

Guide to Open Season

What is an "open season"?

An open season is a process in which Project Sponsors (e.g., TransCanada/ExxonMobil or Denali) propose a package of key terms and design parameters for a potential pipeline project to prospective customers and solicit bids for contracting capacity on that project.

Why hold an open season?

Open Seasons are required by the Federal Energy Regulatory Commission (FERC) for this project. The purpose behind holding an Open Season is to ensure that all interested parties are made aware of the proposed terms for a new pipeline project and to determine if there is sufficient customer interest to pursue the project.

Who will participate in an open season?

Project Sponsors (i.e., Alaska Pipeline Project through TransCanada Alaska and Denali Pipeline Project), Project Regulators (i.e., FERC, NEB, State of Alaska), Potential Shippers (companies and other entities interested to ship gas) and other parties.

What commitments or other agreements result from an Open Season?

The project sponsors typically request binding commitments from shippers in the form of a **precedent agreement** for capacity on the terms proposed in their open season package. The precedent agreement sets forth the shippers and project sponsors' obligations until it is replaced some time later by a firm transportation service agreement. In some cases precedent agreements are executed in advance of the formal open season process but in basically all cases there are a lot of negotiations in advance of the open season. The typical provisions contained in the precedent agreement include: (1) language describing the general scope of the project to be constructed, (2) Key commercial terms and conditions for the services to be provided (receipt and delivery points, rates, volumes, key tariff provisions, quality specs, contract term, etc.), (3) Creditworthiness requirements, (4) Provisions establishing each party's obligations going forward with the project, including deadlines to meet certain critical commitments, (5) Conditions precedent to both the project sponsors obligations and the shippers obligations, and (5) Termination rights.

What steps are required to enter into an Open Season?

Project Sponsors identify a potential pipeline project and announce their intent to pursue - typically in a press release. The sponsors prepare an initial package of terms and conditions for shipping on the project and begin discussions with potential shippers. Sponsors and shippers will attempt to negotiate the critical terms and conditions for participation in a *Precedent Agreement* - often in advance of the actual open season. Project Sponsors conduct the formal Open Season to allow all interested parties the opportunity to participate. Shippers submit bids for capacity in pipeline usually with conditions. Winning bids are identified and "awarded" with usually very general results of the open season reported to the public. Pipeline and shippers negotiate the conditions and terms contained in the formal bids submitted in the open season. The tariff and Precedent Agreements are amended to reflect the results of such negotiations. It is important to note that negotiations take place before, during and after the formal open season process.

Guide to Open Season (continued)

What are the possible outcomes for a conventional Open Season?

The typical open season process can result in one of four situations:

- (1) If Shippers show little interest and make no meaningful commitments, then project sponsors go back to the drawing board – or the project may be abandoned or deferred;
- (2) If shippers express interest but commitments are insufficient to proceed with significant cost outlays and certificate filing, then project sponsors revise project scope, commercial terms, and conduct further negotiations and additional open seasons;
- (3) If shippers make sufficient commitments but place conditions on those commitments which require further negotiations, then project sponsors continue negotiations to remove or revise conditions to terms agreeable to all parties; or
- (4) If shippers make sufficient commitments with minimal or no conditions, then the project sponsors prepare certificate and regulatory filings, detailed engineering and design, etc., and project moves rapidly.

When do you know that a project is going to be constructed?

The simple answer is the **project sanction date**. The project sanction date is when the project sponsors decide to proceed to construct the project. The project sanction date typically comes long after the open season process is completed. Project sanction also requires the completion of a number of objectives, including: (1) Front end engineering and design work and environmental impact studies are completed, (2) Detailed cost estimates are completed, (3) Major regulatory and permit approvals and right-of-ways have been obtained (including approvals from the FERC and NEB), (4) Shippers and pipeline sponsors have resolved all conditions precedent in the precedent agreements, (5) Shippers have executed firm transportation service agreements to replace the precedent agreements, and (6) Any project financing conditions have been met .