

**UNITED STATES OF AMERICA  
BEFORE THE  
FEDERAL ENERGY REGULATORY COMMISSION**

**TransCanada Alaska Company LLC**

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**Docket No. PF09-11-001**

**REQUEST FOR COMMISSION APPROVAL OF DETAILED PLAN FOR  
CONDUCTING AN OPEN SEASON**

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**OPEN SEASON PLAN DOCUMENTS** (submitted separately in three volumes)

Volume I

Proposed Open Season Notice with:

Appendix A: Proposed Precedent Agreement

Exhibit A: Bid Forms for the Alaska-Canada Pipeline and Valdez Pipeline

Exhibit B: Creditworthiness

Exhibit C: Additional Shipper Conditions Precedent

Exhibit D: Illustrative Annual Negotiated Rate Calculation

Volume II

Appendix B: In-State Needs Study required by 18 C.F.R. § 157.34 (b)

Exhibit A: In-State Gas Demand Study Submission Letter

Exhibit B: In-State Gas Demand Study Approval Letter

Volume III

Appendix C: Information required by 18 C.F. R. §157.34 (c)

Item 1: Pipeline Routes

Item 2: Project Design and Capacities

- Item 3: Operating Pressures
- Item 4: Delivery Pressures
- Item 5: In-Service Date
- Item 6: Transportation and Treating Rates
- Item 7: Cost of Service
- Item 8: In-State Transportation Rates
- Item 9: Negotiated and Other Rates
- Item 10: Quality Specifications
- Item 11: Terms and Conditions
- Item 12: Creditworthiness Standards
- Item 13: Precedent Agreement Execution Date
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- Item 18: Information Disclosures and Data Room Procedures
- Item 19: Applicant Affiliates
- Item 20: Organization Charts
- Item 21: Officer and Director Statement
- Exhibit A: Route Map - Point Thomson Pipeline Segment to GTP
- Exhibit B: Route Map - GTP Site Layout
- Exhibit C: Route Map - Alaska-Canada Pipeline, GTP to Canadian Border
- Exhibit D: Route Map - Canadian Pipeline, Canadian Border to Alberta

Exhibit E: Route Map - Valdez Pipeline, GTP to Valdez

Exhibit F: Preliminary Finance Plan

Exhibit G: Data Room Confidentiality Undertaking

Exhibit H: Open Season Data Room Guidelines and Procedures

Exhibit I: Indicative FERC Gas Tariff

Exhibit J: Alaska-Canada Pipeline – Recourse and Negotiated Rate Details

Exhibit K: Valdez Pipeline – Recourse and Negotiated Rate Details

Exhibit L: Definitions

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**REQUEST FOR COMMISSION APPROVAL OF DETAILED PLAN FOR  
CONDUCTING AN OPEN SEASON**

Pursuant to Section 157.38 of the Commission’s Regulations governing Open Seasons for Alaska Natural Gas Projects, 18 C.F.R. § 157.38, and Rule 204 of the Commission’s Rules of Practice and Procedure, 18 C.F.R. § 385.204, TransCanada Alaska Company LLC (“TC Alaska”) hereby requests Commission approval of the Plan described herein for conducting an Open Season for the purpose of securing binding commitments from potential shippers for firm gas transportation service and optional firm gas treatment service to be provided by TC Alaska’s Alaska Pipeline Project (“APP” or “Project”). As part of this Request for Approval, APP has separately submitted three volumes of Open Season Plan Documents which include the proposed APP Open Season Notice, with the following Appendices: (A) a proposed Precedent Agreement; (B) the In-State Needs Study required by 18 C.F.R. § 157.34 (b); and (C) the 21 items of information required by 18 C.F.R. § 157.34 (c), including an indicative tariff.

**I. EXECUTIVE SUMMARY**

Once completed, the Alaska Pipeline Project will allow for the transportation of natural gas from Alaska’s North Slope to North American markets or global liquefied natural gas (“LNG”) markets. The North Slope of Alaska holds approximately 35 trillion cubic feet (“Tcf”)

of currently proven natural gas reserves, and it is estimated that another 100 to 200 Tcf ultimately could be discovered.

TC Alaska, along with affiliates in Canada (collectively, the “Licensee”), are the holders of the license issued by the State of Alaska on December 5, 2008, pursuant to the Alaska Gasline Inducement Act, AS43.90 (“AGIA”). The Project is being jointly advanced on behalf of TC Alaska by TransCanada Alaska Development Inc. (“TransCanada Alaska Development”) and ExxonMobil Alaska Midstream Gas Investments, LLC (“EMAMGI”), along with a respective affiliate of each company in Canada (collectively, the “APP Parties”), pursuant to the terms of a series of agreements among the parties executed on June 10, 2009.

The APP Parties and their respective affiliates (generally, “TransCanada” and “ExxonMobil”) are uniquely situated to efficiently and effectively advance the Alaska Pipeline Project. Both TransCanada and ExxonMobil bring substantial financial strength to the Project. TransCanada has extensive North American pipeline construction experience, particularly in cold weather environments, and operates pipeline networks across Canada and in the United States. TransCanada also holds the certificates and right-of-way in the Yukon Territory under the Northern Pipeline Act (“NPA”) to own and construct the Canada section of the Project, and has proven expertise in efficiently advancing pipeline projects through the regulatory process, construction and operation. ExxonMobil has proven global mega-project management experience and a long history of Arctic project successes and technological innovations. ExxonMobil has repeatedly demonstrated its ability to deliver world-class projects on time and within budget, and has proven expertise in innovative gas treatment, pipeline and compression technologies.

The Alaska Pipeline Project will consist of:

- A FERC jurisdictional gas treatment plant (“GTP”) near Prudhoe Bay, Alaska, which will treat North Slope gas for pipeline transportation;
- A FERC jurisdictional gas transmission pipeline from the outlet of the Point Thomson plant in Alaska to the GTP and from there, subject to shipper confirmation during the Open Season process, to either:
  - The Alaska/Canada border (the “Alaska-Canada Pipeline”), where it will interconnect to a new pipeline in Canada that APP plans to design, permit and construct (the “Canadian Pipeline”); or
  - Valdez, Alaska (the “Valdez Pipeline”).

With the Alaska-Canada Pipeline, shippers would have the ability to deliver gas to North American markets. With the Valdez Pipeline, shippers would have the ability to deliver into an LNG facility (to be developed by third parties), for onward delivery to global LNG markets. The Alaska-Canada Pipeline and the Valdez Pipeline are alternative proposals. Depending on customer interest as evidenced in the Open Season, APP will proceed with either the Alaska-Canada Pipeline or the Valdez Pipeline, but not both.

The Alaska Pipeline Project is a world-class undertaking in all of its aspects. The GTP as currently envisioned would be made up of four trains for the Alaska-Canada Pipeline and three trains for the Valdez Pipeline. The Alaska-Canada Pipeline segment from the GTP would be approximately 734 miles of 48-inch X80 steel (interconnected with 966 miles of the Canadian Pipeline). The base design capacity would be 4.5 Bcf/d, expandable with compression to 5.9 Bcf/d. Under the 4.5 Bcf/d base design, the system would include six compressor stations in Alaska and eleven in Canada, expanding to a total of thirty-three compressor stations under the 5.9 Bcf/d case. The Valdez Pipeline segment from the GTP would be approximately 803 miles of 48-inch X80 steel, all in Alaska, and would have two compressor stations in Alaska to support the base design of 3.0 Bcf/d. The pipeline will operate in areas of continuous and discontinuous permafrost, and therefore gas chillers will be installed at the GTP and on the outlet side of the

compressor stations located in Alaska, as well as on the outlet of the first compressor station in Canada.

The APP Parties have undertaken extensive efforts to update cost and schedule estimates for the Project. These updated estimates conform to Association for the Advancement of Cost Engineering International (“AAACEI”) Class IV standards. The overall cost estimate range in 2009 dollars<sup>1</sup> is from \$32 billion to \$41 billion for the combined Alaska-Canada Pipeline and Canadian Pipeline, and from \$20 billion to \$26 billion for the Valdez Pipeline. Based on this cost range, the estimated rate range for a 25-year negotiated rate from Prudhoe Bay to Alberta is \$3.02 - \$3.89 per MMBtu in nominal dollars or \$2.43 - \$3.13 per MMBtu in 2009 dollars, and from Prudhoe Bay to Valdez is \$2.76 - \$3.59 per MMBtu in nominal dollars or \$2.22 - \$2.89 per MMBtu in 2009 dollars. These rate ranges include the cost of treating gas at the GTP. The estimated in-service date for both options is 2020 for initial gas and 2021 for full gas.<sup>2</sup>

The Open Season Plan, described below, in addition to satisfying the 21 informational elements required by 18 C.F.R. §157.34 (c), also includes TC Alaska’s proposed Precedent Agreement, the Alaska-approved In-State Needs Study, and a complete indicative tariff.<sup>3</sup>

## **II. COMMUNICATIONS**

Communications with regard to this Request for Approval should be directed to:

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<sup>1</sup> Unless otherwise indicated, all references herein to “dollars” are to U.S. dollars.

<sup>2</sup> Further details of the rate development can be found in Exhibits J and K to Appendix C of the Open Season Notice.

<sup>3</sup> Based on discussions with potential shippers, the results of the Open Season and the development of any updated information, TC Alaska reserves the right to amend the Precedent Agreement prior to submission of any executed Precedent Agreements to the Commission pursuant to Section 157.34(d) of the Open Season Regulations (18 C.F.R. § 157.34 (d)), and to amend the tariff prior to submission to the Commission in connection with the Natural Gas Act Section 7 application for a certificate of public convenience and necessity.

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### **III. OPEN SEASON PLAN**

#### **A. The Applicant**

TC Alaska was incorporated in 2004 to pursue the development of the Alaska portion of an Alaska natural gas pipeline. In 2007, TC Alaska, jointly with Foothills Pipe Lines Ltd. (“Foothills”) through its Canadian subsidiaries identified in the NPA as having responsibility for the various zones of the Project in Canada, submitted an application to the Alaska Commissioner of Natural Resources and the Alaska Commissioner of Revenue for a license pursuant to AGIA. The AGIA co-applicants are wholly owned subsidiaries of TransCanada Corporation.

TransCanada owns one of the largest, most sophisticated, remote-controlled natural gas pipeline networks in the world, with 36,500 miles of wholly-owned pipeline that transports nearly 30 Bcf/d of gas to every major natural gas consuming market in North America.

TransCanada’s pipeline project management capabilities and experience are unparalleled in North America. For example, in the 1990s alone, TransCanada and its subsidiaries managed large-scale pipeline expansion projects across the continent with costs totaling approximately

Cdn \$14 billion. These capital projects included more than 6,500 miles of large diameter pipe, almost 3.2 million horsepower of compression, and 375 custody transfer meter facilities.

TransCanada's Cdn \$6.6 billion cross-Canada mainline expansion projects were delivered within a budget variance of 0.6 percent, and the overwhelming majority were completed on or before the original schedule. Similar performance was achieved on the company's Alberta expansion projects, as well as on its international projects.

TransCanada possesses several other unique capabilities or attributes that can provide significant advantages in the development of the Project:

- TransCanada Corporation, through its wholly-owned subsidiary Foothills, holds the certificate of public convenience and necessity to own and construct the Canada section of the Project. While there remains a significant compliance process to be conducted through the NPA, the fact that Foothills is the party certificated to proceed with the development of the Project constitutes a significant advantage over other potential applicants.
- Foothills has access rights to the lands acquired in the Yukon Territory by virtue of an easement that it has held since the early 1980s and continues to maintain through leasehold payments. In addition to these land rights, TransCanada is a recognized leader in building positive relationships with aboriginal communities in Canada.
- TransCanada has been an industry leader for more than 50 years in the development of cutting-edge gas transmission technology, including technology specialized for harsh, cold weather conditions like those that will be encountered by APP. For example, TransCanada has developed a comprehensive pipeline design methodology and models that combine hydraulic simulation with geothermal analysis to predict flowing gas temperatures, the amount of frost heave and thaw settlement, and the structural response of pipeline in permafrost. The pipeline design model, as well as other cold weather design, materials, and construction technologies and systems, has been successfully applied to difficult projects in northern discontinuous permafrost areas, resulting in project cost reductions and increasing pipeline reliability and safety in the extreme conditions in northern Canada.

On December 5, 2008, TC Alaska and Foothills were issued the AGIA license. The Alaska Commissioners found that: "Issuance of the AGIA license to TC Alaska will maximize benefits to Alaskans because it will provide the best opportunity to achieve a gas pipeline that encourages full exploration of Alaska's natural gas resources, generates long-term jobs for

Alaskans, maximizes state revenues, provides affordable in-state gas opportunities, and realizes other important state goals.”<sup>4</sup>

On June 10, 2009, TransCanada and ExxonMobil entered into a series of agreements under which ExxonMobil will work with TransCanada to advance the Project. Both parties bring substantial financial strength to the Project. In addition, ExxonMobil has proven global mega-project management experience and a long history of Arctic project successes and technological innovations. ExxonMobil also has repeatedly demonstrated its ability to deliver world-class projects on time and within budget, and has proven expertise in innovative gas treatment, pipeline and compression technologies.

In endorsing the joint project arrangement, the Alaska Commissioners stated:

ExxonMobil’s actions show that they believe that working with TransCanada and the state through AGIA is the best opportunity for aligning the parties to move this project forward. They bring world-class expertise to the project in construction planning, regulatory and environmental work, as well as technical capability and prior study information that will enhance development of the Gas Treatment Plant. Their early collaboration with TC Alaska will accelerate pre-Open Season spending to roughly \$150 million, and will help to ensure a project design that is tailored to meet the technical needs of potential gas shippers.<sup>5</sup>

This view was recently echoed by the AGIA Coordinator in a letter to the President of the Alaska Senate and Speaker of the Alaska House of Representatives:

The [TransCanada-ExxonMobil] agreement offers tremendous synergies by merging TC’s extensive sub-arctic pipeline construction experience, and its existing regulatory certificates for the project through Canada, with ExxonMobil’s project management expertise, financial strength, expertise in the design

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<sup>4</sup> *Written Findings and Determination by the Commissioners of Natural Resources and Revenue for Issuance of a License Under the Alaska Gasline Inducement Act*, issued May 22, 2008, at ES2.

<sup>5</sup> State of Alaska, Departments of Natural Resources and Revenue, Press Release, issued June 11, 2009.

and construction of gas handling facilities, and its upstream expertise on Alaska's North Slope. ExxonMobil also brings to APP a prior producer gasline study and the large geothermal and environmental data set that it has access to as an owner of the TransAlaska Pipeline (TAPS).<sup>6</sup>

## **B. The Alaska Pipeline Project**

The APP Parties propose to design, permit and construct a new natural gas pipeline system, subject to FERC jurisdiction, beginning near Point Thomson, Alaska, and extending through Alaska over one of two alternative routes. One route, the Alaska-Canada Pipeline, would extend from the outlet of the Point Thomson plant to points near Prudhoe Bay, Fairbanks, and Delta Junction, and then to the Alaska-Canada border, where the pipeline would interconnect to a new pipeline in Canada that the APP Parties plan to design, permit and construct. With the Alaska-Canada Pipeline, shippers would have the ability to deliver gas to North American markets through the Alberta Hub or other existing off-take capacity at or near the British Columbia/Alberta border. An alternative pipeline route, the Valdez Pipeline, would extend from the outlet of the Point Thomson plant through points near Prudhoe Bay, Fairbanks, Delta Junction, and then to an interconnection point with LNG facilities (to be built by third parties) near Valdez, Alaska. In either the Alaska-Canada Pipeline or the Valdez Pipeline alternative, a minimum of five in-state delivery points will be made available on a firm or interruptible basis to all shippers.

The gas transmission pipeline segment between the outlet of the Point Thomson plant and the inlet to the GTP will consist of a single 32-inch, X65 steel pipeline, approximately 58 miles in length, with no compression. The base-case capacity of this segment has been set at 1.1 Bcf/d

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<sup>6</sup> Letter from Mark D. Myers, PhD, AGIA Coordinator to The Honorable Gary Stevens, Senate President and the Honorable Mike Chenault, Speaker of the House, dated October 31, 2009, enclosing the second AGIA Gasline Project Report.

(expandable with compression), with an operating pressure of approximately 1030 psi at the Point Thomson receipt point.

The Alaska-Canada Pipeline gas transmission segment between the outlet of the GTP and the Canadian border would consist of a single 48-inch, X80 steel pipeline, approximately 734 miles in length, and six compressor stations. The base-case capacity of this segment has been set at 4.5 Bcf/d (expandable to 5.9 Bcf/d with additional compression), with an operating pressure of approximately 2500 psi along the entire route of this segment.

The Valdez Pipeline gas transmission segment between the outlet of the GTP and the LNG terminal facilities (to be built by third parties) near Valdez would consist of a single 48-inch, X80 steel pipeline, approximately 803 miles in length, and two compressor stations. The base-case capacity of this segment has been set at 3.0 Bcf/d (expandable with additional compression), with an operating pressure of approximately 900 psi at the Valdez LNG delivery point.

The APP Parties propose to design, permit and construct a new GTP located near Prudhoe Bay, as an integral component of APP's facilities and also subject to FERC regulation, that will operate in conjunction with either the Alaska-Canada Pipeline or the Valdez Pipeline. Shippers on the APP gas transmission pipeline will not be required to have their gas treated at the GTP, but shippers will be required to meet the pipeline gas quality specifications in TC Alaska's indicative FERC Gas Tariff.

The current GTP design for the Alaska-Canada Pipeline alternative is to treat approximately 5.3 Bcf/d of inlet gas, distributed to four trains, and deliver approximately 4.5 Bcf/d of pipeline quality gas with a CO<sub>2</sub> content between 1.5% and 2%, remove approximately 0.6 Bcf/d of acid gas, and consume approximately 0.2 Bcf/d of fuel gas. The GTP design for the

Valdez Pipeline alternative is to treat approximately 3.6 Bcf/d of inlet gas, distributed to three trains, and deliver approximately 3.0 Bcf/d of pipeline quality gas with a CO<sub>2</sub> content of ≤50 ppm, remove 0.44 Bcf/d of acid gas, and consume approximately 0.17 Bcf/d of fuel gas. The GTP will be designed for an inlet pressure of approximately 600 psi and can be expanded to treat additional gas.

### **C. The Open Season Offering**

This Open Season is being held to solicit the submission and execution of binding Precedent Agreements for firm gas transportation service and optional firm gas treatment service. There will be receipt points at the outlet of the Point Thomson plant and the inlet of the GTP, with the possibility of other receipt points being added based on shipper interest. There will be a delivery point at the inlet of the GTP for the Point Thomson pipeline segment and at either the Canadian border or Valdez, depending on which alternative route is selected. In addition, there will be a minimum of five in-state delivery points based on the Alaska-endorsed In-State Needs Study.<sup>7</sup> Both negotiated and recourse rates are being offered in this Open Season.

The APP Parties have not executed any pre-subscription agreements, and all Alaska-Canada Pipeline or Valdez Pipeline capacity and GTP capacity will be offered to potential shippers through this Open Season. This Open Season is being conducted as part of a broader open season process under which APP is also separately soliciting shipper bids for capacity on the Canadian Pipeline.

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<sup>7</sup> For purposes of this Open Season, Exhibit A of the proposed Precedent Agreement specifies as delivery points the locations that were identified in the In-State Needs Study as the most likely off-take points based on expected demand. *See* p. 19 *infra*. The final determination of the in-state locations that will be served will depend on which alternative route is selected, the results of the Open Season and input from potential shippers.

## **D. The Conduct of the Open Season**

### **1. Timing and Notice**

The proposed APP Open Season Notice, with appendices, has been separately submitted in a three-volume set of Open Season Plan Documents. The APP Parties plan to issue the Notice no later than April 30, 2010. As discussed in detail below, the Notice complies with all applicable Commission regulations and includes all of the information specified in 18 C.F.R. Sections 157.34 (b) and (c). The Open Season will run a minimum of 90 days and is anticipated to close on July 30, 2010.

As required by Section 157.34 (a), the APP Parties will notify the public of the issuance of the Open Season Notice through press releases, direct mail solicitations and other advertising sufficient to assure that all parties interested in the Open Season will be made aware of its terms. The Notice will be accessible on the APP website, [www.thealaskapipelineproject.com](http://www.thealaskapipelineproject.com), and copies will be made available to any interested party. In addition, actual notice of the Open Season will be provided to the Commission, the State of Alaska and to the Office of the Federal Coordinator for Alaska Natural Gas Transportation Projects.

### **2. Bid Criteria**

During the Open Season, any party interested in contracting for firm transportation service on either the Alaska-Canada Pipeline or the Valdez Pipeline alternative must execute and return the form of Precedent Agreement attached as Appendix A to the Open Season Notice. To be considered a bona fide bid, the Precedent Agreement must be signed by an authorized representative of the bidding company. The executed Precedent Agreement must include the following information:

- Maximum Daily Quantity (“MDQ”) and optional Maximum Treatment Quantity (“MTQ”), exclusive of Fuel and Lost and Unaccounted for Gas (“Fuel”), by requested

primary receipt and delivery points that bidders must indicate on Exhibit A to the Precedent Agreement.

- Whether the party intends to pay recourse rates or negotiated rates.
- Requested primary term of 20-25, 30 or 35 years for shippers selecting negotiated rates and 25 years for shippers selecting recourse rates.

APP reserves the right, on a not unduly discriminatory basis, to reject any bid that does not conform to the requirements set forth for bids or that modifies the substantive terms set forth in the Precedent Agreement.

### **3. Route Selection and Award of Capacity**

Shippers will be notified, as soon as reasonably practicable following the completion of the Open Season, whether APP will proceed to seek to design, permit and construct the Alaska-Canada Pipeline and GTP or will proceed to seek to design, permit and construct the Valdez Pipeline and GTP. APP will make this determination in its sole discretion, and is entitled to delay providing shippers with this notice if it determines that commercial circumstances justify a later notification. Upon shippers' receipt of such notification, all terms of the Precedent Agreement are binding with respect to each shipper's elections on Exhibit A to the Precedent Agreement for service on the selected pipeline, and the shipper's service elections on Exhibit A to the Precedent Agreement with respect to the pipeline alternative that is not selected for development are thereafter without effect and are not enforceable by the shipper or by TC Alaska.

The APP Parties intend to design the Project, within certain economic and engineering design increments, to accommodate all capacity requests on a not unduly discriminatory basis from acceptable bids received during the Open Season. In the event qualifying bids from shippers for firm services received during the Open Season exceed the design capacity determined by APP, APP reserves the right to reduce the bidders' MDQs and MTQs indicated on

Exhibit A to the Precedent Agreements pro rata, based solely on each bidder's proportion of the total quantity of firm transportation capacity and firm treatment capacity reflected in bids received by APP, without regard to whether a shipper would qualify as a Foundation Shipper, has selected recourse rates or negotiated rates, or has specified in-state or export deliveries.

#### **4. Precedent Agreements**

After awarding capacity and (i) receipt of winning bidder(s)' sufficient written evidence of creditworthiness, as stipulated in Exhibit B to the Precedent Agreement, (ii) resolution of any outstanding commercial issues, and (iii) receipt of bidders' board approvals, TC Alaska will execute each binding Precedent Agreement previously submitted by a bidder and will return one copy to the bidder. If the amount of capacity awarded differs from the amount contained in the initial bid as a result of over-subscription, TC Alaska and the winning bidder(s) will execute amended Precedent Agreements reflecting the final award of capacity. The Precedent Agreement will bind the bidder(s) to execute a firm transportation service agreement ("FTSA") before Project construction commences and will condition the provision of service on satisfaction or express waiver of the transporter Conditions Precedent stipulated in the Precedent Agreement.

APP recognizes that bidders may desire to include certain conditions precedent ("CPs") to their bids that are outside the control of APP. Notwithstanding the bidders' execution of the Precedent Agreement during the Open Season, bidders will be allowed to negotiate CPs acceptable to the APP Parties and will have until December 31, 2010, to secure all necessary board approvals and internal authorizations. CPs that modify substantive terms in the Precedent Agreement may not be accepted.

This Open Season filing and the Project as described herein, including the cost, schedule and expenditure estimates, are conditioned on the timely execution of Precedent Agreements and

the timely satisfaction of the CPs outside the control of APP, in each case, in a form acceptable to APP.

As required by Section 157.34 (d)(3) of the Commission's Regulations, within 10 days after Precedent Agreements have been executed by both parties, APP will make public on the APP web site ([www.thealaskapipelineproject.com](http://www.thealaskapipelineproject.com)) and through press releases the results of the Open Season, including at least the name of the prospective shipper, the amount of capacity awarded, and the term of the agreement. As required by Section 157.34 (d)(4), within 20 days after Precedent Agreements have been executed by both parties, APP will submit to the Commission copies of each such Precedent Agreement and copies of any relevant correspondence with bidders who were not allocated capacity that identifies why such bids were not accepted. APP reserves the right to request confidential treatment of the Precedent Agreements submitted to the Commission pursuant to Section 157.34 (d)(4).

#### **IV. REQUEST FOR COMMISSION APPROVAL**

The APP Parties have devoted substantial time and effort to the preparation of this Plan to assure that it complies with all of the Commission's regulations and offers service on terms that are just, reasonable and not unduly discriminatory. The APP Parties are hopeful that there will be no serious objections to the Plan. However, if there are, the APP Parties stand ready to address any issues promptly, and they are confident that any concerns can be quickly resolved so that the Commission's review of this Plan will be uncontested and the Open Season may proceed on schedule and as planned. In this regard, the APP Parties invite interested parties to contact the APP Parties with any questions prior to the initial comment date.

Because this is the first request for pre-approval under the Open Season Regulations, there is no Commission precedent that directly addresses the scope of the Commission's review of the Plan or the criteria that the Commission should apply in assessing whether to approve the

Plan. Order No. 2005, however, provides guidance on this issue. As set forth below, the APP Plan fully meets the standards of Order No. 2005 and therefore should be approved.

**A. Standard of Review**

The purpose of the pre-approval process is to give the Commission an opportunity “at the earliest possible time” to address disputes that might arise “over the conduct of an open season and its conformance with the open season rules.” Order No. 2005A, PP 64, 71. The pre-approval review to be conducted by the Commission, therefore, is quite limited. It is to focus on the “open season procedures,”<sup>8</sup> and specifically on whether the open season plan “conform[s] to the regulations.” *Id.*, P 64. If the plan on its face complies with the regulations, and does not present concerns that are so obviously beyond remedy as to make the planned Open Season a nullity, the Plan should be approved.

The pre-approval review is not a Section 7 certificate proceeding or a Section 4 proceeding to determine just and reasonable rates or terms and conditions of service.<sup>9</sup> Those steps come later in the process, and the Commission’s pre-approval of an open season plan now will not pre-judge any issues that may be presented in those later proceedings. Indeed, compliance with the Open Season Regulations will remain as one of the issues that must be

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<sup>8</sup> See Order No. 2005, P 109 (concluding “that it is in the public interest to require pre-approval of open season procedures”).

<sup>9</sup> Instead, the review that the Commission should conduct is more like that which the Commission conducts when deciding whether to accept or reject a tariff filing or certificate application. As the Commission is aware, a tariff filing or certificate application may be “rejected” only in narrow circumstances where it is “patently either deficient in form or a substantive nullity.” *Municipal Light Boards v. FPC*, 450 F.2d 1341, 1345 (D.C. Cir. 1971). Pertinent to the current request, rejection “classically” has been considered as “a technique for calling on the filing party to put its papers in proper form and order.” *Id.* at 1346. However, “[i]t may also be used by an agency where the filing is so patently a nullity as a matter of substantive law, that administrative efficiency and justice are furthered by obviating any docket at the threshold. . . .” *Id.*

addressed in the certificate application, *see* 18 C.F.R. § 157.33, and the issue will be subject to the Commission’s review at that time. *See* Order No. 2005, PP 15, 25.<sup>10</sup>

The limited review to be conducted at this time follows directly from the thorough consideration given to the open season process in the rulemaking proceeding leading to Order No. 2005. In that proceeding, all interested parties were given an opportunity to express their views on how an open season should be conducted. Balancing these sometimes conflicting views, *see* Order No. 2005, P 16, the Commission adopted detailed regulations to govern the conduct of the open season process. These regulations “provide the framework for an open season process that will provide reasonable flexibility to pipeline sponsors, while ensuring sufficient exchange of information and regulatory oversight to ensure that the goal of fair, open competition in the transportation and sale of natural gas is met.” Order No. 2005, P 17; *see also* Order No. 2005A, P 2. The Commission has thus already addressed from a policy standpoint how the open season is to be conducted, and those rulings are final.<sup>11</sup> Now, all that remains is for the Commission to determine whether the proposed Open Season Plan complies with the regulations that the Commission has adopted.

For purposes of the current request, there are four regulations in particular that are relevant:

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<sup>10</sup> *See also* Order No. 2005A, P 72 (“given the fact that participants in an open season will have the opportunity to object to the conduct of the open season after a certificate application is filed, as is our current practice, as well as the ability to seek rehearing and obtain appellate review of any Commission certificate orders, orders approving open season procedures will be interlocutory and not subject to rehearing”).

<sup>11</sup> The pre-approval review process, therefore, clearly is not intended to give dissatisfied parties an opportunity to re-argue positions that were rejected in Order No. 2005 or Order No. 2005A. *See, e.g.*, Order No. 2005, P 52 (denying request to “impose a requirement that any open season must remain open to a particular point in time tied to other project activities”); P 95 (denying request to impose a cap on contract term bids).

- Section 157.34 (b) requires that a prospective applicant “conduct or adopt a study of gas consumption needs and prospective points of delivery within the State of Alaska and rely upon such study to develop the contents of the notice. . . . Such study shall be identified in the notice and if practicable, shall include or consist of a study conducted, approved or otherwise sanctioned by an appropriate governmental agency, office or commission of the State of Alaska. In its open season proposal, a prospective applicant shall include an estimate based upon the study, of how much capacity will be used in-state.”
- Section 157.34 (c) specifies 21 items of information that must be contained in the notice. These information items are comprehensive, *see* Order No. 2005, P 56, and “in essence, define[] the information that all shippers will need to participate in an open season for capacity on an Alaska natural gas transportation project.” *Id.*, P 72.
- Under Section 157.35 (a), “[a]ll binding open seasons must be conducted without undue discrimination or preference in the rates, terms or conditions of service and all capacity allocated as a result of any open season shall be awarded without undue discrimination or preference of any kind.”
- Sections 157.34 (c), (d) require that the unit of a prospective applicant conducting an open season function independent of the other non-regulated divisions of the project applicant as well as the applicant’s Marketing and Energy affiliates and subject to certain standards of conduct.

As demonstrated below, the APP Plan for the TC Alaska Open Season satisfies all of these regulations and should therefore be approved.

### **B. The Open Season Plan Satisfies the In-State Needs Study Requirements**

The Open Season Plan complies in all respects with Section 157.34 (b) of the Commission’s regulations. At the request of TC Alaska, the consultant team of Northern Economics, Inc., Science Applications International Corp., and the Institute for Social and Economic Research at the University of Alaska, Anchorage conducted an *In-State Gas Demand Study* to evaluate natural gas requirements and prospective points of delivery within the State of Alaska. That Study is included with the Open Season Notice as Appendix B.<sup>12</sup>

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<sup>12</sup> Included as Exhibits A and B to Appendix B are a letter from TC Alaska submitting the *In-State Gas Demand Study* to the Alaska Department of Public Resources and a letter from the Alaska Commissioners approving the use of the Study by TC Alaska “as a reasonable assessment of in-state natural gas consumption needs based on the facts currently available.”

The *In-State Gas Demand Study* analyzes three demand scenarios categorized as No Industry, Current Industry, and Growth Industry. Recognizing that no in-state gas-intensive industrial load is very certain, the No Industry case represents in-state demand without a large industrial load. The Current Industry case represents a continuation of current trends, with a facility representative of the demand required by the Nikiski LNG terminal operating at full capacity. Finally, the Growth Industry case represents a scenario whereby the existing LNG facility will expand to double its current capacity, but no other greenfield (or new) projects will be built in years 1 to 5. Greenfield industrial projects are not assumed to be built at the same time as the pipeline because the simultaneous demand for labor and materials could significantly increase the capital costs for a new facility, causing it to be uneconomic. Furthermore, unless owners of the greenfield industrial projects were to secure gas supply and commit to pipeline capacity in the early open seasons, it is unlikely that they would have sufficient gas to support the greenfield projects in the initial years of pipeline operation. In years 10 to 15, greenfield projects with reasonably likely economic feasibility are included under the Growth Industry case.

For the first five years of pipeline operations, the projected in-state gas demand for the No Industry case, Current Industry case, and Growth Industry case, are 260, 490 and 740 MMcf/d, respectively; and the chances of these scenarios occurring are 29 percent, 38 percent, and 12 percent, respectively. *See In-State Gas Demand Study* at 74. The Valdez Pipeline is estimated to have a slightly higher gas demand than the Alaska-Canada Pipeline for the three demand scenarios due to the additional industrial demands in the Valdez area that will likely be created with the availability of natural gas. Specifically, for the first five years of pipeline operations, the projected demand levels for the No Industry case, Current Industry case, and Growth Industry case for the Valdez Pipeline, are 270, 500, and 750 MMcf/d, respectively; and

the chances of these scenarios occurring are 61 percent, 30 percent, and 9 percent, respectively.

*Id.*

Because the Current Industry demand scenario has the greatest chance of occurrence, the Study used that scenario for analysis of potential in-state off-take points and volumes. The analysis of potential off-take points and volumes also factored in the continued availability of gas from Cook Inlet sources, which will reduce the demand for North Slope gas. Utilizing this methodology, the Study projects total net in-state demand for North Slope gas in years 1-5 of pipeline operations to be approximately 340 MMcf/d for the Alaska-Canada Pipeline alternative and approximately 350 MMcf/d for the Valdez Pipeline alternative. *Id.* at 79. Based on these demand projections, the Study (*id.* at 84) identifies the most likely off-take points along the two alternative routes as follows:

<b>Location</b>	<b>Alaska-Canada Pipeline</b>	<b>Valdez Pipeline</b>
Livengood	√	√
Fairbanks	√	√
Parks Highway spur	√	√
Delta Junction area/Richardson Highway spur	√	√
Tok	√	n/a
Glennallen	n/a	√
Valdez	n/a	√

For purposes of the Open Season, APP has included in Exhibit A to the Precedent Agreement all of these locations as potential off-take points. The final determination of which locations will be served will depend on which alternative route is selected, the results of the Open Season and input from potential shippers.

### **C. The Proposed Open Season Notice Includes All of the Required Information**

The proposed Open Season Notice includes all of the information that the Commission has determined is necessary to allow potential shippers to evaluate the APP Open Season offering and to make a determination on whether to bid for capacity. Each one of the 21 information items specified in Section 157.34 (c) of the regulations is separately addressed in Appendix C to the proposed Notice. To the extent that the information for the Alaska-Canada Pipeline differs from that for the Valdez Pipeline, each alternative is addressed.

#### **1. The Required Information Has Been Provided**

**Items (1)-(5)** of the information requirements relate to the description of the project, primarily from a technical standpoint. The required information includes the route of the pipeline, the size and design capacity, including a description of possible expanded designs, the maximum allowable and expected operating pressures, the delivery pressures and projected in-service date. All of this information is provided at pp. 1-15 of Appendix C.

**Item (6)** requires an estimated unbundled rate for each delivery point for each service offered, including reservation charges, interruptible transportation rates, usage rates, fuel retention percentages and other applicable charges. **Item (7)** requires information about the estimated cost of service upon which the rates are developed. This information is provided at pp. 16-19 and in Exhibits J and K of Appendix C.

**Item (8)** relates to the estimated transportation rate for deliveries in the state of Alaska. That information, for both the Alaska-Canada Pipeline and Valdez Pipeline alternatives, is provided at pp. 20-21 and in Exhibits J and K of Appendix C. These estimated in-state transportation rates are based on the same cost estimates as the other rates for firm transportation service, but do not include costs to make deliveries outside the State of Alaska. The rates have been developed utilizing a weighted average volume-mile cost allocation and rate design

methodology. APP computed aggregate in-state volume-miles by adding the products of (1) the estimated MDQ for each delivery point, as derived from the *In-State Gas Demand Study* and (2) the miles from the outlet of the GTP to each delivery point. The resulting sum of in-state volume-miles was then divided by the total volume-miles (similarly computed) associated with firm transportation contracts for all deliveries within the state and to either the Alaska-Canada border or the Valdez LNG Facility. The resulting percentage was then applied to the total cost of service to determine the costs applicable to in-state deliveries. The costs applicable to in-state deliveries were then used to design in-state rates, by dividing such costs by in-state aggregate MDQs.

**Item (9)** requires the provision of information relating to negotiated rates and other rate options under consideration, including the rates and terms of any precedent agreements that have been negotiated outside this Open Season. The negotiated rate options being offered are addressed at pp. 22-24 and Exhibits J and K of Appendix C and described in detail in Exhibit A to the proposed Precedent Agreement. APP has not entered into pre-subscription or precedent agreements with any potential shipper.

**Item (10)** calls for the quality specifications and any other requirements applicable to gas to be delivered to the Project. Those specifications and requirements are set forth in Section 5 of the General Terms and Conditions of TC Alaska's indicative FERC Gas Tariff, which is attached as Exhibit I to Appendix C. Potential shippers will not be required to treat their gas at any designated plant or facility.

**Item (11)** requires information about the terms and conditions for each service offered. To satisfy this requirement, the APP Parties have prepared a complete indicative FERC Gas Tariff, which is attached as Exhibit I to Appendix C. Before the tariff is filed as part of a

certificate application, it will be updated to reflect changes negotiated in connection with the Open Season, changes deemed necessary by TC Alaska, and changes to satisfy current North American Energy Standards Board (“NAESB”) Standards.

**Item (12)** requires the specification of the creditworthiness standards, and any other collateral requirements, to be applied to prospective shippers. This information is contained in Exhibit B to the form of Precedent Agreement in Appendix A to the Notice. For purposes of developing the Project and conducting this Open Season, APP intends that certain parties shall be established as “Foundation Shippers.” As specified in the Precedent Agreement, Foundation Shippers are shippers that make long-term capacity commitments equal to or exceeding 200,000 MMBtu/day in aggregate. Due to the requirements to finance a project of this magnitude, Foundation Shippers will be subject to a more stringent creditworthiness standard than non-Foundation Shippers as stipulated in Exhibit B to the Precedent Agreement. The creditworthiness provisions of the indicative tariff also reflect the standards deemed necessary to finance the Project.

**Item (13)** asks for the date by which potential shippers and the prospective applicant must execute precedent agreements. That information is provided at p. 28 of Appendix C.

**Items (14) and (15)** require a statement of a detailed methodology for determining the value of bids for deliveries within and outside the State of Alaska, and the methodology by which capacity will be awarded in the case of over-subscription. That information is provided at pp. 29-30 of Appendix C. Because there is no pre-subscribed capacity on the Project, the provisions in Item (15) regarding pre-subscribed capacity are not applicable.

**Item (16)** requires that the Notice contain the required bid information, whether bids are binding or non-binding, receipt and delivery point requirements, the form of a precedent

agreement and time of execution of the precedent agreement, and definition and treatment of non-conforming bids. That information is provided at pp. 31-32 of Appendix C. All bids will be binding. APP's proposed Precedent Agreement is attached as Appendix A to the Notice. Exhibit A to that form of Precedent Agreement specifies the receipt and delivery point requirements.

**Item (17)** requires the projected date for filing an application at the Commission. As specified at p. 33 of Appendix C, the expected date for the NGA Section 7 certificate application filing is October 31, 2012.

**Item (18)** is the "catch all" that requires disclosure of all information in the prospective applicant's possession pertaining to the service to be offered, projected pipeline capacity and design, proposed tariff provisions, and cost projections, or that the prospective applicant has made available to, or obtained from, any potential shipper, including affiliates of the prospective applicant. Although TC Alaska is the prospective applicant, the APP Parties are responding to this requirement as though it were applicable to APP, not just TC Alaska.

As described below in connection with the independent functioning requirement of Section 157.35 (c) of the Open Season Regulations, ExxonMobil has created an organizational unit for its participation in the Project that is entirely separate from the ExxonMobil entities that could be considered potential shippers, and has established firewalls that restrict the information flow between APP and ExxonMobil's production and marketing units. This organizational separation was put into place in May 2009, in anticipation of ExxonMobil's participation in the Project, and at that time there was a transfer of necessary and relevant information to APP from the ExxonMobil entities that had previously been involved in ExxonMobil's consideration of an Alaska natural gas pipeline. The information provided to APP included the 70-plus volume 2001

Alaska Gas Pipeline Producer Team (“AGPPT”) Study. All project-related information that APP received at that time, and any such information APP has since received from a potential ExxonMobil shipper entity or any other potential shipper, has been logged in and inventoried. The relevant information APP has received from potential shippers, therefore, is readily identifiable and will be made available during the Open Season in response to Item (18).

In addition to the project-related information received from a potential ExxonMobil shipper entity, most of the information in APP’s possession relating to the Project either has been created by APP or was received from TransCanada. To the extent specified in Item (18), this information will also be disclosed in connection with the Notice.

**Items (19)-(21)** relate to the organization of the prospective applicant’s affiliates involved in the production of natural gas in the State of Alaska or the marketing of natural gas from the State of Alaska, and to the restrictions on the transfer of non-public Open Season information to those affiliates. Again, the information being provided as part of the Notice is not limited to the applicant TC Alaska, but also includes ExxonMobil’s affiliates involved in the production of natural gas in Alaska or the marketing of natural gas from Alaska. That information is found at pp. 36-40 of Appendix C.

## **2. The Notice is Based on the Best Information Available**

In Order No. 2005, the Commission recognized that a potential Alaska pipeline project applicant might find it necessary or appropriate to initiate an open season before some of the required information is available or can be finally determined. Order No. 2005, P 71. Indeed, given the necessary lead time between the open season process and the final completion of a project, it would be surprising if a Notice of Open Season could ever provide all of the project information specified by Section 157.34 (c) in a definitive form that is not subject to change.

That is particularly true of initial open season offerings, which in part are designed to test the interest in a project and determine whether the offering will be commercially viable.

These observations are applicable to APP. The basic parameters of the Project have been set based on current information regarding proven and probable reserves and estimates of market demand for transportation. While the APP Parties do not expect those parameters to change, that possibility nevertheless exists as additional information is acquired before Project completion, including information acquired during the Open Season. In addition, even if the basic parameters of the Project are not modified, existing information will continue to be refined.

Consistent with Section 157.34 (c), therefore, the information supplied in the Notice includes good faith estimates based on the “best information available” at the present time, including the recently updated cost and schedule estimates that conform to AACEI Class IV Standards. If new or different information becomes available during the Open Season, it will be provided.

### **3. Information Available in Data Rooms**

In Order No. 2005A, the Commission recognized that the scope of the information specified in Section 157.34 (c)(18) is extensive. Therefore, rather than requiring that the Open Season Notice contain copies of all the documents specified in this section, the project notice may identify a location where such information is available for review. Order No. 2005A, P 106. In addition, the Commission recognized that some such information may be proprietary or confidential, and that access to this information would have to be addressed as it is in any commercial situation. *Id.*

The APP Parties have established data rooms that will be made available to potential shippers and certain other interested stakeholders, as well as interested U.S., Canada, and Alaska regulatory agencies, upon APP’s issuance of its Open Season Notice on April 30, 2010. The

data rooms will contain the information that APP has in its possession relating to the proposed service being offered, projected pipeline design and capacity, proposed tariff provisions, and cost projections. In addition, the data rooms will contain the information that APP has made available to, or obtained from, any potential shipper, including affiliates of the APP Parties prior to the issuance of the Notice of Open Season.

The data rooms will be located in the following locations:

- Houston, Texas – Main data room containing all required project information in electronic format or hard copy.
- Anchorage, Alaska – Adjunct data room containing all required information available in electronic format.
- Whitehorse, Yukon – Adjunct data room containing all required information available in electronic format.
- Calgary, Alberta – Adjunct data room containing all required information available in electronic format.

Due to the commercially and competitively sensitive nature of the information, all information contained in the data rooms that is not in the public domain will be treated as confidential information. Any person wishing to access such confidential information will be required to sign a confidentiality undertaking in the form attached as Exhibit G to Appendix C, and to comply with the data room procedures attached as Exhibit H to Appendix C. The data rooms will be set up on a hierarchical basis, as follows:

- All information in the public domain will be accessible through the APP website, [www.thealaskapipelineproject.com](http://www.thealaskapipelineproject.com), and available for review by anyone interested in accessing that data.
- Data contained in the physical data rooms will be broken into three levels of confidentiality.
  - The first level (“Tier 1”) will contain confidential project information, not in the public domain, but which is of relatively lower commercial and competitive risk to the Project. All interested stakeholders granted access to the data rooms will have access to Tier 1 data.

- The second level (“Tier 2”) will contain high risk, commercially sensitive data, such as project component cost projections, land access cost projections and the like. Such information will be made available only to potential shippers and regulatory agencies with Project oversight responsibilities.
- In addition, certain information (“Tier 3”) contained in the data rooms is subject to third party confidentiality restrictions. Anyone seeking access to Tier 3 data will need to secure a release from such third parties in order to view such Tier 3 data.

**D. The Open Season Plan Does Not Unduly Discriminate Against Any Class of Potential Shippers or Unduly Prefer Others**

Recognizing that a principal objective of the Commission’s Open Season Regulations is to ensure that all potential shippers are able to obtain transportation service on a proposed Alaska pipeline under terms that are not unduly discriminatory or unduly preferential, the APP Parties have designed the Open Season Plan to protect against undue discrimination or preference. APP’s goal is to provide transportation to any and all shippers who are willing to make the commercial commitment necessary to assure the financing and successful operation of the Project. The Open Season Plan is not unduly preferential to any potential shipper (whether or not an APP affiliated entity) or class of potential shippers. Nor is the Plan unduly prejudicial to any potential shipper or any class of potential shippers.

APP will process all similar Open Season requests for transportation capacity in the same manner and within the same time period. APP’s methodology for awarding transportation capacity, *see pp. 12-13 supra*, does not give undue preference to any potential shipper, whether affiliated or not affiliated with the Project sponsors, in matters relating to the sale or purchase of transportation services including, but not limited to, price, curtailment, scheduling, priority, or any other terms and conditions of service offered during the Open Season.

The only distinction between shipper classes that is drawn in the Open Season Notice relates to Foundation Shippers that make capacity commitments equal to or exceeding 200,000

MMBtu/day in aggregate. As described above, Exhibit B of the Precedent Agreement stipulates that such Foundation Shippers will be subject to a more stringent creditworthiness standard than non-Foundation Shippers, which is necessary to finance an investment of this magnitude. In addition, under the terms of the Precedent Agreement, Foundation Shippers will be provided certain rights or benefits, including (1) the right to elect the same negotiated rate terms, in their entirety, including duration and capacity, as offered to and accepted by any other shipper, prior to the commencement of service; (2) the right to sell to TC Alaska a pro rata portion of the initial line fill requirements at a mutually agreed price; and (3) a one-time termination right exercisable within 30 days after receiving notice from APP that TC Alaska has accepted the final FERC certificate of public convenience and necessity. Foundation Shippers exercising this termination right will be required to reimburse the APP Parties for Project development costs, as specified in more detail in the Precedent Agreement. Given that Foundation Shippers will be taking on a role that is essential to the initial financing and ongoing financial viability of the Project, they are distinct from other shippers and are not similarly situated. They thus cannot claim that they are the subjects of undue discrimination. Nor can others claim that the Foundation Shippers are receiving an undue preference.<sup>13</sup>

One of the specific issues addressed by the Commission in Order No. 2005 relates to gas treatment service and gas quality specifications. *See* Order No. 2005A, PP 84, 87. Consistent with the Commission's order, APP is offering a separate rate for transportation service unbundled from the rate for the optional gas treatment service. Furthermore, APP is not requiring bidders to bid on both services and will not evaluate bids based on whether bidders

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<sup>13</sup> *See Ruby Pipeline, L.L.C.*, 128 FERC ¶ 61,224 at PP 76, 81 (2009); *Midcontinent Express Pipeline LLC*, 124 FERC ¶ 61,089 at P 82 (2008); *Rockies Express Pipeline LLC*, 116 FERC ¶ 61,272 at P 78 (2006).

requested both services. Nor will APP reject an otherwise qualified bidder that states that it will deliver gas to the pipeline facilities that meets the required gas quality specifications.

**E. The Applicant and Related Companies Have Complied with Applicable Independent Functioning Requirements and Standards of Conduct**

In the regulations adopted in Order No. 2005, the Commission required that each prospective applicant conducting an open season for an Alaska natural gas transportation project “must function independent of the other divisions of the prospective applicant as well as the prospective applicant’s Marketing and Energy affiliates.” 18 C.F.R. § 157.35 (c). The Commission also directed the prospective applicant to comply with certain specified standards of conduct. *Id.*, § 157.35 (d). Each of these requirements was derived from the Commission’s previous Order No. 2004, and each incorporated by reference then-existing regulations that the Commission had adopted in Order No. 2004. *See* Order No. 2005, P 74.

Because the regulations adopted in Order No. 2004 have now been overturned by judicial action<sup>14</sup> and replaced by the Standards of Conduct promulgated in Order No. 717,<sup>15</sup> it is doubtful whether the Order No. 2004-based requirements adopted in Order No. 2005 remain in effect. Some of the regulation sections incorporated by reference in Order No. 2005 no longer exist in the Code of Federal Regulations (*e.g.*, 18 C.F.R. §§ 358.4(e)(3), (4), (5) and (6)), and no section has the same content as the regulations that were in place in 2005. Moreover, the Commission’s own website relating to Alaska Natural Gas Transportation Projects links to Order No. 717 as providing the applicable Standards of Conduct. *See* <http://www.ferc.gov/industries/gas/industry/angtp.asp>.

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<sup>14</sup> *See National Fuel Gas Supply Corp. v. FERC*, 468 F.3d 831 (D.C. Cir. 2006).

<sup>15</sup> *See Standards of Conduct for Transmission Providers*, 125 FERC ¶ 61,064 (2008) (“Order No. 717”), *on rehearing*, 129 FERC ¶ 61,043 (2009) (“Order No. 717A”), 129 FERC ¶ 61,123 (2009) (“Order No. 717B”).

The Standards of Conduct adopted in Order No. 717 differ from those adopted in Order No. 2004 in a number of fundamental respects. Most importantly, Order No. 717 eliminated the “energy affiliates” concept in its entirety. Order No. 717, PP 3, 12. Order No. 717 thus applies only when pipelines “conduct transmission transactions with an affiliate that engages in marketing functions,” meaning that there is no specified requirement of independence between a pipeline and its production affiliates. *Id.*, PP 20, 26. In addition, Order No. 717 replaced the corporate separation approach with the employee function approach, which requires only that a pipeline’s “transmission function” employees function independently of the pipeline’s “marketing function” employees. *Id.*, PP 9, 12; *see* 18 C.F.R. § 358.5 (a). In this regard, “marketing functions” expressly do not include “sales of natural gas solely from a seller’s own production.” *Id.*, § 358.3 (c)(iii); *see* Order No. 717A, P 55.<sup>16</sup>

Interpreted consistently with Order No. 717, therefore, the independent functioning regulations of Order No. 2005 have no impact on TransCanada’s Open Season conduct because no TransCanada affiliate is engaged in the sales or marketing of Alaska natural gas. Nor do the independent functioning regulations require separation of APP from ExxonMobil’s production or marketing affiliates because the energy affiliates concept has been eliminated and the only Alaska natural gas that ExxonMobil will be marketing is from its own production.

Although the APP Parties believe that the Order No. 2004-based requirements no longer have any legal force and that the Order No. 717-based requirements are by their terms not applicable to the APP Open Season, APP has taken a conservative approach to its organization and structure to assure that APP remains independent. Thus, although TransCanada’s

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<sup>16</sup> As the Commission noted, it “has not found evidence of undue preference that was exclusively a result of sales of natural gas solely from a seller’s own production or its own gathering or processing facilities.” Order No. 717A, P 57 n. 119.

organization and operations are outside the scope of the Commission's concerns, TransCanada personnel continue to be subject to existing codes of conduct which create independence between the TransCanada personnel providing services to APP and TransCanada personnel in non-regulated units. Moreover, as described below, APP has been separated on a corporate basis from ExxonMobil's Alaska production and marketing units and APP has put in place standards of conduct. These steps assure a fair open season process in compliance with the Commission's regulations.

### **1. TransCanada**

The purpose of the independent functioning requirement is to "minimize the risk that an affiliate of a project applicant would have an advantage over non-affiliates in obtaining capacity through the open season." Order No. 2005, P 74. As to the applicant TC Alaska, this risk does not exist. TC Alaska was created solely to build an Alaska natural gas pipeline and has no other business operations. Neither TC Alaska nor TransCanada has any affiliates that are involved in the production of natural gas in Alaska. Nor does TC Alaska or TransCanada have any marketing affiliates that are involved in the sale or marketing of natural gas from Alaska.

Moreover, TransCanada employees providing services to APP are already effectively separated from TransCanada's non-regulated marketing affiliates. TransCanada is comprised of many affiliated companies, some regulated and some not, and is subject to inter-affiliate codes of conduct, as well as FERC Standards of Conduct under Order No. 717. Such codes of conduct are in place to safeguard against improper sharing of information, personnel, or resources. TransCanada's existing regulatory compliance program includes comprehensive training on the FERC Standards of Conduct issued under Order No. 717. Such training includes in-depth information on the no-conduit, independent functioning, non-discrimination and transparency rules. Individuals assigned to or supporting APP are required to complete such training.

In addition, TransCanada has implemented safeguards to assure that non-public APP information is not disclosed to ExxonMobil personnel involved in the production of natural gas in the State of Alaska or the marketing or sales of natural gas from the State of Alaska. TransCanada personnel who provide services to APP or who may receive non-public information regarding APP as part of their job function are instructed that ExxonMobil production and marketing personnel are to be considered in the same category as TransCanada non-regulated personnel and that, in connection with an Open Season, non-public APP information may not be disclosed to ExxonMobil production or marketing personnel, either directly or through a conduit, unless permitted by FERC regulations in connection with a specific request for transportation service.

## **2. ExxonMobil**

The APP Parties recognize that ExxonMobil's participation in and support of the Project distinguishes this project from one in which only TransCanada would be involved. ExxonMobil, therefore, has established an organizational structure and implemented non-disclosure and other requirements that ensure that ExxonMobil personnel providing services to APP will function independently from those ExxonMobil entities engaged in the marketing and sales of natural gas from Alaska or in the production of natural gas in Alaska.

### **a. Structural Separation**

ExxonMobil has three affiliated organizational units that conduct business related to Alaska natural gas: ExxonMobil Production Company ("EMPC") Americas unit, ExxonMobil Gas and Power Marketing Company ("EMGPM") Americas unit, and ExxonMobil Development Company ("EMDC") Arctic unit. To assure the independence of APP from the ExxonMobil organizational units involved in the production of natural gas in the State of Alaska and the marketing or sales of natural gas from the State of Alaska (including the EMDC Arctic unit's

activities related to Point Thomson field development or Prudhoe Bay Unit support/oversight), ExxonMobil has established within EMDC a separate organizational unit to manage APP on behalf of the Project sponsors. This organizational unit is dedicated exclusively to APP and performs no other business function. Except for shared employees providing general corporate/business support or performing non-commercially sensitive activities, all ExxonMobil personnel with active involvement in the Project have been assigned to the APP organizational unit. Within the APP organizational unit, there is an identified Commercial Team that is responsible for Open Season activities.

**b. Standards of Conduct**

To supplement and reinforce the structural separation of the APP organizational unit, three firewall domains have been established: (1) inside the APP Firewall, (2) inside the Production/Marketing Firewall, and (3) outside the firewalls.

Personnel are designated to be inside the APP Firewall if they (1) work full-time on the APP team; (2) have active involvement in developing or modifying parameters and details related to the APP Open Season offering or the commercial basis of the Project (*e.g.*, cost and schedule projections, financing, tolling parameters, tariff terms and conditions, economics); or (3) perform an advocacy role for APP. All personnel with responsibility for conducting the APP Open Season are inside the APP Firewall. Personnel are designated as being inside the Production/Marketing Firewall if they (1) work full time in the EMPC Americas unit, in the EMGPM Americas unit, or on EMDC Arctic unit activities related to Point Thomson field development;<sup>17</sup> (2) have active involvement in or actively support, work activities related to

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<sup>17</sup> The responsibility for the development of ExxonMobil's interests in the Point Thomson area, as contrasted with the ultimate production and marketing of gas from those fields for which EMPC and EMGPM are responsible, is within an organizational unit of EMDC that is entirely

Alaska gas production or the North American gas market (including EMDC Arctic unit activities related to Prudhoe Bay support/oversight); (3) have active involvement in developing or modifying parameters and details related to the commercial basis of the Point Thomson field development (*e.g.*, reserves and production profiles, project cost and schedule projections, economics); or (4) perform an advocacy function in relation to any of the foregoing.

All personnel designated to be inside one of the firewalls are subject to the following standards of conduct:

- All personnel designated to be inside the APP Firewall are prohibited from engaging in or performing any work activities relating to the production of natural gas in the State of Alaska or the marketing of natural gas from the State of Alaska.
- All personnel designated to be inside the Production/Marketing Firewall are prohibited from engaging in or performing any work activities related to conducting the APP Open Season or implementing APP.
- All communication and exchange of non-public information between the personnel designated to be inside the APP Firewall and the personnel of those organizational units inside the Production/Marketing Firewall are restricted, and are permitted only in limited circumstances consistent with an arm's length third-party business relationship and with prior approval of the respective unit's management.
- To the extent that APP makes non-public information available to personnel inside the Production/Marketing Firewall or obtains non-public information from personnel inside the Production/Marketing Firewall prior to the issuance of the Open Season Notice, that information will be included in the Notice or made available in the Open Season data rooms.
- All personnel designated to be within either firewall are prohibited from using anyone as a conduit for the conveyance of non-public information between the separated units.

The APP Open Season will be conducted by the APP Commercial Team, an identified APP working group that is responsible for commercial activities, including review of the Open Season bids and the allocation and award of capacity. The APP Commercial Team is inside the

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separate from the APP organization from the vice-president level down. These EMDC units are further separated by the applicable firewalls.

APP Firewall and, as such, is subject to the aforementioned standards of conduct applicable to ExxonMobil personnel inside the APP Firewall. In addition, during the conduct of the Open Season, the Commercial Team is to observe the following standards of conduct:

- Confidential shipper information received as part of the Open Season process is to be maintained in confidence and is not to be disclosed to personnel inside the Production/Marketing Firewall or shared with other potential shippers, unless authorized in writing by the shipper providing the information or required by law or regulation.
- Non-public APP information may not be disclosed to personnel inside the Production/Marketing Firewall except to the extent it relates solely to a specific request for transportation service on behalf of an ExxonMobil unit as a potential shipper.<sup>18</sup>
- If non-public APP information that does not relate solely to a specific request for transportation service on behalf of an ExxonMobil unit as a potential shipper is disclosed to personnel inside the Production/Marketing Firewall, that information will be made available to all other potential shippers.

The Offices of the Presidents and above, and employees providing general corporate/business support, or working in non-commercially sensitive areas (*e.g.*, technical managers/advisors and other subject matter experts), are considered to be outside of both firewalls and can be shared employees that provide advice or service to APP or those organizational units inside the Production/Marketing Firewall. Shared resources must comply with the communications and information sharing restrictions applicable to the unit they are supporting (*e.g.*, a person supporting APP must comply with Order No. 2005 and the related

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<sup>18</sup> Once the Open Season commences, the Commercial Team expects to receive inquiries about the Open Season offering from potential shippers, including an ExxonMobil affiliate, and expects to engage in negotiations with potential shippers regarding the terms and conditions of the offering. As explained above, APP does not believe that these discussions will be subject to the Order No. 717 non-disclosure requirements because the ExxonMobil affiliate will be seeking capacity for the transportation of ExxonMobil's own production and thus will not be engaged in a marketing function. However, even assuming the Order No. 717 regulations were applicable, APP understands that such discussions, including discussions with affiliates, are permitted and that the information exchanged in these discussions need not be disclosed so long as the discussions relate to specific requests for service. *See* 18 C.F.R. § 358.7 (b).

standards of conduct). To maintain effective functional separation between APP and those organizational units inside the Production/Marketing Firewall, such shared personnel are provided Order No. 2005 compliance training and are required to abide by the following Firewall

Related Behaviors:

- Personnel with access to non-public information may not act as a conduit for the conveyance of non-public information between the separated units.
- Personnel with access to non-public information may not use the non-public information received from one separated unit to influence the decision of another separated unit.
- Decisions concerning the Project made by personnel outside the firewalls shall be made on an objective basis in the best interests of APP (not ExxonMobil's general interest).

**c. Access Restrictions**

Physical access to the office space housing the APP organizational unit (including file rooms) is restricted and controlled by card key security. All ExxonMobil personnel designated to be inside the Production/Marketing Firewall are prohibited from receiving card key access to the APP offices. Access may be granted to certain ExxonMobil personnel designated to be outside the firewalls on a case-by-case basis to meet a specific business need, provided they have received appropriate compliance training. Additional procedures are in place that require a periodic review of the card key access to the APP offices.

APP has implemented controls, which utilize passwords or other information technology security measures, to restrict access to all electronic information systems (*e.g.*, e-mail, LAN systems, hardware or software) containing non-public APP information. Within the APP itself, access to confidential shipper information received only as part of any Open Season is further restricted to the APP Commercial Team. All ExxonMobil personnel designated to be inside the Production/Marketing firewall are prohibited from having access to APP electronic information

systems, and vice-versa. Access to APP electronic information systems may be granted to certain ExxonMobil personnel designated to be outside the firewalls on a case-by-case basis to meet a specific business need, provided they have received appropriate compliance training. Additional procedures are in place that require a periodic review of the access to APP electronic information systems.

### **3. Implementation Procedures**

APP has also implemented procedures to assure compliance with the standards of conduct – *i.e.*, training, posting of written compliance procedures, and designation of a Chief Compliance Officer.

In conjunction with the public APP announcement in June 2009, written Order No. 2005 compliance guidelines were provided to those ExxonMobil employees who were likely to be interfacing with APP or to become privy to non-public APP information. APP has since prepared written Compliance Procedures that have been distributed to all ExxonMobil personnel designated to be inside the APP Firewall, other EMDC personnel (officers, directors, supervisory employees, and any other employees) considered to be outside the firewalls who are likely to interface with APP or to become privy to non-public APP information, and TransCanada personnel assigned to or supporting the Project. The APP Chief Compliance Officer is coordinating through an established regulatory compliance network the distribution of these Compliance Procedures to the ExxonMobil personnel assigned to or supporting those organizational units designated to be inside the Production/Marketing Firewall. The dissemination of the Compliance Procedures, and any revisions to them, are made via an e-mail message that also contains an electronic link to the APP website where these Compliance Procedures have been posted.

Training on Order No. 2005 compliance and the related standards of conduct has been provided and will be provided on an annual basis to all ExxonMobil personnel designated to be inside the APP Firewall and to other EMDC personnel (officers, directors, supervisory employees, and any other employees) considered to be outside the firewalls who are likely to become privy to non-public APP information. The APP Chief Compliance Officer is coordinating through an established regulatory compliance network the delivery of similar Order No. 2005 compliance training to the ExxonMobil personnel involved in or supporting the work activities related to the production of natural gas in the State of Alaska or the marketing or sales of natural gas from the State of Alaska for those organizational units designated to be inside the Production/Marketing Firewall. TransCanada personnel assigned to or supporting the Project are required to complete annual training that includes training regarding the Commission's standards of conduct set forth in Order No. 717. All personnel receiving training are required to provide a written or electronic acknowledgement confirming that they have completed the training.

All personnel newly participating in APP, on behalf of either ExxonMobil or TransCanada, will receive appropriate compliance instructions as part of the APP Induction Manual (employee orientation package).

Finally, as noted above, APP has designated a Chief Compliance Officer who is the contact for all Order No. 2005 compliance issues and is responsible for implementing the Compliance Procedures.

**V. CONCLUSION**

For the reasons stated herein, TC Alaska's Open Season Plan should be approved.

Respectfully submitted,

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