

From: Rep. Paul Seaton
Subject: FW: FYI conflict pkt
Attachments: conflict pkt.pdf

From: Scott Heyworth [<mailto:heyworth@gci.net>]
Sent: Sunday, February 12, 2012 5:03 PM
To: Rep. Eric Feige; Rep. Paul Seaton
Cc: Scott Heyworth
Subject: FYI conflict pkt

----- Original Message -----

From: Sikora, Kirsten L (DOR)
To: Tony Izzo ; Stark, Jeff P (LAW) ; Scott Heyworth ;
Sent: Friday, February 10, 2012 12:01 PM
Subject: FYI conflict pkt

These are the documents from the original conflict of interest concern raised by AGDC over ANGDA about 18 months ago.

"Shipper vs. Pipeline Builder Conflicts" per my Testimony last Wednesday.

Scott Heyworth

Chairman
ANGDA

To: Marcia Davis & Jim Cantor
From: Harold Heinze - ANGDA
Copy To: Dan Fauske, Dave Haugen, Scott Heyworth, & Don Benson
Date: August 9, 2010
Subject: ANGDA Participation in HB 369 In-State Gas Team

Dear Marcia & Jim:

I met on 08/04/10 with Dan Fauske, Dave Haugen, & Mike Buller (of AGDC). They expressed their concerns that ANGDA's access to project information and participation in work briefings of the HB 369 team would present a potential conflict with regulatory (FERC & RCA) rules, in that, ANGDA as a potential shipper would have an information advantage over other potential shippers. We also briefly discussed the restriction & implications of the Enstar licensing agreement.

ANGDA's participation in the APP and Denali pipeline open season on behalf of the electric utilities clearly identifies ANGDA as a potential purchaser and shipper of in-state gas. ANGDA's statutory direction and business plan define a potential role in building of an in-state gas pipeline system, including a connector lateral line (spur line). Both of these are core business activities of ANGDA and they are of significant benefit to the citizens of Alaska.

I ask that you clarify my understanding of the open season rules as they would apply to AGDC (as a gas pipeline company) and ANGDA (as a potential gas shipper and/or gas pipeline owner). I think a gas pipeline company must assure a level information setting for a proposed project during the open season by informing all potential shippers of key terms; usually accomplished by a very public internet posting satisfying regulatory information requirements. The gas pipeline company is obligated at the time it seeks firm financial commitments to fully disclose all information on their project to potential shippers; the information is usually protected from public disclosure at that time by confidentiality agreements (CA). While pressure from competing projects may restrict when gas pipeline project information is available to the public at large, the Environmental Impact Statement,

Commissioner' Finding, and Certificate of Public Necessity processes all require total public disclosure during the permitting of any project. During the development of a gas pipeline project a company may seek other pipeline companies as business partners in its project and in the course of those business discussions reveal confidential information under the restriction of CA's.

Additionally, the rules on affiliates involvement in the same gas pipeline project are designed to protect the public interest by preventing a pipeline subsidiary giving an unfair advantage to an affiliated potential shipper. Potential shippers may tell the pipeline company anything they wish (on a confidential basis). The gas pipeline company must avoid any internal communication with an affiliated potential shipper and strictly communicate the same information to all potential shippers. Foundation or anchor shippers are often offered an opportunity to directly participate financially in the pipeline project as an inducement for their commitment.

An additional complication is that the authorities & responsibilities of the in-state gas development team defined in HB 369 and the business structure set up under AGDC as a subsidiary of AHFC set different management roles. ANGDA is clearly not any part of AGDC, is at worst a distant affiliate, and there is no interlock of the ANGDA & AGDC Boards of Directors (a major indicator of an improper relationship). To date ANGDA's participation in the in-state gas team functions has only been advisory, as all business decisions to date have been made by the project team staff working with the AGDC executives. The only information we have received has been made publicly available on the AGDC website and ANGDA will continue to urge that full public release be the target of further contractor work.

The ANGDA view (on reflection) is that we do not need to see any of the work product covered by the Enstar licensing agreement on a restricted or confidential basis. Our review of the July final report indicates that further public disclosure should be considered in support of any of the study conclusions that AGDC may decide to carry forward.

Having recited all that, I ask your comments on whether I have captured the framework of a FERC & RCA regulatory overlay on the In-State Gas

Development team and AGDC as a subsidiary of AHFC (a public corporation of the State).

I would also like your input on the following suggested course of action in the relationship of ANGDA –and- AGDC, the team, & ASAP project team.

1. ANGDA can contribute to the HB 369 effort (as provided for in the fiscal note) by undertaken specific study assignments as long as it is the AGDC intent that the assigned work product will be published and made publicly available. Over one million dollars of funding was earmarked in the HB 369 fiscal note for this type of ANGDA effort. Study topics can include evaluation of alternatives; definition of gas treatment, NGL, value-added manufacturing, & LNG options; public outreach & presentations; and market & sponsor identification & relations.
2. Until the In-State Stand Alone project is at a more advanced point of development and actually preparing for an open-season there should be little concern about ANGDA's involvement in the team discussion and advisory process, with the exception of items that AGDC intends to maintain as secret even into the open-season process. Those few restricted items can be considered in executive session and the AGDC executive will set attendance on those items.
3. ANGDA is prepared to provide advice to the AGDC executive based solely on information that is or will be put into the public realm, or will be disclosed to potential shippers and/or potential partners in the venture.
4. The AGDC executive should provide a written definition of tasks that ANGDA will be expected to participate in and/or provide advice on. ANGDA will document its communication with AGDC and the project team.

Thanks

STATE OF ALASKA

**ALASKA NATURAL GAS
DEVELOPMENT AUTHORITY**

SEAN PARNELL, GOVERNOR

411 WEST 4th AVENUE, FIRST FLOOR
ANCHORAGE, ALASKA
99501

TELEPHONE: (907) 269-8501

To: Dan Fauske
Leo von Scheben
John Binkley
Robert Swenson

From: Harold Heinze

Date: August 12, 2010

Subject: Joint In-State Gas Line Development Team

Consistent with Sec. 38.34.060 Conflicts of interest (a new section added by HB 369) this is a formal disclosure that the public corporation of the state (ANGDA) that I am the chief executive of, may from time to time, be affected by the in-state natural gas pipeline project or other matters under consideration by the development team.

ANGDA's functions as clarified and expanded in HB 369 broadly include in-state gas shipping and marketing, as well as, all aspects of an in-state gas pipeline system and marketing facilities.

Sec. 41.41.010. Establishment of the authority.

(a) There is established the Alaska Natural Gas Development Authority, the purpose of which is to provide one or more of the following services and functions in order to bring natural gas from the North Slope or other regions of the state to market, including

- (1) the acquisition and conditioning of natural gas;***
- (2) the design and construction of the pipeline system;***
- (3) the operation and maintenance of the pipeline system;***
- (4) the design, construction, and operation of other facilities necessary for delivering the gas to market, including markets in the state; and***
- (5) the acquisition of natural gas market share sufficient to ensure the long-term feasibility of pipeline system projects.***

(b) The authority is a public corporation and an instrumentality of the state within the Department of Revenue.

(c) The authority has a legal existence independent of and separate from the state.

(d) The acquisition of natural gas from the North Slope and other regions of the state, including the Alaska outer continental shelf, and its delivery to markets in the state for use by markets in the state or to tidewater for shipment to market by the authority are essential government functions of the state.

ANGDA has and is engaged in activities related to each of these functions. As part of the Alaska Pipeline Project and Denali Pipeline project "open seasons", ANGDA has identified gas suppliers and prepared bids for pipeline capacity. ANGDA intends to negotiate contracts for the delivery of this gas to Alaska electric utilities. To facilitate this goal, ANGDA is a member along with five electric utilities of the Natural Gas Supply Company.

In addition, ANGDA is currently pursuing project definition and business arrangements related to a North Slope propane supply point, modification of the Kenai LNG plant, potential gas spur pipeline partners, Valdez LNG export facilities, combined power generation & gas value added manufacturing facilities, and Cook Inlet gas storage.

I have been asked if ANGDA will submit a bid as a shipper should development of an in-state gas line proceed. Submission of a bid is an activity that would fit within ANGDA's statutory authority and which may make sense for ANGDA to explore. It is not presently included in the Board of Director's strategic direction or authorized by the Board, nor has the ability to issue bonds been authorized by the legislature.

cc: ANGDA Board members
Marcia Davis, Deputy Commissioner, DOR
Jim Cantor, Assistant Attorney General, DOL

STATE OF ALASKA

ALASKA NATURAL GAS DEVELOPMENT AUTHORITY

SEAN PARNELL, GOVERNOR

411 WEST 4th AVENUE, FIRST FLOOR
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August 13, 2010

Don Benson
Scott Heyworth
Bill Jeffress
Kate Lamal
Dan Sullivan

Dear ANGDA Board members:

Mr. Fauske, as chair of the Joint In-State Gas Line Development Team, has asked that ANGDA resolve a conflict between being a potential in-state gas shipper and being a member of the gas line development "team". Based on the advice of AHFC counsel (Ken Vassar of Birch Horton Bittner & Cherot), the other team members concluded at a meeting yesterday that to avoid any lingering perceived conflict, ANGDA must either forswear any commercial participation in a gas line project developed by the team (i.e., bid for capacity during an open season) or withdraw as a team member.

This is a major decision for ANGDA, striking to the heart of our ability as a public corporation of the state to uniquely provide significant benefits to in-state gas consumers. There has not been any non-public information released to me nor have there been any team decisions to date. During the interim to the next ANGDA Board meeting, I will recuse myself, ANGDA staff, and our contractors from the gas line development team activities.

Mr. Fauske has indicated he will attend the ANGDA Board meeting scheduled for the morning of September 8, 2010. Both Mr. Cantor and Ms. Davis will be available to advise the Board. The Board packet materials for this agenda item will include all the background references, statutes, correspondence and advise letters available. If you have specific questions

for Mr. Fauske to respond to, we will pass them on to him. If there is specific information you need, we will provide the research. I will prepare a written recommendation and draft motion for the Board's consideration.

I attach several key reference documents that are currently available.

Sincerely,

A handwritten signature in cursive script, reading "Harold Heinze".

Harold Heinze
CEO

cc: Speaker Mike Chenault
Senator Lesil McGuire
Dan Fauske
Leo VonScheben
John Binkley
Bob Swenson
Marcia Davis
Jim Cantor

STATE OF ALASKA

SARAH PALIN, GOVERNOR

DEPARTMENT OF LAW
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October 4, 2010

Kenneth E. Vasser
Law Offices of Birch, Horton, Bittner & Cherot
1127 West Seventh Avenue
Anchorage, AK 99501

Re: Alleged Conflicts between ANGDA and the Gasline Development Team

Dear Mr. Vasser:

This office represents the Alaska Natural Gas Development Authority ("ANGDA"). I have received a copy of your letter to Dan Fauske that raises concerns about potential conflicts of interest that may result from ANGDA's participation in the Joint In-State Gasoline Development Team (the "Team") created by the Alaska Legislature. Specifically, you have raised concerns that:

1. Competitors of ANGDA will not provide the Team with information;
2. ANGDA is in a position to influence any plan developed by the team to favor ANGDA's interests;
3. There is an appearance of impropriety created by ANGDA's participation on the Team because ANGDA has a separate interest in the outcome of Team decisions;
4. If the Team is considered a pipeline owner, it may not be allowed to reveal information to ANGDA without making it available to all bidders;
5. The Team may not be able to obtain information from pipeline owners if ANGDA participates on the Team; and
6. The Team may be prevented from becoming an owner of any pipeline if ANGDA is a member.

We disagree that any legal conflicts between ANGDA and the Team are created by ANGDA's participation in this process. To the extent any conflicts could be hypothesized, they would be resolved by full disclosure.

The Legislature was fully aware of ANGDA's mission and therefore must have contemplated that the kinds of information you describe would be shared among all Team members. One of the purposes identified by HB 369 is to plan for development of an in-state natural gas pipeline that is "compatible but not competitive with" ANGDA projects. Indeed, the Team's composition was established to bring together knowledge and information from all relevant sources to "coordinate information sharing" necessary to develop a plan for natural gas development.

Although AS 38.34.060 makes members of the Team subject to AS 39.50 and AS 39.52, ANGDA's participation does not violate any provision in either of those statutes.

AS 39.50 address the duty of state officials to file an annual financial disclosure statement. It does not create any other duty, or make any conflict illegal or unethical. Once proper disclosure is made, AS 39.50 requires nothing more.

AS 39.52, the Executive Branch Ethics Act (the "Act"), also does not prohibit the participation of ANGDA on the Team. First, the Act only applies to individuals, not entities like ANGDA. Harold Heinze, CEO of ANGDA, is the individual on the Team representing ANGDA, but does not act in a personal, individual capacity. The prohibitions found in the Act at AS 39.52.120 - .190 apply only to (1) conduct that may impact personal interests, (2) conduct used for partisan political purposes, (3) acceptance of improper gifts, and (4) restriction on outside employment. Nothing from ANGDA's participation on the Team remotely raises any of these concerns. To the extent any ANGDA Board members have personal conflicts, they have been fully disclosed.

Second, even if there could be a conflict with ANGDA under AS 39.52, those conflicts would need to be addressed on a matter by matter basis to determine any potential violations. Current activities of the Team, which may include the acquisition of confidential information, can only create hypothetical conflicts that are not yet appropriate for analysis. We are unaware of any information sought by the Team that would create a competitive conflict with ANGDA. When that information is identified, potential conflicts of interest with individual members of ANGDA can be addressed.

Finally, the stated purpose of the Act includes this declaration at AS 39.52.010(b):

"The legislature declares that it is the policy of the state, when a public employee is appointed to serve on a state board or commission, that the holding of such offices does not constitute the holding of incompatible offices unless expressly prohibited by the Alaska Constitution, this chapter and any opinions or decisions rendered under it, or another statute."

Nothing about ANGDA's participation is prohibited by the Alaska Constitution, or AS 39.50, or AS 39.52. The Legislature appointed members to the Team, and only the Legislature can remove them. To the extent any conflicts may exist, which we are unable to identify, they appear to have been waived.

Because there are no legal conflicts generated by ANGDA's participation on the team under AS 39.50 or AS 39.52, we are left with addressing practical concerns that may arise as a result of ANGDA's participation on the Team. All of these concerns appear to stem from the potential sharing of confidential information received by the team. You have expressed concern that ANGDA's competitors (other potential shippers of natural gas) may not share important information with the Team for fear that ANGDA would use this information to its advantage. You also raise some concerns that FERC or RCA regulations may prohibit potential shippers and pipeline owners from sharing certain information if ANGDA remains on the Team.

We do not know what competitors you refer to, or what information could be shared with ANGDA that would cause concern. But assuming a competitor was reluctant to share information that is deemed important to the Team's mission, then a number of options are available to address the concern, none of which would require that ANGDA be removed from the Team.

Of course, Mr. Heinze has agreed to keep any sensitive information shared with him confidential and separate from other ANGDA efforts. The information will not be shared with board members. As you know, ANGDA has facilitated the formation of a natural gas supply cooperative ("NGSC") which consists of electric utilities that have an interest in obtaining natural gas from any successful project that develops and delivers gas from the North Slope. Anthony Izzo, an ANGDA contractor, is a member of NGSC, and also a contractor to ANGDA.

The NGSC may have commercial interests that could benefit from sharing information obtained by ANGDA through its participation in the Team. To resolve this issue, Mr. Heinze has agreed to remove himself completely from the NGSC, and will not share any information with it. The following is a list of efforts ANGDA proposes to further resolve any conflict concerns:

1. The ANGDA Board of Directors will instruct Mr. Heinze to compartmentalize ANGDA's work from the NGSC, its members, and others concerning potential shipper actions related to any in-state bullet line that results from efforts of the Team;
2. Mr. Heinze will treat all information from the Team as confidential;
3. Mr. Izzo will continue to represent ANGDA as a member of the NGSC, but Mr. Heinze will not provide Mr. Izzo, the NGSC, or others with any confidential information from the Team that is not also available to other shippers;
4. ANGDA will not be a bidder for any in-state bullet line that results from the Team's efforts;
5. Mr. Heinze, Mr. Izzo, and other ANGDA contractors will continue to work with NGSC on participation in the open season process for both the Alaska Pipeline Project and Denali gas line projects;
6. ANGDA will continue to work independently, but cooperatively, on in-state gas projects; and
7. ANGDA contractors can be a resource available to work on AGDC project tasks under RSA contracts.

We believe that implementation of these efforts will completely resolve any concerns with ANGDA's continued participation on the Team. These proposals have not been approved by the ANGDA Board, but will be presented for approval if they are acceptable to the Team and AGDC. Please let me know if this is acceptable to your client.

Kenneth Vasser

Alleged Conflicts between ANGDA and Gasline Development Team

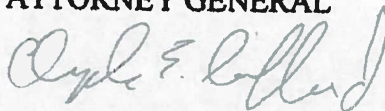
October 4, 2010

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Thank you for your assistance and cooperation. I am confident we will be able to reach an accommodation that satisfies all parties so the Team's work can continue expeditiously.

Sincerely yours,

DANIEL S. SULLIVAN
ATTORNEY GENERAL



for By James E. Cantor
Chief Assistant Attorney General

JEC/CES/mdz