STATE OF ALASKA

THE REGULATORY COMMISSION OF ALASKA

Before Commissioners: John M. Espindola, Chair
Steve DeVries
Mark Johnston
Robert M. Pickett
John C. Springsteen

In the Matter of the Tariff Revision Designated as TA350-4 Filed by ENSTAR NATURAL GAS COMPANY, LLC	))))	U-25-004 ORDER NO. 5

ORDER CLOSING REGULATORY ASSET AUTHORIZED BY ORDER U-22-090(2), APPROVING NEW REGULATORY ASSET, DENYING TA350-4, FINDING MOTIONS FOR CONFIDENTIAL DISCOVERY ORDERS AND MOTION FOR EXPEDITED CONSIDERATION MOOT, REQUIRING FILINGS, VACATING REMAINING PROCEDURAL SCHEDULE AND HEARING, AND APPOINTING ADMINISTRATIVE LAW JUDGE

BY THE COMMISSION:

Summary

We close the regulatory asset authorized by Order U-22-090(2). We approve the creation of a new regulatory asset for certain future development costs incurred by ENSTAR Natural Gas Company, LLC (ENSTAR). We deny the tariff revision designated as TA350-4 filed by ENSTAR. We find the motions for confidential discovery orders filed by ENSTAR and the Office of the Attorney General, Regulatory Affairs and Public Advocacy Section (RAPA) and the motion for expedited consideration filed by RAPA moot. We require filings. We vacate the remaining procedural schedule and hearing for this proceeding. The chair appoints an administrative law judge.

Background

On January 28, 2025, ENSTAR filed a tariff revision designated as TA350-4. The filing proposes to revise ENSTAR's gas cost adjustment (GCA) surcharge to allow

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ENSTAR to recover amounts recorded in a previously approved regulatory asset.[1] In support of its filing, ENSTAR filed the affidavit of John Sims, a redline version of the proposed tariff changes, and a preliminary project timeline.[2]

We issued public notice of TA350-4 on January 30, 2025, with comments due February 13, 2025. We received public comments from two individuals; Doyon, Limited; and the Alaska Public Interest Research Group.[3]

With Order U-25-004(1), we suspended TA350-4 into this docket for investigation, invited participation by the Attorney General (AG), and invited intervention by interested persons. We issued questions to be addressed through written briefing by ENSTAR; the AG, if he elected to participate; and any interested person who petitioned to intervene and was ultimately granted intervenor status. We scheduled a prehearing conference to expedite the orderly conduct and disposition of this docket through the adoption of a procedural schedule and to establish a timeline for written briefing.[4]

RAPA elected to participate[5] and we received petitions to intervene from Chugach Electric Association, Inc. (Chugach), JL Properties, Inc. (JLP), RSD Properties, LLC (RSD) (jointly, JLP/RSD), Homer Electric Association, Inc. (HEA), Matanuska Electric Association, Inc. (MEA), and Golden Valley Electric Association, Inc.

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[1]Order U-22-090(2), *Order Granting Petition to Create Regulatory Asset, Requiring Reporting, and Closing Docket*, dated February 22, 2023 (Order U-22-090(2)).

[2]TA350-4 at Attachment A, B, C, and D.

[3]Comment by T. Barrett, filed February 4, 2025; Comment by J. Weiss, filed February 4, 2025; Comment by A. Schutt on behalf of Doyon, Limited, filed February 6, 2025; Comment by N. Kiley-Burgen and V. di Suvero on behalf of Alaska Public Interest Research Group, filed February 13, 2025.

[4]Order U-25-004(1), *Order Denying Waiver, Suspending Tariff Revision, Inviting Participation by the Attorney General and Intervention by Interested Persons, Issuing Questions, Scheduling Prehearing Conference, Addressing Timeline for Decision, Designating Commission Panel, and Appointing Administrative Law Judge*, dated February 4, 2025 (Order U-25-004(1)); Order U-25-004(2), *Order Issuing Additional Question*, dated February 6, 2025 (Order U-25-004(2)).

[5]*Notice of Election to Participate*, filed February 4, 2025.

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(GVEA).[6] We held a prehearing conference on February 13, 2025, with ENSTAR, RAPA, Chugach, JLP, RSD, HEA, MEA, and GVEA participating.[7] At the prehearing conference, the parties proposed and we adopted a procedural schedule and a written briefing schedule for the issued questions.[8] We granted each of the petitions to intervene filed in this proceeding.[9] All parties filed opening and reply briefs.[10]

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[6]*Chugach Electric Association, Inc.'s Petition to Intervene*, filed February 11, 2025; *Petition to Intervene of JL Properties, Inc.*, filed February 11, 2025; *Petition to Intervene of RSD Properties, LLC.*, filed February 11, 2025; *Homer Electric Association Inc.'s Petition to Intervene*, filed February 12, 2025; *Petition to Intervene of Matanuska Electric Association, Inc.*, filed February 12, 2025; *Golden Valley Electric Association, Inc.'s Petition to Intervene*, filed February 13, 2025.

[7]Tr. 1–35.

Our regulation addressing intervention is found at 3 AAC 48.110. That regulation requires that any person wishing to intervene in a docket file a petition to intervene and provides any party to the docket with an opportunity to file an answer to the petition within seven days under 3 AAC 48.110(e). At the time of the prehearing conference, RAPA confirmed that it did not oppose any of the petitions to intervene. However, the petitions to intervene were not ripe for our consideration as the time for ENSTAR to file an answer had not yet expired. As a result, Chugach, JLP, RSD, HEA, MEA, and GVEA had not been granted or denied intervenor status. Nonetheless, Chugach, JLP, RSD, HEA, MEA, and GVEA were treated as intervenors during the prehearing conference for the limited purpose of establishing a procedural schedule and written briefing schedule.

[8]Order U-25-004(3), *Order Adopting Procedural Schedule and Establishing Briefing Schedule*, dated February 18, 2025.

[9]Order U-25-004(4), *Order Granting Intervention*, dated February 27, 2025.

[10]*ENSTAR Brief in Response to Commission Orders U-25-004(1) and U-25-004(2)*, filed February 28, 2025 (ENSTAR Opening Brief); *Office of the Attorney General's Opening Brief*, filed February 28, 2025 (RAPA Opening Brief); *Chugach Electric Association, Inc.'s Opening Brief*, filed February 28, 2025 (Chugach Opening Brief); *HEA's Brief on Commission Questions*, filed February 28, 2025 (HEA Opening Brief); *Golden Valley Electric Association, Inc.'s Opening Brief*, filed February 28, 2025 (GVEA Opening Brief); Matanuska Electric Association, Inc.'s Opening Brief, filed February 28, 2025 (MEA Opening Brief); *JL Properties, Inc.'s and RSD Properties, LLC's Joint Opening Brief*, filed February 28, 2025 (JLP/RSD Opening Brief); *Golden Valley Electric Association, Inc.'s Responsive Briefin*g, filed March 10, 2025 (GVEA Reply); *Chugach Electric Association, Inc.'s Reply Brief*, filed March 10, 2025 (Chugach Reply); *HEA's Limited Reply in Response to Briefing on Commission Questions*, filed March 10, 2025 (HEA Reply); *Office of the Attorney General's Responsive Brief*, filed March 10, 2025 (RAPA Reply); *Responsive Brief of Matanuska Electric Association, Inc.*, filed March 10, 2025 (MEA Reply); *ENSTAR Natural Gas Company, LLC's Reply Brief*, filed March 10, 2025 (ENSTAR Reply); *JL Properties, Inc.'s and RSD Properties, LLC's Joint Reply Brief*, filed March 10, 2025 (JLP/RSD Reply).

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On March 28, 2025, ENSTAR and RAPA filed competing motions for entry of orders addressing confidential discovery material.[11] RAPA also filed a motion for expedited consideration.[12] Chugach filed a response to both motions, opposing ENSTAR's proposed order addressing confidential discovery material and non-opposing the order proposed by RAPA.[13] ENSTAR filed an opposition to RAPA's proposed confidential discovery material order[14] and a reply to Chugach's opposition.[15]

Discussion

In TA350-4, ENSTAR raises matters of first impression for us. The matters present issues of law, policy, and undisputed fact. Therefore, we issued questions and asked the parties to file both simultaneous opening and reply briefs. All parties responded with thorough and in-depth briefing. After reviewing the briefing and TA350-4 itself, we reach a final decision and do not require an evidentiary hearing, thus we vacate the remaining procedural schedule and the hearing.

Regulatory Asset

On November 10, 2022, in Docket U-22-090, ENSTAR filed a petition to create a regulatory asset to accumulate and defer the costs associated with studying and securing long-term gas supplies for the Alaska Railbelt.[16] In its Petition, ENSTAR stated

[11] *Office of the Attorney General's Motion for Entry of Proposed Order Governing Confidential Discovery Material*, filed March 28, 2025; *Motion to Adopt Confidential Discovery Material Order*, filed March 28, 2025, by ENSTAR.

[12] *Office of the Attorney General's Motion for Expedited Consideration of Motion for Entry of Proposed Order Governing Confidential Discovery Materials*, filed March 28, 2025.

[13] *Chugach Electric Association, Inc.'s Position on Proposed Confidential Discovery Orders*, filed April 2, 2025.

[14] *ENSTAR's Opposition to the Office of the Attorney General's Motion for Entry of Proposed Order Governing Confidential Discovery Material*, filed April 7, 2025.

[15] *ENSTAR's Reply in Support of Motion to Adopt Confidential Discovery Material Order*, filed April 10, 2025.

[16] *ENSTAR Natural Gas Company's Petition for Approval to Create a Regulatory Asset for the Accumulation and Deferal* [*sic*] *of Costs Associated with Studying and Securing Long Term Gas Supplies for the Alaska Railbelt,* filed November 10, 2022 (Petition), in Docket U-22-090.

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that it "intends to seek recovery of the amount not allocated to future capital projects or reimbursed by a third party through a future rate proceeding."[17] In Order U-22-090(2), we granted ENSTAR's Petition to create a regulatory asset. In doing so, we reiterated that we "continue a strong preference to not create regulatory assets, especially ones for which we do not know, or even have an estimate of, the final total."[18]

We were precise in our language when granting ENSTAR's Petition. We stated:

> [W]e grant ENSTAR authority to defer all necessary and prudent third-party costs incurred during its participation in the multiparty working group for studying and securing long-term gas supplies in the Cook Inlet. Our approval does not include amounts allocated to future capital projects or reimbursed by third parties. Our decision does not shift ENSTAR's evidentiary burden regarding the necessity and prudency of costs, carrying costs, or appropriate amortization periods. We will investigate these and any other issues required at the time of ENSTAR's request to include these costs in the calculation of rates.[19]

As we required, ENSTAR routinely files a report on the balance of consulting and other costs accumulated in the approved regulatory asset with its Second and Fourth Quarterly Gas Cost Balance Account (GCBA) Reports.

During a presentation at our January 15, 2025, special public meeting, ENSTAR's president announced that on December 17, 2024, ENSTAR had entered into an exclusivity agreement with Glenfarne Group, LLC (Glenfarne)[20] to work towards the development of a liquified natural gas (LNG) importation and regasification terminal (LNG

[17]Petition at 6.

[18]Order U-22-090(2) at 6.

[19]Order U-22-090(2) at 6–7.

[20]In this order we use "Glenfarne" to refer to Glenfarne Group, LLC and its affiliates, including Glenfarne Energy Transition, LLC.

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Project).[21] ENSTAR states that the LNG Project "may include an LNG marine and import terminal, an onshore LNG storage tank, and/or a regasification facility."[22]

TA350-4

In TA350-4, ENSTAR seeks to recover $4.6 million in costs accumulated in the regulatory asset allowed by Order U-22-090(2), plus carrying costs. ENSTAR proposes to apply carrying costs to its $4.6 million accumulated regulatory asset as of December 31, 2024. To calculate these costs, ENSTAR will apply an annual rate of 5.34% to the regulatory asset balance, compounded monthly through March 2025. This reflects the long-term interest rate that ENSTAR received on its 5-year note, as filed with the Commission in ENSTAR's most recent Annual Operating Report. These costs will be collected through ENSTAR's annual GCA surcharge mechanism by creating a new cost element in its GCA methodology and passing the costs through its GCBA.[23]

ENSTAR explains that future new costs identified in TA350-4 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.[24] ENSTAR further categorizes those costs as project agreements, engineering, and permitting costs.[25]

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 established under Order U-22-090(2).[26]

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[21]January 15, 2025, Special Public Meeting Tr. 18–25; Presentation at 6. ENSTAR further noticed its exclusivity agreement with Glenfarne in its *2024 Fourth Quarter Gas Cost Balance Account Report and Compliance with U-22-090(2) Reporting Requirements*, filed January 15, 2025. This is reiterated in TA350-4 at 2; Attachment A, Affidavit of John D. Sims at 4.

[22]ENSTAR Opening Brief at 6.

[23]TA350-4 at 3–4.

[24]These costs are described in TA350-4 at 3–6.

[25]TA350-4 at 4–6.

[26]TA350-4 at 3.

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Going forward, ENSTAR estimates incurring $5 million each year during the Development Phase.[27] However, the timeline attached to TA350-4 only shows an estimated $2 million in ENSTAR Costs for 2025 and $3.4 million for 2026.[28] 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.[29]

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 if the LNG Project is suspended, terminated, or cancelled.[30] If the LNG Project is built, those Developer Costs will instead be included as capital costs in the new LNG Project.[31] 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 Developer Costs will be between $43 and $48 million. If the LNG Project is suspended, terminated, or cancelled late in development,

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[27]TA350-4 at 3–4.

[28]TA350-4 at Attachment D.

[29]TA350-4 at 5–6.

[30]ENSTAR refers to this as "Scenario 2." TA350-4 at 4.

[31]ENSTAR refers to this as "Scenario 1." TA350-4 at 4.

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"ENSTAR will be obligated to promptly reimburse Developer Costs in a lump sum payment," resulting in a significant increase to the GCA surcharge. [32]

In Orders U-25-004(1) and U-25-004(2) we issued seven questions to the parties for briefing:

1. Other than costs authorized by Order U-22-090(2), explain how the Commission has jurisdiction to consider all of the costs ENSTAR proposes for recovery in TA350-4 given the Federal Energy Regulatory Commission's exclusive jurisdiction over the "siting, construction, expansion, and operation" of a liquified natural gas (LNG) facility under 15 USC Section 717b(e)(1), or other provisions of 15 USC Section 717, and given the exclusion of an LNG import facility from Commission jurisdiction under AS 42.05.711(v).[33]
2. In Order U-22-090(2), we stated we were granting ENSTAR's request to "defer all necessary and prudent third-party costs incurred during its participation in the multi-party working group for studying and securing long term gas supplies in the Cook Inlet" in a regulatory asset. *See* Order U-22-090(2) at 6. ENSTAR states that as of December 17, 2024, it is no longer studying gas supply options but has instead entered into an exclusive arrangement with Glenfarne to import LNG to meet gas supply shortfalls. Explain why the regulatory asset allowed by Order U-22-090(2) should not be terminated from including any further third-party costs as of December 17, 2024, since the reason upon which Order U-22-090(2)'s permission for regulatory asset treatment was based (identifying a path forward) no longer appears to exist.
3. Explain why it is proper for ENSTAR's ratepayers to assume all cost obligations for all risk associated with the described LNG Project's development given that ENSTAR's return on equity is designed, at least in part, to compensate it for its business risk.
4. In Order U-22-090(2), the Commission stated it would investigate the prudency of costs, carrying costs, appropriate amortization period, and other issues related to the regulatory asset at the time ENSTAR requests to include these costs in rates. The Commission further required ENSTAR to make compliance filings until the recovery of the regulatory asset was approved in a ratemaking proceeding. It is the Commission's ratemaking practice is to review regulatory asset costs for inclusion in rates in a rate case, not through a Cost of Power Adjustment (COPA) or a GCA. *See e.g.* Order U-19-101(5) at 8. Since the Commission intended its review of the regulatory asset authorized by Order U-22-090(2) to occur in a rate case proceeding where the prudence and reasonableness of the costs could be reviewed, why is it proper to instead allow ENSTAR to seek cost recovery through its GCA?

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[32]TA350-4 at 4. ENSTAR estimates this impact at approximately $15 per month to residential customers.

[33]AS 42.05.711(w) was relettered by the Revisor as AS 42.05.711(v). In this order, we have therefore replaced all references to AS 42.05.711(w) in our past orders and the parties' briefing with AS 42.05.711(v). *See* 2024 Revisors notes to AS 42.05.711.

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5. Identify any Commission precedent where the Commission has allowed a regulated utility to recover previously approved regulatory asset costs through a COPA or a GCA.
6. Explain how ENSTAR's request to recover its regulatory asset costs through its GCA is consistent with 3 AAC 52.505(a).
7. ENSTAR's TA350-4 at 4 requests inclusion of "Developer Costs" in the GCA under two scenarios. Under Scenario 2, estimated at between $43 and $48 million, ENSTAR requests full cost recovery via its GCA in the event the project "is suspended, terminated or otherwise cancelled." Explain how inclusion of these costs in consumer rates would not be barred by AS 42.05.441(b) since the costs incurred would not result in used and useful plant.

As previously stated, ENSTAR, RAPA, Chugach, HEA, MEA, and GVEA each submitted their own opening and reply briefs, while JLP and RSD submitted theirs jointly. The following is a summary of the parties' briefing.

<u>Briefs</u>

<u>ENSTAR</u>

In response to Question 1, ENSTAR argues that the Federal Energy Regulatory Commission (FERC) jurisdiction does not extend to Natural Gas Act (NGA) exempt intrastate pipeline and local distribution companies (LDCs), such as ENSTAR. ENSTAR also states that 15 U.S.C. § 717(b) explicitly indicates that the NGA and federal preclusion under the NGA do not apply to the intrastate sale and transport of natural gas.[34] 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.[35]

As an analogy, ENSTAR notes we have 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's

[34]ENSTAR Opening Brief at 9.

[35]ENSTAR Opening Brief at 12; ENSTAR Reply at 7–8.

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interconnection with, and any necessary gas purchase agreements or terminal use agreements, are all within our jurisdiction.[36]

ENSTAR further argues that principles of statutory interpretation support our jurisdiction over TA350-4. ENSTAR asserts that the language in AS 42.05.711(v) plainly exempts a FERC-regulated LNG facility from our jurisdiction, but it does not contain any language that precludes our jurisdiction over the costs incurred by an LDC to interconnect with a LNG import facility, or over utility costs stemming from gas sales agreements and terminal use agreements used to take natural gas from the facility.[37]

ENSTAR states it will incur costs associated with securing LNG Project agreements, as well as costs during the engineering and permitting phases of the Project's development. It claims all these development activities "are solidly within the jurisdiction of the Commission."[38]

In response to Question 2, ENSTAR argues that although it signed an exclusivity agreement with Glenfarne on December 17, 2024, it has not yet secured long-term gas supplies and the reasoning behind Order U-22-090(2) still applies. ENSTAR states that it committed to negotiate exclusively with Glenfarne to advance the LNG Project and required respective agreements. It has not reached a final investment decision and there is no completed project in place that secures long-term gas supplies for the Cook Inlet.[39]

In response to Question 3, ENSTAR states that it does not earn a return on its cost of purchased gas which includes a cost of gas supply, pipeline transportation, and gas storage service, implying any linkage of its costs to secure LNG supplies to its return

[36]ENSTAR Opening Brief at 12.

[37]ENSTAR Reply at 5–6.

[38]ENSTAR Opening Brief at 12–13.

[39]ENSTAR Opening Brief at 15; ENSTAR Reply at 10–11.

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on equity (ROE) would be illusory.[40] ENSTAR also argues that in its previous rate case, we found that the regulatory asset created by Order U-22-090(2) offset some of ENSTAR's risk. ENSTAR states that we should not, on the one hand, decline to include gas supply risk as a risk factor in determining ENSTAR's ROE because of the regulatory asset, and then use ENSTAR's ROE as grounds to deny recovery of legitimate costs incurred to secure long-term gas supplies for Southcentral Alaska.[41]

In response to Question 4, ENSTAR argues that in Order U-22-090(2) we referenced "calculation of rates" and "ratemaking procedure" for the regulatory asset and we did not order ENSTAR to propose recovery of its regulatory asset costs through a rate case.[42] ENSTAR contrasts this with our language in Order U-19-101(5), which explicitly stated that the "amortization period [for ENSTAR's regulatory asset to recover extraordinary Earthquake costs] will be determined in ENSTAR's next rate case."[43]

ENSTAR states that it is committed to providing complete transparency into its costs. It claims its GCBA and GCA filings provide significant information for a prudence review warranting approval of the GCA recovery mechanism requested in TA350-4. ENSTAR argues that opposition brief arguments to this recovery mechanism ignore the substantial amount of information that ENSTAR has committed to file in support of its costs and the process we follow to investigate ENSTAR's quarterly GCBA filings and annual GCA filings. ENSTAR states that our Staff undertakes an extensive review of its GCBA and GCA filings and calculations and it is required to answer questions from Commission Staff on issues that require clarification and revise its calculations if

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[40]ENSTAR Opening Brief at 16.

[41]ENSTAR Opening Brief at 16-17; ENSTAR Reply at 14-15.

[42]ENSTAR Opening Brief at 18.

[43]ENSTAR Opening Brief at 18 (citing Order U-19-101(5), *Order Granting Petition to Create Regulatory Asset, Redesignating Commission Panel, and Closing Docket*, dated October 20, 2020, at 8, corrected by Errata Notice, dated October 22, 2020).

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necessary. ENSTAR states that the GCA is a tariff filing that is subject to possible suspension if we determine that we need additional time to review it.[44]

In response to Question 5, ENSTAR states that GCA recovery is not precluded by Commission precedent. ENSTAR further states that no party was able to identify a proceeding that precluded such recovery where the utility met the regulatory criteria in 3 AAC 52.502(a).[45]

ENSTAR also cites two prior orders as analogous support for its request. ENSTAR first cites Order U-86-008(6), where the Alaska Public Utilities Commission ruled that ENSTAR could recover royalty settlement agreement costs relating to natural gas purchased under an approved gas supply contract via a per-Mcf surcharge.[46] ENSTAR says the Commission chose not to authorize recovery via ENSTAR's GCA because at that time the GCA provision provided for the collection of interest, which is no longer the case.[47]

ENSTAR also cites Orders U-01-152(4)[48] and U-01-152(5),[49] where we authorized ENSTAR to defer and recover legal and consulting expenses incurred while obtaining approval of a gas sales agreement as a surcharge. ENSTAR states that we denied recovery via ENSTAR's GCA for the same reason as we did in Order U-86-008(6):

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[44]ENSTAR Reply at 18.

[45]ENSTAR Reply at 19.

[46]ENSTAR Opening Brief at 20 (citing Order U-86-008(6), *Order Allowing Flow-Through of Royalty Gas Settlement and Associated Costs Over a Four-Year Period Without Interest*, dated May 9, 1986, as corrected by Errata Notice, dated May 13, 1986 (Order U-86-008(6)).

[47]ENSTAR Opening Brief at 20.

[48]ENSTAR Opening Brief at 20 (citing Order U-01-152(4), *Order Denying Request for FAS 71 Treatment; Denying Request to Recover Legal and Consulting Expenses Through Gas Cost Adjustment; Requiring Filing; Approving Tariff Sheets; and Extending Suspension Period*, dated January 3, 2023 (Order U-01-152(4)).

[49]ENSTAR Opening Brief at 20 (citing Order U-01-152(5), *Order Accepting Compliance Filing, Approving Proposal, Approving Tariff Sheet, Requiring Filing, and Closing Docket*, dated March 6, 2003 (Order U-01-152(5)).

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the GCA provision provided for the collection of interest from customers.[50] However, ENSTAR claims it has demonstrated in TA350-4 that recovery on a per-Mcf basis as a cost element in ENSTAR's GCA is reasonable and appropriate, and this is analogous to what we allowed in this precedent, even though GCA recovery was denied in those orders.[51]

In response to Question 6, 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 Alaskan history and the costs to proceed with it represent unusual fuel costs.[52] 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. ENSTAR states that the costs will be easily verifiable, and it will continue to file regular updates on the total balance of costs incurred, as well as a narrative statement detailing the progress of the working group[53] in securing gas supply with its second and fourth quarterly GCBA filings.[54]

In response to Question 7, ENSTAR states that AS 42.05.441(b) is inapplicable to its GCA recovery request. If the LNG Project is terminated under Scenario 2, and the developer must be reimbursed, the payment will be for "an operating

[50]ENSTAR Opening Brief at 20.

[51]ENSTAR Opening Brief at 20.

[52]ENSTAR Reply at 19–20.

[53]*See infra* Note 125.

[54]ENSTAR Opening Brief at 21–22.

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expense and not for capital investments in plant and none of the costs in TA350-4 are for the construction phase or competed plant" that would be subject to AS 42.05.441(b).[55]

ENSTAR argues that time is of the essence to move forward with the LNG Project and an approved cost recovery mechanism is necessary for it to access the funding required to continue progress and maintain timelines. ENSTAR states that securing a cost recovery mechanism ensures ENSTAR and other Railbelt utilities can enter into binding agreements with the developer and any delay has a direct negative impact on the LNG Project timeline. ENSTAR characterizes TA350-4 as "the gateway for the Project to advance and avoid undue risk to the public."[56]

RAPA

In response to Question 1, RAPA argues that the development costs at issue in TA350-4 are inextricably linked to their subject matter, an LNG terminal.[57] While recognizing that an LNG import facility normally falls within FERC's exclusive jurisdiction under the NGA, RAPA states an exception exists—the Hinshaw Amendment—that provides the Commission discretionary authority to seek jurisdictional oversight. RAPA asserts this docket will allow the Commission to decide "whether to exert, or not exert, jurisdiction in this case."[58]

The prudency of the costs ENSTAR will incur for the development phase of the LNG terminal ultimately depends on the prudency of development phase decisions regarding the siting and construction of the project. Therefore, RAPA disagrees with ENSTAR and the Railbelt cooperatives[59] that TA350-4 does not implicate a jurisdictional issue. RAPA believes the jurisdictional complexity in this case arises, at least in part,

[55]ENSTAR Opening Brief at 23–24; ENSTAR Reply at 20–21.

[56]ENSTAR Reply at 12–13.

[57]RAPA Opening Brief at 7.

[58]RAPA Opening Brief at 9–14.

[59]Chugach, GVEA, MEA, and HEA.

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from the fact ENSTAR seeks authorization for recovery of costs related to the development of an LNG facility before they are even incurred.[60]

RAPA states that ENSTAR wants the Commission to exercise jurisdiction over costs associated with a facility that ENSTAR wants to construct, prior to construction, and for costs if the project is abandoned. RAPA states that this request is not analogous to an LDC seeking to recover capacity costs stemming from a project that has already been authorized by FERC.[61]

In response to Question 2, RAPA asserts that we specifically linked our approval of the regulatory asset in Order U-22-090(2) to the understanding that the costs in it related to ENSTAR's effort to explore and study long-term solutions to the impending gas supply gap in Cook Inlet. RAPA states that ENSTAR has sufficiently studied long-term solutions to commit itself to developing an LNG facility in proximity to its transmission and storage facilities. And because it has decided how to proceed, and the lack of "any specificity regarding the precise nature of continuing costs," the regulatory asset allowed under Order U-22-090(2) should be terminated as of December 17, 2024.[62]

In response to Question 3, RAPA characterizes ENSTAR's GCA recovery request in TA350-4 as "a blank check for all and any costs incurred in the future related to its efforts to secure natural gas amounts to a request to fully shield its shareholders from the risks [they] knowingly assumed at purchase."[63] RAPA states that ENSTAR currently has the highest ROE of any rate-regulated investor-owned utility in Alaska—11.875%—and ENSTAR provides no rational justification for it continuing to earn its

[60]RAPA Reply at 3–4.

[61]RAPA Reply at 7.

[62]RAPA Opening Brief at 16; RAPA Reply at 9–10.

[63]RAPA Opening Brief at 17.

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current return at a premium while simultaneously eliminating any shareholder risk for which ENSTAR has already been compensated.[64]

RAPA also argues that when we authorized ENSTAR's acquisition by TriSummit Utilities Inc. (TriSummit), we did so with the understanding and expectation that TriSummit maintained sufficient financial resources to invest in new facilities. ENSTAR's request therefore represents an attempt to shift the inherent risks TriSummit already assumed, and for which it has already been rewarded, onto its ratepayers.[65]

In response to Questions 4 through 6, RAPA first states that it cannot find any precedent where we allowed a regulated utility to recover previously approved regulatory asset costs through a COPA or a GCA. RAPA next states that the definition of "adjustment clause" in 3 AAC 52.519(a)(1) limits what may be recovered through the GCA to costs related to "changes in gas, fuel, and purchased power expense," and to conclude that the costs proposed by ENSTAR amount to "changes in gas" expense would extend the definition of "adjustment clause" beyond the regulation's plain language and intent. RAPA also argues that ENSTAR's projected development costs of approximately $5 million are not subject to change at a rate that would cause financial harm if recovered exclusively in base rates as required by 3 AAC 52.502(a)(1).[66]

RAPA argues ENSTAR fails to explain how the costs associated with studying gas supply are "beyond its control." RAPA explains that unlike the market and geopolitical forces that control the current cost of gas itself, ENSTAR maintains control over all the costs it chooses to incur to study gas supply options, and it cannot give Glenfarne a blank check with absolutely no spending limit or controls.[67] Finally, RAPA argues that unlike the third-party cost of gas currently included in ENSTAR's GCA, where

[64]RAPA Opening Brief at 17–18; RAPA Reply at 10–11.

[65]RAPA Reply at 11–12.

[66]RAPA Opening Brief at 19-22; RAPA Reply at 12–13.

[67]RAPA Reply Brief at 14–15.

third-party invoices for gas supplies and commodity contract costs are easily verified, costs related to its efforts to study long-term gas supply options are not easily verifiable. RAPA states that by our noting in Order U-22-090(2) that we would "investigate" the costs included in the regulatory asset, we already recognized that those costs do not lend themselves to easy verification.[68]

In response to Question 7, RAPA states the "used and useful" language of AS 42.05.441(b), and our precedent applying it, relate to the proper valuation of utility property included in rate base. Because terminated project development costs will never attach to "used and useful" property, RAPA suggests "AS 42.05.441(b), on its own, does not necessarily bar recovery of costs associated with an abandoned project."[69] But RAPA says that TA350-4 fails to address how these costs would otherwise be treated from a regulatory accounting perspective.[70]

RAPA concludes that the decision of whether to allow a utility to recover costs associated with cancelled or abandoned projects must be made on a case-by-case basis where a determination of the prudency of the initial investment can be made, as well as the prudency of an ultimate decision to abandon the project. RAPA asserts that it would not be just and reasonable to pass costs on to ratepayers without any opportunity for investigation or examination into their prudency.[71]

JLP/RSD

In response to Question 1, JLP/RSD assert that FERC's exclusive authority and duty to balance the public's interest in interstate natural gas projects preempts actions under state or local law that would affect projects like the LNG facility discussed

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[68]RAPA Opening Brief at 22–23.

[69]RAPA Opening Brief at 25.

[70]RAPA Opening Brief at 25.

[71]RAPA Opening Brief at 25–28.

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in TA350-4.[72] JLP/RSD state that whether we are preempted by the NGA turns on the question of whether the act is a regulation of rates and facilities of natural gas companies used in transportation and sale or resale in interstate commerce.[73]

JLP/RSD argue that we do 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."[74] 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.[75]

JLP/RSD state that it is undisputed that the LNG Project will receive LNG in interstate commerce and therefore it is clearly subject to FERC jurisdiction. JLP/RSD stress that the LNG import facility will not be subject to the exemption set forth in 15 U.S.C. § 717(c) (the Hinshaw Amendment) and ENSTAR improperly seeks to cast itself as an exempt *entity* under 15 U.S.C. § 717(c). JLP/RSD states that a proper analysis focuses on "the *facilities* or *activities* at issue" instead.[76]

JLP/RSD argue that it is improper to require ratepayers to pay ENSTAR for costs attributable to a FERC-regulated LNG import facility. JLP/RSD stress the lack of detail in TA350-4 and state that with the level of information provided, it is apparent that

[72]JLP/RSD Opening Brief at 2–3.

[73]JLP/RSD Opening Brief at 3–5.

[74]JLP/RSD Reply at 3.

[75]JLP/RSD Reply at 3–4.

[76]JLP/RSD Reply at 3–5.

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ENSTAR is largely seeking to recover costs directly related to a FERC-regulated facility that is outside of this Commission's jurisdiction.[77]

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."[78]

As to Joint Development Agreement costs, JLP/RSD state that ENSTAR has failed to provide any detail regarding what its obligations may be under such an agreement and the agreement is clearly related to the development of the LNG import facility, which is a non-jurisdictional project.[79]

As to the Terminal Use Agreement and LNG Sales and Purchase Agreement, JLP/RSD state that "ENSTAR apparently plans to purchase gas outside of Alaska for import to the facility and to utilize the facility to regasify the LNG for use in Alaska." JLP/RSD state that this "activity constitutes interstate transportation of gas and is squarely within FERC's jurisdiction."[80]

As to any gas sales agreement, JLP/RSD state that "costs associated exclusively with negotiating a gas sales agreement for the purchase of and use of gas within Alaska may be properly recoverable to the extent they are prudently incurred." However, JLP/RSD state such costs are only recoverable after they have been incurred

[77]JLP/RSD Reply at 5–7.

[78]JLP/RSD Opening Brief at 5–6.

[79]JLP/RSD Reply at 7.

[80]JLP/RSD Reply at 7.

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and after we have had an opportunity to review them. JLP/RSD conclude that "ENSTAR improperly seeks pre-approval to recover such costs long before they are incurred."[81]

As to ENSTAR's engineering and project management oversight of the developer's activities, JLP/RSD state that we "cannot properly cause ENSTAR ratepayers to pay for engineering and project management oversight for a non-jurisdictional project through jurisdictional rates."[82] JLP/RSD state that any costs associated with engineering and project management for a FERC-regulated facility may not be recovered through rates we set.

JLP/RSD state that to the extent permitting costs are associated with an LNG import facility outside of our jurisdiction, such costs are also not properly recoverable through rates set by us.[83]

In response to Question 2, JLP/RSD state that ENSTAR's request falls far outside our scope of approval in Order U-22-090(2). JLP/RSD also argue costs incurred under the exclusivity agreement are "amounts allocated to future capital projects," which should similarly be "exempted from recovery under Order U-22-090(2)."[84]

In response to Question 3, JLP/RSD argue that the ROE received by ENSTAR "serves as compensation for the assumption of risks associated with ENSTAR's business operations, including the risk that speculative projects will never become used and useful." JLP/RSD surmise that by seeking to recover costs associated with the LNG Project through rates, ENSTAR is "shifting a risk that it has assumed onto ratepayers."[85]

[81]JLP/RSD Reply at 9.
[82]JLP/RSD Reply at 10.
[83]JLP/RSD Reply at 10–11.
[84]JLP/RSD Opening Brief at 8–9.
[85]JLP/RSD Opening Brief at 9–11.

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JLP/RSD find further support for their argument by citing our finding of financial fitness for ENSTAR's parent TriSummit in Order U-22-032(6)/U-22-033(6), where we said:

> We further find that TriSummit Utilities Inc.'s past financial performance and demonstrated financial resources are sufficient to provide financial support to ENSTAR Natural Gas Company, LLC; Alaska Pipeline Company, LLC; and CINGSA, as may be required to fund investment in new facilities and costs associated with unexpected occurrences.[86]

JLP/RSD also cite to Order U-22-081(14) where we noted that the creation of the regulatory asset in Order U-22-090(2) "provides additional insulation for ENSTAR from losses or costs incurred to find a long-term supply of gas and shifts the risk and costs to future ratepayers" and "any negative economic factors that affect a utility also affect ratepayers at a personal level and it is not proper to insulate the utility and shift all negative effects to the ratepayers."[87]

Further, JLP/RSD cite our order setting ENSTAR's ROE at 11.875% which was found to be beneficial for ENSTAR to secure new gas supplies:

> We acknowledge that there is a looming gas shortage in the Cook Inlet and ENSTAR may have to spend or borrow significant funds in the future to secure a gas supply. Meanwhile, ENSTAR's current ROE has been steadily earning sufficient revenue and maintaining healthy equity for the company. We find that ENSTAR's current equity position will be beneficial for ENSTAR if those investments have to be made. [88]

JLP/RSD also point to FERC authority on this issue. They note FERC has held, "the financial risk of committing funds to study or to initiate projects which may be

[86]JLP/RSD Opening Brief at 10 (citing Order U-22-032(6)/U-22-033(6), *Order Approving Applications Effective on the Date of the Closing of the Transactions, Requiring Filings, and Amending Docket Caption*, dated December 21, 2021 (Order U-22-032(6) /U-22-033(6)) at 39).

[87]JLP/RSD Opening Brief at 10 (citing Order U-22-081(14), *Order Resolving Return of Equity Issue, Requiring Filings, and Redesignating Commission Panel*, dated April 8, 2024 (U-22-081(14)) at 33).

[88]JLP/RSD Opening Brief at 10 (citing Order U-22-081(14) at 34).

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completed is a business risk which management and the stockholders should bear—one of the business risks for which they earn a rate of return."[89]

In response to Question 4, JLP/RSD state that it is ENSTAR's burden to establish the prudence of costs it seeks to include in rates, and it is impossible to determine now whether the costs ENSTAR will incur in the future are prudent, necessary, or provide any benefit to ratepayers; nevertheless, this is precisely what ENSTAR requests with TA350-4. JLP/RSD assert that ENSTAR seeks recovery of costs related to engaging legal, commercial, and technical experts which are not a commodity cost and should be treated differently than other gas costs. JLP/RSD state that ENSTAR's previous attempt to recover legal and consulting costs through a GCA was rejected, and this conclusion is consistent with our recent letter order issued denying TA384-13 and TA385-13, where we said:

> The COPA is not a catch-all for any "fuel-related" expense. The lease expenses in TA384-13 include construction costs, utilities, property taxes, and many other non-fuel components. The operation expenses in TA385-13 include PSI's overhead, hiring/contracting, insurance, and other non-fuel components as well. These expenses are negotiated, fixed recurring charges, which are not subject to change at a rate that would cause financial harm if recovered exclusively through base rates as required by 3 AAC 52.502(a)(1) and are not beyond control of the utility as required by 3 AAC 52.502(a)(2).[90]

Finally, JLP/RSD state that costs related to development, engineering, procurement, commissioning, construction, and operation of the pipeline required to receive regasified LNG are capital expenditures related to the construction of intrastate pipeline facilities and may be properly recovered through rates, but not through the GCA mechanism. JLP/RSD state that "after such facilities are constructed, ENSTAR may seek

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[89]JLP/RSD Opening Brief at 11 (citing *Transwestern Pipeline Co.*, 14 FERC ¶ 63,065, 65,199 (1981)).

[90]JLP/RSD Opening Brief at 12–13; JLP/RSD Reply at 11–12 (quoting TA384-13 and TA385-13; Letter Order No. L2500013, dated January 17, 2025).

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Commission approval for including them in rate base and recovering associated costs through rates."[91]

In response to Question 5, JLP/RSD state that a survey of Commission orders revealed no precedent allowing the recovery of previously approved regulatory asset costs through a COPA or a GCA. JLP/RSD state that ENSTAR is attempting to use elements of our cost-based ratemaking authority to manage risk for a project regulated by FERC under market-based regulation. JLP/RSD assert that ENSTAR seeks the protection of cost-based ratemaking principles to protect its investment while the LNG Project, if it is ever constructed, will provide ratepayers with none of the benefits of cost-based ratemaking.[92]

In response to Question 6, JLP/RSD state that TA350-4 is not consistent with the provisions of 3 AAC 52.502(a). They assert that ENSTAR has failed to show that it will face financial harm if the costs are recovered exclusively in base rates. JLP/RSD further assert that ENSTAR did not support ENSTAR's President Sims' statement that "[a]bsent a cost element, ENSTAR will have to find a different mechanism for the recovery of costs if the project is suspended," which ENSTAR asserts "will cause significant delay." JLP/RSD state that "ENSTAR fails to explain how costs driven by contractual arrangements that it alone will enter into are outside of ENSTAR's control."[93]

In response to Question 7, JLP/RSD argues that if the LNG Project does not proceed to construction, reimbursing Glenfarne for up to $48 million would be inconsistent with the well-settled principle that only operating expenses associated with used and useful plant can be included in rates. JLP/RSD state that the used and useful principle is intended to protect ratepayers from bearing the cost of the exact type of speculative investment that ENSTAR seeks to recover and ENSTAR should not be

[91]JLP/RSD Reply at 10.

[92]JLP/RSD Opening Brief at 6–7.

[93]JLP/RSD Opening Brief at 14–15.

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permitted to recover its investment unless and until it satisfies the used and useful standard.[94]

Chugach

In response to Question 1, Chugach 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).[95] However, Chugach points out FERC's jurisdiction does not extend to price regulation of imported LNG,[96] 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.[97]

Chugach argues FERC's jurisdiction over the LNG import facility ENSTAR describes in TA350-4 is not subject to the Hinshaw Amendment, which could otherwise provide a potential vehicle for this Commission's oversight. Instead, FERC's jurisdiction, and the application of the Hinshaw Amendment, depends on whether foreign commerce is involved. As Chugach explains, "the Hinshaw Amendment's exemption from FERC's Section 7 jurisdiction for intrastate pipelines receiving interstate gas within a state for ultimate consumption within that same state has no bearing on FERC's Section 3 jurisdiction over LNG terminals operating in foreign commerce."[98] Since the Glenfarne LNG facility will be involved in foreign commerce, Chugach argues there can be no assertion of this Commission's jurisdiction over the facility, nor any authority to assess whether any duplication of LNG import facilities would be barred by AS 42.05.221(d).[99]

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[94]JLP/RSD Opening Brief at 16; JLP/RSD Reply 11 (citing Order U-04-022(38) /U-04-023(38), *Order Approving Interim Rates as Permanent Rates and Closing Dockets*, dated, June 27, 2011).

[95]Chugach Opening Brief at 2–3; Chugach Reply at 7.

[96]Chugach Opening Brief at 5.

[97]Chugach Opening Brief at 6–7; Chugach Reply at 7–8.

[98]Chugach Reply at 2–4.

[99]Chugach Reply at 4–6.

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In response to Questions 2 and 3, Chugach takes no position on the status of ENSTAR's authorized regulatory asset or ENSTAR's request in general.[100]

Chugach also takes no position on Question 4, but notes a similar requirement was imposed upon Chugach when it requested authorization to create a regulatory asset to defer and amortize transaction costs associated with its acquisition of the Anchorage Municipal Light & Power's assets. There we stated "consistent with Chugach's request and our practice, we will allow recovery through future rates of only those transaction costs that were prudently incurred."[101] Chugach also argues that when GCA or COPA cost recovery is requested, it would "typically be reviewed for potential recovery through rates in an after-the-fact proceeding when the proposed contracts have been executed and the costs to be recovered are known."[102]

In response to Question 5, Chugach states it is unaware of any precedent where the Commission has allowed a regulated utility to recover previously approved regulatory asset costs through a COPA or a GCA. But Chugach suggests "that the fact that costs are associated with a regulatory asset should not be determinative of whether those costs can be appropriately included within a COPA or a GCA."[103]

In response to Question 6, Chugach takes no position on whether TA350-4 is consistent with 3 AAC 52.505(a).[104]

In response to Question 7, Chugach takes no position on the reasonableness of TA350-4 but cites to the used and useful standard in *BP Pipelines*

[100]Chugach Opening Brief at 14.

[101]Chugach Opening Brief at 15 (citing Order U-18-102(44)/U-19-020(39)/U-19-021(39), *Order Accepting Stipulation in Part, Subject to Conditions; Amending, Transferring and Issuing Certificates of Public Convenience and Necessity, Subject to Conditions; Addressing Beluga River Unit Management, Gas Transfer Prices, and Third Party Sales Gas Pricing; and Requiring Filings*, dated May 28, 2020, at 141–142).

[102]Chugach Reply Brief at 9.

[103]Chugach Opening Brief at 15.

[104]Chugach Opening Brief at 15–16.

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(Alaska) Inc., 2014 WL 897389 (Alaska 2014) as guidance for our analysis. Chugach states that we should endeavor to ensure that, absent good cause, long-standing regulatory principles like the used-and-useful standard are consistently applied to regulated utilities in Alaska.[105]

GVEA, HEA, and MEA

In response to Question 1, GVEA argues that we have jurisdiction to consider ENSTAR's costs as part of our statutory authority over the rates, services, operations, and practices of certificated public utilities and pipelines. GVEA asserts that we should not complicate our decision-making process by focusing on an LNG terminal facility that is not constructed or operating. GVEA asserts that jurisdiction over an LNG facility is a separate issue that is not ripe for our consideration.[106]

HEA argues the costs addressed by TA350-4 are related to ENSTAR's efforts to secure a long-term gas supply. HEA states that ENSTAR and Glenfarne have only signed an exclusivity agreement related to the development phase of the LNG Project and neither has brought forth an application for the siting, construction, expansion, or operation of an LNG terminal, which falls under FERC's exclusive jurisdiction.[107]

MEA claims the jurisdictional issues presented in TA350-4 boil down to the question of "what constitutes LNG import activity versus activities undertaken to distribute natural gas in state and where is the line of demarcation between the two."[108] While MEA does not squarely answer its own question,[109] it does argue that ENSTAR is not asking to construct an LNG import facility, but instead is only asking to recover costs associated

[105]Chugach Opening Brief at 17.

[106]GVEA Opening Brief at 1–3.

[107]HEA Opening Brief at 5.

[108]MEA Reply at 4–5.

[109]MEA says the demarcation line between FERC and Commission jurisdiction depends on "how the RCA interprets its authority versus FERC's and applicable statutory or case law exceptions to the definition of 'LNG terminal.'" MEA Reply at 5.

with studying and securing long-term gas supply and developer costs. MEA states that if Glenfarne does not move forward to construction of the project there will be no LNG import facility to fall under FERC's jurisdiction, therefore the recovery of the costs in ENSTAR's rates falls within our regulatory authority.[110]

In response to Question 2, GVEA, MEA and HEA each argue that the exclusivity agreement between ENSTAR and Glenfarne is a beginning, not the end, of the process to secure natural gas for the Railbelt. As GVEA puts it, "[u]ntil such time that ENSTAR is no longer 'studying gas supply options' but has *secured long-term natural gas for the Cook Inlet*, GVEA believes that the regulatory asset allowed by . . . Order U-22-090(2) should not be terminated because the reason upon which the Commission's permission for regulatory asset treatment persists."[111]

HEA also notes its own unique circumstances. HEA states that it is currently relying on an interruptible gas supply agreement with ENSTAR, which to its knowledge is the first time a Railbelt utility has not had access to a firm gas supply contract and is at risk of curtailment due to lack of a fuel supply.[112] It therefore urges us not to erect barriers to the LNG Project's economics based on aspersions related to ENSTAR's corporate structure.[113]

In response to Question 3, GVEA and MEA state that ENSTAR will not be dedicating any capital assets associated with these agreements, therefore there is no investment being made on which a return can be earned.[114] HEA does not view the development and eventual construction of Alaska's first LNG import facility as a normal cost of business for ENSTAR that was or should have been contemplated by us and

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[110]MEA Opening Brief at 3.

[111]GVEA Opening Brief at 3; HEA Opening Brief at 7; MEA Opening Brief at 4, Reply at 2–3.

[112]HEA Reply at 2–3.

[113]HEA Reply at 3–4.

[114]GVEA Opening Brief at 4; MEA Opening Brief at 4.

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included in ENSTAR's ROE. Nor does HEA view ENSTAR's ROE as covering the unique risks of the LNG Project which entails significant urgency, complexity, scale, and capital requirements.[115]

In response to Question 4, GVEA and HEA state we used the term "rate making proceeding" in Order U-22-090(2), and not "rate case," making it unclear what we were requiring.[116] While MEA acknowledges we intended the regulatory asset authorized by Order U-22-090(2) to be reviewed in a rate case, it alternatively supports ENSTAR's request to use its GCA provided "comparable transparency" to "what would be expected in a rate case" is provided.[117]

In response to Question 5, GVEA and MEA state they are unaware of circumstances where a public utility was permitted to create a regulatory asset and then allowed a cost recovery approach like what ENSTAR is requesting.[118] HEA, however, points to its approved Wholesale Power Cost Rate Adjustment (WPCRA) charge proposed in TA260-32 as analogous. HEA states that both the WPCRA and the GCA are adjustment mechanisms meant to ensure that utilities can recover their costs in real time to limit excessive financial risk.[119]

In response to Question 6, GVEA and HEA assert that the costs ENSTAR seeks to recover in TA350-4 meet the criteria for GCA recovery outlined in 3 AAC 52.502(a).[120] GVEA also argues that outside of a rate case, GCA recovery is the only available vehicle for ENSTAR to use to recover these costs.[121]

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[115]HEA Opening Brief at 8–9.

[116]GVEA Opening Brief at 4; HEA Opening Brief at 10.

[117]MEA Opening Brief at 4.

[118]GVEA Opening Brief at 5; MEA Opening Brief at 5.

[119]HEA Opening Brief at 11–12.

[120]GVEA Opening Brief at 6; HEA Opening Brief at 12–13.

[121]GVEA Opening Brief at 6.

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In response to Question 7, GVEA, MEA and HEA all state (or imply) that the development costs incurred for a terminated project are not subject to AS 42.05.441(b). The statute applies to rate base valuation which would not be implicated where a facility is not built.[122] In addition, MEA argues allowing ENSTAR to recover Developer Costs if the Project is terminated is analogous to situations where the Commission has reviewed requests to allow acquisition adjustments in rates. As MEA puts it, if the Project is terminated, then the public interest tests we employ to review acquisition adjustments can be used here to conclude ENSTAR's lump-sum payment recovery under Scenario 2 would be in the public interest.[123]

Analysis

Jurisdiction

There are several jurisdictional issues raised by the parties. The first is whether this Commission may seek to acquire jurisdiction over an LNG import facility such as that discussed in TA350-4. While no party disputes that FERC has exclusive jurisdiction over the "siting, construction, expansion, or operation" of an LNG import facility used in either interstate or foreign commerce under the NGA,[124] RAPA points to the Hinshaw Amendment as a vehicle for this Commission to assume jurisdiction.

[122]HEA Opening Brief at 13–14; GVEA Opening Brief at 7; MEA Opening Brief at 6.

[123]MEA Reply Brief at 3–4.

[124]15 USC § 717b(e)(1). The NGA defines an LNG terminal to include: "[A]ll natural gas facilities located onshore or in State waters that are used to receive, unload, load, store, transport, gasify, liquify, or process natural gas that is imported to the United States from a foreign country, exported to a foreign country from the United States, or transported in interstate commerce by waterborne vessel . . . ." 15 USC § 717a(11).

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The Hinshaw Amendment is codified at 15 USC § 717(c). It provides:

> The provisions of this chapter shall not apply to any person engaged in or legally authorized to engage in the transportation in interstate commerce or the sale in interstate commerce for resale, of natural gas received by such person from another person within or at the boundary of a State if all the natural gas so received is ultimately consumed within such State, or to any facilities used by such person for such transportation or sale, provided that the rates and service of such person and facilities be subject to regulation by a State commission. The matters exempted from the provisions of this chapter by this subsection are declared to be matters primarily of local concern and subject to regulation by the several States. A certification from such State commission to the Federal Power Commission that such State commission has regulatory jurisdiction over rates and service of such person and facilities and is exercising such jurisdiction shall constitute conclusive evidence of such regulatory power or jurisdiction.

Because LNG imported to the proposed developer's facility is to be transported and consumed within Alaska, RAPA claims the Hinshaw Amendment allows us to seek jurisdictional oversight of the facility. We disagree. ENSTAR's LNG source is likely to be from Canada or Mexico, meaning foreign commerce, not interstate commerce is implicated.[125] The Hinshaw Amendment by its own terms applies to interstate commerce, not foreign commerce. FERC's jurisdiction over an LNG import facility appears to be exclusive where foreign commerce is the source of LNG imports.[126]

We note that even if LNG was ultimately obtained from a domestic source, or if access to state commission jurisdiction under the Hinshaw Amendment was as broad

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[125]As ENSTAR states in TA350-4 at 1–2, the Railbelt electric utilities and ENSTAR formed a "Working Group" in 2022 to identify options to meet future gas supply needs. The Working Group contracted with the Berkley Research Group (BRG) to provide guidance. BRG produced a report for the Working Group in June 2023 identifying Canada or Mexico as the most likely source for imported LNG. *See* www.enstarnaturalgas.com/wp-content/uploads/2023/06/CIGSP-Phase-I-Report-BRG-28June2023.pdf at page 50.

[126]*See New Forest Energy, LLC*, 174 FERC ¶ 61,207 (2021), *aff'd* 36 F.4th 1172 (D.C. Cir. 2022) at P. 28 ("Because the New Fortress Energy facility includes facilities dedicated to the importation of LNG in foreign commerce, is located at or near the point of import, and includes a pipeline that sends out gas, it is an LNG terminal subject to the Commission's jurisdiction."); *Trans-Foreland Pipeline Co. LLC*, 173 FERC ¶ 61,253 (2020) at P. 8 ("Because the proposed facilities will be used to import natural gas from foreign countries, the construction and operation of the proposed facilities and site of their location require approval by the Commission under Section 3 of the NGA.").

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as RAPA claims, we do not see a viable path to acquiring jurisdiction. 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."

This subsection was adopted via HB 50 in 2024. Not only does this subsection's express language appear to clearly bar our assumption of jurisdiction, but the legislative history underlying its enactment reinforces this conclusion.[127] Therefore, if we were to assert LNG facility oversight under the Hinshaw Amendment which RAPA suggests is possible, we would be disregarding the jurisdictional side boards imposed on us by the legislature. We decline to do so.[128]

The second jurisdictional issue presented by the parties addresses whether FERC or this Commission's jurisdiction would attach to development costs identified in TA350-4. RAPA claims these costs "are inextricably linked to their subject matter, an LNG terminal."[129] JLP/RSD make similar arguments.[130]

We note initially that a different analysis applies when looking at development costs under ENSTAR's Scenario 1 compared to Scenario 2. Under Scenario 1, if the LNG Project advances to construction, the only development costs

[127]JLP/RSD Opening Brief at 5 & n.19 points to minutes and amendments preceding the adoption of AS 42.05.711(v). Section 40 of Version T, SCS CSHB50, dated May 10, 2024, had included a proposed amendment to AS 42.05.381 which would have granted the Commission jurisdiction to "consider the investment of a public utility in a liquified natural gas import facility as utility property, even if the liquified natural gas import or export facility is exempt from regulation by the commission." This subsection was eliminated by Amendment 4, dated May 11, 2024. *See* JLP/RSD Opening Brief at Exhibit 2.

[128]Because we do not have jurisdiction over an LNG import facility, we also lack authority to assess whether a duplication of facilities, such as that announced by Harvest Midstream, would be contrary to the public interest under AS 42.05.221(d).

[129]RAPA Opening Brief at 7.

[130]JLP/RSD Reply at 5–11.

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addressed for GCA recovery in TA350-4 are ENSTAR's development costs.[131] Case law cited by Chugach clearly shows we would maintain jurisdiction to review ENSTAR's Scenario 1 development costs,[132] but only to the extent that they are not related to the siting, construction or operation of the LNG facility. Costs related to the siting, construction, or operation of the LNG facility would be non-jurisdictional and excluded from rates.[133]

Under Scenario 2, a different analysis applies. In TA350-4, ENSTAR says it will seek GCA recovery of its own development costs (estimated at $5.4 million) and the Developer's Costs (estimated at $43 to $48 million) if the LNG Project is "suspended, terminated or otherwise cancelled."[134] We do not see a FERC jurisdictional problem under Scenario 2. If the LNG Project is terminated or cancelled, there will be no LNG import facility upon which FERC jurisdiction could attach. We will be free to examine these

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[131]Developer Costs are not slated for GCA recovery under Scenario 1. ENSTAR says they would instead be "recovered through supply purchase or import terminal use agreements." TA350-4 at 4.

[132]*See* Chugach Opening Brief at 7 & n.25 (citing *Transcontinental Gas Pipe Line Co., LLC*, 190 FERC ¶ 61,048 at P. 36 (2018) and *Mountain Valley Pipeline, LLC*, 161 FERC ¶ 61,043 at P. 53 (2017)).

[133]*See*, *Florida Gas Transmission Co. v. F.E.R.C.*, 604 F.3d 636, 646-47 (D.C. Cir. 2010) (holding FERC did not have jurisdiction to establish a cost-recovery mechanism for expenses incurred by non-jurisdictional downstream gas users, such as electric generators and local distribution companies, when they modified and upgraded their equipment to handle gas delivered under new interchangeability standards for imported LNG. FERC's jurisdiction was limited to ensuring that the transportation service rates, terms, and conditions were just and reasonable, and it could not require non-jurisdictional parties to reimburse these costs); *Williston Basin Interstate Pipeline Co.*, 76 FERC ¶ 61,066, 61,382 (1996) ("The non-jurisdictional costs are excluded because no non-jurisdictional costs should be included in a pipeline's jurisdictional rates."); *Venice Gathering Co. and Venice Energy Services Chevron U.S.A. Inc., Venice Gathering Co., Venice Energy Services Co., and Venice Gathering System, L.L.C. Samedan Oil Corp.*, 97 FERC ¶ 61,045, 61,242 n.18 (F.E.R.C. 2001) ("The costs associated with the Delta Gathering Station were previously included in the transmission rates for the Venice system. However, if that facility was declared to be non-jurisdictional, the costs would be removed from the Venice system's rate base and, thus, would not be recovered by the transmission rates. The separate rates charged for services provided to shippers by the Delta Gathering Station, if it was found to be non-jurisdictional, would not be regulated by the Commission.").

[134]TA350-4 at 4.

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costs for prudence and reasonableness when they are presented in a rate case for our review.[135]

A third jurisdictional question arose in conjunction with ENSTAR's description of gas supply and terminal use agreements that will be presented to us after the LNG Project is viable. As ENSTAR argues:

> FERC jurisdiction ends where the LNG Terminal connects to a state-regulated pipeline. . . . [and it] does not extend to the purchase of LNG supply or the purchase of the service from LNG importation and regasification facilities. Instead, intrastate activities in Alaska by a[n] [LDC] local natural gas transportation and distribution company are regulated by this Commission – including interactions with an LNG Terminal regulated by FERC.[136]

To illustrate this point, ENSTAR provides a useful analogy:

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[135]We were concerned at the prehearing conference held in this docket on February 13, 2025, when ENSTAR's president emphatically stated ENSTAR would not consider participating in or using an alternative LNG import facility project recently announced. *See* Tr. 12-13:

> [I]n 2024, I made the very, very clear statement to the group that there is no world in which ENSTAR will participate in a project that has a Hilcorp-owned entity as the importer of natural gas. . . . ENSTAR, as a natural gas utility, will not be reliant upon an entity that provides Cook Inlet gas, Cook Inlet storage and the importation of LNG, full stop. We cannot do that from a long-term strategic perspective, from a planning perspective. That is way too much risk for our customers . . . . I also believe that there's a massive benefit to the ratepayer for participating in the same projects. Chugach has said that that is not a competing project, they are 100 percent correct. It does not compete with what we are looking to do in any way, shape or form because ENSTAR will not participate in that project because of the reasons I've stated.

We emphasize that ENSTAR's decision to enter into an exclusivity agreement with Glenfarne does not usurp or limit the scope of our prudence review authority. Thus, our prudence review of development costs under either Scenario 1 or 2, as well as our review of any gas supply or terminal use agreements, will likely include an assessment of whether a prudent utility manager should have considered or selected a competing LNG import facility option to meet ENSTAR's gas supply needs.

[136]ENSTAR Opening Brief at 10–11.

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> Ultimately, these costs are no different from a Commission jurisdiction standpoint than ENSTAR's costs to negotiate and enter into a gas sales agreement with an unregulated (by the Commission) Cook Inlet gas producer. Like an LNG import terminal, the Commission does not have jurisdiction over the siting or construction of Cook Inlet producers' platforms and pipelines, but it does have jurisdiction to regulate ENSTAR as a utility-offtaker of those facilities. The import facility itself may not be regulated by this Commission, but ENSTAR's interconnection with an LNG Terminal, and any necessary gas purchase agreements or terminal use agreements, are all firmly within this Commission's jurisdiction.[137]

JLP/RSD dispute this. JLP/RSD claim because gas sales and terminal use agreements stem from ENSTAR's plans to "purchase gas outside of Alaska for import to the facility and to utilize the facility to regasify the LNG for use in Alaska," that "[t]his activity constitutes interstate transportation of gas and is squarely within FERC's jurisdiction."[138]

We disagree.[139] We find ENSTAR's analogy to our current jurisdictional boundaries for our review of Cook Inlet gas supply contracts useful. We also find case law presented by Chugach persuasive on this issue. Both *Transcontinental Gas*[140] and

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[137]ENSTAR Opening Brief at 12.

[138]JLP/RSD Reply at 7.

[139]We note that we do not have any gas supply or terminal use agreements before us. Nor do we have specific facts to assess the contours of any such agreements. Therefore, our opinion on this issue is generic and based only on the generalities presented and is subject to modification to the extent any agreements brought before us later warrant our doing so.

[140]190 FERC ¶ 61,048 at P. 36 (2025) ("[W]e reaffirm that oversight of LDC procurement decisions is outside the Commission's jurisdiction and best left to state regulators. Absent credible evidence of self-dealing, an attempt by the Commission to look behind precedent agreements to independently review the decision-making of an LDC might infringe upon the role of state regulators in determining the prudency of expenditures by the utilities they regulate. Therefore, 'issues related to the utility's ability to recover costs associated with its decision to subscribe for service on the [project] involve matters to be determined by the [state regulator]; those concerns are beyond the scope of the Commission's jurisdiction. Here, New Jersey has the authority to conduct a prudency review to ascertain whether an LDC's capacity purchases and attendant costs are just and reasonable and whether it is appropriate to pass those costs onto customers.").

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Mountain Valley Pipeline[141] are on point and show 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.

Termination Date for the $4.6 Million Regulatory Asset

As an initial matter, in TA350-4, ENSTAR does not appear to request it be able to continue to accrue future costs associated with its development plans in the regulatory asset authorized by Order U-22-090(2).[142] Thus our Question 2, asking if the regulatory asset authorized by Order U-22-090(2) should be capped as of December 17, 2024, seems to be answered by ENSTAR's TA request. However, ENSTAR's briefing still suggests the regulatory asset should remain open to include additional accrued costs.

ENSTAR does this by pointing to language in Order U-22-090(2) which says the regulatory asset will be allowed "to accumulate and defer the *costs associated with studying and securing* long term gas supplies." Because ENSTAR has not yet *secured* a long-term gas supply, it argues it should still be allowed to include costs in the regulatory asset we previously approved.[143]

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[141]161 FERC ¶ 61,043 at P. 53 (2017)("State utility regulators must approve any expenditures by state-regulated utilities. We disagree with commenters who suggest that once the Commission has made a determination in this proceeding, state regulators cannot effectively review the expenditures of utilities that they regulate. In fact, any attempt by the Commission to look behind the precedent agreements in this proceeding might infringe upon the role of state regulators in determining the prudence of expenditures by the utilities that they regulate. . . . Issues related to a utility's ability to recover costs associated with its decision to subscribe for service . . . involve matters to be determined by the relevant state utility commissions; those concerns are beyond the Commission's jurisdiction.").

[142]ENSTAR instead says it will remove "[t]he balance accumulated under the previously approved regulatory asset and corresponding carrying costs" and record them "as a new cost element in ENSTAR's GCBA. The costs that ENSTAR anticipates incurring going forward (Future Costs) will be included in the same cost element in ENSTAR's annual GCA calculations." TA350-4 at 3.

[143]ENSTAR Opening Brief at 15.

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We disagree. We approved the regulatory asset in Order U-22-090(2) based on ENSTAR's participation in a "multiparty working group" that was studying available choices to meet long term gas supplies. By its own admission, as of December 17, 2024, ENSTAR has signed an exclusivity agreement with Glenfarne. It has chosen to partner with Glenfarne to pursue this project.[144]

ENSTAR's participation in this multiparty working group was also an important consideration for us in allowing the regulatory asset we approved in Order U-22-090(2). As we stated, "We also find mitigating that ENSTAR's costs are part of a multiparty working group and therefore *are not entirely within ENSTAR's control*."[145] This is no longer the case. The multiparty mitigation governor we relied on in Order U-22-090(2) no longer exists. We therefore terminate the regulatory asset authorized by Order U-22-090(2) effective December 17, 2024.

GCA Recovery Request for $4.6 Million Regulatory Asset

In Questions 4 and 5 listed in Order U-25-004(1), we asked whether it would be appropriate to allow recovery of the $4.6 million regulatory asset through ENSTAR's GCA given our language in Order U-22-090(2), and whether the parties could identify precedent where we have allowed a regulatory asset to be recovered via a GCA or a COPA.

ENSTAR and the other Railbelt electric utility parties first point to language in Order U-22-090(2) where we state our review of the regulatory asset costs will occur in a "ratemaking proceeding" and that ENSTAR's GCA is a "rate" as defined by AS 42.05.990(7).[146] While we agree that the term "rate" is defined in the statute expansively, we disagree it was our intent in Order U-22-090(2) to review ENSTAR's regulatory asset costs in anything other than a rate case. We noted in our order that

[144] TA350-4 at 2.

[145] Order U-22-090(2) at 6 (emphasis added).

[146] ENSTAR Opening Brief at 18.

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ENSTAR would need to "meet its evidentiary burden regarding the necessity and prudence of costs, carrying costs, or appropriate amortization periods."[147] GCA filings are not reviewed in a comprehensive manner. The GCA and COPA adjustment clause mechanisms are a streamlined review process designed primarily to accommodate variable fuel costs which are easily verifiable. As we stated in a recent order:

> Though there may be situations where more prompt recovery of costs provides a benefit to cooperative customers, that does not provide a broad justification for a waiver of 3 AAC 52.502(a) requirements or for cost recovery through the COPA. Such a justification would allow the inclusion of a potentially unlimited number of operational expenses incurred by a utility.[148]

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. While first stating the costs included in the $4.6 million regulatory asset pertain to "studying and securing long term gas supply,"[149] 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.[150] However, as RAPA 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).[151]

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.

Nor does the precedent ENSTAR cites show its request for GCA recovery is proper. ENSTAR first cites Order U-86-008(6), but this order rejected GCA recovery

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[147]Order U-22-090(2) at 6

[148]Letter Order No. L2500075, dated March 4, 2025, at 2.

[149]TA350-4 at 3.

[150]ENSTAR Reply at 19–20.

[151]3 AAC 52.519(a)(1) reads:

> "adjustment clause" means a mechanism designed to recover changes in gas, fuel, and purchased power expenses; "adjustment clause" includes COPAs and GCAs[.]

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of royalty settlement costs baked into a gas supply contract, finding them ill-suited for GCA inclusion:

> The Commission must now determine the appropriate mechanism to use in collecting the settlement amount from ENSTAR's ratepayers. Because the Commission has determined that the ratepayers should not pay interest costs, the PGCA [Purchased Gas Cost Adjustment] cannot be used. Even if the Commission were to adopt ENSTAR's position that the costs should be recovered with interest, the PGCA would not be an appropriate vehicle for recovery. The PGCA balancing account is based on the difference between estimated consumption and actual consumption and the difference between estimated unit cost and actual unit cost of the gas purchased. As previously discussed, *the royalty settlement amount is not tied to specific gas purchases, either as to quantity or as to unit cost. It is simply inappropriate to try to fit this unusual expense into the scheme of the PGCA*.[152]

We reached the same conclusion in another ENSTAR order. In Order U-01-152(4), we considered ENSTAR's request for GCA recovery of legal and consulting costs incurred in obtaining approval of a gas supply agreement with Unocal in Docket U-01-007. We stated:

> As a matter of precedent, in Order U-86-8(6), the Commission stated that customers should pay for legal and consulting costs associated with the cost of gas; however, the *legal and consulting costs are not a commodity cost and should be treated differently than other gas costs*. The Commission added that including such costs in ENSTAR's GCA would result in ENSTAR collecting interest from ratepayers on the legal and consulting expenses. The Commission found that it was inappropriate for customers to pay interest costs, *because the purpose of the GCA is to balance the difference between the estimated and actual costs of gas.* This case is virtually identical and ENSTAR has not provided any justification to convince us to violate that precedent and grant ENSTAR's request to include the legal and consulting expenses in its GCA.[153]

ENSTAR's request for GCA recovery has additional fatal defects. 3 AAC 52.502(a) has three gatekeeper requirements for GCA consideration:

> Cost elements included in an adjustment clause must be
> (1) subject to change at a rate that would cause financial harm to the utility if the costs were recovered exclusively through base rates;
> (2) beyond the control for the utility; and

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[152]Order U-86-008(6) at 14 (emphasis added).

[153]Order U-01-152(4) at 5 (emphasis added).

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(3) easily verifiable.

It is difficult to discern how accumulated regulatory asset costs *already incurred* can meet the requirements of subsection (a)(1). Past incurred costs already accumulated are not "changing," a requirement of subsection (a)(1). Nor can ENSTAR legitimately claim depriving it of GCA treatment for these regulatory asset costs will cause it financial harm. As we stated just last year in Order U-22-081(14) at 34:

> We acknowledge that there is a looming gas shortage in the Cook Inlet and ENSTAR may have to spend or borrow significant funds in the future to secure a gas supply. Meanwhile, ENSTAR's current ROE has been steadily earning sufficient revenue and maintaining healthy equity for the company. We find that ENSTAR's current equity position will be beneficial for ENSTAR if those investments have to be made.[154]

No party has cited any relevant precedent supporting ENSTAR's request. Nor have we found any precedent where we have allowed non-fuel related regulatory asset costs to flow through a GCA or COPA.[155]

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.

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[154]This conclusion is further supported by our decision in Order U-22-032(6)/ U-22-033(6)) at 39, where ENSTAR was acquired by TriSummit: "We further find that TriSummit Utilities Inc.'s past financial performance and demonstrated financial resources are sufficient to provide financial support to ENSTAR Natural Gas Company, LLC; Alaska Pipeline Company, LLC; and CINGSA, as may be required to fund investment in new facilities and costs associated with unexpected occurrences."

[155]The only other precedent cited was HEA's reference to Order U-06-140(1), in HEA Opening Brief at 11. This order does not support ENSTAR's request. In TA260-32, HEA requested authority to include prepayment of a fuel supply obligation in the computation of its WPCRA. The accounting treatment for fuel credits received was based on amortized savings used to reduce purchase power expenses and the savings were passed through to HEA's members via its WPCRA. In TA350-4, however, ENSTAR's development costs are not fuel costs, nor are they credits against fuel costs incurred by ENSTAR's ratepayers which could theoretically flow through the GCA.

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GCA Recovery Request for Development Costs

In TA350-4, ENSTAR requests GCA recovery for its own development costs, and for those of the LNG import facility developer. For the Developer's Costs, these will be requested only if the LNG Project is terminated at which point ENSTAR will be required to reimburse the Developer's Costs in a lump sum.[156]

ENSTAR's TA350-4 identifies the types of costs it and the developer will incur throughout the development phase as falling into three buckets: project agreements, engineering, and permitting. Each category generically identifies the types of activities that will occur, but in general, they can be characterized as legal, contracting, and labor costs associated with each development phase activity.[157]

ENSTAR's opening brief provides additional detail. It explains project agreements costs will consist of "legal and consulting fees required to vet the agreements." Engineering costs will consist of its labor to "finalize the commercial agreements" and provide "project management oversight of the developer's activities." And permitting costs will "revolve around providing information on ENSTAR's connecting facilities, needs, and customers."[158]

Both RAPA and JLP/RSD claim these costs are inappropriate for GCA recovery. RAPA points to ENSTAR's own language in TA350-4, saying these costs "relate to studying and securing a long-term gas supply," and not to the "underlying cost of gas" as evidence showing the costs do not meet the requirements of 3 AAC 52.519(a)(1), and it argues additional development costs of $5 million cannot meet the financial harm showing required under 3 AAC 52.502(a)(1).[159] JLP/RSD argue the information provided by ENSTAR about these costs is "scant" and "wholly insufficient to

[156]TA350-4 at 3–4.

[157]TA350-4 at 4–6.

[158]ENSTAR Opening Brief at 12–13.

[159]RAPA Opening Brief at 21; RAPA Reply at 12–14.

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determine whether the costs are properly recoverable at all, let alone through a [GCA]."[160] Because of this ambiguity, JLP/RSD also express concern that the development costs requested could include non-jurisdictional expenses which require exclusion from rates. As JLP/RSD put it, "[t]his Commission must determine what, if any, of these costs are properly recoverable, which is a challenging task in light of the dearth of details provided by ENSTAR." [161]

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). And the same precedent cited earlier, Orders U-86-008(6) and U-01-152(4), both contradict ENSTAR's GCA recovery request.

Second, allowing GCA treatment of ENSTAR's development costs would deprive us of a meaningful ability to review at least a portion of the development costs for prudence. Under ENSTAR's GCA, it makes quarterly filings, but its GCA is adjusted annually.[162] ENSTAR's development costs would therefore be included annually in its GCA. However, TA350-4 shows a multi-year timeline for the LNG Project, with development costs continuing to accrue for GCA consideration through at least 2026. If

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[160]JLP/RSD Reply at 2.

[161]JLP/RSD Reply at 5–10.

[162]Under ENSTAR's tariff, ENSTAR is required to file its GCA as a tariff filing on or before July 1 of each year. The annual GCA filing reflects the weighted average cost of gas for the ensuing 12 months and includes the March 31 GCBA balance. Although ENSTAR is required to file the GCA on an annual basis, ENSTAR is also required to file the GCBA report on a quarterly basis fifteen days after the end of each quarter. The GCBA filings are informational, and the costs included in the GCBA filings flow into the annual GCA filing. *See* ENSTAR's Tariff Sheets Nos. 128 and 130.

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the LNG Project is terminated downstream from when development costs have already been rolled through ENSTAR's GCA, there would be no meaningful remedy for ratepayers who have already paid rates which include development costs if they are subsequently ruled imprudent. Requiring a refund of these imprudently incurred costs would violate the rule against retroactive ratemaking.[163]

Third, the development costs identified do not meet the requirements of 3 AAC 52.502(a)(1). As we addressed above for ENSTAR's $4.6 million regulatory asset, the amount at issue is inadequate to meet a financial harm threshold given ENSTAR's enhanced 11.875% ROE and the financial strength of its parent TriSummit. Regarding the Developer's Costs, since they will be requested as a lump sum payment after all costs have accrued, there is no variability or change implicated that would meet the requirements of subsection (a)(1).

Fourth, we will require a more robust review of the LNG Project development costs than that which generally happens in our review of GCA filings.[164] While TA350-4 provides broad cost generalizations of what ENSTAR believes its future development costs will be,[165] JLP/RSD are correct in pointing out that we have no *details* about the development costs ENSTAR proposes to roll through its GCA other than ENSTAR's broad characterizations of what these costs will or will not cover.[166] We do not currently know the terms of any contracts that will ultimately be presented, what legal

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[163] *See MEA v. Chugach Elec. Ass'n*, 53 P.3d 578, 585 (Alaska 2002) (barring a recovery of a COPA overpayment because requiring it would violate the rule against retroactive ratemaking).

[164] The abbreviated nature of the Commission's review of GCA or COPA filings was discussed in *MEA v. Chugach*, 53 P.3d at 585. The danger of agreeing to use the GCA process for ENSTAR's proposed development costs is illustrated in this decision. Since the Commission's COPA review was abbreviated, mistakes were made which could not be undone because of the rule against retroactive ratemaking.

[165] TA350-4 at 3–6.

[166] *See, e.g.*, ENSTAR Reply at 9 ("The costs that ENSTAR proposes to recover through TA350-4 are all attributable to intrastate activities under the Commission's jurisdiction.")

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or consulting fees we will see, what potential affiliated transactions we may need to adjudicate, or whether any of these costs will be non-jurisdictional. ENSTAR's summary overview of these projected costs is simply insufficient to justify the ratemaking treatment it requests.[167] We will require these costs be reviewed in a rate case proceeding to ensure non-jurisdictional costs are excluded from rates, in addition to assessing the prudence and reasonableness of costs within our jurisdiction for inclusion in rates.

Allocation of Risk

In Question 3, we asked why ENSTAR's ratepayers should assume all risk associated with ENSTAR's LNG Project. We observed our orders generating ENSTAR's existing ROE have been enhanced, designed to compensate ENSTAR for the business risk it now faces—a shortage of natural gas. We said so in Order U-16-066(19)[168] at 50, and again just one year ago in Order U-22-081(14) at 34.

Despite our past willingness to compensate ENSTAR for this business risk in its revenue requirements, ENSTAR suggests there is no justification to allocate any risk or LNG development costs to its shareholders. ENSTAR claims it has no assets associated with its gas purchases upon which a return can be generated, implying its LNG development costs are somehow untethered from any risk allocation analysis. ENSTAR also argues Order U-22-081(14) does not compel a contrary conclusion because we "explicitly did not include lack of a gas supply, and the corresponding need to import LNG, as a risk factor that would increase ENSTAR's relative risk." ENSTAR instead focuses on our discussion in Order U-22-081(14) of why our creation of a regulatory asset for ENSTAR in Order U-22-090(2) helps buffer ENSTAR from some gas

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[167] *See Jager v, State*, 537 P.2d 1100, 1113-14 (Alaska 1975) ("The commission may not, however, defer to bald assertions by management. This is so particularly when more compelling evidence, in the form of economic and statistical analyses and comparisons of the type which can be committed to record and be available for analysis by the commission and by a reviewing court, can be developed at reasonable cost.").

[168] Order U-16-066(19), *Order Resolving Revenue Requirement and Cost-of-Service Issues and Requiring Filings*, dated September 22, 2017 (Order U-16-066(19)).

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supply risk by “shift[ing] the risk and cost to future ratepayers,”[169] and that this deprived it of a risk factor which could have enhanced its ROE.[170]

We disagree our decision to create a regulatory asset in Order U-22-090(2) is dispositive on this issue. However, we need not delve too deep into this argument’s circularity because ENSTAR does not address the language in our ROE determination where we tied ENSTAR’s awarded ROE to the looming Cook Inlet natural gas shortfall:

> We acknowledge that there is a looming gas shortage in the Cook Inlet and ENSTAR may have to spend or borrow significant funds in the future to secure a gas supply. Meanwhile, ENSTAR’s current ROE has been steadily earning sufficient revenue and maintaining healthy equity for the company. We find that ENSTAR’s current equity position will be beneficial for ENSTAR if those investments have to be made.[171]

We also find unpersuasive ENSTAR’s claim of immunity from any risk allocation because it has no assets associated with its gas purchases upon which a return can be generated. On this point, RAPA noted, “[t]he fact that ENSTAR will not earn a return on this particular investment does not change the fact that it *currently* earns a return on its rate base that compensates it for the purported risk posed by the situation in Cook Inlet.[172] We agree.

We made clear in Order U-16-066(19) and Order U-22-081(14) that ENSTAR’s authorized ROE was providing it revenue designed to help address the problem it is now seeking to cure, and at 11.875%, it currently has the highest ROE of any rate regulated investor owned utility in the state.[173] 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

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[169]Order U-22-081(14) at 33.

[170]ENSTAR Opening Brief at 16–17.

[171]Order U-22-081(14) at 34.

[172]RAPA Reply at 11.

[173]RAPA Opening Brief at 18.

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allocation to ENSTAR when its shareholders have already been compensated for this business risk.

Applicability of Carrying Costs

In TA350-4, ENSTAR requests to be allowed to recover carrying costs on its $4.6 million regulatory asset. It sets an interest rate at 5.34% based on its long-term debt.[174] We note that no authority was cited in support of this request, and we did not request briefing on this issue. Because we are requiring ENSTAR to address its $4.6 million regulatory asset in its next rate case, we will address the appropriateness of permitting the inclusion of carrying costs, interest, or a return on amortized regulatory asset recovery, at that time.

But we note we have previously addressed this issue for ENSTAR. In Order U-00-088(12), we addressed ENSTAR's request to create a regulatory asset including several expenses.[175] ENSTAR also requested a return allowance on the amortized balances. In denying this request, we recognized regulatory asset creation was an extraordinary remedy, but it did not carry with it an entitlement to a return, interest or carrying costs because such an allowance would be inconsistent with ratemaking theory:

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[174]TA350-4 at 4.

[175]Order U-00-088(12), *Order Establishing Revenue Requirement, Requiring Filings, Scheduling Prehearing Conference, and Affirming Electronic Rulings*, dated August 8, 2002 (Order U-00-088(12)).

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> In the case of extraordinary or nonrecurring expenses, the appropriate adjustment to the revenue requirement is either to remove the expense, or where the utility proves benefit to future ratepayers, to amortize it over a reasonable period.[176] ENSTAR's proposed regulatory asset treatment, in contrast, treats a cost it incurred previously as an investment on which it should both recover and earn a return from future ratepayers.[177]

We are aware that Order U-22-090(2), which authorized creation of the $4.6 million regulatory asset, references carrying costs. But we did not address whether they would be authorized, instead stating the issue, along with all others would be investigated when we reviewed ENSTAR's request to include them in rates. Our order here does not disturb that decision.

Application of AS 42.05.441(b) to Scenario 2 Development Costs

All parties other than JLP/RSD seem to agree that AS 42.05.441(b) would not apply to bar development costs ENSTAR incurs if the LNG Project is cancelled or otherwise terminated. But JLP/RSD suggest the "used and useful" requirement of the statute does apply because this protects ratepayers from "bearing the costs of the exact type of speculative investment that ENSTAR seeks to recover."[178]

We disagree that the statute is applicable. AS 42.05.441(b) is a rate base valuation statute, requiring plant in service be "used and useful" in providing a utility-related benefit. Without this linkage, neither depreciation expense nor a return on investment can be allowed on this plant.

But under Scenario 2, the development costs at issue are operating expenses incurred in pursuit of a terminated project. Since no LNG import facility will be

[176] *See* 3 AAC 48.820(42) defining a "normalized test year" as "a historical test-year adjusted to reflect the effect of known and measurable changes and to delete or average the effect of unusual or nonrecurring events, for the purpose of determining a test year which is representative of normal operations in the immediate future." Normalized test year data includes supportive information required by 3 AAC 48.275(a), which is used to establish a utility's revenue requirement.

[177] Order U-00-088(12) at 24. Other ENSTAR orders reach the same conclusion in analogous circumstances. *See* Order U-86-008(6) at 13 and Order U-01-152(4) at 5-6.

[178] JLP/RSD Opening Brief at 16.

built under Scenario 2, there is no plant at issue for purposes of a subsection .441(b) review.

While AS 42.05.441(b) does not apply by its own terms to an abandoned project, Chugach and RAPA note that there is authority from other jurisdictions that addresses whether it is appropriate to include costs of an abandoned project in rates. This authority cuts both ways; some jurisdictions have denied recovery where others have allowed it after rate case review and application of an appropriate amortization period.[179] As RAPA notes, “the decision of whether to allow a utility to recover costs associated with cancelled or abandoned projects must be made on a case-by-case basis where a determination of the prudency of the initial investment can be made, as well as the prudency of the ultimate decision to abandon the project.”[180]

In evaluating this issue, we agree with MEA’s characterization that in looking to import LNG into the Cook Inlet, we are addressing “an unprecedented event in Alaskan history.”[181] We also recognize that ENSTAR’s plan to source gas supplies from outside Alaska can be viewed as a fundamental change to its business practice. Under

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[179]*See* Chugach Reply at 9 & n.37 (citing *Nat. Gas Pipeline Co. of Am.,* 27 FERC ¶ 61,201, at ¶ 61,379 (1984) (disallowing the costs for three abandoned gas supply projects, where the costs were "found to be speculative and uncertain, remote in time, and without benefit to ratepayers. These projects have been held to constitute risks which should properly be borne by shareholders rather than ratepayers and which should be compensated by means of the pipeline's allowed rate of return rather than by means of a specific allowance in the cost of service.")).

[180]RAPA Opening Brief at 25–28.

[181]MEA Opening Brief at 4. MEA also analogizes the permissibility of including terminated project costs in rates to our prior decisions where we have allowed acquisition adjustments. *Id*. at 3. An acquisition adjustment occurs when a utility is purchased for an amount beyond net book value. Our general rule is to not allow an acquisition adjustment in rates. An exception to this general rule may be allowed, but only where a utility demonstrates that ratepayers will receive a specific tangible benefit in an amount at least equal to the cost of the acquisition adjustment. *See* Order U-02-013(7)/ U-02-014(7)/U-02-015(7), *Order Affirming Electronic Ruling Vacating Hearing, Accepting Stipulation, Subject to Condition, and Cancelling Hearing*, dated March 19, 2003, at 7. We do not agree our standard for approval of acquisition adjustments is analogous. Under Scenario 2, the LNG Project will be terminated. No ratepayer benefit will result from a terminated project that does not address ENSTAR’s gas supply shortfall.

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these unique circumstances we do not agree that an ultimate decision to terminate this project should, by itself, disenfranchise ENSTAR from pursuing its Scenario 2 development costs.[182] We hold that ENSTAR may do so, under the procedure we describe below. We will review whether these costs are jurisdictional, prudently incurred, reasonable, and select an appropriate amortization period when the development costs are ultimately presented in a rate case for our review.

Creation of a New Regulatory Asset

ENSTAR says in TA350-4 that it needs an "assurance of timely recovery of third-party costs to secure the funding, security and resources required" to move forward with its project.[183] But we must also balance ENSTAR's request with our statutory duty to protect ratepayers by ensuring that rates imposed are just and reasonable.[184] In order to do so, we will allow ENSTAR to create a new regulatory asset to record third-party development costs identified in TA350-4.

As we have stated earlier, allowing regulatory asset creation is an extraordinary remedy. We have permitted for-profit utilities to create regulatory assets when operating or maintenance costs, which would otherwise be expensed, are significant and occur because of unusual circumstances not representative of normal operations.[185]

We believe those circumstances exist here. Incurring substantial costs in anticipation of LNG imports unquestionably represents an unusual circumstance. ENSTAR's projected participation in the development of a greenfield LNG Project is not

[182]We generally exclude expenses that are not associated with utility service or provide a utility-related benefit from rates. *See, e.g.,* Order U-00-088(12) at 6 & Appendix A, Schedule 4, Notes 3–4. While costs incurred for a terminated project would ordinarily fall within this category of excluded expenses, we recognize the unusual and extraordinary circumstances presented here warrant a limited exception to this general rule.

[183]TA350-4 at 8.

[184]AS 42.05.381(a); AS 42.05.431(a).

[185]Order U-22-090(2) at 3.

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representative of its normal operations, and the LNG Project's anticipated development costs are significant, as outlined in TA350-4.

But we will not provide a blank check. Caps will be imposed on this regulatory asset's costs recognizing, in part, the amounts identified in TA350-4, Attachment D. For Developer Costs, we cap permissible regulatory asset costs at $42.3 million. ENSTAR's regulatory asset development costs are capped at $4,758,750.[186] If development costs exceed these caps, the additional costs will be borne by ENSTAR's shareholders or by the developer.

In reaching this decision, we find instructive a similar cap we imposed on projected utility development plans in Order U-97-245(1), where Alaska Electric Light & Power Company (AEL&P) planned to construct a submarine cable, projecting its costs at $101 million.[187] We stated:

> Because the full cost of the submarine cable will not be known until installation is complete, which will occur after the bond sales, the Commission would like assurances that the total project cost, including the submarine cables, will not exceed $101 million. If costs do escalate beyond $101 million, the Commission will not allow these costs to be passed on to the ratepayers. Any additional costs will be borne by the Federal Government, AIDEA, or AEL&P. During AEL&P's rate case, the Commission will closely examine the costs associated with installing the submarine cable to determine if they are reasonable and allowable in rate base.[188]

We are addressing a similar situation here, requiring we balance ratepayer protections with ENSTAR's plans to procure LNG. As was the case for AEL&P, we will not know what the full development costs will be until ENSTAR and the developer reach a decision point on proceeding to construction. As our predecessor the Alaska Public

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[186] These caps were determined by using the 11.875% ROE, granted to ENSTAR in its revenue requirement as compensation for its gas supply business risk, as an offset to the development cost projections for ENSTAR ($5.4 million) and the Developer ($48 million) identified in TA350-4, Attachment D.

[187] Order U-97-245(1), *Order Approving Power Sales Agreement, Subject to Conditions; Approving Application and Related Hatchery Electric Service Agreement, Subject to Conditions; and Requiring Filing*, dated June 24, 1998 (Order U-97-245(1)).

[188] Order U-97-245(1) at 7.

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Utilities Commission required, we also require ratepayer protections be in place if development costs exceed the ceiling we impose in this order.

By allowing creation of a new regulatory asset to be reviewed in a subsequent rate case, we are providing ENSTAR a fair and balanced mechanism to address this LNG Project's development costs. ENSTAR can seek interim rate relief while its rate case proceeds investigating these costs, providing it a prompt remedy while we concurrently protect ratepayers from any overpayment.

We emphasize the development cost totals we will consider for inclusion in rates represent a substantial risk mitigator for ENSTAR.[189] While the caps provide assurance for ENSTAR that we will consider costs up to these ceilings, provided they are reasonable, jurisdictional and prudently incurred, the caps also recognize ENSTAR's shareholders bear some responsibility to shoulder development cost risks for which they have already been compensated.

We require the following conditions on creation of this regulatory asset:

(1) ENSTAR may only include third-party costs in the asset, and it cannot include internal labor or overhead;

(2) Development costs accumulated in the regulatory asset are capped at $4,758,750 for ENSTAR, and $42.3 million for the developer;

(3) ENSTAR must submit informational filings quarterly about its regulatory asset development costs including:

   a. a balance of its incurred costs as well as a narrative statement detailing the progress of the LNG Project's development; and

   b. a summary list of all incurred costs with each quarterly informational filing.

(4) Our approval of the creation of a new regulatory asset does not include amounts allocated to future capital projects or reimbursed by third parties;

(5) Our decision does not shift ENSTAR's evidentiary burden to show the costs included in the regulatory asset are within our jurisdiction, were necessary, reasonable and prudent, and an appropriate amortization period be established; and

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[189] Rather than imposing a direct cost allocation percentage to ENSTAR's shareholders for each development dollar spent or excluding these costs entirely if the Project is terminated, we have instead applied the development cost ceilings discussed above based on the unique circumstances presented in this docket.

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(6) ENSTAR's costs accumulated in this new regulatory asset, and any other issue pertaining to this regulatory asset, may only be reviewed for inclusion in rates in a rate case proceeding.

Denying TA350-4

We deny TA350-4. We find that the regulatory asset approved in Order U-22-090(2) closed when ENSTAR signed an exclusivity agreement with Glenfarne on December 17, 2024. In its last rate case, ENSTAR agreed to file a rate case in 2025 or in 2026 based on a 2024 or 2025 test year, respectively.[190] ENSTAR may seek to recover the costs of the $4.6 million regulatory asset in that rate case.

We allow ENSTAR to create a new regulatory asset to defer costs up to $4,758,750 for its development costs, and $42.3 million for the developer's Scenario 2 development costs as described in the body of this order. ENSTAR may seek to put this regulatory asset into base rates in a future rate case after demonstrating the costs are reasonable, jurisdictional, and prudently incurred, and after demonstrating an appropriate amortization period. Our approval does not include amounts for internal labor or overhead, costs allocated to future capital projects, or costs reimbursed by third parties. Our decision does not shift ENSTAR's evidentiary burden to demonstrate the necessity, reasonableness and prudency of costs, or appropriate amortization periods. We will investigate these, and any other issues required when ENSTAR requests to include these costs in the calculation of rates in a rate case proceeding.

Requiring Filings

Until the new regulatory asset approved in this order is fully and finally addressed in a rate case proceeding, we require ENSTAR to file information pertaining to its regulatory asset as detailed in the body of this order.

[190]Order U-22-081(11), *Order Accepting Partial Stipulation, Rescheduling Hearing, Denying Motion for Expedited Consideration, Amending Docket Caption, and Redesignating Commission Panel*, dated October 11, 2023, Appendix at 8.

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Motions

Both RAPA and ENSTAR filed motions for confidential discovery orders on March 28, 2025. RAPA also filed a motion for expedited consideration. Because this is a final order fully addressing TA350-4, we find these motions moot.

Vacating Remaining Procedural Schedule and Hearing Dates

As this is a final order, we vacate the remainder of the procedural schedule, which consequently results in the vacation of the hearing dates established in this docket adopted by Order U-25-004(3).

Administrative Law Judge

The chair reappoints an administrative law judge for this docket. Under AS 42.04.070(b), the chair appoints Administrative Law Judge Patrick S. Sheridan to facilitate conduct of the docket. Orders issued by the administrative law judge will be considered orders of the Commission for purposes of petitions for reconsideration.

Final Order

"Case law from the Alaska Supreme Court is clear that there is no statutory or procedural due process right to an oral hearing in the absence of a factual dispute."[191] Additionally, "some kinds of disputes, such as legal and policy arguments, are addressed more efficiently through written statements. Written statements, as well as oral testimony, provide . . . an opportunity to be heard and have been held to meet the statutory requirement of a hearing."[192] This standard has been met here.

We find that this order settles all outstanding issues in this docket and meets our timeline to issue a final order under AS 42.05.175.

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[191]Order U-16-069(7), *Order Affirming Initial Impression, Withdrawing Carrier of Last Resort Status, and Terminating Carrier of Last Resort Support*, dated May 24, 2017 (citing *Church v. Dep't of Revenue*, 973 P.2d 1125, 1129 (Alaska 1999); *Smith v. Dep't of Revenue, Child Support Enforcement Div.*, 790 P.2d 1352, 1353 (Alaska 1990)).

[192]Order U-01-129(2)/U-01-130(2)/U-01-131(2), *Order Denying Petition for Reconsideration*, dated December 18, 2001 (citing *Church v. State, Dep't of Revenue* at 1129-30.).

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This order constitutes the final decision in this proceeding. This decision may be appealed within thirty days of this order in accordance with AS 22.10.020(d) and the Alaska Rules of Court, Rules of Appellate Procedure, Rule 602(a)(2). In addition to the appellate rights afforded by AS 22.10.020(d), a party has the right to file a petition for reconsideration in accordance with 3 AAC 48.105. If such a petition is filed, the time period for filing an appeal is then calculated in accordance with Alaska Rules of Court, Rules of Appellate Procedure, Rule 602(a)(2).

ORDER

THE COMMISSION FURTHER ORDERS:

1. The regulatory asset authorized by Order U-22-090(2), *Order Granting Petition to Create Regulatory Asset, Requiring Reporting, and Closing Docket*, dated February 22, 2023, is closed effective December 17, 2024.

2. ENSTAR Natural Gas Company, LLC may create a regulatory asset to defer up to $4,758,750 of its own development costs, and $42.3 million of the developer's Scenario 2 development costs as described and subject to the conditions established in the body of this order.

3. The tariff revision designated as TA350-4, filed January 28, 2025, by ENSTAR Natural Gas Company, LLC, is denied as described in the body of this order.

4. The *Motion to Adopt Confidential Discovery Material Order*, filed March 28, 2025, by ENSTAR Natural Gas Company, LLC is moot.

5. The *Office of the Attorney General's Motion for Entry of Proposed Order Governing Confidential Discovery Material*, filed March 28, 2025, by the Office of the Attorney General, Regulatory Affairs and Public Advocacy Section is moot.

6. The *Office of the Attorney General's Motion for Expedited Consideration of Motion for Entry of Proposed Order Governing Confidential Discovery Materials*, filed March 28, 2025, by the Office of the Attorney General, Regulatory Affairs and Public Advocacy Section is moot.

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7. ENSTAR Natural Gas Company, LLC shall file informational filings quarterly as compliance filings into this docket, as described in the body of this order.

8. The procedural schedule that includes a hearing scheduled for August 21–26, 2025, adopted by Order U-25-004(3), *Order Adopting Procedural Schedule and Establishing Briefing Schedule*, dated February 18, 2025, is vacated.

9. Patrick S. Sheridan is appointed as the administrative law judge.

DATED AND EFFECTIVE at Anchorage, Alaska, this 22nd of April, 2025.

BY DIRECTION OF THE COMMISSION

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