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REPRESENTATIVE MIKE CHENAULT

SPEAKER OF THE HOUSE

Fact Sheet

House Bill 142: Presumption AGIA project is Uneconomical

House Bill 142 creates a new statute that makes the presumption that a gas pipeline project licensed under the Alaska Gasline Inducement Act^[1] is uneconomic absent firm transportation commitments during the first open season^[2].

The bill requires proof to the Legislature that the first open season for the AGIA project generated sufficient firm transportation commitments to build the gasline. If those contracts exist between shippers and the AGIA licensee, TransCanada, the project continues. If not, the bill says that the AGIA project is rebuttably presumed uneconomic and should be abandoned. The existing AGIA statute provides a roadmap for abandoning the project if it becomes uneconomic, without financial penalties to either the state or TransCanada.

Under House Bill 142, TransCanada, has until July 15, 2011, to inform the commissioners of the Alaska Departments of Revenue (DOR) and of Natural Resources (DNR) whether firm transportation commitments sufficient to support the project were made in the first open season. The commissioners have until Aug. 1, 2011, to notify the Legislature whether that disclosure was made.

Without firm transportation commitments, the presumption is raised that the project is uneconomic for purposes of AS 43.90.240 (AGIA Abandonment of Project). The presumption can be rebutted with a preponderance of evidence. The presumption may also be allowed to stand for purposes of AS 43.90.240 (AGIA Abandonment of Project).

^[1] TransCanada Alaska Company, LLC, and Foothills Pipe Lines Ltd. were issued a license under AGIA on December 5, 2008.

^[2] TransCanada held its first open season starting at 8 a.m. April 30, 2010, and ending at 5 p.m. July 30, 2010.

If the presumption is raised, the commissioners of DOR and DNR have until Aug. 15, 2011, to submit a report to the Legislature. The report either rebuts the presumption with evidence, or states that there is not sufficient evidence to rebut the presumption.

House Bill 142 builds on an existing AGIA provision – Abandonment of Project, AS 43.90.240, that describes how the project can be abandoned if it is deemed uneconomical.

Additionally, if the presumption is raised, the commissioners must provide evidence the project has sufficient credit for construction and that the project's rate of return meets benchmarks when requesting FY2013 appropriations for reimbursements to the licensee under AGIA.

The bill does not prevent an agreement between the state and the licensee that the project is uneconomic for purposes of AS 43.90.240 (AGIA Abandonment of Project).

AS 43.90.240, Abandonment of project

The Alaska Gasline Inducement Act includes a section, 43.90.240, called

“Abandonment of project,” essentially a road map to follow if one or both parties – the state and TransCanada – decide the project is uneconomic.

If both parties agree the project is uneconomic, all deals are off and everyone walks away. The state doesn't have the obligation to pay more of the \$500 million reimbursement, and TransCanada is no longer bound to pursue the project to FERC certification. The state does have the option of paying TransCanada for all qualified expenditures eligible for reimbursement, and in return, taking the project work product.

(ACTUAL STATUTE: (e) If the commissioners and the licensee agree that the project is uneconomic or an arbitration panel makes a final determination that the project is uneconomic, the licensee shall, upon the state's request, transfer to the state or the state's designee 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 .)

If only one party decides the project is uneconomic, a panel of three American Arbitration Association members are brought in – one picked by the state, one by TransCanada, and the third by the first two panelists.

In arbitration, the party that decided the project is uneconomic has to present evidence proving two benchmarks, laid out in statute.

The first is that the project lacks the credit support through firm transportation commitments, government assistance or other financing, to sufficiently support construction.

The second is more complex. The party must show that the expected rate of return is less than an oil and gas company committing production to the line would typically expect in similar projects.

If the arbitrators decide the project is uneconomic, all deals are off.

If the arbitrators decide the project is not uneconomic, both parties must continue to meet their obligations under AGIA.

The abandonment of project section of AGIA does not trigger punitive damages, such as the treble damages in another section of the statute. Under that section, AS 43.90.440, the state could be liable for three times the amount TransCanada has spent on work under AGIA if the state takes certain actions giving preferential treatment or grants to another person with a gasline project of a certain size.

What HB142 does and does not do

House Bill 142 does:

- House Bill 142 does allow the parties to walk away from the project if the project is deemed uneconomic.
- House Bill 142 does call on the DOR and DNR commissioners to serve as the conduit for project status information between TransCanada and the Legislature.
- House Bill 142 does create a new section of law outside of AGIA.

House Bill 142 does not:

- House Bill 142 does not change or repeal the AGIA statute or the contract with TransCanada.
- House Bill 142 does not allow the state to walk away from a signed contract.
- House Bill 142 does not trigger treble damages or other punitive damages.

House Bill 142 does not force the commissioners or TransCanada to divulge confidential information. Firm transportation commitments, and their precursors, precedent agreements, are required by the Federal Energy Regulatory Commission to be made public (in a limited degree) within days.