154 FERC ¶ 61,084
UNITED STATES OF AMERICA
FEDERAL ENERGY REGULATORY COMMISSION

Before Commissioners: Norman C. Bay, Chairman;
Cheryl A. LaFleur, Tony Clark,
and Colette D. Honorable.

Maritimes & Northeast Pipeline, L.L.C. Docket No. RP16-363-000

ORDER ACCEPTING TARIFF RECORDS

(Issued February 5, 2016)

1. On January 6, 2016, Maritimes & Northeast Pipeline, L.L.C. (Maritimes) filed revised tariff records[1] pursuant to section 4 of the Natural Gas Act (NGA), in order to switch its method of allocating available capacity from first-come, first-served to net present value (NPV). Maritimes proposes a method of valuing NPV under which, if an existing firm shipper seeks to modify its primary receipt or delivery points without increasing its rate, quantity, or term, the NPV of its proposal is presumed to be zero. Maritimes also proposes to implement a process by which Maritimes may reserve capacity for a planned future expansion. As discussed below, we accept the subject tariff records, effective February 6, 2016 as requested.

I. Details of the Instant Filing

2. Maritimes states that it is proposing to modify its tariff to (1) specify standard timelines under which customers may request firm service using available capacity, (2) allocate available capacity pursuant to an NPV methodology, (3) implement a process pursuant to which Maritimes may reserve capacity for a planned future expansion and sell that capacity on an interim basis.

A. Standard Timelines

3. Maritimes proposes a new section 3.5 of its General Terms and Conditions (GT&C) requiring that, when a customer requests service, the requested service must commence within specified time frames, depending upon the primary term of the service

[1] Maritimes & Northeast Pipeline, L.L.C., FERC NGA Gas Tariff, Maritimes Database 1, 3., Service Requests and Contracting for Service, 4.0.0 and 4., Allocation of Capacity Entitlements, 3.0.0.

commenced. Service with a term of less than 90 days must commence within five days of the award of capacity; service with a term of 90 days to a year must commence within 30 days; and service with a term of more than a year must commence within 180 days. Section 3.5(b) provides that Maritimes may consider on a not unduly discriminatory basis requests for service to commence outside these timeframes, and the details of any allowed variation will be included in the notice of the open season. Maritimes argues that this proposal is consistent with the Commission's approval of similar proposals for a number of other natural gas pipelines.[2]

B. <u>NPV Allocation Methodology</u>

4. Maritimes currently allocates requests for available firm service on a "first-come, first-served" basis. Maritimes asserts that since the first-come, first-served methodology allocates capacity based on the timing of the receipt of a valid request, this methodology in and of itself does not ensure that capacity is allocated to customers who place the highest value on such capacity.

5. Therefore, Maritimes proposes to modify sections 3.2(b), 4.1(a), and 4.1(b) of its GT&C to replace the existing first-come, first-served methodology with an NPV allocation methodology. Maritimes argues that the Commission has consistently held that its policies regarding capacity allocation are guided by its goal of placing capacity in the hands of the bidder that most highly values it. Accordingly, the Commission has approved the use of capacity allocation methodologies based on NPV for many pipelines.[3]

6. Proposed GT&C section 4.1(a)(1) provides that, upon receipt of a valid request for firm service with a term greater than 30 days, Maritimes shall establish an open season to solicit bids for service to start immediately or in the future. For requests for firm service with a term or 30 days or less, Maritimes may, but is not obligated, to establish an open season. GT&C section 4.1(a)(2) provides minimum time periods for the open seasons depending upon the term of the service subject to the open season, and section 4.1(a)(2) sets forth the information that must be included in the open season notice. GT&C section 4.1(a)(7) provides that the "best bid" shall be the bid which yields to Maritimes the highest NPV.

---

[2] Maritimes Transmittal at 2 & n.5 (citing *Saltville Gas Storage Co., L.L.C.*, 128 FERC ¶ 61,257, *order on reh'g*, 126 FERC ¶ 61,181 (2009); *Algonquin Gas Transmission, LLC*, 120 FERC ¶ 61,072 (2007); *Wyoming Interstate Company Ltd.*, 110 FERC ¶ 61,238 (2005); *Texas Eastern Transmission, LP*, 106 FERC ¶ 61,018 (2004); *Tennessee Gas Pipeline Co.*, 105 FERC ¶ 61,167 (2003)).

[3] Maritimes Transmittal at 2.

7. Maritimes proposes in section 3.2(b) to require that an existing shipper's request to add or modify a primary receipt or delivery point that requires additional capacity will be addressed in accordance with proposed section 4.1(a). Maritimes states that, consistent with Commission precedent,[4] proposed section 4.1(a)(7) provides that an existing firm customer's request to add or change primary receipt or delivery points will be considered to have an NPV of zero, unless the customer agrees to (i) increase its Maximum Daily Transportation Quantity (MDTQ), (ii) increase its rate if such rate is less than the applicable maximum rate, or (iii) extend the term of its service agreement. Maritimes adds that, in those circumstances, it will include the MDTQ increase, rate increase and/or term extension in the calculation of the net present value of the request and will award the capacity to or among the Positive NPV Bid(s) in accordance with the provisions of section 4.1(a)(7).

8. Maritimes states that if no bid resulting in a Positive NPV Bid is received or if point capacity remains after capacity has been awarded to or among the Positive NPV Bid(s), the remaining capacity will be awarded to the existing firm customer whose request to change primary points was received first-in-time by Maritimes. Therefore, Maritimes concludes, even if there is no available mainline capacity, Maritimes will have procedures in place for the allocation of available point capacity to existing firm customers. Maritimes states that these procedures are consistent with the Commission precedent.[5]

9. Maritimes states that the last two paragraphs of proposed section 4.1(a)(7) describe the obligations of a winning bidder. Maritimes notes that if the winning bidder is the original requesting party, the winning bid is binding on the requesting party and a service agreement will be executed pursuant to section 3.3. Maritimes adds that if the winning bidder is not the original requesting party, such winning bidder must submit a request for service pursuant to section 3.1 and must comply with all requirements of GT&C section 3. Maritimes states that in the event that the winning bidder does not execute the service agreement pursuant to section 3.3, the winning bidder is nonetheless bound by the terms of its winning bid and the provisions of such service agreement as though it had been fully executed. Finally, Maritimes states that section 4.1(a)(7) provides that if Maritimes is unable to approve the winning bidder's request for service, the capacity will be awarded to the bidder that submitted the next highest bid for the

---

[4] Maritimes Transmittal at 4 & n.9 (citing *Tennessee Gas Pipeline Co.*, 108 FERC ¶ 61,177, at P 27 (2004); *Southern Natural Gas Co.*, 96 FERC ¶ 61,008, at 61,031 (2001)).

[5] Maritimes Transmittal at 4 & n.10 (citing *Tennessee Gas Pipeline Co*., 91 FERC ¶ 61,053 (2000) (*Tennessee*), *aff'd on reh'g*, 94 FERC ¶ 61,097 (2001) (*Tennessee rehearing*), *aff'd, Process Gas Consumers Group*, *et al*. *v. FERC*, 292 F.3d 831 (D.C. Cir. 2002)).

capacity, subject to the credit requirements set forth in sections 3.8 and 3.9, unless such party provides written notification to Maritimes, within one business day of the award of capacity, that it does not accept such awarded capacity.

10. Maritimes states that proposed section 4.1(a)(8) provides that, in the event Maritimes receives two or more bids that yield the best bid, capacity subject to the open season will be allocated between or among such bids pro rata based on the MDTQ requested. Maritimes states that section 4.1(a)(8) further provides that Maritimes shall reject any request submitted by a bidder who is offered capacity on a pro rata basis and declines to enter into a service agreement for such pro rata capacity and shall reallocate the available capacity among any remaining requests which produce an equivalent NPV.

11. Finally, Maritimes states that proposed section 4.1(a)(9) provides that, within twenty-four hours after capacity is awarded, Maritimes will post the best bid(s) and show the NPV for such best bid(s). Maritimes states that proposed section 4.1(a)(9) provides that, in the event Maritimes accepts a winning bid that is less than the applicable maximum rate, the winning bidder must submit a discount request online, and Maritimes must approve such request pursuant to the provisions of section 27 in order for such discounted rate to become effective.

12. Section 4.1(a)(10) provides that Maritimes may reserve capacity for a future expansion project for which an open season has been held or will be held within 12 months. Any capacity reserved pursuant to this section must first be posted as available capacity for at least 5 business days. Any minimum terms and conditions imposed in an open season for capacity to be reserved must not materially differ so as to be more restrictive than the terms and conditions imposed in the expansion project open season.

C. Interim Service Program

13. Maritimes also proposes, in section 4.1(b), that capacity reserved by Maritimes pursuant to sections 3.5(b), 4.1(a)(10), or 4.1(b) may be sold on an interim basis, up to the commencement date of the applicable service, to customers requesting such service (Interim Capacity).[6] Maritimes states that section 4.1(b) specifies the process for the posting of, bidding on, and awarding of such Interim Capacity. In addition, Maritimes states that section 4.1(b) provides that the right of first refusal will not be applicable to any service agreement entered pursuant to section 4.1(b).

---

[6] Maritimes asserts this is consistent with Commission policy, and cites *Gas Transmission Northwest Corp.*, 109 FERC ¶ 61,141 (2004) and *Northern Natural Gas Co.*, 109 FERC ¶ 61,388 (2004). Maritimes Transmittal at 6 & n.13.

II. Notice and Responsive Pleadings

14. Public notice of the filing was issued on January 7, 2016. Interventions and protests were due as provided in section 154.210 of the Commission's regulations.[7] Pursuant to Rule 214, 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.[8] Granting late intervention at this stage of the proceeding will not disrupt this proceeding or place additional burdens on existing parties. Repsol Energy North American Corporation (Repsol) filed a protest, the details of which are discussed below.

15. Maritimes filed an answer to Repsol's protest. Rule 213(a)(2) of the Commission's Rules of Practice and Procedure, (18 C.F.R. §213 (a) (2) (2015)) prohibits an answer to a protest unless otherwise ordered by the decisional authority. The Commission will accept Maritimes' answer because it has provided information that assists the Commission in its decision-making process.

III. Discussion

16. The Commission finds that Maritimes proposed revisions to its GT&C are consistent with Commission policy, and accordingly accepts Maritimes' filing to be effective February 6, 2016. As Maritimes states, the Commission's longstanding policy permits capacity to be allocated based on an NPV methodology, including service to commence on a future date. In addition, the Commission permits pipelines to reserve capacity for future expansions and sell that capacity on an interim basis pursuant to conditions such as Maritimes has proposed. For the reasons discussed below, the Commission denies Repsol's protest.

A. Primary Point changes

1. Protest

17. In its protest, Repsol protests Maritimes' proposed treatment of requests by existing firm customers to add or change primary receipt and delivery points. Repsol objects to the requirement in proposed section GT&C section 3.2(b) that such requests be included in Maritimes' proposed NPV open season, contending that such requests should continue to evaluated on a first-come, first-served basis. Repsol also protests Maritimes' proposal in section 4.1(a)(7) to assign an NPV of zero to a primary point change request made as a bid in response to an open season. Instead, Repsol avers that such requests should be assessed based upon the value of the capacity under the shipper's contract.

---

[7] 18 C.F.R. § 154.210 (2015).

[8] 18 C.F.R. § 385.214 (2015).

Repsol acknowledges that the Commission has approved proposals by other pipelines to evaluate requests to change primary points as part of an NPV open season and to assign an NPV of zero to primary point change requests in allocating additional capacity among competing bids under an NPV methodology.[9] However, Repsol contends that the factual and policy considerations underlying the Commission's prior holdings are not present in the instant case, because of unique circumstances on the Maritimes system.

18. Repsol states it holds almost 90 percent of Maritimes' firm capacity. As the sole anchor shipper for Maritimes' Phase IV expansion, Repsol holds 730,000 Dth/day of firm capacity until 2034 spanning the entirety of the Maritimes system, from a primary receipt point at the Canadian border to primary delivery points at interconnections in the south with the Algonquin Gas Transmission, LLC (Algonquin) and Tennessee Gas Pipeline Company, L.L.C. (Tennessee) pipeline systems.

19. Repsol notes that in Docket No. CP16-9-000, Maritimes and Algonquin have filed a certificate application for the proposed Atlantic Bridge Project. Repsol states that Maritimes' portion would permit Maritimes to accept firm deliveries from Algonquin at the southern end of the pipeline. According to Repsol, Algonquin's and Maritimes' application states that the Atlantic Bridge Project will "provide 106,276 Dth/d of firm transportation service from Beverly [the point of interconnection between Maritimes and Algonquin] to various existing delivery points on the Maritimes system for the Atlantic Bridge Project shippers."[10] Repsol contends that the Atlantic Bridge Project will have a substantial impact on existing firm shippers, including mainly Repsol, whose contractual primary receipt and delivery points are in the traditional north-to-south direction. Repsol understands that the Atlantic Bridge Project will result in the creation of significant additional firm south-to-north capacity on Maritimes, in excess of the amount required to serve Atlantic Bridge Project shippers who have executed precedent agreements with Maritimes. Repsol states that this capacity will need to be posted and made available to Maritimes' shippers. Repsol argues that existing firm shippers must have the value of their long-term agreements preserved as changes on the system occur, and such shippers should not be precluded from or foreclosed from access to new sources of natural gas supply that will result from the Atlantic Bridge Project.

20. Repsol states that all of the new capacity resulting from the Atlantic Bridge Project has been and will continue to be paid for primarily by Repsol because such new capacity will essentially be provided by Maritimes' existing facilities. Repsol contends that the application submitted by Algonquin and Maritimes shows that the Maritimes portion of the Atlantic Bridge Project is based on Maritimes' ability to provide the

---

[9] Repsol Protest at 10 (citing *Tennessee*, 91 FERC ¶ 61,053 at 61,192).

[10] Repsol Protest at 5 & n.6 (citing Algonquin and Maritimes FERC Certificate Application for the Atlantic Bridge Project, FERC Docket No. CP16-9-000 at 2).

proposed services on a low-cost basis by utilizing a large part of Maritimes' existing facilities, which are being paid for by Maritimes' existing shippers, including, Repsol.[11] Further, Repsol avers that its negotiated rate agreement represents $139.2 million in annual revenues compared to Maritimes' mainline cost of service of $153.9 million proposed in its Section 4 rate case filing.

21. Repsol states that under Maritimes' open season proposal, any other shipper who submits a bid with a positive NPV in an open season held following a primary point change request by Repsol would be able to pre-empt Repsol's primary point change request. Repsol argues that this outcome would harm Repsol by substantially undercutting the value of Repsol's existing agreement by impairing Repsol's ability, through a primary point change request, to access new sources of natural gas supply and serve the market with that supply.

22. Repsol contends that the Commission's reasoning in support of its acceptance of other pipelines' proposals to evaluate requests to change primary points using an NPV methodology is inapplicable here. First, Repsol states that the Commission justified its earlier decisions in part upon the finding that while the zero valuation of a primary point request may mean that "the existing shipper may not be able to change its primary point, it does retain the right to those primary receipt and delivery points for which it has contracted and so still has the means to transport its gas."[12] Repsol argues that finding does not apply in the case of shippers whose primary flow path runs in the historical north-to-south direction from the historical sources of supply at the northern end of the system, such as with a pipeline like Maritimes that is reversing direction and providing new sources of supply at the opposite end of its system. Repsol states that as the system changes direction, an existing shipper's primary receipt and delivery points may not afford it the "means to transport its gas" and may preclude it from accessing the new sources of supply. Repsol contends that this specific set of circumstances was not present in *Tennessee*, which only involved questions concerning the allocation of capacity of a single-direction system that had a fixed production area at one end and a fixed market area at the other. Accordingly, Repsol maintains, *Tennessee* does not compel the Commission to reach the same decision here.

23. Second, unlike in *Tennessee*, Repsol states that Maritimes has a single existing long-term firm shipper whose long-term service agreement underwrites the pipeline,

---

[11] Repsol Protest at 6 & n.9 (citing Application at Exhibit N, Schedules 2 & 5 (showing the Maritimes-portion of the Atlantic Bridge Project consists of only approximately $2 million for modifications to the existing metering and regulating station in Westbrook, Maine, compared to the mainline rate base of $551.8 million identified by Maritimes in its section 4 rate case filing pending in FERC Docket No. RP15-1026-000)).

[12] Repsol Protest at 10-11 (quoting *Tennessee*, 91 FERC ¶ 61,053 at 61,193).

including much of the cost of the new capacity. In these circumstances, Repsol contends that the "harm to a particular existing shipper whose request to change a primary point may be rejected in favor of the new shipper" is not "outweigh[ed]" by bringing a new customer to the system who bids a positive NPV. Instead, Repsol argues that "to preserve the value of Repsol's and Maritimes' long-term agreement, which underwrites nearly the entire system, open season bids consisting of a primary point change request should be valued at the contract value, not zero."[13]

24. Third, in *Tennessee*, Repsol states that the Commission relied upon the fact that "[t]he sale of the unsubscribed mainline capacity allows the pipeline to spread its recovery of fixed costs over more units of service, thus lowering costs to all." Repsol maintains that Maritimes overwhelmingly recovers its system costs from Repsol, and this will continue to be true after the Atlantic Bridge Project requires only modifications of an existing metering and regulating station. Moreover, Repsol states that the sale of new capacity by Maritimes will not be "lowering costs to all."[14] As a result of Repsol's and Maritimes' negotiated rate agreement, Repsol states it will not receive any benefit from more units of service. In fact, Repsol states that Maritimes would significantly over-recover its costs under its proposal by continuing to receive the same revenue from Repsol under its long-term agreement and additional revenue from any new south-to-north shippers who would prevail over Repsol under the NPV method. With only minor modifications required to provide new south-to-north service, Maritimes' open season and NPV proposals would permit Maritimes to "rake in" revenues far above Atlantic Bridge Project costs, while Repsol would be precluded from the benefits of the Atlantic Bridge Project despite its financial contributions to the system.

25. Fourth, in *Tennessee*, Repsol states that the Commission relied upon the fact that "despite the implementation of the NPV method, pre-existing shippers have had substantial success in changing their primary points. Approximately ninety percent of the existing customers' requests to change their primary points have been granted." Repsol states that at the time the order was issued, Tennessee operated as a traditional long haul pipeline with a production area in the southern United States and the Gulf of Mexico and a market area in the northeast. "Receipt point capacity in the production area of Tennessee's system [was] over seven times its mainline capacity," and shippers were also able to use pooling points for production area supply.[15] In contrast, Repsol states that Maritimes' proposal is being made not in the context of a single direction pipeline with a single major production area with substantial excess receipt point capacity and pooling

[13] Repsol Protest at 11.

[14] Repsol Protest at 12.

[15] Repsol Protest at 12 (quoting *Tennessee rehearing*, 94 FERC ¶ 61,097 at 61,402-403).

points, but in the context of a changing-flow system that is proposing to add new supply at the southern end of its system near the Boston market area, on the opposite end of the system from where supply comes from today. Repsol argues that given these differences, there is no reason to believe that Maritimes will be comparable to Tennessee in being able to accommodate primary point changes from existing shippers if Maritimes proposed tariff changes are approved. Accordingly, Repsol concludes that it is imperative for existing shippers to have primary point change requests made in an open season valued at the contract value, so that they will be able to utilize system capacity and align their current capacity with the changes in how the system operates and the sources of natural gas supply it receives.

2. Answer

26. In its answer, Maritimes contends that Repsol's arguments are inconsistent with long-standing Commission precedent that subjecting primary point changes to an NPV open season is just and reasonable and consistent with the goal of allocating unsubscribed capacity to shippers who place the highest value on that capacity. Maritimes argues that the Commission's policy goal regarding the allocation of unsubscribed interstate pipeline capacity is that pipelines should allocate that capacity to the shipper that places the highest value on the capacity, up to the maximum rate.[16] Maritimes notes that in furtherance of this goal, the Commission favors the use of open seasons to allocate capacity and permits an NPV allocation methodology as a tool for determining the highest valued use.[17] Maritimes argues that "net present value evaluation . . . allocates capacity to the shipper who will produce the greatest revenue and the least unsubscribed capacity. As such, it is an economically efficient way of allocating capacity and is consistent with Commission policy."[18] Maritimes concludes that the instant filing, including the portions of the filing that Repsol protests, is consistent with these policies and with the capacity allocation procedures set forth in numerous Commission-approved tariffs.[19]

---

[16] Maritimes Answer at 2 (citing *Texican N. La. Transport, LLC v. Southern Natural Gas Co.*, 129 FERC ¶ 61,270, at P 70 (2009), *reh'g denied*, 132 FERC ¶ 61,167, at PP 23, 26 (2010) (*Texican*); *Northern Natural Gas Co.*, 108 FERC ¶ 61,044, at P 11 (2004)).

[17] Maritimes Answer at 2 (citing *Texican* at P 26).

[18] Maritimes Answer at 2.

[19] Maritimes Answer at 3 (citing *Algonquin Gas Transmission, LLC*, 120 FERC ¶ 61,072 at P 50; *Great Lakes Gas Transmission Ltd. Partnership*, 103 FERC ¶ 61,133, at P 30 (2003); *Southern Natural Gas Co.*, 96 FERC ¶ 61,008 at 61,031; *Tennessee Gas Pipeline Co.*, 94 FERC ¶ 61,097, at 61,402-61,403 (2001)).

27. Maritimes also contends that the circumstances involving Repsol's firm service agreement provide no basis for departing from the Commission's well-established precedent. In response to Repsol's claims that the level of capacity that it has subscribed on the Maritimes system justifies prioritizing Repsol's request to change primary points over the request of a new shipper that desires the same capacity, Maritimes states that, to the contrary, it would be discriminatory for Maritimes to give preference to any shipper, including Repsol, for new capacity.[20] Maritimes contends that the fact that Repsol is Maritimes' largest firm shipper does not obviate the need to allocate unsubscribed capacity on the system to the shipper who most values that capacity, and it does not mean that Repsol should have priority to amend its agreement to change to another primary point when a new shipper has requested to enter into an agreement using that point and the new agreement will produce greater revenue for the system.[21] Maritimes states that Repsol does not explain why the quantity of its firm capacity on the system should override the Commission's policy of ensuring that other firm capacity on the system is subscribed by those that place the highest value on the capacity, nor does Repsol cite to any precedent to support its claim.[22]

28. Maritimes states that it constructed its Phase IV Project to ensure that it had sufficient capacity to provide Repsol with the service for which it has a contract, and Maritimes will continue to provide that service. Maritimes notes that the Commission has stated that since an "existing shipper originally entered into its contract with one point designated as its primary receipt point and never has . . . an absolute right to change to other primary receipt points[, the existing shipper] should have been prepared to rely on that point as its primary receipt point for purposes of bringing gas supplies onto the pipeline for the term of the contract."[23]

29. Further, Maritimes argues that Repsol fails to acknowledge that the increase in firm quantities subscribed on the system will result in lower recourse rates for the benefit of existing and future recourse rate shippers on the system. Maritimes states that, contrary to Repsol's claim the facts here are somehow different, the Commission expressly dealt with this issue in *Tennessee*, concluding that using the NPV method for primary point changes "maximizes throughput on the system [which means] that at such time as Tennessee does file a new rate case, there will be a greater number of units of

---

[20] Maritimes Answer at 7-8.

[21] Maritimes Answer at 5-6.

[22] Maritimes Answer at 10.

[23] Maritimes Answer at 5 (citing *Tennessee rehearing*, 94 FERC ¶ 61,097 at 61,402).

service over which to spread Tennessee's fixed costs."[24] The Commission explained that such a result "benefits all Tennessee's shippers by allowing Tennessee's rates to be lower than they otherwise would be."

3. **Determination**

30. The Commission finds that Maritimes' proposal to evaluate requests by existing shippers for primary point changes using an NPV methodology is consistent with longstanding Commission policy. The Commission's overriding policy for allocating pipeline capacity is to have capacity awarded to the highest valued use, that is, to those that value the capacity the most. The Commission's capacity allocation policy also is meant to promote the most efficient overall use of the pipeline system in a manner that maximizes benefits to the natural gas market. As we explained in *Texican*, the *Tennessee* order "was not establishing a preference for new bidders. Rather," the Commission was approving "use of an NPV allocation policy that maximizes the amount of capacity to be awarded and thereby reduces to the largest extent possible the rates of existing shippers."[25] Maritimes' proposal, like other proposals that the Commission has approved, does not inhibit existing shippers' ability to change their receipt and delivery points to the extent that those points are truly available. Where capacity at a point is in demand, however, it is just and reasonable for a pipeline to prefer the proposal that would maximize its ability to market mainline capacity. As the Commission explained in *Tennessee*, a pipeline's sale of unsubscribed mainline capacity allows the pipeline to spread recovery of fixed costs over more units of service in its next rate case, thus allowing its recourse rates to be lower than they otherwise would be.

31. Furthermore, we reject any arguments premised on the idea that a particular shipper that "underwrites nearly the entire system,"[26] deserves special treatment. While the NGA primarily protects the public against the monopoly power of pipelines, it also protects the public against the monopsony power of shippers. NGA section 4(b)(1) charges the Commission with prohibiting pipelines from offering a shipper "any undue preference or advantage."[27] Thus, we will not permit, let alone compel, Maritimes to treat Repsol's capacity requests preferentially, simply because it is the largest shipper on Maritimes' system.

---

[24] Maritimes Answer at 11 (citing *Tennessee rehearing*, 94 FERC ¶ 61,097 at 61,402).

[25] *Texican*, 132 FERC ¶ 61,167 at P 27.

[26] Repsol Protest at 11.

[27] 15 U.S.C. § 717c (b)(1) (2012).

32. With respect to Repsol's concerns about the Atlantic Bridge Project, that project is not before the Commission in this docket. All issues concerning how that project may affect existing shippers on Maritimes should be raised in Docket No. CP16-9-000, in which the Commission is reviewing whether that project is in the public convenience and necessity.

B. Reservation of Capacity

33. In its protest, Repsol also raises one concern with respect to Maritimes' proposal in section 4.1(a)(10) to reserve capacity for "a future expansion project for which an open season has been held or will be held within twelve (12) months of the date that Pipeline posts such capacity as being reserved." Under Maritimes' proposal, its ability to reserve capacity for a future expansion project would be expressly conditioned on the capacity "first be[ing] posted as available capacity on Pipeline's Web Site for at least five (5) business days." Repsol requests that this minimum posting period be extended to 30 days.[28]

34. Repsol states that it and other shippers will not know how much firm south-to-north capacity will be posted until after the Atlantic Bridge Project commences service and thus cannot develop any plans or assessments at present regarding utilization of that capacity. Under Maritimes' instant proposal, the capacity will be identified for the first time when it is posted, and then only be available for a mere five days before Maritimes can reserve it. Repsol argues that, given the importance of offering current shippers the opportunity to obtain capacity for south-to-north service through primary point change requests (or new shippers the opportunity to submit service requests), shippers should be afforded more time to analyze the opportunities presented by the capacity once it is made available, especially since this capacity will be associated with a change in how the system operates. For this reason, Repsol requests that the minimum posting period be extended to 30 days.[29]

35. The Commission requires that a pipeline allow shippers a reasonable opportunity to bid on and win available capacity before the pipeline reserves the capacity for a future expansion project. As Maritimes states in its answer, the Commission has determined that posting long-term capacity for five business days is a reasonable period of time for shippers to make a decision about the posted long-term capacity before the pipeline reserves the capacity for an expansion.[30] For example, in *Northern Natural Gas Co.*,[31]

---

[28] Repsol Protest at 13.

[29] Repsol Protest at 14.

[30] Maritimes Answer at 12 (citing *Ozark Gas Transmission, LLC*, 125 FERC ¶ 61113, at P 30 (2008); *Petal Gas Storage, LLC*, 120 FERC ¶ 61,109, at PP 4, 9 (2007); *ANR Pipeline Co*., 107 FERC ¶ 61,187, at P 11 (2004); *Columbia Gas Transmission*

(continued…)

the Commission rejected a request, like Repsol's, where a shipper argued that long-term capacity should be posted for at least 30 days prior to the pipeline reserving that capacity for a future expansion, finding that "the five business day period is consistent with previous Commission approval of that period for posting prior to selling newly available capacity." Therefore, we reject Repsol's request to modify Maritimes' language on open seasons so that long-term capacity should be posted for at least 30 days prior to the pipeline reserving that capacity for a future expansion.

C. Repsol Requests for Clarification

36. Repsol requests clarification with respect to two discrete provisions in the tariff records included with the instant filing. First, Repsol notes that proposed section 4.1(a) provides that "an open season shall not be required for minor or auxiliary facilities, additions of receipt and/or delivery facilities or facilities modifications which do not significantly alter the operational characteristics of the pipeline system." Repsol is concerned that this *de minimis* exception could be interpreted to exclude service requests for capacity made available by the Atlantic Bridge Project or similar expansions from the open season requirement. Repsol avers that relatively minor facilities in the form of modifications to a metering and regulating station are required to create the Atlantic Bridge Project capacity. Repsol states that Maritimes could deem them "minor or auxiliary facilities" exempt from the open season requirement under its proposal, even though the resulting capacity will make substantial new capacity available. In this regard, Repsol contends it is unclear what the proposed qualifying language "do[es] not significantly alter the operational characteristics of the pipeline system" means and whether it applies only to "facilities modifications" or also "minor or auxiliary facilities" and "additions of receipt and/or delivery facilities." For these reasons, Repsol states that Maritimes should affirmatively commit, or else the Commission should affirmatively find, that the open season requirements for requests for available capacity as set forth in proposed section 4.1(a) of the GT&C will apply to with regard to any available capacity resulting from Maritimes' proposed Atlantic Bridge Project pending in the Docket No. CP16-9-000 certificate proceeding. Repsol states that this provision, if approved, should not create uncertainty for the shippers as to how Maritimes will administer its tariff.[32]

Corp., 80 FERC ¶ 61021, at 61,051 (1997); *Columbia Gulf Transmission Co*., 80 FERC ¶ 61020, at 61,048 (1997); *Tennessee Gas Pipeline Co.*, 79 FERC ¶ 61,297, at 62,338 (1997); *Questar Pipeline Co.*, 76 FERC ¶ 61,259, at 62,331 (1996); *Koch Gateway Pipeline Co.*, 75 FERC ¶ 61,026, at 61,081 (1996)).

[31] 105 FERC ¶ 61,057, at P 13 (2003).

[32] Repsol Protest at 15.

37. In its answer, Maritimes states it believes it is already clear in proposed Section 4.1(a)(1) that the capacity created by the Atlantic Bridge Project and similar projects would be subject to the NPV open season requirements following the in-service date of the applicable project. However, in its answer, Maritimes clarifies and commits that the proposed language referenced by Repsol will not result in Maritimes declining to subject requests for new capacity resulting from the Atlantic Bridge Project or any other project that creates "a material amount of new south-to-north capacity" on the Maritimes system to Maritimes' proposed NPV open season process following the in-service date of such projects.

38. Second, Repsol states that proposed section 4.1(a)(1) would confer upon Maritimes the discretion as to whether to hold an open season for capacity requests with a term of 30 days or less. Repsol is concerned that this provision could be used to evade the open season requirements. Under this provision, Repsol states that Maritimes and a shipper could enter into an agreement with a 30-day term, that also has a right-of-first-refusal, rollover, or evergreen clause. Repsol states that Maritimes could elect not to post the service request and hold an open season, even though the agreement would provide for rights that essentially make it a long-term agreement. Repsol concludes that the Commission should require Maritimes to revise this language to limit it to requests for a bona fide term of 30 days or less that would not ultimately include in the service agreement a right-of-first-refusal, rollover, or evergreen clause.[33]

39. In its answer, Maritimes states it believes this language is clear already. However, Maritimes clarifies that its discretion regarding whether to hold an NPV open season for capacity requests with a term of 30 days or less will apply only to requests for agreements that cannot extend beyond 30 days, i.e., agreements that do not contain a right-of-first refusal, rollover or evergreen clause.

40. We find that Maritimes' answer has directly addressed Repsol's two requests for clarification, and that those clarifications are both consistent with our policy on the conduct of open seasons.

---

[33] Repsol Protest at 16.

<u>The Commission orders:</u>

The Commission accepts Maritimes' tariff records listed in Footnote 1, effective February 6, 2016 as requested.

By the Commission.

(S E A L)

Nathaniel J. Davis, Sr.,
Deputy Secretary.