

Kate Giard, Commissioner  
Regulatory Commission of Alaska  
701 West Eighth Avenue, Suite 300  
Anchorage, Alaska 99501-3469

April 14, 2011

Senator Lesil McGuire  
State Capitol Room 125  
Juneau AK, 99801

Dear Senator McGuire:

During Senate Finance yesterday, you expressed concern about a conversation I had with Mr. Kerr of Anchor Point Energy, LLC. Hopefully, the information below provides some context and explanation for my comments to Mr. Kerr in February.

The design, size and location of Anchor Point's planned pipeline was identified as a potential issue by Union Oil (Unocal) when Enstar filed "to construct a new 8-inch gas transmission pipeline to increase access to both known natural gas supplies as well as prospective exploration areas" in 2009. Anchor Point filed comments in that docket and Unocal also filed comments. Among other things, Unocal sought assurance that Anchor Point's pipeline would be established from the outset with consideration for the potential use of that pipeline by other users, stating,

[Anchor Point's proposed] 9.3 mile pipeline will be located in the immediate vicinity of a number of other oil and gas leases including the existing Nikolavesk Unit, CIRI acreage, and state oil and gas leases held by Renaissance Alaska, LLC, Alaska Energy Alliance, LLC, Nordic Energy Partners, LLC, and Benchmark Oil & Gas Company. Companies holding this acreage should be assured from the outset that they will have access to the 9.3 mile pipeline

...

...it is clear that Anchor Point's proposed pipeline is subject to the Commission's jurisdiction under AS 42.06 and that Anchor Point will now be required to obtain a Commission certificate pursuant to AS 42.06 before commencing construction. As part of obtaining a certificate, Anchor Point will be required to design its system to accommodate third party volumes... (Emphasis added).

Enstar asserted that it was inappropriate to discuss Anchor Point's pipeline in Enstar's docket. We granted Enstar's expansion stating that we were not going to address any

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extraneous matters raised. With that order, in April, 2010 I wrote a statement urging Anchor Point to apply for a certificate soon so that any disputes over the pipeline's design or access would not impede Enstar's plans to take gas in early 2011 (attached).

As Unocal noted in its comments, state law requires that a carrier must offer carriage to others, which means that design, size and route become important matters to address before a pipeline is constructed. AS 42.06.240(a) requires that a pipeline carrier may not "undertake the construction or extension of any pipeline facilities ...unless there is in force with respect to that pipeline carrier a certificate of public convenience and necessity issued by the commission authorizing those acts or operations." It would be inefficient and costly for a pipeline carrier to completely build a pipeline, come for a certificate, only to find that a third party wants the pipeline sized differently. The way the law is written avoids these situations.

Anchor Point's application for a certificate was filed on December 29, 2010. In its application, Anchor Point stated, "Actual construction of the Pipeline is currently well under way as the Applicant was not aware of any requirement for advance approval."

Anchor Point's lack of compliance with statute created an uncomfortable precedent. AS 42.06 offers regulatory structure for several critical pipelines in Alaska, including TAPS and other Cook Inlet natural gas pipelines. If a new pipeline can be constructed, without offering the public due process on important matters, particularly when those matters were already raised in a closely related docket, it becomes challenging to find a rational basis to enforce any provision of AS 42.06.

When a commissioner has a position about a matter pending before the RCA, there are several venues that are available. First, we can write a concurring statement, as I did in April and as commissioners have done for years. Those statements reflect the perspective of a commissioner but do not affect the overall decision in the docket. Second, we can make statements on the public record, which was the venue I had seriously considered. Those statements create a record, but are also the reflections of just one commissioner.

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Emphasizing this circumstance through a public venue would make it more readily apparent that the statute had been weakened and more easily accessible to other carriers in the future as a basis for why they should not be penalized for taking similar action. So I determined not highlight the matter in the public arena, but to let Mr. Kerr know how seriously I did consider the matter.

In my conversation with Mr. Kerr, I explained how disturbing it was, to have encouraged Anchor Point in April 2010, to file early, thus allow for a full due process, to find in December, that the pipeline had been illegally constructed. I expressed that I was at least partially convinced that building the pipeline in advance of obtaining a certificate may have been a strategic step to avoid designing the pipeline to accommodate a route or size needed by other developers in the area.

I discussed other aspects of Mr. Kerr's application related to compliance with commission regulations on confidential financial matters, as I had been asked by the adjudicatory panel to review them. My comments were limited to the statutory and regulatory matters in front of the commission, just as I would have made them on the public record.

At the hearing, Mr. Kerr referred to our conversation, noted that he was very upset that someone would question his integrity, that he truly was not aware that he needed to file an application prior to construction and that he would do everything possible to comply with our statutes in the future. (attached) The Commission footnoted his promise in its final order and expressly conditioned his certificate on complying with all statutes and regulations.

Those are the facts as I know them and I would be happy to provide any additional information that you may need about the subject.

With regards,



Kate Giald

1 STATE OF ALASKA

2 THE REGULATORY COMMISSION OF ALASKA

3 Before Commissioners:

4 Robert M. Pickett, Chairman  
 5 Kate Giard  
 6 Paul F. Lisankie  
 7 T.W. Patch  
 8 Janis W. Wilson

9 In the Matter of the Application Filed by ALASKA )  
 8 PIPELINE COMPANY to Amend Certificate of )  
 9 Public Convenience and Necessity No. 141 to )  
 Expand Its Service Area )

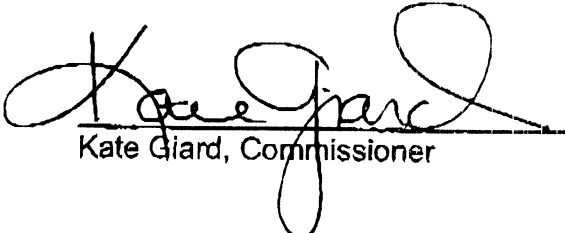
U-09-107

ORDER NO. 2

10 CONCURRING STATEMENT OF COMMISSIONER KATE GIARD

11  
 12 If an application for a certificate of public convenience and necessity is  
 13 required under AS 42.06 for Anchor Point Energy's pipeline (or for APLC's proposed  
 14 pipeline in the event that DNR issues an AS 38.35 right-of-way lease), the law requires  
 15 the RCA to hold a public hearing at least 30 days prior to issuing the certificate.

16 Comments made by Union in this docket indicate that there may be  
 17 tension as to the location and routing of any new AS 42.06 pipelines. A contested  
 18 application process will take longer to resolve. Given the proposed construction  
 19 schedules, parties may wish to file their AS 42.06 applications as soon as possible to  
 20 get the process underway.

21   
 22 Kate Giard, Commissioner

23 (SEAL)

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## REGULATORY COMMISSION OF ALASKA

Anchorage, Alaska

VOLUME I

PUBLIC HEARING

February 14, 2011

10:00 o'clock a.m.

Anchorage, Alaska

Comments of Anchor Point:

*You know, right before this meeting I had someone come and, I guess, as my dad would say, dress me down. And, you know, we have always at Armstrong attempted to work with regulatory authorities. It's -- you know, it's our intention to be partners with you guys. We see that as how things are a win/win and to the extent that we can, we're always going to do that. And I feel horrible right now 'cause I had someone imply that I was less than honest or something like that. And just for what it's worth anything I can do to get you guys where you need to be, let me know because, you know, life is just too short. I don't want anyone in your shoes to think that we're doing anything that is less than forthright or less than honest, so -- and I apologize, but I just had to get that out there because it shook me up with respect to that.*

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*Q So now is probably as good a time as any to address the question of why is it that the pipeline is almost built and we're just now asking for the certificate?*

*A Right. And with respect to that let me -- let me start by saying I apologize. And, again, apologize, too for having to hear me earlier, but this is unique for us. Number one, we did not know we needed to come here and I sincerely apologize for that with respect to the pipeline aspect. We thought we -- when we went through the SPCO and all of the protocol that is associated with that and Bob Rich has been nice enough to be here and under his feet we've got two boxes full of various filings and data that went in tangent with the -- with the SPCO filing, but we definitely dropped the ball. We did not recognize that we needed to be in front of you for your permission to -- for the construction of the pipeline and I sincerely apologize for that. And at this point all I can do is say we'll try everything we can to make it better. We actually found out when we began this tariff filing aspect which was another unique thing to us since we're only moving our own gas, but when we did find out shortly after that which was the very first week, I think, of December I came up and visited with some people with the RCA to say I'm sorry, we've made a mistake and we're going to try everything we can to rectify it.*

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