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56

AN ACT

Relating to pipeline carriers of natural gas produced from the North Slope of Alaska and to the intrastate regulation by the Regulatory Commission of Alaska of pipelines and pipeline facilities of that natural gas.

BE IT ENACTED BY THE LEGISLATURE OF THE STATE OF ALASKA:

THE ACT FOLLOWS ON PAGE 1

Approved by the Governor: May 11, 2000
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AN ACT

1 Relating to pipeline carriers of natural gas produced from the North Slope of Alaska and to
2 the intrastate regulation by the Regulatory Commission of Alaska of pipelines and pipeline
3 facilities of that natural gas.

4

5 * Section 1. AS 38.35.120(a) is amended to read:

6 (a) A noncompetitive lease of state land for a right-of-way for an oil or natural
7 gas pipeline valued at \$1,000,000 or more may be granted only upon the condition that
8 the lessee expressly covenants in the lease, in consideration of the rights acquired by
9 it under the lease, that

10 (1) it assumes the status of and will perform all of its functions
11 undertaken under the lease as a common carrier and will accept, convey, and transport
12 without discrimination crude oil or natural gas, depending on the kind of pipeline
13 involved, delivered to it for transportation from fields in the vicinity of the pipeline
14 subject to the lease throughout its route both on state land obtained under the lease and

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1 on the other land; however, a lessee that [WHO] owns or operates a natural gas
2 pipeline

3 (A) subject to regulation either [(A)] under the Natural Gas Act
4 (15 U.S.C. 717 et seq.) of the United States [,] or [(B)] by the state or political
5 subdivisions with respect to rates and charges for the sale of natural gas, is, to
6 the extent of that regulation, exempt from the common carrier requirement in
7 this paragraph; it will accept, convey, and transport crude oil or natural gas
8 without unjust or unreasonable discrimination in favor of one producer or
9 person, including itself, as against another but will take the crude oil or natural
10 gas, depending on the kind of pipeline involved, delivered or offered, without
11 unreasonable discrimination, that the Regulatory Commission of Alaska shall,
12 after a full hearing with due notice to the interested parties and a proper finding
13 of facts, determine to be reasonable in the performance of its duties as a
14 common carrier;

15 (B) that is a North Slope natural gas pipeline (i) is required
16 to operate as a common carrier only with respect to the intrastate
17 transportation of North Slope natural gas, as that term is defined in
18 AS 42.06.630, and (ii) is not required to operate as a common carrier as
19 to a liquefied natural gas facility or a marine terminal facility associated
20 with the pipeline, and is not otherwise required to perform its functions
21 under the lease as a common carrier; for purposes of this subparagraph,
22 "North Slope natural gas pipeline" means all the facilities of a total system
23 of pipe, whether owned or operated under a contract, agreement, or lease,
24 used by a carrier for transportation of North Slope natural gas, as defined
25 by AS 42.06.630, for delivery, for storage, or for further transportation,
26 and including all pipe, pump, or compressor stations, station equipment,
27 tanks, valves, access roads, bridges, airfields, terminals and terminal
28 facilities, including docks and tanker loading facilities, operations control
29 centers for both the upstream part of the pipeline and the terminal, tanker
30 ballast treatment facilities, fire protection system, communication system,
31 and all other facilities used or necessary for an integral line of pipe, taken

1 as a whole, to carry out transportation, including an extension or
2 enlargement of the line;

3 (2) it will interchange crude oil or natural gas, depending on the kind
4 of pipeline involved, with each like common carrier and provide connections and
5 facilities for the interchange of crude oil or natural gas at every locality reached by
6 both pipelines when the necessity exists, subject to rates and regulations made by the
7 appropriate state or federal regulatory agency;

8 (3) it will maintain and preserve books, accounts, and records and will
9 make those reports that the state may prescribe by regulation or law as necessary and
10 appropriate for purposes of administration of this chapter;

11 (4) it will accord at all reasonable times to the state and its authorized
12 agents and auditors the right of access to its property and records, of inspection of its
13 property, and of examination and copying of records;

14 (5) it will provide connections, as determined by the Regulatory
15 Commission of Alaska under AS 42.06.340, to facilities on the pipeline subject to the
16 lease, both on state land and other land in the state, for the purpose of delivering crude
17 oil or natural gas, depending on the kind of pipeline involved, to persons (including
18 the state and its political subdivisions) contracting for the purchase at wholesale of
19 crude oil or natural gas transported by the pipeline when required by the public
20 interest;

21 (6) it shall, notwithstanding any other provision, provide connections
22 and interchange facilities at state expense at such places the state considers necessary
23 if the state determines to take a portion of its royalty or taxes in oil or natural gas;

24 (7) it will construct and operate the pipeline in accordance with
25 applicable state laws and lawful regulations and orders of the Regulatory Commission
26 of Alaska;

27 (8) it will, at its own expense, during the term of the lease,

28 (A) maintain the leasehold and pipeline in good repair;

29 (B) promptly repair or remedy any damage to the leasehold;

30 (C) promptly compensate for any damage to or destruction of
31 property for which the lessee is liable resulting from damage to or destruction

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1 of the leasehold or pipeline;

2 (9) it will not transfer, assign, or dispose of in any manner, directly or
3 indirectly, or by transfer of control of the carrier corporation, its interest in a right-of-
4 way lease, or any rights under the lease or any pipeline subject to the lease to any
5 person other than another owner of the pipeline (including subsidiaries, parents, and
6 affiliates of the owners), except to the extent that the commissioner, after consideration
7 of the protection of the public interest (including whether the proposed transferee is
8 fit, willing, and able to perform the transportation or other acts proposed in a manner
9 that will reasonably protect the lives, property, and general welfare of the people of
10 Alaska), authorizes; the commissioner shall not unreasonably withhold consent to the
11 transfer, assignment, or disposal;

12 (10) it will file with the commissioner a written appointment of a
13 named permanent resident of the state to be its registered agent in the state and to
14 receive service of notices, regulations, decisions, and orders of the commissioner; if
15 it fails to appoint an agent for service, service may be made by posting a copy in the
16 office of the commissioner, [AND] filing a copy [OF IT] in the office of the lieutenant
17 governor, and [BY] mailing a copy to the lessee's last known address;

18 (11) the applicable law of this state will be used in resolving questions
19 of interpretation of the lease;

20 (12) the granting of the right-of-way lease is subject to the express
21 condition that the exercise of the rights and privileges granted under the lease will not
22 unduly interfere with the management, administration, or disposal by the state of the
23 land affected by the lease, and that the lessee agrees and consents to the occupancy
24 and use by the state, its grantees, permittees, or other lessees of any part of the right-
25 of-way not actually occupied or required by the pipeline for the full and safe utilization
26 of the pipeline, for necessary operations incident to land management, administration,
27 or disposal;

28 (13) it will be liable to the state for damages or injury incurred by the
29 state caused by the construction, operation, or maintenance of the pipeline and it will
30 indemnify the state for the liabilities or damages;

31 (14) it will procure and furnish liability and property damage insurance

1 from a company licensed to do business in the state or furnish other security or
2 undertaking upon the terms and conditions the commissioner considers necessary if the
3 commissioner finds that the net assets of the lessee are insufficient to protect the
4 public from damage for which the lessee may be liable arising out of the construction
5 or operation of the pipeline.

6 * Sec. 2. AS 42.05.711 is amended by adding a new subsection to read:

7 (n) Except as provided by AS 42.06.370(c), the provisions of this chapter do
8 not apply to a person who owns or operates a natural gas pipeline as a North Slope
9 natural gas pipeline carrier, as that term is defined in AS 42.06.630.

10 * Sec. 3. AS 42.06.230(b) is amended to read:

11 (b) The commission's jurisdiction and authority extend to

12 (1) an oil or gas pipeline facility operating in a municipality, whether
13 home rule or otherwise; if [. IF] a conflict between a certificate, order, decision, or
14 regulation of the commission and a charter, permit, franchise, ordinance, rule, or
15 regulation of such a local governmental entity occurs, the certificate, order, decision,
16 or regulation of the commission prevails; and

17 (2) the intrastate transportation of North Slope natural gas through
18 a North Slope natural gas pipeline.

19 * Sec. 4. AS 42.06.240 is amended by adding a new subsection to read:

20 (f) In addition to other requirements of (a) - (e) of this section, the provisions
21 of this subsection apply to a certificate of public convenience and necessity for a North
22 Slope natural gas pipeline carrier or person that will be a North Slope natural gas
23 pipeline carrier under this chapter:

24 (1) the person making application shall dedicate a portion of the
25 pipeline's initial capacity sufficient to transport the total volume of North Slope natural
26 gas that has been committed by producers and shippers of North Slope natural gas to
27 tendering for intrastate firm transportation service at the time that the operation of the
28 North Slope natural gas pipeline commences;

29 (2) upon receipt of the certificate application under this subsection, the
30 commission shall issue a public notice inviting prospective intrastate shippers of North
31 Slope natural gas to file requests for service; a request for service submitted by a

1 shipper in response to a notice issued under this paragraph must include a proof of the
2 shipper's commitment to use the North Slope natural gas pipeline for intrastate firm
3 transportation service, specifying the volume of North Slope natural gas that the
4 shipper will tender for initial intrastate firm transportation service;

5 (3) in its review of an application submitted under this subsection,

6 (A) for purposes of evaluating the total volume of intrastate
7 transportation of North Slope natural gas to be accepted for initial intrastate
8 transportation, the commission shall determine total volume based upon written
9 commitments to tender North Slope natural gas for intrastate firm transportation
10 service continuously for a period of not less than three years after the operation
11 of the North Slope natural gas pipeline commences as follows:

12 (i) each request for service by an intrastate shipper that
13 is a public utility, as that term is defined in AS 42.05.990, for the
14 purpose of furnishing natural gas for ultimate consumption within the
15 state by its customers that individually consume an average annual
16 volume of less than 20,000,000 standard cubic feet of gas per day shall
17 be supported by a written commitment by the public utility that sets out
18 the utility's best current estimate of the average annual volume that the
19 utility will require during the three-year period;

20 (ii) each request for service by an intrastate shipper that
21 is not a public utility, as that term is defined in AS 42.05.990, and each
22 request for service by a public utility for the purpose of furnishing
23 natural gas for ultimate consumption within the state by a customer that
24 individually consumes an average annual volume of 20,000,000 or more
25 standard cubic feet of gas per day, that purchases North Slope natural
26 gas from a North Slope natural gas producer, must be supported by one
27 or more contracts for the purchase of the North Slope natural gas on a
28 take-or-pay basis that extends for a period of not less than three years
29 after the operation of the North Slope natural gas pipeline commences;

30 (iii) the commission may consider peak volumes
31 specified in the written commitments of North Slope natural gas

1 producers and purchase contracts; and

2 (B) the commission shall set out in its order granting a
3 certificate of public convenience and necessity the total volume of intrastate
4 North Slope natural gas that the North Slope natural gas pipeline carrier shall
5 accept for intrastate transportation; the total volume may not exceed the volume
6 substantiated by written commitments and contracts that comply with the
7 requirements of this chapter;

8 (4) if the North Slope natural gas pipeline carrier wants to transport
9 North Slope natural gas within the state in excess of the amount set out in the
10 statement of total volume in the pipeline carrier's certificate of public convenience and
11 necessity, the pipeline carrier may apply for authority to transport a greater volume of
12 North Slope natural gas within the state than the carrier is required by the commission
13 to transport in its order entered under (3)(B) of this subsection; the commission shall
14 grant the authority requested by the pipeline carrier if the commission determines that
15 the pipeline carrier's transportation of a greater volume is consistent with public
16 convenience and necessity.

17 * Sec. 5. AS 42.06.310 is amended by adding a new subsection to read:

18 (d) The requirement of (c) of this section does not apply to a North Slope
19 natural gas pipeline carrier to the extent that the capacity of the carrier's North Slope
20 natural gas pipeline does not allow for expanded capacity, and does not apply to
21 require a North Slope natural gas pipeline carrier to enlarge or extend its North Slope
22 natural gas pipeline system. However, the commission may require a North Slope
23 natural gas pipeline carrier to expand, enlarge, or extend its North Slope natural gas
24 pipeline system if, after notice and opportunity for hearing, the commission determines
25 that

26 (1) a person making a request for expanded, enlarged, or extended
27 service by a North Slope natural gas pipeline carrier has made a firm contractual
28 commitment to the North Slope natural gas pipeline carrier to transport North Slope
29 natural gas; and

30 (2) the expansion, enlargement, or extension will not result in

31 (A) substantial injury, including economic injury, to the North

- 1 Slope natural gas pipeline facility or its customers;
- 2 (B) substantial detriment to the services furnished by the North
- 3 Slope natural gas pipeline facility; or
- 4 (C) the creation of safety hazards.

5 * Sec. 6. AS 42.06.350 is amended by adding a new subsection to read:

6 (c) In its tariff filed with the commission under (a) of this section, a North
7 Slope natural gas pipeline carrier may charge separate rates for firm transportation
8 service and for interruptible transportation service. A North Slope natural gas pipeline
9 carrier

10 (1) may, in addition, impose a reservation fee or similar charge for
11 reservation of capacity in a North Slope natural gas pipeline as a condition of
12 providing firm transportation service; the reservation fee or charge imposed by the
13 carrier may not include any variable costs or fixed costs that are not attributable to the
14 provision of firm transportation service;

15 (2) may not impose a reservation fee or similar charge for reservation
16 of capacity in a North Slope natural gas pipeline for interruptible transportation
17 service.

18 * Sec. 7. AS 42.06.370 is amended by adding a new subsection to read:

19 (c) Rates demanded, observed, charged, or collected by a North Slope natural
20 gas pipeline carrier for intrastate service shall be designed as if that portion of the
21 North Slope natural gas pipeline were a public utility regulated under the provisions
22 of AS 42.05.

23 * Sec. 8. AS 42.06.630 is amended by adding new paragraphs to read:

24 (11) "capacity" means, with reference to a North Slope natural gas
25 pipeline, the average daily volume throughput of the North Slope natural gas pipeline,
26 calculated at the normal operating pressure of the North Slope natural gas pipeline as
27 set out in the pipeline design;

28 (12) "firm transportation service" means service by a North Slope
29 natural gas pipeline carrier that is not subject to a prior claim by another shipper or
30 another class of service; service constitutes "firm transportation service" if the service
31 receives the same priority as any other class of firm transportation service;

1 (13) "interruptible transportation service" means service by a North
2 Slope natural gas pipeline carrier in which the carrier's pipeline system capacity may
3 be subject to a prior claim by another shipper or another class of service; a service
4 constitutes "interruptible transportation service" if the service is given a lower priority
5 than another class of service, resulting in noncontinuous service to a shipper of North
6 Slope natural gas;

7 (14) "intrastate," as applied to the transportation of North Slope natural
8 gas, means the transportation of North Slope natural gas between any point within the
9 state and another point within the state, for ultimate consumption of the North Slope
10 natural gas within the state;

11 (15) "North Slope natural gas" means gas that is produced from the
12 area of Alaska lying north of 68 degrees North latitude and that, but for a pipeline
13 subject to regulation under this chapter, had not been committed for sale and delivery
14 in a commercial market due to the prevailing costs or price conditions;

15 (16) "North Slope natural gas pipeline" or "North Slope natural gas
16 pipeline facility" means all the facilities of a total system of pipe, whether owned or
17 operated by a North Slope natural gas pipeline carrier under a contract, agreement, or
18 lease, in this state used by a North Slope natural gas pipeline carrier for transportation
19 of North Slope natural gas for delivery, storage, or further transportation, including all
20 pipe, pump, and compressor stations, station equipment, gas processing plants, treaters,
21 separators, and all other facilities used or necessary for an integral line of pipe to carry
22 out the transportation from point to point, but excluding marine terminal facilities and
23 the integrated plant, facilities, and equipment, including pollution control equipment,
24 used for conditioning, storage, handling, or processing of North Slope natural gas into
25 liquefied natural gas;

26 (17) "North Slope natural gas pipeline carrier" means the owner,
27 including a corporation, company, or other entity organized under the laws of the
28 United States or of a state, of a North Slope natural gas pipeline, or an interest in it,
29 or a person, including a corporation, company, or other entity, organized under the
30 laws of the United States or of a state, authorized to construct, operate, or extend
31 North Slope natural gas pipeline facilities under this chapter.