

Authority of the Regulatory Commission of Alaska under House Bill 4 (2013) Chapter 11 SLA 13

Senate Resources Committee
February 4, 2026

HB 4 (2013)

Legislative Findings & Intent

The legislature finds that

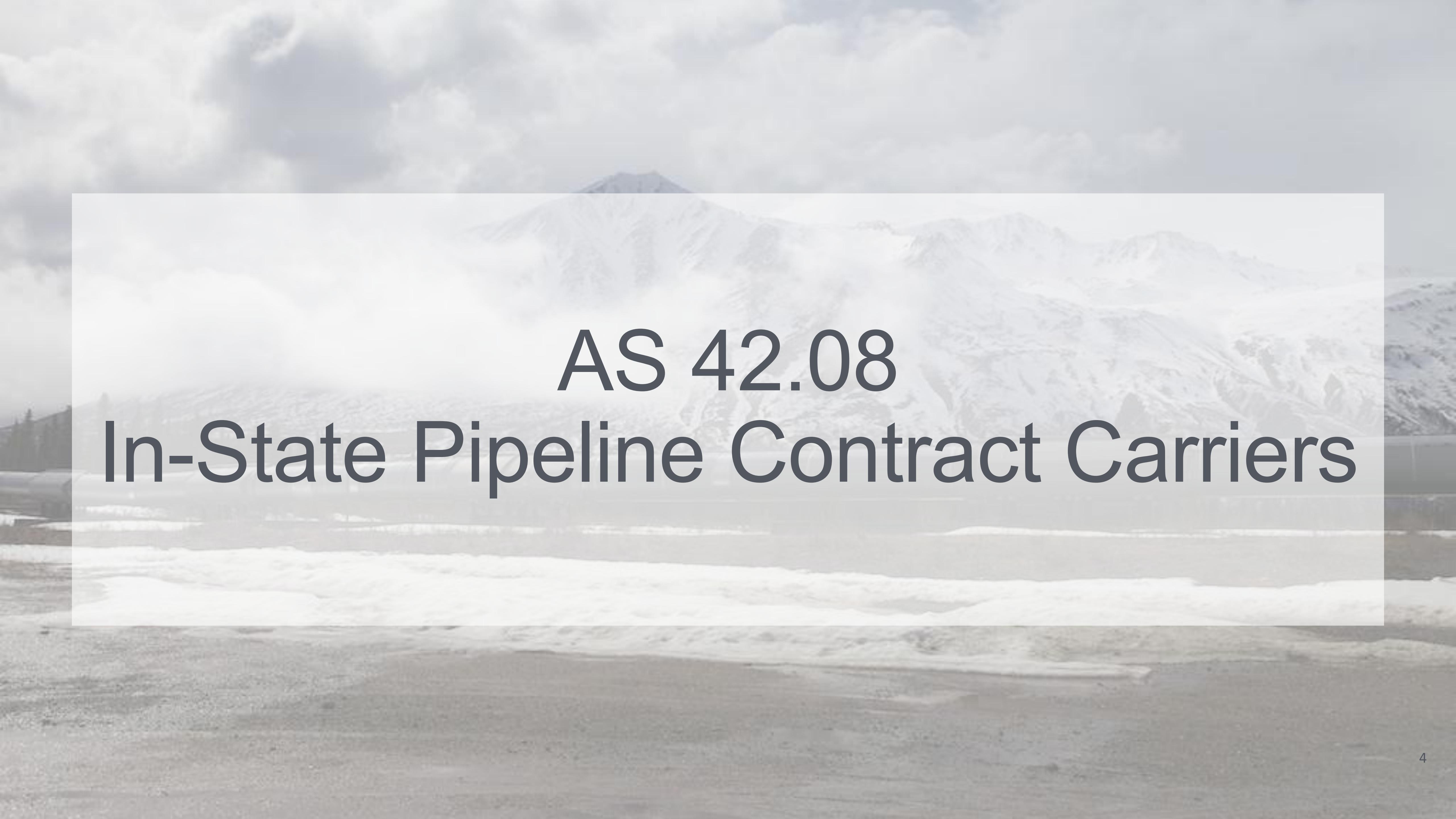
- (1) an in-state natural gas pipeline developed by the Alaska Gasline Development Corporation is required for public convenience and necessity;*
- (2) the development of a natural gas pipeline by the Alaska Gasline Development Corporation is in the best interest of the state;*
- (3) making the Alaska Gasline Development Corporation an independent public corporation of the State of Alaska located for administrative purposes under the Department of Commerce, Community, and Economic Development will enhance the ability of the Alaska Gasline Development Corporation to accomplish its purposes.*



HB 4 (2013)

Five Sections of HB 4 Directly Impact the Commission

- Amendment to Title 42 to add a new chapter, AS 42.08, defining Commission authority over “in-state pipeline contract carriers” (Section 21)
- Amendment to Title 42, Chapter 5 to add a new section, AS 42.05.433, requiring Commission review of certain contracts (Section 18)
- Conforming amendments:
 - Amendment to Title 42, Chapter 4, Section 80(a) (Section 17)
 - Amendment to Title 42, Chapter 5 to add a new subsection (Section 19)
 - Amendment to Title 42, Chapter 6 to add a new section (Section 20)



AS 42.08

In-State Pipeline Contract Carriers

AS 42.08

Commission Authority

- Suspend, approve, deny, and reject initial recourse tariff
- Conduct investigations
- Establish notice requirements
- Review, approve, and disapprove contracts
- Issue, transfer, modify, and revoke a certificate of public convenience and necessity (Certificate)
- Issue permits for construction, enlargement, extension, connection and interconnection, operation, or abandonment
- Classify documents as confidential
- Review required reporting
- Extend timelines
- General administrative functions - including adoption of regulations, administration of a regulatory cost charge

AS 42.08 – Recourse Tariff

General Information

Permissive authorities:

- Under AS 42.08.220(b)(1) the Commission *may* review and approve recourse tariffs
- The Commission *may* reject all or part of a recourse tariff that is not consistent with AS 42.08 and any recourse tariff rate or provision rejected is void

A recourse tariff must contain:

- Procedures for conducting open seasons for uncommitted firm transportation and for expansion
- Rates that are determined on a cost-of-service basis (may be leveled over the depreciable life of the pipeline)
- All rates, rules, regulations, terms, and conditions pertaining to the service provided by the in-state natural gas contract carrier
- All contracts with shippers that affect or relate to the rates, tariffs, charges, classifications, rules, regulations, terms, or conditions of service

AS 42.08 – Recourse Tariff

Initial Recourse Tariff

- The Commission *shall* review an initial recourse tariff and verify that the proposed terms and conditions of service are not unduly discriminatory
- The Commission *shall* review the supporting cost study provided with an initial recourse tariff and verify that the proposed rate of return on equity is within the permissible rates of return as determined by the Federal Energy Regulatory Commission, that the cost study incorporates a reasonable depreciation methodology and depreciable life, and that the cost study uses a reasonable capital structure
- The Commission *shall* approve an initial recourse tariff unless it includes a proposed term or condition of service that is unduly discriminatory, includes a proposed rate element that does not comply with the requirements listed above, or violates a provision of AS 42.08

AS 42.08 – Recourse Tariff

Revised Recourse Tariff

- The Commission *shall* review a revised recourse tariff consistent with the review of the initial recourse tariff with the exception of depreciable life, which may be adjusted to reflect the time period between approval of the previous recourse tariff and the revised recourse tariff
- The Commission *shall* verify that the recourse tariff includes the same elements that were approved in the previous recourse tariff
- The Commission *shall* deny a revised recourse tariff with a new or revised term or condition of service that is unduly discriminatory
- The Commission *shall* deny a revised tariff rate that does not use the previously approved value of the specified rate element (unless it is proven that the new value is just and reasonable)

AS 42.08 – Investigations

General Information

The Commission *may* conduct investigations:

- Related to rules, regulations, services, practices, and facilities (other than those that are subject to dispute resolution provisions contained in a contract or a recourse tariff)
- Related to the proposed terms and conditions of service and cost study filed with an initial recourse tariff
- Related to a complaint filed by a person that does not have a contract with the in-state natural gas pipeline carrier
- Related to the conduct of an open season; however, the Commission may only order an expansion of the pipeline or an open season
- Related to an “unreasonable” diminution in quantity or quality in the provision of service to a public utility that (1) is a violation of the recourse tariff or applicable contract, (2) has not been resolved, and (3) will result in “immediate injury, loss, or damage to the peace, health, safety, or general welfare of the public as clearly demonstrated by specific facts shown by affidavit or verified complaint”

AS 42.08 – Notice Requirements

General Information

Notices to the Commission:

- An initial or revised recourse tariff must be noticed to the Commission and the public at least 90 days before it goes into effect. The notice shall plainly indicate the time when the recourse tariff will go into effect and include a supporting cost study
- An open season must be noticed to the Commission

Notices from the Commission:

- An application for a Certificate must be noticed to interested persons
- An application to discontinue or permanently abandon service must be noticed
- The Commission *may* prescribe requirements for the notice and the method of communicating the notice

AS 42.08 – Contracts

Definition

AS 42.08 speaks to two types of contracts a precedent agreement and a presubscription agreement and provides the following definition:

“precedent agreement” means a contractual commitment, including a presubscription agreement, to acquire firm transportation capacity, executed between an in-state natural gas pipeline carrier and another person, that establishes the rates, terms and conditions for service.

Precedent Agreements

During open season, pipelines negotiate rates with potential customers and, once a deal is reached, sign a *precedent agreement*. A precedent agreement may include conditions the pipeline must meet prior to the agreement becoming a firm transportation agreement.

Presubscription Agreements

Prior to open season, a customer may sign a *presubscription agreement*, using the same terms and conditions applicable to other customers once open season starts.

AS 42.08 – Contracts

Permissive Authority & Required Action

Permissive Authority:

- Under AS 42.08.220(b)(2) the Commission *may* review and approve contracts filed by an in-state natural gas pipeline carrier

Required Action:

- The Commission *shall* review and may conduct an investigation and hearing to determine whether a contract is just and reasonable
- The Commission *shall* approve the contract as presented if it is just and reasonable or disapprove the contract if it is not just and reasonable

AS 42.08 – Contracts

Arm's Length Analysis

The Commission *shall* find that a precedent agreement or related contract that is negotiated at arm's length is just and reasonable unless it finds that (1) unlawful market activity affected the rate or unfair dealing such as fraud or duress affected for formation of the contract. This requirement applies to precedent agreements for firm transportation service submitted under AS 42.08 and related contracts submitted under AS 42.05.433(b) and (c)

The following factors are to be used in the assessment of an “arm’s length” negotiation:

- A contract that incorporates the approved recourse tariff is negotiated at arm's length
- A contract that does not incorporate the approved recourse tariff is negotiated at arm's length (1) if the contract is between two state-owned parties, (2) if the parties are not affiliated, or (3) if the parties are affiliated and the contract is substantially similar to those contracts negotiated between unaffiliated parties and the formation of the contract was not impacted by unlawful market activity or unfair dealing
- A contract is not arm's length if the contract is between an in-state pipeline contract carrier and a public utility and the rate paid for transportation is greater than the recourse tariff rate

AS 42.08 – Contract

Just and Reasonable

A contract that is not negotiated at arm's length may still be found to be just and reasonable.

To review a contract that is not negotiated at arm's length:

- The Commission *shall* use the standards normally applied under AS 42.06.140;
- The Commission *shall* consider the consequences of failing to approve the contract;
- The Commission *may* consider the in-state natural gas pipeline carrier's approved recourse tariff and the cost data underlying the tariff if the contract does not incorporate the approved recourse tariff

AS 42.08 – Certificates

General Information

- A Certificate authorizes the construction and operation of an in-state natural gas pipeline facility and the transportation of natural gas
- A Certificate must describe the nature and extent of the authority granted, including a description of the authorized area and scope of operation for the in-state natural gas pipeline facility
- The Commission *shall* issue a Certificate to an applicant upon a finding that the applicant is fit, willing, and able to do the acts, perform the proposed service, and conform to the provisions of AS 42.08 and the requirements of the Commission, and that the proposed service, operation, construction, extension, or acquisition is or will be required by the present or future public convenience and necessity

AS 42.08 – Certificates

Required Findings Subject to Commission Discretion

- The Commission *shall* determine if an applicant is technically fit, willing, and able to take the actions, perform the service, and conform to the requirements of AS 42.08
- The Commission must find that the transfer of a Certificate does not impair the safe and efficient operation of the natural gas pipeline before operating authority provided by that Certificate may occur
- The Commission *shall* approve a transfer of a Certificate if the transfer does not involve “a substantial change in ownership”
- The Commission must find that continued service is not required by public convenience and necessity before a Certificate holder may abandon or permanently discontinue all or a portion of an in-state natural gas pipeline

AS 42.08 – Certificates

Additional Findings Subject to Commission Discretion

- The Commission *may* attach “reasonable terms and conditions” to a Certificate that are (1) consistent with the terms of AS 42.08 and (2) mutually benefit the pipeline facility and the public
- The Commission *may* amend, modify, suspend, or revoke a Certificate upon a finding of good cause. Good cause is demonstrated through (1) misrepresentation of material fact in obtaining the Certificate, (2) unauthorized discontinuance or abandonment, (3) willful failure to comply with the provisions of AS 42.08, a regulation adopted by the Commission, or an order of the Commission, or (4) willful failure to comply with a term, condition, or limitation of the Certificate

AS 42.08 – Certificates

Conclusive Findings Binding on the Commission

Per Statute:

- The Alaska Gasline Development Corporation *is financially fit, willing, and able* to take the actions, perform the service, and conform to the requirements of AS 42.08
- The Alaska Gasline Development Corporation, through its board of directors and officers, *is managerially fit, willing, and able* to manage the Alaska Gasline Development Corporation and to take the actions, perform the service, and conform to the requirements of AS 42.08
- Upon application by the Alaska Gasline Development Corporation for a Certificate under AS 42.08, *the proposed service, construction, and operation of the in-state natural gas pipeline are required* by present and future public convenience and necessity



AS 42.08 – Permits

General Information

Under the authority found in AS 42.08.220(a)(2) the Commission *must* require permits for the construction, enlargement in size or operating capacity, extension, connection and interconnection, operation, or abandonment of an in-state natural gas pipeline facility under the provisions of AS 42.08 and subject to the standards for certification found in AS 42.08.330.

AS 42.08 – Confidential Treatment

General Information

- AS 42.08.320(a) requires that the Commission keep a precedent agreement between an in-state natural gas pipeline carrier and an entity that is not a public utility and that is filed under seal confidential
- AS 42.08.400(c) requires that the Commission classify a precedent agreement between an in-state natural gas pipeline carrier and an unregulated entity as privileged and not open to the public for inspection. It further requires that the Commission classify a record that relates to a precedent agreement or other contract and is between an in-state natural gas pipeline carrier and an unregulated entity as privileged and not open to the public for inspection if the Commission finds that identified provisions could adversely affect the competitive position of the shipper or could cause commercial or competitive harm or damage if disclosed
- The Commission *may* classify records as privileged records that are not open to the public for inspection

AS 42.08 – Reporting

General Information

- An in-state natural gas pipeline carrier *must* submit reporting to the Commission every three years after operations begin on the in-state natural gas pipeline
- The report is due 90 days after the close of the annual accounting period for the in-state natural gas pipeline carrier. However, the Commission *may* extend the reporting deadline upon a showing of good cause
- The Commission *shall* review the report, verify that the rate elements are the same as those approved by the Commission in the last recourse tariff filing, and calculate the three-year average actual return on equity

AS 42.08 – Timelines

General Information

- Precedent agreement - 180 days
- Certificate application - 180 days
- Recourse tariffs - 90 days
- Investigation in response to a timely filed dispute - 150 days
- Investigation of open season - 60 days

The Commission *may* extend certain timelines required by AS 42.08 if all parties of record consent to the extension or if the Commission acts before expiration of the applicable timeline and (1) finds that good cause for the extension exists, (2) issues an order that sets out findings demonstrating good cause and explicitly extends the timeline, and (3) the extension is less than 30 days.

The following timelines may not be extended:

- Precedent agreement filed before the issuance of a Certificate
- Applications for a Certificate
- Initial recourse tariffs

AS 42.08 - General Administrative Functions

Other Functions Not Addressed Elsewhere

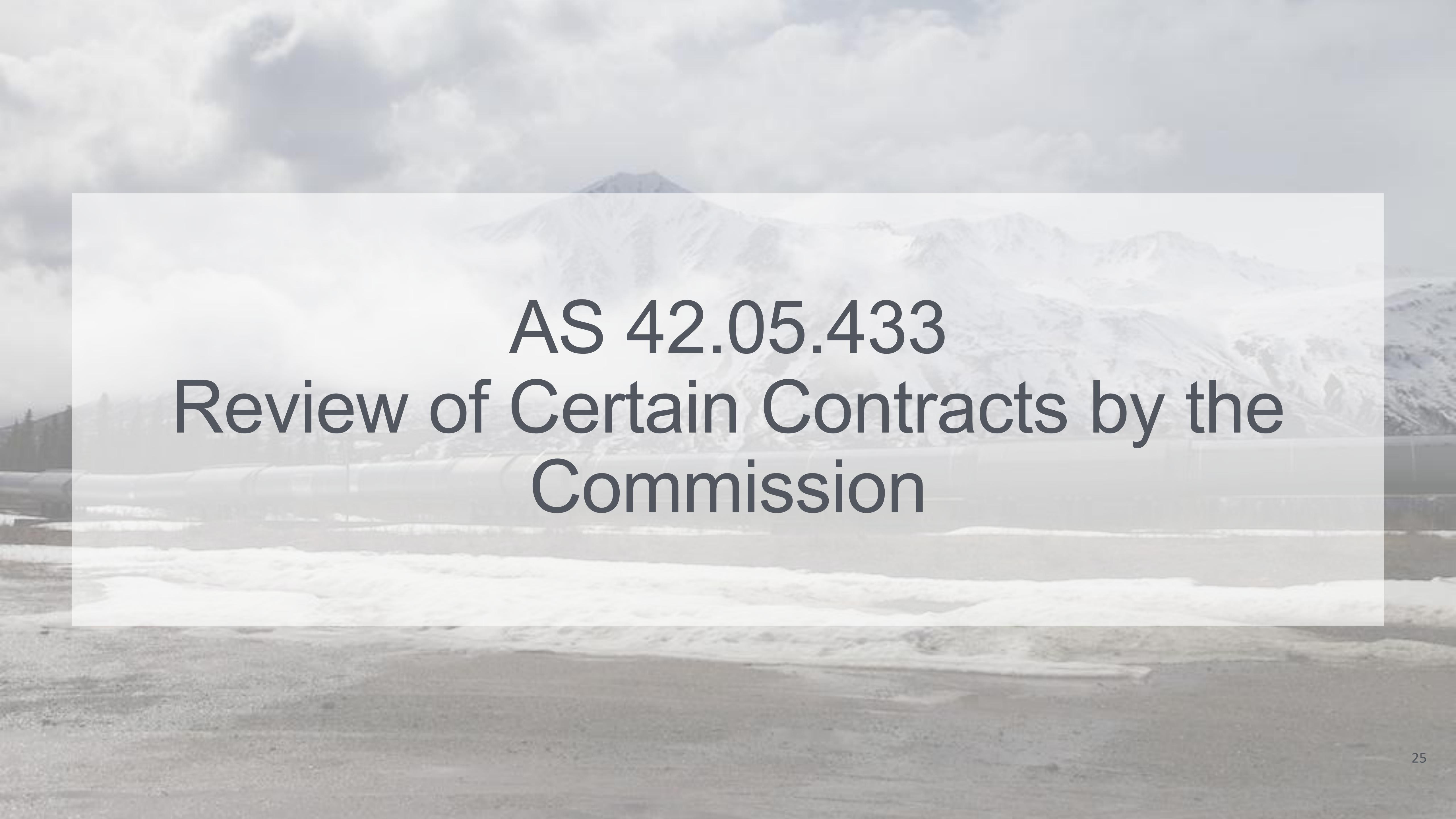
- To the extent necessary to perform its duties, the Commission *shall* have access to information that directly affects the interests of the state and directly relates to in-state natural gas pipelines
- The Commission *may* adopt regulations necessary for the performance of its duties under AS 42.08
- The Commission *may* participate in state proceedings involving an in-state natural gas pipeline carrier and affecting the interests of the state
- The Commission *shall* determine and administer the regulatory cost charge imposed under AS 42.08
- The Commission *may* certify official records and official acts under AS 42.08
- The Commission *may* require maintenance of records showing specified information pertaining to property being used in pipeline activity

AS 42.08 – Limitations

Limitation on Commission Authority

The Commission ***may not***:

- Require rates, rate-design, or tariff rates or regulations;
- Require an in-state natural gas pipeline carrier to make a recourse tariff filing;
- Order a modification of a contract that is approved, considered approved, or filed under this chapter;
- Conduct further review or investigation of a contract that is approved, considered approved, or filed under this chapter; or
- Investigate a dispute under AS 42.08.220(b)(3) if a complete formal complaint has not been filed with the Commission within 60 days after the event giving rise to the complaint



AS 42.05.433

Review of Certain Contracts by the Commission

AS 42.05.433

Review of Contracts by the Commission

- A public utility that purchases natural gas that is shipped through an AS 42.08 pipeline or stores gas shipped through an AS 42.08 pipeline must file the contract for Commission review
- The standard of review is identical to the review performed under AS 42.08



Conforming Amendments

Conforming Amendments

General Information

- Section 17 - Amendment to AS 42.04.080(a) to provide the chair of the Commission with the authority to assign a panel of three or more members to decide a matter presented in accordance with AS 42.08. This authority already exists for matters presented in accordance with AS 42.05 (Alaska Public Utilities Regulatory Act) and AS 42.06 (Pipeline Act)
- Section 19 - Amendment to AS 42.05.711 to add a subsection at (t) to clarify that the Commission's authority and regulation under AS 42.08 precludes regulation under AS 42.05 (Alaska Public Utilities Regulatory Act)
- Section 20 - Amendment to AS 42.06 to add a new section at AS 42.06.601 to clarify that the Commission's authority and regulation under AS 42.08 precludes regulation under AS 42.06 (Pipeline Act)

Conclusion

Applicability and Inapplicability

Where AS 42.08 does and does not apply

Applicability:

- AS 42.08.010(a) reads “This chapter applies to the regulation of in-state natural gas pipelines that provide transportation by contract carriage”
- An in-state natural gas pipeline is defined in AS 42.08.990(5) as a natural gas pipeline that transports or will transport natural gas in the state by way of contract carriage
- Contract carriage is not a term defined in AS 42.08
- In the recent Supreme Court decision, *Orutsararmiut Native Council v. Boyle*, S-18737, 2025 WL 3187314 (Alaska Nov. 14, 2025), the court noted that the pipeline project proposed by Donlin Gold, LLC would be an in-state natural gas pipeline that provided transportation by contract carriage, stating: “The pipeline will be a contract carrier that can supply to other users through a contracting process”

Inapplicability:

- AS 42.08.010(b) reads “An in-state natural gas pipeline subject exclusively to federal jurisdiction is exempt from this chapter”
- The Natural Gas Act at Section 3 (15 U.S.C. 717b) addresses exclusive federal jurisdiction

Alaska Gasline Development Corporation

171 FERC ¶ 61,134 (Issued May 21, 2020)

- On April 17, 2017, Alaska Gasline Development Corporation (AGDC) filed an application under section 3 of the Natural Gas for authorization to site, construct, and operate facilities for the liquefaction and export of natural gas produced in the North Slope (Alaska LNG Project)
- The Alaska LNG Project was defined to include a gas treatment plant located in the Prudhoe Bay Unit of Alaska's North Slope, and two natural gas pipelines connecting production units to the gas treatment plant, an approximately 806.7-mile-long, 42-inch-diameter pipeline (Mainline Pipeline) capable of transporting up to 3.9 billion cubic feet of gas per day (Bcf/day) from the gas treatment plant to the liquefaction facilities; 344,000 horsepower (hp) of compression located at eight compressor stations along the Mainline Pipeline; and liquefaction facilities on the Kenai Peninsula designed to produce up to 20 million metric tons per annum (MMTPA) of LNG (Liquefaction Facilities) for export
- The Federal Energy Regulatory Commission approved the AGDC application in the *Order Granting Authorization Under Section 3 of the Natural Gas Act Establishing Jurisdiction Over the Alaska LNG Project*

Alaska LNG Project Under FERC Jurisdiction

Quoting from 171 FERC ¶ 61,134 (Issued May 21, 2020)

9. We acknowledge at the outset that the physical footprint of the Alaska LNG Project diverges significantly from any LNG facility for which the [FERC] has previously considered an application. As described above, the Alaska LNG Project includes a gas treatment plant located in the Prudhoe Bay Unit of Alaska's North Slope, two natural gas pipelines connecting production units to the gas treatment plant, liquefaction facilities on the Kenai Peninsula, and an approximately 806.9-mile-long, 42-inch-diameter pipeline connecting the gas treatment plant to the liquefaction facilities. While the [FERC] has previously authorized remotely located gas treatment facilities and shorter pipeline segments as part of an LNG terminal, we have never exerted NGA section 3 jurisdiction over a project of this size. However, the scope of these facilities is a function of the unique nature of Alaska. Most pipelines delivering domestic gas to LNG export terminals have been subject to the [FERC's] NGA section 7 jurisdiction over interstate pipelines; but there are no existing interstate pipelines in Alaska and the pipeline proposed here will carry no gas in interstate commerce. In addition, there is no existing intrastate transmission system linking the North Slope production area to Alaska's market areas, which are relatively small and located a significant distance from the North Slope; nor is there a robust intrastate transmission system linking other instate production to multiple markets.

10. Section 3(e)(1) of the NGA states that “[t]he [FERC] shall have the exclusive authority to approve or deny an application for the siting, construction, expansion, or operation of an LNG terminal.” NGA section 2(11) defines LNG terminal as “all natural gas facilities located onshore or in State waters that are used to receive, unload, load, store, transport, gasify, liquefy, or process natural gas that is ... exported to a foreign country from the United States ... but does not include ... any pipeline or storage facility subject to the jurisdiction of the Commission under [section 7].”

11. In addition to the traditional (liquefaction and terminaling) LNG terminal facilities to be located on the Kenai Peninsula, AGDC's proposed Alaska LNG Project includes gas treatment facilities on the North Slope and the pipeline facilities necessary to transport gas from the North Slope to the liquefaction facilities. The definition of LNG terminal in NGA 2(11) is broad enough to encompass these facilities. Accordingly, consistent with section 2(11) of the NGA, we consider them part of AGDC's proposed LNG terminal.



THANK YOU



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