

# LEGAL SERVICES

DIVISION OF LEGAL AND RESEARCH SERVICES  
LEGISLATIVE AFFAIRS AGENCY  
STATE OF ALASKA

(907) 465-3867 or 465-2450  
FAX (907) 465-2029  
Mail Stop 3101

State Capitol  
Juneau, Alaska 99801-1182  
Deliveries to: 129 6th St., Rm. 329

## MEMORANDUM

February 25, 2012

**SUBJECT:** Conceptual amendment No. 2 to Amendment 15 relating to rate of return review by the Regulatory Commission of Alaska; broad limitation on appeals.  
(CSHB 9(RES); Work Order No. 27-LS0075\S)

**TO:** Representative Paul Seaton,  
Co-chair of the House Resources Committee  
Attn: Louie Flora

**FROM:** Emily Nauman  
Legislative Counsel

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Donald M. Bullock Jr.  
Legislative Counsel

### Conceptual Amendment

You requested a conceptual amendment to U.25 that was offered for CSHB 9( ), draft version U, as follows:

The RCA shall review the rate of return on equity to pipeline owners. The rate of return on equity must be within the range of rates of return on equity commonly accepted for natural gas transportation pipelines of a similar nature in the United States. If the commission does not act within 180 days after the submission of an application by equity owners, the rate of return on equity shall be considered approved and shall be implemented. An application that is approved or considered approved under this section is not subject to further review by the commission.

We listened to the committee discussion about the conceptual amendment in order to try to understand the intent of the amendment. The committee concluded that if the contract rates for transportation of the natural gas provided an unreasonably high rate of return to the owners, the Alaska Gasline Development Corporation (AGDC) or other owners of the pipeline should renegotiate the transportation contracts to provide a lower rate of return. An unreasonably high rate of return results in a high transportation cost - and thus produces a lower gross value at the point of production. This is because the gross value at the point of production is calculated by subtracting out transportation costs. Please

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keep in mind that gross value at the point of production is a factor both in the production tax and in determining the value of the state's royalty.

Generally, if transportation rates for gas are regulated by the Regulatory Commission of Alaska (RCA) under AS 42.05 or AS 42.06, RCA can be expected to consider the rates of return to the owners when determining just, fair, and reasonable rates. However, if the gas pipeline is not regulated by RCA the charges for transporting gas are determined by contract.

To best integrate the intent of the conceptual amendment, the enclosed committee substitute is revised in two places.

First, a new subsection (h) is added to AS 18.56.087 in sec. 1 of the draft. The new subsection requires AGDC to submit gas transportation contracts to RCA in the event that RCA is not already regulating the tariff for the pipeline. If RCA notifies AGDC that the contracts result in an unreasonably high rate of return to the owners, AGDC may renegotiate the contracts. If RCA does not notify AGDC within 180 days after receiving the contracts that the rates of return are too high, AGDC may assume the rates are reasonable.

Second, a new subsection is added to AS 42.05.141 in sec. 24 of the bill that requires RCA to review the rates of return under contracts submitted to RCA by AGDC.

#### Constitutional Issue

Finally, be aware that the amendment to AS 38.35.200(c) in sec. 12 substantially limits judicial review. This raises a due process issue and other issues relating to appeals of administrative decisions and access to the court.

ELN:DMB:med

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Enclosure