ALASKA LEGISLATURE
JOINT COMMITTEE ON NATURAL GAS PIPELINES
February 15, 2002
3:35 p.m.

SENATE MEMBERS PRESENT

Senator John Torgerson, Chair

SENATE MEMBERS ABSENT

Senator Rick Halford
Senator Pete Kelly
Senator Johnny Ellis
Senator Don Olson, Alternate

HOUSE MEMBERS PRESENT

Representative Joe Green, Vice Chair
Representative Brian Porter

HOUSE MEMBERS ABSENT

Representative Scott Ogan
Representative John Davies
Representative Hugh Fate, Alternate
Representative Reggie Joule, Alternate
Representative Mike Chenault, Alternate

COMMITTEE CALENDAR

A resolution urging the President of the United States, the United States Congress, and appropriate federal officials to support the construction and operation of the Alaska Highway Natural Gas Pipeline route.

WITNESS REGISTER

Mr. Patrick Coughlin
Consultant to the Senate Resources Committee
Alaska State Capitol
Juneau AK 99811

Ms. Karol Newman
Hogan & Hartson L.L.P.
Columbia Square

555 13th Street N.W.
Washington D.C. 22004-1109

ACTION NARRATIVE

TAPE 02-4, SIDE A
Number 001

CHAIRMAN JOHN TORGERSON called the Joint Natural Gas Pipelines Committee meeting to order at 3:35 p.m. and said the committee would work on the proposed Senate Joint Resolution. He said at 4:00 the committee's attorney would be calling in to discuss issues in the federal legislation. The intent is to have this resolution be introduced by the Senate Resources Committee at the request of this committee since it doesn't have the legislative powers per se. He said they hadn't officially adopted any resolutions to support any positions, but the committee adopted 12 points to take to Congress on different amendments it wants to see in the gas line act.

REPRESENTATIVE GREEN asked if they knew for sure that this is the largest known natural gas discovery referring to line 5. He was thinking of the Gulf Coast.

CHAIRMAN TORGERSON said they were okay on that one.

REPRESENTATIVE GREEN asked if the wording on page 2, line 8 - "including the losses of tens of millions of United States jobs; and" was correct.

CHAIRMAN TORGERSON said that was taken directly out of the Energy bill. "A lot of it has to do with the recession and the California problems and all the other things."

REPRESENTATIVE GREEN asked if they should delete "sources" and insert "amounts" on page 2, line 9 where it says, "the United States imports significant amounts of LNG,".

CHAIRMAN TORGERSON said they would take that as amendment 1.

REPRESENTATIVE PORTER moved amendment 1. There were no objections and amendment 1 was adopted.

REPRESENTATIVE GREEN said the next proposed amendment is on page 2, line 12 and would delete "natural gas" and leave ANS.

REPRESENTATIVE PORTER moved amendment 2. There were no objections and amendment 2 was adopted.

REPRESENTATIVE GREEN said on page 2, line 18 there is a redundancy "via a pipeline" since they are talking about pipeline routes.

REPRESENTATIVE PORTER moved amendment 3. There were no objections and amendment 3 was adopted.

REPRESENTATIVE GREEN said the next amendment was a concept that affected the 'WHEREAS' clause on page 3, lines 21 and 26. He is concerned that they are talking about a petrochemical extraction and further down they talk about LNG, but there isn't any mention of gas to liquids (GTL). He wanted to know if that was left out on purpose.

REPRESENTATIVE PORTER said he was under the impression that GTLs would go down the existing TAPS line.

CHAIRMAN TORGERSON said it may and he didn't think it would be wrong to add that.

REPRESENTATIVE GREEN said it could also be done at Kenai.

REPRESENTATIVE PORTER moved on page 3, line 26 to insert "GTL" after "including". There were no objections and amendment 4 was adopted.

REPRESENTATIVE PORTER noted that there was a list of advantages on page 4, line 5, and benefits to the state from the sale of ANS gas, no matter which route was used.

REPRESENTATIVE FATE moved amendment 5, which inserts "little to" in front of "none". There were no objections and amendment 5 was adopted.

REPRESENTATIVE PORTER referred to amendment 3 on page 5, which provides for reaffirmation of the validity of ANGTS and the modernization of the Act as necessary. He asked if they want to leave ANGTS in place as it relates to the pipeline companies to the exclusion of anybody else being able to apply or with the addition of other people being able to apply.

CHAIRMAN TORGERSON said their intent was if they are going to support the producers' legislation, to allow them to file under the Natural Gas Act. The legislature would authorize ANGTA to be upgraded to keep that permit.

REPRESENTATIVE PORTER said he didn't think that was correctly

expressed.

MR. PATRICK COUGHLIN, consultant to the Senate Resources Committee, said that was the intent as existed and that S 1766 did not have anything about ANGTA in it. The purpose of this amendment recommending that the Joint Committee adopt an amendment was to keep the ANGTA people on par with where they stood and to recognize that the legislation, itself, already allowed others to apply.

MR. COUGHLIN explained that most people believed that under ANGTA no one else could apply at least until the ANGTS was built. He explained:

> One of the major purposes of the producers' legislation was to enable them to file an application under the NGA. As originally drafted by the Senate majority leadership, Senator Daschle, his version of the bill, which was S 1766, made no mention whatsoever of ANGTA. We were simply proposing that we stay consistent with recommendations that this committee adopted in October to reaffirm that ANGTA was still a valid law, given that the Senate was introducing this enabling legislation and the Joint Committee, the last time they met, they thought that ANGTA should be capable of being modernized... We are simply going to request that those types of provisions were added to S 1766. Now what's happened is in the current version of the federal bill those basic provisions have already been added [the current version is S 517]…

CHAIRMAN TORGERSON commented that he thought the current version has been changed to [S] 1948.

REPRESENTATIVE PORTER asked if the current bill still has ANGTA in place as originally written.

CHAIRMAN TORGERSON said it is in section 701 in the new legislation on page 104, line 11.

MR. COUGHLIN said that is what they want to see in the bill.

CHAIRMAN TORGERSON noted that the pipeline people have also wanted ANGTA to be upgraded.

> There has never been a discussion about repealing ANGTA. It was never in anybody's mind... They are not opposing the producers' legislation. That is true, but they had

asked for Congress to upgrade certain provisions of ANGTA to modernize it.

MR. COUGHLIN pointed out that language was on page 111, section 711, in the current version of the bill.

CHAIRMAN TORGERSON said:

This is a moving target. There is no doubt about that. These are our main points that we had made. Basically, what we're saying is we're okay with the producers' legislation as long as these things are there. The intent of number 3 was to keep a level playing field so that if we're going to allow one permit and new provisions for exploration NGA for expedited permitting and other things, but didn't want to have a technicality, because the language was old and wouldn't apply, it wouldn't have authority to upgrade that.

REPRESENTATIVE GREEN moved to adopt the wording in the resolution. There were no objections and it was so ordered.

REPRESENTATIVE GREEN moved that the Senate Resources Committee introduce this resolution. There were no objections and it was so ordered.

CHAIRMAN TORGERSON advised Representative Porter that it wouldn't hurt to have a companion bill in the House on this issue.

4:00 p.m.

CHAIRMAN TORGERSON said he put together several questions (attachment A) when they were looking for an attorney to represent the committee's concerns in Washington D.C. The answers to those questions were part of the selection process. Mrs. Karol Lyn Newman, partner with Hogan & Hartson, answered those questions very well.

He said there had been a lot of discussion on whether FERC had the authority to order expansion and access questions for explorers other than the producers. The producers were not happy with the committee's language on access. He said there is rumored to be a couple of hundred amendments to the Alaska portion of the Energy bill. He was very impressed with Mrs. Newman and said, "She has great knowledge of actions that go before FERC and has been practicing before FERC for a long time."

CHAIRMAN TORGERSON asked her to review Attachment A and the original open season.

MS. NEWMAN said:

> In the context of holding open seasons before FERC, the objective that FERC has always articulated is to insure that all potential shippers have an equal opportunity to obtain access to a pipeline which is proposed to be constructed on a fair and equal basis in a bidding process and the bidding process should be fair. That's where it becomes difficult and the reason it becomes difficult is because FERC at this time does not have any regulations, which require or mandate that an open season be conducted in any particular fashion. As a result, they are conducted as the pipeline chooses to conduct them - usually through some form of advanced negotiations with what I will [call] anchor shippers, and terms and conditions are discussed or in some cases worked out through advanced proceeding agreements. Then the bidding papers are put together. So, the open season is structured in a way which, by definition, is going to favor those who have participated in the process and explained to the pipeline what they need to see in order to ship gas on the line. Then, of course, when the open season is held, other bidders who have never seen the proposal or have not [had] a chance to discuss their concerns are in fact at a real disadvantage. In fact, they may already be shut out from a significant portion of the line, because FERC has not precluded presubscription capacity.
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> The object is to try to structure a process, which will make the open season, especially on a line such as one proposed in Alaska where you know there is not going to be more than one. There's not going to be two in the foreseeable future. If there's going to be one built, there needs to be some special rules, at least, for that particular line. Otherwise the process will be totally controlled by the three large producers in the area. And the initial capacity, as well as expansion capacity, could easily be contracted for before anyone else including the state for its royalty gas to get in the line, except perhaps under some onerous conditions. The reason I say that is because it's not just a bidding process, but the process of developing the tariff, the terms and conditions of service are all discussed in

advance with the anchor shippers to make sure that makes imminently good sense. From the perspective of people who need access to the pipeline, it doesn't work.

The second part of the problem is timing. FERC does not have any regulations in effect right now on open seasons at all and, therefore, doesn't have any regulations obviously on timing. Open seasons are conducted in a variety of fashions and in a variety of times depending on the project. Some people will actually go forward and set an open season to get a sense of who's interested in participating in shipping on the line. Others will already have their deal cut. So some people will hold an open season well before the application is filed at FERC. Others will hold it within a couple of weeks of filing the application. Others will hold it even later than that. So, there's no requirement as to when you must hold an open season, especially in terms of an in-service date. It is really unusual for somebody to hold an open season on a pipeline when the in service date is many, many years down the road. We're usually looking at six months to one year from the date of filing an application to somebody saying I have an in service date of 18 months from now. Clearly, on Alaska's pipeline there's more lead time required that just plays into the whole question of when you hold that open season. Although in the Alaska Natural Gas Transportation Act (ANGTA) there was a requirement that applications explain the dates for expansion and how they would do an expansion and what it would look like. That requirement is not a part of any open season under the NGA. Open seasons may or may not talk about expansions. But frequently, at least in the Lower 48, they talk about expansion, they plan phases of projects - phase one, phase two, and phase three. People will actually sign up and bid on expansion capacity that's coming down the road in five, six or seven years. It's not unheard of. They do it that way…

As a practical matter, that would need to be part of regulations governing an open season. If on the other hand, as legislators, surely you understand this and you would want your regulators to understand this, if you were faced with a pipeline of finite capacity - a 52 inch - and current technology says you can't make it any bigger no matter what you do and someone were to conclude it's not feasible to lift the line for environmental reasons or others, which would need to be looked into. As

a regulator or as legislators you would want to look at this and say what do I do with this finite capacity? I've got three major shippers; they've got X amount and I've got other people out there. What the state is telling us is that there's going to be a second line some year some day when it can be financed, but in the interim, what do we do? Do we shut down exploration opportunities in the state, because nobody can plan on having access or do it as a regulator or a legislator build something into the process, which says we want to take a look at this. We're not going to predetermine this, but we want to make sure we have the ability to take a look at it. So, what you may have seen in the draft legislation we've been looking at is something that gives the regulator the ability to talk about the timing and the terms and conditions of an open season, so it's fair…not giving any advantage. When you're talking about bidding, that's bid rigging almost….

The next question is well what do I do. Well, I don't know whether you're going to have a finite capacity. It's a matter of technology and environmental concerns primarily, available right-of-way, etc., but if you assume there is and it's 30 years from now before another line will get built of any significance, then somebody needs to talk about capacity allocation. Right now the way FERC's statutes are structured, it's not that you couldn't do it. It's just a little more difficult. FERC has not yet embarked on putting together any kind of a ruling for pipelines in general or for this pipeline. So, one of the things we think is rather important is the need to have some controls set in place governing an open season and trust the regulator, unless the legislature will do it. I don't think the U.S. Congress will be that specific in establishing procedures for an open season, although they could be. So, you want to at least leave it to a regulator where you have input. You have an opportunity to tell them what you think needs to be in a rule and give them the impetus to write the rule.

When I look at open seasons, FERC has gone a long way in general, but not far enough for a line like this and maybe not far enough even in the Lower 48. This would be a new concept for them to actually sit down and write rules and we think it's important.

CHAIRMAN TORGERSON asked if FERC could delay the open season.

MS. NEWMAN said they have the regulatory authority to do it, but it's not likely they will do it unless someone complains or petitions or does something. He stated, "If nobody asks them for it, they will not do it on their own initiative."

CHAIRMAN TORGERSON asked if we aren't successful in convincing FERC to delay it and the producers go forward, does the state have any ability to challenge the open season in court to block it.

MS. NEWMAN replied that they can challenge it in FERC by filing a complaint saying it's unfairly conducted. This has happened in a few cases and FERC has required that the open season had to be redone. It's a tougher road to go than to have rules up front. It would have to be challenged at FERC, not at court.

CHAIRMAN TORGERSON said since expansion is tied into an open season, he referred her to an opinion, FERC Order 637, saying the producers claim that FERC has the authority to demand the expansion of a line and he asked if she thought FERC currently has the authority to demand expansion and how does their Order 637 apply to us.

MS. NEWMAN replied:

> There is no question in my mind that no lawyer that practices before FERC would give a real legal opinion that FERC has the authority to order an expansion, for it clearly does not. That lawyer that wrote to you by, I believe, Exxon's in-house people, doesn't say they believe FERC has the authority. They say, 'FERC says they have the authority.' That's a very different thing. There are two problems with that. Number one is Order 637 was not in any sense articulating a rule that said FERC has the authority to order an expansion and will do so in an appropriate case. What it said was there are certain instances when we look at discrimination in terms of access, that we can potentially require pipelines to expand if, in fact, we can make appropriate determination.
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> What that meant [Order 637], we were talking about situations in large part where pipelines made commitments. That was how the gas act is structured; it's built on private contracts. It is inherently a regulatory scheme that is superimposed on private contracts. What happens is you go out and you contract. Well, some pipelines have gone out and contracted for capacity well

in excess of what they have the ability to provide. I have come back to rue a couple of circumstances and one is the El Paso [indisc.] in Arizona. They have situations on their hands now and they've been hearing about them before 637 issues, where it's clear that there had been over commitments of capacity. FERC was simply saying, 'In the appropriate circumstance, we may be able to do that as a remedy - as a remedy for if you sign contracts that said you could transport 100,000 decatherms a day - fine - now you have to live up to your commitment. We're going to make you honor your contracts.'

But if a pipeline with a contract for more capacity than it has there is nothing in any statute that FERC derives statutory authority from which would allow the FERC to order a main line expansion. That has been decided in cases for years and it has been articulated by FERC, itself. So, I would challenge whoever wrote that letter, which I read, and the letter does not say FERC has the authority. It says, '636 says FERC says it has the authority.' It is taking 636 out of context and more than that, it is not an opinion of counsel, because I would venture to say you would not get that opinion.

My guess is that the first people who would challenge it if FERC were to order it, would be the very producers who are telling you right now that FERC has the authority. They would be the first one to file in the United States Court of Appeals challenging FERC's statutory authority. I would not take any comfort from those statements about 637 to suggest that FERC had any authority to order expansions. It does not.

REPRESENTATIVE GREEN said they have maintained steadfastly that there has to be access upon expansion and asked what FERC's history has been as far as determining how much of the future additional capacity would be given to certain companies, if the companies are currently at capacity and have a tremendous amount of additional reserve. He asked if there would be an allocation based on an ability to provide gas or would it be a first come first served or would there be a preference for other people without specificity in this legislation.

MS. NEWMAN replied that FERC has not been confronted with the situation in Alaska.

That is because in the Lower 48 and even on the continental shelf there are multiple lines built. The only issue is whether somebody actually has capacity and whether they will be let in. Because FERC doesn't have the authority to order an expansion, it becomes a question of whether they can prorate within the line.

TAPE 02-4, SIDE B

MS. NEWMAN said that FERC had been given some authority to prorate capacity and to require expansions to meet needs. She added:

Congress recognized it there, but it's not in the general Natural Gas Act. So, how FERC would address a capacity shortage issue would be addressed in terms of the fairness of the vague process. In other words, it could be structured so it's not to prefer. Other than that, you're going to need legislation to give the FERC specific authority to act in a certain way. If you want, for example, non-Prudhoe Bay, Pt. Thompson producers to have first call on expansion capacity, that's going to have to be done by legislation because that is not going to be something FERC on its own could implement right now.

REPRESENTATIVE PORTER said that begs the question of doing legislation before or after the original pipeline operation.

MS. NEWMAN replied, "You need it now. Once it's committed and locked up, there's nothing can stop it after that. You can't undo it."

CHAIRMAN TORGERSON said they would discuss the bill now and asked her to explain page 3, (4) where it starts out to reaffirm the intent of the Congress that ANGTA is the right statute.

MS. NEWMAN replied that this is a question entirely of how you want to move forward.

We have in here a provision that says Congress intends that the ANGTA - and the words that are in here say that ANGTA - now the words that are in here say 'as supplemented by this subtitle remains in full force and effect with respect to any transportation system.' That's important. Basically, ANGTA is going to control, in our view, over competing applications if we're talking about a complete final permanent application being placed

before FERC for the existing ANGTS versus a note or application, which might be filed by someone else under the NGA. As a result, what this does is say we're reaffirming ANGTA. ANGTA remains in full force and effect, i.e., it carries a priority it always carried. That remains in place. Primarily I think that is to ensure that the routing, which was designated in ANGTA, stays intact. You don't have to do this, but it was my understanding that that's what we wanted to do.

CHAIRMAN TORGERSON said he didn't think she had seen the new federal legislation that was introduced, S 1948.

MS. NEWMAN said she couldn't get it through her e-mail.

CHAIRMAN TORGERSON related that it said the producers, the pipeline companies, and the state have a lot of amendments that would make it longer.

CHAIRMAN TORGERSON asked her to explain the intent on page 6 (e).

MS. NEWMAN responded that even under ANGTA there is no assurance that the state's royalty gas will move.

ANGTA only deals with the ability to remove gas from interstate commerce and allow it to be used in the state as it was moving through an interstate pipeline. That is something that the law is different now. That is something that had to be done in 1976 in order to allow the state to use its own royalty gas in the state. Back then, pipelines bought all the gas and shipped it. The question was making sure it could get off in Alaska. The problem now is somewhat different and is more pointed and goes hand-in-hand with this issue of open access and the bidding process.

The way pipeline tariffs are factored, shippers are now dealt with in FERC, is that pipelines are allowed to negotiate with shippers. That once you participate in a bidding process, it becomes sort of a negotiated agreement that you have. It's supposed to be just a negotiated rate, but it usually manages to get well beyond that, although it's being challenged at FERC now when people do that. There is a lot of room in there. The only fall back is you have to have a recourse rate, which any shipper will do based on the cost to serve the tariff, which every shipper can get, if you can't

> negotiate. The reality is I have never seen a recourse rate that is anywhere near as good as a negotiated rate. What happens is the person who has to rely on a recourse rate even if you get capacity is going to be in a much worse position than the guy who gets a negotiated rate. You want to make sure that first of all you get capacity and then about the terms and conditions of your surface or structure. That's really how (e) and (f) work together. But, (e) is in there because we thought the state needed to make sure it had access for its royalty gas and that would be a change from existing law.

CHAIRMAN TORGERSON asked her to comment on page 15 (a) and (b), particularly as it relates to the BP lawsuit on the outer continental shelf and the regs that FERC had.

MS. NEWMAN responded that she didn't know if any other producers had joined in with Chevron and didn't want to comment. She said the Outer Continental Shelf Lands Act (OCSLA) is the only existing statute under which FERC has the authority to order an expansion when it's needed. The Outer Continental Lands Act was debated in Congress for many, many years before it ultimately was put into some format that was useable in 1978 for the amendments. One of the conditions in the OCSLA is that there is open nondiscriminatory access. The question of jurisdiction was whether the Department of Interior does things or FERC, but FERC was clearly put in charge of ordering prorationing of capacity if it was necessary to enforce the nondiscriminatory access provision. He continued:

> FERC did nothing since 1978 with this statute. This past year, this year, maybe it was 2001, FERC promulgated brand new rules where they required the disclosure of contracts that were in place between shippers and pipelines on the Outer Continental Shelf under the OCSLA. Its purported authority for doing this was its obligation to ensure that there was open and nondiscriminatory access. It said it needed information; it needed access to these contracts. Producers Williams, Duke all challenged the commission's authority to issue those regulations on the grounds that Congress had not specifically given them authority to issue rules and regulations to implement the provisions and that what Congress intended was that they had to adjudicate every case - that they weren't entitled to promulgate rules to require information to be filed. They actually won that in the United States District Court. It made the appeal in the Court of Appeals and we'll see what happens.

> But I don't think people need to worry about that. The most important thing is to put in legislation that the agency that is implementing the statute has the authority to write all the rules, regulations, issue all the orders necessary and then you don't worry about it. It is not a foregone conclusion that an agency has that authority if it's not spelled out in a statute. So we put it in.

CHAIRMAN TORGERSON wanted to spend some time talking about provisions governing open seasons and the access question where non producers or explorers have some sort of level of comfort that if they strike gas, they will be able to have access to the line to move it down. It is important to Arctic Slope Regional Corporation, Anadarko and Alberta Energy and to the state. Alaska would not be able to have another lease sale unless they had a way of making that happen. This is probably the most controversial part of the bill. The producers have said basically that this is a deal killer. The other side is saying that it has to be in there, because it doesn't do the state any good unless they are guaranteed access to the line in the future.

MS. NEWMAN said:

> FERC currently has the authority to write rules; it just hasn't done it and it's not going to do it unless somebody asks it to do it. That can be either a private party, the state or it could be Congress. A directive from Congress that it shall write rules to govern this is very, very important. Then it doesn't have an option. It must embark on a rule making process to figure out how to deal with this Alaska pipeline. So, that's the first premise. You have to have a requirement that they write the rule. We have put in here that they establish procedures. Well, let me start with the first part of it, which is in page 15, which is the requirement that they file. Obviously, what you want is that the commission promulgate regulations governing the timing, structure and minimum criteria for the conduct of an open season. That's a starting point that says let's get some basic guidelines and rules down here. Let's figure out what needs to be in the calculation of net present value. If we're going to do this on a MTV basis, that's fine, but let's know what the criteria are and let's talk about the things that are going to create a disadvantage or an advantage for some shippers. So, what you want to do is

get that process going where people have input in getting the right rules out. But you need more than that.

You need the commission to then require that the open season be filed with FERC. They are not now filed with FERC. They are not even publicly available. They are available if the pipeline chooses to send you a copy. And they won't send it to anybody. If I called up and wanted open seasons on something as an outside lawyer, they would no more give it to me than the man in the moon. So, you cannot just get copies of these things. Some people put them out for bid, some don't. It depends on whether they're running a rigged or a biased open season.

The fact that there have been ongoing negotiations, which we know right now, we already know that there have been ongoing negotiations with the three producers and the pipeline sponsors. It's imperative that an open season for an Alaska pipeline be filed 90 days before the proposed date for the opening of the open season. That's important because people need a chance to look at the criteria for bidding and to raise objections that they are discriminatory or preferential. It would be an early shot out the door before people start signing contracts. That's very important to allow that process to happen. That doesn't stop the financing from going forward because the financing is down the road; the pipeline isn't going to be built for a long time and it's best if these things are resolved up-front rather than to get challenged later after the contracts are signed. So, there are a lot of good reasons for doing this and I think at the end you might get that if someone requires FERC to promulgate regs.

The second part, which starts on page 16, line 4, says that the commission shall establish procedures for reviewing the terms and conditions. So, what you want is for FERC to write some regulations saying this is how we're going to go about it. These are procedures rules. This isn't telling them what to do; this is telling FERC to write some procedures. You're going to file in 90 days, now everybody is going to have so many days for comment. We will look at it; we will do X, Y and Z. The object, which is what's written in here, is to insure that potential shippers, whether it's for initial or expansion capacity, because as I mentioned before, they do put an open season out for both, that they have a fair

and equal opportunity. The fair and equal is critical. As I said, this is a bidding process. You don't want your bids rigged. What you want is a fair and equal bidding process - not undue preference. I've heard talk that, 'Let's use the Natural Gas Act standard of no undue discrimination.' I don't really see how that can fit into the equation when you're talking about a bidding process. How can any discrimination or any preference be permissible when you write a bid? It just can't be. If you give somebody input to the bidding process, then they're very key to win the bid. So, FERC needs to take a look at this and say, 'Since we know that process has already gone on, let's give everybody a chance to scrutinize it and decide what's wrong with it and if you have to open the bidding in a different fashion, then it has to be opened in a different fashion. This allows that process to take place before the bidding starts.

It's also an issue of timing. You can put in here when you're trying to tell FERC what needs to be done, that you need a phased process or there's to be no bidding for phasing capacity until five years out from now or seven years out from now. So, that's what's important and then what we have after that is instructions saying after you've reviewed these materials and engaged in whatever process it is you determine you need to do, then if it is important in the public interest that FERC decides that they have to establish procedures to reallocate that capacity or reserve capacity for expansion for others, then FERC will have the authority to do that. Articulating that is a lot better than just leaving it up to chance that you could prevail in a Court of Appeals, if you were able to convince FERC to do it. I'd really rather see it in law - that says yes, you clearly do have the authority to do it, because this is a one-time pipeline, at least for the next 30 years. That's why this is structured as it is.

REPRESENTATIVE GREEN said he is concerned if it's opened up to competitive bid using the public interest criteria and he is sitting on a large amount of gas that he could get into an expanded line versus a smaller amount that has to come forth over some terrain, the chances are he would be able to bid competitively better than the people who have to come a longer way. The public interest would be the purchasers down in the Lower 48 or the people of Alaska, because it's to our advantage to get more fields developed and start the exploration that's necessary We won't get

that unless there's some degree of reasonableness on those investors who would be out exploring.

MS. NEWMAN asked if he is concerned about what the regulator can or would do when faced with that.

REPRESENTATIVE GREEN responded yes.

MS. NEWMAN responded:

> I think if you look at the very beginnings of the proposed statute that we're looking at here - Section 702.2, which says, 'One of the purposes of this Act is to insure access on an equal and non-discriminatory basis to promote competition,' you would hopefully be able to convince the regulator that putting total control in the hands of those who have easy access is not the answer and maybe you could convince them that they needed to clearly reserve capacity But, I think absent legislation, and we do have it in here now, absent a reservation of capacity for a non-Prudhoe Bay producer - you're right. You may have a very difficult time of it, but that's why one of the indications in here that we would like Congress to say is that one of the things we want you to look for is whether or not you need to reserve capacity for expansions for non-Prudhoe Bay and Pt. Thompson producers. That's why that's in here... If you wanted, we could make it more explicit.

CHAIRMAN TORGERSON said he had a hunch they would be dealing with that section a lot and asked if a more controversial thing is the words "reallocation of initial capacity".

MS. NEWMAN replied that capacity can be reallocated in a number of ways. If they are looking at financing and have enough volume to fill the pipe, it's not a financing issue. This is because people who are doing the financing are looking at whether or not you've got the volume. It doesn't matter who it comes from. He added:

> So if producers are saying this will kill the pipeline, all they're saying - it's not able to kill the pipe, because if you reallocate capacity, that means there's more volume than you have capacity for. If that's the case, we don't have a financing problem. What we have is a problem of the three producers who want to monopolize the pipe not being given the permission to do so.

CHAIRMAN TORGERSON responded, "Or the fact that they are building an overall business plan with so much for netback for the sale of their product."

MS. NEWMAN responded:

> That's right. That's dependent on their being in control of this asset, whether they build it or whether they don't, whether they are the ones that manage it or somebody else is. I look at this - as I said in the paper I gave to you before in answer to the question - I look at this fundamentally as a question of whether or not, to put it in very simple terms, these producers have the capacity or the capability or the authority - whether they can in fact just shut their gas in and say, 'Fine, we just won't produce it.' If they can do that, then I don't know how you can eliminate the control unless something happens that takes that power away from them. If they don't have that power, then they're bluffing.

CHAIRMAN TORGERSON asked Ms. Newman if she had concluding comments.

MS. NEWMAN responded, "Let's do our best and say our prayers and work hard at this, because I think this is terribly important."

CHAIRMAN TORGERSON said the talks were going on with the producers and Washington D.C. He thanked Ms. Newman and adjourned the meeting at 4:50 p.m.