

## **SB 180 Reinstate/again clarify RCA jurisdiction of consumer rates from utilities.**

The RCA on April 20, 2025 handed down an important order in an ENSTAR rate case. ENSTAR had asked for permission to recover \$4.6 million in costs associated with its LNG import facility development by rolling those costs into its Gas Cost Adjustment (GCA) surcharge on customers' bills, rather than waiting for the facility to go into operation, at which time the capital cost would be added to the rate base.

The RCA said no

In that case:

April 22, 2025

Hearing re: RCA U-25-004

ENSTAR explains that future new costs identified in TA350-4 (the rate case) are for the development phase of the LNG Project. They will include commercial, engineering, and permitting activities. ENSTAR divides the proposed development phase costs into two categories: ENSTAR Costs and Developer Costs. ENSTAR further categorizes those costs as project agreements, engineering, and permitting costs. ENSTAR anticipates spending approximately \$10 million on its project development expenditures. This amount includes \$4.6 million ENSTAR already accumulated in its regulatory asset account.

ENSTAR's project agreements costs will be comprised of legal fees, commercial and technical industry consulting, due diligence necessary to vet agreements, and incremental costs associated with regulatory filings. ENSTAR's anticipated engineering costs are to finalize commercial use agreements, project financial security agreements, land agreements, and/or LNG sales and purchase agreements. ENSTAR states it may also need to provide necessary financial security or guarantees and engineering and project management oversight. ENSTAR's permitting costs include legal and technical expenses to support permitting activities, responses to regulators or customers, legal and consulting fees for final approval, intermediate reporting requirements, and preparing for implementation and integration of LNG into the gas system.

The second development cost category includes necessary external and internal costs incurred by the developer. ENSTAR states the Developer Costs will only be recovered through the GCA (Gas Cost Adjustment) if the LNG Project is suspended, terminated, or cancelled. If the LNG Project is built, those Developer Costs will instead be included as capital costs in the new LNG Project. The owners of the LNG Project will then recover those capital costs through supply purchase or import terminal use agreements once the LNG Project is operational. ENSTAR predicts that (its) Developer Costs will be between \$43 and \$48 million.

ENSTAR differentiates the costs at issue in TA350-4 as related to securing a gas supply and formalizing a commercial relationship with the import facility and LNG suppliers which falls within our authority, unlike the construction or operation of the facility which would be within FERC's exclusive jurisdiction. As an analogy, ENSTAR notes RCA has jurisdiction to regulate ENSTAR as a utility-offtaker of Cook Inlet producers' platforms and pipelines. Likewise, ENSTAR asserts that although the LNG Project may not be regulated by us,

ENSTAR argues that the proposed costs identified in TA350-4 meet adjustment clause criteria listed in 3 AAC 52.502(a). ENSTAR argues that importing LNG to the Cook Inlet is an unprecedented event in Alaska history and the costs to proceed with it represent unusual fuel costs. ENSTAR states that the LNG Project's development costs are subject to change at a rate that would cause financial harm to ENSTAR if recovered exclusively in base rates. ENSTAR asserts that the costs are beyond ENSTAR's control because it must incur these costs to advance the LNG Project. ENSTAR states that these costs will vary year-to-year and will be dictated by the various project agreements and the engineering and permitting activities that it will be required to complete. ENSTAR states that it has no control over these factors.

JLP/RSD (JL Properties and RSD Properties, an intervenor) argue that RCA does not have and should not exercise jurisdiction over LNG import facilities. JLP/RSD assert that ENSTAR is planning to advance funds for the LNG Project that will receive gas transported in interstate commerce and is defined in TA350-4 as "construct[ion] of a natural gas receiving terminal on the Kenai Peninsula, in close proximity to ENSTAR transmission and storage facilities." JLP/RSD cite 15 U.S.C § 717b(e)(1) which states that FERC "shall have the exclusive authority to approve or deny an application for the siting, construction, expansion, or operation of an LNG terminal." Therefore, JLP/RSD argue that the LNG Project, as defined by ENSTAR, and all agreements related to the interstate transportation of natural gas, are subject to exclusive FERC jurisdiction.

**JLP/RSD argue that the Legislature's intent to restrict Commission jurisdiction by adopting AS 42.05.711(v) was shown when it expressly decided to remove language stating "[f]or rate-making purposes, the commission shall consider the investment of a public utility in a liquified natural gas import or export facility" from HB 50. JLP/RSD assert this language appeared in the Senate Finance Committee draft of HB 50 but was subsequently amended to state, "For rate-making purposes, the commission shall not consider the investment of a public utility in a liquified natural gas import or export facility."**

Chugach Electric Association argues that FERC's jurisdiction over the siting, construction, operation, or expansion of an LNG import or export facility is exclusive under 15 U.S.C. § 717b(e).<sup>95</sup> **However, Chugach points out FERC's jurisdiction does not extend to price regulation of imported LNG, nor to an LDC's decision to procure gas supplies or capacity in a FERC jurisdictional project like an LNG import facility. The review of those determinations falls to state regulatory commissions who hold jurisdictional authority to review such terms.**

## CONCLUSION

**We (RCA) do not see a viable path to acquiring jurisdiction over facility. Were we to do so, we would violate AS 42.05.711(v). This subsection provides that "A liquified natural gas import facility under the jurisdiction of the Federal Energy Regulatory Commission is exempt from this chapter." (My note: This applies to the physical facility, not utility contracts.)**

**We have jurisdiction to consider gas supply and terminal use agreements arising from ENSTAR's use of an LNG import facility's services, and we are not barred by AS 42.05.711(v) from doing so.**

ENSTAR does attempt to show these regulatory asset costs have an adequate linkage with variable fuel costs permitted for recovery through a GCA or a COPA (Cost of Power Adjustment). While first stating the costs included in the \$4.6 million regulatory asset pertain to "studying and securing long term gas supply," it subsequently adds they are "related to the importation of LNG to the Cook Inlet" and that this "unprecedented event" represents "unusual fuel costs" which should be granted GCA treatment. **However, as RAPA (Department of Law Advocacy Office) points out, these costs are operating expenses; they do not relate to changes in fuel supply as defined in 3 AAC 52.519(a)(1). We agree. The costs included in the \$4.6 million regulatory asset are operating expenses. They are not commodity costs contemplated by 3 AAC 52.519(a)(1) for inclusion in GCA recovery.**

**For the above reasons, we deny ENSTAR's request. ENSTAR may seek to address this \$4.6 million regulatory asset and an appropriate amortization period in its next rate case.**

For many of the same reasons we rejected GCA treatment for ENSTAR's \$4.6 million regulatory asset, we deny ENSTAR's request for GCA treatment of its development costs, and the lump sum payment due to the developer under Scenario 2 if the Project is terminated. First, the costs ENSTAR describes as its development costs, and for those of the developer, are non-fuel-related operating expenses. They are not fuel related expenses of the sort identified by 3 AAC 52.519(a)(1). ... It would be unreasonable for us to require ratepayers to fully compensate ENSTAR for this business risk in rates, and then require ratepayers again to fully absorb all LNG development costs without any cost allocation to ENSTAR when its shareholders have already been compensated for this business risk.