

**Comments and Observations Regarding Confidentiality Regulations
Proposed for Adoption by the Alaska Gasline Development Corporation**

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The Alaska Gasline Development Corporation (AGDC) is proposing to adopt regulations relating to confidentiality agreements. AGDC is given broad authority under AS 31.25.090 to enter into confidentiality agreements "necessary to acquire or provide information to carry out its functions." The proposed regulations limit that broad authority by second-guessing a third-parties position that the information proposed to be shared with AGDC is sensitive and should be subject to a confidentiality agreement. In my opinion, the regulations favor "transparency and openness" rather than effectiveness in moving a project forward. I anticipate that the regulations will impede the free-flow sharing and exchange of information because a business partner would be reluctant to share sensitive information in an environment that starts with the presumption that all information should be shared openly and transparently.

I have looked at the confidentiality regulations proposed by the Alaska Gasline Development Corporation (AGDC), the transcript of the public hearing on the regulations, the comments on the regulations received by AGDC, and the law (AS 31.25.090) describing the confidentiality agreements that AGDC may use. The comments by the State's partners universally request that the proposed regulations be rejected. I agree that the proposed regulations would hinder rather than advance the development of a natural gas pipeline project.

The proposed regulations.

The first thing that stands out in the proposed regulations is the use of the word "contract" rather than "agreement" in the section captioned "Confidentiality agreements." The statutory authority uses the word "agreement" and "agreement" is generally the term used in the Alaska Statutes. While confidentiality may be a factor when negotiating contracts, a confidentiality agreement creates a trust relationship between parties. One party says "I have valuable information about my business that I don't want disclosed because of the harm disclosure would cause." The other

Confidentiality Regulations Proposed by AGDC

party says, "I need that information and because I need it, I will protect that information so that it will not be disclosed." Both parties then agree to protect the information and come up with a remedy if that confidence is violated. If an agreement is reached, the information is shared.

AS 31.25.090 recognized the sensitivity of the information that would be shared in the course of developing AGDC's natural gas projects and provides for confidentiality agreements. The proposed regulations weaken the protection of confidential information, such as the proposed section that states, "No contract that the corporation enters into after December 1, 2015 to protect the confidentiality of any information shall itself be treated as a confidential document."

Public hearing and comment.

A public hearing on the proposed regulations was conducted on October 15, 2015. Lydia Johnson, a representative of ExxonMobil and who is the technical manager of the Alaska LNG project, cautioned against weakening the protection of sensitive information. The representative stated:

And if the proposed confidentiality regulations are adopted in a way that prevents AGDC from signing these agreements, then it will not only compromise their ability to have all of the information needed to inform the AGDC vote as the State's representative, but also makes it very difficult for the project team to continue to work in the collaborative, open, and transparent matter that's needed to maximize as much as possible the benefits and synergies of our joint venture.

Bill McMahon from ExxonMobil also testified at the hearing. Mr. McMahon stated, "The Alaska Legislature has given full authority under House Bill 4 and Senate Bill 138 to enter robust confidentiality agreements necessary for a venture such as AK. ***The proposed regulations are unnecessary and harmful and should be rejected in their entirety.***" (Emphasis added.)

Patrick Flood of ConocoPhillips, and lead negotiator for ConocoPhillips also opposed the regulations at the hearing. He stated:

In order for AGDC to participate as a fully informed party in AKLNG and for the State to have transparent access to information in support of the State's participation in AKLNG, it is imperative that AGDC be able to sign and be bound by confidentiality agreements.

If the proposed confidentiality regulations are adopted, it will place the State and AGDC in an awkward position and may slow the decision making process down because of AGDC's lack of access to key information. ***We urge AGDC to reconsider the proposed confidentiality regulations.***

(Emphasis added.)

David Van Tuyl, Regional Manager for BP in Alaska also testified and cautioned that the regulations could stifle the exchange for information necessary for the AKLNG project. He stated:

We offer two observations about these proposed regulations which are of particular concern to BP. One, will project information already disclosed to AGDC under our existing confidentiality agreement remain confidential or would it be made public under these new regulations without the consent of the participants? ***A public disclosure of this historic information could seriously jeopardize the competitiveness of the Alaska LNG project.***

And two, the proposed regulation requiring the public disclosure of the entirety of any contract provided to the AGDC board for approval, even if that contract contains commercially sensitive, financial, or technical information, ***would seriously harm the competitive advantage that the project might otherwise enjoy.***

Confidentiality Regulations Proposed by AGDC

As I said, BP wants the Alaska LNG project to be successful. While we understand, appreciate, and support appropriate public disclosure and transparency, ***these proposed regulations would cause significant unintended consequences and make it difficult for the project to be successful. BP urges reconsideration of these proposed regulations.***

(Emphasis added.)

AGDC received written comments in addition to comments offered on the record at the public hearing. Comments asking that the proposed regulations should be rejected were presented by the senior commercial advisor for ExxonMobil Development Co., the technical manager for the Alaska LNG Project, a representative of BP, and the Senior Lead Negotiator for ConocoPhillips Alaska. Representative Guttenberg submitted written comments, but the comments are not available on the AGDC regulations web site.

AKLNG is a commercial project that includes the State as a business partner. The written submission by ConocoPhillips summarizes the situation of a commercial venture well:

In industry projects, when a participant or contractor wants to have its information held confidential, it does not have to prove to the receiving party if or how sensitive or confidential the information is. ***The parties either come to agreement on the terms for how the disclosing party's information will be held confidential, or the disclosing party does not disclose its information and the receiving party does not have the benefit of that information.***

(Emphasis added.)

Conclusion

In my opinion, these regulations are not only counterproductive but are also inconsistent with the authority in AS 31.25.090 that authorizes AGDC to enter into confidentiality agreements. The

Confidentiality Regulations Proposed by AGDC

candid sharing of information relevant to a commercial project is necessary for the successful development of AKLNG and any other project that involves multiple parties or requires third party information. The effect of a lack of confidentiality agreements or a lack of confidence that sensitive information will be protected is likely to result in AGDC failing to receive critical information necessary for making good and knowledgeable business decisions. At the very least, time will be wasted to review information for disclosure that would otherwise be subject to prenegotiated confidentiality agreements. For the State and the AKLNG project, time is of the essence.