
MEMORANDUM

TO: REPRESENTATIVE MIKE CHENAULT
SPEAKER OF THE HOUSE OF REPRESENTATIVES
FROM: DONALD M. BULLOCK JR., ATTORNEY
HOUSE MAJORITY STAFF
SUBJECT: CONFIDENTIALITY REGULATIONS PROPOSES BY AGDC
DATE: NOVEMBER 2, 2015
CC: TOM WRIGHT
CHIEF OF STAFF

I have reviewed the confidentiality regulations proposed by the Alaska Gasline Development Corporation. In conjunction with the review, I have read the statute authorizing AGDC to enter into confidentiality agreements (AS 31.25.090), the transcript of the public hearing on the proposed regulations, and written comments and questions presented to AGDC. In my opinion, the proposed regulations are likely to impede AGDC's participation in the Alaska Liquefied Natural Gas Project because the proposed regulations would imperil the free exchange of confidential information critical to the project.

Recognizing that AGDC was created as a business rather than political entity of the State, the legislature enacted AS 31.25.090, a statute addressing confidentiality and interagency cooperation. In AS 31.25.090(f), the legislature authorized the corporation to "enter into confidentiality agreements necessary to acquire or provide information to carry out its functions." AS 31.25.090(g) protects information acquired or provided by AGDC under a confidentiality agreement from public disclosure, and subsection (h) protects information and trade secrets of AGDC if the corporation determines disclosure would cause commercial or competitive harm to the corporation. AS 31.25.090(f) – (h) were enacted as part of HB 4 in 2013, sec. 3, ch. 11, SLA 2013. In 2014, as part of SB 138, a new subsection was added to AS 31.25.090 to authorize AGDC to provide the commissioner of natural resources and the commissioner of revenue access to information that is related to the development of contracts under AS 38.05.020(b)(10) and (11) (commercial agreements and other agreements relating to natural gas and a North Slope natural gas project), but that access is "[s]ubject to limitations on the disclosure of information in AS 31.25.090(g) and (h).

The proposed regulations limit AGDC's power to enter into confidentiality agreements by starting with the presumption that all information should be public unless there is a specific reason for protecting that information. The burden is placed on the provider of information to prove the information should be protected. Although the intent of the proposed regulations is to make information held by AGDC "open and transparent," the result is expected to be delays and the withholding of sensitive and confidential information by persons not wanting to risk disclosure.

Representatives of ExxonMobil, BP, and ConocoPhillips, the companies most likely to hold information that would be a benefit to AGDC for making business decisions regarding any natural gas transportation project, universally oppose the adoption of the proposed regulations. The companies state that the adoption of the proposed regulations would prevent the free exchange of information under confidentiality agreements that is common in the industry and would impede progress in developing the Alaska LNG Project.

In my opinion, the proposed regulations are contrary to the broad authority given to AGDC to enter into confidentiality agreements that are necessary to acquire information for good business decisions relating to natural gas projects developed in the State. Industry may be cautious to share information if it is not confident that critical and sensitive information will not be protected because of political rather than good business reasons.

Additional information is attached for your convenience.