



Northern Border Pipeline Company

May __, 2017

Ms. Kimberly D. Bose, Secretary
Federal Energy Regulatory Commission
888 First Street, N.E.
Washington, D.C. 20426

Northern Border Pipeline Company
700 Louisiana Street, Suite 700
Houston, TX 77002-2700

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Re: Northern Border Pipeline Company
Change in FERC Gas Tariff
Docket No. RP17-_____ - _____

Dear Ms. Bose:

Pursuant to Section 4 of the Natural Gas Act (“NGA”) and Section 154 of the Federal Energy Regulatory Commission’s (“FERC” or “Commission”) regulations,¹ Northern Border Pipeline Company (“Northern Border”) respectfully submits for filing revised tariff sections,² included as Appendix A, to be part of its FERC Gas Tariff, Second Revised Volume No. 1 (“Tariff”), as more fully described below. Northern Border respectfully requests that the Commission accept the tariff sections included herein to become effective June __, 2017.

Correspondence

The names, titles, mailing addresses, and telephone numbers of those persons to whom correspondence and communications concerning this filing should be addressed are as follows:

¹ 18 C.F.R. Part 154 (2017).

² Specifically, Northern Border is submitting Section 5.1.4.1 – Rate Schedule T-1, Service Continuation (“Section 5.1.4.1”); Section 5.1.4.2 – Rate Schedule T-1, Posting / Bid Procedures (“Section 5.1.4.2”); Section 5.1.4.3 – Rate Schedule T-1, Avoidance of Right of First Refusal (“Section 5.1.4.3”); and Section 6.37.2 – GT&C, Applicability (“Section 6.37.2”).

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Statement of Nature, Reasons, and Basis for Filing

Northern Border is proposing in the instant filing to modify certain right of first refusal (“ROFR”) tariff provisions within Section 5.1.4 of its Tariff, as further described below. In addition, conforming and housekeeping changes were necessary to incorporate the various revisions proposed herein.

Section 5.1.4.1 – Service Continuation

Section 5.1.4.1 of Northern Border’s Tariff currently provides a ROFR Shipper the unilateral right to extend its Service Agreement and not be subject to the ROFR bidding process if the term of the agreement is extended for a at least five (5) years (“Five Year Extension Right”).

Northern Border is proposing herein to eliminate this unilateral Five Year Extension Right, which is not required by current Commission policy. Northern Border’s removal of the Five Year Extension Right is consistent with the Commission’s October 31, 2002, Order on Remand in Docket No. RM98-10-011,³ which eliminated the requirement for a five-year matching cap for existing shippers seeking to renew an expiring contract with ROFR rights. Furthermore, this revision is consistent with the Commission’s goal of placing capacity into the hands of customers who value it most, exemplified by the fact that recent ROFR open seasons on Northern Border resulted in contract terms well in excess of five years.

For the reasons enumerated above, Northern Border is eliminating the Five Year Extension Right contained in paragraph 3(a) of Section 5.1.4.1, as well as other references to this right found within Sections 5.1.4.1, 5.1.4.3, and 6.37.2.

Additionally, Section 5.1.4.1(3) has been revised to shorten the Shipper's response time to provide its ROFR election from (10) business days to no less than five (5) business days from the date that notice was issued, consistent with Commission policy.⁴ Finally, consistent with other pipeline tariffs, Section 5.1.4.1(3)(a) now requires that the existing Shipper execute a new agreement (as opposed to an amendment to its existing agreement) to reflect the terms matched in the ROFR open season.⁵

Section 5.1.4.2 – Posting/Bid Procedures

In an effort to make the posting of ROFR capacity more flexible, Northern Border has updated paragraph 1 of Section 5.1.4.2 to state that open bidding will commence no later than three (3) months prior to the expiration of Shipper's Service Agreement (currently required to occur one business day after receiving Shipper's ROFR election notice). Additionally, Northern Border has reduced the minimum number of days, from twenty (20) days to five (5) business days, that a notice of available ROFR capacity will be posted. As revised, Northern Border's ROFR posting requirements are consistent with previous orders where the Commission noted that it did not establish a specific time frame for the posting and matching period in Order No. 636, but rather directed pipelines to establish reasonable minimum posting and matching periods.⁶ The posting revisions, which are similar to those approved by the Commission in other tariffs,⁷ will provide Northern Border more flexibility to optimally time ROFR open seasons.

In an effort to further streamline its bid procedures, Northern Border proposes to remove from paragraph 2(a) the requirement that it immediately (within one business day) post all bids

³ *Regulation of Short-Term Natural Gas Transportation Services and Regulation of Interstate Natural Gas Transportation Services*, 101 FERC ¶61,127 (2002); order on reh'g, 106 FERC ¶ 61,088 (2004).

⁴ *Koch Gateway Pipeline Company ("Koch")*, 75 FERC ¶ 61,026 (1996) and *Viking Gas Transmission Company ("Viking")*, 87 FERC ¶ 61,280 (1999).

⁵ *Portland Natural Gas Transmission System*, FERC Gas Tariff, Third Revised Volume No. 1("PNGTS"); Section 6.13.3(b).4 – GT&C, Available Capacity and Right of First Refusal; *Equitrans, L.P.*, FERC Gas Tariff, First Revised Volume No. 1("Equitrans"); Section 6.28(2)e – GT&C, Right of First Refusal; and *Transwestern Pipeline Company, LLC*, FERC Gas Tariff, Fifth Revised Volume No. 1 ("Transwestern"); Section 20.10 – GT&C, Right of First Refusal. PNGTS, Equitrans and Transwestern provide that if a Shipper elects to match an accepted bid (as part of the ROFR process), Shipper and Transporter will enter into a new service agreement which reflects the terms matched.

⁶ See *Koch* and *Viking*.

⁷ *Gas Transmission Northwest LLC*, FERC Gas Tariff, Fourth Revised Volume No. 1-A ("GTN"); Section 6.33.2 – GT&C, ROFR Upon Termination of Firm Service Agreement. *PNGTS*, Section 6.13.3(b)(2) – GT&C, Available Capacity and Right of First Refusal. *GTN* provides that open bidding will commence no later than three (3) month's prior to the service agreement's expiration and that the bid period will be no less than five (5) business days. *PNGT* provides that open bidding on ROFR capacity will commence no later than 45 days prior to the service agreement's expiration for a period of no less than five (5) business days.

received, and from paragraph 3(g) the requirement that it post the Best Bid within one day of its award. Additionally, paragraph 2(c), which outlines the process for bids received which are contingent upon the bidder obtaining capacity on another pipeline, has been eliminated. The provision has not been identified by the Commission as necessary within the ROFR process and has never been utilized by Northern Border. In conjunction with the removal of paragraph 2(c), other references to contingent bids found within Section 5.1.4.2 have also been deleted.

Finally, within paragraph 3(f), Northern Border has updated the methodology used to award any remaining capacity in the event of more than one equivalent best bid. A lottery is currently used to award remaining capacity when Northern Border receives more than one equivalent best bid. Consistent with other pipeline tariffs,⁸ Northern Border proposes that such capacity shall be awarded on a *pro rata* basis within one (1) business day following receipt of the Shipper's ROFR notice to match the Best Bid(s).

Section 5.1.4.3 – Avoidance of ROFR

Section 5.1.4.3 currently allows Northern Border and a Shipper to mutually agree to extend the term of the Shipper's Service Agreement, thereby allowing the Shipper to avoid the to the ROFR bidding process, if such agreement is reached prior to the issuance of the ROFR notice by Northern Border. To allow more time to reach a mutual agreement and thus avoid the ROFR bidding process, Section 5.1.4.3 has been revised to state that the mutual agreement must be reached prior to the initiation of the Posting/Bid process.

Effective Date

Northern Border requests that the Commission accept the tariff sections, attached herein as Appendix A, to become effective June __, 2017.

Other Filings That May Affect This Proceeding

There are no other filings before the Commission that may significantly affect the changes proposed herein.

⁸ *GTN*, Section 6.33.2 – ROFR upon Termination of Firm Service Agreement and *PNGTS*, Section 6.13(b)(4) – GT&C, Available Capacity and Right of First Refusal.

Contents of Filing

In accordance with Section 154.7 of the Commission's regulations and Order No. 714,⁹ Northern Border is submitting the following XML filing package, which includes:

1. This transmittal letter;
2. A clean tariff section (Appendix A); and
3. A marked tariff section (Appendix B).

Certificate of Service

As required by Sections 154.7(b) and 154.208 of the Commission's regulations, copies of this filing are being served upon all of Northern Border's existing customers and interested state regulatory agencies. A copy of this letter, together with the other attachments, is available during regular business hours for public inspection at Northern Border's principal place of business.

Pursuant to Section 385.2005 and Section 385.2011(c) (5), the undersigned has read this filing and knows its contents, and the contents are true as stated, to the best of his knowledge and belief. Additionally, the undersigned possesses full power and authority to sign such filing.

Any questions regarding this filing may be directed to Joan Collins at (832) 320-5651.

Respectfully submitted,

NORTHERN BORDER PIPELINE COMPANY
By: TransCanada Northern Border Inc., Its Operator

John A. Roscher
Director, Rates & Regulatory

Enclosures

⁹ *Electronic Tariff Filings*, 124 FERC ¶ 61,270 (2008) ("Order No. 714").

Appendix A

Northern Border Pipeline Company FERC Gas Tariff, Second Revised Volume No. 1

Clean Tariff

<u>Tariff Section</u>	<u>Version</u>
5.1.4.1 – Rate Schedule T-1, Service Continuation	v.3.0.0
5.1.4.2 – Rate Schedule T-1, Posting/Bid Procedures	v.2.0.0
5.1.4.3 – Rate Schedule T-1, Avoidance of Right of First Refusal	v.2.0.0
6.37.2 – GT&C, Applicability	v.2.0.0

5.1.4.1 Service Continuation.

1. A Shipper that has entered into a Service Agreement that provides for at least twelve (12) consecutive months of service at the Maximum Rate shall have the right to continue service with respect to all or a portion of Shipper's Maximum Receipt Quantity, beyond the primary term specified in the Shipper's Service Agreement provided Shipper satisfies the credit worthiness requirements set forth in Section 6.40 of the General Terms and Conditions and is current with its obligations and otherwise is in compliance with the terms and conditions of this Tariff. Unless Company and Shipper expressly agree otherwise in Shipper's Service Agreement, a right of first refusal does not apply to negotiated rate arrangements, to firm service unless it has been performed at the applicable Maximum Rate for at least twelve (12) consecutive months or to off-system services acquired for Shipper under Section 6.38 of the General Terms and Conditions of Company's FERC Gas Tariff. A limited right of first refusal shall be applicable to interim Service Agreements for capacity that has been sold with a future Billing Commencement Date as set forth in Section 6.26.2(b)(iv) or 6.26.5 of the General Terms and Conditions.
2. A Shipper that has entered into a Service Agreement that provides for a term that is at least twelve (12) months of service and up to and including five (5) years of service at the Maximum Rate for a path shorter than the path criteria set forth in a posting of capacity, shall have the right to continue service with respect to all or a portion of Shipper's firm capacity rights regarding such path beyond the primary term specified in the Shipper's Service Agreement; provided, however, Company shall have the right, not less than six (6) months and not more than eighteen (18) months prior to termination of Shipper's Service Agreement, to post, in accordance with the timeline set forth below in Section 5.1.4.2, the originally-posted full path criteria to the extent capacity is available in the amount of Shipper's firm capacity. If an acceptable bid is received for such full path, Shipper shall have the right to match the terms of the bid. If no acceptable bid is received, Shipper shall have the right to extend its Service Agreement at the Maximum Rate for a term up to and including five (5) years. For clarity, this provision does not require Northern Border to accept a short haul bid for more than five (5) years.
3. A Shipper may not exercise a right of first refusal for a geographic portion of its historical service. Company shall give Shipper notice not less than six months and no more than eighteen months prior to termination of Shipper's Service Agreement that Shipper must exercise its right of first refusal. However, in the event a construction project is proposed that would utilize capacity on Company's existing facilities, the sizing of which

project could be effected by Shipper's plans regarding the continuation of service, Company will have the right to give Shipper such notice no more than thirty-six (36) months prior to termination of Shipper's Service Agreement. Company shall not require a response from Shipper in less than five (5) business days from the date the notice is issued. Such response shall be Shipper's notification to Company of either (1) its intent to retain its option to exercise its ROFR pursuant to this Section 5.1.4 or (2) its binding commitment to terminate its Service Agreement. Service under the Service Agreement shall continue if:

- (a) Shipper agrees to match, the term of the Best Bid, the Best Bid, as described in Section 5.1.4.2 paragraph 3, for the firm service being provided to Shipper, which Company has offered in accordance with Section 5.1.4.2, provided that Shipper executes a new Service Agreement, within five (5) business days of receipt of such new Service Agreement, reflecting the terms matched.

A Shipper with an expiring Service Agreement that had a primary term greater than one year at the Maximum Rate is not required to match a rate higher than the Maximum Rate currently in effect for that Transportation Path in order to retain its contracted capacity.

If Shipper elects to reserve its right to continue service in accordance with this subsection, Shipper must so notify Company of its election, within five (5) business days of receiving notice from Company of Company's intent to terminate in total or in part the Service Agreement. After receiving notice of Shipper's election under this subsection, Company will post the capacity in accordance with Section 5.1.4.2 paragraph 1. In the event that Shipper does not notify Company of an election pursuant to this subsection, Company shall post, without a right of first refusal, all of Shipper's capacity for Bids in accordance with Section 6.26.2(a), or;

- (b) If Company does not receive any acceptable Bid(s) for all or part of the capacity in response to a posting pursuant to Section 5.1.4.2 paragraph 1, Company shall notify Shipper in writing of the results and inform the Shipper that it may continue to receive service in accordance with its Service Agreement for any period chosen by the Shipper. Company and Shipper shall have five (5) business days to mutually agree to acceptable terms and execute a Service Agreement to continue all or part of Shipper's Service Agreement. The Company is under no obligation to provide service at less than the Maximum Rate under this Rate Schedule. If Company and Shipper do not execute a Service Agreement by the close of the five (5) business day

period, Company shall post, on its Internet web site on the following business day, the capacity as available capacity without a right of first refusal, in accordance with Section 6.26.2(a).

- (c) Upon completion of the applicable processes as described above in this subsection and in Section 5.1.4.2 and if such processes do not result in mutually agreed upon terms to continue service, Shipper's right of first refusal under the Service Agreement will have expired.

5.1.4.2 Posting/Bid Procedures.

1. Posting of Available Capacity.

Company will commence open bidding no later than three (3) months prior to the expiration of Shipper's Service Agreement.

Company shall post for a period of no less than five (5) business days a notice of available firm capacity. The posting shall specify the Maximum Receipt Quantity, the Point(s) of Receipt and Delivery and Bid evaluation method. The posting shall state that the capacity is subject to the right of first refusal and if Company will consider Negotiated Rate Bids pursuant to Section 6.37.3 paragraph 1 of the General Terms and Conditions.

2. Bid Procedures.

(a) Company shall not be obligated to accept Bids at less than the applicable Maximum Reservation Rate.

(b) Any Person desiring to submit a Bid for firm capacity in accordance with this section must satisfy the requirements of Rate Schedule T-1 and execute a U.S. Shipper Service Agreement. A Person's Bid for firm capacity which exceeds its qualified level of credit worthiness shall be accepted up to the level of credit worthiness established pursuant to Section 6.40 of the General Terms and Conditions of Company's FERC Gas Tariff.

(c) If a Bid is received which contains conditions that are not satisfied at Bid Closing Date, such Bid shall not be accepted.

(d) A bidder may withdraw its Bid prior to the Bid Closing Date upon written notice to Company.

3. Selection of Best Bid.

(a) For purposes of determining the Best Bid(s), Company will use Method A as detailed in Section 6.27.6 paragraph 1(a) and, if applicable for Negotiated Rate bids, Section 6.37.3 of the General Terms and Conditions. (Where competing Bids at less than the Maximum Rate are received, Shipper need not match the Bid unless the less than Maximum Rate Bid is accepted by Company.)

(b) Company will evaluate Bids received within one (1) business day of the Bid Closing Date.

- (c) Company shall notify Shipper in writing within one (1) business day after the Bid Close Date of the Best Bid(s) or if no acceptable Bids were received.
- (d) In order for a Shipper to retain its capacity, Shipper shall notify Company in writing within ten (10) business days of notification in Section 5.1.4.2 paragraph 3(c) that Shipper elects to match the contract term(s) and rate(s) contained in the Best Bid(s) for all or a percentage of the Maximum Receipt Quantity. If the Best Bid(s) contains a Negotiated Rate, Shipper may retain all or a portion of its Maximum Receipt Quantity in accordance with this subsection (d) by choosing one of the options for rate pursuant to Section 6.37.2 paragraph 3 of the General Terms and Conditions.
- (e) In the event there is capacity remaining after Shipper's election in Section 5.1.4.2 paragraph 3(d), each Person submitting a Best Bid will be notified of its awarded capacity within one (1) business day following receipt of Shipper's notice to Company.
- (f) In the event there is capacity remaining after Shipper's election in Section 5.1.4.2 paragraph 3(d) and there is more than one equivalent Best Bid, the firm capacity shall be awarded on a pro rata basis within one (1) business day following receipt of Shipper's notice to Company.

5.1.4.3 Avoidance of Right of First Refusal.

Shipper can extend the term of its Service Agreement at any time and not be subject to the right of first refusal process if prior to the initiation of the Posting/Bid Procedures outlined in Section 5.1.4.2 above (1) Shipper and Company mutually agree to amend the terms of the existing Service Agreement which shall include an extension of the term beyond the termination date of the existing Service Agreement; and (2) the Shipper remains eligible in accordance with Rate Schedule T-1 and an amended Service Agreement is executed prior to the initiation of the Posting/Bid Procedures. Company will mutually agree to a contract extension term under this subsection on a not unduly discriminatory basis. However, a Service Agreement containing a right of first refusal applicable to off-system service contracted pursuant to Section 6.38 of the General Terms and Conditions of this Tariff, may not be extended beyond the term of Company's agreement with a third-party for such off-system service.

6.37.2 Applicability.

1. Existing Service.

Notwithstanding anything to the contrary contained in this tariff, Company and Shipper may mutually agree to negotiate rates and contract term for all or any portion of the capacity under any existing Agreement, provided that Shipper has not acquired its capacity through a temporary capacity release. If only a portion of the capacity under any existing Agreement will be priced at Negotiated Rates, the original Agreement must first be bifurcated, and Recourse Rates will continue to apply to the Agreement not subject to the Negotiated Rates.

2. New Service.

(a) Requests for Planned Pipeline Capacity.

Company and Shipper may mutually agree to Negotiated Rates and contract term for any planned expansion and/or extension capacity that is requested by Shipper.

(b) Bids on Posted Available Capacity.

If available capacity is posted for bid and Company has determined that it is willing to consider bids at Negotiated Rates, Company must specify in its posting that it will consider Negotiated Rate bids in addition to Recourse Rate and discounted Recourse Rate bids.

3. Expiring/Terminating Service.

An existing Shipper with a right-of-first-refusal as outlined in Section 5.1.4 of Rate Schedule T-1 may retain all or a portion of its capacity when such capacity is posted subject to Negotiated Rate offers (1) by matching the Best Bid under a Negotiated Rate offer submitted by another Shipper that meets or exceeds the lowest rate Company is willing to accept for such service, (2) by paying a Recourse Rate or discounted Recourse Rate that is equivalent to the Negotiated Rate for the capacity it wishes to retain, or (3) by paying the currently effective Maximum Rate in order to retain its contracted capacity; provided, however, that nothing herein shall obligate Company to render service to any Shipper at rates less than Company's then applicable maximum tariff rates.

Appendix B

Northern Border Pipeline Company FERC Gas Tariff, Second Revised Volume No. 1

Marked Tariff

<u>Tariff Section</u>	<u>Version</u>
5.1.4.1 – Rate Schedule T-1, Service Continuation	v.3.0.0
5.1.4.2 – Rate Schedule T-1, Posting/Bid Procedures	v.2.0.0
5.1.4.3 – Rate Schedule T-1, Avoidance of Right of First Refusal	v.2.0.0
6.37.2 – GT&C, Applicability	v.2.0.0

5.1.4.1 Service Continuation.

1. A Shipper that has entered into a Service Agreement that provides for at least twelve (12) consecutive months of service at the Maximum Rate shall have the right to continue service with respect to all or a portion of Shipper's Maximum Receipt Quantity, beyond the primary term specified in the Shipper's Service Agreement provided Shipper satisfies the credit worthiness requirements set forth in Section 6.40 of the General Terms and Conditions and is current with its obligations and otherwise is in compliance with the terms and conditions of this Tariff. Unless Company and Shipper expressly agree otherwise in Shipper's Service Agreement, a right of first refusal does not apply to negotiated rate arrangements, to firm service unless it has been performed at the applicable Maximum Rate for at least twelve (12) consecutive months or to off-system services acquired for Shipper under Section 6.38 of the General Terms and Conditions of Company's FERC Gas Tariff. A limited right of first refusal shall be applicable to interim Service Agreements for capacity that has been sold with a future Billing Commencement Date as set forth in Section 6.26.2(b)(iv) or 6.26.5 of the General Terms and Conditions.
2. A Shipper that has entered into a Service Agreement that provides for a term that is at least twelve (12) months of service and up to and including five (5) years of service at the Maximum Rate for a path shorter than the path criteria set forth in a posting of capacity, shall have the right to continue service with respect to all or a portion of Shipper's firm capacity rights regarding such path beyond the primary term specified in the Shipper's Service Agreement; provided, however, Company shall have the right, not less than six (6) months and not more than eighteen (18) months prior to termination of Shipper's Service Agreement, to post, in accordance with the timeline set forth below in Section 5.1.4.2, the originally-posted full path criteria to the extent capacity is available in the amount of Shipper's firm capacity. If an acceptable bid is received for such full path, Shipper shall have the right to match the terms of the bid. If no acceptable bid is received, Shipper shall have the right to extend its Service Agreement at the Maximum Rate for a term up to and including five (5) years. For clarity, this provision does not require Northern Border to accept a short haul bid for more than five (5) years.
3. A Shipper may not exercise a right of first refusal for a geographic portion of its historical service. Company shall give Shipper notice not less than six months and no more than eighteen months prior to termination of Shipper's Service Agreement that Shipper must exercise its right of first refusal. However, in the event a construction project is proposed that would utilize capacity on Company's existing facilities, the sizing of which

project could be effected by Shipper's plans regarding the continuation of service, Company will have the right to give Shipper such notice no more than ~~thirty-six~~ (36) months prior to termination of Shipper's Service Agreement. Company shall not require a response from Shipper in less than ~~five (5)ten (10)~~ business days from the date the notice is issued. Such response shall be Shipper's notification to Company of either (1) its intent to retain its option to exercise its ROFR pursuant to this Section 5.1.4 or (2) its binding commitment to terminate its Service Agreement. Service under the Service Agreement shall continue if:

~~(a) The Service Agreement is extended for a term of at least five years at the Maximum Rate under this Rate Schedule, or~~

~~(a)~~ Shipper agrees to match, the term of the Best Bid, the Best Bid, as described in Section 5.1.4.2 paragraph 3, for the firm service being provided to Shipper, which Company has offered in accordance with Section 5.1.4.2, provided that Shipper executes ~~an amendment to its a~~ new Service Agreement, within five (5) business days of receipt of such ~~newamended~~ Service Agreement, reflecting the terms matched.

A Shipper with an expiring Service Agreement that had a primary term greater than one year at the Maximum Rate is not required to match a rate higher than the Maximum Rate currently in effect for that Transportation Path in order to retain its contracted capacity.

~~If Shipper does not elect to continue service for all or part of Shipper's contracted Maximum Receipt Quantity in accordance with Section 5.1.4.1 paragraph 3(a) and~~ If Shipper elects to reserve its right to continue service in accordance with this subsection, Shipper must so notify Company of its election, within ~~five (5)ten (10)~~ business days of receiving notice from Company of Company's intent to terminate in total or in part the Service Agreement. ~~No later than one (1) business day of~~ After receiving notice of Shipper's election under this subsection, Company will post the capacity in accordance with Section 5.1.4.2 paragraph 1. In the event that Shipper does not notify Company of an election pursuant to ~~either Section 5.1.4.1 paragraph 3(a) or~~ this subsection, Company shall post, without a right of first refusal, all of Shipper's capacity for Bids in accordance with Section 6.26.2(a), or;

~~(b)~~ If Company does not receive any acceptable Bid(s) for all or part of the capacity in response to a posting pursuant to Section 5.1.4.2 paragraph 1, Company shall notify Shipper in writing of the results and inform the Shipper that it may continue to receive service in

accordance with its Service Agreement for any period chosen by the Shipper. Company and Shipper shall have five (5) business days to mutually agree to acceptable terms and execute a Service Agreement to continue all or part of Shipper's Service Agreement. The Company is under no obligation to provide service at less than the Maximum Rate under this Rate Schedule. If Company and Shipper do not execute a Service Agreement by the close of the five (5) business day period, Company shall post, on its Internet web site on the following business day, the capacity as available capacity without a right of first refusal, in accordance with Section 6.26.2(a).

(c) Upon completion of the applicable processes as described above in this subsection and in Section 5.1.4.2 and if such processes do not result in a mutually agreed upon terms to continue amendment to Shipper's currently effective Service Agreement, Shipper's right of first refusal under the Service Agreement will have expired.

5.1.4.2 Posting/Bid Procedures.

1. Posting of Available Capacity.

Company will commence open bidding no later than three (3) months prior to the expiration of Shipper's Service Agreement.

Company shall post for ~~twenty days~~ a period of no less than five (5) business days a notice of available firm capacity. The posting shall specify the Maximum Receipt Quantity, the Point(s) of Receipt and Delivery, and Bid evaluation method, and deadline for resolution of Bid contingency as set forth in Section 5.1.4.2 paragraph 2(c). The posting shall state that the capacity is subject to the right of first refusal and if Company will consider Negotiated Rate Bids pursuant to Section 6.37.3 paragraph 1 of the General Terms and Conditions.

2. Bid Procedures.

(a) ~~Within one business day of receipt of a Bid by Company for the posted firm capacity, Company will post the Bid. The identity of the bidder shall be kept confidential.~~ Company shall not be obligated to accept Bids at less than the applicable Maximum Reservation Rate.

(b) Any Person desiring to submit a Bid for firm capacity in accordance with this section must satisfy the requirements of Rate Schedule T-1 and execute a U.S. Shipper Service Agreement. A Person's Bid for firm capacity which exceeds its qualified level of credit worthiness shall be accepted up to the level of credit worthiness established pursuant to Section 6.40 of the General Terms and Conditions of Company's FERC Gas Tariff.

~~(c) The Company will allow Bids for capacity which are contingent upon the bidder obtaining capacity on another pipeline(s). The Bid must specify the contingency, including the timing of when the results of the other pipeline(s) evaluation and allocation process will be completed. In those instances where such a contingent Bid(s) is determined to be the Best Bid, the allocation of capacity may be delayed, without undue discrimination, pending satisfaction of the contingency. If such contingency has not been resolved by no later than 10 business days after Bid Closing Date, then such contingent Bid is deemed void.~~

~~(cd)~~ If a Bid is received which contains conditions, ~~other than those allowed in Section 5.1.4.2 paragraph 2(c),~~ that are not satisfied at Bid Closing Date, such Bid shall not be accepted.

(de) A bidder may withdraw its Bid prior to the Bid Closing Date upon written notice to Company.

3. Selection of Best Bid.

- (a) For purposes of determining the Best Bid(s), Company will use Method A as detailed in Section 6.27.6 paragraph 1(a) and, if applicable for Negotiated Rate bids, Section 6.37.3 of the General Terms and Conditions. (Where competing Bids at less than the Maximum Rate are received, Shipper need not match the Bid unless the less than Maximum Rate Bid is accepted by Company.)
- (b) Company will evaluate Bids received within one (1) business day of the Bid Closing Date ~~except as noted in Section 5.1.4.2 paragraph 2(e).~~
- (c) Company shall notify Shipper in writing within one (1) business day after the Bid Close Date of the Best Bid(s) or if no acceptable Bids were received.
- (d) In order for a Shipper to retain its capacity, Shipper shall notify Company in writing within ten (10) business days of notification in Section 5.1.4.2 paragraph 3(c) that Shipper elects to match the contract term(s) and rate(s) contained in the Best Bid(s) for all or a percentage of the Maximum Receipt Quantity. If the Best Bid(s) contains a Negotiated Rate, Shipper may retain all or a portion of its Maximum Receipt Quantity in accordance with this subsection (d) by choosing one of the options for rate pursuant to Section 6.37.2 paragraph 3 of the General Terms and Conditions.
- (e) In the event there is capacity remaining after Shipper's election in Section 5.1.4.2 paragraph 3(d), each Person submitting a Best Bid will be notified of its awarded capacity within one (1) business day following receipt of Shipper's notice to Company ~~except as noted in Section 5.1.4.2 paragraph 2(e).~~
- (f) In the event there is capacity remaining after Shipper's election in Section 5.1.4.2 paragraph 3(d) and there is more than one equivalent Best Bid, the firm capacity shall be awarded on a pro rata basis within one (1) business day following receipt of Shipper's notice to Company.~~allocated in the sequence in which the Best Bid(s) are drawn one at a time at random from a bowl in which each of the Best Bid(s) has been placed individually. Best Bid(s) will continue to be drawn until all the firm capacity has been allocated. The drawing will be~~

~~conducted by a separate impartial entity not affiliated with Company and will be completed within two business days of the Bid Closing Date.~~

~~(g) The Best Bid(s), including the identity of the bidder(s), will be posted on Company's Internet web site within one (1) business day of award.~~

5.1.4.3 Avoidance of Right of First Refusal.

Shipper can extend the term of its Service Agreement at any time and not be subject to the right of first refusal process ~~outlined above~~ if prior to the initiation of the Posting/Bid Procedures outlined in Section 5.1.4.2 above~~receipt of notice from Company to Shipper of the termination of Shipper's Service Agreement;~~ ~~(1) Shipper agrees to amend the term of its Service Agreement to a term of five or more years at the Maximum Rate from the effective date of the amendment,~~ ~~or~~ (12) Shipper and Company mutually agree to amend the terms of the existing Service Agreement which shall include an extension of the term beyond the termination date of the existing Service Agreement; and (23) the Shipper remains eligible in accordance with Rate Schedule T-1 and an amended Service Agreement is executed prior to ~~receipt of such notice~~the initiation of the Posting/Bid Procedures. Company will mutually agree to a contract extension term under this subsection on a not unduly discriminatory basis. However, a Service Agreement containing a right of first refusal applicable to off-system service contracted pursuant to Section 6.38 of the General Terms and Conditions of this Tariff, may not be extended beyond the term of Company's agreement with a third-party for such off-system service.

6.37.2 Applicability.

1. Existing Service.

Notwithstanding anything to the contrary contained in this tariff, Company and Shipper may mutually agree to negotiate rates and contract term for all or any portion of the capacity under any existing Agreement, provided that Shipper has not acquired its capacity through a temporary capacity release. If only a portion of the capacity under any existing Agreement will be priced at Negotiated Rates, the original Agreement must first be bifurcated, and Recourse Rates will continue to apply to the Agreement not subject to the Negotiated Rates.

2. New Service.

(a) Requests for Planned Pipeline Capacity.

Company and Shipper may mutually agree to Negotiated Rates and contract term for any planned expansion and/or extension capacity that is requested by Shipper.

(b) Bids on Posted Available Capacity.

If available capacity is posted for bid and Company has determined that it is willing to consider bids at Negotiated Rates, Company must specify in its posting that it will consider Negotiated Rate bids in addition to Recourse Rate and discounted Recourse Rate bids.

3. Expiring/Terminating Service.

An existing Shipper with a right-of-first-refusal as outlined in Section 5.1.4 of Rate Schedule T-1 may retain all or a portion of its capacity when such capacity is posted subject to Negotiated Rate offers, ~~for the lesser of five years or the term of the Best Bid~~, (1) by matching the Best Bid under a Negotiated Rate offer submitted by another Shipper that meets or exceeds the lowest rate Company is willing to accept for such service, (2) by paying a Recourse Rate or discounted Recourse Rate that is equivalent to the Negotiated Rate for the capacity it wishes to retain, or (3) by paying the currently effective Maximum Rate in order to retain its contracted capacity; provided, however, that nothing herein shall obligate Company to render service to any Shipper at rates less than Company's then applicable maximum tariff rates.