

ALASKA LEGISLATURE
JOINT COMMITTEE ON NATURAL GAS PIPELINES
September 19, 2001
9:09 a.m.

SENATE MEMBERS PRESENT

Senator Torgerson, Chair
Senator Kelly
Senator Olson

SENATE MEMBERS ABSENT

Senator Halford
Senator Ellis

HOUSE MEMBERS PRESENT

Representative Green, Vice Chair
Representative Ogan
Representative Davies
Representative Porter
Representative Chenault
Representative Fate

OTHER MEMBERS PRESENT

Representative Lancaster
Representative Dyson
Representative McGuire

COMMITTEE CALENDAR

Discussion of Producers' Legislation:

Patrick Coughlin, Special Consultant to the
Senate Resources Committee

Producers Team:

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Mr. Joseph Marushack, Vice President
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Mr. Michael Hurley
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No address provided

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Alaska Gasline Port Authority
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Public Testimony:

Mr. Scott Heyworth, Chairman
Citizens for the All Alaska Gasline to Valdez Initiative
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Mr. Harold Heinze
Special Assistant to the Legislative Majority
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Ms. Nan Thompson, Chair
Regulatory Commission of Alaska

Department of Community and Economic Development
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Mr. John Katz
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Committee discussion on federal legislation

ACTION NARRATIVE

TAPE 01-17, SIDE A

CHAIRMAN TORGERSON called the Joint Natural Gas Pipelines Committee meeting to order at 9:09 a.m. He announced that the purpose of today's meeting was discussion of the Producers' legislation. He said that four or five entities were working on legislation and that he wanted to formulate the Alaska Legislature's position so he could present it to the U.S. Energy Natural Resources Committee meeting, which is scheduled for October 2 in Washington, D.C.

He noted that he had a letter from the Governor with 10 points, but he told the Energy Committee that he would be writing a letter clarifying that the Alaska Legislature does not agree with them necessarily, since they hadn't even discussed them yet.

MR. PATRICK COUGHLIN, Special Consultant to the Senate Resources Committee, said he was providing the committee with an overview of the proposed legislation circulated by the Alaska Gas Producers Pipeline Team, composed of BP, Phillips Petroleum and ExxonMobil, entitled "The Alaska Natural Gas Pipeline Act of 2001." He will point out differences between that Act and "The Alaska Natural Gas Transportation Act of 1976." He said he would also reflect and summarize the comments they have received from various parties including Anadarko on the proposed legislation. It was not his intent to support any of the positions. He explained:

In July of 2001, the Alaska Gas Producers Pipeline Team circulated their proposed legislation, which I'll refer to as their Proposed Act. Its stated purpose is "to expedite the approval, construction and initial operation of...transportation systems for the delivery of Alaska Natural Gas to the Lower 48 states." The Proposed Act purports to advance this purpose by:

1. Relying on competitive market forces to determine which transportation system can be built and operated in an economical manner; and
2. Providing for various measures designed to expedite the construction and operation of that line.

The stated purpose is very similar to the stated purpose of the Alaska Natural Gas Transportation Act of 1976, which I'll refer to as ANGTA. That purpose is stated as follows:

The purpose of this chapter is to provide the means for making a sound decision after the selection of a transportation system for delivery of Alaska natural gas to the Lower 48 states and to expedite its construction and operation by (1) limiting the jurisdiction of the courts to review the actions of federal officers or agencies taken pursuant to the direction and authority of this chapter, and (2) permitting the limitation of administrative procedures and affecting the limitation of judicial procedures related to such actions.

The similarity between the two acts continues. They both contain similar provisions relating to the creation of a new federal official to direct and coordinate the permitting efforts, expediting the permit approval process, limiting the agency discretion and limiting judicial review.

The next topic that I want to touch upon is the selection process that is contained in the act. The producers have said it's designed to be route neutral and it allows for the selection of any project. In comparison, under ANGTA, an operator, Foothills, and a route, the Alcan route, has been selected through a lengthy process, which included a treaty with Canada, a presidential finding and decision and approval by the U.S. Congress.

Although the producers' proposed act does not explicitly repeal ANGTA, the proposed act would begin anew the selection process of both an operator and a route. The producers in their remarks say that this is necessary because ANGTA has been a failure and that a competitive market should be allowed to select a system/route rather than government.

Foothills, on the other hand, is wary about any assertion that a new federal law is necessary. Foothills believes that an Alcan route can be built quickly and efficiently under the ANGTA without any statutory changes. Foothills is concerned about statements that a new law is necessary because it is possible a law will not pass. If that becomes the case, then the viability of the ANGTA has been called into question.

Continuing on to the neutrality principle, the producers' legislation is route neutral. It would authorize a variety of routes. It would clearly authorize the proposed over-the-top route and would call into question the constitutionality in SB 164 that banned the over-the-top route that the legislature passed last session.

On the issue of owner neutrality, the producers say that the act is available to any party including Foothills. What it does do that ANGTA did not do originally was to allow the producers, themselves, to be the only owners of the transportation system.

Initially, under ANGTA, the producers were not allowed to have any ownership interests because of anti-trust concerns. Later, in 1981, ANGTA was modified through a waiver of law that allowed the producers to have some ownership interest. However, I should note that when President Reagan forwarded that waiver to Congress for its approval, it contained explicit conditions that the Federal Energy Regulatory Commission, which is the agency that is back in Washington, D.C. that deals with these issues, which I'll call FERC, had to make an explicit finding after consultation with the Attorney General that the participation of the owners in the line would not raise an anti-trust problem. FERC had to make a second finding that in and of itself the participation would not cause concerns by non-owners who wanted to ship on the line, that they would not get [indisc.] and there had to be a finding regarding capacity and expansion. So, that's a significant difference.

Both Foothills and other commentators, including Anadarko, have expressed some concerns that the proposed act eliminates competitive market forces by placing market power in the hands of the producers and allowing them to control when and how a pipeline can be built. In addition, Foothills asserts that ANGTA is consistent with

the market-based approach, because it allows the commercial negotiations between the producers of the gas and the pipeline owners for tariff terms and conditions.

The next topic I would like to address in this overview is instate access to gas. Unlike ANGTA, the Producers' proposed act makes no mention of in-state access to gas. Section 13(b) of ANGTA, however, explicitly states:

The State of Alaska is authorized to ship its royalty gas on the approved transportation system for use within Alaska and, to the extent it contracts for the sale of royalty gas, to withdraw such gas from the interstate market for use within Alaska. The FERC (the former FERC) shall issue all authorizations necessary to effectuate such shipment and withdrawal...

MR. COUGHLIN said the proposed act has no similar provision. The producers proposed legislation would have significant benefits for them in terms of reducing uncertainty and risk in building "this very expensive pipeline." Some of these issues relate to the withdrawn partners, whether or not there's an obligation to construct a Dempster Lateral, whether or not ANGTA has the ability to be modernized and how the tariff is determined. They believe that their proposed act will eliminate some of those risks or reduce them. Foothills, on the other hand, has responses to most, if not all, of those concerns.

MR. COUGHLIN compared the proposed bill section by section:

Section 1 is simply the title.

Section 2 sets forth the congressional findings that justify the proposed act. The Findings (1) - (6) are uncontroversial and are setting forth the need for gas in the Lower 48 and a short history of ANGTA. Finding (6) states that despite the passage of more than 20 years, the parties seeking to develop the Alaska portion of the ANGTA project have been unable to obtain the necessary regulatory approvals or to attract the necessary financing. This finding leads the producers to claim that the ANGTA effort is a "failure."

Others, in their comments to us, have claimed that Finding (6) is misleading because Foothills has obtained many authorizations and financing could not be obtained

primarily because the producers were unwilling to commit their reserves to the project due to market conditions in the Lower 48.

Finding (7) states that because of the passage of time, some of the design features of the ANGTA system are outdated and would have to be modified. Although the statement is true, it implies that these modifications cannot be obtained under ANGTA. Foothills has submitted numerous briefing materials that such modifications can be obtained with the design framework of ANGTA.

Finding (8) states that because of a change in the nation's energy supply situation, interest in an Alaska project has been renewed. This finding, as well as the entire proposed act has been criticized for ignoring an LNG option. The Port Authority has presented the committee with a draft bill in our Fairbanks meeting, which incorporated an LNG option.

Findings (9) and (10) suggest that in order to assess economic certainty, one must know whether permits and environmental assessments can be timely obtained. Foothills asserts that these findings ignore the ANGTA provisions regarding expedited permitting, limits on agency discretion and limits on judicial review, which provide more certainty than any other federal statute.

Section 3 is the congressional statement of purpose which I have already gone over. Again, the purpose under the Producers' proposed legislation and under ANGTA appear to be quite similar.

Section 4 is a definitional section and most of the definitions are not controversial, but a few are. In particular, it's 5, 6, and 7, which deal with Alaska gas being transported to Lower 48 markets and addressing facilities to be built in Alaska and Lower 48 states. These provisions do not address Canadian facilities. Foothills notes ANGTA, through the treaty with Canada and an agreement with Canada, does address Canadian facilities. Foothills suggests that the proposed act could create confusion and significant lack of coordination between the two countries on regulatory and commercial issues. Additionally, other commentators again noted that the definitions excluded an LNG option through Alaska.

Section 5 is the section dealing with the expedited approval process. Section 5(a) adds new definitions to the Natural Gas Act, that is the Act that normally under federal law governs construction of operations of pipelines, which is administered by FERC. Again, most of those definitions are non-controversial.

Section 5(b) amends the Natural Gas Act to provide that FERC shall issue a Certificate of Public Convenience and Necessity to a firm to construct and operate the Alaska portion of a pipeline if three conditions are met. They are:

- FERC determines that the applicant has contracted with a "shipper" to transport Alaska natural gas to Lower 48 markets;
- FERC determines that rates, terms and conditions for transportation service can be established under the Natural Gas Act; and
- FERC determines that the terms and conditions for compliance with all applicable environmental laws can be established in accordance with the Natural Gas Act.

To help expedite the process, Section 5(b) requires that the FERC makes these determinations and issue a certificate within 18 months after the filing of an application. Section 5(b) also adds a new section to the Natural Gas Act authorizing the FERC to issue a certificate to transport Alaska gas from the Canadian border to the Lower 48 through normal Natural Gas Act (NGA) procedures.

The Department of Law's outside counsel, Morrison & Foerster (MoFo), and Foothills have suggested that upon a finding that these three conditions exist, FERC must issue a certificate. MoFo has suggested that FERC has no other discretion. Along the same lines, Foothills suggests that the proposed act would eliminate the NGA's requirement that an applicant demonstrate "public convenience and necessity."

As I stated, the first condition is that the applicant has to show that it's contracted with a shipper and has raised some concerns with producers whose summary says that a shipper is "anyone who, through a contract or otherwise, controls Alaska natural gas." MoFo and others

have suggested that this requirement gives the producers a significant leg up on any other potential applicant because they already control the gas. Foothills and other commentators believe that giving the producers too much control raises antitrust concerns. The producers have disagreed on that point. They suggest that a shipper can be anyone and as long as you have a contract with a shipper, you can be an applicant. This may be something that you wish to clarify today.

Foothills also contends that the "can be established" language is designed to allow the applicant under the new law to catch up with the ANGTA applicants. Under the NGA, Foothills says that rates, terms and conditions are reviewed to insure that public convenience and necessity standard is satisfied before, not after, a certificate is issued.

9:36 a.m.

Section 6 deals with environmental reviews and requires a single EIS for what the producers define as a segment from Alaska to Alberta and a single EIS for Alberta to the Lower 48. In other words, there are two separate EIS's required and the producers believe that this is a more efficient way to deal with the environmental statement issue.

Section 6 designated the FERC as lead agency and provides that an EIS shall be prepared in accordance with the FERC's regulations and procedures. It further states that such an EIS shall satisfy the National Environmental Policy Act (NEPA) obligations and that the scope of this EIS shall be limited to the scope of the application. It requires that the preparation of an EIS shall be expedited and the draft shall be issued within 12 months after filing and the final EIS shall be issued within six months thereafter absent good cause.

Foothills and others assert that Section 6 in combination with the mandatory provisions of Section 5 can be interpreted to eliminate NEPA's requirement to evaluate alternative routes and to eliminate the "no action alternative before issuing a certificate. Further, Foothills argues that the FERC could be required to issue a certificate for an over-the-top route even though there are more environmentally accessible alternatives.

Finally, Foothills notes that two EISs and a supplemental EIS has already been prepared for the ANGTA project. These reviews were prepared and concluded after numerous opportunities for public review and comment. Congress found that those EISs satisfied NEPA.

Section 7 creates the Office of the Federal Pipeline Director within the executive branch. The director is responsible for making sure the project is expedited and for coordinating between the various federal agencies.

Section 7 basically duplicates the provisions of ANGTA that created the Office of the Federal Inspector. That position was later abolished by Congress in 1992, but the functions were transferred to the Secretary of Energy, which presumably still has that power today.

Section 8 deals with agency review and decisions. It requires that all actions taken by federal agencies be expedited and that actions be coordinated under the direction of the director. Any necessary authorization may include terms and conditions permitted by law unless the director determines that they would impair the expeditious construction and initial operation to transport Alaska gas to market. Section 8 is basically the same as Section 9(a) of the ANGTA.

9:38:50 a.m.

Section 9 - Judicial Review - limits review of a federal agency's action in connection with the Alaska Gas Project claims that the action violated the Constitution or was in excess of statutory authority. It also limits the time within which an action can be brought. Claims that the agency's actions were arbitrary and capricious are precluded. Section 9 requires that all claims be brought exclusively in the District of Columbia Circuit Court and that the court treat all claims as a matter for expedited consideration. Section 9 of the proposed act limits judicial review, similar to Section 10 of ANGTA.

Finally, Section 10 - Separability - provides that if any provision of the proposed act is invalid, the remainder of it is unaffected. This is similar to Section 16 of the ANGTA.

9:40 a.m.

REPRESENTATIVE OGAN said page 2 of Mr. Coughlin's overview says that the proposed act would allow an over-the-top route and would call into question the constitutionality of SB 164 that bans the over-the-top route as violating the federal commerce clause. He asked if the Producers' proposal is passed into federal law, would that supercede our state law and, "they could build a route wherever they want."

MR. COUGHLIN answered that concerns were raised when the Alaska legislature passed SB 164 and this, "in essence puts into federal law the authority to construct such a route and thereby agreeing with you, yes it would supercede state law."

CHAIRMAN TORGERSON said, "It was our legislative legal's opinion that SB 164 was constitutional because ANGTA was in place, which in effect selected a route that ran south and I think he went on to say that without that, we're stepping on commerce clause problems and that we would be forbidding interstate trade. But with the over-the-top route authorized, it would make our language null and void."

REPRESENTATIVE OGAN asked if he thought this would be a subject of litigation or would it automatically supercede our state law.

MR. COUGHLIN replied that even though he is a lawyer, he thought the Attorney General could better answer that question. He said, "It clearly goes further in weakening the state's position on SB 164. There's no doubt about that."

CHAIRMAN TORGERSON said that was the most effective way at the time, but the state has two or three other options that are just as effective.

REPRESENTATIVE GREEN asked, in reference to Sections 6 - 8, if Mr. Coughlin thought that the existing EIS could be modified slightly to cover the [indisc.] route as opposed to a full EIS. He said the Producers are talking about a one year expedited EIS with maybe a six-month EIS following that and asked if Mr. Coughlin had ever seen an EIS of this magnitude expedited in such a short time.

MR. COUGHLIN replied that he hadn't, but if this special piece of legislation passes, it mandates that to happen. "I think that's one of the things that the producers clearly want."

In answer to the first question, MR. COUGHLIN said:

I think that Foothills has done a very detailed analysis of that issue and they believe that the President

provided that when the EIS was approved that no further EIS would be necessary, but there would be site specific review and the President in ANGTA specifically allowed for that. So, if new or different environmental concerns came up, that's how they would be dealt with under that act.

REPRESENTATIVE DAVIES said:

The flip side of the route neutral question is the fact that the benefits of an expedited review are not conferred in a tidewater approach. Is that a fair way to state that? Can you amplify on that a little bit? And there seems to be a little bit of ambiguity about what's meant by the Canadian border in some of the discussions. It's probably just sloppy drafting, but there are references to the Alaska to Alberta section and things like that, which - that might include the Mackenzie River Valley, for example. Do you have any comment on those issues?

MR. COUGHLIN responded:

It's my reading of the act and others, particularly YPC who is of course directly interested in that, that the definitions exclude a route such as they would propose, because it explicitly appears to be to carry gas to the Lower 48 markets. If they were going to a foreign market, that would not be included within the definitions and, second, it talks about an over-land pipeline route.

I will tell you frankly, that [Canadian border] was a little bit unclear to me and I think you might talk to the producers about what their intent was. But, it looked to me like when they were focused on the one part about the authority of what the United States federal government would do, they broke it into Prudhoe to the Canadian border and then from the Canadian border to a final destination market in the Lower 48, but then they recognize that an EIS would have to be prepared for the entire route and that's how I understood it, but I can't say that's exactly what they meant.

9:47 - 9:53 a.m. - BREAK

CHAIRMAN TORGERSON announced that Mr. Ken Konrad, BP; Mr. Joe Marushack, Phillips; and Mr. Robbie Schilhab, ExxonMobil [of the Producers' Team] would testify next. He said that the information

they had received from them was basically their overview and sectional analysis that they had presented in Fairbanks.

MR. JOE MARUSHACK offered to review four or five summary slides and then they could go through and answer questions. His review was as follows:

You may need a little background on why we headed down this path of enabling legislation to start out with. The project that we're working on right now has some economic hurdles and economic hurdles are highly influenced by risk. To the extent that we can reduce risk in this project, one can accept the hurdle ranks that are less than you would have to accept if there was a lot of risk in that. So that's really what we're focusing on with our enabling legislation here. We're reducing risk and increasing our ability to develop an economic project.

One of the key risks we have had associated with this project right now is cost numbers sitting out there. They have been out there for some period of time. We are trying to assess those costs' risk by trying to use technology to reduce the cost to the extent that we can. And, also, what we're trying to do with cost risk is look at how can we eliminate timing problems and that gets into the enabling legislation.

Price volatility - that's a situation of the market that we're living in. There is really no surprise in what's happening in the market in terms of last year, this year, what's going to happen in the future. We are price takers. We don't make the market; we take the prices that are out there. Ten dollars last year was a market phenomena; \$2.46 right now is a market phenomena; it's been up and down and it will continue to be up and down. So, we've got to have a project that weathers all these storms and that's what we're focusing on there.

Fiscal risks - a number of things we're addressing there. One thing we're trying to do is work with the state on assessing what is the actual fiscal - how can we just know what the rules are in the State of Alaska and live with those rules whatever they are. We are trying to finalize what those things are.

Regulatory risks - [Indisc.] We're spending around \$100 million on this project this year. It's an unsanctioned project [indisc.]. As we go through this process, you

cannot continue to spend this kind of money and not know what the timing is, what permitting process you're going to be working under. So, this enabling legislation is really design to put some parameters and put some certainty around the regulatory risk.

The big point is that we're here today to discuss and answer questions on any new legislation for you.

The next slide - what it does - and Patrick Coughlin hit on a number of these things. It creates a market driven expedited regulatory process for any viable project subject to FERC regulations, fair and reasonable terms, open access, just like many pipelines that are out there. There's nothing special in that regard. It's subject to all environmental laws and regulations and in 18 months an EIS completion.

Now on this, a couple of points to make. We believe it is extremely important that this project be managed by a market driven process. Again, what market driven really means - the only reason the producers came together on this project in my mind is to try and find the lowest cost way of getting gas to market. Historically, we don't own a lot of pipelines. It's not what we choose to do. In this case, we've come together to assess what the pipeline costs would be so we can really manage the tariff costs. What we want is a low cost tariff and a low cost project that competes with other projects in the Lower 48.

The FERC regulatory - fair and reasonable terms and conditions. Obviously, with FERC managing [indisc.], we believe there are requirements that those things be met. This is not an attempt to put unreasonable unfair terms and conditions. In fact, at the end of the day, it's not certain who will own this pipeline. The only reason we're working on this right now is to try and make sure that the cost is as low and the tariff is as low and economic as possible.

We do believe, however, that a new EIS is a good thing. We think that will limit the amount of regulatory reviews and we have no fear that we can do this in an 18 month period with the enabling legislation. It certainly is a challenge. The whole project is a challenge. A new EIS is a good thing; it's not something we think should be of concern to people.

As Patrick indicated, this proposed legislation creates an Office of Federal Pipeline Director in the executive branch. The whole point there is to have a single point of contact to coordinate and make this project as certain and as coordinated as possible.

Timing the judicial review is in there and we think that's a good thing. There will be many challenges. It's not our intent to limit challenges, but it is an intent to save. There are challenges and let's get through them as quickly as possible.

Finally, the last point mitigates regulatory uncertainty risk provisions relevant to any project. [Indisc.] Patrick said this would only provide ownership to the producers and that is not true. Any party in this legislation can build a pipeline. It is true, however, that any party is going to have to have shipping commitments and you're going to have to have shipping commitments with the producers one way or another.

This is an overview of what we have in here. However, none of this is locked in stone. We are trying to come up with a process that works well and works well for all parties. If there's changes to be made, we're willing to consider them and implement those things.

[Static]

There is not [indisc.] the north route. We're not going to pick something the State of Alaska does not want. At the end of the day, this was never an attempt to find a way of mandating north. We continue to be route neutral. We do not know enough information to give you a route at this point in time on an economical project.

TAPE 01-17, SIDE B

10:10 a.m.

MR. KEN KONRAD, BP Alaska, said he wanted to spend a few moments talking about what the legislation doesn't do:

The first thing is that this enabling legislation does not affect existing provisions or rights and obligations of ANGTA. It doesn't change the companion legislation in Canada; it does not change the treaty with Canada. If the

project sponsor under ANGTA can somehow make that old legislation and that old project work on a cost competitive basis, that's a good thing. That's something we support. So, nothing in this legislation precludes that project from going forward - if they can manage all their issues and come up with a competitive project. We have encouraged the Foothills groups to do just that.

We are not wed to own a pipeline; we're wed to getting gas to market as cost effectively as possible, which, I think, maps very directly in terms of the state's interests as well.

It does not apply only to producers and it doesn't actually increase producer control. I think there have been a number of comments that one of the three criteria that's set out in the legislation requires shipping commitments, requires new environmental standards, requires that it meets fair terms and conditions per FERC - those things are required for any project. Any project that goes ahead requires shipping commitments; that is not unique; that is not special. An ANGTA project would require shipping commitments to gain financing. A producer project would require that; a third-party project would require that. That is not unique or new and, indeed, anyone can be a shipper. The State of Alaska could be a shipper; a gas marketing company could be a shipper. Again, it is available to any project. It's probably worth noting the word 'producer' never actually shows up in the legislation. So, it is actually quite balanced.

It doesn't seek relief from any current environmental requirements. It says the project must meet all existing modern day environmental requirements. What it does limit, in terms of trying to go beyond existing environmental requirements, in terms of judicial review, does not predetermine a route or project. It does not predetermine a project sponsor. That has caused some clear concerns in Alaska, but as Joe said, and as we've said repeatedly over the past quite a while, at the end of the day the producers are not going to do a project that Alaska does not want. It really should not be an issue. And to the extent we want to enshrine that in some way, that can be done, but I don't think anyone has ever thought that a project would go ahead that Alaska doesn't want. Nor do we think that a project will go ahead that Canada doesn't want; nor do we think that a project will

go ahead that people in Washington D.C. don't want. We need to build a pipeline all 3,500 miles, we need to get gas all the way to market. If there's a 100-mile gap or a 1,000-mile gap somewhere along the way, it's simply not going to happen and that's the reality.

There's been some questions raised about the state's ability to market gas and certainly this enabling legislation does not limit the state's ability to market its royalty gas. The old provisions that were part of the old ANGTA legislation were needed back then because we were living in a different regulatory environment - bundled services, a regulated environment. Special provisions needed to be made to carve that out. That's not necessary today in today's world. Under this legislation certainly, Alaska would be agreed to either to take its gas in kind or take its gas in value and we've certainly talked to this committee about that before.

10:05:54 a.m.

MR. KONRAD continued his testimony:

Another question they have heard is why not just revise ANGTA that was there 25 years ago? And isn't there something we could do to dust off this 25-year old project to make it right for today's 21st-Century environment? As we said earlier, this legislation does not preclude a project proceeding under ANGTA if they can resolve all of their issues. Back then it was focused on the then competing projects. The legislation was put in place around the regulatory environment that was there at that time and what was going on at that time. But it doesn't actually provide for a competitive framework.

A competitive framework encourages multiple projects to come forward and the most cost effective project to proceed. And, again, that's certainly in the best interests of Alaska and certainly in the best interests of producers. It's probably not in the best interests of folks that are seeking to limit the competition. It doesn't really have a process in it for new lower cost applications either through other companies, be it Williams, Duke, Enron, producers, whatever. It didn't have a process for that and it also had quite specific technical specifications attached to it. Again, we would expect that if a project did proceed under ANGTA, that

they would update it to modern day technology, but what's in the actual legislation is quite specific in terms of pipeline design and pressure design. I would expect that could be changed, but the way it sits now it is quite specific. I know the ANGTA project sponsors are certainly looking at coming up with a more modern design that would be much more cost effective than the old design.

Another thing we touched on before is that the market structure is fundamentally different than it was 25 years ago. Back then we were in regulated markets and the cost of a pipeline was really on the back of consumers. Prices were regulated. People were told where gas would go and under what pricing and a large portion of the ANGTA legislation is actually built around addressing those issues.

Current markets are deregulated and the risks in terms of where gas goes, as Joe said, we're price takers not price makers. Gas will flow freely through the North American grid and it's very much deregulated and the risk of the project has shifted from consumers to investors - a fundamentally different framework. That is kind of a high level snapshot of where we are. What we really wanted to do today was just sit down and talk to you, answer any and all questions possible and see what suggestions might be around to improve it...We do want some sort of enabling legislation that is competitive, sets a framework for investors to move forward in a certain fashion, but it's not cast in stone, but we certainly need to make sure it addresses the needs just not of investors, but also of stakeholders.

CHAIRMAN TORGERSON said he wanted to focus on his thoughts on the competitive framework and that he didn't think it allowed a route different from the Alcan. He asked if that's why he is saying ANGTA isn't competitive.

MR. KONRAD answered, "No, it doesn't have provisions for a pipeline sponsored by producers...whoever comes up with the best idea, the most innovation that we all know is going to be necessary to get the economics where they need to be."

CHAIRMAN TORGERSON asked if that decision wasn't made with the then competing projects. Projects were brought forward and a party was selected. "Now you're saying that the party was selected and that route was selected and their engineering was selected, but that's not competitive."

MR. KONRAD responded, "If that project was competitive, it would have been done a while ago, when we hope that it can be turned into a competitive project, but we would also hope that other folks with better ideas would have the opportunity to create..."

CHAIRMAN TORGERSON said he had heard his debate on that, but it doesn't change the federal law. "What you're implying here is that because they were chosen long ago, it's not competitive anymore to other things. The law is still there. Right?"

MR. KONRAD responded that the law is still there. "We're not proposing to change the law, we're not proposing that a project couldn't proceed under that. What we are proposing is that the best project proceed."

CHAIRMAN TORGERSON responded that the decision was made, although it was 27 years ago, that a group and a selection was made on how to proceed for getting that gas out and it was never repealed. And now your position is: Well, it's old, so we ought to be able to file under the same old law that you made your choice on 27 years ago and start all over again.

MR. KONRAD replied:

If people want to vote for the status quo and want to say the status quo is fine and whatever has happened over the past 25 years is fine, that's a decision policy makers can make. I don't think that's a decision that policy makers want to make, but that's their decision. I don't know if a vote for status quo actually moves the ball forward. Maybe it does. That's certainly not what we're thinking.

CHAIRMAN TORGERSON responded, "We'll get into that this afternoon, but I don't know of anybody who will recommend the status quo, but the status quo changes and has modernized in the 21st Century."

MR. MARUSHACK explained:

The real point of enabling legislation to me is that we have an opportunity to have different projects come in and have the lowest cost project. This is not code for north. People think it is, but it's not. Assume it's south, if you will. What we're trying to do is have a way of making sure that the lowest cost project and lowest tariff succeeds. That is good for producers and it's good for the state, also. So, we're a little confused...

REPRESENTATIVE OGAN said he wanted to ask him about a comment he heard by Curtis Thayer that sent shock waves through a lot of them saying, "If there's any route specific legislation,... that they would just pull the plug on the state and go home and leave our gas stranded for I don't know how many more decades."

MR. KONRAD responded:

Let me say as clearly as we can that we're not going to do a project Alaska doesn't want; we're not going to do a project Canada doesn't want; we're not going to do a project that any political body doesn't want, because it won't happen. I think what we're saying is that it's actually in the best interests of we think everyone - ourselves and the state - to do the work, look at the attributes and decide. Alaska has already passed legislation and I think we're still doing work. If Alaska ultimately decides that it doesn't support a project, then it's not going to go ahead. I think that's fairly straight-forward. We don't think right now is the time to take away options, when no one actually has all the answers. We don't have all the answers and I know you're relying on us to provide information to make assessments and I think that's all we're saying. I know that's all we're saying...

REPRESENTATIVE GREEN said they had gone over this before, but he still has difficulty understanding what they say:

Producers are not going to proceed with a project Alaska doesn't want, and Alaska is telling you we don't want the over-the-top route, because it doesn't do a litany of things for the people of the state and yet you are proceeding.

MR. KONRAD responded that, "We're not proceeding with any route right now. What we're doing is a study..."

He said they were trying to share results with Alaska as they became available. The state has said that revenues, jobs, environment and gas access are important and the producers are showing them how that can be accommodated. He said they had not selected a northern route or identified a route or an economic project to date.

REPRESENTATIVE GREEN responded:

When you go through the litany of procedure, the process that you go through, the first stage is the study. That's proceeding in my vernacular. So, you are proceeding. You're not selecting a route that the State of Alaska doesn't want, but you are proceeding.

MR. KONRAD responded, "We're doing what we told you we would do in January, we're doing what we told you we would do in March...and we're continuing with that work program and we're still on target with that work program."

REPRESENTATIVE GREEN said:

Let's assume that you're through with it as all indications seem to be that you find for your stockholders that the best route would be through other fields that you have an interest in and collect gas from those other fields and then you come down through the Mackenzie route. That is certainly the best from your standpoint. When you say you want to establish the lowest cost tariff, that is again the bottom line for the producers, but it isn't necessarily the best route to take. In your analysis, are you going to consider those issues that are best for the state including jobs and use of gas in state and those kinds of things or is it going to be the process you're going through right now that comes out with dollars?

MR. MARUSHACK replied:

The process we're under right now is we're looking at both the north and the south. There are tons of challenges on both of those routes. Phillips, I feel is pretty clean on this issue, because we don't have any interest in Canada. We still need to look at both routes and see what happens there in terms of what's getting the do-ability and getting the cost. Now, we are fully, fully understanding of Alaska that jobs are extremely important, gas is extremely important, the wellhead price is extremely important. All that will work in there and at the end of the day, there's a conclusion and maybe we have perpetuated that through the information, there is a conclusion that the north is cheaper. We don't know that yet. That's why we have to continue it. At the end of the day, we might find out that the south is actually cheaper, but it's still not economic and then we'll be back sharing that information with you. We may find the north is cheaper and there's ways of getting all these

other things. If that's not acceptable to the State of Alaska, we won't be going forward.

Someone mentioned earlier today the idea of litigation. The last thing on earth we want to do is spend a lot of time and money in litigation. It could happen, but we wouldn't do that. We would rather sit back and say we couldn't make a project happen and let the other folks bring their projects and let's see if anybody else can make it happen.

REPRESENTATIVE GREEN said they are looking at do-ability and affordability and the do-ability is best down the Alcan, because that's already permitted. Affordability is the question that they are going through and he asked:

Would it be in your analysis that you're making and you've referred to several times, that you come up with the fact that it's not economic. Do you have any objection to selling gas on the Slope to some other conduit whose plans could afford it?

MR. MARUSHACK replied, "No objection."

MR. KONRAD said they had encouraged all the pipeline companies to come up with a better answer than they can.

REPRESENTATIVE DAVIES said that a number of them are wondering what the Curtis Thayer comments were all about. "We feel there is a lot of resistance to our stating what is in the best interests of our citizens and those comments, you need to clarify them directly or you need to retract them."

MR. KONRAD said that was a miscommunication in their opinion between him and the reporter. They apologize for that and said that what the Joint Team says carries more weight than what anyone else working for them may or may not have said.

MR. MARUSHACK asked which comments in particular he was concerned with.

REPRESENTATIVE DAVIES said it was the specific comment about shutting down the study.

MR. MARUSHACK responded:

On that regard, the process we are on is trying to find an economic project. We know we need enabling legislation

in order to put timing around that. What should have been said and I think has been said, is at the end of the day, if the joint producer group doesn't have any certainty around these parameters, we cannot continue to spend money on a project that we can't see any endpoint. So, it's got to be economic; we've got to have regulatory certainty; we have to be making progress on working with the state so we know what the rules are. And we're trying to do all those things. It's certainly not a threat; it's a statement of fact. If we don't have all those things, we can't spend \$100 million and keep doing that and not know what the endpoint is. I don't want to mislead anybody. We need those things; we are working hard to get those things. We're asking you to support us in helping get those things.

REPRESENTATIVE DAVIES said the legislation specifically requires FERC to issue a certificate if three items are met and he asked what is taken off the table by that requirement.

Is the finding of public necessity and convenience taken off the table - question one? Question two is, are antitrust concerns taken off the table? In your view, does FERC no longer have a comment on whether or not the portfolio would have antitrust violations? And, thirdly, especially with the couple of scope questions, what environmental concerns are you taking off the table?

MR. MARUSHACK answered:

Regarding the first statement - the finding of public convenience. We think there is a need for Alaskan gas to come to the Lower 48. So, what that first statement was intended to do is say that has already been decided. There is a need for Alaskan gas to come to the Lower 48. So, yes that is off the table there, but what it replaced was you have to acknowledge that you have to have commitments to make a pipeline happen. So, if someone can take those commitments forward, you come to the producers and you have an agreement that you'll make 4 BCF of gas appear for 20 years, then that suffices that particular issue. So, it was an attempt to say why you need to go there on that one. You don't need to go there, but you do need to have shipping agreements, just as any big pipeline is going to have to have.

MR. KONRAD said if that provision was taken out, he didn't think anyone would object, because it's just a fact of life. "All

pipelines need shipping commitments."

MR. MARUSCHACK continued:

With the idea that that's a stranglehold on producers owning the pipeline, that point we completely missed, because that was never the intent, whatsoever. In terms of your statements on antitrust, no. All antitrust issues, to the extent that there are antitrust issues, that is not taken off the table.

The environment - we think we've proposed something that is significantly more consistent with current 2001 environmental requirements. We're going to do a new EIS for this process and it's going to be a full blown, fully evaluated EIS, but we do believe that in order for that process not to take forever, in order to get the certificate, we did put in an 18 month commitment. What we're really saying there is that's just a priority; that just gets some certainty and that gets around reducing risk.

MR. KONRAD said it would be built to the highest environmental standards. He thought the antitrust issue was a Justice Department issue, not a FERC issue.

REPRESENTATIVE FATE asked them to explain how the proposed enabling legislation would not impair the state's marketing options.

10:27 a.m.

MR. KONRAD replied:

Back in that time frame in a regulated market, there were provisions for bundled services and where gas needed to go. Back then they recognized that Alaska might have within state needs and that gas should be exempt from those regulated bundling provisions. In today's environment, those things don't exist. We're not in a regulated market; we're in unbundled services. So, there's not a need for it. The state would be free - any shipper, party, producer, state would be free to move and market their gas any way they wanted to. In the 21st Century, that's the way it is. It's not an issue today; it was an issue 30 years ago.

REPRESENTATIVE FATE asked if they are speaking primarily of marketing gas rather than instate use of gas. "What I'm getting at

is that it says it's going to impair marketing and that's true, but will it impair instate use?"

Both gentlemen indicated it wouldn't.

MR. KONRAD said that he thought the provisions back then were around state royalty gas and:

Today the state would be free to do whatever it wants to do and anyone could provide gas for instate gas. Any pipeline that's built, in the case of a southern route, would have onramps and offramps and gas coming into it and off of it.

REPRESENTATIVE FATE said that would become a function included in the over-the-top route. There wouldn't be instate gas unless there was some kind of lateral coming down and they would need infrastructure and that's not in the discussion.

MR. MARUSHACK said their proposal does not preclude taking gas and using it instate. "It's not intended to do that."

MR. KONRAD agreed.

CHAIRMAN TORGERSON asked if they would object to clarifying that in their legislation.

Both men indicated they wouldn't object.

CHAIRMAN TORGERSON said there were a number of provisions the committee thought were left out of their proposal.

REPRESENTATIVE OGAN asked what kind of interaction they had with the other pipeline group. Were they also looking at 4 BCF/D line that's economically feasible.

MR. MARUSHACK replied that Steve Alleman reports to him from within Phillips and the LNG work that he's referring to is happening under his watch, too. Four BCF/D is 28 MTPA, a huge number. They are not looking to try to place that in a market.

REPRESENTATIVE OGAN said there was a lot of interest in building LNG on the West Coast and they have receiving facilities. His whole district's number one question to him is why are they even looking at going down through Canada. There is a lot of support for a tidewater port in the state. "I think we're at a watershed moment with Alaska and the producers. I would like to caution us all to handle this very delicately, because people are emotional about

marketing this gas and different routes and these kinds of things. Mr. Thayer's comments weren't helpful."

MR. MARUSHACK responded:

It just doesn't make sense. The whole idea of regulatory certainty is to limit, to know how much time it takes so you can buy your materials and get them in the ground. To the extent that we end up doing something you don't want and we end up in all sorts of court actions, we've destroyed that. It doesn't make economic sense.

REPRESENTATIVE OGAN said the bigger picture now is that we have a national security issue, not only for a gas pipeline, but for the possibility of opening ANWR. "...I'm going to hold you to it that at the end of the day, if it's something we can't live with, that you won't do that..."

REPRESENTATIVE DAVIES asked them to comment on language under (B) rates and charges, "can be established in accordance with..." in the proposed legislation on page 8.

MR. MARUSHACK answered that perhaps it should have said, "...are established". The point is it has to be reviewed and acceptable to FERC. "This was drafted by lawyers and we're just engineers. We know what the intent is, though."

10:35 a.m.

REPRESENTATIVE PORTER asked, "If this proposed legislation were to pass and the producers had a proposal for a northern route, and it was accepted, could other parties use the legislation for another route? One proposal is specific and everything else is precluded."

MR. MARUSHACK answered that it could be used for any route, north or south.

MR. MARUSHACK added that Foothills could use it and anyone else could use it. They talked to the owners of Foothills last week and continue to talk to them. "It's a difference of we really think we need this in order to have the most competitive project for us or anybody else to do.

MR. KONRAD said, "They may decide this legislation is easier to work in and, again, that would be their choice.

CHAIRMAN TORGERSON said he wanted to revisit the antitrust issue. "ANGTA is not authorizing an owner of the project? Correct?"

MR. MARUSHACK answered that was correct.

CHAIRMAN TORGERSON said in '82 there was an amendment that said you could own "some" - not all, but "some."

They acknowledge that was true.

CHAIRMAN TORGERSON said:

Now you're talking about owning all. And your legislation doesn't mention the fact that you have a test for antitrust and I want to make sure of your comments, Joe, that anybody has to go through antitrust and I believe it affects any company, takeovers or anything when they try to make a project. So, you would probably have to stand some sort of antitrust test, whether or not this legislation was there. So, the question again is, does your legislation make you go through the same provisions and actually make you have a separate ruling from FERC that this does not violate antitrust?"

MR. MARUSHACK said he could only say that the intent was not to circumvent any antitrust issues.

CHAIRMAN TORGERSON asked how to get from "some" in the '82 amendment to owning "all" today.

MR. MARUSHACK replied: "Senator, the only reason we have come together is to try to make the most economic project we possibly could..."

He said there are a lot of different interests and it's not easy, but they are trying. The major resource owners at the end of the day are going to make the shipping commitments and a lot of the risk is going to be on them. "At the end of the day, if someone can do a better project and we're part of it or we're not part of it, we're willing to talk to them about it."

CHAIRMAN TORGERSON said:

I don't think that answers my question. How do you get from "some" to "all" ownership in the pipeline? Does this legislation change the '82 intent provisions saying that producers can own some of the project or does the '82 amendment to ANGTA mean you can own all of it?

MR. MARUSHACK answered: "What this language does is you can own

some or none. It works for anybody; it doesn't just work for us."

CHAIRMAN TORGERSON asked if the 1982 amendment to ANGTA allows them to own all of the project or just some?

MR. KONRAD replied that he believed they were allowed some ownership under the 1982 amendment, but he could check on it and get back to him.

CHAIRMAN TORGERSON said, "So, that would still be the law today."

MR. KONRAD replied, "For a project that would proceed under ANGTA, that would still be the case."

CHAIRMAN TORGERSON asked, "But you don't know what 'some' means, how much of that project."

MR. KONRAD said they would check on it and get back to him.

CHAIRMAN TORGERSON asked if they could do that before 2:00.

They said they would give it a try.

CHAIRMAN TORGERSON said they hadn't mentioned anything about taxes. He asked if they were seeking tax exemptions, accelerated depreciation, investment tax credits or anything in federal legislation?

MR. KONRAD replied that this was regulatory legislation.

CHAIRMAN TORGERSON asked: "Would you like that in federal legislation that this committee could consider this afternoon - whether or not you are asking Congress for any tax exemptions?"

MR. KONRAD replied, "The Joint Team has said it supports accelerated depreciation for gas pipelines, both in the U.S. and Canada."

CHAIRMAN TORGERSON asked if they were satisfied with the accelerated depreciation provisions that were in the House version.

MR. MARUSHACK said they would have to check, but he thought it was seven years, which is what they have been talking about. That makes it consistent with gas gathering lines.

CHAIRMAN TORGERSON said he thought it was seven years on one and 10 years on another one.

Both men said they want seven years.

CHAIRMAN TORGERSON asked about other tax issues.

MR. MARUSHACK replied, "The joint team's position is that they are not jointly looking for tax incentives, but you know that different companies have different views."

CHAIRMAN TORGERSON responded:

I understand, but I also clarified that. In this federal legislation that I'm talking about - and I'm not talking about what some companies are doing - in the broader sense, investment tax credits or other things, that may have been talked about. Are you seeking any of that in this legislation? Yes or no?

MR. KONRAD replied that they said those issues were not in this bill and they have said that to the folks on the hill.

CHAIRMAN TORGERSON said:

We are going to recommend to Congress to adopt certain provisions in federal law...One of our recommendations could be no tax incentives, period, no accelerated depreciation or anything - or it could be accelerated depreciation, investment tax credits or other things. It's a pretty simple question. Do you want any of that? I heard yes on accelerated depreciation. So, I'm asking you if you can give us what you want by 2:00 this afternoon so we can talk about including that in our package of recommendations....

MR. KONRAD said they support seven-year depreciation for natural gas pipelines.

CHAIRMAN TORGERSON asked what they thought about a provision using United States Steel.

MR. KONRAD replied, "We would love to use U.S. Steel [Company] if the mills have the capability to supply it competitively...As always, mandates tend to not create competitive pricing, but we'll be working very closely with U.S., Canadian...The scale of this project is such that it's going to need steel from a lot of places. So, we'll actively be encouraging everyone to come up with the best product they can.

MR. MARUSHACK clarified that they do not support mandates. They

support the free market system and they want to use U.S. Steel to the extent they can.

CHAIRMAN TORGERSON said his last question was about project labor agreements.

MR. MARUSHACK answered that they were going to use unions on this project, given the labor situation. They think that is a good thing, but they do not want mandates on that, because they would like to be able to negotiate with all parties in order to have costs as low as possible.

REPRESENTATIVE GREEN asked if it was imperative that this federal legislation be passed in order for them to continue.

MR. MARUSHACK answered, "Yes sir,... We're all for improvement, but we think there needs to be a regulatory process."

REPRESENTATIVE GREEN asked if they would continue under existing law if their proposed legislation was defeated.

MR. KONRAD said that would raise the risks considerably.

MR. MARUSHACK replied that the Joint Team would not continue. He didn't know what individual companies would do at that point.

10:46:04 a.m.

MR. JOHN ELLWOOD, Vice President, Foothills Pipe Lines, Ltd., introduced Mr. Curt Moffatt from the firm of VanNess Feldman who would respond to questions about the legislation and he would respond to business matters and corporate policy. Mr. Ellwood said:

We feel very strongly at Foothills that no federal legislation is required in order to expedite, modernize, construct and operate the Alaska Natural Gas Transportation System. We believe that ANGTA is more than sufficient and is superior to any alternative pieces of legislation of which we are aware.

We would also point out that the Canadian regulatory regime is in place and will expedite the construction of the necessary Canadian facilities. This Canadian expedition is tied directly to ANGTA and would not be available to a project that was proceeding under other U.S. legislation.

We would request that, if parties believe that federal legislation is necessary, that that legislation should be drafted so that it does no harm to the ANGTA regime. We believe that the legislation that the producer group...

TAPE 01-18, SIDE A

MR. ELLWOOD continued:

...put forward would violate that principle of do no harm to ANGTA. We believe it will delay the commercial negotiations that are under way now by confusing the regulatory and commercial situation and raising new, and perhaps unforeseen, legal questions, which will take time to resolve.

The Foothills and the Alaska partnership are committed to work within the ANGTA framework and to construct a modern ANGTS and to construct it to the full modern environmental standards. We believe that can be accomplished under the current law and lastly, I would just say again that Foothills is ready to work with all stakeholders to consider development of constructive legislation which confirms and clarifies ANGTA, its flexibility, and we believe that that would assist in the expedited construction of the Alaska Highway project. That's my opening remarks, Mr. Chairman.

MR. MOFFATT said he didn't have anything to add, but would answer questions.

CHAIRMAN TORGERSON asked if he wanted to take a different position on any of the testimony from the producers.

MR. ELLWOOD said he would need a few minutes to think that one over.

CHAIRMAN TORGERSON asked if he thought ANGTA gave them an absolute franchise or an exclusive right to be the only operator in construction and operation on the line.

MR. ELLWOOD answered:

We believe that it was the intent of Congress and likewise in Canada, the intent of our parliament here, that we would be the operator of the first project to move Alaska gas. There is no perpetual franchise granted

by either ANGTA or the Northern Pipeline Act here in Canada.

CHAIRMAN TORGERSON asked how close they are to making a deal with their withdrawn partners and how close are they to making a deal with the producers to exercise their franchise right.

MR. ELLWOOD responded:

I think as you and other members of the committee have probably heard, we are in the process of discussing with all the withdrawn partners whether they would be interested in reenlisting in the project. Those discussions are progressing very well and we are expecting in the very near future to have this issue of the withdrawn partners completely off the table.

CHAIRMAN TORGERSON asked what their position would be on his proposed amendment for federal legislation to do away with their withdrawn partner liability taking \$4 billion off the table.

MR. ELLWOOD said he would have to get advice from his legal team as to whether or not he could legislate these large commercial matters. "This is really an arrangement between ourselves and our withdrawn partners. We are about to change that and we're about to change it in a positive and constructive way."

CHAIRMAN TORGERSON said:

We're dealing with federal legislation today that we're going to testify and have a position on your position by October 2. We don't have time to wait for you to do this stuff and continue on with this stuff and us not take a position on whether or not you have a legitimate \$4 billion claim on your route, which if you do, I can tell you what's not going to happen. We're not going to start the race off with \$4 billion in the hole. I don't know anybody who would do that.

This is a major stumbling block for finding support for your position. Until this is taken care of or legislated out, I'm going to have a hard time supporting your position.

MR. ELLWOOD replied that they understand that, but they are moving expeditiously to clarify that.

I should make it clear at this point that there is no \$4 billion number that people are seeking to recover from the producers or the state or anyone else. No one is asking for or seeking an additional \$4 billion here. That won't happen; it can't happen; it would just never be commercially viable. I understand that people are concerned about that number. I just ask for your patience for a few more days while we sort this matter out amongst ourselves and bring forward a new position, but at the same time, I think it's important that everyone understands that even if we were to proceed without any other matter right now, there would be no \$4 billion charge to anybody.

CHAIRMAN TORGERSON responded that they aren't trying to legislate that this go away, but we can sure recommend that to Congress and they can figure out whether or not it works. We could have our support contingent upon that going away by a certain period of time, which is what I think I tend more to favor than a carte blanche you're in the right position, that we're going to wait for you some day to get this figured out. It's a major stumbling block now.

MR. MOFFATT interrupted to say:

First of all with respect to any contingent liability to any of the withdrawn partners, it is highly contingent under the partnership agreement first and foremost none of the very sophisticated companies who hold the status of withdrawn partners and those include Enron, El Paso, Duke, Williams, PGT, an affiliate of PG&E, and Semper, the parent of Southern California Gas Company. They are all very sophisticated participants in the energy markets today. They understand fully that they have no opportunity whatsoever to recover any dollars under the partnership agreement if the project is not built under ANGTA and pursuant to that partnership agreement. You'll also understand that that partnership agreement provision was written in a way that it should never inhibit the completion and initial operation of the ANGTS and is contingent upon that completion and operation. The border partners, which is comprised solely of the current active partners, which are TransCanada and Foothills and any other partners that they invite back in to the partnership, which could be any of the producers or other interests in Alaska, will have the right to vote on when and if any of the withdrawn partners ever see a penny under that provision. It is highly, highly contingent.

I think the other point Mr. Ellwood was making is that even if there is private contractual obligation that at some point down the road is due and we determine we can make such payment under the partnership agreement, it is not going to be recovered in the rates that will be charged either to the state for their royalty gas or to the producers on the Slope or any of your explorers who are out there bringing gas on the line 10 or 15 years from now. That is a private contractual matter. The rates for transportation on any system, whether it's the ANGTS or a greenfield pipeline developed by the producers or any other group of people, those transportation rates are going to be determined by the market. The market is very competitive today and this project that did go through a very detailed and long competitive process at the FERC and FTC, all it does is authorize a group to hold the certificate to build the project and selected a route and the terms and conditions can be modernized and they will reflect current market conditions. So, all of the issues that have been raised about the need to modernize, the need to be efficient, the need to be able to develop a project that's economic - absolutely. That's what we've been facing for 25 years - waiting for demand and the price to get to where we can, through technology and lowering costs, get this project finally built and bring your Alaskan gas to the North American market at competitive prices.

CHAIRMAN TORGERSON asked if he said the withdrawn partner amount would not be built into a tariff. Therefore, the \$4 billion is not an issue?

MR. MOFFATT answered:

Yes, sir. In our view, it is not going to be an issue in the tariff. The market forces, whether it's an Alberta Hub or Fairbanks Hub, [indisc.] or Chicago. The pricing rules are very clear. This gas has to be laid into that market at competitive prices. The capital costs and the operating and maintenance costs that are required to build this line that is still not in the ground, as we all know, are going to be enough to take up what the transportation costs can be to lay that gas into the market.

10:58:47 a.m.

Our shareholders have never approached this with a view that any of those dollars are going to be recovered. We just believe they won't exist, because our partners are good, strong, economic, savvy companies and they know they cannot exist.

MR. ELLWOOD said:

We're not here in this project, nor are our shareholders in this project to recover historic costs. We are here for the investment opportunity going forward. We believe this will unfold under a negotiated toll arrangement whereby we will negotiate with those parties wishing to ship gas to determine what the charges would be. Of course, it would be based in some way on the capital cost of building this project.

All projects have development costs. If the new party were to come forward and try now to develop a new project, they will have development costs. Those costs normally get recovered in some fashion by the developing company. We believe going forward here that we will, in that negotiation, be seeking to recover some good will, because we believe we bring value to this process. We already have permits in hand and shippers working with us will not have to go through the expense of acquiring those. We have rights of way; we have current engineering data and other information that would be useful and would be costly for anybody going forward and we will seek to negotiate some fair value for those assets. And to that extent, these costs might be incurred in the [indisc.], but there is nobody seeking to recover all prior expenses with interest.

MR. MOFFATT added:

Also, to the extent those costs are being reflected in a toll, they will only be reflected as people attribute value to those that are avoided costs of some other developer who's going to incur those costs currently to start over. So, we just don't believe that a \$4 billion issue is ever going to hit the toll.

MR. ELLWOOD said, "We would never ask for it and it would never be permitted by FERC in any toll that they might approve."

MR. MOFFATT underscored their basic point which is:

We find the proposed legislation by the producers absolutely and totally unnecessary. It calls into jeopardy the viability of the ANGTA regime, including the president's decision, the congressional actions, the agreement on principle, the statutory framework of the Northern Pipeline Act in Canada - all of that would be called into question. There is just no question in our mind that passage of this legislation adds absolutely nothing to the debate. If anything, it adds confusion and delay. We're committed to building a highway route and getting on with FERC and Congress determined after a healthy competitive analysis of fuel alternatives are reflected in today's debate, one which would be to go over and connect with Mackenzie, albeit on shore as opposed to off shore, the other taking it on a LNG basis to the west coast and the third being the highway route.

Those are the same three primary alternatives being considered today. Nothing has changed. The national debate at that time, with the approval of the president and the Congress, chose the highway route and we still think that's the right decision and we will also be able to, as the President said in 1977, add facilities off the highway route when and as necessary to serve other parts of the State of Alaska including Southcentral and we believe, as you know, by our support and involvement in the ANS [Arctic North Slope] study group that if economics permit and if the gas supply permits and the markets develop, this can be the backbone of a Y route to support an LNG project, as well. We've been saying that for years and we've invested in the ANS study group to look at those efficiencies.

11:03 a.m.

REPRESENTATIVE DAVIES asked what the status was of their discussions and when can they expect a decision that they are going to go forward with a request to the producers to buy their gas.

MR. ELLWOOD responded:

We wouldn't see ourselves buying the gas of the North Slope producers, particularly. We are a transportation company. We would see that the North Slope producers might contract with us to transport the gas. So, they would sell it, if you wish, in the market place. We would also see that other energy companies, some of whom may become our partners in this, perhaps would buy gas from

the North Slope producers on the North Slope or as a stake on the North Slope and would then contract with us to transport it. And, again, they would sell it in the market. It is not a role that we seek for ourselves as a pipeline company. There are other shareholder companies and other North American marketing companies who do that commodity transaction.

CHAIRMAN TORGERSON thanked them for their testimony and announced that Mr. Mark Hanley from Anadarko would testify next.

MR. MARK HANLEY, Anadarko Petroleum, apologized that a number of people who planned to be with him from Alberta Energy and Anadarko were not present today. He said:

You asked how this legislation affects us. And to be honest with you, specifically, it doesn't. It does create the expedited process. You've been through the testimony of where it supercedes different things, but for us as explorers, we have a large acreage position in Alaska, largely in the Foothills. We're in partnership with Alberta Energy, as well as BP and it is gas prone. We are actually looking for gas. We've done seismic last winter and this winter potentially we're not going to drill this year, but the following year for gas. The lease sale that happened earlier this year in the Foothills, I think it was the most acreage ever leased at one lease sale for the state. There were a number of companies participating from Burlington Resources, PetroCanada, UCAL, Chevron, Phillips, ourselves without partnership. So, there is a lot of interest in this gas.

As explorers who do not have identified reserves, I guess I would say our interest is getting fair access to a pipeline at a reasonable price. The issues that we raised in our paper go through those. And where we see potential, not that it will happen that way, but potential for problems, we have shared this information with the producers group and we have shared it with a number of other companies, some of the pipeline companies. So, this is not something that they don't know.

MR. HANLEY said in the proposed legislation the definition of the availability of Alaska natural gas is gas that comes from that area generally known as the North Slope of Alaska. They did not think that was a concern from their discussions with the producers, but their area is generally known as the Foothills and areas around

Fairbanks are not generally known as North Slope. "So, if people did find gas, that piece of legislation seems like it might exclude that. That was not the intent, we were told..."

He said that other areas of the legislation were more process oriented. FERC has testified that they don't have the authority to force expansion of a pipeline and their legal research shows that to be true. So, a company that finds gas after the pipeline is built, comes forward willing to pay the cost of expansion, if the producers or someone else come to a pipeline with a bunch of gas to expand it that might even lower the tariff. Normally that would be a good situation, but if they are competing with the producers, for instance, for exploration rights, they may not choose to allow Anadarko into the pipeline. They would use that leverage as a negotiation tool.

The producers have suggested that they may have an open season as early as January of next year. Typically, FERC likes to have an open season to demonstrate that there's the ability to have gas and people can show there is a market out there, but the process is really unregulated by them when the application comes in for the tariffs - to show and demonstrate that there is that ability to produce that gas. But at that point, for companies like Anadarko, they might be interested in bidding at the open season, even if they don't have identified gas reserves.

We would be on the hook at that point for whatever the charges are to transport that gas whether we had them at that time or not. That's a huge risk and whether we would take that or not, I don't know. But, we would need to know the terms and conditions during that open season so we could make a fair bid and that is not a disclosed process.

Typically, what will happen is after the open season, normally what would happen as Mr. Ellwood said, a pipeline company who is like the trucking company - they don't actually own the things they are shipping. They will charge you for the transportation. They would go out and see a need and develop this and ask for producers to submit nominations for capacity on a line they want to build. In this case, because it could be unique where both the producers are partly the owners, it creates a little different situation. I guess we want to know the terms up front before the open season, have an adequate time to look at those so we can decide whether or not we want to bid.

MR. HANLEY said that some issues within FERC get fairly technical, like the ability of producers to withhold capacity at an open season. It seemed that a large part could be withheld so it would not be available for other companies to bid on. "It has happened in other cases. FERC does allow that."

He said they have concerns about setting BTU minimums or maximums for the gas quality that goes into a pipeline as part of the application process. Gas in the Foothills might not have as many liquids in it [BTU content].

The company that is going to build the pipeline is going to submit an application to FERC with these tariffs with these conditions in it and we may not know what those are ahead of time and we think there are some issues the state should look at and determine whether or not they want to support mandating or suggesting that FERC go in a particular direction. A lot of the cases, FERC has precedence and policies, but we have found they are just that - policies and you're going to find that this is a unique pipeline. It definitely is likely the only pipeline going to be built out of Alaska. It is, unlike the Lower 48 states, whether your cost of going in a different route or building your own pipeline is significant, but the market forces down there prevent someone from charging too much of a rate, because you can go somewhere else. You have other options. That is not going to be the case here.

One of the issues you heard about earlier, accelerated depreciation. We don't particularly have a problem, but one of the issues we would raise is - is it structured in such a way that it increases the tariff? If it does, obviously the wellhead value for everyone, including the producers and the state, will be higher and a higher tariff is not good for us.

If someone can recover that accelerated depreciation through a different mechanism, through ownership of the pipeline and not have it affect their individual assets, it may not be a problem for them to have a higher tariff rate if they are recovering it somewhere else, but companies that do not own the pipeline, the state for example, may be disadvantaged by that. So, that is one of the issues. I am not suggesting that is what is going to happen, but it is an issue that you need to be aware of and it could happen.

MR. HANLEY said their remedy in many of these cases will happen particularly after an open season, at which point it gets very difficult to go back and change things. He thought the state should consider that.

CHAIRMAN TORGERSON asked him to give the committee a short overview of the reaction of the producers to the propositions.

MR. HANLEY said they had presented the propositions to them and generally speaking they said the same thing:

One, we haven't decided on a lot of these issues. We asked them, 'What do you think the tariff is going to be? Are you going to bundle the costs, for instance the gas conditioning plant, which is allowed under... and we don't have a problem with the gas conditioning plant costs being included in the tariff. FERC's typical policies [are] unbundled. So, if we bring gas in, load it on the pipeline and they're paying 50 cents per MCF to condition that gas, I guess we would be concerned that we would have to pay the cost for them to condition their gas - as well as the cost, if there was any for us to condition ours - if we're not going through their facility.

Back to your point, I guess. They said, 'We're going to be fair. We don't have a reason not to be fair. This is going to be an open process.'

Some of the things they did not list specifically. They didn't have concerns with, for instance, the gas definition issue that we raised earlier. They said that was not their intent and not a problem making it clear that all gas could get into this under their legislation....

11:17 a.m.

REPRESENTATIVE DAVIES asked if another option for including the gas conditioning plant in the tariff was to include it in their price.

MR. HANLEY explained that the tariff would be less and they would get more for their gas. "I assume just like other processing facilities on the North Slope. Those are included in the developing costs..."

He emphasized that he is not saying that they should not be allowed to include that necessarily.

What we are saying is that if we don't use the facility, and that's generally what we understand FERC's process is, that they be unbundled, that there basically be a separate tariff without that gas conditioning cost in it whether people brought it in from Fairbanks or if you found gas somewhere else.

REPRESENTATIVE DAVIES asked what other options were available to meet his concern about assurances that a pipeline would be expanded later if reasonable conditions were met.

MR. HANLEY replied:

We're actually working on specific ideas for legislation...I guess the only general idea is to give FERC the authority to expand the pipeline. I don't know what kind of guidelines, and frankly, it's always dangerous from a company perspective to force things that may not happen, but they don't have the ability now. I don't know whether they would want it...

REPRESENTATIVE DAVIES asked if that would be in the context of future open seasons.

MR. HANLEY replied yes:

There's all kinds of discussion and I'm getting close to where I'd better be careful about what I say... I don't believe you necessarily have to have open seasons for future expansions particularly if the initial nominators of capacity are the ones doing it.

11:20:03 a.m.

REPRESENTATIVE GREEN said he had alluded to several concerns with capacity, BTU content, and how much it's depreciated, and asked where he saw their proposed legislation getting "sticky."

You're going toward the fact that some agencies should have some sort of regulatory authority and say, 'Well, okay, here's your sliding scale for BTUs or if, let's say, Anadarko were to have a major discovery in the Foothills, but it's possibly five years down the road. We've heard the operators talk about accelerated depreciation. Would you come in, then, at the depreciated rate and buy in, would you buy a compressor plant to go from say \$4 billion to \$5 billion? We're getting some details that could get sticky. Do you anticipate that

future suppliers would be involved in, I mean not just Anadarko, as you say, Unocal is involved and some of these other people, or leases that haven't been let yet. Do you see that there's going to be a master type thing proposed by, say, Anadarko or somebody that will cover all these creative possibilities?

MR. HANLEY said they are working on some of the issues and haven't come up with an exact answer on how to solve all the problems. There is a hearing coming up and they are trying to be reasonable.

We look at it internally as to what issues could affect us and our ability to develop gas and really what we're going to have to do is potentially, if the open season happens in January of next year, an application follows in March or April, as they said it might, we'll have to make a decision as to whether we think we can get access. If we think there's not a very good chance for whatever reason, we're not going to spend a lot of money going and finding gas. Other companies are going to do the same thing. So, future Foothills lease sales or activity on the current lease sales - these are the kinds of decisions we have to make long in advance of the pipeline starting as well as potentially at an open season nomination process before the application has been turned in with a lot of the specifics. So, it becomes a concern.

CHAIRMAN TORGERSON asked when his legislation would be available. "Our point is that these are issues that we think may need to be addressed in any legislation...It won't be an amendment to any particular piece."

MR. HANLEY said he hoped by the end of the week.

11:24:10 a.m.

REPRESENTATIVE OGAN said he thought that access issues were second only to the route issues. "This leads us to make sure to encourage companies like yours and others to lease, explore and be able to have access to that pipeline..."

MR. HANLEY responded that there had been talk about reserving a certain amount of space for things and as a company, that's difficult to argue, because they wouldn't like it if other people did that.

We would like the ability, if we choose to take the risk of the open season, to be able to understand the terms

and conditions so we could bid. We would be on the hook for the money whether we had the gas or not and, also, during an expansion process, if we find a fair amount of gas, we make a proposal and there's an open season for other people to propose, we are able to compete on a fair basis for that. That's really what we're looking for.

So, it is a balancing act for us in what we ask for specifically, because some of these things get into details and it's very difficult to regulate or dictate the specifics or a project.

REPRESENTATIVE GREEN asked if he thought their proposal would be available this week.

MR. HANLEY said that as soon as they got some of their specifics, they would be sharing it with multiple individuals from Senator Torgerson and this committee to the state to Senator Murkowski.

11:26:40 a.m.

CHAIRMAN TORGERSON thanked him for his testimony and announced the Alaska Port Authority would give their update.

MR. BILL WALKER, General Counsel, Alaska Port Authority, thanked the legislature for all the work that they're doing. He said that he would like to answer the questions a little bit differently than others. He said:

We have reviewed the proposed legislation as requested on the federal side and it appears to us that the only benefit is on the over-the-top option. It does not clearly say over-the-top, but the other permitted routes, the Alcan route and the LNG and YPC would not need such legislation. By default, it appears that the only [indisc.] that would benefit would be an over-the-top option, because if it wasn't that, there wouldn't be much reason for this legislation.

The existing approvals of permits of the two routes and the fact that they are following existing corridors also substantially reduce the odds of a judicial challenge to the project that follows either or both routes. You had some discussion about whether there would be litigation. Based on what I heard today and certainly any time we have legislation that impacts another permitted route, our concern is that it would bring delay. It would invite litigation from those that already have permitted routes.

The biggest enemy to a gas project in Alaska, we think, is delay. You heard from CERA testimony at your last meeting in Anchorage, I believe it was, is that there is a market window. And as we continue to look at federal legislation and studies, and hopefully not litigation, the market doesn't wait for that. The market needs to fill those orders. So, anything that's going to have anything to do with delay we're very concerned about.

It appears to us that the legislation is primarily designed to help the over-the-top route catch up and at the same time eliminate the type of analysis that has traditionally been performed on such infrastructure decisions which can so substantially affect or even eliminate access of significant areas of the country to the use of essential highways for commerce.

It is disingenuous to imply that a number of pipelines may be built in Alaska. Clearly, the decision to build an over-the-top line does affect the odds of a pipeline being built through Alaska. It is doubtful that two lines will be built from Alaska to the Lower 48.

This bill would effectively repeal the treaty, federal legislation and presidential findings that lead to the Alaska Natural Gas Pipeline Act of 1976 and the Highway Route selection. It is the job of government to determine things like the route for essential infrastructure services especially where the significant construction cost essentially guarantees that one line will be built in a generation.

The proposed bill and accompanying explanation could leave one with the impression that the reason the highway pipeline has not been built is due to the fact that the U.S. and Canadian governments made the wrong choice when they selected the highway route. The fact is gas economics, technology, and cheaper alternatives for supplying gas from within the Lower 48 led the leaseholders of the gas to not build the line. Those factors have changed especially over the last two years.

The highway route is economically viable today and may be demonstrated to be just as profitable as alternate routes, such as over-the-top and clearly would have more long-term benefits for the long-term development of the State of Alaska. This bill would go way beyond repealing

ANGTA, but would also prevent the FERC from determining which route would best serve the economic interests of both producers, transporters, end users and the people of the State of Alaska.

I should add to that, as you know, the Port Authority concept is a Y-line. It is the highway route and an LNG option. Economic analysis has demonstrated that a large volume pipeline is cheaper per unit of gas transported than a smaller line. This bill would preclude analysis, for example, whether a line to the Lower 48 that would go the highway route might get significant economic benefit from a branch line to tidewater, which we have heard very little discussion of today other than from yourselves that would double the carrying capacity of the main trunk line. It might be in the producers interest to make sure that alternative was not available so they could charge a higher price or even guarantee a market for the LNG going to the west coast of Mexico or the United States from Indonesia or Australia.

We don't think there's anything in the federal legislation that helps Alaska. You heard testimony today that this federal legislation trumps the state legislation, which eliminates the over-the-top. That's a very big concern. Someone asked the question. It's nice to hear these statements being made by individuals at this table, but what happens if another group comes in? If there's a merger? If there's a sale? If there's a replacement of individuals who have given various assurances? I mean the law is the law. Once the law is passed, the law takes precedent over what Alaska has done. That's of great concern to us.

We were very concerned about discussion of tax incentives and that there needs to be a tax package - not as far as this legislation, but there is a proposal in the Energy Committee for tax incentives. What concerned us when we first heard that is that we are also aware that, Karen Knudson, the Deputy Director of the White House Task Force on August 16, stated that President Bush's administration supports construction of a pipeline to carry Alaska North Slope natural gas to the Lower 48 states, but it is important that it does not include tax incentives for any state the gas pipeline project would have to work without tax incentives.

We were surprised that in the face of those kinds of statements that there is now being proposed a package of tax incentives. The Port Authority addressed that earlier on. We heard Pedro Van Meurs '96 or '97 presentation of what it would take for Alaska's gas to be commercialized. He gave a shopping list of seven or eight items and one of them was accelerated depreciation. I think he may have used seven years versus the fifteen years.

MR. WALKER said that after the Port Authority was formed and received their IRS exemption, he met with Pedro Van Meurs in Bangkok and presented him with the IRS ruling.

TAPE 01-18, SIDE B

He was astounded saying it was far better than anything he had envisioned as far as accelerated depreciation. He estimated the economic benefit of a Port Authority concept to be \$10 - \$20 billion over the life of the project (stated in his memo of March 30). That is substantial, because at the time the price of oil was \$10 a barrel.

MR. WALKER said they are not concerned whether they get the tax benefits or not, but their concern is the delay factor. "We don't feel there needs to be any federal legislation for an Alaskan project to go through. Our economic model shows that there's a fantastically economic project available using the Y-line..."

Foothills permits are very valuable; YPC has permits also. Federal legislation would make everything start from scratch again.

We think the federal legislation attempts to catch-up the over-the-top route with those that are already permitted. I think the message to Congress is that Alaska wants to commercialize their gas now. I think as you will hear soon, if you haven't already, that Alaskans predominantly prefer an LNG project.

CHAIRMAN TORGERSON asked if they had been talking to Foothills about the incentives the Port Authority might have to offer, like being tax exempt up to a certain point.

MR. WALKER said they had and that they were tax exempt to the Canadian border.

CHAIRMAN TORGERSON asked if he thought that exemption needed to be reinforced in federal legislation. He said that the legislature technically has no position until their studies are done. He asked

if there were any amendments to ANGTA or the Producers' bill that would make their position more solid.

MR. WALKER said:

If the federal legislation gets involved, there's no upside to us at all and there's all potential downside... It's not like we feel they're going to get an additional advantage. It's that I think we're going to get an additional disadvantage of additional litigation, delay, additional studies. That's what we're concerned about.

11:40 a.m.

REPRESENTATIVE GREEN asked if he was aware of a 5 - 20 percent differential in pipeline cost and operation for an over-the-top versus a pipeline that comes down into the state, which would allow access to additional discoveries and asked if any comparisons had been made of the benefits to the state.

MR. WALKER replied that they hadn't looked at the over-the-top option. "Our economic model shows a return to the producers of a little over \$2 billion per year, with a netback of 75 cents per MCF. We show a return to the state of Alaska in excess of \$1 billion per year..."

He said they would have their updated model of 4 BCF down the Alcan Highway this afternoon and that the work was being done by the financial house of Taylor DeYoung in Washington D.C. He explained that when the numbers in their model change, it doesn't mean they have changed their mind; it means that they are using updated data. "We are very anxious to make that available to anybody that would like to see it. It shows that it's extremely financially beneficial to the State of Alaska."

MR. WALKER added:

The statements that there is no market for LNG is just not all what we have found. We've been in Houston four or five times and met with those that make their money on the marketing of natural gas from LNG and they are very anxious for Alaska gas to come down in LNG form.

He said there is some question that El Paso's Texas project with Phillips out of Australia would go through. "Bringing LNG from Australia versus from Alaska - it just doesn't make sense. There's a tremendous market out there and the way we found out about it is we went to the market..."

CHAIRMAN TORGERSON thanked Mr. Walker for his comments and said they would be discussing that tomorrow with tax incentives and disincentives. He announced that they would take public testimony and start with Scott Heyworth.

11:45 a.m.

MR. SCOTT HEYWORTH, Chairman, Citizens Petition for the All Alaska Gasline to Valdez, testified that Lieutenant Governor Fran Ulmer certified the petition and it is 'being met with incredible welcome by the Alaskan people.'

None of these other projects say anything about gas to Southcentral. Nothing is proposed. Nothing is on paper. The LNG to Valdez has a spur line from Glennallen to Southcentral to bring gas to our existing gas grid, hooking it up near Sutton to the North Star. It is integral to our project. LNG to Valdez has the most jobs and the most revenues to the state and I'd be glad to debate any person, any citizen, any oil company executive, any governor at any time about that discussion.

We believe the oil producers won't talk about liquid natural gas to Valdez because it directly competes with all their other LNG projects around the world, as Mr. Walker just pointed out, which as you know, they are now racing to bring their gas on line as soon as possible and kill the LNG viability. That is a fact; it is not made up.

I'm not opposed to the Y-line through Canada at some time. The state gas authority that we are proposing in our initiative will make that possibility available, but that is after we build the line to Valdez first and after everyone settles the huge food fight in Canada, mitigates the crossing of some 10,000 parcels of land, settling claims like the Foothills \$4 billion problem and allowing the Indian and tribal claims of Canada to get settled, which is going to take many, many, many years. The oil companies are now fighting the governor over which route and they are also fighting each other over which federal legislation they should pass to give the most tax breaks to the already incredibly rich oil companies.

How much more money do they need, gentlemen?

While Alaskans suffer in education, roads, potholes, lack of sewers. The all-Alaskan, all-American route doesn't need, nor is it asking for, any of this special federal legislation. It works on its own economics, no matter what the oil producers keep spewing out with no proof whatsoever that LNG development is uneconomical. It's not uneconomical.

He said Alaska can reach Asian markets that are stable and U.S. markets through the new facilities and terminals that El Paso has announced they are building on the west coast (three in Mexico and two in California). The Pedro van Meurs letter says that LNG development is economical no matter what the oil companies say.

MR. HEYWORTH pointed out that after the tragedy of September 11 that this is an all-American route. LNG to Valdez through Alaska is not going through a foreign country. He added, "We do not need federal legislation. We do not need a federal energy czar. We just need to do what the people of Alaska want to do, not what the governor wants to do and not what the oil companies want you to do for them."

MR. HEYWORTH read a portion of Governor Knowles' letter to Senator Bingaman that said:

Early this year, I formed the Alaska Highway Natural Gas Policy Committee, which held hearings across Alaska in order to solicit the views of Alaskans on the many complicated issues surrounding North Slope gas development transportation. This Council received many useful and thoughtful suggestions from various interested parties. It is fair to say a consensus exists among Alaskan businesses, Alaska Natives, organized labor, environment and civil groups and the Alaska Legislature that the following principles should be embodied, etc.

MR. HEYWORTH disagreed with the Governor's letter. He thought he was totally out of touch with what the Alaskan people want.

REPRESENTATIVE OGAN said that is what his constituents tell him on the street.

MR. HAROLD HEINZE, Special Assistant to the Legislative Majority, said he hadn't heard anything that was in the state's interest in this legislation. He offered the perspective that the state needs to focus on expanding its role in whatever happens at a federal level in this legislation. He said:

The original ANGTA legislation we've talked about is several decades old. Frankly, at that time the State of Alaska was not overly sophisticated in the executive and administrative branch and probably in the legislative branch. Since then, we have a Joint Pipeline Office and a Regulatory Commission. I went through and read the acts, the Right-of-Way Leasing Act, on and on. There's about seven or eight pieces of legislation that you have passed in the last decade and a half very specifically dealing with the gas issue. So, the state is very sophisticated now. I think we should have an expanded seat at the table. And I think any federal legislation should provide for that. I think it should be almost a litmus test of whether anybody who asks you for support whether they will support the state in that role.

He said he was concerned that our treaty with Canada provides a number of things that are important to Alaska, like guarantees of allocation of throughput capacity and not inflating the cost, vis a vis the tariff, which would affect our wellhead. "If we end up in a situation where some different route is selected, that treaty is out the window..."

MR. HEINZE said that it also seems to him that in the end in Alaska we have to come to grips with what is best for Alaska and it may not even be a project that is on the table today. That needs to be another reason why Alaska needs to be at the table. He has heard a lot of conversation from the producers this morning about lowest cost and that's not the state's motive. "There is a revenue benefit to the state, which is affected by cost, but there is a non-revenue benefit that's also very important to many people..."

He urged the committee to focus on what's best for Alaska when reviewing legislation this afternoon. If the producers want our support, "I think you should put the price tag on it of being their support of improving Alaska's standing before the federal government on this issue."

CHAIRMAN TORGERSON thanked him and announced a break for lunch.

11:58 a.m. - 1:35 p.m. - LUNCH BREAK

TAPE 01-19, SIDE A

MS. NAN THOMPSON, Chairperson, Regulatory Commission of Alaska, said that the last time she testified before this committee, she highlighted some of the issues that related to her agency's jurisdiction relative to the FERC. She was asked to comment today

on the topic generally of what federal legislation should include to resolve some of the uncertainties.

I think it's generally a good idea to reduce uncertainties. I would agree with the producers. I would probably call them uncertainties rather than risks, but the process will go much more smoothly if those uncertainties are resolved. There would be less delay and less costs associated with it.

The focus of my comments today is suggestions about what should be included in federal legislation to clarify my agency's role. I wanted to talk first about what generally our regulator would have to do or what a regulator should have to do with this pipeline.

In administrative law, we're the equivalent of the police. We make sure the pipeline is operated fairly and consistently with the public interest. I would argue that our role is especially important in a pipeline like this because some of the state's gas is going to be taken to market through this line. As a state agency we have a very unique responsibility with respect to this particular proposed pipeline. Also, the role of both my agency and FERC might be different with regard to this gas pipeline than other gas pipelines in the Lower 48 because this is the only route for the foreseeable future. In the Lower 48 there's a complex network of pipelines and there's many different markets. So, producers have options for shipment that don't exist here where there's only one option. That's an area where regulators traditionally have a stronger role. When there is a commercial interest that has an opportunity to exercise monopoly power to control an asset, the traditional role of a regulator would be to make sure they use that power fairly and consistently with the public interest.

In this particular case there are two areas where the state's interest could be better protected by having the regulatory roles of FERC and my agency clarified. The two areas are the rates to be charged for shipments within the State of Alaska and also the interconnection points.

Section 13(b) of ANGTA does talk about how the state has a right to sell its gas instate and requires that FERC allow that to happen. Its language says FERC has to sign all the necessary permits to make that happen, but it's

silent on the issue of where those interconnection points are and how the placement of those points is going to be determined and what happens if after the line is originally built another interconnection point is requested. That is something where additional input from the state would be real important.

My recommendation for the best model about how state regulatory input could be a part of the process is rather than creating a separate process, to have it formalized by the creation of a joint board. A joint board is something that there's some reference to in Section 209 of the Natural Gas Act to input from a state agency and review by FERC, but the model I'm thinking of is one that I'm familiar with in the context of telecommunications regulation. There it's one where on issues where the FTC needs to work with the state, there is by statute, in Section 410 of the Telecommunications Act, the creation of a joint board. The board in that statute has commissioners from different states and a consumer advocate and some of the FTC commissioners. That particular joint board only adjudicates issues that are referred to it by the FCC. So, it would be issues that the FERC, in this case, wanted input from the joint board on and then that joint board makes recommendations back to the FERC, which decides to adopt or reject them. But it's a process that exists now in federal law and in other areas that are helpful to provide state input and it's a process that I know this particular FERC would be familiar with, because Pat Wood, who is the new chair, was on the Federal Universal Service Joint Board in the telephone context. It's a process that has functioned very well and I don't know why we couldn't have a specific reference in federal legislation creating a similar joint board. Again, all the issues that the FERC needs to adjudicate with respect to this pipeline are not ones that are important to the state. But with regard at least to instate rates and the interconnection points instate, it would be useful to have those issues referred to a joint board so that we'd have some opportunity for input.

I think in terms of other important provisions, Section 13 that I talked about the last time I was before this committee, I still think is important. It's that section of ANGTA that gives the state - insures that there's nondiscriminatory access to the line that says you don't have to be a pipeline owner in order to ship gas on that

line, which would be important if the state wants to continue to encourage development of its oil and gas resources. It also insures under Section (b) that the state can use its royalty gas instate and requires the FERC to make sure that happens. Those are my suggestions for what should be in federal legislation that goes forward.

CHAIRMAN TORGERSON said they had language about the joint boards, but they didn't give it any powers and her suggestion was that it would only have the power to recommend back to FERC to make decisions. He asked if it would be advisory in nature.

MS. THOMPSON replied that it is and that's the model that is now in federal law that she is familiar with and that works.

When you say only advisory, the purpose of, at least in the FCC context, of giving issues to the joint board, it's ones where we, as state commissioners, have more expertise and knowledge. The FCC doesn't always do exactly as recommended, but the reason [joint boards] were created was to provide more input for them and it's well taken.

CHAIRMAN TORGERSON asked her to think about how large the board may be.

REPRESENTATIVE GREEN asked if she had heard the testimony of Anadarko. She indicated she hadn't. Representative Green asked if she thought they should advise on the myriad of problems that are involved in trying to regulate the quality of the gas and windows later on.

MS. THOMPSON responded:

If it would be helpful to the FERC, yes. Again, the model I've seen for a joint board of this kind is when there are issues that the federal agency needs local input on, it's a good way to get it. We are sometimes less encumbered by some of the rules and we're here.

REPRESENTATIVE GREEN said that some of this is covering new ground and he wanted to know if they wanted to be an observer or an active participant.

MS. THOMPSON responded that they don't need to be involved in every issue.

In some instances, expansion is a tough one; the application process is an easier one. I think under the existing statute, there's already an adequate opportunity for considerations in the state's interest and that's not something, if in the existing statute and legal scheme there's already opportunity for the state's interest to be considered, there isn't a need to run it through this other process. It's only in areas where we as a state have unique interests that aren't otherwise protected under the legal scheme that regulates gas pipelines. For example, the instate rates - there isn't another state that I'm familiar with that has the same issues with regards to instate rates that we do. And the same thing with access. Those are issues that are unique that existing regulatory schemes for gas pipelines don't account for - the type of issues we're going to face on this pipeline.

REPRESENTATIVE GREEN said he was concerned about new discoveries and new gas royalties on other than just state land. "That starts to get pretty roiled then, especially if it's after the initial operation."

MS. THOMPSON responded that expansion would be a different issue than interconnection and she would have to think more about what their role would have to be.

REPRESENTATIVE DAVIES said they are concerned about gas being discovered in the Yukon Basin, for instance, and the unique circumstances that would present.

MS. THOMPSON replied:

In that case, a provision like the one that's in Section 13 that allows nondiscriminatory access to a line would be important. So that if there is gas discovered later by someone who does not own an interest in the pipeline, they can get it on. And then I imagine the same rules would apply to expansion in any FERC pipeline...The way it works generally in the Lower 48 with gas pipelines is the pipeline owners, if it's a tradition down there, it's pipeline companies after a while that own it and they want to make money, so they have an interest in expansion. If there's gas and it needs to get to market, they can make money taking it to market. So, usually expansion isn't an issue that's contested under those circumstances. That's not usually the problem.

REPRESENTATIVE DAVIES asked if she was proposing changes to ANGTA or to the proposed Producers' legislation.

MS. THOMPSON answered that the big confusion she sees is the status of the existing ANGTA permit and the Natural Gas Act application. She could see that it could potentially be a problem if the goal is to get a project built.

Anywhere where there's a lot of unresolved legal issues, clarification might help the whole process go smoother. It's in regard to the relationship of those two statutes where clarification would be most helpful. If not, opining on whether or not I think ANGTA is a good law, you could argue about it either way.

REPRESENTATIVE DAVIES asked in the ANGTA if are the provisions of the state's interest are advisory or mandatory.

MS. THOMPSON replied that is a hard question to answer. "Section 13(b) talks about the rates and that's probably advisory rather than mandatory at least in terms of the state's role in setting intrastate rates now, but it is a statute that can be read different ways, which is part of the reason she thought it would help to clarify it.

REPRESENTATIVE DAVIES asked about the access.

MS. THOMPSON answered that there wasn't a very clear provision for access in there now.

Under state law we have a joint use and interconnection authority and that would satisfy us to pipelines in the states, but it wouldn't apply to this one clearly now. That has standards for joint use and interconnections that I think might be a useful guide. It's in AS 42.06 now, but there isn't a clear provision now under ANGTA for interconnection within the state with other pipelines.

CHAIRMAN TORGERSON asked instead of a joint committee made up of FERC and RCA, would it be better to put language saying that FERC must seek their position on access issues or other issues prior to making their decision.

MS. THOMPSON answered that from her experience the decision making process goes better if the people who were supposed to make a decision were looking at the same record.

CHAIRMAN TORGERSON thanked Ms. Thompson for her testimony and said they would hear from Mr. John Katz next.

1:51 p.m.

MR. JOHN KATZ, Director, State and Federal Relations and Special Counsel to the Governor, said his testimony would be divided into three parts: first, the congressional situation as he understands it; two, where we are heading in drafting legislation; and three, a review and consultative process of where we go from here. The committee will hold a hearing devoted specifically to the natural gas pipeline on October 2. He said that it is no longer clear that it will be an energy package per se and the timing of that package. The committee wants to either report comprehensive energy legislation to the full Senate or to participate in deliberations of the full Senate on economic stimulus packages and other vehicles that might carry some portions of the national energy package.

The chairman wants the hearing on October 2 so he will be prepared for any eventuality in the Senate. If he has the time to produce comprehensive legislation, that would be his preference, but if he doesn't he would like to be in a position to propose amendments to a fast moving vehicle such as an economic stimulus package. There has been some talk about dealing with exigent issues in an energy bill and perhaps picking others up later on.

MR. KATZ said there were some things that were emerging out of the committee's early deliberations that are worth mentioning.

The first is that among some members of the Senate there clearly is a dynamic between ANWR and the natural gas pipeline. Some members are in opposition to ANWR and feel that the natural gas pipeline is a weighty substitute. We have taken the position that both projects are essentially in the national interest and neither one should have preference over the other. They both now present jobs in bad economic times and national energy security. Another thing that is of concern to us is that it may be that some variant of the Producers' enabling legislation that ends up in the markup vehicle being considered by the committee. That, of course, is a concern to most of us on this teleconference if that occurs. We and others have been making arguments on that point.

MR. KATZ continued:

A few weeks ago the Governor asked me to head up a legislative drafting group that included officials in the state administration in an effort to come up with a comprehensive legislative approach to the pipeline project. This is not something that we often do or feel the need to do in connection with federal policy, but it seemed useful and appropriate in this context. Since then, the committee has met on several occasions to consider successive drafts of legislation. In the last couple of days we have finalized a draft which we are internally comfortable with and I'll describe in a minute how we proposed to proceed from there.

MR. KATZ said he wanted to talk about the draft legislation. It is premised on amending the ANGTA of 1976 as they felt that was the best way to accomplish the Alaskan goal of constructing a pipeline in an expeditious way. It was the cleanest approach. ANGTA is existing federal law and making amendments would modernize it and reflect certain preeminent national or state interests.

So, one major purpose of the legislation is to modernize an expedited process for executive branch review of an application for construction.

A second major principle is that everything we've done is tied to construction of the Alcan route. We have tied everything, then, to the southern route. So, for example, we do propose in there various tax benefits some of which have been broached by Phillips Petroleum, tied to the southern route. They include accelerated depreciation from 15 years to seven years, investment tax credit on construction of 10 percent and a provision, which deals with the question of commodity risk - that is if the price of natural gas goes below a certain unacceptable floor, our research, particularly by the Department of Revenue, indicates that those provisions could have significant beneficial impact on the rate of return and we hope would, therefore, benefit the southern route.

As all of you know, the Governor has proposed certain principles, which we have sought to draft into federal legislative language. Briefly, they include the concept of a project labor agreement, the idea of buying Canadian and U.S. steel if that steel is available and if it is available at reasonable prices. Also, provisions relating to local hire of Alaskans, Native hire and the use of Alaskan contractors wherever possible. We also have provisions that deal with other issues that I know the

committee has heard testimony on such as access to [the] pipeline by nonproducers. We recognize that this is federal legislation and that it is inevitably dealing with federal interests, but we also think that it's important that that legislation reflect and be protective of certain state interests and while there is a line to draw between going too far in federal legislation, we don't think we've crossed that line.

Moving on, then, to the consultative and review process, everything that we have contemplated has now been telescoped by virtue of this hearing on October 2. We had originally advocated to the committee that the hearing be on October 8, which would have given us more time to do the things I'm about to describe. We do want to cooperate with the committee and with the Alaska legislature and I want to be careful here, because I don't want to stumble into the dynamic that I know has been discussed today. The perspective on my testimony here is the Washington D.C. perspective of affectuating Alaska's interests in Washington and our collective interests as best we can do it.

On August 5, Pat Pourchot, the Commissioner of Natural Resources, wrote Chairman Torgerson offering certain information and volunteering to provide other information and to cooperate as best we can. That is an approach and an attitude that we continue to adhere to. Our current thinking with respect to the process is to discuss on Tuesday of next week with the Governor's Alaska Gas Policy Council the general direction that we have taken in the legislation and generally the provisions to implement that direction to determine whether they are generally comfortable with that. We hope in that same timeframe to involve the producers and the gas pipeline companies in that same conversation. And then, we would want to bring this to the formal attention of Chairman Torgerson and your committee.

As yet, the Governor has not been intimately involved in the legislative drafting. He knows the direction we're headed in, but we want to conclude some of these initial steps that I've described so that he's in a position to know not only what we recommended, but to hear from some of the other groups. Then we are hoping for an interaction with the committee.

The next step in our process would be to bring this to Senator Murkowski. He is our Alaskan ranking member of the committee and it's important in terms of protocol that we work with him and through him as much as possible. We will then talk to the chairman about our legislation. We have been advocates with the chairman and the ranking member and with their staffs on general principles that we think are important in this legislation and have expressed our concern about the Producers' enabling legislation, but we have not provided legislative language and until we complete the process we just described, we will not provide the language to the committee, although I very much alternately want to do that, because I think there's a vacuum there that Alaskans should seek to fill.

In closing I want to offer one personal observation based on my own experience back here. I was here on and off in the early days of congressional consideration of the Alaska National Interest Lands Conservation Act in 1978 - 79 and at that point there was not much consensus among Alaskans and we suffer from that. When, however, we talked among ourselves and reached a consensus on how to approach the federal government, we became much stronger and our advocacy registered much more in the process. To the limit and extent this office and I can contribute to building that in the case of the gas pipeline, we will and we want to work with other Alaskans who accomplish that. With that, Mr. Chairman, I'll stop and see if the committee might have any questions.

2:06 a.m.

REPRESENTATIVE GREEN said he mentioned three possible concessions - accelerated depreciation, construction tax incentives and a floor on the gas value - and asked if he is concerned if those are granted federally, that it's almost a given that the state might also do the same thing.

MR. KATZ answered that he didn't have specific concerns about translating that exactly into the three provisions of state law, but that's a very good question.

Yesterday, I was forewarned by one member of the committee that as we come back here to present what we are expecting from the federal government in terms of legislation, some members of the committee may ask us what we are thinking about in terms of changing the state

fiscal regime or other issues that might expedite the construction of the pipeline.

REPRESENTATIVE GREEN said he thought that was a pretty delicate line, "...to offer carrots to help get the line in the direction we want it, but we may also then be almost showing our hole card."

MR. KATZ replied:

Representative Green, I think we need to be careful about that, but I didn't get the sense, and it may change, that there's a specific quid pro quo, that is if you guys recommend X, you'd better make sure you include X in a state law, but I do think there will be a general inquiry about what Alaska is thinking in terms of things that we can contribute that would expedite the pipeline. That might be modifications in the fiscal regime, it might be some form of participation or other things that the committee would be aware of.

CHAIRMAN TORGERSON thanked Mr. Katz for his testimony and said they would go back to Joe Marushack and Ken Konrad.

MR. MARUSHACK said that the first written question the committee asked them was how the ownership of the pipeline by the producers corresponded to ownership provisions in ANGTA. His answer was that they think this is a good example of why ANGTA is inconsistent with state requirements and new legislation is needed.

At the time of the waiver for the package permitting producers to participate, there was a provision for 30 percent equity, we believe, for the producers and that waiver could be approved and exceeded if it was subject to approval by FERC and the Department of Justice. At that time, as you are aware, the pipeline and the whole gas system was bundled and pipelines bought and sold gas at the wellhead and that's not the case any more. So, that's an example of what's changed.

CHAIRMAN TORGERSON asked if under ANGTA they could own 100 percent of the line if they met the antitrust test.

MR. KONRAD said that was right. He said that in today's regulatory environment, it's open access and the point becomes much more moot.

MR. MARUSHACK said they are very comfortable with all antitrust tests and their legislation was not intended to bypass any of that.

CHAIRMAN TORGERSON said, "Under ANGTA, you're not precluded from owning all the line. You just have to pass an antitrust test. The other question was, does your legislation do away with that same antitrust test?"

MR. MARUSHACK replied that he didn't believe that it did, but they are open to changes to that if it makes the process better. "We are not concerned about any antitrust issues. We will address them all."

MR. KONRAD added that back then it wasn't open access.

CHAIRMAN TORGERSON asked if they supported seven years accelerated depreciation and they indicated they did support it.

2:12 p.m. - 2:16 p.m. BREAK

CHAIRMAN TORGERSON said he was going back to Washington on Saturday and he wanted to formulate the committee's position today. He said when the committee was formed, it was charged with coming up with policies and to represent the legislature. He said he had amendments that are suggested legislative fixes and are broken down into three or four major categories. The first one is ANGTA 1 with access issues 1 - 6, taxation issues 1 -2. Most of what he heard today was covered in these amendments. He said this is a broad brush approach, so if they are totally missing the point, they want to get it.

REPRESENTATIVE PORTER moved to adopt proposal 1 (ANGTA 1).

CHAIRMAN TORGERSON explained that the proposal:

...Asks the committee to ask Congress to reaffirm that the Alaska Natural Gas Transportation Act is the prevailing law with respect to the transportation system for delivery of natural gas to the Lower 48. It also requests that Congress allow amendments to that law as long as it doesn't change the basic nature and general route approved by the transportation system that was already there.

The justification is as follows:

Justification for Proposal ANGTA 1

Before the enactment of ANGTA there were three competitive proposals for an Alaska Natural Gas Transportation System. Specifically those proposals were:

- 1) The Arctic Gas Project, which proposed an overland pipeline extending from Prudhoe Bay, across the North Slope of Alaska to the Canadian Mackenzie Delta and thence southerly through Canada to the lower forty-eight states;
- 2) The El Paso LNG Project, which proposed an overland pipeline extending from Prudhoe Bay to Southern Alaska, where the gas would have been liquefied and transported by tankers to terminals in the western United States; and
- 3) The Alcan Pipeline Project, referred to in Canada as the Alaska Highway Pipeline Project, which proposed an overland pipeline extending from Prudhoe Bay to Fairbanks, Alaska, and thence southeasterly through western Canada to the lower forty-eight states.

All of these proposals were filed under the Natural Gas Act, debated by FERC, and Congress passed ANGTA, which authorized the President to select a route. The President then approved the ALCAN route and entered into a treaty with Canada, which was later confirmed by Congress. The Canadian Parliament also passed the Northern Pipeline Act, the equivalent of ANGTA. ANGTA was never repealed. In fact, in 1992 the federal inspector recommended that ANGTA be abolished, but Congress rejected that notion.

CHAIRMAN TORGERSON recommended that they adopt ANGTA 1.

REPRESENTATIVE DAVIES said he was concerned about the focus on delivery to the contiguous states and wondered if it should be broader and include Alaska specifically and the possibility of other markets.

CHAIRMAN TORGERSON said that language was in the purpose section of ANGTA. "We could chop it off anywhere you want as long as we are saying that ANGTA is the prevailing law and there was only one route under that law and that's the direction."

REPRESENTATIVE DAVIES said:

Mr. Chairman, I believe that within ANGTA there are provisions that refer to the delivery from that system into Alaska, specifically, and also the off take provisions could allow, essentially, for the Y-line to be constructed... I think the interests of the State of Alaska are clearly broader than just delivering gas to the contiguous Lower 48...

CHAIRMAN TORGERSON said you could put in language saying "to the

contiguous states or as directed under ANGTA," but that is already in Section 13(b).

REPRESENTATIVE DAVIES proposed an amendment to insert "to Alaska, the contiguous states and other markets" on line 4 after "to the". It would then read, "for delivery of Alaska natural gas to Alaska, the contiguous states, and other markets and the construction and initial operation of that system."

CHAIRMAN TORGERSON asked if that would allow for the Y-line and Representative Davies indicated that it would. There were no objections to Amendment 1 and it was adopted.

TAPE 01-19, SIDE B

CHAIRMAN TORGERSON asked if there were objections to ANGTA 1. There were no objections and it was adopted as follows:

The Joint Committee on Natural Gas Pipelines respectfully requests that Congress reaffirm that the Alaska Natural Gas Transportation Act (ANGTA) is the prevailing law with respect to a transportation system for delivery of Alaska natural gas to Alaska, the contiguous states, and other markets, and the construction and initial operation of that system.

The Joint Committee on Natural Gas Pipelines also respectfully requests that Congress allow certain amendments to ANGTA to modernize the act without changing the basic nature and general route of the approved transportation system or otherwise preventing or impairing in any significant respect the expeditious construction and initial operation of the transportation system.

2:24 - 2:26:41 p.m. - BREAK

CHAIRMAN TORGERSON announced that ANGTA 2 was up for consideration.

REPRESENTATIVE GREEN moved to adopt ANGTA 2.

CHAIRMAN TORGERSON explained that it says: "The Joint Committee on Natural Gas Pipelines respectfully requests that Congress adopt the provisions that prohibit the over-the-top route through the Beaufort Sea as a pipeline route."

He said it would be consistent with what passed the House and they have heard the justification many times. It would ask the Senate to

adopt the same provisions that passed the House.

The justification is as follows:

- The Alaska Legislature has banned this route in Senate Bill 164.
- The House of Representatives in Congress has adopted an amendment in the Energy Bill to ban this route.
- This route seriously decreases the benefits Alaskans' will receive from the development of natural gas.
- The North Slope Borough and the Alaska Eskimo Whaling Captains oppose this route.

REPRESENTATIVE DAVIES moved to delete "the" from before "provisions". There were no objections and it was so adopted.

REPRESENTATIVE OGAN asked if the justification was part of the language. It wasn't.

SENATOR OLSON said that adding the Eskimo Whaling Captains opposition would give it a little more clout.

CHAIRMAN TORGERSON responded that the reason he didn't add them was because he hadn't seen an official document from the International Whaling Commission opposing the over-the-top route, although he had heard a number of them testifying against it. If there was such a letter, he would be glad to use it in his presentation. Senator Olson said he would try to get one.

CHAIRMAN TORGERSON asked if there was any objection to adopting ANGTA 2.

REPRESENTATIVE OGAN objected, pointing out that the route seriously decreases the benefit to Alaska and that they have a constitutional obligation to develop the resources to the maximum benefit.

CHAIRMAN TORGERSON said he wished that Congress would pay more attention to our constitution, but he understood what he was saying.

REPRESENTATIVE DAVIES added that previous testimony had pointed out that low cost does not equal maximum benefit necessarily.

REPRESENTATIVE OGAN said this was an important amendment because they said if Congress does prohibit the over-the-top route, they are going to pull the plug on the project. He reminded them that they had been assured that at the end of the day the producers weren't going to build something Alaskans didn't support or sell

gas to someone that would build a pipeline over-the-top. He thought that maybe the strategy of the producers was to get all the information in, then make a presentation to the legislature and that might be the proper time to say yeah or nay. "This amendment may be the trigger that gets people prepared to draw lines in the sand and we've got another 25 years of stranded gas."

CHAIRMAN TORGERSON responded, "We're not going to allow an over-the-top route to be built. So if they're going to pull the plug, let's do it today and get it over with."

REPRESENTATIVE GREEN said he had the same concerns at first, but we have since found out that other people and organizations have come forward saying they would consider it and the producers have testified that they wouldn't object to selling the gas to someone else.

REPRESENTATIVE OGAN added that they had said that about LNG and the question is, "At what price - a price that will make the project economic or price that would kill the project? The guy with the gas makes the rule..."

REPRESENTATIVE PORTER said he intended to support the proposal, but said:

After the work is done by the producers and they determine that that route can be done with environmental safety and all the other concerns that we have, I would probably not be opposed to reconsidering after our line is already constructed to do what was suggested by one of the testifiers to bring Delta gas over to Prudhoe Bay and down our pipeline.

CHAIRMAN TORGERSON asked for the roll call. SENATORS OLSON, ELLIS, and TORGERSON; REPRESENTATIVES DAVIES, CHENAULT, FATE, OGAN, PORTER, and GREEN voted yes and the ANGTA 2 as amended was adopted.

CHAIRMAN TORGERSON announced ANGTA 3 to be up for consideration. This is an attempt to handle Anadarko's problems and reads:

The Joint Committee on Natural Gas Pipelines respectfully requests that Congress create a mechanism for allowing the fair distribution of the costs allowed to be included in the tariffs associated with a conditioning plant(s).

The justification is:

Other producers will likely discover gas downstream from access to a conditioning plant in Prudhoe Bay that will require them to construct an additional conditioning plant. These producers will need to be treated fairly with regard to tariffs to encourage development and exploration of all North Slope gas resources.

REPRESENTATIVE OGAN moved to adopt Amendment 3.

REPRESENTATIVE DAVIES asked if he seriously considered discussing unbundling the costs.

CHAIRMAN TORGERSON said he didn't discuss it with anybody. He just asked for a fair mechanism; he didn't know what language would be used. "All that has to work here is that we create something that if the conditioning plant is built in one location and someone builds one downstream, that we don't pay the tariff for the upstream one...."

REPRESENTATIVE DAVIES moved to amend line 2 by inserting "unbundling or otherwise" after "a mechanism for". So, it would read:

The Joint Committee on Natural Gas Pipelines respectfully requests that Congress create a mechanism for unbundling or otherwise allowing the fair distribution of the costs allowed to be included in the tariffs associated with a conditioning plant(s).

CHAIRMAN TORGERSON said he didn't have a problem with that.

SENATOR OLSON asked who was going to make the determination of what a fair distribution of costs would be.

CHAIRMAN TORGERSON replied that the FERC would.

We want Congress to consider creating a mechanism that tells FERC to look out for these kinds of things and to treat people fairly that have different conditioning plants. According the FERC, that's a given, but according to what we hear from other people, it's not.

REPRESENTATIVE DAVIES added:

I completely concur with your last comment in that when we listen to FERC, they seem to be saying that market forces will determine those things and this is such a unique situation, essentially almost a monopoly position,

that most people think that only one pipeline will be built. I think we need to send a message to Congress to send a message to FERC that they need to look at that issue a lot more carefully than they apparently normally would.

REPRESENTATIVE OGAN said that maybe the language could be broader than just conditioning plants and maybe add "and associated infrastructure."

CHAIRMAN TORGERSON suggested keeping that in mind when they go through the access sections. He thought they had covered those points, but they need to make sure. He also didn't think they needed to be that detailed.

CHAIRMAN TORGERSON asked if there was any objection to the amendment to ANGTA 3.

REPRESENTATIVE FATE asked since "unbundling" is such a general term, if it might cause some unintended consequences. He said he was uncomfortable with that language.

REPRESENTATIVE DAVIES explained, "In my mind, the unbundling speaks having transparency with respect to the way the tariffs are put together and that's why I offered the amendment."

REPRESENTATIVE FATE replied that his explanation explained it more clearly than his amendment.

REPRESENTATIVE DAVIES withdrew his amendment and stated Amendment 2 which inserted "transparent and" after "allowing the". There were no objections to adopting Amendment 2.

CHAIRMAN TORGERSON asked if there was any further discussion of ANGTA 3 as amended. There were no objections and ANGTA 3 as amended was adopted.

CHAIRMAN TORGERSON announced ANGTA 4 to be up for consideration.

REPRESENTATIVE GREEN moved to adopt ANGTA 4.

CHAIRMAN TORGERSON said they hear about some of the provisions of ANGTA that are dated and the Dempster Lateral is one of them. He thought it might go away automatically, but he thought it should be discussed. It says, "The Joint Committee on Natural Gas Pipelines respectfully requests Congress to eliminate the Dempster-Lateral route from provisions in ANGTA."

The justification is that the Northwest Territories has another route that they are considering and the Dempster Lateral plan has been gone for some time.

REPRESENTATIVE DAVIES said he wondered what Alaska's interest was in doing that, although he wouldn't object to using it as an example after 1, which talks in terms of modernization.

REPRESENTATIVE GREEN suggested adding, "if necessary".

REPRESENTATIVE DAVIES again suggested using it as an example under ANGTA 1 and removed his objection.

REPRESENTATIVE GREEN moved to add ", if necessary." after "ANGTA". There were no objections and it was adopted.

CHAIRMAN TORGERSON asked if there were any objections to ANGTA 4 as amended. There were no objections and it was adopted and reads: The Joint Committee on Natural Gas Pipelines respectfully requests Congress to eliminate the Dempster-Lateral route from provisions in ANGTA, if necessary.

CHAIRMAN TORGERSON announced ANGTA 5 to be up for consideration.

REPRESENTATIVE GREEN moved to adopt ANGTA 5.

CHAIRMAN TORGERSON explained that this proposal goes to the withdrawn partners issue with Foothills Pipe Lines, Ltd. that is the other issue that is often raised as a block. It basically says that the Committee respectfully requests that Congress pass legislation that limits funds the withdrawn partners of the approved transmission system can collect in a tariff.

The justification is that the current owner of the authorization under ANGTA is Foothills Pipe Line Ltd. Previously, Foothills had several partners, which over time have withdrawn from the partnership. The withdrawn partners spent funds in support of the ANGTA route and have filed documents with the FERC to include recovery of those costs in any tariff for transportation of Alaska natural gas. Foothills has been negotiating with the withdrawn partner to resolve this outstanding liability. However, those negotiations have not been successful to date.

Foothills and its partners should be compensated for the work done in furtherance of the ANGTA system that does not need to be duplicated. If the work needs to be redone or modernized, they should not be entitled to collect for the funds previously expended. Accordingly, the Joint Committee should support this

request.

2:48 p.m.

CHAIRMAN TORGERSON explained in other words this means that the only thing they can claim in a tariff is reimbursement for work that would not have to be duplicated under the regime of ANGTA. This, in his mind, would do away with the amounts in question.

REPRESENTATIVE FATE said:

The limiting factor of the collection of those tariffs was something that was a tangible asset and the withdrawing of a partnership is usually something conducted outside of the parameters of this ANGST as a controlling factor, but is something that is usually within either corporate structure or a business enterprise. I am not sure that however this came about, that a withdrawn partner should be entitled to anything.

CHAIRMAN TORGERSON said he didn't disagree and maybe he had poor language. But they have heard the claims out there.

The withdrawn partners is probably a business arrangement between two grown-up corporations that can make any kind of deal that they want to. My concern is that there is not a contingent liability for adding to the tariff expenses that are not justifiable.

REPRESENTATIVE GREEN said he could see where Representative Fate was coming from,

...but if you gain something from what has been done in the past, whether it's \$4 billion or several hundred million, if that's a benefit towards getting this thing done, then there probably should be some ability to recoup them.

CHAIRMAN TORGERSON said they had heard from the producers that there may be a liability out there and:

I'm just trying to make that go away. I think it's fair that they ask - and it's not our bailiwick; it's Congress's, but if we're going to use the framework of ANGTA, we don't want to hang it up with an extraordinary expense for things that aren't Foothills'.

2:54 p.m.

REPRESENTATIVE DAVIES said he was a little concerned, but agreed with the intent. He asked if withdrawn partners could actually collect from a tariff. He wondered if it shouldn't read more like legislation that limits tariff charges that are intended to pay the withdrawn partners.

CHAIRMAN TORGERSON said that it could actually say, "any carried forward costs from prior dates".

REPRESENTATIVE DAVIES said he thought the way the verbs should go together should limit the tariff charges to legitimate expenses.

CHAIRMAN TORGERSON agreed.

REPRESENTATIVE FATE said, "Limiting tariff charges, even though it's certainly better to cut them out, still opens the door to tariff charges."

CHAIRMAN TORGERSON said they could add, "if appropriate."

REPRESENTATIVE FATE said his concern was if that was even appropriate.

CHAIRMAN TORGERSON said that according to Foothills, they don't have any carried forward charges. He thought they were writing off all of their expenses up to this time.

REPRESENTATIVE FATE said if there were a window of opportunity, they would find it.

REPRESENTATIVE PORTER wondered if getting into this issue was more confusing than staying out of it. It seemed if all the work done by the withdrawn partners had been done by Foothills under contract, there wouldn't be any discussion. All the costs that had been amassed to this point by continuing partners, it's all on their ledger and they either try to get it back or not get it back, depending on how successful they are with this whole project. "It seems like discussions with withdrawn partners and the still in partners is their deal, not ours."

CHAIRMAN TORGERSON said he didn't disagree, but they have heard testimony from different sources that come up with the \$4 billion number and he is trying to give the committee's position on it.

As I was going from office to office back in Washington D.C., somebody has done a damn good job of telling everybody that there's a \$4 billion bill hanging over Foothills' head and they're very familiar with that. I

advised Foothills of that and they're doing kind of a lousy job of telling people back in D.C. that this is not true. They tell us it's not true, but the people that are pushing the buttons think it is true. I think we need to make a position on this that since we've already adopted the framework of ANGTA, this is one of the problems and we need to recommend that it go away.

3:00 p.m. - 3:04 p.m. BREAK

REPRESENTATIVE DAVIES moved to amend ANGTA 5 to read the same up through "legislation that limits" and insert "tariff charges for prior work to compensation for work done that does not have to be duplicated and which is deemed appropriate to the current transportation system."

CHAIRMAN TORGERSON said the intent is to allow expenses to be carried forward that are fair and do not have to be duplicated. He used the example of an EIS statement that was already half done. If money was spent on it, that would be a legitimate expense to add to the tariff.

CHAIRMAN TORGERSON asked if there was any further discussion on the amendment to ANGTA 5. There were no objections and it was adopted.

3:07 p.m.

CHAIRMAN TORGERSON asked if there was further discussion on ANGTA 5 as amended. There was no further objection or discussion and it was adopted.

CHAIRMAN TORGERSON said that access issues 1 - 4 were up for consideration. They were all called "A" for access.

REPRESENTATIVE GREEN moved to adopt A1.

CHAIRMAN TORGERSON explained it requests that Congress pass legislation to assure that Alaska has fair and reasonable access to gas produced from the state and to create a joint board consisting of the Federal Energy Regulatory Commission (FERC) and the Regulatory Commission of Alaska (RCA) to determine instate access and tariffs under the Natural Gas Act.

He said the justification was given to them by Ms. Thompson of the RCA and says unlike the Trans-Alaska Transportation System for oil, the Natural Gas Act does not provide for the Regulatory Commission of Alaska to set rates for gas used in Alaska. Although Section 13(b) of ANGTA provides that the state is authorized to ship its

royalty gas on the approved system for use within Alaska and to withdraw such gas from the interstate market for use within Alaska, it does not deal specifically with how Alaska delivery points along the line will be approved. Access to gas is necessary for social and economic development of Alaska. The Alaska Regulatory Commission should be part of a team that determines how intra-state access and rates are determined.

CHAIRMAN TORGERSON said Ms. Thompson recommended that the team could make recommendations back to FERC. He was not sure they needed that in the language.

REPRESENTATIVE DAVIES moved to add "to make recommendations back to FERC." So it would read:

...requests that Congress pass legislation to assure that Alaska has fair and reasonable access to gas produced from the state and to create a joint board consisting of Federal Energy Regulatory Commission (FERC) and the Regulatory Commission of Alaska (RCA) to determine instate access and tariffs under the Natural Gas Act, to make recommendations back to FERC.

REPRESENTATIVE PORTER commented, "When you say create a joint board consisting of FERC and the Regulatory Commission of Alaska to determine instate access, would you want to then say 'to recommend instate access'?"

CHAIRMAN TORGERSON said that was right. So they have to delete "determine" and insert "recommend".

REPRESENTATIVE GREEN withdrew Amendment 1.

REPRESENTATIVE PORTER moved Amendment 2 to A1, which on line 3 deletes "from" and inserts "within" and on line 5, delete "determine" and insert "recommend". There were no objections and it was adopted.

REPRESENTATIVE DAVIES said he didn't think it was the Chair's intent on line 4 to have the board consist of the entire FERC and RCA. He moved to delete "consisting of" and insert "appointed from". So, it would read, "members appointed from". There were no objections and Amendment 3 to A1 was adopted.

REPRESENTATIVE GREEN asked if our RCA wanted FERC to be involved in establishing instate tariffs.

REPRESENTATIVE PORTER suggested "access and tariffs under the

Natural Gas Act that affect the State of Alaska."

CHAIRMAN TORGERSON said he thought that was very broad language that might "get us a seat at the table."

REPRESENTATIVE PORTER moved to insert "that affect the State of Alaska." after "access and tariffs". There were no objections to Amendment 4 to A1 and it was adopted.

REPRESENTATIVE PORTER moved to adopt A1 as amended. There were no objections and it was so ordered.

It read:

The Joint Committee on Natural Gas Pipelines respectfully requests that Congress pass legislation to assure that Alaska have fair and reasonable access to gas produced within the State and to create a joint board consisting of members appointed from the Federal Energy and Regulatory Commission and the Regulatory Commission of Alaska to recommend access and tariffs that affect the state of Alaska.

TAPE 01-20, SIDE A

3:16 p.m.

CHAIRMAN TORGERSON said they had decided not to offer A2 and that A3 was up for consideration.

REPRESENTATIVE GREEN moved to adopt A3.

CHAIRMAN TORGERSON explained that A3 requests that the formula be developed that would allow for the setting of different tariff rates for natural gas distribution points along the route (Hubs).

He explained that the justification is Alaska studied different proposals for the use of natural gas within the state including several proposals for LNG facilities and petrochemical plants, several GTL plants and instate usage by communities. It is important to be able to set tariffs at different rates to allow these take off points. "This is what I was thinking came close to our discussion before about whether we allow compressor stations and everything else. I don't know if we need to get into that level of detail, but certainly we need to if we take off from Fairbanks, we want to have a price in Fairbanks and if there's one in Glennallen or Big Delta, maybe there should be a corresponding price.

CHAIRMAN TORGERSON asked if there were any objections to adopting A3. There were no objections and A3 was adopted.

CHAIRMAN TORGERSON announced A4 to be up for consideration.

REPRESENTATIVE GREEN moved to adopt A4.

CHAIRMAN TORGERSON explained that this is a request that Congress pass legislation to insure that producers who do not have an ownership interest in the pipeline have fair and reasonable access to space on the pipeline and the ability to obtain expansion of the pipeline.

The justification is ANGTA originally precluded the Producers from participating in the ownership of the gas pipeline. In 1981, a waiver was sought and obtained by President Reagan to permit the Producers to have an ownership share in the pipeline. Their participation, however, had to be approved by the FERC and could be approved only after consideration of the advice from the Attorney General and upon a finding by FERC that the participation would not (a) be inconsistent with the antitrust laws or (b) in and of itself create restrictions on access to the transportation system for non-owner shippers or restrictions on capacity expansion.

Alaska has much more gas than that contained in known fields. Currently, companies are considering exploring for such gas and if discoveries are made, that gas will need to have access to the pipeline on fair and reasonable terms. If significant discoveries are made after the initial capacity is filled, the pipeline will need to be expanded and any expansion request needs to be determined on fair and reasonable terms. Accordingly, the law must be clear that the FERC has the authority to make such determinations.

3:20 p.m.

REPRESENTATIVE DAVIES moved on line 4 after "obtain" to insert "capacity". There were no objections and Amendment 1 was adopted.

CHAIRMAN TORGERSON asked if there were any objections to adopting A4 as amended. There were no objections and A4 amended was adopted.

CHAIRMAN TORGERSON explained that the next two amendments involved local hire, AH1 and AH2. He explained that they request Alaska hire and use of Alaska businesses.

3:26:44 p.m.

REPRESENTATIVE DAVIES said the only way to meet the interstate commerce test and to provide for Alaska hire is through project labor agreements.

CHAIRMAN TORGERSON said this is a constitutional question.

REPRESENTATIVE DAVIES said he thought it was important to go on record in support of that and moved to delete "for Alaska hire" and insert "project labor agreements."

CHAIRMAN TORGERSON said the producers testified this morning that they were going to have labor agreements anyhow. He asked if there was any further discussion on AH1.

REPRESENTATIVE OGAN objected saying that the legislature is mandating a route and they should keep other mandates at a minimum. The producers said they were going to hire union people and he thought that, "every able bodied Alaskan who was sober in the morning could get work." He didn't think this was necessary.

REPRESENTATIVE DAVIES offered the amendment with the "project labor agreements" language.

CHAIRMAN TORGERSON asked for a roll call. SENATORS OLSON, KELLY AND TORGERSON and REPRESENTATIVES DAVIES, PORTER, voted yeah; REPRESENTATIVES CHENAULT, FATE, OGAN, GREEN voted nay; and AH1 as amended was adopted as follows:

The Joint Committee on Natural Gas Pipelines respectfully requests Congress to approve a provision for project labor agreements.

CHAIRMAN TORGERSON announced AH2 to be up for consideration. It requests Congress to approve a preference for Alaskan businesses for the construction and maintenance of a natural gas pipeline. He said there was discussion on whether it was constitutional, but they want to see Alaskan businesses have first crack at supplying whatever is needed.

REPRESENTATIVE GREEN moved to adopt AH2.

REPRESENTATIVE PORTER suggested inserting "qualified" before "Alaskan businesses". There were no objections and Amendment 1 to AH2 was adopted.

REPRESENTATIVE GREEN said he thought this amendment was more palatable, because of using the word "preference" instead of

"provision for".

REPRESENTATIVE OGAN said he was wondering what kind of preference they were talking about.

CHAIRMAN TORGERSON responded, "If you're asking me, I would have the steel mills built here where everything had to be made in Alaska."

REPRESENTATIVE FATE said if it opens up a discussion on constitutional issues, "That opens up Pandora's box."

REPRESENTATIVE OGAN agreed with Representative Fate. He thought there were ways to deal with it instate and they had already had some success negotiating with producers at Northstar and others.

CHAIRMAN TORGERSON asked if there was further discussion on AH2. There being none, he asked for a roll call: SENATORS KELLY, OLSON and TORGERSON and REPRESENTATIVE DAVIES, CHENAULT, PORTER and GREEN voted yeah; REPRESENTATIVES FATE, OGAN; and AH2 as amended was adopted.

3:38 - 3:41 p.m. - BREAK

CHAIRMAN TORGERSON announced that they had two taxation proposals before them for consideration, T1 and T2.

REPRESENTATIVE GREEN moved to insert "from" after "imports" on T1.

CHAIRMAN TORGERSON said it now read: "Respectfully requests that Congress pass legislation that prohibits tax incentives for LNG imports from outside of North America."

He explained the justification was that:

The President and Congress have recommended a variety of incentives as part of a national energy policy. Alaska natural gas is in competition with LNG imported from foreign sources to supply gas to the Lower 48 states. It is the policy of the United States to reduce dependence on foreign energy sources. Accordingly, Congress should not pass any law that gives tax incentives to facilitate importing LNG from sources outside North America. Rather, Congress should enact incentives that benefit production from the frontier areas of the United States, including Alaska. Otherwise, United States gas in frontier areas may be stranded.

He said that right now the committee is only recommending accelerated depreciation; that would not apply to LNG import facilities that are built to bring in gas that competes with gas sources within North America. "We kept that particularly broad because we didn't want it to apply to Canada which supplies us now with about 20 percent of our natural gas or something like that - a large volume. Possibly, Mexico may come on line.

He didn't think it was fair to give incentives to our competition that would be equal to product that is available here in Alaska.

REPRESENTATIVE PORTER suggested amending the amendment. "Imports outside" leaves the possibility for intermediate [indisc.]. He thought they might replace "imports" with "produced".

CHAIRMAN TORGERSON said that Amendment 1 would delete "imports" and insert "sources" after "from". There were no objections and Amendment 1 was adopted. It now read:

The Joint Committee on Natural Gas Pipelines respectfully requests that Congress pass legislation that prohibits tax incentives fro LNG from sources outside of North America.

CHAIRMAN TORGERSON asked if there was any discussion on Amendment 1.

REPRESENTATIVE OGAN asked if there was any kind of North American free trade agreement.

CHAIRMAN TORGERSON responded that this was more of a policy and that:

The same people who are producing our gas are going around the world finding other sources cheaper and producing that first and we're giving them incentives to beat our own gas out of the market and I don't think it's right.

There was no further discussion and without objection Amendment T1 as amended was adopted.

CHAIRMAN TORGERSON announced T2 to be up for consideration.

REPRESENTATIVE GREEN moved to adopt T2.

CHAIRMAN TORGERSON said that T2, "...requests that Congress pass legislation providing a tax incentive that allows for an

accelerated depreciation schedule of seven years for Alaska natural gas brought to United State markets."

REPRESENTATIVE DAVIES asked what impact that would have on tariffs.

CHAIRMAN TORGERSON said it would let them write it off quicker and that it was consistent with what had already passed the House of Representatives.

MR. MICHAEL HURLEY, Alaska Gas Producers' Pipeline Team, explained:

The way that T2 is worded - if you're going to change accelerated depreciation, that is a federal tax statute and relates only to your taxes. If you wanted to clarify it, because normally what happens, just as background, you always end up with several depreciation schedules; one you use for your SEC books, because they have certain requirements; one you use for the federal tax man, because he has different requirements, which may or may not be accelerated. The FERC actually makes you keep a separate set of books that are tariff books that have a different set of depreciation schedules. So, the FERC role as part of their oversight of tariffs, works through a depreciation schedule that they will allow. You could clarify this by simply saying, "accelerated depreciation schedule for tax purposes" and that would alleviate any concern that it would change the tariff in any way shape or form.

CHAIRMAN TORGERSON said there was an amendment for T2 to insert "for tax purposes" after "schedule".

CHAIRMAN TORGERSON asked if there were any objections to Amendment 1. There were no objections and it was adopted.

REPRESENTATIVE DAVIES asked why they were adopting seven years.

CHAIRMAN TORGERSON replied, "They asked for it and it's already in the energy bill."

REPRESENTATIVE OGAN asked how this would affect local government taxing them. This is an issue in Valdez where they're getting less and less local revenues.

REPRESENTATIVE DAVIES moved to insert "federal" in front of "tax purposes". There were no objections and Amendment 2 to T2 was adopted.

CHAIRMAN TORGERSON asked if there were any objections to adopting T2 as amended. There were no objections and T2 was adopted as amended.

CHAIRMAN TORGERSON said that was all the legislation he had prepared to consider.

REPRESENTATIVE OGAN said, "For the record, my vote on Alaska hire in no way reflected my desire that Alaskans not be hired. I think I made it pretty clear that I thought the state would be a little more effective without it."

CHAIRMAN TORGERSON announced the committee would go into executive session for purposes of discussing strategies in dealing with legislation from the governor and the federal legislation.

4:00 p.m.

REPRESENTATIVE GREEN moved for the committee to go into executive session. There were no objections and they recessed.

CHAIRMAN TORGERSON called the meeting back to order at 4:43 p.m.

REPRESENTATIVE GREEN moved to end the executive session. There were no objections and it was so ordered.

CHAIRMAN TORGERSON adjourned the meeting at 4:45 p.m.