



THE STATE
of **ALASKA**
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July 13, 2016

Honorable Cathy Giessel
State Capitol
120 4th Street, Room 427
Juneau, Alaska 99801-1182

Re: *Alaska Gasline Development Corporation*
AGO No. AN2014102400

Dear Senator Giessel:

Jane Conway, your Chief of Staff, has passed to us your inquiry about whether or not the Alaska Gasline Development Corporation ("AGDC") has the authority under SB 138 to change the model for the AKLNG project.

We understand that your inquiry stems from AGDC's recent proposal to restructure the AKLNG project as it proceeds beyond the current pre-front end engineering and design stage ("pre-FEED"). AGDC's proposed restructuring would have the State take the lead on the effort to monetize North Slope gas. At present, AGDC's proposed restructuring is still being worked out. AGDC's President Keith Meyer has discussed the possibility of AGDC, or an affiliate of it, owning the infrastructure for the project, or sharing ownership of the project infrastructure with one or more of the gas producers (ExxonMobil, BP and ConocoPhillips). Ownership could also be shared with outside investors. The cost of constructing the project would be funded through third-party project financing that may or may not include any significant equity contribution from the project infrastructure owner(s). The producers could be shippers of gas in the system, or they may only be sellers of gas at the wellhead, or they could do both. The project company would toll gas through the system for the shippers, or it or an affiliate also might be a shipper itself by purchasing gas at the wellhead, transmitting it through the system and selling it to third party purchasers at the marine terminal. The exact nature of the proposed restructuring and all the details concerning it are in flux and are the subject of on-going discussions between AGDC and the producers.

As a statutory creation, AGDC can perform only those functions and exercise only those powers as the statutes give it. AGDC's statutory authority is set out in chapter 31.25 of the Alaska Statutes, as mostly recently amended in 2014 by SB 138. The statutes give AGDC significant powers in pursuing "an Alaska liquefied natural gas project," which is defined in the statutes as including "collectively, the Prudhoe Bay unit gas transmission line, the Point Thompson unit gas transmission line, a gas pipeline, the gas treatment plant, a liquefied natural gas plant, and a marine terminal."¹ Our understanding is that the restructured project AGDC is proposing involves all of these specific components.

AGDC's governing statutes do not dictate that any particular structure be used in developing an Alaska liquefied natural gas project. Instead, the statutes give AGDC considerable leeway in proceeding with the project. AGDC is specifically authorized to "acquire an ownership or participation interest in an Alaska liquefied natural gas project, . . . or an entity or joint venture that has an ownership interest in or is engaged in the planning, financing, acquisition, maintenance, construction, and operation of an Alaska liquefied natural gas project."² The statutes do not either prohibit or require that AGDC's ownership or participation interest in a project company be 100% or shared with others or divided up in any particular way.³ Thus, we see AGDC's restructuring proposal, as Mr. Meyer has preliminarily outlined it, as fitting within this statutory authorization.

We recognize that there is one provision in AS 31.25 that refers to joint ownership of the Alaska liquefied natural gas project. AS 31.25.080(a)(1) states that AGDC "may enter into agreements with other persons for joint ownership, joint operation, or both of . . . an Alaska liquefied natural gas project." Because this provision is phrased in permissive terms ("may"), and because AGDC's governing statutes must be construed so as to give effect to all of them, we do not interpret this one provision as requiring that AGDC must only develop the project through a joint ownership structure. Rather, joint

¹ AS 31.25.390(1).

² AS 31.25.080(a)(23).

³ The authority of this provision is further broadened by AGDC's general powers to "make and execute agreements, contracts, and other instruments necessary or convenient in the exercise of the powers and functions of the corporation" (AS 31.25.080(a)(11)) and to "do all acts and things necessary, convenient, or desirable to carry out the powers expressly granted or necessarily implied in this chapter" (AS 31.25.080(a)(20)).

ownership is among the options that AGDC may utilize in the project but it is not the exclusive way for AGDC to proceed.

We also note that Mr. Meyer's description of the project going forward includes the possibility of there being joint ownership of the project infrastructure, either between AGDC and all or some of the producers or with outside investors. The project as restructured therefore may include a joint ownership aspect, which is in line with the options the statutes authorize.

The history of SB 138 supports our conclusion that AGDC is not bound to follow any one particular structure for the project. At the time SB 138 was adopted, the State, AGDC, TransCanada, and the producers had entered into the Heads of Agreement, dated January 14, 2014 (the "HOA"). The HOA specified that the multi-party structure it envisioned was applicable to the pre-FEED stage of the project. At the completion of pre-FEED, the HOA specified that the parties were to decide whether and how to proceed to the next stage, FEED. The decision on the next stage was up to each party "in its sole discretion."⁴ SB 138 was enacted with the HOA in mind. As such, SB 138 did not lock AGDC into any one project structure because the parties themselves had reached no understanding on the project structure for the entirety of the potential life of the project.

After the passage of SB 138, the HOA was superseded by the Alaska LNG Project Pre-FEED Joint Venture Agreement (the "JVA"). The JVA itself is a confidential document. However, the producers and others have publicly disclosed that the JVA, like the HOA, covers only the pre-FEED stage of the project. No binding agreement is in place for the FEED stage. For the project to proceed to FEED, the parties wanting to go forward have to reach a new agreement on how they will do so. AGDC's restructuring proposal is consistent with the JVA in that it is a proposal for moving the project forward to the next stage and beyond.

In short, we conclude AGDC is acting within its statutory authority in proposing a restructuring of the Alaska liquefied natural gas project.

Please understand that we are not saying AGDC has a free hand to proceed in any manner it chooses. AGDC will need to continue to review the structure to be sure proposals as they evolve stay within the bounds established by the legislature.

⁴ HOA § 4.3.

Hon. Cathy Giessel
Alaska Gasline Development Corporation

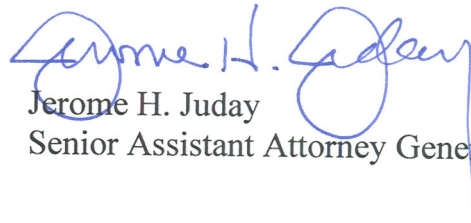
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We trust this adequately answers your inquiry. If you should require further information or assistance, please let us know.

Sincerely,

JAMES E. CANTOR
ACTING ATTORNEY GENERAL

By:



Jerome H. Juday
Senior Assistant Attorney General

JHJ/aec

cc: Mr. Keith Meyer