

**Sec. 38.35.100. Decision on application.**

(a) The commissioner shall promptly determine, in a written finding, on an application filed under AS 38.35.050, whether the applicant is fit, willing, and able to perform the transportation or other acts proposed in a manner that will be required by the present or future public interest. In making a determination the commissioner shall consider whether or not

(1) the proposed use of the right-of-way will unreasonably conflict with existing uses of the land involving a superior public interest;

(2) the applicant has the technical and financial capability to protect state and private property interests;

(3) the applicant has the technical and financial capability to take action to the extent reasonably practical to

(A) prevent any significant adverse environmental impact, including but not limited to erosion of the surface of the land and damage to fish and wildlife and their habitat;

(B) undertake any necessary restoration or revegetation; and

(C) protect the interests of individuals living in the general area of the right-of-way who rely on fish, wildlife, and biotic resources of the area for subsistence purposes;

(4) the applicant has the financial capability to pay reasonably foreseeable damages for which the applicant may become liable on claims arising from the construction, operation, maintenance, or termination of the pipeline;

(5) the applicant has agreed that in the construction and operation of a pipeline within the right-of-way the applicant will comply with, and require contractors and their subcontractors to comply with, applicable and valid laws and regulations regarding the hiring of residents of the state then in effect or that take effect subsequently.

(b) If the commissioner makes the determinations under (a) of this section favorably to the applicant, then the commissioner may grant the whole or part of the application. If the commissioner makes the determinations under (a)(1) - (5) of this section favorably to the applicant but determines that the applicant is not then fit, willing, and able to perform under the application, the commissioner may grant the application under a conditional lease subject to conditions established by the commissioner that will ensure that the applicant will, within a prescribed period of time not exceeding 10 years, establish that the applicant is fit, willing, and able, under (a) of this section, to perform the transportation or other acts that will be required by the present or future public interest. An applicant is not entitled to a notice or authorization to proceed to construction, or its equivalent, under a conditional lease until the commissioner determines in writing that the applicant has satisfactorily established that the applicant is then fit, willing, and able to perform under (a) of this section. Otherwise, the commissioner shall deny the application.

(c) The commissioner may offer the applicant a lease or a conditional lease under this section. If the applicant does not accept a lease offered under this section within 30 days, the lease offered is withdrawn.

(d) The commissioner shall include in a conditional lease each requirement and condition of the covenants established under AS 38.35.120. The commissioner may also require that the lessee agree to additional conditions that the commissioner finds to be in the public interest. In place of the covenant established under AS 38.35.120(a)(9), the commissioner shall require the lessee to agree that it will not transfer, assign, pledge, or dispose of in any manner, directly or indirectly, its interest in a conditional right-of-way lease or a pipeline subject to the conditional lease, unless the commissioner, after considering the public interest and issuing written findings

to substantiate a decision to allow the transfer, authorizes the transfer. The commissioner shall also require the lessee to agree not to allow the transfer of control of the lessee without the approval of the commissioner; as used in this subsection, "transfer of control of the lessee" means the transfer of 30 percent or more, in the aggregate, of ownership interest in the lessee in one or more transactions to one or more persons by one or more persons.

(e) The commissioner shall require a conditional lessee to agree that

(1) in the absence of the approval of the commissioner, a transfer may not relieve the lessee of an obligation assumed under the lease;

(2) a transfer, including the transfer of lessee, that occurs without the approval of the commissioner is ineffective to transfer interests in and obligations under the lease; and

(3) a transfer constitutes a default under the lease.

(f) In an application for the approval under (d) of this section of a transfer of an interest, the commissioner shall consider whether the proposed transferee will be fit, willing, and able to perform the transportation or other acts proposed under the conditions established in the conditional lease and whether the transfer is in the public interest. In approving the transfer of an interest under (d) of this section and this subsection, the commissioner may impose any condition on the transfer that the commissioner considers in the public interest.

(g) If, during the term of a conditional lease, the commissioner determines under (a) of this section that the applicant is fit, willing, and able to perform the transportation or other acts proposed in a manner that will be required by the present or future public interest, the commissioner may amend the conditional right-of-way lease to insert the covenant established in AS 38.35.120(a)(9) in place of the covenant against a transfer established under (d) and (e) of this section.

(h) The issuance of a conditional lease does not prevent the commissioner from issuing other conditional or unconditional leases for the same right-of-way. A conditional lease may be revoked at any time that the commissioner determines that the applicant or conditional lessee will not be fit, willing, and able to perform during the term of the lease or when another applicant or conditional lessee is determined to be fit, willing, and able to perform under an application or lease for all or part of the right-of-way. An applicant or conditional lessee accrues no rights, including preference or priority rights, to a particular right-of-way until the commissioner makes a determination that the applicant or conditional lessee is then fit, willing, and able to perform the transportation or other acts proposed under (a) of this section.

(i) The commissioner shall insert a provision implementing the requirements of (a)(5) of this section into each agreement entered into by the commissioner for the construction and operation of a pipeline within the state.

History -

(Sec. 1 ch 72 SLA 1972; am Sec. 9 ch 3 FSSLA 1973; am Sec. 1, 2 ch 51 SLA 1987)