

MEMORANDUM

State of Alaska *Department of Law*

TO: Governor Bill Walker

DATE: October 26, 2015

THRU: The Honorable Craig Richards
Attorney General

SUBJECT: AGDC's Authority to Acquire
TransCanada's Interest in the
AKLNG Project

FROM: Martin T. Schultz
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Oil, Gas & Mining Section

Question: Does the Alaska Gasline Development Corporation (AGDC) have legal authority to acquire TransCanada's interest in the Alaska Liquefied Natural Gas (AKLNG) Project gas treatment plant (GTP) and pipeline?

Brief Answer: Yes. Senate Bill 138 amended AGDC's statutes to provide AGDC with authority to "acquire an ownership or participation interest in an Alaska liquefied natural gas project, natural gas treatment facilities, [and] natural gas pipeline facilities . . . related to the infrastructure of an Alaska liquefied natural gas project . . ."¹ AGDC has statutory authority to acquire TransCanada's interest in the AKLNG Project.

ANALYSIS

1. AGDC's Purpose Includes Developing and Advancing an AKLNG Project

Senate Bill 138 expanded AGDC's purpose to include developing and advancing an Alaska liquefied natural gas project: "The corporation shall, for the benefit of the state, to the fullest extent possible, develop . . . an Alaska liquefied natural gas project," and "advance an Alaska liquefied natural gas project by developing infrastructure and providing related services, including services related to transportation, liquefaction, a marine terminal, marketing, and commercial support . . ."²

The AKLNG Project satisfies the statutory definition of an "Alaska liquefied natural gas project," which is defined as: "a natural gas project as described in AS 31.25.005(5) that includes collectively, the Prudhoe Bay unit gas transmission line, the Point Thompson

¹ AS 31.25.080(a)(23).

² AS 31.25.005 (1), (5).

unit gas transmission line, a gas pipeline, the gas treatment plant, a liquefied natural gas plant, and a marine terminal”³

AGDC’s statutory purpose therefore includes developing and advancing the AKLNG Project.

2. AGDC’s Powers and Duties Provide Express Authority for AGDC to Acquire TransCanada’s AKLNG Interest

Senate Bill 138 also amended AGDC’s powers and duties to provide AGDC with authority to acquire an ownership interest in the AKLNG Project components. Paragraph 23 of AS 31.25.080(a) provides that AGDC may, “except as provided in (g) of this section, acquire an ownership or participation interest in an Alaska liquefied natural gas project, natural gas treatment facilities, natural gas pipeline facilities, liquefaction facilities, marine terminal facilities related to the infrastructure of an Alaska liquefied natural gas project”⁴ This provision provides AGDC with explicit authority to acquire TransCanada’s interest in the gas treatment and pipeline facilities. This paragraph also provides AGDC with authority to hold the State of Alaska’s interest in the AKLNG Project liquefaction facilities, which AGDC has held since 2014, as was clearly intended by the legislature.

Subsection (g) of AS 31.25.080 provides that TransCanada’s interest may not be acquired by an “entity or subsidiary” of AGDC that is advancing an in-state natural gas pipeline, such as the Alaska Stand Alone Pipeline (ASAP):⁵ “The power in (a)(23) of this section may not be exercised by an entity or subsidiary of the corporation that is advancing the development of an in-state natural gas pipeline”⁶ This subsection does not prohibit the corporation from acquiring TransCanada’s AKLNG interest, even if AGDC continues to work on the in-state Alaska Stand Alone

³ AS 31.25.390(7). “Gas pipeline,” “gas treatment plant,” “liquefied natural gas plant,” “marine terminal,” “Point Thomson unit gas transmission line,” and “Prudhoe Bay unit gas transmission line” are defined terms. AS 31.25.390(7)(A)-(F). The AKLNG Project components satisfy those definitions.

⁴ AS 31.25.080(a)(23).

⁵ See Senate Bill 138 Sectional Analysis, at 2 (noting that SB 138 “adds a new subsection to AS 31.25.080 to direct that an entity or subsidiary of the corporation pursuing the in-state natural gas pipeline may not pursue an AK LNG project (AS 31.25.080(a)(23))”).

⁶ AS 31.25.080(g).

Pipeline (ASAP). If subsection (g) was interpreted to prohibit the corporation from acquiring an interest in components of the AKLNG Project while the corporation completed work on ASAP, AGDC would also have been prohibited from holding the interest in the liquefaction facility that they have held since 2014. Such a reading would be contrary to legislative intent.

3. AGDC's Liquefied Natural Gas Project Fund Can be Used to Pay for Future Expenses Associated with TransCanada's Interest

Senate Bill 138 also established the Alaska liquefied natural gas project fund in AGDC, which can be used for any of the powers and duties discussed above. AGDC may use money appropriated to the Alaska liquefied natural gas project fund “without further appropriation . . . for purposes related to an Alaska liquefied natural gas project . . .”⁷ AGDC may therefore use money appropriated to this fund for future AKLNG Project cash calls and expenses associated with the TransCanada interest it acquires.

In summary, Senate Bill 138 amended AGDC's statutory purpose, powers and duties, and funds to provide AGDC with the authority and ability to acquire TransCanada's interest in the AKLNG Project gas treatment and pipeline facilities. No statutory amendments are necessary for AGDC to acquire TransCanada's interest in the AKLNG Project.

⁷ AS 31.25.110.