

123 FERC ¶ 61,114
FEDERAL ENERGY REGULATORY COMMISSION
WASHINGTON, D.C. 20426

(May 2, 2008)

In Reply Refer To:
Northern Border Pipeline
Company
Docket No. RP08-309-000

Northern Border Pipeline Company
P.O. Box 542500
Omaha, NE 68154-8500

Attention: Bambi L. Heckerman
Agent and Attorney-in-Fact

Reference: Revision of ROFR Rights and Bidding for Long Term Capacity

Dear Ms. Heckerman:

1. On April 3, 2008, Northern Border Pipeline Company (Northern Border) filed revised tariff sheets,¹ to modify two provisions of its tariff. Northern Border requests an effective date of May 5, 2008, for the revised tariff sheets. We accept Northern Border's revised tariff sheets, to be effective May 5, 2008, subject to Northern Border amending Fifth Revised Sheet No. 271, as discussed below.

2. The first proposed revision addresses the right of first refusal (ROFR) on firm capacity contracts with a future service commencement date. Northern Border proposes to add Subsection 26.2(iv) to the General Terms and Conditions (GT&C) of its tariff and to amend Subsection 5.1 of Rate Schedule T-1 to clarify that if Northern Border awards capacity with a future billing commencement date, such capacity will be made available to shippers on an interim basis up to the billing commencement date of the prospective firm service agreement and will have limited ROFR rights, if applicable.

¹ Fifth Revised Sheet No. 102A, First Revised Sheet No. 270C, Fifth Revised Sheet No. 271, Eighth Revised Sheet No. 406, and Seventh Revised Sheet No. 429 B to FERC Gas Tariff, First Revised Volume No. 1.

3. The second proposed revision is an amendment to Subsection 26.3(b)(iii) of Northern Border's GT&C. The amended Subsection 26.3(b)(iii) would provide more flexibility for shippers to bid on contingent long-term capacity on Northern Border's pipeline system. The current period for bids of one year or more, that are contingent on the potential shipper acquiring capacity on another pipeline connected to Northern Border is five days. Specifically, Northern Border proposed to change the language "the contingency must be cleared within 5 business days" to "the contingency must be cleared within the time frame specified in Company's posting pursuant to Subsection 26.2 of these General Terms and Conditions." Northern Border states that some of its potential shippers have indicated that five days may not be enough time to clear a contingency involving the shipper's ability to purchase capacity on another pipeline connected to Northern Border.

4. Notice of Northern Border's filing was issued on April 8, 2008. Interventions and protests were due as provided in section 154.210 of the Commission's regulations, 18 C.F.R. § 154.210. Pursuant to Rule 214, 18 C.F.R. § 385.214 (2007), all timely filed motions to intervene and any motions to intervene out-of-time filed before the issuance date of this order are granted. Granting late intervention at this stage of the proceeding will not disrupt this proceeding or place additional burdens on existing parties. The Peoples Gas Light and Coke Company and North Shore Gas Company (Protestors) filed protests. BP Canada Energy Marketing Corp., Occidental Energy Marketing, Inc., and Coral Energy Resources, L.P. (Commenters) filed comments.

5. In their protest, Protestors object to Fifth Revised Sheet No. 271, which deals with the revised contingency period. Protestors assert that it is not clear why the five business day period is insufficient. If there is a valid problem with five business days, Protestors state that they would not be opposed to a different period, but the period should not be open-ended. Additionally, Commenters filed comments raising concerns similar to those of the Protestors. Their primary concern is that the minimum period to clear a contingency should be no less than five business days.

6. Northern Border filed its answer on April 16, 2008. Rule 213(a)(2) of the Commission's Rules of Practice and Procedure, 18 C.F.R. § 385.213(a)(2) (2007), prohibits an answer to a protest unless otherwise ordered by the decisional authority. We will accept Northern Border's answer because it has provided information that assisted us in our decision-making process.

7. Northern Border's answer addresses Protestors' and Commenters' concerns and proposes filing a revised tariff sheet amending the language in Subsection 26.3(b)(iii) to read: "[F]or service for one year or more, the contingency must be cleared within the time frame specified in Company's posting pursuant to Subsection 26.2 of these General Terms and Conditions, but in no event shall the specified time frame be less than five business days or greater than forty-five calendar days." On April 17, 2008, in response to Northern Border's answer, Protestors withdrew their protest.

8. We find Northern Border's suggested language adequately addresses the concerns raised by both Protestors and Commenters while allowing additional flexibility to resolve any contingency involving a shipper's ability to purchase capacity on another pipeline connected to Northern Border. Therefore, we will accept Northern Border's revised proposal, subject to Northern Border incorporating the above proposed new language into its tariff within ten days of the date this order issues.

9. The revised tariff sheets listed in Footnote No. 1 are accepted, effective May 5, 2008, subject to the conditions stated above.

By direction of the Commission.

Nathaniel J. Davis, Sr.,
Deputy Secretary.