

52. RIGHT OF FIRST REFUSAL

Shippers holding firm Agreements at maximum rates with a term of twelve (12) or more consecutive months of service or for a term of more than one (1) year for service not available for twelve consecutive months may exercise the Right of First Refusal. Such agreements are not subject to pregranted abandonment provided notice is given as described herein. A Shipper may agree to waive its Right of First Refusal at any time. Firm Service Agreements at discounted rates entered into prior to March 27, 2000, with a term equal to or greater than one (1) year, retain the Right of First Refusal. Any service agreement must extend at maximum rates for twelve (12) or more consecutive months of service or for a term of more than one (1) year for service not available for twelve consecutive months in order to retain its Right of First Refusal. Any Shipper with a contract having a Right of First Refusal that wishes to extend its contract at maximum rates for a term of at least five (5) years, can do so without exercising the Right of First Refusal process or posting. A firm Shipper may elect to retain a portion of its capacity, subject to the Right of First Refusal process and have Northern's pregranted abandonment authority apply to the remainder of the capacity.

The Right of First Refusal will not be applicable to interim service agreements for entitlement associated with (1) expansion projects as set forth in Part 8, Section 26 of this Tariff, and (2) capacity that is already under contract for a future period subject to the following conditions:

- (a) The future capacity must have been sold through an open season bidding process permitting bids for capacity for service to start immediately or anytime in the future;
- (b) the bids must have been evaluated on a net present value basis; and
- (c) the future capacity must have been awarded to the Shipper providing the highest net present value bid.

The process for exercising the Right of First Refusal is as follows:

1. Notice

Northern will provide no more than nine (9) months, and no less than eight (8) months advance written notice of pending contract expiration to firm Shippers with contract terms of one (1) year or more. Shippers must give written notice to Northern within sixty (60) days of the date of Northern's notification to Shipper that it wishes Northern to post its capacity to begin the Right of First Refusal process. Failure by the Shipper to give Northern the notice specified in this Section will result in the automatic abandonment of the entitlement and the Shipper's right to the subject capacity at the end of the contract term will cease. Shipper may waive its right to participate in the Right of First Refusal process which will result in automatic abandonment of the entitlement upon the termination of the contract.

2. Bidding Process

Subsequent to Northern's receipt of the Shipper's Right of First Refusal notice described in Subpart 1. of this Section above, Northern will post the designated capacity on its website in order to solicit bids for the capacity. Northern will post any availability of throughput capacity under Right of First Refusal as separate and distinct from generally available throughput capacity. However, Northern may post any availability of Firm Deferred Delivery (FDD) capacity, including FDD capacity available under Right of First Refusal, in a single aggregate posting with the type of capacity identified, e.g., generally available or Right of First Refusal.

A Bidder desiring to obtain the posted capacity must submit a bid to Northern, in accordance with Subpart 3. of this Section below, within forty-five (45) days of the posting to participate in the Right of First Refusal process.

If the tendered bids are less than maximum rate and if Northern is willing to accept such rate, Northern will utilize an iterative bidding process. Each bid will be posted on the website and each iteration's best offer will be posted on the website for informational purposes, along with the name of the highest bidder. In subsequent iteration(s), bidders will have five (5) days to respond to Northern after a posting; thereafter, after each bidding period, Northern will have up to five (5) Business Days to perform an analysis to determine the best offer as described in Subpart 4. of this Section below. The bidding process must be completed three (3) months before the end of the existing contract term.

If any bid submitted by a bidder is subsequently withdrawn, any new bids submitted by such bidder for the same capacity or path(s) must be at a higher rate and produce a higher net present value (NPV). If the withdrawn bid is at the maximum rate, the new bid must be at the maximum rate and produce a higher NPV.

Northern will have the right to reject, on a non-discriminatory basis, any bid not at the maximum rate.

3. Contents of Bid

Service Agreements, corresponding to the Shipper's bid, will be required and must contain the price, term, amount of capacity desired and primary receipt and delivery points.

When any Shipper bids the maximum rate, such Shipper is only required to bid up to the maximum rate for its requested receipt and delivery points, not the maximum rate which may apply to different receipt and delivery points which could be charged for such service.

Multiple bids for throughput capacity, defined as different bids made for different portions of the total capacity, will be permitted.

Bidders for FDD capacity may submit bids on one or more packages of FDD capacity; provided, however, bidders may submit only one bid per package. In the event that bidder submits bids on more than one FDD package, then bidder must prioritize its bids and indicate a minimum and maximum total cycle quantity desired. However, in the event there is only one package available, a bidder may submit multiple bids that do not exceed the total quantity of the package.

4. Best Offer

Northern will determine which bid constitutes the best offer by determining the highest economic unit value (per dekatherm of capacity) to Northern. A calculation based on rate, term and quantity will be used to determine the highest economic unit value, utilizing the FERC interest rate. The comparative economic unit value of each bid will be determined by calculating the NPV of the incremental revenues of each offer over either the term of the offer or five (5) years, whichever is less, and then dividing by the quantity of the respective bid. However, if the bid is at maximum rate and the term is more than five (5) years, the entire term will be considered in determining the economic unit value. The best bid will be the bid with the highest NPV. The NPV is the discounted cash flow of incremental revenues per dekatherm to Northern for service. Incremental revenues are those revenues above and beyond the current revenues which Northern already receives from reservation charges being paid prior to the bid period. Northern will utilize the NPV calculation based on rate, term and quantity to determine the highest incremental revenues per dekatherm. The NPV calculation

shall include only revenues generated by the reservation rate or a guaranteed throughput volume. In those cases where one or more bidders is willing to pay the maximum recourse reservation rate, the NPV used in such cases is capped at, and may not exceed, the NPV equal to the maximum reservation rate available to recourse Shippers.

For purposes of determining the best bid and allocating capacity, Shippers willing to pay more than the maximum Tariff rate will be considered to be paying the maximum Tariff rate.

In the event equivalent offers are submitted, the capacity will be made available on a pro rata basis to the equal bidders. Should any one of the equal bidders veto their pro rata allocation of the capacity, Northern will then conduct a lottery to select the winning bidder, who will then, if the bid is not matched under Subpart 5. of this Section below, be allotted its requested capacity. The remainder of said capacity, if any, will be available to the other equal bidder(s) on a pro rata basis, which will again trigger the veto/lottery selection process.

In the event that Northern is conducting an open season for generally available FDD capacity at the same time as the FDD Right of First Refusal process, Northern will allocate bids at maximum rates first to generally available FDD capacity and then on a pro rata basis to FDD Right of First Refusal capacity. Northern will include in the posting the allocation parameters for bids at less than maximum rates. In no event will Northern be required to enter into an Agreement at less than maximum rates.

If the original Shipper does not match the best offer, Northern will post the name of the winning bidder(s) on the website for a period of no less than five (5) Workdays. The winning bidder(s) must execute a Service Agreement within fifteen (15) days of Northern's tender thereof.

5. Match

a. Firm Transportation Service:

The original firm Shipper shall have the option to execute a firm Service Agreement which exactly matches the rate and term of the bid constituting the highest economic unit value to Northern. The highest rate that the original firm Shipper must match if it wishes to continue its service arrangement is the maximum Tariff rate. The original firm Shipper need only match the quantity bid if the quantity bid is less than the quantity offered under Subpart 1. of this Section above. Northern will notify the original firm Shipper within five (5) Workdays of the best offer it must match by tendering to such Shipper a Service Agreement. The Service Agreement must be executed by the original firm Shipper within fifteen (15) days of Northern's tender thereof. Northern is not required to accept an offer at less than the maximum rate.

b. Firm Deferred Delivery (FDD) Service:

The original FDD Shipper shall have the option to execute a FDD Service Agreement which exactly matches the rate and term of the bid constituting the highest economic unit value to Northern, subject to the following. The original Shipper is not required to match the quantity offered. The highest rate that the original FDD Shipper must match if it wishes to continue its service arrangement is the maximum Tariff rate.

- i. Northern will notify the original FDD Shipper within five (5) Workdays of the close of the bidding process of the various bids received for its capacity.

- ii. The original Shipper must provide written notice to Northern within fifteen (15) days of the date of Northern's notification as to which of the prioritized bids the original Shipper is willing to match. The original Shipper may not be required to match all bids. In the event bids received on the Shipper's capacity are for a quantity that is less than the Shipper's capacity, then the original Shipper must include in the notice to Northern a statement of its commitment to continue service for the capacity for which there were no bids. Such notice to Northern shall be binding upon the original Shipper.
- iii. Northern will determine the best offer(s) that the original Shipper must match based on the priority provided to Northern by bidders.
- iv. Upon tendering a Service Agreement for the best offer, such Service Agreement must be executed by the original FDD Shipper within fifteen (15) days. Northern is not required to accept an offer at less than the maximum rate.

6. No Bids

Where there are no competing bids for the capacity and the original firm Shipper agrees to pay the maximum rate, service may be contracted for any term the original firm Shipper chooses. Northern is not required to accept an offer at less than the maximum rate. If Northern rejects such a bid, the original Shipper may receive continued service at the maximum rate unless another rate is agreed to by Northern and the original Shipper. The original firm Shipper must execute the Service Agreement within fifteen (15) days of Northern's tender thereof.