UNITED STATES OF AMERICA
BEFORE THE
FEDERAL ENERGY REGULATORY COMMISSION

Petition for Rulemaking to Update	**)**	
Commission Regulations Regarding	**)**	**Docket No. RM22-17-000**
Allocation of Interstate Pipeline Capacity	**)**	

PROTEST OF
NORTHERN NATURAL GAS COMPANY

Pursuant to Rule 211 of the Federal Energy Regulatory Commission's ("FERC" or "Commission") Rules of Practice and Procedures, 18 C.F.R. § 385.211 (2022), Northern Natural Gas Company ("Northern") hereby Protests the Petition for Rulemaking to Update Commission Regulations Regarding Allocation of Interstate Pipeline Capacity filed on June 2, 2022 ("Petition") by the American Gas Association, American Public Gas Association, Process Gas Consumers Group, and Natural Gas Supply Association (collectively, the "Petitioners").

I. SUMMARY

The Petitioners request FERC to conduct a rulemaking "to adopt a rule precluding natural gas pipelines from the practice of aggregating bids on non-contiguous segments of capacity in determining the highest value bid for the purpose of allocating capacity."[1] The Petition should be denied as it proposes to change long-standing, well established and accepted Commission policy without providing any valid arguments for doing so.

[1] Petition at 1.

The Petitioners' basis for reversing the Commission policy is premised on conclusory statements and arguments the Commission has repeatedly rejected in the past.[2]

The Commission's policy allowing pipelines to include criteria in a transparent bid evaluation method, including the ability to include bids for non-contiguous segments of capacity in a net present value ("NPV") calculation, promotes economic efficiency by allocating capacity to parties who value it the most.[3] The Commission's settled policy allows pipelines to efficiently maximize the value and use of pipeline capacity, thereby benefitting customers by increasing billing determinants. Notwithstanding current policy, the Petitioners want to prohibit the practice and impose new regulations to ensure the margin on pipeline capacity would be captured by producers and marketers instead of benefitting the pipeline and its customers.

Petitioners erroneously include a Northern open season in its pleading as an example of allowing bids for non-contiguous segments of capacity.[4] However, the referenced Northern open season did not permit bids for non-contiguous service to be included in an NPV calculation, but rather allowed bids for contiguous service to be considered in the NPV calculation in accordance with Northern's tariff.[5] Northern supports the current Commission policy that permits pipelines to sell their capacity in the most efficient and economic manner possible so that the pipeline capacity is awarded to shippers that value it most, whether the capacity is contiguous or non-contiguous.

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[2] *See Transcontinental Gas Pipe Line Co., LLC,* 172 FERC ¶ 61,258 (2020); *Northern Border Pipeline Co.*, 164 FERC ¶ 61,150 (2018); *Indicated Shippers v. Natural Gas Pipeline Co. of Am.*, 89 FERC ¶ 61,142, at 61,417 (1999).
[3] *Tennessee Gas Pipeline Co.*, 79 FERC ¶ 61,297 (1997).
[4] Petition at 67.
[5] The Petitioners explain the combining of two contiguous segments of capacity "merits a valid bid" and is "consistent with FERC policy." Petition at 11.

II. PROTEST

The Commission's policy on permitting aggregation of bids for non-contiguous pipeline capacity segments is clear—shippers that value the capacity most should be awarded the capacity as it benefits the pipeline and ultimately, captive shippers, provided there is no requirement that a bid must include segments of capacity not desired by the bidder. The Commission should not interfere with the market at work—namely, where each bidder is deciding how to bid in an open season and determining how it values the potential capacity. FERC's intervention in this market dynamic by restricting the NPV evaluation criteria a pipeline could offer in an open season would thwart the Commission's longstanding goal of making the market competitive between shippers and between shippers and pipelines.[6]

The Commission has repeatedly held that pipelines may include various criteria in a bid evaluation method[7] including the ability for shippers to bid for contiguous and non-contiguous segments of capacity in an NPV evaluation.[8] The Commission's allowance of posting non-contiguous segments of capacity and including the bids in evaluating the NPV is in the public interest. The Petitioners' contention that a rulemaking is warranted because of "new information" is belied by the fact that the arguments raised amount to a collateral attack on the Commission's clear and unambiguous policy permitting pipelines to package non-contiguous segments. In *Northern Border*, the Commission ruled:

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[6] *See Promotion of a More Efficient Capacity Release Market*, Order No. 712, 123 FERC ¶ 61,286, at P 131 (2008) ("Order No. 712").
[7] *Northern Border Pipeline Co.*, 164 FERC ¶ 61,150 (2018) ("*Northern Border*"); *ANR Pipeline Co.*, 177 FERC ¶ 61,049 (2021); *Columbia Gas Transmission, LLC,* 148 FERC ¶ 61,218 (2014).
[8] *Northern Border*; *Transcontinental Gas Pipe Line Co., LLC*, 172 FERC ¶ 61,258 (2020).

> [T]he Commission's policy does not preclude a pipeline from packaging non-contiguous segments of capacity, so long as shippers are not required to bid on segments of capacity that are not desired and thus have an opportunity to obtain the portion of the capacity they seek, understanding, of course, that a competing shipper willing to bid on all the elements of the aggregated package may provide a greater NPV and become the winning bid. Northern Border's proposal contemplates that shippers can submit bids for less than the full amount of a capacity package, because proposed section 6.26.4(a)(ii) permits Northern Border to aggregate two or more bids for one or more bid packages.[9]

The Commission's policy to permit the inclusion of non-contiguous segments in a capacity offering allows the pipeline to sell more capacity, providing a benefit to shippers in the long run because of the resulting additional billing determinants.[10] Consistent with prior orders, FERC explained, "[m]aximizing revenue and the use of pipeline capacity will benefit all customers by increasing billing determinants and thereby lowering unit fixed costs in the next rate case. The maximum recourse rate remains applicable to each segment of capacity included in a capacity offering, and thus shippers cannot be required to pay more than the maximum recourse rate for the capacity they obtain."[11]

Petitioners have presented no new information or arguments that FERC has not already heard, considered, and rejected. Packaging the same arguments with new affidavits does not equate to new evidence supporting a new basis for the Commission to reconsider or change a well-established policy that is in the public interest. There is no need for the Commission to change that policy. Petitioner's request for a rulemaking must be denied.

A. Northern Natural Gas' Open Season Involved Contiguous Services.

The Petition takes issue with the practice of permitting pipeline shippers the

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[9] *Northern Border* at P 23.
[10] *Id.* at P 24.
[11] *Id.*

ability to bid on multiple non-contiguous capacity segments in order to maximize the value of their bid and increase the opportunity to acquire desired capacity. However, the Petition includes in Appendix A, without explanation, a Northern "Jan. 23, 2020 Auction"[12] as an example of pipelines "packaging **non-contiguous** segments of capacity that are not operationally related and often have mismatched terms and volumes…""[13] *(emphasis added)*. The inclusion of the Northern open season was erroneous and in no way supports the Petitioners' request.

The referenced Northern open season ("Northern Open Season") is inapposite as it permitted bids for **contiguous** service.[14] The ability to hold open seasons with contiguous service is set forth in Northern's tariff.[15] "For purposes of NPV evaluation, the aggregate NPVs of two or more bids for contiguous service may be considered provided that the combined capacity under those bids does not exceed the maximum capacity available for bid."[16] The Commission approved Northern's bid evaluation structure involving solicitation of multiple bids on different bid packages, finding the "bidding structure promoted the Commission's policy governing the allocation of capacity, by assuring that capacity will go to the shipper that values it the most and maximizing the value of capacity to the pipeline."[17]

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[12] The Petition incorrectly labels the open season as the "Jan. 23, 2020 Auction." The open season was conducted in December 2019, for available capacity beginning January 2020.
[13] Petition at 8.
[14] Petition at 71. The Commission has ruled that Northern's NPV contiguous service should "render[] the highest incremental revenue to the system." *See Northern Natural Gas Co.*, 82 FERC ¶ 61,077, at 61,287 (1998).
[15] *Northern Natural Gas Co.*, 82 FERC ¶ 61,077.
[16] Northern's tariff, Sheet No. 253.
[17] *Northern Natural Gas Co.*, 108 FERC ¶ 61,044, at P 11 (2004). *See also Northern Border* at P 26.

As the Petition specifically applies to non-contiguous segments of capacity, the inclusion of the Northern Open Season as an example of non-contiguous capacity offering is erroneous and should be disregarded by the Commission.

B. Pipelines are Obligated to Sell Available Capacity.

Petitioners seek a rule prohibiting the packaging of "valuable and unwanted, operationally unrelated, non-contiguous capacity segments" for purposes of aggregating bids to determine the most valuable bid.[18] Such a prohibition would significantly impede a pipeline's ability to make available unsold capacity and maximize the value of such capacity efficiently and transparently. As an alternative to completely prohibiting a pipeline from posting a package of non-contiguous segments of capacity, Petitioners suggest the Commission should require pipelines to offer for sale segments of capacity on a stand-alone basis prior to permitting a pipeline to transparently offer such capacity in an open season where non-contiguous bids are accepted. Neither of these proposals are practical, nor in the public interest.

FERC regulations require pipelines to post operationally available capacity on their websites.[19] If a shipper wants to purchase the capacity at the maximum rate, the pipeline must sell it. These are clear and transparent requirements. However, the Petitioners seek to impose new rules that interfere with market forces and place the task of designating certain capacity as valuable, unwanted, operationally unrelated or non-contiguous on the Commission and pipelines. Importantly, what is "unwanted" or "operationally unrelated" to one bidder may hold value to another bidder—as the

[18] Petition at 18.
[19] 18 C.F.R. § 284.13(d).

Commission has recognized, for example, an asset manager may be able to package the capacity (along with the commodity) to enhance its overall value.[20]

On Northern's system, quantities of capacity can change based on the receipt and delivery points contracted. Northern's system design is based upon a configuration Northern believes to be the most efficient. Northern posts its unsubscribed and operationally available capacity associated with its system configuration. Northern then may hold open seasons where it may be willing to reconfigure its pipeline system should the market desire a different configuration. In those open seasons, Northern evaluates all bids received and awards capacity based upon the most economical results to Northern, including potentially reconfiguring its system. Northern is not in a position to define or determine what is "valuable" capacity to include as opposed to "unwanted" capacity to exclude from capacity postings or open seasons. If forced to do so, Northern believes it will be subject to potential charges of withholding capacity from the market. The competitive transportation market is better able to determine what capacity is "valuable" or "unwanted" than the pipeline. The same challenge exists for Petitioners' alternative suggestion to require posting of stand-alone capacity prior to selling multiple segments of capacity. Selling available capacity in phases interferes with the competitive market optimizing the use of capacity and ensuring capacity is allocated to the shippers that value it most. Granting Petitioners' requests would introduce artificial barriers to holding efficient, transparent and competitive open seasons by pipelines.

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[20] Order No. 712 at P 122 ("Asset managers have resources and market knowledge not necessarily available to natural gas capacity holders, such as trading platforms, credit portfolios, hedge fund and risk management experience, cost containment and counterparty credit and contracting expertise, which allow asset managers to better maximize the value of the releasing party's assets and manage the associated risk.").

As the Commission has done repeatedly, it should reject the Petition and decline to set any additional parameters beyond those requiring full disclosure of the bid requirements and evaluation criteria at the time of posting and after-the-fact disclosure of winning bids.[21]

C. Current Commission Policy that Promotes the Allocation of Capacity to the Shipper that Values it the Most is Fundamentally Sound and Should Not Be Changed.

Fundamentally, the Petition raises the question of who is "entitled" to the value of pipeline capacity in instances where market indices suggest a market value greater than the pipeline's maximum tariff rate.[22] The Commission's policy on this point is clear that "maximizing the value of the capacity to the pipeline is a fundamental component of Commission policy governing the allocation of capacity."[23] To limit or prohibit the methods for how pipelines allocate capacity would upend this fundamental economic principle and harm pipelines and their captive shippers.

In Northern's Field Area, the value of a majority of the capacity is based upon volatile, short-term market values, which constantly fluctuate and may result in a discounted or negotiated rate for short periods of time. To allow bidders to compete for that capacity, Northern will hold an open season that permits, but does not require, bidders to increase the value of their bids by bidding on contiguous service, *i.e.*, two or more contiguous paths where the receipt point of one path is the same location as the delivery point of another path. As relevant here, no bidder is required to bid on

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[21] *See* cases cited *supra* note 2.

[22] The market value of the pipeline capacity, in this context, is the difference in the price of natural gas between two distinct points, i.e., the difference between published prices at or near the receipt and delivery point, less the applicable variable costs.

[23] *Northern Natural Gas Company*, 108 FERC ¶ 61,044, at P 11 (2004).

contiguous service and the maximum recourse rate remains applicable to each segment of capacity included. Likewise, the bidders cannot be required to pay more than the maximum recourse rate for the capacity they obtain.[24]

In a review of all such open seasons held by Northern, it does not appear that any bidder was an end-user (e.g., industrial, municipal natural gas distribution entity), and only once did a local distribution company bid.[25] The balance of bidders were producers and marketers, with the vast majority being gas marketing companies. When gas marketing companies purchase the capacity, they use it to deliver a bundled supply of gas and extract whatever margin exists on the capacity (*i.e.*, the spread value). The marketer's goal is to maximize its margin. If the market value of pipeline capacity is greater than the pipelines' maximum tariff rate, the marketing company will sell at the market value, without regard to the pipelines' maximum rate. Marketers are not selling gas at cost to end-users when there is a higher market value. The Commission's policy to permit bids for contiguous and non-contiguous segments to be included in an NPV evaluation merely allows the pipeline and its customers the opportunity to benefit from changes in the market value of the pipelines' capacity rather than abdicating the value entirely to natural gas marketers, as would be the case if the Commission reversed its policy as advocated by the Petitioners, and thereby harming captive customers.

If pipelines are not permitted to sell non-contiguous paths, the value of the index spread in excess of the pipeline's maximum rate would be realized by the marketing companies and retained by their owners or shareholders, with no offsetting benefit to the pipeline or other shippers. When pipelines are able to sell the capacity to the party that

[24] *Northern Border* at P 24.
[25] However, even this bid was not for delivery to the local distribution company's city gate.

values it the most, not only do pipelines benefit, but the pipelines' customers benefit by the pipeline being able to defer a rate case that would increase rates, or by reducing the potential maximum rates when a rate case is necessary.[26]

It is important to remember that the capacity at issue is generally available capacity that was at one time contracted but has since been turned back to the pipeline, placing the pipeline at risk for recovering the cost of service of this turned back capacity in between rate cases. The pipeline does not recover the cost unless the capacity is either re-contracted or billing units are adjusted in the next rate case. Adopting a process that is designed to facilitate an opportunity for marketing companies to select the most valuable capacity on a pipeline's system, and buy it in a piecemeal fashion, while leaving other capacity unused, and related costs unrecovered, is not sustainable nor in the public interest.

Petitioners cite a list of examples of pipelines marketing non-contiguous capacity, and the number of examples demonstrate that the market is willing to bear the results of FERC's policy. Petitioners' proposal will only serve to harm pipeline customers by shifting any realized beneficial market value of a pipeline's capacity away from a pipeline and its customers and diverting that value to marketers who are not subject to FERC's rate regulation. By retaining the market value of capacity at the pipeline, FERC can ensure that the benefit of revenues for capacity that was built and operated under its policy is distributed consistent with the public interest.

Pipelines must have the flexibility to market and award available capacity in a manner that is transparent to all bidders, that will maximize the value and use of available

[26] *Northern Border* at P 24.

pipeline capacity and will result in capacity being awarded to the shipper that values it the most.

III. CONCLUSION

It has been consistent FERC policy that pipelines can include bids for contiguous and non-contiguous segments of capacity in the NPV analysis in an open season for available capacity. The Commission's established policy remains just and reasonable. The Petition should be denied. The Petitioners have not shown the Commission's policy is unjust or unreasonable and that their alternate proposals are just and reasonable. The so called "new information" offered by the Petitioners is not new and in fact, has been solidly rejected by the Commission.

Northern supports the Commission's established and accepted policy that permits pipelines the ability to market all of their capacity in a manner that achieves the highest economic value, whether that capacity is contiguous or non-contiguous. Furthermore, the Petitioners' request, including the alternative request, is fraught with risks and, in practice, not workable. Fundamentally, the market value in excess of tariff rates should be available to the pipeline so as to benefit the pipeline, its shippers, and ultimately the public. The Commission's policy allowing pipelines to include non-contiguous segments in determining NPV in a transparent bid methodology continues to be just and reasonable and in the public interest. Petitioner's request for a rulemaking must be denied. Northern respectfully requests the Commission deny Petitioners' request for a rulemaking.

Respectfully submitted,

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July 18, 2022

CERTIFICATE OF SERVICE

I hereby certify that I have this day served the foregoing document upon the parties identified on the Commission's official service list for this proceeding.

Dated at Washington, DC, this 18th day of July 2022.

/s/ Megan McDowell

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