

168 FERC ¶ 61,090
UNITED STATES OF AMERICA
FEDERAL ENERGY REGULATORY COMMISSION

Before Commissioners: Neil Chatterjee, Chairman;
Cheryl A. LaFleur, Richard Glick,
and Bernard L. McNamee.:

Northern Border Pipeline Company

Docket No. RP19-1390-000

ORDER ACCEPTING TARIFF FILING SUBJECT TO CONDITIONS

(Issued August 16, 2019)

1. On July 19, 2019, Northern Border Pipeline Company (Northern Border) submitted revised tariff records¹ to add provisions for pre-arranged sales of capacity, and future sales of firm capacity that is unsubscribed or soon to be available to be offered more than 95 days in advance, either through an open season or the proposed pre-arranged procedures. In addition, Northern Border proposes to provide for sales of such capacity in the interim, without a right of first refusal (ROFR). As discussed below, the Commission accepts the revised tariff records, to be effective August 19, 2019, subject to conditions.

Proposal

2. Northern Border proposes to revise and clarify its procedures for sales of capacity to be available more than 95 days in the future. In addition, Northern Border requests that “it continue to be able to sell that same capacity on an interim basis, prior to the commencement of the future capacity sale, without a [ROFR].”²

3. Northern Border proposes a future available capacity sales mechanism as set forth in new section 6.26.6 of the General Terms and Conditions (GT&C) of its tariff.³ According to Northern Border, the proposed mechanism clarifies that it may sell firm

¹ See Appendix.

² Northern Border Filing Letter at 2-3.

³ *Id.* at 3.

capacity at any time in the future by either conducting an open season or by selling such capacity on a pre-arranged basis and then conducting an open season.⁴

4. Northern Border describes its proposal for pre-arranged sales of capacity in its filing:

Section 6.26.6 stipulates that if Northern Border sells capacity on a pre-arranged basis, Northern Border will post a notice on its interactive web site indicating that the associated capacity will be subject to an open season bidding process so that other parties will have an opportunity to submit a bid reflecting either an immediate or future need for the capacity. If another party submits a bid with a greater economic value, the shipper entering into the pre-arranged deal will have a one-time right to match the higher bid in order to retain the capacity. If the pre-arranged shipper elects not to match the greater competing bid, the associated capacity will be awarded to the shipper bidding the greatest net present value [(NPV)] for the capacity.⁵

Northern Border states that “[p]ermitting [it] to sell capacity with future commencement dates on a pre-arranged basis will benefit customers requiring long lead times who do not need capacity in the near-term, but need some assurance that they can acquire capacity for future requirements, such as for new or planned electric generation projects which require substantial lead times.”⁶ Northern Border states that its proposed posting and bidding processes for pre-arranged capacity sales “will allow for an efficient allocation of capacity and ensure that available capacity is awarded to the shipper(s) willing to pay the highest net present value for such capacity, consistent with an acceptable ‘prearranged deal’ program[.]”⁷

5. Northern Border’s proposed GT&C section 6.26.6(b) provides that, if it conducts an open season, it will post a notice of the open season on its Internet web site for at least

⁴ *Id.*

⁵ *Id.*

⁶ *Id.*

⁷ *Id.* (referencing *Gas Transmission Northwest Corp.*, 109 FERC ¶ 61,141, at PP 17, 18 (2004) (*GTN*); *Northern Natural Gas Co.*, 109 FERC ¶ 61,388, at PP 14, 22-24, 27-29 (2004) (*Northern Natural*)).

five business days to afford all potential shippers an opportunity to acquire the capacity.⁸ Proposed section 6.26.6(b) states that any potential shippers wishing to acquire capacity may request an immediate or future Billing Commencement Date (if the capacity is currently available) or a future Billing Commencement Date (if the capacity will become available in the future) and that Northern Border will award capacity on an NPV basis consistent with Section 6.26.4 of the GT&C.⁹

6. Under Northern Border's proposed GT&C section 6.26.7, "if Northern Border sells capacity with a future commencement date, such capacity will be made available for transportation service on an interim basis prior to the service commencement date of the future service agreement."¹⁰ Northern Border states that, as part of its proposal, it "has updated and relocated existing language pertaining to interim sales of capacity," moving the language from GT&C section 6.26.2 to new section 6.26.7.

7. New section 6.26.7 states that "Northern Border reserves the right to limit shipper rights to not extend beyond the service commencement date of the future service agreement, including the ROFR, on interim capacity sales."¹¹ Northern Border states that the Commission has allowed such limitations in other proceedings.¹² Northern Border states that its proposed pre-arranged capacity sales program implements posting and bidding procedures to ensure that the shipper obtaining the capacity for the future period places the highest present value on the capacity, which is the Commission's prerequisite for allowing such extension limitations.¹³

⁸ See proposed GT&C section 6.26.6(b).

⁹ *Id.*

¹⁰ Northern Border Filing Letter at 4.

¹¹ *Id.*

¹² *Id.* (citing *GTN*, 109 FERC ¶ 61,141 at PP 17, 18; *Northern Natural*, 109 FERC ¶ 61,388 at PP 22, 24, 26-29; *ANR Pipeline Co.*, 150 FERC ¶ 61,059, at P 12 (2015) (*ANR*); *Viking Gas Transmission Co.*, 142 FERC ¶ 61,054 (2013) (*Viking*); *Portland Natural Gas Transmission System*, Docket No. RP16-981-001 (June 30, 2016) (delegated order) (*PNGTS*); *Tennessee Gas Pipeline Co.*, 126 FERC ¶ 61,200, at PP 9, 12 (2009)).

¹³ *Id.* at 4 n.6.

8. Northern Border argues that its proposal is consistent with prior Commission decisions.¹⁴ Northern Border requests that the Commission accept its filing of revised tariff records to become effective August 19, 2019.

Notice of Filing, Interventions and Responsive Pleadings

9. Public notice of the filing was issued on July 22, 2019. Interventions and protests were due as provided in section 154.210 of the Commission's regulations.¹⁵ Pursuant to Rule 214 of the Commission's Rules of Practice and Procedure, all timely filed motions to intervene and any unopposed motion to intervene out-of-time filed before the issuance date of this order are granted.¹⁶ Granting late intervention at this stage of the proceeding will not disrupt the proceeding or place additional burdens on existing parties.

10. BP Canada Energy Marketing Corp. (BP Canada)¹⁷ and Koch Energy Services, LLC (Koch) filed comments (Comments).

11. On August 9, 2019, Northern Border filed an answer (Answer) to the Comments. Rule 213(a)(2) of the Commission's Rules of Practice and Procedure prohibits an answer to a protest unless otherwise ordered by the decisional authority.¹⁸ We accept the Answer here because it provides information that has assisted in our decision-making process.

12. BP Canada and Koch request that the Commission require Northern Border to include a reference to the winning bid procedures in GT&C section 6.26.3 of Northern Border's tariff in its newly proposed tariff language related to sales of capacity available at a future date. BP Canada and Koch note that section 6.26.3 requires Northern Border to post winning bids, identify successful bidders, and post the NPV analysis used to

¹⁴ *Id.* at 2 (citing *GTN*, 109 FERC ¶ 61,141; *Columbia Gulf Transmission Co.*, 118 FERC ¶ 61,194 (2007); *Tuscarora Gas Transmission Co.*, 127 FERC ¶ 61,217 (2009); *Viking*, 142 FERC ¶ 61,054; *ANR*, 150 FERC ¶ 61,059; *PNGTS*, delegated order, Docket No. RP16-981-001).

¹⁵ 18 C.F.R. § 154.210 (2018).

¹⁶ *Id.* § 385.214.

¹⁷ BP Canada was originally joined in its comments by ConocoPhillips Company, who withdrew its participation from the comments on August 7, 2019.

¹⁸ 18 C.F.R. § 385.213(a)(2) (2018).

determine winning bidders.¹⁹ Koch states that section 6.26.3 provides the necessary information “to ensure market transparency in Northern Border’s [c]apacity awards.”²⁰ Koch states that its request is consistent with an order that the Commission issued last year, which approved section 6.26.4 of Northern Border’s tariff.²¹

13. According to BP Canada, “Northern Border’s proposed tariff language would determine the best bidder in an open season, or the highest bid in a prearranged shipper open season, on the basis of NPV, consistent with [s]ection 6.26.4 of Northern Border’s tariff.”²² BP Canada explains that

[s]ection 6.26.4 states only that Northern Border has the discretion to determine how the various inputs to the NPV analysis (including term, quantity, date of commencement of service, cost of facilities required to provide the service, and “other factors” determined relevant by Northern Border) factor together to create the bid with the highest NPV.²³

BP Canada states that section 6.26.4 “does not go far enough” to ensure transparency in the open season process.²⁴ BP Canada states that when the Commission approved GT&C section 6.26.4 in Northern Border’s tariff in August 2018, the Commission recognized the importance of the posting requirements in section 6.26.3.²⁵ According to BP Canada, the Commission also noted in the *Northern Border* order that the requirement to post the identity of winning bidders and bids, along with the NPV analysis, was consistent with

¹⁹ Northern Border’s tariff, GT&C section 6.26.3(e), Bid Procedures, states, “The winning Bid(s), including the identity of the bidder(s), will be posted on [Northern Border’s] Internet web site.”

²⁰ Koch Amended Comments at 2-3.

²¹ *Id.* at 3 (citing *Northern Border Pipeline Co.*, 164 FERC ¶ 61,150, at P 19 (2018) (requiring Northern Border to post the NPV analysis used to determine the successful bidder or bidders along with the identity of the winning bidders and bids under GT&C section 6.26.3(e)) (*Northern Border*)).

²² BP Canada Comments at 2.

²³ *Id.* at 2-3. *See also* Koch Amended Comments at 2.

²⁴ BP Canada Comments at 3.

²⁵ *Id.* (citing *Northern Border*, 164 FERC ¶ 61,150 at P 19).

prior proceedings.²⁶ BP Canada states that the Commission should require Northern Border to reference section 6.26.3 in proposed section 6.26.6, similar to the reference in section 6.26.5, Reservation of Capacity for Expansion/Extension Projects.²⁷

14. BP Canada also requests the Commission to confirm that Northern Border's tariff requires Northern Border to post the identity (i.e., the actual name(s)) of the winning bidder(s) and bid(s). BP Canada reports several recent open season award postings where Northern Border has stated that "Party 1" was the winning bidder, but did not identify who "Party 1" was.²⁸

15. In its Answer, Northern Border states that it would be amenable to modifying the last sentence of section 6.26.6(b) of the GT&C to add the underlined language as shown in the following:

Company will award capacity in accordance with the bid procedures of Section 6.26.3 and on an NPV basis consistent with Section 6.26.4 of these General Terms and Conditions.²⁹

16. Northern Border states that Indicated Shippers and Koch Energy each expressed a concern that Northern Border has not posted the name of the winning bidder in recent open season award postings.³⁰ Northern Border responds in its Answer that Northern Border posts the names of winning bidders in its "Transactional Reports."³¹ Northern Border states that, in addition to providing winning bidders' names, these Transactional

²⁶ *Id.* See also *Northern Border*, 164 FERC ¶ 61,150 at P 19 (directing Northern Border to specify in its GT&C that it will post the NPV analysis used to identify winning bidders when it posts identity of winning bidders and bids, because Northern Border stated that it sought the same flexibility as awarded in the proceedings discussed in the order); *Columbia Gas Transmission, LLC*, 148 FERC ¶ 61,218, at PP 41-43 (2014); *Texas Eastern Transmission Corp.*, 79 FERC ¶ 61,258, at 62,109 (1997). See also GT&C section 6.26.3(f) (requiring posting of NPV analysis when identifying winning bidder).

²⁷ BP Canada Comments at 3-4.

²⁸ *Id.* at 4.

²⁹ Northern Border Answer at 3.

³⁰ *Id.*

³¹ *Id.* See 18 C.F.R. § 284.13(b) (2018).

Reports include contract start and end dates, receipt and delivery point names, contract quantities and rates paid.³² Northern Border states that it is confident that this reporting provides the transparency necessary to permit shippers to confirm that capacity is awarded in a non-discriminatory fashion.³³

Discussion

17. The Commission finds that the tariff records filed by Northern Border are reasonable and consistent with Commission policy, with the exception discussed below.

18. Permitting a pipeline to sell capacity for service to commence in the future has efficiency benefits similar to the benefits provided by permitting a pipeline to reserve capacity as part of an anticipated system expansion in the Commission's capacity reservation program.³⁴ Furthermore, selling capacity for future service will benefit customers with long lead times, such as generation developers and distribution companies anticipating growth, who do not need capacity right now, but need assurance that they can get capacity in the future.³⁵

19. However, the Commission directs Northern Border, as a condition of acceptance of its filing, to revise its proposal to incorporate and reference the GT&C section 6.26.3 information posting requirement as requested by the Comments and agreed to in Northern Border's Answer. The Commission imposed a similar requirement in its August 2018 *Northern Border* order approving the existing auction procedures. In *Northern Border*, the Commission approved modifications to Northern Border's auction procedures to incorporate a NPV bid evaluation methodology, but required Northern Border to post,

³² Northern Border Answer at 3-4.

³³ *Id.* at 4.

³⁴ *GTN*, 109 FERC ¶ 61,141 at P 15; *Northern Natural*, 109 FERC ¶ 61,388 at P 14. The proposal is consistent with the Commission's policy that a pipeline may sell capacity no more than 90 days in advance commencement of service. *E.g.*, *Encana Mktg. (USA) Inc. v. Rockies Express Pipeline LLC*, 146 FERC ¶ 61,161 (2014). Although Northern Border's tariff permits the request for capacity to be made 95 days in advance, Northern Border's tariff also includes a 5 day bidding period. *See* General Terms and Conditions section 6.26.2. Thus, the capacity will not actually be sold until the conclusion of the bidding period, which will be at least 90 days prior to the commencement of service.

³⁵ *See, e.g.*, *GTN*, 109 FERC ¶ 61,141 at P 15; *Northern Natural*, 109 FERC ¶ 61,388 at P 29.

after the fact, the winning bid and associated bid calculation analysis. The Commission explained that it was “Northern Border’s obligation to present in an open, understandable, and transparent manner all bidding criteria and evaluation methodologies in the posting soliciting bids for available capacity under GT&C section 6.26.4” that rendered Northern Border’s proposal just and reasonable and consistent with Commission policy.³⁶ This finding was consistent with prior Commission orders directing information to be posted with regard to winning bids following open seasons in order to ensure transparency and the Commission has relied on such posting requirements to establish that open season procedures are transparent, non-discriminatory, and fair.³⁷ In the instant filing modifying certain provisions within Northern Border’s tariff regarding future sales of available capacity, Northern Border has neglected to incorporate the provision for identifying winning bidders as was the case in its previous proposals.

20. Consequently, consistent with the representations in Northern Border’s Answer, the Commission directs Northern Border, in a compliance filing due within 21 days of the issuance of this order, to revise the new GT&C section 6.26.6 future sales provisions to incorporate the reference to the GT&C section 6.26.3 information posting requirement as proposed in its Answer.

21. Additionally, in response to BP Canada’s concern, the Commission confirms that GT&C section 6.26.3 requires identification of winning bidders by name and the amount of their winning bid, along with the disclosure of the NPV analysis used to select successful bidders. Northern Border’s Answer states that it provides information to meet its open season reporting obligations on its website as Transactional Reports.³⁸ However, a review of Northern Border’s website reveals that it posts the results of open seasons, not as Transactional Reports,³⁹ but as “Non-Critical” Notices. Moreover, we clarify that information posted in Transactional Reports does not provide sufficient transparency to meet the Commission’s requirements for pre-arranged capacity auctions.⁴⁰ The

³⁶ *Northern Border*, 164 FERC ¶ 61,150 at P 13.

³⁷ *Id.*; *Sea Breeze Pacific Juan de Fuca Cable, LP*, 112 FERC ¶ 61,295, at P 27 (2005) (“Once all contracts have been executed related to the open season, Sea Breeze will identify the names of the winning bidders and the general terms of the contract, and report the results of the open season to the Commission. Thus, the open season criterion is satisfied”); *Rockies Express Pipeline LLC*, 160 FERC ¶ 61,127 (2017).

³⁸ Northern Border Answer at 3.

³⁹ *See* 18 C.F.R. § 284.13(b).

⁴⁰ *See, e.g., Texas Gas Transmission Corp.*, 101 FERC ¶ 61,408, at P 34 (2002) (stating Commission policy in relation to interruptible and short-term sales that pipeline

Transactional Reports for firm services are to be posted “no later than the first nomination under a transaction.”⁴¹ In *Northern Border*, the Commission required disclosure of the winning bid and analysis to provide added transparency enabling shippers to confirm that capacity was awarded in a non-discriminatory fashion.⁴² We do not believe that delaying disclosure of the identity of the winning bidder potentially until the start of service under the transaction provides adequate transparency. Northern Border should follow the approach that the Commission approved in the August 2018 *Northern Border* order, and therefore should “includ[e] the identity of the bidder(s)” when it posts the winning bids and the NPV analysis used to determine successful bidders on its web site, consistent with GT&C section 6.26.3(e) and (f).⁴³ Consequently, we direct Northern Border to include the identity of the winning bidder when it discloses the auction results and other required information on its website as a Non-Critical Notice, consistent with its current posting practice.

The Commission orders:

(A) The tariff records identified in the appendix are accepted, effective August 19, 2019, subject to condition, as discussed in the body of this order.

should disclose the winning bidder of each auction “in a timely manner” so that bidders should have access to information in case a bidder wants to raise a complaint or investigate a particular auction); *Gulf South Pipeline Co.*, 95 FERC ¶ 61,196 (2001) (“to ensure that the option fee component of a negotiated rate [park and loan] transaction is disclosed in a timely fashion, we will require Gulf South to also disclose the duration of the exercise period for the option fee at the time it discloses the other information concerning the winning bid under the auction procedures”).

⁴¹ 18 C.F.R. § 284.13(b).

⁴² *Northern Border*, 164 FERC ¶ 61,150 at P 19.

⁴³ *Id.*

(B) Northern Border is directed to file revised tariff records within 21 days of the issuance of this order, as discussed in the body of this order.

By the Commission.

(S E A L)

Nathaniel J. Davis, Sr.,
Deputy Secretary.

Appendix

**Northern Border Pipeline Company
FERC NGA Gas Tariff
Northern Border Tariffs**

Tariff Records Accepted Effective August 19, 2019, Subject to Conditions:

[5.1.4.1-Rate Schedule T-1, Service Continuation, 3.0.0](#)

[6.26.2 - GT&C, Posting of Available Firm Capacity, 3.0.0](#)

[6.26.5 - GT&C, Reservation of Capacity for Expansion/Extension Projects, 2.0.0](#)

[6.26.6 - GT&C, Future Sales of Capacity, 0.0.0](#)

[6.26.7 - GT&C, Interim Sales of Capacity, 0.0.0](#)

[7.1.1 - Service Agmts, Rate Schedule T-1 - Exhibit A, 5.0.0](#)

[7.4.1 - Service Agmts, Rate Schedule T-1B - Exhibit A, 5.0.0](#)

[7.8.1 - Service Agmts, Rate Schedule FTL-1 - Exhibit A, 3.0.0](#)