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MEMORANDUM

April 7, 2014

TO: The House Finance Committee

FROM: Donald M. Bullock
Legislative Counsel

Summary of Memorandum of Understanding

The Memorandum of Understanding ("MOU") provides for the transition from the project licensed under AGIA and the release of the state and the licensee from obligations under AS 43.90.

The MOU addresses ending the AGIA license based on a finding that the AGIA project is uneconomic.

The MOU does not address the assurances and damages in AS 43.90.440, commonly referred to as the treble damages provision. That statute requires a payment to the licensee if the licensee is current in its obligation under AGIA and "the state extends to another person preferential royalty or tax treatment or grant of state money for the purpose of facilitating the construction of a competing natural gas pipeline project in this state." A competing natural gas pipeline is a project designed to accommodate throughput of more than 500,000,000 cubic feet a day of North Slope gas to market.

Parties to the MOU

TransCanada Alaska Company, LLC

Foothills Pipe Lines, Ltd.

TransCanada Alaska Development Inc.

State of Alaska, acting through the commissioner of natural resources and the commissioner of revenue

(Note: ExxonMobil or a subsidiary of ExxonMobil that worked on the Alaska Pipeline Project with the AGIA licensee is not a party to this agreement)

Recitals

1. AGIA enacted in 2007.
2. License issued. Licensees and an affiliate of ExxonMobil commenced to "jointly develop the AGIA pipeline project in Alaska and Alberta as the Alaska Pipeline Project ("APP"). Licensee "pursued the APP in compliance with AGIA requirements to timely conduct an initial binding open season and engage in the pre-filing process" with FERC.
3. Changed circumstances -- substantial increase in U.S. shale gas and lower gas prices. October 2011, governor requested the licensee to work cooperatively with the three major North Slope oil producers.
4. Project plan amendment ("PPA"). Assessment of the LNG alternative project with the producers to deliver gas from the North Slope to tidewater for in-state use and for export. Commissioners approved the PPA and additional PPA's "facilitating the Licensee's continued participation with the ANS Producers in completion of the concept selection phase for the Alaska LNG Project."
5. Concept for Alaska LNG Project. Affiliate of TransCanada -- TransCanada Alaska Development Inc. ("TADI") selected a concept and prepared for pre-FEED (Front End Engineering Design) phase.

6. Licensee and producers to work together.

The Commissioners have determined that in order to facilitate the financing and expedite the development and construction of the Alaska LNG Project *it is desirable for the State to participate with the Licensee and the ANS Producers in the Alaska LNG Project.* State participation in the Alaska LNG Project is expected to yield significant benefits, including the alignment of interests, greater transparency for the State on the commercial terms of the project, and the reduction of disputes. As part of its participation in the Alaska LNG Project, the State would enter into certain commercial agreements with the Licensee, TADI and the ANS Producers, subject to legislative authorization for this purpose.

(Emphasis added.)

7. Commercial arrangements between the State and TADI. State will enter into commercial arrangements with TADI for participation in the Alaska LNG Project.

<p>Comment: This provision keeps a TransCanada affiliate in the Alaska LNG Project. TADI is the new participant.</p>

8. Relationship to licensee and affiliates continues. Commissioners determined that "it is in the State's best interest to continue its relationship with the Licensee and its Affiliates."

To maintain project momentum and promote continued cooperation between the AGIA Licensee and the ANS Producers, the Commissioners, exercising their authority under *AS 43.90.210*, **have approved the Licensee's request for PPA-IB** for the Licensee's continued participation with the ANS Producers in preparation for the pre-FEED phase of the Alaska LNG Project and to prepare for the transition mentioned above.

(Emphasis added.)

9. Commercial arrangements for the state to participate in the Alaska LNG Project have been discussed with the licensee, the producers, and TADI. Certain "commercial arrangements are necessary" for the State to participate with TADI to facilitate the Alaska LNG Project. Terms in exhibits B and C have no force and effect "until the effective date of enabling legislation" that authorizes the State to "negotiate and execute commercial agreements."

Definitions: "**Enabling Legislation**" means legislation enacted by the Alaska Legislature that has become effective as provided under AS 01.10.070, and that at a minimum:

- (i) Authorizes the Commissioners to negotiate and enter into the Transition Agreements, and
 - (ii) Authorizes the Commissioners to negotiate and enter into commercial arrangements with the ANS Producers for the Alaska LNG Project;
 - (iii) Funds the State's contingent and direct payment obligations for development costs under the Precedent Agreement and Article 4.2 of this MOU. (Art. 1.1(l) - Defined Terms)
- "**Transition Agreements**" mean the Alaska LNG Project Equity Option Agreement and the Alaska LNG Midstream Services Agreement. (Art. 1.1(s) - Defined Terms)

10. Transition from AGIA to a commercial arrangement. TADI will own part of the "midstream portion" of the Alaska LNG Project. The state would have an option to acquire an equity interest in the TADI or affiliate that holds an ownership interest. State's share of gas would be processed and transported in the midstream part of the Alaska LNG Project by TADI.

11. AGIA uneconomic? After enabling legislation becomes effective, commercial agreements executed and producers commit to pre-FEED phase, commissioners commit to initiate the process of making a determination that the AGIA project is uneconomic under AS 43.90.240(a).

Because it is not economically feasible that two large-scale pipeline projects will be developed concurrently to transport Alaska North Slope natural gas to market, *the Commissioners have committed to consider* the commercial agreements executed by and between the State, TADI and the ANS Producers for development of the Alaska LNG Project as material evidence that the Licensee's AGIA licensed project is uneconomic as provided in AS 43.90.240(a).

Comment and questions: Are the commissioners saying that the project is not uneconomic if the Alaska LNG Project does not go forward? What happens to AGIA if the enabling legislation fails to pass or is found to be unacceptable? What does "committed to consider" mean? Will the state pay for and receive "all engineering designs, contracts, permits, and other data related to the project that are acquired by the licensee during the term of the license upon reimbursement by the state of the net amount of expenditures incurred and paid by the licensee that are qualified expenditures for the purposes of AS 43.90.110" as authorized by AS 43.90.240(e)?

12. Trigger event commits the Licensee to agree that the AGIA licensed project is uneconomic under AS 43.90.240(a). "Trigger event" is the effective date of enabling legislation "that the licensee, TADI, and the state determine to be acceptable."

Definition: "Trigger Event" means the effective date of Enabling Legislation that the Licensee, TADI and the State determine to be acceptable. For purposes of determining whether the Enabling Legislation is acceptable, the Parties will evaluate whether the Enabling Legislation provides appropriate and sufficient authority to the State;

- (i) to *negotiate and execute* the Precedent Agreement and the Alaska LNG Project Equity Option Agreement;
- (ii) to *negotiate* the Firm Transportation Services Agreement; and
- (iii) to *fund* the State's contingent and direct payment obligations for development costs under the Precedent Agreement and Article 4.2 of this MOU. (Art. 1.1(t) - Defined Terms) (Emphasis added)

13. Negotiation and execution of transition agreements. Two agreements will be subject to negotiation and execution after the trigger event:

- a. The Alaska LNG Project Equity Option Agreement; and
- b. The Alaska LNG Midstream Services Agreement.

Article 1 Defined Terms

Key defined terms:

Alaska LNG Midstream Services Agreement: the agreement between the State and TADI to ship the state's gas in the interest of the pipeline owned by TADI. A term sheet for the agreement is in Exhibit C. (Art. 1.1(e) - Defined Terms)

Alaska LNG Project: There are 4 segments, 1) Two upstream transmission lines from PBU Central Gas Facility and Point Thomson outlet flanges to inlet flange of the gas treatment plant; 2) the gas treatment plant that may include both gas processing and gas treatment; 3) main natural gas pipeline from outlet flange of the gas treatment plant to the inlet flange of the LNG plant; and 4) the LNG plant. (Art. 1.1(f) - Defined Terms)

Alaska LNG Project Equity Option Agreement: Agreement to be entered into between the state and TADI. Terms of the agreement are in Exhibit B. The equity agreement relates to ownership in the LNG project upstream from the inlet flange of the LNG plant. (1 - 3 in the LNG Project described above). (Art. 1.1(g) - Defined Terms)

Enabling Legislation: Legislation becomes law (takes effect) that authorizes the commissioners to 1) execute Transition Agreements, and 2) commercial arrangements with ANS Producers for the Alaska LNG Project. Provides funding for the "State's contingent and direct payment obligations for development costs under the Precedent Agreement and Article 4.2 of this MOU." (Art. 1.1(l) - Defined Terms)

Pre-FEED JVA: the project pre-FEED Venture Agreement to be executed after enabling legislation by producers, TADI, and AGDC. (Art. 1.1(q) - Defined Terms)

Precedent Agreements: Under the Alaska LNG midstream services term sheet, precedent agreements refer to agreements that "capture" the operative terms in the term sheet. Precedent agreements will be replaced with firm transportation service agreements ("FTSA") that may only be entered into after legislative approval. (Art. 1.1(r) - Defined Terms)

Transition Agreements: Two agreements: 1) Alaska LNG Project Equity Option Agreement (Exhibit B); and 2) the Alaska LNG Project Midstream Services Agreement (Exhibit C). (Art. 1.1(s) - Defined Terms)

Trigger Event: is the effective date of "Enabling Legislation" giving the state authority

1) to negotiate and execute the Alaska LNG Equity Option Agreement;
2) negotiate the Firm Transportation Services Agreement; and 3) fund the State's contingent and direct payment obligations for development costs under the Precedent Agreement and article 4.2 of the MOU. (Art. 1.1(t) - Defined Terms)

Article 2 Transition Agreements

2.1 Negotiation of Transition Agreements

(a) State will seek enabling legislation.

(b) Parties to proceed to negotiate in good faith.

(c) Operative terms in Exhibits B (equity option) and C (midstream services) are agreed upon and the Alaska LNG Project Equity Option Agreement the Alaska LNG Project Midstream Services Agreement must be consistent with the commercial principles in the operative terms. No party may negotiate an inconsistent term and the final agreements may include additional terms unless required by the enabling legislation or heads of agreement.

(d) Parties will support enabling legislation. If enabling legislation includes terms that vary or conflict with the Operative Terms attached to the MOU, the terms and conditions in the legislation will be reflected in the agreements "if Parties agree to accept the Enabling Legislation."

(e) Operative Terms deemed to be amended if at variance with terms in an agreement:

The Parties acknowledge that insofar as the terms of the Heads of Agreement ("HOA"), the Pre-Feed JVA, or any future Alaska LNG agreement to which the State or an entity of the State (including AGDC) is a party or which the State has approved are at variance with the Operative Terms, the Operative Terms shall be deemed to be amended to the extent necessary to conform to the HOA, the Pre-Feed JVA, or other such agreements, as the case may be, notwithstanding the Parties' acknowledgements in Article 2.1(c) above.

Article 3 Timelines

3.1 Timeline Commitment

(a) Intent is to execute the Alaska LNG Project Equity Option Agreement and the Alaska LNG Midstream Services Agreement "as soon as commercially reasonable" and within 90 days after the Trigger Event (effective date of enabling legislation). Period may be extended by joint approval.

(b) All transition agreements must be fully executed and delivered for each to be effective.

3.2 Notice of Enabling Legislation

Each party must notify other parties within 30 days after the effective date of the enabling legislation if the legislation is not acceptable. Failure to timely notify acts as acceptance of the enabling legislation.

Article 4 Term, Termination, and reimbursement

4.1 Term and Termination

The effective date of the MOU is December 12, 2013, in the opening paragraph of the MOU.

The termination is on the earliest of the following:

(a) all transition agreements are executed and delivered;

(b) a party gives written notice that the enabling legislation is not acceptable;

(c) the Alaska LNG Project Equity Option Agreement has not been executed timely;

(d) the Alaska LNG Project Midstream Services Agreement has not been executed timely;

(e) 120 days after the effective date of the enabling legislation, unless extended jointly by the parties;

(f) on the last date Enabling Legislation could be enacted by the legislature in 2014 but has not been enacted, or if vetoed, has not been overridden. (Enacted is the date the governor signs the legislation, or allows a bill to become law without signature, AS 01.10.070); or

(g) July 31, 2014 unless extended by joint approval (31 days in July, 30 days in June, 29 days in May, equals 90 days; legislation without an immediate effective date or special effective date must be signed by the governor 90 days before July 31, 2014 or the parties must extend this date).

4.2 Development Cost Reimbursement

(a) If MOU is terminated for a reason other than the execution of the Transition Agreements, the State must reimburse TADI for

all the post-December 31, 2013 development costs plus an amount equal to the associated AFUDC, at a rate of 7.1 %, net of AGIA reimbursement received and retained by the Licensees under AGIA Project Plan Amendment IB, that have been incurred or committed to by TADI or its Affiliates under the CSA and the Pre-FEED JVA, including but not limited to TADI's share of contract cancellation penalties and continued funding obligations under such agreements, through the date of termination. ("CSA" is the concept selection agreement for ANS gas development between TADI and the AN producers (March 29, 2012); "AFUDC" means allowance for funds used during construction.)

(b) Reimbursement under 4.2(a) is TADI's exclusive remedy in law and equity.

4.3 Survival

Termination article 4 survives termination of MOU.

Comment: There are seven situations in which the MOU will terminate. Only one -- execution of all transition agreements -- does not require a payment for reimbursement costs by the state under section 4.2 of the MOU.

Article 5 Relationship of the parties

5.1 Relationship of the parties

Parties only act individually -- no joint venture or other business combination.

Article 6 Notices

6.1 Notices

Notices go to the two commissioners, and Anthony Palmer, TransCanada PipeLines Ltd.

Article 7 Governing law and effect of MOU

7.1 Governing Law and Jurisdiction

Law of Alaska and federal laws applicable in the state.

Parties "irrevocably and unconditionally" submit to the Alaska state courts.

Article 8 Miscellaneous

8.1 Assignment

No assignment to an entity that is not an affiliate without prior written consent.

8.2 Severability

MOU is severable and should be adjusted rather than voided if any part is found by a court to be invalid, illegal, or unenforceable.

8.3 Non-Waiver

No failure or delay constitutes a waiver of a right, power, or privilege.

8.4 Entire Agreement

The MOU constitutes the entire agreement between the parties.

8.5 Amendments

Amendments allowed only by supplemental written agreement signed by all.

8.6 Construction

To be construed as if drafted jointly by the parties.

8.7 Counterparts; Multiple Originals

May be signed in counterparts (pieces).

8.8 No Damages/Dispute Resolution

Only damages are those identified as cost reimbursement under 4.2(a).

8.9 Article and Section Headings

Shall not be determinative in construing meaning, effect, or application of the succeeding part.

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