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REPRESENTATIVE MIKE CHENAULT

SPEAKER OF THE ALASKA STATE HOUSE

The sponsors and Alaska Gasline Development Corporation have developed these responses to questions from House Finance Committee members.

1. **House Bill 9 places Alaska Housing Finance Corporation's board as the board of both the Alaska Gasline Development Corporation and Alaska Natural Gas Development Corporation. Explain whether this creates a conflict of interest.**

   From Ken Vassar, General Counsel to Alaska Gasline Development Corporation:
   "Regarding ANGDA: AS 41.41.010 establishes ANGDA as a public corporation of the state with a legal existence independent of and separate from the state. This is similar to the language that creates AHFC. As a separate corporation, its liabilities are its own. The same analysis will apply to its liabilities; i.e., a board of directors in common with the AHFC board of directors will not, in and of itself, cause ANGDA's liabilities to become AHFC's liabilities. AGDC has the added benefit of being incorporated under AS 10.20, but that just adds another layer of protection. I would reach the same opinion regarding ANGDA.

   Furthermore, while AHFC, AGDC and ANGDA would share a common board of directors, all agencies would maintain separate and independent management organizations.

2. **What is the potential liability to the State or to Alaska Housing Finance Corporation for actions taken by the Alaska Gasline Development Corporation?**

   Please see attached memo from Alaska Gasline Development Corporation, "AHFC Liability Opinion."

3. **Does the Alaska Gasline Development Corporation get unlimited powers to exercise eminent domain?**

   Alaska Statute AS 09.55.240 provides that the right of eminent domain may be exercised for pipelines. House Bill 9 specifically grants the ability to exercise that right to the Alaska Gasline Development Corporation, as a state entity operating under statutory direction.

Representative_Mike_Chenault@legis.state.ak.us

House Bill 9 limits the Alaska Gasline Development Corporation's ability to exercise eminent domain to a degree commensurate with the Alaska Gasline Development Corporation's statutory responsibilities; specifically, "to acquire land or an interest in land that is necessary for an in-state natural gas pipeline." There is a precedent for this in the legislature's granting to KABATA (Knik Arm Bridge and Toll Authority) similar authority.

Under House Bill 9, the Alaska Gasline Development Corporation's ability to exercise eminent domain would be governed by the provisions currently in statutes A.S. 09.55.240-09.55.460.

From Joe Dubler, CFO/AGDC: "We will negotiate in good faith with all impacted landowners and address their concerns and issues one at a time. We fully expect to reach a successful negotiation with each one. Should our efforts reach an impasse, we will utilize condemnation with its many statutory safeguards for the landowner, to keep the project progressing."

4. **When would the Alaska Gasline Development Corporation analyze potential connecting lines to other Alaska communities, and when would the Alaska Gasline Development Corporation have an analysis of the economics behind those lines?**

House Bill 9 calls on AGDC to pursue an instate natural gas pipeline serving the population centers of Fairbanks and Southcentral, as described in the project plan issued July 2011. Once construction begins on that mainline project, House Bill 9 requires the Alaska Gasline Development Corporation to analyze additional opportunities to connect other communities in other regions of the state with natural gas.

The sponsors believe that the analysis of additional opportunities will be most effective and will result in meaningful, accurately assessed projects only once a main line is well underway. The sponsors also acknowledge that natural gas by pipe may not necessarily be the most effective means to extend the benefits of gas to some communities and regions. The sponsors fully expect the Alaska Gasline Development Corporation and other state agencies/interests, including communities, to work together in identifying ways to maximize Alaskans use of gas where doing so results in lower energy costs and commercially viable pipeline projects. Where gas by pipe is not the optimal choice, the Alaska Gasline Development Corporation would step back as a pipeline corporation and allow other agencies/interests to proceed with the best solutions.

From Joe Dubler, CFO/AGDC: "Future connections will be analyzed in accordance with the directions contained in Section 2 of the bill. The cost of such connections will be determined by many variables including composition of the gas in the line, location of the community, and the volume of gas desired at the community."

5. **Explain why HB 9 is needed, especially in light of the passage of HB 369 in 2010. Explain how the Alaska Gasline Development Corporation has spent its funds, including the $200 million appropriated in 2011.**

House Bill 369, which passed the House unanimously and the Senate by a majority in 2010, assembled a team to plan the development of a project that would allow for an instate gasline to be operational by 2015. Specifically, the bill called for a project plan specifying how a pipeline could be designed, financed, constructed and made operational.

House Bill 369 did not require that a pipeline be built. In fact, as a next step, House Bill 9 included direction to the Alaska Gasline Development Corporation to determine whether additional legislative action would be required to allow Alaska Gasline Development Corporation to progress a project, and if so, to identify those actions. House Bill 9 is the result of that statutory direction to the Alaska Gasline Development Corporation within HB 369.

In the Alaska Gasline Development Corporation's July 2011 Project Plan, the Alaska Gasline Development Corporation identified a number of legislative actions required to proceed with a project (See attached "HB9 Alaska Gasline Development Corporation Legislative Recommendations"). These recommendations included:

- Ensure that confidential agreements are not subject to Public Records Act disclosure
- Create a fund for AGDC.
- Limit judicial review of state leasing, permitting and authorizing decisions
- Allow a contract carrier pipeline through the Right-of-Way Leasing Act
- Provide the authority for AGDC to decide rate-making methods and settle tariff disputes via contractual agreements.
- Stabilize property taxes
- Waive lease/rental payments for state land leased to AGDC

Although the Legislature appropriated $200 million to allow the Alaska Gasline Development Corporation to continue its work toward an open season (scheduled for mid-2013), the money has not been available to the Alaska Gasline Development Corporation as there is no 'fund' through which the Alaska Gasline Development Corporation can access the appropriation. House Bill 9 creates this fund and provides direction for fund management.

In addition to the $200 million appropriated in 2011, the Alaska Gasline Development Corporation anticipates it will need another $200 million in order to properly prepare a project up to the point of project sanction and the start of construction. This early funding for the Alaska Gasline Development Corporation is likely to total about $400 million, and is expected to carry the Alaska Gasline Development Corporation through the 5-year process of developing a sound project in accordance with recommendations by Independent Project Analysis.

The Independent Project Analysis guidelines have been adopted by the Alaska Gasline Development Corporation. A basic premise, which Independent Project Analysis has proven in its comprehensive analysis of megaprojects worldwide, is that spending more money up-front on solid project planning is more likely to generate a successful project in terms of budget and timing.

The $440 million covers engineering, design and permitting; the open season and resolution of open season conditions; refinements to engineering and design and to cost estimates; and, ultimately, work to the point of starting construction.

Please see the attached "AGDC Funding Profile" for detail on the Alaska Gasline Development Corporation's spending and anticipated use of future funds.

Alaska Gasline Development Corporation

ASAP - Funding Outline thru FEL 3

Total Projected Costs: $ 400,000,000.0 (+/- 30%)

Funding Needed at Start of Activity	Supplemental FY2010 3/31/2010	FY2011 7/1/2010	Total FEL 1	Supplemental FY2011 4/1/2011	FY2012 7/1/2011	Governer's Budget FY2013	In-State Pipeline Fund	Total FEL 2	Future Appropriation	Total FEL 3	Totals FEL 1-FEL 3
FEL 1											
DEC pre-AGDC	6,827,612		6,827,612								6,827,612
AGDC Report		15,640,000	15,640,600								15,640,600
FEL 2											
Commercial Operations				820,000	2,910,000	3,800,000	1,795,000	9,325,000			9,325,000
Pipeline Environmental & Permitting				1,177,000	4,176,000	2,600,000	7,578,000	15,531,000			15,531,000
Pipeline Engineering				2,130,000	7,559,000	3,400,000	29,169,000	42,258,000			42,258,000
Facilities Environmental & Permitting				642,000	2,277,000	1,200,000	2,800,000	6,919,000			6,919,000
Facilities Engineering				292,000	1,038,000	4,770,000	105,347,000	111,447,000			111,447,000
AGDC Support Activities				1,139,000	4,040,000	5,230,000	44,111,000	54,520,000			54,520,000
FEL 3											
Commercial Operations							1,200,000		3,300,000	4,500,000	4,500,000
Pipeline Environmental & Permitting									11,488,000	11,488,000	11,488,000
Pipeline Engineering							2,100,000		22,407,000	24,507,000	24,507,000
Facilities Environmental & Permitting											
Facilities Engineering							3,600,000		68,527,788	72,127,788	72,127,788
AGDC Support Activities							2,300,000		22,609,000	24,909,000	24,909,000
	6,827,612	15,640,000	22,468,212	6,200,000	22,000,000	21,000,000	200,000,000	240,000,000	128,331,788	137,531,788	400,000,000

Note: All projections are at a +/- 30% confidence level.

ALASKA GASLINE DEVELOPMENT CORP.
GAS FOR ALASKANS

March 18, 2012

Joe Dubler
Vice President/Chief Financial Officer
Alaska Gasline Development Corporation
3301 C Street, Suite 100
Anchorage, Alaska 99503

Dear Mr. Dubler:

You have asked whether the fact that the Alaska Gasline Development Corporation ("AGDC") and the Alaska Housing Finance Corporation ("AHFC") share a common board of directors could expose AHFC to liability for the actions or obligations of AGDC. The answer to your question is that having a common board will not, in and of itself, create liability for AHFC.

AHFC is a public corporation of the State of Alaska and has a legal existence independent of and separate from the State of Alaska (AS 18.56.020). One purpose for creating public corporations of the State is to insulate the State from the potential liabilities of the public corporations. This is frequently the primary purpose that private persons create private corporations.

AHFC has the power to create subsidiary corporations under AS 18.56.086 to accomplish various goals. AHFC has acted under this power to create four subsidiaries to date: the Northern Tobacco Securitization Corporation, the Alaska Housing Capital Corporation, AGDC, and the Alaska Corporation for Affordable Housing.

While it is not required to do so, AHFC, acting under the powers granted in AS 18.56.086 may incorporate its subsidiaries as nonprofit corporations pursuant to the procedures established in AS 10.20.146 – 10.20.166. AHFC has exercised this option with respect to AGDC.

One reason that AHFC opted to incorporate AGDC as a nonprofit corporation was to insulate AHFC from any liability arising from the activities that AGDC might conduct. AHFC is the sole member (and, therefore, the sole owner) of AGDC. As the sole member of a nonprofit corporation, the following language of AS 10.20.051(b) applies: "The directors, officers, employees, and members of the corporation are not, as such, liable on its obligations." As a general matter, absent fraud, bad faith, or the use of the subsidiary as an agent or instrumentality of the parent, a parent corporation will not be held liable for the acts of its subsidiary corporation.

There has been no fraud or bad faith in AHFC's creation of AGDC. The question that the common board of directors goes to is whether a court might decide to "pierce the corporate veil" because AGDC is really just the alter ego of AHFC. Courts do not lightly pierce the corporate veil. In considering whether to do so, the courts apply a case-by-case analysis and take into consideration various factors.

It is true that sole ownership of AGDC by AHFC and a common board of directors would be considered. However, those two factors alone would not be sufficient to lead a court to pierce the corporate veil, and both AHFC and AGDC have been careful to avoid creating any other factors that might justify such a piercing. AGDC clearly has a business purpose that is different from AHFC's. The directors and executives of AGDC act independently in the interest of AGDC and do not take their orders from AHFC. AGDC observes all the legal formalities inherent in being an incorporated entity. AGDC is a separate financial unit, and AHFC does not finance AGDC or pay the salaries of AGDC's employees. AHFC does not use AGDC's property as its own, nor does AHFC describe AGDC as a department or division of AHFC in any of AHFC's statements.

In my opinion, AHFC would not be considered liable for any actions taken by AGDC.

While I am confident of the correctness of the opinion stated above without the need for any further statutory protection for AHFC or for the State of Alaska in general, I do note that the current version of HB 9 contains language that would certainly remove all doubt. Section 2 of the current version of HB 9 contains an amendment to the Alaska Statutes that would add a new section 18.56.087. Subsection (d) of the new section would provide that "No debt, obligation, or liability of the Alaska Gasline Development Corporation shall become a debt, obligation, or liability of the state or any part or subdivision of the state or of the corporation [referring to AHFC] or a subsidiary corporation of the corporation other than the Alaska Gasline Development Corporation, except as provided in this subsection." The subsection goes on to reinforce this statement and, most notably, prohibits any person from bringing suit against the state or AHFC in the courts of the state to enforce any obligation of AGDC.

Again, my opinion is that AHFC would not be considered liable for actions taken by AGDC simply because of its common board of directors. The adoption of the language contained in the current version of HB 9 would reinforce and strengthen that opinion.

Sincerely,

Kenneth E. Vassar
General Counsel
Alaska Gasline Development Corporation

2.3.5 Recommended Legislative Actions

Currently pending state legislation addressing AGDC and ASAP will contribute greatly to the success of the project. AGDC recommends passage of these measures.

- **House Bill 189:** This bill provides that, to the extent AGDC enters into confidentiality agreements, information provided pursuant to such agreements is not subject to the Public Records Act. Further, it adjusts board participation to include the Alaska Railroad Chairman's designee and elimination of ANGDA participation. The bill passed the House, and was referred to Senate Resources. It has not been heard.
- **House Bill 203:** This legislation creates a fund for AGDC. The bill passed the House, and was referred to Senate Finance. It has not been heard.
- **House Bill 215:** This legislation limits the judicial review of a right-of-way lease or the development or construction of an oil or gas pipeline on state land. The bill passed the House and was referred to both Senate Judiciary and Finance. It has not been heard. This legislation is modeled after the Trans-Alaska Pipeline legislation that was adopted by Congress in 1973. Similar legislation was passed by the Alaska State Legislature in 1973 (Senate Bill 3) related to the Trans-Alaska Pipeline.

In addition, AGDC believes that several other legislative measures are important to address issues identified during its investigation and studies of the past year. AGDC recommends the following:

- ***Address the issue of contract vs. common carrier:*** Shippers will be reluctant to bid firm transportation as long as ASAP is required to operate as a common carrier for intrastate transport of gas. A common carrier operation by definition will not have 100% capacity covered through firm transportation agreements. The Alaska Legislature should amend the Alaska Pipeline Act to conform to the changes proposed in House Bill 215 or otherwise exempt ASAP from the common carrier provisions of the act. ASAP has virtually no chance of attracting adequate shipping commitments as a common carrier.
- ***Empower AGDC with ratemaking authority over its projects:*** For AGDC projects, AGDC needs to have the sole right to determine the ratemaking methodology and settle tariff disputes for intrastate gas shipments (including Gas Conditioning Facility tariffs) over the life of the initial firm transportation commitments or during the period of AGDC financing, whichever is longer.
- ***Stabilize property taxes:*** AGDC recommends that the State of Alaska fix the methodology and assessed mill rates for the first 20 years of the ASAP Project.
- ***Request waiver of rental on state land:*** The Alaska Legislature should consider whether it should pass a law waiving rental from AGDC for rights-of-way on state land or state agency land unless and until ASAP is transferred to a builder/owner/operator. Such legislation would preclude the Legislature from having to appropriate money to AGDC that is then transferred to another state entity.

With regard to the first two recommendations, AGDC staff will work with counsel to have proposed language ready by September 15, 2011.