated in-service date of July 1, 2001. Kern River offered limited-term expansion capacity of 114,000 Mcf per day available for a term expiring April 30, 2002, plus 21,000 Mcf per day available for a term expiring April 30, 2003. The latter increment of capacity represents the capacity that will be in excess of the 2002 Expansion Project shipper requirements, 124,500 Dth per day, commencing May 1, 2002.

Kern River states that the California Action Project open season announcement did not solicit capacity relinquishment from existing shippers because Kern River solicited capacity relinquishments in its open seasons for both the 2002 and 2003 Expansion Projects, and that in neither case did any shippers express interest in relinquishing capacity to California.

As a result of the California Action Project open season, which concluded at noon on March 15, Kern River states that a total of 38 shippers executed binding Precedent Agreements requesting the maximum quantity and term for the 114,000 Dth/d package of capacity. Similarly, Kern River states that a total of 30 shippers executed binding Precedent Agreements requesting the maximum quantity and term for the 21,000 Dth/d package of capacity.

Kern River states that since the offer was oversubscribed, it used pro-rata tie-breaker allocations, consistent with the open season notice. Consequently, each of the 38 shippers that requested the 114,000 Dth/d of capacity for the full 10-month term was allocated 3,000 Dth/d of that capacity. Likewise, each of the 30 shippers that requested the 21,000 Dth/d of capacity for the full 22-month term was allocated 700 Dth/d of that capacity.[5] The Wheeler Ridge delivery point was allocated a total of 126,600 Mcf/d of the incremental delivery capacity.

Kern River states that it notified the open season participants that it would deliver to them Transportation Service Agreements (TSAs) reflecting the capacity allocations on March 22. Under the binding commitments in the Precedent Agreements, the shippers were then to Kern River's creditworthiness requirements and return executed copies of

[5]The names of the 43 winning shippers (several shippers tendered requests for both packages of capacity) and the respective capacity allocations, including allocations of associated receipt point and delivery point capacities, are listed in Appendix B.

the TSAs to Kern River on March 26, 2001.[6] In a March 29, 2001 supplement to its application, Kern River states that all of the tendered TSAs have been executed by credit-worthy shippers.

II. PROPOSALS

A. Construction/Operation Certificate and Pre-Granted Partial Abandonment

Kern River seeks a certificate authorizing it to construct and operate new or upgraded facilities at three new compressor station sites, three existing compressor station sites, and one existing meter station site, as detailed below.

Further, pending issuance of a permanent certificate, Kern River requests issuance of a temporary certificate pursuant to Section 157.17 of the Commission's regulations. Kern River states that it will use its best efforts to compress the construction period and expedite construction activities at the three new compressor sites to meet its proposed in service date of July 1, 2001. Kern River states that, to meet the July 1, 2001 deadline, all necessary construction permits and approvals must be granted immediately.

Kern River also requests pre-granted approval to abandon the temporary compressor unit proposed for installation at the new Daggett Compressor Station, with such abandonment to occur concurrently with installation of the permanent electric motor-driven compressor unit proposed for Kern River's 2002 Expansion Project.[7]

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[6] According to Kern River, each TSA includes non-conforming provisions addressing (1) Kern River's right to terminate the TSAs if all necessary permits and regulatory approvals are not received and accepted by April 2, 2001; (2) Shipper's agreement that, if Kern River converts the TSAs from volumetric to thermal contracts, Shipper's quantities will be converted using a factor a 1,000 Btu per cubic foot; and (3) certain liability issues. An additional non-conforming provision in the TSAs with an April 30, 2003 termination date establishes that any otherwise applicable right-of-first-refusal will not apply upon termination of the TSAs, since, commencing May 1, 2003, the underlying capacity is reserved for Kern River's long-term expansion.

[7] If Kern River receives a temporary waiver of emissions permit requirements from the Environmental Protection Agency (EPA) and the Mojave Desert Air Pollution Control District, Kern River intends to amend its certificate application for the 2002 Expansion Project to reflect an in-service date of May 1, 2003, instead of May 1, 2002, for the electric motor-driven compressor.

B. Facilities

The proposed facilities include: (1) three new compressor stations, the Elberta Compressor Station, the Veyo Compressor Station and the Daggett Compressor Station; (2) upgrades and restages for the compressor units at three existing compressor stations, the Muddy Creek Compressor Station, the Fillmore Compressor Station, and the Goodsprings Compressor Station; and (4) an upgrade at the existing Wheeler Ridge Meter Station. The compressor unit proposed for the new Daggett Compressor Station is a temporary facility, which subsequently will be replaced with a permanent compressor unit as part of Kern River's 2002 Expansion Project currently pending in Docket No. CP01-31-000. Upon conclusion of the California Action Project, Kern River states that the remainder of the proposed facilities will be permanently incorporated into either the 2002 or 2003 Expansion Projects.

The proposed compression facilities will add a total of 53,900 ISO-rated horsepower (15,000 of which is temporary at Daggett) to Kern River's system, at a total cost of approximately $81 million. Below is a more detailed description of the proposed facilities.

Elberta Compressor Station

Kern River proposes to locate the proposed Elberta Compressor Station in Utah County, Utah at an existing launch/receiver facility on a 27.8-acre site. The station would consist of two Solar Taurus 60 gas-fueled, turbine-driven centrifugal compressor units rated at 7,150 h.p. each.

Veyo Compressor Station

This new compressor station would be located on a 15-acre portion of an undeveloped 37.9 acre site in Washington County, Utah. The station would consist of one Solar Mars 100 gas-fueled, turbine-driven centrifugal compressor unit rated at 15,000 h.p. The primary appurtenant facilities would include auxiliary buildings, station piping/valves, gas coolers, horizontal filter/separators, a pig launcher/receiver, and an auxiliary electric generator. To facilitate site access, Kern River indicates that it plans to improve approximately 4.3 miles of an existing county road.

Daggett Compressor Station

The proposed new Daggett Compressor Station includes one temporary Solar Mars 100 gas-fueled, turbine-driven centrifugal compressor unit rated at 15,000 h.p. and appurtenances. Kern River states that this unit is larger than is actually required at this location, but that it is the only unit it was able to acquire that included a compressor that could accommodate the highly variable and wide-ranging operational flow requirements. Kern River states that it has petitioned the Mojave Desert Air Quality Management District for a variance to install natural gas driven compression at this location.[8] Kern River intends to locate the new compressor station at the Daggett Interconnect (i.e., the start of the Common Facilities) metering facilities on a 27.7-acre site in San Bernardino County, California.

Muddy Creek Compressor Station Upgrades/Restages

At its existing Muddy Creek Compressor Station, Kern River proposes to upgrade the two existing Solar Mars 90 gas fueled turbine-driven centrifugal compressor units, rated at 12,600 h.p. each, to Solar Mars 100 units, rated at 15,000 h.p. each, and to restage the associated compressors for improved operational efficiency at the new design flow conditions.

Fillmore Compressor Station Upgrade/Restage

At its Fillmore Compressor Station, Kern River proposes to upgrade the existing Solar Mars 90 gas fueled turbine-driven centrifugal compressor unit, rated at 12,600 h.p., to a Solar Mars 100 unit, rated at 15,000 h.p., and to restage the associated compressor to improve operational efficiency under the new design flow conditions.

Goodsprings Compressor Station Upgrade/Restage

At its Goodsprings Compressor Station, Kern River proposes to upgrade the existing Solar Mars 90 gas fueled turbine-driven centrifugal compressor unit, rated at 12,600 h.p., to a Solar Mars 100 unit, rated at 15,000 hp, and to restage the associated compressor to improve operational efficiency under the new design flow conditions.

Wheeler Ridge Delivery Meter Station Upgrade

Kern River plans to upgrade the jointly-owned Wheeler Ridge Delivery Meter Station on the Common Facilities in Kern County, California by adding two new 12-inch

[8]Kern River states that it will amend its 2002 Expansion Project to reflect reliance upon this temporary compressor from May 1, 2002, until it is replaced by the originally proposed electric motor-driven compressor on May 1, 2003.

orifice meter runs and appurtenances. Kern River contends that the upgrade will increase the design delivery capacity at that point from approximately 598,000 Mcf/d to approximately 800,000 Mcf/d at a delivery point pressure of 587 psig into SoCalGas' system.

C. System Capacity and Operations

According to Kern River, the proposed additional 53,900 h.p. will expand its mainline capacity for transportation from Wyoming to California by approximately 135,000 Mcf per day, under both the summer day design case and the winter day maximum case. On a summer day, the certificated mainline design capacity to California increases from 700,000 to 835,000 Mcf per day. On a winter day, the mainline capacity to California increases from 693,000 to 828,000 Mcf per day. Because of existing seasonal firm contract commitments, the winter day cases also reflect deliveries of 70,000 Mcf per day to delivery points near Las Vegas, Nevada. On the Common Facilities, the summer day cases show that the capacity increases by 135,000 Mcf per day, from 700,000 to 835,000 Mcf per day.

Upon the contemplated May 1, 2002, in-service of its pending 2002 Expansion Project, Kern River states that most of the California Action Project facilities, along with some additional facilities to be certificated in Docket No. CP01-31-000, will be utilized to provide 124,500 Dth per day of long-term, firm service for 2002 Expansion Project shippers. The excess design capacity available at that time due to the California Action Project facilities, 21,000 Mcf per day, will be used for California Action Project service until May 1, 2003, when the associated permanent facilities will be incorporated into Kern River's planned 2003 Expansion Project.[9]

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[9] The proposed meter station upgrade will result in some excess capacity at the Wheeler Ridge Delivery Point. Kern River intends to reserve all such excess meter capacity for use in the design of its forthcoming 2003 Expansion Project. According to Kern River, the subject reservations of capacity for planned future expansions is not precluded by its existing FERC Gas Tariff. However, Kern River contends that it currently plans to develop a tariff provision that would explicitly provide for capacity reservations in such circumstances. During the period between completion of the herein proposed California Action project and the completion of the contemplated 2003 Expansion Project, the reserved capacity at the Wheeler Ridge delivery point would be available for interruptible and secondary firm deliveries. Kern River must file its tariff provision reserving capacity for planned future expansions within 30 days of the date of

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Kern River designed the proposed new Daggett Compressor Station to compress the combined Kern River and Mojave gas stream on the Common Facilities. By compressing the common gas stream, this station will satisfy Kern River's "keep-whole" compression obligation under the COM Agreement. That obligation allows Kern River to expand capacity on the Common Facilities solely for its benefit, as long as sufficient compression is installed to also compress Mojave's gas so Mojave's existing capacity rights on the Common Facilities will not be adversely impacted.[10]

D. Proposed Incremental Rates

Kern River requests approval of a two-part incremental rate for the proposed incremental firm capacity. The rate is designed to recover the incremental cost of service attributable to the proposed facilities over the term of the California Action Project. On a 100 percent load factor basis, the total rate is $0.8790/Mcf. The reservation charge is $0.8190/Mcf, and the usage charge is $0.06/Mcf.[11] Stated in dekatherms, the total rate is $0.8396/Dth, with $0.7823/Dth for the reservation charge and $0.057/Dth for the usage charge.[12] The billing determinants used to derive the incremental rate assume 100 percent utilization of the new capacity for the maximum available terms, i.e., 114,000 Mcf/d from July 1, 2001, through April 30, 2002, and 21,000 Mcf/d from July 1, 2001, through April 30, 2003.

The estimated cost of the project is $81.3 million, which includes $77.7 million of capital expenditures and $3.6 million of compressor restage expenses. The $77.7 million of capital expenditures includes $10.5 million for temporary facilities at Daggett and $18.5 million of additional costs attributable to compressing the construction period and

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[9](...continued) this order.

[10]MPOC has the right to design, construct and operate on behalf of KRGT the proposed new Daggett Compressor Station and the upgrade to the Wheeler Ridge Meter Station, since both are on the Common Facilities. Kern River states that it will work with MPOC to obtain a one-time waiver of MPOC's rights under the COM Agreement to allow Kern River to arrange for the design and construction of the proposed temporary gas turbine and appurtenances at Daggett.

[11]This equates to a monthly reservation charge of $24.9113/Mcf.

[12]Using the current thermal conversion factor of 1.047 Dth per Mcf, this equates to a monthly reservation charge of $23.7950/Dth.

expediting construction activities for the permanent facilities. The costs associated with the temporary facilities and the additional, expedited costs are amortized over the proposed 22-month period of the California Action Project. The remaining costs are levelized over approximately a 15-year term.

With one exception, the cost of service is derived using factors and methodology consistent with Kern River's last approved rate settlement in Docket No. RP99-274-003, which consists of a capital structure of 70 percent debt, 30 percent equity and a debt cost of 8.7 percent. The exception is the proposed 15.25 percent return on equity (ROE), which represents a 2 percent premium over the 13.25 percent ROE authorized in the approved settlement. The overall rate of return is 10.67 percent. Kern River states the equity premium is based on the added risk of the California Action Project.

Kern River proposes an incremental fuel reimbursement rate of 4.2 percent for the period from July 1, 2001, through April 30, 2002, and 6.2 percent for the period from May 1, 2002, through April 30, 2003. Kern River states these fuel rates represent the average of the summer day and winter day fuel differences between the system design cases with and without the proposed facilities, except that the Daggett Compressor Station is anticipated to operate at the 15 percent load factor proposed in the 2002 Expansion Project. Kern River states these incremental fuel reimbursement rates will apply only to the incremental shippers and will apply irrespective of actual contract flow paths. The incremental shippers will also be required to provide reimbursement of system lost and unaccounted for gas, according to Kern River's current tariff procedures, at the same rate as existing shippers.

Finally, Kern River requests approval of the pro forma tariff sheets to implement the proposed incremental transportation rate and associated incremental fuel rates. Kern River also proposes to change the interruptible and authorized overrun service rates as set forth in its tariff to match the 100 percent load factor rate proposed for the incremental firm service. Any increased revenues due to having a higher rate cap for such services, Kern River states, will be shared 50/50 with its shippers, after the adjusted revenue threshold is reached, as provided in Kern River's last rate settlement.

E. Accounting Treatment

Since the proposed restaging of existing compressor units consists of replacing minor items of depreciable property, Kern River will follow Gas Plant Instruction 10 C(3) in accounting for the associated costs. Thus, approximately $3.6 million will be expensed in Account 864. Since these restages are for permanent facilities that, after expiration of the California Action Project term, subsequently will be utilized in Kern River's long-term expansion projects (which are supported primarily by 15 year contracts), Kern River requests approval to amortize the restaging expenses over 15 years.

Kern River also requests any waivers or approvals that may be necessary to amortize the proposed $10.5 million of temporary facility costs and the estimated $18.5 million of excess permanent facility costs due to compressed and expedited construction activities over the 22-month term of the California Action Project.

Since the remainder of the permanent facility costs are levelized over 15 years, consistent with the term of most of the contracts for the ET rate program, the 2002 Expansion Project and the forthcoming 2003 Expansion Project, Kern River requests approval to continue accounting for the differences between its book depreciation and its regulatory depreciation as a regulatory asset or liability, as appropriate, with amortization over the primary terms of the underlying service agreements.

F. Certificate Policy Statement

Kern River contends that under the criteria set forth in the Commission's policy statement on certification of new pipeline facilities, the proposed California Action Project is needed and will serve the public interest.[13] Since the project is designed to provide incremental service at incremental rates, Kern River contends that it automatically satisfies the threshold requirement of not relying upon financial subsidization by existing customers. Further, the proposed amortization of the excess costs of permanent facilities due to expedited construction activities over the term of the California Action project will ensure that neither the 2002 Expansion Project customers (and existing customers since that project is proposed to be rolled-in) nor the forthcoming 2003 Expansion Project customers will be required to subsidize the California Action Project customers.

Kern River states that market support for the proposed project is demonstrated by shipper commitments for all of the proposed incremental capacity. Kern River also states that there is an urgent need for this capacity to provide additional gas supplies as quickly

[13] Certification of New Interstate Natural Gas Pipeline Facilities (Policy Statement), 88 FERC ¶ 61,227 (1999), Order Clarifying Statement of Policy, 90 FERC ¶ 61,128 (2000).

as possible to help ameliorate the energy shortages currently being experienced in California.

According to Kern River, the proposed project will have no adverse impact on existing pipelines in the targeted market area. Mojave is the only other interstate pipeline providing service in the area. The primary firm delivery points for the expansion shippers are located on the Common Facilities, jointly owned with Mojave. Further, Kern River states that the proposed Daggett Compressor Station is designed to satisfy its "keep whole" pressure obligations, so Mojave's existing capacity rights on the Common Facilities will not be compromised.

Kern River states that the proposed construction will minimally impact only a few landowners. For example, all work at the existing compressor and meter station sites will take place within the existing, fenced station yards and existing access roads will be utilized. Kern River states that only approximately 130 acres of land will be disturbed during construction, with only about 85 acres of that amount required for the on-going operation of the three new proposed compressor stations and the improved access road for the Veyo site.

Kern River indicates that it has filed a request for an amended right of way grant from the Bureau of Land Management (BLM) to cover the additional land rights required for the Veyo Compressor site and part of the Daggett Compressor site. Negotiations to acquire the proposed land rights from the other owner at the Daggett Compressor site, Southern California Edison Company, and the single owner of the Elberta properties, the LDS Church, are nearing completion. Kern River states that it will have no need to rely upon eminent domain authority.

III. INTERVENTIONS, PROTESTS and COMMENTS

Notice of Kern River's application in Docket No. CP01-106-000 was published in the Federal Register on March 22, 2001 (66 Fed. Reg. 16048). Timely motions to intervene were filed by parties listed in Appendix A to this order.[14]

Four intervenors raise substantive issues.

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[14] Timely, unopposed motions to intervene are granted by operation of Rule 214 of the Commission's Rules of Practice and Procedure. 18 CFR § 384.214 (2000).

The Firm Customers,[15] PG&E, and SoCalGas express concern about the impact of the California Action Project on the Wheeler Ridge delivery point. The Firm Customers object to Kern River's selling additional capacity at Wheeler Ridge, which, they allege, will aggravate the constraint problem there and degrade the rights of existing shippers. The Firm Customers cite the El Paso case[16] for the proposition that it is unjust and unreasonable to sell more capacity at a delivery point than is available. The Firm Customers request that existing firm shippers who have Wheeler Ridge primary firm delivery point rights be given a priority over expansion shippers. PG&E makes similar arguments, and also asks that additional information be obtained from Kern River or SoCalGas, possibly through a technical conference.

SoCalGas also asserts that the California Action Project will reduce the reliability of firm service to existing customers. SoCalGas explains that it allocates capacity at Wheeler Ridge pro rata among the upstream pipelines (Kern River/Mojave, PG&E, and Elk Ridge), based on nominations. The upstream pipelines then use their priority mechanisms and allocation procedures to determine which shippers' gas is delivered to the SoCalGas interconnect.[17] SoCalGas avers that its market forecasts show a drop in on-system gas demand, including electric generation gas demand, in the near future, as new, "out-of-area" generating plants displace marginal generators in Los Angeles and San Diego. SoCalGas states that, while it plans to maintain 15-20 percent excess capacity, it will consider further expansions prudent only if they are supported by shipper commitments.[18] Like PG&E, SoCalGas suggests that the Commission convene a technical conference to address California pipeline expansion issues.[19]

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[15]The Firm Customers consist of Aera Energy L.L.C., Amoco Production Company, CanWest Gas Supply Inc., Chevron U.S.A. Inc., RME Petroleum Company, and Texaco Inc.

[16]Amoco Energy Trading Corp, et al., 93 FERC ¶ 61,060 (2000).

[17]SoCalGas contends that the aggregated delivery point rights of upstream pipelines should not exceed downstream receipt capacity.

[18]SoCalGas states that a number of pipelines, including Kern River, El Paso, Transwestern Pipeline Company, and Pacific Gas & Electric Gas Transmission Company, are proposing or considering expansions to California.

[19]SoCalGas proposes that the Commission hold a technical conference in the next 15 to 20 days, with initial comments to be filed five days after the conference, and reply

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Amoco Production Company and BP Energy Company (Amoco) protest the rates for the California Energy Project. Amoco states that Kern River has not provided sufficient support for the proposed incremental rate on the project, which is approximately 50 percent higher than Kern River's existing firm transportation rate (and the rate for the 2002 expansion project). Similarly, Amoco notes, the proposed fuel rates for the project are considerably higher than Kern River's current charges, or those proposed for the expansion. Amoco also asserts that Kern River has not supported its proposed incentive rate of return. In consequence, Amoco contends that the proposed rates are not just and reasonable, and asks the Commission to set Kern River's current transportation and fuel rates as the ceiling for the California Action Project, and to consolidate all expansion rate issues for further review. On another rate matter, the Firm Customers object to Kern River's proposal to increase its rates for authorized overrun and interruptible services, which, they assert, violates the terms of settlements prohibiting such increases until Kern River files a new rate case.[20]

IV. DISCUSSION

A. Application of the Certificate Policy Statement

Since Kern River's application pertains to facilities for the transportation of natural gas in interstate commerce subject to the jurisdiction of the Commission, the proposal is subject to the requirements of subsection (c) of section 7 of the NGA.

The Commission's September 15, 1999 Policy Statement provides guidance as to how it will evaluate proposals for certificating new construction. The Policy Statement establishes criteria for determining whether there is a need for a proposed project and whether the proposed project will serve the public interest. The Policy Statement explains that in deciding whether to authorize the construction of major new pipeline facilities, the Commission balances the public benefits against the potential adverse consequences, giving appropriate consideration to the enhancement of competitive transportation alternatives, the possibility of overbuilding, subsidization by existing

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[19](...continued)
comments five days after that.

[20]See Kern River Gas Transmission Co., 90 FERC ¶ 61,124 (2000); Kern River Gas Transmission Co., 92 FERC ¶ 61,061 (2000). The Firm Customers also state the Commission in similar circumstances has rejected a similar proposed rate increase. Viking Gas Transmission Co., 89 FERC ¶ 61,204 (1999)

customers, the applicant's responsibility for unsubscribed capacity, and the avoidance of the unnecessary exercise of eminent domain or other disruptions of the environment.

Under this policy, the threshold requirement for existing pipelines proposing new projects is that the pipeline must be prepared to financially support the project without relying on subsidization from existing customers. The next step is to determine whether the applicant has made efforts to eliminate or minimize any other 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, the Commission will evaluate the project by balancing the evidence of public benefits to be achieved against the residual adverse effects. This is essentially an economic test. Only when a proposed project's benefits outweigh its adverse effects on economic interests will the Commission then proceed to complete the environmental analysis, in which other interests are considered.

As discussed below, the Commission finds that Kern River's proposal satisfies the "no-subsidy" requirement and that the benefits of the project outweigh any potential adverse effects. Accordingly, the Commission finds that the construction and operation of Kern River's proposed expansion project is required by the public convenience and necessity.

1. Subsidization

The threshold requirement for certification under the Policy Statement is that the pipeline is prepared to support the project financially without relying on subsidization from existing customers.

As proposed, Kern River's expansion project will not be subsidized by its existing customers because Kern River proposes to charge the California Action Project shippers an incremental rate. We agree with Kern River that the incremental rate is designed to recover the incremental cost of service attributable to the proposed facilities over the term of the California Action project. Therefore, existing shippers will pay no costs associated with the new service.[21] However, the Commission rejects Kern River's

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[21] Amoco argues that, because of the rate to be paid by the California Action Project shippers, those shippers will subsidize Kern River's future expansions. We

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proposed 15.25 percent return on equity, a 2 percent premium over its currently authorized return. Kern River has not justified its proposal for such a premium. Therefore, Kern River must revise its incremental rate to reflect its currently authorized rate of return on equity of 13.25 percent, consistent with the discussion below.[22]

Consistent with this discussion, we find that Kern River's proposal meets the certificate policy statement's requirement that new construction will not be subsidized by existing shippers.

2. Need for the Proposed Project

The certificate policy statement also requires that a pipeline demonstrate that there is a need for a new project. Here, Kern River has demonstrated market demand for its California Action Project by its firm service agreements covering the total 135,000 Dth/d of proposed capacity of the project. Kern River also argues that the facilities are needed to address the need for deliveries of natural gas supplies to existing and new generation markets to help meet California's energy requirements during the 2001 cooling season. The Governor of California filed a letter in support of Commission action that could help alleviate the energy challenges California is facing.[23] Also, the Governor of Nevada

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[21](...continued)
disagree with Amoco. There is no showing that the rates paid by the shippers in this limited term project will have any impact on rates paid by customers in the future. The appropriate rates to be paid by shippers in any future Kern River expansions will be determined in those proceedings. The shippers on the California Energy Project have entered into free-market agreements to pay the proposed rates. Moreover, the concern which undergirds the policy statement – that existing shippers not be required to subsidize expansions – is simply not presented here, where the expansion rates will be incremental.

[22]We note that the costs associated with the facilities that will become permanent as part of the 2002 and 2003 Expansion Projects will be levelized over an approximate 15-year term and will be subject to the outcome of those proceedings.

[23]See Letter from Governor Gray Davis to Chairman Curt Hébert, Jr. (March 20, 2001).

filed a letter in support of the California Action Project.[24] In addition, numerous entities including the BLM, Environmental Protection Agency, U. S. Army Corp of Engineers,

U.S Fish and Wildlife Service, as well as state agencies in Wyoming, Utah, Nevada, and California have coordinated and expedited action in an effort to review and obtain the necessary permits for the project. While there is no guarantee of the extent to which this project, by itself, will help alleviate that situation this summer, the Commission nevertheless believes that additional interstate pipeline capacity can be an integral component of a solution to California's energy problems. Here, we find that an adequate market exists for the proposed facilities and that the proposed expansion is necessary to provide additional transportation capacity into California.

3. Effect On Existing Customers, Competing Pipelines, and Landowners

Effect On Existing Customers and Competing Pipelines

As discussed above, the Firm Customers, PG&E, and SoCalGas express concern that increased deliveries to Wheeler Ridge will degrade service to existing customers, and ask that existing shippers be given priority over those on the California Energy Project.

The record does not demonstrate that increased deliveries to Wheeler Ridge will necessarily have an adverse impact on current shippers. In Docket No. CP01-31-000, Kern River asserts that SoCalGas' current take-away capacity is approximately 780 MMcf/d,[25] and that this amount significantly exceeds both Kern River's individual firm delivery requirement and the combined Kern River/Mojave firm delivery requirement from the jointly-owned Common Facilities. In this proceeding, Kern River states that the Wheeler Ridge delivery point will be allocated a total of 126.6 MMcf/d of the California Action expansion firm delivery capacity (the remainder of the 135 MMcf/d will be delivered upstream of Wheeler Ridge). In its March 29, 2001, supplement to the

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[24]See Letter from Governor Kenny C. Gunn to J. Mark Robinson (March 14, 2001).

[25]In Docket No. CP01-31-000, the 2002 Expansion Project, SoCalGas states that it has a minimum firm (365-day) take-away capacity at Wheeler Ridge of 680 MMcf/d. However, SoCalGas admits that on many days under favorable conditions, it can take away almost 800 MMcf/d from Wheeler Ridge. Meanwhile, Kern River alleges that the Wheeler Ridge take-away capacity ranges from 780 MMcf/d to 830 MMcf/d.

California Action Project, Kern River states that with these incremental contract commitments, Kern River's aggregate primary firm delivery rights at Wheeler Ridge for shippers on Kern River's system will increase from about 450 MMcf/d to approximately 527 MMcf/d.[26] In addition, Kern River states in its California Action Project application that the design delivery capacity at the Wheeler Ridge Meter Station will increase from approximately 598 MMcf/d to approximately 800 MMcf/d.[27]

In the event Kern River's allocated share of Wheeler Ridge take-away capacity[28] on any day is inadequate to flow all of its shippers' primary firm nominations for deliveries at Wheeler Ridge, Kern River would follow existing scheduling procedures and allocate the available capacity on a pro rata basis. However, since the allocation by SoCalGas to the Wheeler Ridge Meter Station is based on the previous day's scheduled quantities, Kern River theorizes that its shippers (existing and expansion) can preserve the utility of their Wheeler Ridge Meter Station delivery rights by successfully competing with shippers/suppliers on Mojave and PG&E, and with supplies from the California producers in their quest to sell gas to markets downstream of Wheeler Ridge. In other words, to the extent expansion shippers' marketing efforts actually increase SoCalGas' allocation to Kern River's Wheeler Ridge Meter Station (i.e., increase Kern River's shippers allocated piece of the "take-away pie"), the potential degradation of existing shippers' delivery rights to the Wheeler Ridge Meter Station is minimized.

We conclude that the California Action Project will not have undue negative impacts on existing shippers or competing pipelines. First, the record does not show that pro rata allocations of primary firm capacity have been a problem at Wheeler Ridge. The

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[26]Kern River states that over 200 MMcf/d of its shippers' existing primary delivery rights at Wheeler Ridge are duplicative of primary firm delivery rights held by such shippers at other points on the Kern River system.

[27]Under the agreement with Mojave for the Common Facilities, Mojave's rights at the Wheeler Ridge Meter Station would remain constant at approximately 147 MMcf/d.

[28]In a January 26 filing in Docket No. CP01-31-000, Kern River explained that SoCalGas will allocate its Wheeler Ridge receipt capacities (i.e., Kern River/ Mojave, PG&E, California production) based on the previous day's scheduled quantities from the various sources to Wheeler Ridge. Kern River's filing went on to explain that the California Public Utilities Commission (CPUC) is currently investigating, among other things, the method by which SoCalGas allocates its receipt point capacities, and the scheduling of deliveries from the interstate pipelines serving SoCalGas. The investigation proceeding, designated as Docket No. I99-07-003, is pending.

data in Kern River's 2002 Expansion Project shows that assignment of primary delivery rights under existing contracts to Wheeler Ridge on peak days does not go above Kern River's existing 450 MMcf/d share of capacity. In this project, Kern River will increase the design delivery capacity at Wheeler Ridge to about 800 MMcf/d to accommodate its existing shippers, new expansion shippers, and Mojave shippers. Therefore, the expanded delivery point capacity at Wheeler Ridge will be greater than the sum of the combined Kern River and Mojave contract volumes. The Commission recognizes that this does not factor in the volumes attributable to both PG&E and local production that are also delivered to Wheeler Ridge. However, our emphasis is on Kern River being able to provide sufficient delivery point capacity for its customers.

There is no evidence that Kern River has oversold its capacity at the Wheeler Ridge delivery point with SoCalGas, which was our concern in El Paso. The issue there was not one of El Paso bringing more gas to the Topok delivery point than SoCalGas could take away, but one of El Paso selling more primary firm delivery rights than it could physically deliver. The record here, however, indicates that Kern River will have the capacity in place to meet the delivery requirements of all firm shippers on its system, even if all 135 MMcf/d of additional capacity was designated for Wheeler Ridge. No party here has suggested the contrary. And while this capacity addition could exacerbate the take-away problem for all capacity (primary firm, alternate firm, interruptible, etc.) at Wheeler Ridge, there is no clear showing that pro rata allocations of primary firm delivery capacity will become a problem.

The solution to the problem of pro rata allocations of any services at Wheeler Ridge lies not with the interstate pipelines, but rather in fixing the problem with the take-away capacity and the lack of firm transportation path rights on SoCalGas, a matter which is beyond our jurisdiction.[29] In any event, the California Action Project shippers will have the ability to reduce their flows to Wheeler Ridge by flowing their gas to other points on the system, including the major Kern River interconnect with PG&E at Daggett

[29]According to the data responses in the 2002 Expansion Project proceeding in Docket No. CP01-31-000, SoCalGas' receipt point allocation procedure (designated as the "window" procedure) for its various receipt point capacities and SoCalGas' policy of not offering firm transportation service are issues currently before the CPUC in Docket No. I.99-07-003, referred to as the Gas Industry Restructuring (GIR). It is likely that the uncertainties and exposure to pro rata allocations on upstream supply systems could be significantly reduced or eliminated entirely if upstream shippers could enter into transactions with the knowledge that they are making arrangements with downstream parties who hold firm rights on SoCalGas' take-away system.

and Kern River's planned direct connect delivery point to the new La Paloma power plant, which is downstream of Wheeler Ridge. Moreover, while SoCalGas does express concern about the situation at Wheeler Ridge, it also indicates some willingness to provide additional capacity at that point.

Because the issue of capacity at Wheeler Ridge has been thoroughly ventilated in this proceeding and in Docket No, CP01-61-000, we see no need to delay the construction of these facilities by holding a technical conference here.

Given that there is no issue regarding Kern River's ability to deliver all contacted-for volumes to Wheeler Ridge and other delivery points, and given that the record does not show that firm shippers' rights will necessarily be degraded by allowing Kern River to ship additional supplies to meet California's urgent energy needs, we will not grant priority rights to existing customers, which would, in any case, be contrary to Commission policy. We further note that existing shippers with Wheeler Ridge as their delivery point will have a decided rate advantage over the new California Action Project shippers with the same delivery point. The existing shippers pay a rolled-in system rate, while the expansion shippers will pay substantially higher incremental rates for the new capacity. Thus, logic suggests that the shippers with the lowest costs will have the best opportunity to market their gas.

In addition, the Commission believes the potential adverse impact on existing customers' service (the risk of being prorated) is offset to some extent by the settlement in Docket No. RP99-274-003[30] which, among other things, provides a 50/50 revenue sharing mechanism with maximum rate firm customers if Kern River receives revenues in excess of $177.3 million. Thus, existing firm customers will in all likelihood benefit through the revenue sharing mechanism as a result of the proposed capacity in the California Action Project.[31] In addition, the expansion to Kern River's system provides shippers with the opportunities and the flexibility to capture alternate markets outside of their primary delivery rights. Thus, in our view Kern River's existing customers will receive several substantial benefits that occur as a direct result of the California Action Project.

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[30] 90 FERC ¶ 61,124 (2000).

[31] On August 15, 2000, the Commission issued a letter order accepting Kern River's Annual Threshold Report in Docket No. RP99-274-000 indicating that Kern River had generated $958,642 of excess revenues for the twelve-month period ending April 30, 2000.

On March 14, 2001, the Commission issued an order entitled "Removing Obstacles To Increased Electric Generation And Natural Gas Supply" in Docket No. EL01-47-000. In light of the severe electric energy shortages facing California and other areas of the West in recent months, the Commission announced certain actions to help increase electric generation supply and delivery in the Western United States in order to protect consumers from supply disruptions. As part of this effort, the Commission announced that it would do what it can to increase pipeline capacity where appropriate. However, the March 14 order also noted the addition of new capacity to serve California and the West may be affected by the available local distribution capacity to deliver gas downstream of the interstate pipeline, and that the availability of sufficient local take-away capacity is a matter controlled by the states rather than the Commission. Our March 14 order recognized that California's energy crisis has reached a stage where the time to react is very critical. Expanding Kern River's upstream system is consistent with that order.

Based on the foregoing, we conclude that the California Action Project will not have an undue negative effect on existing shippers.

Landowner Impact

In the Policy Statement, the Commission stated that landowners whose land would be condemned under eminent domain for the new pipeline right-of-way, as well as the community surrounding the right-of-way, have interests that also may be adversely impacted by an expansion project.[32] Thus, the Commission indicated that another factor it will consider when certificating a project is the extent to which the applicant has obtained rights-of-way by negotiation, and has thereby minimized the use of eminent domain.

As discussed above, Kern River will acquire the lands needed for the California Action Project through negotiation, and will not rely upon eminent domain authority. Therefore, condemnation and the use of eminent domain are not an issue in this proceeding.

4. Balancing Adverse Impacts Against Project Benefits

The Policy Statement provides that for the Commission to make a finding that a proposed expansion is in the public convenience and necessity, the applicant must show

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[32] 88 FERC at p. 61,748.

that the benefits to be achieved by the project will outweigh the potential adverse effects, after efforts have been made by the applicant to mitigate these adverse effects.[33]

Kern River's application states that its expansion shippers' markets include electric power generation plants in California. The California energy situation has been the subject of numerous press releases, studies, Congressional hearings, and is a matter of grave concern to this Commission. One explanation for this situation is that demand has outstripped the supply of energy on the Western Grid. Kern River's California Action Project will provide 135 MMcf/d of additional firm transportation capacity to California by July of 2001. The Commission finds that the California Energy Project will help expand the interstate pipeline grid, provide the opportunity to bring more natural gas supplies to a needy market, and thereby help address the current energy situation in California.

The project will have no significant adverse environmental impacts. While some parties have alleged that the project will degrade service to existing shippers, there has been no showing that this will necessarily be the case. Moreover, while the Commission can authorize interstate pipelines to provide needed natural gas to California, it is beyond our jurisdiction to resolve any capacity problems on local distribution systems.

In this proceeding, time is of the essence, the capacity is fully subscribed with no subsidy by existing customers, the environment will not be significantly impacted, eminent domain will not be required, and all state, federal, and local permitting has been obtained. Thus, on balance, we conclude that the potential benefits of the California Action Project outweigh its potential adverse impacts.

B. Accounting

Kern River is seeking accounting approval to defer approximately $3.6 million of restaging costs and amortize this amount over 15 years. Additionally, it is seeking accounting approval to amortize an estimated $10.5 million of temporary facility costs, and $18.5 million of excess permanent facility costs over the 22-month term of the California Action Project. It also requests approval to continue to account for these differences between its book depreciation and its regulatory depreciation as a regulatory asset or liability. We approve Kern River's accounting request consistent with the rate design provided for in this order.

[33] Id.

C. Engineering

Commission staff has conducted its engineering analysis of Kern River's proposal and concludes that Kern River has properly designed its California Action Project to accommodate an additional 135,000 Mcf per day of firm transportation service from the start of its system in Lincoln County, Wyoming to the 17-Z delivery point on the Westside Lateral at the terminus of the Common Facilities in Kern County, California.

D. Rate Issues

The Commission has reviewed Kern River's rate proposal and calculations and finds them to be appropriate, except for the ROE. Other than the proposed 15.25 percent ROE, Kern River's cost factors are consistent with the settlement in its last section 4 rate case. Although the ROE underlying Kern River's currently-authorized rates is 13.25 percent, Kern River has designed its incremental rate using an ROE of 15.25 percent. Kern River claims this 2 percent equity premium will compensate it for the additional risk it has undertaken in this project to expedite the development of this incremental capacity for California.

The Commission will require Kern River to revise the rate to utilize its currently-authorized 13.25 percent ROE. Kern River has not shown that the California Action Project, which is fully subscribed, presents an unusually high risk. Accordingly, the 2 percent premium is rejected. Kern River is directed to make a filing thirty days before the July 1, 2001, in-service date of this project to revise the rate to reflect an ROE of 13.25 percent. Kern River should base the rate on the 1.047 conversion factor set forth in its tariff, subject to the outcome of its Mcf-to-Dth conversion proposal in Docket No. RP01-190-000.

The Commission has also reviewed the incremental fuel reimbursement rates and finds the estimates appropriate as they are based on historical actuals. Kern River should file tariff sheets to effectuate the proposed incremental fuel rates when it makes its section 4 filing to implement the incremental rate. Finally, Kern River cannot change its rate for interruptible and authorized overrun service in this proceeding, but may make such a proposal in a section 4 filing.

E. Environmental Assessment

The California Action Project will replace much of the compression expansion which is currently pending in Docket No. CP01-31-000, the Kern River 2002 Expansion Project. Kern River states that upon conclusion of the project, the facilities will be permanently incorporated into either the Kern River 2002 Expansion Project or a forthcoming 2003 expansion project.

On December 15, 2000, Commission staff a Notice of Intent to Prepare an Environmental Assessment for the Proposed Kern River Expansion Project and Request for Comments on Environmental Issues (NOI). The NOI was sent to individuals and organizations having a potential interest in the project, Federal, state, and local agencies, elected officials, local libraries, and newspapers. In response to the NOI, comment letters filed by the Wyoming Office of Land Policy, U.S. Fish and Wildlife Service, the Department of the Interior, Bureau of Land Management, the California Native American Heritage Commission, and one landowner near the proposed Daggett Compressor Station.

Commission staff has prepared an environmental assessment (EA) assessing the environmental impact of the facilities proposed by Kern River in the California Action Project. The EA addresses construction procedures, water resources, vegetation, wildlife, threatened and endangered species, cultural resources, geology, soils, land use, environmental justice, air quality and noise, cumulative impact, and alternatives. Written comments in response to the NOI are addressed in the appropriate sections of the EA.

Facilities similar to Kern River's California Action Project facilities were also analyzed previously by our staff and have undergone public review as part of an earlier Kern River Expansion Project EA issued in April 1993, under Docket No. CP92-198-000, and as part of the Mojave Pipeline Northward Expansion Project Final Environmental Impact Report/Environmental Impact Statement (Mojave Expansion EIS) issued in June 1995, under Docket Nos. CP93-258-000, et al. The Kern River Expansion Project EA (1993) addressed three new compressor stations sites and the existing compressor station modifications which are proposed in the California Action Project. The Mojave Expansion EIS (1995) addressed a new compressor station at Kern River's currently proposed Daggett Compressor Station site. The environmental analysis in the

Kern River Expansion Project EA (1993) and the Mojave Expansion EIS (1995) are incorporated by reference in the EA.[34]

Based on the discussion in the current EA and information further developed by literature research, contacts with Federal and state agencies, review of the Kern River Expansion Project EA (1993) and the Mojave Expansion EIS (1995), we conclude that if the California Action Project facilities are constructed and operated in accordance with Kern River's application and supplement, and our staff's recommended mitigation measures, approval of this proposal will not constitute a major Federal action significantly affecting the quality of the human environment.

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.[35] Kern River shall notify the Commission's environmental staff by telephone or facsimile of any environmental noncompliance identified by other Federal, 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 of the Commission within 24 hours.

For the reasons discussed above, we find, subject Kern River's acceptance of the conditions set forth below, that the benefits of Kern River's proposal will outweigh any potential adverse effects, and therefore, will be consistent with the Policy Statement and section 7 of the NGA. Accordingly, we will issue a certificate, as conditioned, to Kern River.

At a hearing held on April 2, 2001, the Commission, on its own motion, received and made a part of the record all evidence, including the application and exhibits thereto, submitted in this proceeding, and upon consideration of the record,

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[34]The facilities proposed in both the Kern River Expansion Project EA (1993) and the Mojave Expansion EIS (1995) were dismissed by the Commission and were not constructed.

[35]See, e.g., Schneidewind v. ANR Pipeline Co., 485 U.S. 293 (1988); National Fuel Gas Supply v. Public Service Commission, 894 F.2d 571 (2d Cir. 1990); and Iroquois Gas Transmission System, L.P., et al., 52 FERC ¶ 61,091 (1990) and 59 FERC ¶ 61,094 (1992).

<u>The Commission orders</u>:

(A) Pursuant to section 7(c) of the NGA, a certificate of public convenience and necessity is issued to Kern River authorizing it to construct and operate its California Action Project in Docket No. CP01-106-000, as described herein and in the application. The certificate authorization here is without prejudice to resolution of the proceeding pending in Docket No. CP01-61-000.

(B) Kern River is authorized to abandon the temporary compressor unit at the Daggett Compressor Station upon the in-service date of the replacement permanent unit for the 2002 Expansion Project. If the 2002 Expansion Project is not certificated, or the replacement permanent unit is not placed in service by May 2, 2003, this authorization is revoked. In such case, Kern River must seek further authorization from the Commission.

(C) Kern's River's proposal to utilize a return on equity for this project of 15.25 percent is rejected. Kern River is directed to file, at least 30 days prior to commencement of service, a revised incremental rate to reflect a return on equity of 13.25 percent.

(D) Construction of the authorized facilities shall be completed and the facilities shall be made available for service, as provided in section 157.20(b) of the Commission's regulations, within one year from the issuance of a final order in this proceeding.

(E) Kern River shall comply with Part 157 of the Commission's regulations, in particular section 157.20(a), (c), and (f), and Parts 154 and 284 of the Commission's regulations.

(F) Kern River's proposed accounting is approved as discussed in the body of this order.

(G) The certificate issued in Ordering Paragraph (A) is conditioned upon compliance with the environmental conditions set forth in Appendix C to this order.

(H) Kern River shall notify the Commission's environmental staff by telephone and/or facsimile of any environmental noncompliance identified by other Federal, 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 of the Commission within 24 hours.

(I) The protests in Docket No. CP01-106-000 are denied.

(J) Kern River must file its tariff provision reserving capacity for planned future expansions within 30 days of the date of this order.

By the Commission. Commissioner Breathitt dissented in part and concurred in part with a separate statement attached.

(S E A L)

Linwood A. Watson, Jr.,
Acting Secretary.

Docket No. CP01-106-000

APPENDIX A

Motions to Intervene and Protests

Aera Energy, LLC

Amoco Production Company*

Chevron U.S.A. Inc.

Colorado Interstate Gas Company

Dynegy Marketing and Trade

Firm Customers**

El Paso Natural Gas Company

Mirant Americas Energy Marketing, LP

Mojave Pipeline Company

PG&E National Energy Group Companies

RME Petroleum Company (formerly Union Pacific Resources Company)

Southern California Ga Company

Southwest Gas Corporation

Texaco Natural Gas Inc.

*Also filed a supplemental protest jointly with BP Energy Company

**Protest (Firm Customers consist of Aera Energy L.L.C., Amoco Production Company, CanWest Gas Supply Inc., Chevron U.S.A. Inc., RME Petroleum Company, and Texaco Inc.).

APPENDIX B NOT ON DISKETTE

APPENDIX C

Environmental Conditions for Kern River's California Action Project

1. Kern River shall follow the construction procedures and mitigation measures described in its application and supplement and as identified in the EA, unless modified by this Order. Kern River must:

  a. request any modification to these procedures, measures, or conditions in a filing with the Secretary of the Commission (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 the Office of Energy Projects (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 California Action Project, and during activities associated with abandonment of the gas compressor unit at the Daggett Compressor Station. This authority shall allow:

  a. the modification of conditions of this 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 the avoidance or mitigation of adverse environmental impact resulting from project construction and operation.

3. **Prior to any construction**, Kern River shall file an affirmative statement with the Secretary, certified by a senior company official, that all company personnel, and contractor personnel 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 location(s) shall be as shown in the EA, 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 this Order. All requests for modifications of environmental conditions of this Order or site-specific clearances must be written and must reference locations designated on these alignment maps/sheets.

5. Kern River shall consult with the California Department of Fish and Game if its preconstruction survey indicates the presence of the burrowing owl at the Daggett Compressor Station site.

6. Kern River shall conduct a preconstruction survey of the Veyo Compressor Station site, including the access road, for Siler pincushion cactus. This survey shall be performed by a qualified biologist familiar with identifying adult Siler pincushion cactus, as well as seedling and juvenile individuals. If the species is present, Kern River shall not proceed with construction at the Veyo Compressor Station site until Kern River files its Siler pincushion cactus survey report with the Commission, and the consultation and notification requirements stated in environmental condition 7 are met.

7. Kern River shall not begin construction activities at the Daggett and Veyo Compressor Stations **until**:

   a. the staff receives comments from the U.S. Fish and Wildlife Service (FWS) regarding the proposed action;

   b. the staff completes section 7 consultation with the FWS, and

   c. Kern River has received written notification from the Director of OEP that construction or use of mitigation may begin.

8. Kern River shall include an emphasis on restricting off-road vehicle traffic in its desert tortoise training and education program for the Daggett Compressor Station.

9. Kern River shall perform a noise survey after placing the new compressor in-service at the Daggett Compressor Station, and file a copy of the noise survey with the Secretary no later than 60 days after the in-service date. If the noise from the compressor station exceeds an L_{dn} of 55 dBA at nearby noise-sensitive areas, Kern River shall notify the Commission staff within 24 hours and identify the corrective measures to be taken to meet an L_{dn} of 55 dBA and when they will be implemented. This information shall be filed with the Secretary within 7 days. Kern River shall confirm compliance with the L_{dn} of 55 dBA requirement by filing a second noise survey with the Secretary no later than 60 days after it installs the additional noise controls.

UNITED STATES OF AMERICA
FEDERAL ENERGY REGULATORY COMMISSION

Kern River Gas Transmission Company Docket No. CP01-106-000

(Issued April 6, 2001)

BREATHITT, Commissioner, dissenting in part, concurring in part:

This protested filing has raised difficult issues for me that today's order does not resolve to my satisfaction. As I will explain in greater detail below, I believe that the parties have raised valid concerns that require further exploration. Specifically, Southern California Gas Company (SoCal Gas) requested that the Commission establish a technical conference in this proceeding, on a compressed schedule, in order for the Commission and the parties to approach Kern River's filing in a more orderly and informed fashion. Pacific Gas & Electric Company also sought further information about this project, either through a technical conference or additional written data. In addition, Kern River's Firm Customers sought a coordinated approach to expansion of capacity on Kern River. I would have granted these requests by either: (1) establishing a conference before issuance of the certificate, or (2) conditioning the certificate we are issuing today on the outcome of a conference. I am disappointed that my colleagues fail to see the value of granting this request. Therefore, I am issuing this partial dissent. However, for reasons I will delineate below, I am concurring on other aspects of the order.

Each of us seeks to use FERC's regulatory authority in a positive way to alleviate the energy market disruptions being experienced by California consumers. I strongly believe that the Commission must act, within the limits of its jurisdiction, to ensure that additional natural gas supplies reach the California markets to curb the shortage of electric generation in that state. I do have serious reservations about this project and about the Commission's general direction with respect to capacity expansions into California; however, I find on balance that it is in the public interest to certificate this project.

I share the hope that this action today represents a step in the right direction. However, it has been somewhat difficult for me to view Kern River's "California Action" project as being one that necessarily merits the kind of extraordinary regulatory treatment that we have granted the applicant in this case. My hesitation does not come only from the fact that Kern River has pending before this Commission a very similar proposal in which the parties have raised valid concerns that would pertain to any expansion of Kern River. I believe that it would have made more sense for the Commission to have considered the merits of that proposal at the same time we deliberated the merits of the instant expansion. It is my understanding that such consideration would have been possible and timely; and in my opinion, it would have given us a more complete picture to consider. However, the relationship between Kern River's two proposals is not my main concern.

The intervenors, who themselves represent the intended beneficiaries of this expansion of interstate capacity, point out the primary problem: Kern River's application does not demonstrate - or even assert - that any more gas will flow through the Wheeler Ridge interconnection than currently flows. This is due to congestion at that point that could prevent additional supplies from reaching the intended markets and, importantly, providing natural gas that is needed for electric generation.[1] Furthermore, the record of this proceeding is inadequate for the Commission to independently assess the congestion issues at Wheeler Ridge. I am very uncomfortable that this order does not take the opportunity for a fuller airing of this issue.

This order acknowledges, in dismissing claims that existing shippers will be negatively affected by the project, that "the delivery point capacity at Wheeler Ridge will be greater than the sum of the combined Kern River and Mojave volumes" that must pass through that point, but that "this does not factor in the volumes attributable to both PG&E and local production that are also delivered to Wheeler Ridge." In other words, Kern River's expansion could result in the displacement, by interstate natural gas, of gas that is already available, such as natural gas produced within California. But it will not necessarily result in any net increase of natural gas in the California marketplace. This makes it difficult to understand just how our approval of Kern River's proposal is going to assist in increasing electric generation in California this summer.

[1] In an April 5, 2001 pleading, the Kern River Firm Customers emphasized the need for the Commission to address the Wheeler Ridge situation. As a result of an alert issued on March 30, 2001, by SoCal Gas, nominations allowed by SoCal Gas for the Wheeler Ridge receipt point were 600 times the available capacity of 518,500 dth. The Firm Customers allege that such "'gaming' demonstrates that the situation at Wheeler Ridge is out of control" and that this situation "will only further deteriorate under Kern River's proposal." The Firm Customers contend that such data pertaining to recent developments at Wheeler Ridge reinforce their claims that while Kern River may be able to implement its expansion very quickly, the gas cannot be delivered to the markets needing gas.

But beyond questioning whether we are doing any good by certificating this project, I am even more concerned that our approval of it could make the situation in California even worse by exacerbating the congestion problem at Wheeler Ridge. And this is exactly what the intervenors have alleged: that insufficient take-away capacity at Wheeler Ridge and the resulting degradation of firm shippers' rights will place them in a situation analogous to the type of capacity rights controversy that we recently addressed with respect to the Topock delivery point. [2] Today's order gives little weight to these claims on the speculation that future expansion of intrastate capacity will occur. I hope it does; but I am wary of the potential for creating congestion and future capacity turn-back problems without firm assurance that sufficient additional capacity downstream of Wheeler Ridge will materialize.

While I do not question that additional interstate natural gas pipeline capacity to California may be needed, we at the Commission are tasked with acting on individual projects and their effects on specific markets. I strongly believe that the California situation warrants a thoughtful and coordinated approach to interstate pipeline expansion. This case has raised issues that will likely continue to appear as we analyze other expansion projects on an expedited schedule. It would be counterproductive for this Commission to act precipitously on projects related to California without ensuring that they will, in reality, benefit specific markets - and more importantly, that they will cause no further harm. There appears to be great uncertainty about exactly what interstate capacity is needed to assist California in alleviating its energy crisis; and the information available to us is, at times, confusing. For example, while we have been urged to take extraordinary measures and expend considerable resources to process this application on an emergency basis, the California Gas Utilities, in their 2000 California Gas Report, state that Southern California continues to operate in an environment of excess interstate pipeline capacity.[3] In addition, the California Energy Commission's report on siting

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[2] Amoco Energy Trading Corp., et al., v. El Paso Natural Gas Co., 93 FERC ¶ 61,060 (2000).

[3] California Gas Utilities, 2000 California Gas Report, http://www.pge.com/pipeline/news/ (2000) (prepared at the direction of the California Public Utilities Commission). In addition, the California Energy Commission's November 2000 staff analysis concludes that while local constraints can be a problem, the physical capacity of interstate pipelines appears adequate, when used in conjunction

(continued...)

peaking plants for the summer of 2001[4] establishes that the 32 potential sites for this summer's "peaker project" were chosen, in part, because of the existing availability of natural gas supplies at those sites. The report does not call for additional interstate capacity to effectuate the program. It is obvious to me that FERC must work in tandem with California officials to establish common goals and understanding, since the primary responsibility for take-away capacity belongs to intrastate pipelines and state regulators.

It is not good public policy, in my view, for the Commission to encourage interstate capacity to California that does not have the desired effect of bringing additional supplies into the areas where they are needed. As the parties argue in their comments, a coordinated approach could avoid pipeline expansions that (1) would not match up with downstream capacity; (2) could not be used by the markets and end-users that require additional supplies; or (3) would degrade the service of existing firm shippers. It is regrettable that we must act on Kern River's proposal without the benefit of such coordination. I hope that FERC will seek a collaborative resolution to the broader California expansion issues, and I suggest that the Commission's inquiry in Docket No. EL01-47-000 provides a suitable forum for such discussion.[5] We have other proposals in-house for which the applicants are seeking expedited action. It is simple common sense that more coordination should take place so that additional interstate pipeline capacity can be targeted to areas where it will represent a positive response to California's energy needs.

The speed with which the Commission has acted in this proceeding is something which will no doubt be touted as a great effort. And it has been. The staff responsible

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[3](...continued)
with in-state storage capacity. California Energy Commission, Staff Report: California Natural Gas Analysis and Issues, http://www.energy.ca.gov/naturalgas/ (November 2000).

[4]California Energy Commission Fuels Office, Staff White Paper: Natural Gas Issues That May Affect Siting New Power Plants in California, http://www.energy.ca.gov/naturalgas/ (January 25, 2001).

[5] Removing Obstacles to Increased Electric Generation and Natural Gas Supply in the Western United States, Order Removing Obstacles to Increased Electric Generation and Natural Gas Supply in the Western United States and Requesting Comments on Further Actions to Increase Energy Supply and Decrease Energy Consumption, 94 FERC ¶ 61,270 (2001).

for processing this application has put in countless overtime hours to meet compressed deadlines. The precedent we have created could be a double-edged sword. What signals does this order really send? Will the Commission be able to keep up this pace on other pending "emergency" expansion applications? Is there sufficient time built into the process for the Commission and staff to fully analyze the issues? Should we be willing to sacrifice careful review for speedy action? Will we be overlooking significant issues? It

would certainly be helpful for the Commission to have a plan of action before embarking on this course. I would also like to point out that if the Commission is to act within weeks of receiving certificate applications, I have been told that there could be more prefiling involvement of Commission staff than we are all accustomed to. The extent of such involvement is a matter about which I hope the Commission can reach a comfortable agreement. Meanwhile, I feel it necessary to caution the public and other agencies that staff's role is not to advocate or support individual projects. Each agency must use its own discretion to determine the urgency of any application.

I fully support the Commission's overarching goal of finding solutions to the energy problems facing California, and I am voting to issue the certificate.

Linda K. Breathitt
Commissioner