

Right-of-Way Leasing Act covenants comparison

House Bill 4, In-state Gasline Development Corp.

Current statute provides the Department of Natural Resources the authority to lease state land for pipeline right-of-way corridors. Part of the current statute requires certain covenants to be required in a noncompetitive state right-of-way lease for an oil or gas pipeline; the covenants are AS 38.35.120.

The 14 covenants reflect both state policy and terms related to lease upkeep and management. Several of the 14 covenants, however, represent principles associated with common carrier pipelines. As natural gas pipelines need the ability to provide contract carriage, House Bill 4 retains the original 14-covenants set under AS 38.35.120 for common carriers; there is no intent to change the terms for a common carrier oil pipeline. House Bill then establishes terms for a natural gas contract carrier pipeline, requiring the contract carrier to meet all but 3 of the 14 common carrier covenants. In lieu of the three, House Bill 4 re-crafts the intent of the common carrier covenants in a manner that allows for contract carriage.

The three covenants altered for a contract carrier pipeline are intended to maintain the representation of the state's policy in state land grants for pipeline rights-of-way, as expressed in AS 38.35:

Sec. 38.35.010. Legislative declaration of policy.

(a) The natural resources of this state in crude oil and natural gas and in its land for transportation of these resources and their products by pipeline toward markets both in and out of the state are capable of making a significant contribution to the general welfare of the people of this state. It is the policy of this state that the development, use, and control of a pipeline transportation system be directed to make the maximum contribution to the development of the human resources of this state, the increase in the standard of living for all of its residents, the advancement of existing and potential sectors of its economy, the strengthening of free competition in its private enterprise system, and the careful protection of its incomparable natural environment.

(b) The State of Alaska reserves unto itself all rights, powers, privileges, and immunities not preempted by federal interstate commerce laws and regulations in the right-of-way leasing of any state land for pipeline construction, transmission, or operation within its boundaries.

Covenants applicable to common and natural gas contract carriers

These covenants in AS 38.35 are unchanged in House Bill 4; they apply to a common carrier, and to a contract carrier:

Covenant 3: The pipeline will keep books, accounts, and records, and will make reports the state deems necessary.

- Covenant 4: The pipeline will give the state access to its property and records for inspections.
- Covenant 6: The pipeline will provide connections and interchanges, at state expense, at places along the pipe the state decides necessary if the state takes a royalty or tax share in kind.
- Covenant 7: The pipeline will construct and operate the pipeline in accordance with state laws and with RCA regulations/orders.
- Covenant 8: The pipeline must take care of the leasehold; promptly repair damages; and promptly compensate for any damages
- Covenant 9: The pipeline cannot transfer or dispose of its interest in a state right-of-way lease, including by a transfer of control of the pipeline carrier corporation, without the DNR commissioner's authorization. The authorization is to include the commissioner's consideration of whether the proposed transferee is fit, willing and able to operate the pipeline.
- Covenant 10: The carrier must file with the commissioner a named, permanent resident of the state as its 'registered agent.'
- Covenant 11: The state's laws will be used to resolve lease interpretation questions.
- Covenant 12: The lease comes with the understanding that the lease use will not interfere with the state's management or disposal of land, and that the carrier consents to state occupancy and use of the land by the state (with pipeline safety and operations considerations in mind).
- Covenant 13: The pipeline is liable for damages to the state caused by pipeline construction, operations and maintenance.
- Covenant 14: The pipeline must have liability and property damage insurance as required by the DNR commissioner.

Covenants that differ for contract and common carriers

Three of the 14 existing covenants reflect common carriage principles ((a)(1), (2), and (5)). These are unchanged for common carrier pipelines. House Bill 4, section 11 (Version I) adds a new section to the Right-of-Way Leasing Act: 38.35.121, *Covenants required to be in a lease to a natural gas pipeline that is a contract carrier*. A contract carrier must agree to the regular covenants in 38.35.120, except for (a)(1), (2), and (5), and must agree to the new 38.35.121 covenants (a)(1), (2), (3), (4) and (5), and two additional terms (b) and (c); (b) allows the contract carrier to offer firm and/or interruptible service, and (c) prohibits a new pipeline or an expansion to violate the terms of the Alaska Gasline Inducement Act.

Transporting gas without undue discrimination: The covenants are similar and require a pipeline to accept, transport and convey gas without discrimination. The contract carrier covenant removes references to crude oil; allows the carrier to provide its service subject to contracts with shippers; and removes the requirement of the RCA to determine the reasonableness of a pipeline's actions as a common carrier.

Common carrier (38.35.120) covenant (a)(1) requires a pipeline to operate as a common carrier and to handle oil/gas without unjust or unreasonable discrimination in favor of one producer or another, and that the RCA shall determine reasonable performance of common carrier duties.

The new contract carrier (38.35.121) covenant (a)(1) requires a pipeline to operate as a contract carrier and, subject to contracts, transport gas without discrimination.

Interchanges: The covenants are similar, and require a pipeline to 'interchange' product and provide connections with other pipelines and facilities. The common carrier covenants turn to a regulatory agency for rates and regulations governing such connections. The contract carrier covenants instead turn to contracts between the shipper and the pipeline for determining rates and regulations for interchanges.

Connections: The common carrier covenants require common carriage and expansions. The contract carrier covenants also require expansions, but only on commercially reasonable terms.

Common carrier (38.35.120) covenant (a)(5) requires the carrier to provide connections as ordered by the RCA, when required by the public interest.

The new contract carrier (38.35.121) covenant (a)(4) requires expansions on commercially reasonable terms that, when possible, encourage gas exploration and development in Alaska, without increasing transportation costs for shippers beyond what the shipping contract allows.