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April 24, 2009

Ms. Mary Nichols, Chairman
Mr. James Goldstene, Executive Officer
California Air Resources Board
1001 "I" Street
Sacramento, CA 95814-2828

Re: Kern River Gas Transmission Company Comments on the CARB's Proposed Implementation of Administrative Fee Regulations to Fund AB 32

Dear Chairman Nichols and Executive Officer Goldstene:

On April 20, 2009, representatives of Kern River Gas Transmission Company ("Kern River") had an opportunity to view the webcast of the California Air Resources Board ("CARB") workshop related to administrative fee regulation proposed for the implementation of AB 32 ("fee regulation"). Kern River appreciates this opportunity to provide its initial comments on the proposed fee regulation.

Summary of CARB's Fee Recovery Proposal. CARB's proposal is to reach upstream to entities such as Kern River to impose the collection requirement for the fees it needs to generate to fund AB 32 program administration costs. For natural gas utilities, interstate pipelines and intrastate pipelines, the fees will be collected based on the number of therms delivered to end-users – as defined by CARB - within the state of California. Companies such as Kern River will be required to report the therms delivered, for the previous year, which will establish the basis for the next year's fee. CARB believes this method is most administratively convenient.

Summary of Comments. Kern River is particularly concerned that CARB's fee recovery proposal contravenes the enabling legislation, as well as principles of equity and practicality. Because Kern River's rates are exclusively regulated by the Federal Energy Regulatory Commission ("FERC"), Kern River cannot adjust its rates or implement a surcharge to recover these fees from its customers without prior approval of its federal regulator, a process that is often lengthy. Simplicity dictates what the legislature contemplated: the CARB should directly assess the fee on the sources of the emissions within the state of California as clearly stated in AB 32.

About Kern River. Kern River is a Texas general partnership based in Salt Lake City, Utah, an interstate natural gas company within the meaning of the Natural Gas Act and regulated by FERC. The Kern River pipeline transports natural gas in a system made up of nearly 1,680 miles of pipeline, from the production fields of southwestern Wyoming to delivery points in Utah and Nevada and on to Bakersfield, California. Kern River's pipeline currently has a design capacity of more than 1.7 billion cubic feet per day. As a federally-regulated open-access interstate natural gas transporter, Kern River utilizes its interstate natural gas transmission system to provide transportation services to customers throughout the Western United States. Kern River does not own the natural gas it transports.

<u>Interstate Natural Gas Transportation Companies are Not Greenhouse Gas "Sources" within the Meaning of AB 32.</u> The statute AB 32 states that "a schedule of fees to be paid by the sources of greenhouse gas emissions" would be established by the Board. Moreover, the legislation requires that the source be "significant," in the Board's estimation, in order "to enable [it] to effectively reduce greenhouse gas emission and monitor compliance" with California's stringent GHG limit. The requirement that "sources" pay the "fees" is to ensure that emitters understand that the greater their emissions, the more they will pay to support state programs that control GHG. Price signals are a recognized regulatory tool for influencing behavior. However, placing the costs associated with implementing the state of California's GHG program far upstream from the source and then collecting those costs in a retroactive manner defeats the basic purpose of the legislative mandate <u>that the fee be collected from the source</u>.

<u>Federally-Regulated Interstate Pipelines Subject to Collecting the Fee Cannot Collect the Fee from Customers without Federal Approval.</u> As a federally-regulated pipeline, Kern River could collect such fees only following special tariff and rate approval from FERC. No such mechanism (for a current or retroactive exaction of fees) exists in Kern River's tariff. Kern River transports the gas in interstate commerce for its customers, it does not own it. Kern River is a transportation service provider. Therefore, the policy concept that the fee would be "passed through" by increasing the price for interstate transportation service is not necessarily true. Moreover, Kern River's pipeline transportation rates are subject to federal rate regulation, requiring the consent of FERC to pass through any new regulatory cost. While upstream regulation contemplates that fees will reach end-users immediately and on a constant basis, pipeline rate proceedings occur only on a periodic basis. Thus, unless a rate tracking mechanism were adopted and approved by FERC, there could be long periods in which Kern River would be forced to pay all or a substantial portion of the fees, and those costs would not be borne by emitters of GHG, nor reflected in the price of natural gas. Imposing the fees on federally regulated interstate pipelines is unlikely to provide either the price signal or the revenue assurance that CARB seeks.[1]

<u>Conclusion.</u> Natural gas is a necessary clean burning fuel. In the business as a transporter and not a consumer of natural gas, the interstate natural gas pipeline industry's contribution to overall U.S. GHG emissions is small. According to the EPA inventory of GHGs[2] in 2006 for the whole United States, natural gas pipelines accounted for less than 1% of the overall GHG emissions. As AB32 instructs, CARB's focus for collection of its implementation fee should be on the real sources of GHG. The intrusion of an end-user fee, established on a retroactive basis, on the rates of a federally-regulated interstate pipeline, is inapt and inappropriate.

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[1] In addition, as in any regulatory environment, Kern River may not be authorized to recover the full fee. Pipeline rate proceedings typically are heavily contested. Kern River's rate structure may not readily permit the inclusion of additional fees and costs at this time.

[2] <u>Inventory of U.S. Greenhouse Gas Emissions and Sinks: 1990-2006</u>, (EPA, USEPA #430-R-08-005**,** April 2008).

Thank you for this opportunity to comment on the Draft Fee Implementation Regulations as set forth in the April 20, 2009 webcast. Please do not hesitate to telephone me with any questions you may have concerning Kern River's comments.

Respectfully submitted,

s/Patricia M. French
Patricia M. French

Cc: Edie Chang, Chief, Program Planning and Management Branch, Office of Climate Change
Jon Constantino, CARB
Jeannie Blakeslee, CARB