

UNITED STATES OF AMERICA  
FEDERAL ENERGY REGULATORY COMMISSION

Regulations Governing the Conduct of  
Open Seasons for Alaska Natural Gas  
Transportation Projects

Docket No. RM05-1-000

NOTICE OF RE-SCHEDULED  
ALASKA NATURAL GAS TRANSPORTATION PROJECTS  
OPEN SEASON PRE-FILING WORKSHOP

(February 17, 2010)

On February 22, 2010, the Staff of the Federal Energy Regulatory Commission (FERC) will hold a workshop on the procedures and process for holding and commenting on an open season for an Alaska Natural Gas Transportation Project. The Workshop is being held at the Commission's headquarters in Washington and has been rescheduled from the previous date of February 11, 2010 due to the weather emergency closure of the Commission's offices.

In 2005, in the above-referenced docket, FERC enacted regulations under the Alaska Natural Gas Pipeline Act which established the procedures for conducting open seasons for the purpose of making binding commitments for the acquisition of capacity on Alaska natural gas transportation projects. TransCanada Alaska Company LLC (TC Alaska) has recently filed its request for approval of its Open Season plan for its Alaska Pipeline Project in Docket No. PF09-11-001. Denali - The Alaska Gas Pipeline LLC has publicly stated that it intends to hold an open season for its project in 2010.

Under FERC's open season regulations, prior to conducting an open season for an Alaskan natural gas transportation project, each project sponsor is required to submit a detailed open season plan to FERC. After receiving the project sponsor's open season plan, FERC will issue a notice requesting public comments on the open season plan and explain the procedure for submitting such comments. Absent unusual circumstances, FERC will act on the open season plan within 60 days its submission by the project sponsor.

Both of these project sponsors have initiated FERC's pre-filing process, which is typically focused on FERC's environmental review of a project. However in this instance, the pre-filing process also includes FERC's review, approval, and oversight of the project sponsors' open season. FERC Staff is holding this Open Season Pre-Filing

Workshop to provide interested parties an opportunity to learn about and discuss the procedures and process for commenting upon and holding an open season.

The workshop will be held on February 22, 2010, from 1pm to 4pm (EST) at:

Federal Energy Regulatory Commission  
888 1<sup>st</sup> Street, NE - Room 3M-2 A&B  
Washington, DC 20426

All interested parties may attend. The agenda for the Open Season Pre-Filing Workshop is attached. There will be no discussion of TC Alaska's filing in Docket No. PF09-11-001, or any other aspect of the proposed Alaska pipeline projects. Rather, the Workshop will focus on the requirements of the Commission's regulations and procedures and process for commenting upon and holding an open season. In order to ensure that questions could be appropriately answered, it was previously requested that interested parties provide any questions in advance to Commission Staff and these questions have been added to the Agenda without attribution. Any further new questions or follow-up questions will also be entertained at the Workshop.

The Workshop will not be transcribed by the FERC Staff. Telephone participation will be available; by calling:

Conference number : (888) 566 - 6129

Participant passcode : 43634

For security reasons, the passcode will be required to join the call. Restrictions may exist when accessing freephone/toll free numbers using a mobile telephone.

For additional information concerning this event, please contact Richard Foley at (202) 502-8955 or Mary O'Driscoll at (202) 502-8680.

Kimberly D. Bose,  
Secretary.

**Alaska Natural Gas Transportation Projects  
Open Season Pre-Filing Workshop**

**Agenda**

1:00 pm – Welcome and Opening Remarks

1:10 pm – Explanation of FERC Open Season Policy and Alaskan Open Season Rules  
Richard Foley, FERC Staff, Lead Certificate Manager for Alaskan Projects  
(Slide presentation will be posted on FERC’s Calendar page for this event)

1:30 pm – Explanation FERC’s Electronic Records and Filing System  
Todd Ruhkamp, FERC Staff, Senior Certificate Analyst  
(Slide presentation will be posted on FERC’s Calendar page for this event)

2:00 pm – Questions and Discussion (see attached Appendix)

4:00 pm – Closing Remarks and Adjourn

Alaska Open Season Workshop in RM05-1-000  
Agenda Item – Questions and Discussion

*The Commission Staff will seek to provide qualified opinions regarding these questions, provided however, that it is understood that the full text of current and future Commission Orders and Regulations is the official and complete explanation of the Open Season Process and Procedures for Alaska Natural Gas Transportation Projects*

- 1) What process will FERC use for pre-approval of a project sponsor's open season bid package ? The Commission has identified 21 items which must be included in the bid package. Will the standard of review of the bid package simply be whether those items have been included, or will it be whether those items also provide sufficient quantity and quality of information for the potential shipper to make an informed and reasoned decision to bid ?
- 2) If the project sponsor does clarify or modify its bid package in reply comments, will the Commission specifically incorporate that clarification into its Order approving the bid package, if it agrees with the project sponsor's response ? Will parties have an opportunity to comment on any such changes or clarifications ?
- 3) Is it possible that the bid package could be clarified, modified, and/or conditioned to such an extent that it would require the project sponsor to refile its bid package with the Commission ?
- 4) Under what circumstances could/would the Commission require the project sponsor to refile its bid package (eg: due to updated or changed information per Sec. 157.34 (c) ?
- 5) Will the "relevant standing" principle be applicable, or will any, and every, party have the ability to participate ? Even if "relevant standing" is applicable will any Alaska citizen be considered to have "relevant standing" ?
- 6) Order No. 2005-A stated that any decision on the bid package will be interlocutory and not subject to rehearing. Is there any means for parties to comment on any clarifications or modifications that the project sponsor may make in reply comments, or to any conditions or changes that the Commission may impose ?

- 7) The Commission indicated in Order 2005-A that some confidentiality protections would be appropriate for some of the information put into the public reading room under Sec. 157.34 (c) (18) ?
  - a) Does FERC contemplate the use of a protective order of the sort used in under FERC hearings ? If so, what would be the process and when would that occur ?
  - b) May a shipper that has provided information to a project sponsor under Sec. 157.34 (c) (18) independently seek confidential treatment of that information under the Commission's general regulations (eg: appropriate parts of Part 388) ?
- 8) If any party wished to raise the issue of jurisdiction of any facilities proposed in the bid package, how and when would the Commission address that issue, given that the purpose of Order 2005 is to give the Commission an opportunity "at the earliest possible time" to address disputes that might arise.
- 9) Do the FERC Open Season rules apply to the Alaska LNG project portion of TransCanada's project ? Would they apply to a stand-alone LNG project ?
- 10) How would FERC define a failed open season, and what are the implications ?
- 11) Can the project sponsor continue to market its capacity after the initial open season is closed ?
  - a) Would there be any limitations ?
  - b) Does it make any difference if the project sponsor attempts to market capacity after a failed open season ?
- 12) Given current FERC precedent, are there any types of Conditions Precedent that would not be acceptable to the Commission ?
  - a) For example, would Conditions Precedent that are under the control of either the project sponsor or the shipper be acceptable to the Commission ? [eg: 89 FERC ¶ 61,283 at 61,841-42 (1999) (*Note this case is prior to the actual implementation of the Certificate Policy Statement – cited section generally discusses termination clauses in precedent agreements*)]
  - b) Could a Conditions Precedent be based upon the outcome of the Commission's certificate proceeding (eg: unacceptable modifications or conditions) ?

- 13) To what extent will subsequent changes to the approved open season plan be allowed ? More specifically :
- a) Will the Commission allow subsequent changes to the approved open season bid package as shippers and the project sponsor continue their negotiations after the Commission issues an order on the bid package ?
  - b) Would any post open season negotiated agreement have to be made available to any other shipper ?
  - c) What amount of subsequent negotiated change would require a re-submission of the bid package ?
  - d) To what extent will the negotiated terms and conditions submitted to the FERC for pre-approval of the notice of open season be allowed to differ from negotiated terms submitted either: (1) prior to the official open season notice, (2) after the start of the open season, or (3) after the conclusion of the open season ?
- 14) Can a project sponsor enter into a negotiated agreement with a potential shipper during or after the open season that differs from other shipper's contracts as long as that contract is filed as a non-conforming contract ?
- a) Will contracts with such shippers be made publicly available ?
  - b) Will all shippers seeking the same type of capacity be offered service on the same terms and conditions ?
- 15) Order 2005 provides that "contracts with such [anchor] shippers be made publicly available, and that all shippers seeking the same type of capacity be offered service on the same terms and conditions".
- a) Under what circumstances/conditions could a pre-subscription agreement be contracted with an anchor shipper during the open season ?
  - b) May the project sponsor and potential shippers negotiate modifications to the pro-forma tariff after the open season bid package has been approved ?
  - c) Is there a loophole such that a pre-subscription agreement could be executed just prior to the close of the open season and thus not disclosed to other potential shippers before they submit their bids ?

- d) Does this provision allow a shipper that has entered into a pre-subscription agreement the subsequent right to take another presubscription deal that it feels is more favorable ? Does this provision apply to a late bidder under Sec. 157.34(d)(2) ?
  - e) Is there any time limit envisioned by the Commission as to when a late bidder may submit a bid after the open season has closed ?
- 16) If a certificate application is not accompanied by sufficient contract quantity would the FERC still continue to advance the certificate ?
- 17) What are the Commission's standards for evaluating the project sponsor's obligation to provide low cost expansion capability per Sec. 157.37 ?
- 18) If a project sponsor denies a bid made by a potential shipper, must the project sponsor notify the potential bidder as to why the bid is being rejected per Sec. 157.34 (d) (4) ? Would a potential bidder have the ability to protest the rejection, eg: if it is done on an unduly discriminatory basis ?
- 19) The State of Alaska has some similar financial interests as producer/shippers as a royalty owner and prospective shipper, in addition to other roles. How will FERC treat the State of Alaska, when Alaska is pursuing its proprietary/prospective shipper interests, the same as other resource owners/prospective shippers ? Has FERC instituted any policies or procedures to assure such nondiscriminatory access ?
- 20) One of Order 2005's standards of review is that all binding open seasons must be conducted without undue discrimination or preference.
- i) Can parties comment/protest specific elements of the proposal, such as the lack of in-state, distance based rates, or creditworthiness, which may constitute discrimination or preference ? If the Commission agreed, would the remedy be to deny the bid package or to impose a condition to modify the package ?
  - ii) Can parties raise issues regarding any discrimination or preference at any time during or after the open season process (eg: file a protest or complaint) ? Would the Commission treat such action as an expedited proceeding ?