

DOCKETED

Docket Number:	16-RPS-02
Project Title:	Appeal by Los Angeles Department of Water & Power re Renewables Portfolio Standard Certification Eligibility
TN #:	213039
Document Title:	32 Kern River 2000 LADWP Board File No BP 99-002A (Bates Nos. LA000565-LA000577)
Description:	N/A
Filer:	Pjoy Chua
Organization:	LADWP
Submitter Role:	Applicant
Submission Date:	8/30/2016 12:55:55 PM
Docketed Date:	8/30/2016

DEPARTMENT OF WATER AND POWER
CITY OF LOS ANGELES

COMMISSION OFFICE

September 29, 2000

BOARD FILE

Attached herewith for FILE

The following

CONFORMED COPY OF AGREEMENT

FILE NO.	DATE	NAME	
BP 99-002A	07-18-00	<p>Kern River Gas Transmission Company – Term Differentiated Rate (TDR) Precedent Agreement (BP 99-002A) – Authorizing to enter into TDR gas transportation service. This agreement replaces a previous agreement (BP 99-002) adopted by this Board. Authorized by Resolution No. 001-014, adopted July 18, 2000. Approved under Council File No. 99-0283, on September 19, 2000.</p> <p>Original - Accounts Payable Duplicate Original - Power Services (Attn Bulk Power) Conformed Copies: - Power Services - Corporate Services - Corporate Purchasing Services - Board File</p>	

Title

JOHN C. BURMAHLN
Board Secretary

LA000565

**PRECEDENT AGREEMENT
FOR TERM DIFFERENTIATED RATE
FIRM TRANSPORTATION SERVICE**

THIS PRECEDENT AGREEMENT FOR TERM DIFFERENTIATED RATE FIRM TRANSPORTATION SERVICE ("Agreement"), made and entered into this ____ day of _____, 1999, by and between KERN RIVER GAS TRANSMISSION COMPANY, a Texas general partnership ("Kern River") and Los Angeles Department of Water and Power, a municipal corporation of the State of California, ("Shipper").

WITNESSETH:

WHEREAS, Kern River owns and operates an interstate natural gas transmission system extending from a point of interconnection with the facilities of Northwest Pipeline Corporation and Williams Field Services Company near Opal, Wyoming, to terminal points in Kern County, California (the "Kern River System"), subject to the jurisdiction of the Federal Energy Regulatory Commission (the "Commission" or "FERC");

WHEREAS, Kern River by notice dated October 23, 1998 proposed to offer firm transportation service with Term Differentiated Rates ("TDR") to be incorporated through proposed TDR rate options under Kern River's existing firm transportation rate schedules ("TDR Service");

WHEREAS, the TDR Service will be 18 CFR. part 284 service for Kern River's mainline system with firm receipt and delivery points for Shipper, as specified in Shipper's currently effective Transportation Service Agreement;

WHEREAS, Kern River is willing to provide TDR Service and Shipper is willing to receive such service from Kern River, subject to the satisfaction of certain conditions precedent and upon other conditions of this Agreement;

WHEREAS, Kern River and Shipper desire to set forth in this Agreement the terms and conditions pursuant to which Kern River will provide Shipper with and Shipper will receive TDR Service under an amended firm transportation service agreement.

WHEREAS, Kern River and Shipper have entered into a precedent agreement dated April 8, 1999 for TDR service and now desire to substitute this Agreement for the April 8, 1999 precedent agreement.

NOW, THEREFORE, in consideration of the mutual covenants and agreements herein contained, and subject to all of the terms, conditions, and provisions herein set forth, Kern River and Shipper do hereby agree as follows:

ARTICLE I PROVISION OF FIRM TRANSPORTATION SERVICE

1.1 Subject to satisfaction or express written waiver of all of the conditions precedent set forth in Article II of this Agreement, Kern River agrees to provide TDR Service to Shipper and Shipper agrees to receive such service, in accordance with the terms and conditions of the TDR rate options that will be available under Kern River's existing firm transportation rate schedules ("TDR Rate Options"), as will be set forth in Kern River's FERC Gas Tariff. TDR Service will commence on October 1, 2001 and will continue for 15 years for TDR Rate Option: TDR-15; and for 10 years for TDR Rate Option: TDR-10. To receive TDR Service, Shipper must, prior to March 31, 2001, execute an amendment to Shipper's existing firm transportation

service agreement extending the term of such agreement consistent with one of the TDR Rate Options.

1.2 On or before March 31, 2001, any Shipper initially electing to receive TDR Service may elect not to receive TDR Service and to rescind the TDR Rate Option amendment of its firm transportation service agreement if the rate for the TDR Rate Option, as provided in Exhibit A, has increased due to a change in Kern River's refinancing or interest costs or if Shipper is adversely impacted, or is potentially adversely impacted, by a Mcf to Dth conversion of Kern River's shippers' contracts as proposed, filed for, and/or approved by the Commission.

1.3 Exhibit A, attached hereto and incorporated herein designates Shipper's Maximum Daily Quantity, receipt and delivery point capacity, service commencement and termination date for TDR Service, and maximum rates for the TDR Options.

1.4 Receipt and delivery point capacity will be as specified in Shipper's firm transportation service agreement.

1.5 Kern River will seek regulatory approval to implement the TDR Rate Options once it has determined the level of interest from current and prospective shippers and such shippers have executed a precedent agreement based on the TDR Rate Options.

1.6 Kern River shall charge Shipper an FERC-approved rate for firm transportation service utilizing the TDR Rate Options as amended ("TDR Rates") as defined more specifically in Section 4.1. Such TDR Rates will be subject to Kern River's general Section 4 rate filings under the jurisdiction of the FERC. The TDR Rates will be derived from the same basic principles ultimately incorporated and approved in Kern River's pending general Section 4 rate proceeding in Docket No. RP99-274, adjusted only to include the rate base and cost-of-service effects of revised depreciation rates and the costs associated with Kern River's debt, including

the issuance costs associated with the refinancing of Kern River's existing debt, as are required to enable the extended contract terms under the TDR Rate Options.

1.7 Kern River will file with the FERC to establish the TDR Rate Options with a proposed rate not exceeding the rate set forth in Exhibit A, subject to Section 1.6.

1.8 Kern River's obligation to provide the TDR Service contemplated herein under the TDR Rate Options shall commence as soon as all Kern River's TDR Rate Options have been approved for implementation and the TDR firm transportation service agreements become effective; provided, however, Kern River will be excused from providing TDR Service if, in Kern River's sole discretion, acceptable financing for TDR Service cannot be effectuated.

ARTICLE II CONDITIONS PRECEDENT

2.1 Kern River and Shipper expressly understand and agree (i) that Kern River shall not be obligated to provide TDR Service and (ii) that neither Kern River nor Shipper shall be obligated in any manner whatsoever unless and until all of the following conditions precedent have been satisfied or expressly waived by the party favored by the condition.

(a) Kern River has entered into TDR Service precedent agreements with shippers, substantially similar in form and substance to this Agreement which provide for Kern River to transport aggregate volumes of no less than 200,000 Dth/day in connection with TDR.

(b) Kern River has received any and all such approvals and authorizations from the Kern River Executive Committee as may be required to implement TDR Service and Shipper's management has issued its approval.

(c) Kern River has filed the TDR Rate Options with the Commission requesting authorization to provide TDR Service. Kern River reserves the right to file with the

Commission any and all such amendments and supplements to the TDR Rate Options as Kern River deems necessary in its sole discretion to obtain Commission authorization to provide TDR Service. Kern River shall use due diligence, and Shipper shall cooperate fully with Kern River, to prosecute approval of the TDR Rate Options by the Commission.

(d) Kern River has received and accepted a final order from the Commission authorizing the use of TDR Rate Options, no longer subject to rehearing, as well as any and all additional Commission approvals, authorizations, permits, and exemptions, which authorize Kern River to provide TDR Service consistent with the terms and conditions of this Agreement or which are otherwise acceptable to Kern River and Shipper in their respective sole discretion.

(e) Shipper has satisfied all of the applicable creditworthiness requirements consistent with those set forth in Rate Schedule KRF-1, or has otherwise provided Kern River an acceptable guaranty that creditworthiness requirements will be met, as such requirements may be revised from time to time.

(f) Kern River has successfully executed amendments or obtained waivers or acknowledgements of satisfaction relating to all existing firm transportation agreements that contain a Most Favored Nations clause that might relate to TDR Service.

2.2 Any of the conditions precedent set forth in Section 2.1 may be waived by express written agreement of Kern River and Shipper.

2.3 Kern River and Shipper shall each use due diligence to assure that the respective conditions precedent set forth above in Section 2.1 for which they are individually responsible are satisfied in a timely manner.

**ARTICLE III
EFFECT OF FAILURE OF
CONDITIONS PRECEDENT; TERMINATION**

3.1 This Agreement may be terminated by Shipper as provided for in Section 1.2. This Agreement may also be terminated by Kern River or Shipper at their respective sole discretion if any condition precedent set forth in Article II is not either satisfied or not expressly waived pursuant to written agreement of Kern River and Shipper by October 1, 2001, or if a condition under Section 1.2 is elected. Termination pursuant to this Section shall be communicated within ten calendar days of such date by written notice to the other party.

3.2 In the event of termination under Section 3.1, neither Kern River nor Shipper shall have any further rights or obligations whatsoever pursuant to this Agreement.

**ARTICLE IV
RATES**

4.1 The rates to be charged by Kern River and to be paid by Shipper for provision of TDR Service shall at all times be the applicable maximum rates and charges set forth for TDR Rates, as amended. Shipper understands and agrees that the applicable rates and charges, as well as the terms and conditions, for service under the TDR Rate Options, will be established by the Commission pursuant to Kern River's FERC Gas Tariff, and Shipper agrees to pay Kern River the TDR Rates in accordance with such established rates, subject to the Commission's review and approval as provided by the Natural Gas Act. Shipper retains all rights to intervene and protest and to offer its views on any proposed rates in proceedings before the Commission.

4.2 Kern River shall have no obligation to provide TDR Service if, before implementation of initial TDR Service, the Commission requires Kern River to utilize a rate design which is unacceptable in Kern River's sole discretion.

4.3 As a result of Kern River being an optional certificate pipeline that assumes certain risks and has the opportunity for certain rewards, Kern River will not seek to assign costs to TDR Service for unsold capacity that becomes available as a result of the termination of any firm transportation contracts in 2007 or for costs associated with the marketing of turned-back capacity that is subsequently sold at less than maximum rates.

ARTICLE V OTHER AGREEMENTS

It is expressly agreed by Kern River and Shipper that the execution of this Agreement, and the corresponding rights and obligations of Kern River and Shipper hereunder, is without prejudice to any additional rights or obligations which Kern River and Shipper may have to each other under any existing separate and distinct agreements.

ARTICLE VI SUCCESSION AND ASSIGNMENT

6.1 Any entity which shall become a successor to this Agreement by purchase, merger or consolidation shall be entitled to the rights and shall be subject to the obligations of its predecessor in interest under this Agreement.

6.2 Either Kern River or Shipper may, without relieving itself of its obligations under this Agreement, assign this Agreement to any entity or entities with which it is affiliated, including without limitation any wholly-owned subsidiary, but otherwise no assignment of this Agreement nor of any of the rights or obligations hereunder shall be effective without the express prior written consent of the other party, which shall not be unreasonably withheld. Shipper acknowledges and agrees that Kern River may decline to consent to an assignment by

Shipper to a party that does not or cannot demonstrate satisfaction of Kern River's creditworthiness tariff provisions.

6.3 Kern River shall have the right to pledge this Agreement, or any and all of Kern River's rights thereunder, as security for any indebtedness incurred by Kern River in connection with the financing or refinancing of Kern River and to assign this Agreement in accordance with the terms and conditions of any agreement with third parties pertaining to any such indebtedness.

ARTICLE VII GOVERNING LAW

The construction, interpretation, and enforcement of this Precedent Agreement shall be governed by the laws of the State of California, excluding any conflict of law rule which would refer any matter to the laws of a jurisdiction other than the State of California.

ARTICLE VIII NO THIRD PARTY BENEFICIARIES

This Agreement shall not create any rights in any third parties, and no provision shall be construed as creating any obligations for the benefit of, or right in favor of, any person or entity other than Kern River or Shipper.

ARTICLE IX NOTIFICATIONS AND COMMUNICATIONS

9.1 Except as otherwise provided herein, any notice contemplated or required by this Agreement shall be in writing, and shall be considered duly delivered when sent by registered or certified mail, or by telefacsimile, to the appropriate party at the appropriate address set forth below, or at such other address as Kern River or Shipper may from time to time designate by express written notice.

Kern River: Kern River Gas Transmission Company
295 Chipeta Way
Salt Lake City, UT 84108
Fax No.: (801) 584-7076
Attn: Kirk Morgan
Director, Business Development

Shipper: Los Angeles Department of Water and Power
P.O. Box 51111, Room 1148
Los Angeles, California 90051 – 0100
Fax No.: (818) 771-6565
Attn: Natural Gas Supply Manager

9.2 Routine communications shall be considered duly delivered when sent to the appropriate party by either registered or certified mail, or by telefacsimile, at the appropriate address indicated above, or by regular mail at the appropriate address as set forth below:

Kern River: Kern River Gas Transmission Company
295 Chipeta Way
Salt Lake City, UT 84108
Fax No.: (801) 584-7076
Attn: Kirk Morgan
Director, Business Development

Shipper: Los Angeles Department of Water and Power
P.O. Box 51111, Room 1148
Los Angeles, California 90051 – 0100
Fax No.: (818) 771-6565
Attn: Natural Gas Supply Manager

ARTICLE X SEPARATE CLAUSES

Each clause is separate from other clauses. If any clause or provision of this Agreement be deemed invalid, the remaining clauses and provisions shall remain in full force and effect.

ARTICLE XI
ENTIRE AGREEMENT

11.1 This Agreement contains the entire agreement between Kern River and Shipper with respect to the subject matter hereof, and supersedes any and all prior agreements, understandings and commitments, whether oral or written, concerning the subject matter hereof, and any and all such prior agreements understandings and commitments including the April 8, 1999 precedent agreement are hereby deemed to be void and of no effect.

11.2 No amendments to or modifications of this Agreement shall be effective unless agreed upon in a written instrument executed by Kern River and Shipper which expressly refers to this Agreement.

IN WITNESS WHEREOF, the parties hereto have caused this Agreement to be duly executed as of the day and year first above written.

KERN RIVER GAS TRANSMISSION COMPANY

By: Larry E. Larsen
Larry E. Larsen
Vice President, Customer Service & Rates

DEPARTMENT OF WATER AND POWER
OF THE CITY OF LOS ANGELES BY
BOARD OF WATER AND POWER COMMISSIONERS
OF THE CITY OF LOS ANGELES

By: S. David Freeman
Name: S. DAVID FREEMAN, General Manager

APPROVED AS TO FORM AND LEGALITY
JAMES K. HAHN, CITY ATTORNEY

JAN 07 2000

BY: Stanton J. Snyder
STANTON J. SNYDER
ASSISTANT CITY ATTORNEY

REQUIRES CITY COUNCIL
APPROVAL

AUTHORIZED BY RES. 001 011
JUL 18 2000

EXHIBIT A
TO
PRECEDENT AGREEMENT
BETWEEN KERN RIVER AND SHIPPER

Maximum Daily Quantity Same as specified in Article 1.2 of Shipper's
Transportation Service Agreement

Term
 Commencement Date: October 1, 2001
 Termination Date: September 30, 2016

Primary Receipt Point Same as specified in Article 1.2.1 of Shipper's
Transportation Service Agreement

Primary Delivery Point Same as specified in Article 1.2.1 of Shipper's
Transportation Service Agreement

TDR RATE OPTION¹

TDR-15 not to exceed \$.423 per Dth

¹ The specific rate ultimately will be determined consistent with the rate design principles that Kern River has utilized to derive the TDR rates based upon the Commission approved cost of service level, including any specific refinancing costs that might be specifically attributable to the TDR Rate Options and subject to Section 1.6 of the Precedent Agreement. This maximum TDR rate corresponds to a 1.047 Dth\ Mcf conversion factor.