

ALASKA STATE LEGISLATURE
HOUSE LABOR AND COMMERCE STANDING COMMITTEE

May 13, 2003

4:06 p.m.

MEMBERS PRESENT

Representative Tom Anderson, Chair
Representative Bob Lynn, Vice Chair
Representative Nancy Dahlstrom
Representative Carl Gatto
Representative Norman Rokeberg
Representative Harry Crawford
Representative David Guttenberg

MEMBERS ABSENT

All members present

COMMITTEE CALENDAR

HOUSE BILL NO. 277

"An Act relating to the powers of the Regulatory Commission of Alaska in regard to intrastate pipeline transportation services and pipeline facilities, to the rate of interest for funds to be paid by pipeline shippers or carriers at the end of a suspension of tariff filing, and to the prospective application of increased standards on regulated pipeline utilities; allowing the commission to accept rates set in conformity with a settlement agreement between the state and one or more pipeline carriers and to enforce the terms of a settlement agreement in regard to intrastate rates; and providing for an effective date."

- HEARD AND HELD

PREVIOUS ACTION

BILL: HB 277

SHORT TITLE: PIPELINE UTILITIES REGULATION

SPONSOR(S): REPRESENTATIVE(S) DAHLSTROM

Jrn-Date	Jrn-Page		Action
04/17/03	1026	(H)	READ THE FIRST TIME - REFERRALS
04/17/03	1026	(H)	O&G, L&C
04/22/03		(H)	O&G AT 3:15 PM CAPITOL 124

04/22/03		(H)	-- Meeting Canceled --
04/23/03	1081	(H)	COSPONSOR(S): KOHRING
04/24/03	1108	(H)	RES REFERRAL ADDED AFTER O&G
04/24/03		(H)	O&G AT 3:15 PM CAPITOL 124
04/24/03		(H)	Heard & Held
04/24/03		(H)	MINUTE(O&G)
04/29/03		(H)	O&G AT 3:15 PM CAPITOL 124
04/29/03		(H)	Scheduled But Not Heard
05/01/03		(H)	O&G AT 3:15 PM CAPITOL 124
05/01/03		(H)	Moved CSHB 277(O&G) Out of Committee
05/01/03		(H)	MINUTE(O&G)
05/02/03		(H)	L&C AT 3:15 PM CAPITOL 17
05/02/03		(H)	Scheduled But Not Heard
05/02/03		(H)	RES AT 1:00 PM CAPITOL 124
05/02/03		(H)	<Pending Referral> -- Meeting Canceled --
05/05/03	1316	(H)	O&G RPT CS(O&G) NT 1DP 6NR
05/05/03	1316	(H)	DP: KOHRING; NR: HOLM, ROKEBERG, FATE,
05/05/03	1316	(H)	KERTTULA, CRAWFORD, MCGUIRE
05/05/03	1317	(H)	FNS: FORTHCOMING
05/06/03	1372	(H)	FN1: ZERO(REV) RECEIVED
05/06/03	1372	(H)	FN2: ZERO(DNR) RECEIVED
05/07/03		(H)	RES AT 8:00 AM CAPITOL 124
05/07/03		(H)	Bill Postponed 1:30 PM --
05/07/03		(H)	RES AT 1:30 PM CAPITOL 124
05/07/03		(H)	Heard & Held
			-- Recessed to Friday 8 AM --
05/07/03		(H)	MINUTE(RES)
05/09/03		(H)	L&C AT 3:15 PM CAPITOL 17
05/09/03		(H)	Scheduled But Not Heard
05/09/03		(H)	RES AT 8:00 AM CAPITOL 124
05/09/03		(H)	Heard & Held
			-- Recessed to 1:00 pm --
			MINUTE(RES)
05/12/03		(H)	L&C AT 3:15 PM CAPITOL 17
05/12/03		(H)	Scheduled But Not Heard
05/12/03		(H)	RES AT 1:00 PM CAPITOL 124
05/12/03		(H)	Moved CSHB 277(RES) Out of Committee
			MINUTE(RES)
05/13/03	1589	(H)	RES RPT CS(RES) NT 3DP 1DNP 2NR
05/13/03	1589	(H)	DP: LYNN, HEINZE, FATE;
05/13/03	1589	(H)	DNP: GUTTENBERG; NR: MASEK, WOLF

05/13/03	1590	(H)	FN1: ZERO(REV)
05/13/03	1590	(H)	FN2: ZERO(DNR)
05/13/03	1590	(H)	REFERRED TO LABOR & COMMERCE
05/13/03	1617	(H)	CORRECTED CS(RES) NT RECEIVED
05/13/03		(H)	L&C AT 3:30 PM CAPITOL 17

WITNESS REGISTER

DAVE HARBOUR, Chairman

Regulatory Commission of Alaska (RCA)

Department of Community and Economic Development (DCED)

Anchorage, Alaska

POSITION STATEMENT: Related concerns about areas in which CSHB 277(RES) provides obscurity rather than clarity; answered questions.

JANICE GREGG LEVY, Assistant Attorney General

Oil, Gas & Mining Section

Civil Division (Juneau)

Department of Law

Juneau, Alaska

POSITION STATEMENT: Testified in support of CSHB 277(RES) and provided a sectional analysis; answered questions.

RANDAL G. BUCKENDORF, Counsel

Anchorage Legal Department

ConocoPhillips Alaska, Inc.

Anchorage, Alaska

POSITION STATEMENT: Testified in support of CSHB 277(RES).

MARK HANLEY, Public Affairs Manager, Alaska

Anadarko Petroleum Corporation

Anchorage, Alaska

POSITION STATEMENT: Pointed out that the committee was addressing an erroneous version of CSHB 277(RES).

ACTION NARRATIVE

TAPE 03-52, SIDE A

Number 0001

CHAIR TOM ANDERSON called the House Labor and Commerce Standing Committee meeting to order at 4:06 p.m. Representatives Anderson, Lynn, Dahlstrom, and Gatto were present at the call to order; Representative Crawford arrived immediately thereafter. Representatives Rokeberg and Guttenberg arrived as the meeting was in progress.

HB 277-PIPELINE UTILITIES REGULATION

CHAIR ANDERSON announced that the committee would consider HOUSE BILL NO. 277, "An Act relating to the powers of the Regulatory Commission of Alaska in regard to intrastate pipeline transportation services and pipeline facilities, to the rate of interest for funds to be paid by pipeline shippers or carriers at the end of a suspension of tariff filing, and to the prospective application of increased standards on regulated pipeline utilities; allowing the commission to accept rates set in conformity with a settlement agreement between the state and one or more pipeline carriers and to enforce the terms of a settlement agreement in regard to intrastate rates; and providing for an effective date."

[Before the committee was CSHB 277(RES). The version in packets, labeled 23-LS0980\I, was in error. The corrected version, labeled 23-LS0980\Q, was provided to the committee after this meeting.]

Number 0069

REPRESENTATIVE DAHLSTROM, sponsor, told members HB 277 clarifies that jurisdiction of the Regulatory Commission of Alaska (RCA) over rates is limited to intrastate tariffs. It eliminates the RCA's jurisdiction over state right-of-way leases and clarifies its authority over dismantlement, removal, and restoration (DR&R). It adds a new section that ensures the RCA's support of rate methodologies agreed to in settlement agreements with the state. And it changes the applicable interest rate charged under RCA orders so that it conforms to the interest rate applied in similar matters. Representative Dahlstrom concluded by adding, "My intent for filing this legislation is that there are issues that need to be worked out. And I think we're doing a good job of bringing all the parties to the table ... and working towards a solution." She suggested hearing from witnesses.

CHAIR ANDERSON called upon Dave Harbour.

Number 0211

DAVE HARBOUR, Chairman, Regulatory Commission of Alaska (RCA), Department of Community and Economic Development (DCED), specified that his comments would address CSHB 277(RES) and that the version he had - since he was testifying via teleconference

- was faxed to him prior to the House Resources Standing Committee meeting the previous day. He also noted that he'd provided formal written testimony.

CHAIR ANDERSON offered his belief that version 23-LS0980\I was what had moved out of the House Resources Standing Committee.

REPRESENTATIVE DAHLSTROM requested that Jan Levy testify first and present a sectional analysis.

MR. HARBOUR concurred, but pointed out that the RCA finds serious fault with the position of [Ms. Levy] as well as the advocates of the bill, in spite of the best intentions of its author.

Number 0470

JANICE GREGG LEVY, Assistant Attorney General; Oil, Gas & Mining Section; Civil Division (Juneau); Department of Law, noted that she would address legal questions about the bill and offered the administration's support for CSHB 277(RES). She said:

In our view, the bill has a number of attributes that will clarify areas where there have been questions raised regarding the jurisdiction of the RCA. ... Section 1 would amend the authority of the commissioner of natural resources ... by adding a section that makes clear that the commissioner is the lead in investigating the performance of obligations under the terms of the leases issued by that department. We believe this is already the law and that DNR [Department of Natural Resources] is the obvious agency to be enforcing the leases that it enters into, with the assistance of the Department of Law. But this would make it explicit.

And the reason this was brought up is because, as you may know, a little later, in Section 2 of the bill, we're deleting language under which it currently says that the commission, the RCA, may investigate the performance of obligations under and compliance with terms of leases issued by the state. So the administration believes that the proper agency to enforce its state leases - these are real estate leases, mind you - is the Department of Natural Resources and not the RCA, and that the RCA's functions are more tailored to overseeing the rates

and the transportation service provided by the pipeline carriers.

Number 0626

REPRESENTATIVE GUTTENBERG remarked that it seems this changes the authority and relationship among the commissioner, the RCA, and the regulated community. He asked Ms. Levy to expound on that and added, "The RCA's rulings - which I don't have in front of me, and I think some of this ... is meant to address that - said one thing, and now ... are you giving the commissioner authority over things that the RCA has claimed authority over before?"

MS. LEVY replied:

The administration doesn't believe that we're changing that scheme, but I will recognize absolutely that the ... commissioners of the RCA may have a different view. And where this is coming up, specifically, is with this phrase, "performance of obligations under and compliance with terms of leases issued by the state".

The ... leases issued by the state, of course, are ... leases for the use of the state land. That's not so much the area where we believe the legislature in the past has sought regulation. ... The way that we would enforce our leases would not be by going to the RCA, but by going to the court if we need to. If we think that a company ... that we allow to use our land is breaching the contract, we would ... initially work with them and then, if need be, go to court to have that enforced. We wouldn't typically go to the RCA. And also, if you would note, this has only to do with terms of leases issued by the state.

And there's been quite a bit of discussion that somehow this bill would leave a regulatory void, and that there would be no oversight of the leases issued by private landowners, Native landowners, federal landowners. And, of course, we think ... the owners of the land are the proper ones to enforce their rights - if they lease their lands to parties, they should enforce those rights - and that the commission has the expertise and wisdom to regulate the rates charged for transporting the resource, but not what

the terms are of the use of the land on which the pipeline is built.

Number 0779

REPRESENTATIVE GUTTENBERG offered his understanding that this relates to the whole DR&R issue. He asked, "Isn't the DR&R ... under the leases and that whole concept?"

MS. LEVY replied:

That's correct. ... I'm not aware of any time in the past that the APUC [Alaska Public Utilities Commission - precursor to the RCA] or the Regulatory Commission of Alaska has, in fact, overseen DR&R. This is a relatively new phenomenon coming up now. And the reason I think you're hearing about it is, in a recent order - and not Order 151 that you've heard about that's been appealed to superior court, but in a recent order - the regulatory agency said that it had authority over the performance of DR&R. And this came as a surprise to most parties, I think. ...

The administration is fully in support of the RCA overseeing the collection of money from shippers to perform those obligations. We want them to perform that function. So when a carrier says, "We want to ... make additional charges to the shippers so that we can collect money in advance to perform this at the end of the life of the pipeline," we think that's absolutely appropriate. If there are refunds to be made at the end of the life of the pipeline, we think that is absolutely appropriate for the RCA to determine how much the cost has been.

But the evidence of whether or not those contractual obligations have been met should be determined by the landowner that required it in the first place. This ... appears to be a new area of oversight in regulation that we've never seen evidenced or exercised by this agency or its predecessor agencies.

Number 0907

MS. LEVY turned attention to Section 3 and said:

This is the same issue that we think is an appropriate clarification, that with respect to ... the performance of DR&R - that means the physically taking down the pipe or cleaning it or whatever is required - ... will be overseen by those parties that have a contractual obligation to either do it or ... receive the benefit of that contract. But if you can see, at the end, "except amounts included in the pipeline carrier's intrastate rates", the RCA ought to have continued jurisdiction over whether or not those amounts should be continued to be collected - is it too much, is it too little.

Number 0962

MS. LEVY addressed Section 4 as follows:

The primary change here that we see is down ... around page 4, lines 27, 28, 29, that the commission, in setting its intrastate rates, may not base those rates on the revenues that have been collected from interstate shippers. ... We have ... one pipe and two types of service on the pipe. If the oil is destined for an interstate market, ... the shippers pay an interstate tariff that is filed with the Federal Energy Regulatory Commission [FERC].

And on the intrastate side, it's filed with the RCA. Even though it's flowing through the same pipe, it enters at Pump Station [No.] 1 and in some cases is used within Alaska, [and in some cases] ... Outside. But the FERC, who regulates interstate tariffs, doesn't make its decision ... as to what can be collected based on what's been collected on the intrastate side. And it shouldn't operate the other way around either. ...

It has been brought to my attention that some folks think that because the TAPS [Trans-Alaska Pipeline System] settlement agreement ... does allow intrastate rates to be considered on the interstate side to set tariffs, that that means the FERC considers intrastate revenues. But that's not the case, ... because the FERC doesn't set rates on TAPS, since it's approved the settlement agreement. So the FERC does not consider intrastate revenues. We think this is what the law is today, and it's meant to be a

clarification. And it's meant to be consistent with the FERC methodology as well.

Number 1070

MS. LEVY turned attention to Section 5, noting that it would delete the words ["discontinue use of all or any portion of a pipeline or abandon" and replace it with "reduce capacity"]. She explained:

My understanding of the purpose of this is to make clear that the owners of a pipeline in this state should be free to make changes in hardware, equipment - the capital expenditures - without going to the RCA for permission so long as they aren't reducing ... the transportation service. If they are, if they're permanently reducing capacity, or if they're having a reduction in transportation services, as you'll see highlighted here, then they need to go ... and seek permission. So we think that's appropriate, and not removing regulation that is necessary. The administration is in support of regulation where it's useful and helpful to the public, but not where it ... may impede efficient use of the resource.

Number 1132

MS. LEVY addressed Section 6 as follows:

Section 6 is an interest rate provision. Under the current statute, if there are overcollections that are ordered at some time to be refunded, they're paid at the statutory rate set out in [AS] 45.45.010, which is 10.5 percent. This change would be five percentage points above the 12th Federal Reserve District discount rate. This is a modification, if you will, of the interest rate that the legislature set for other judgments and ... payments of money in Title 9, but it's adjusted to five percentages points above, instead of three percentage points above.

Under this bill, this provision changing the interest rate would not apply to any pending cases. It would only apply to a case filed after the effective date of this bill. So any pending case, if a refund is ordered, would continue to be paid at the 10.5 percent.

Number 1192

MS. LEVY turned attention to Section 7 and said:

Section 7, again, is something we believe is the existing law, but it's a clarification. It arose as a result of litigation - things that have been argued - but I believe I've understood Chair Harbour to say that the commission believes this section is consistent with their understanding of existing law. So, any orders that are issued by the commission would not affect any rates that have been charged before the protest that initiated the dispute. This would be consistent with ... their business as well.

MS. LEVY discussed Section 8 as follows:

The change you'll see on page 7, again, [is] a codification of existing practice that the attorney general is the one who brings a pipeline tariff challenge if we are challenging one of the carrier's rates. We do that now before the FERC, and it's clear in statute that the attorney general is the entity to do that. It's less clear with respect to the RCA, but it's been the practice ever since we've had pipelines in the state, and this would clarify that, and that the attorney general would consult with the affected agencies.

Number 1264

MS. LEVY turned attention to [Section 9] and said:

It's a large applicability section. Most of the bill, Sections 1-4 and 7 and 8, would apply to matters pending before the RCA. And I know that this has been a concern to a number of people who have stated that they don't want to change the rules midstream. And in looking through the bill, we looked for ... where there would be a change here. A lot of this is just codifying what we think is existing practice or policy. And for those, if you were to say this bill did not apply to them, well, then, you'd actually have the reverse effect: you would be leaving in place language that perhaps is not the policy intended by this legislation.

So we think this is the right way to go, with the exception of interest, which could affect an existing case, and so it seems right, in the administration's view, to just apply that going forward. Additionally, there's been discussion that ... this has been an effort to change an order that was issued by the RCA, Order 151, and my understanding is that's not the case. [Subsection] (c) ... on the last page would clarify that. ... The changes here do not apply to anything on appeal to the courts. And it would not apply to something on appeal to the courts that was subsequently remanded. So it is not an attempt to undo what the RCA did in Order 151.

Number 1364

MS. LEVY, in reply to Representative Guttenberg as to why Section 9 doesn't affect Order 151, said:

That order is on appeal now; ... it's before the superior court. And then we thought, well, it could get remanded for some reason, or some part of it could be remanded. And ... so we went to say it won't apply to a matter that's in an order that's on appeal and is remanded. So that's our way of getting around it.

Now, there are other issues that still exist before the RCA now that, except for the interest rate, the rest of this bill would apply to them. And the administration thinks it's both fair and good policy. You don't want a situation where you have one pipeline subject to one set of rules for complaints that were filed a year ago, and that same pipeline subject to another set of rules by somebody who files a complaint next year. ... DR&R either is a function of the RCA or it isn't. It can't exist two different ways on the same pipeline for two different litigants.

REPRESENTATIVE GUTTENBERG asked whether any part of Order 151 hasn't been appealed or remanded.

MS. LEVY replied:

Nothing has been remanded. All of Order 151 has been appealed. There are pieces of the docket from which [Order] 151 arose that remain before the commission,

but those have not been resolved. They are not on appeal. There's not an order yet with respect to those, and they involve DR&R. So they involve an issue that's being addressed within the body of the bill.

REPRESENTATIVE GUTTENBERG requested confirmation that this bill would address all of those issues that aren't appealed, basically the DR&R.

MS. LEVY said that is correct.

Number 1478

REPRESENTATIVE GATTO asked whether it is a departure from past practice to have [decisions about] the land being separate from rates and services.

MS. LEVY replied, "No. That's always been the case." As to what triggered this, she said there was litigation brought before the RCA and explained:

It cited to this statutory authority to oversee state leases as a basis for having jurisdiction over ... both intrastate and interstate DR&R collections. And I think that's what brought this to folks' attention. But the leases have always been entered into by the state. The state owns the land. If it issues a right-of-way lease, it does so pursuant to the statute and through a long string of requirements set by the legislature.

And so this would be new to have the RCA overseeing or interpreting the state's leases. And I'm not sure what would happen if the RCA had a different view of what our contractual requirements were than what the state thought of its own contract. And so we're concerned about that as a policy matter - who should be interpreting ... the state's contracts.

Number 1558

REPRESENTATIVE GUTTENBERG referred to Section 4 and the concept that the commission may not base intrastate rates on revenue collected on interstate transportation. He asked, "Does this mean that they can't use any of the information they know about those rates, ... any part of their understanding of what

happens, whether its overpayment, underpayment, or just any part of the rate structure ... on interstate, ... that they can't gather information and understand what happens and even use that in consideration?"

MS. LEVY answered no. She explained:

This language is a clarification of the previous version of the bill, which used the words "the commission may not consider" - I think is the way it was written. And in the last committee there was concern expressed about the use of that word, and I think that's why the committee changed this so ... they can consider it, they gather any information they want, [and] they can look at anything.

But under this, the commission may not base the intrastate rates on what's been collected on the interstate side. ... You have to kind of view it in your mind as though [there are] two pipes: there's an interstate pipe and an intrastate pipe. And there's one big cost in operating that regulated entity.

If the FERC ... does not allow the interstate side to collect a sufficient amount - maybe they have 90 percent of the throughput and they only allow them to collect 80 percent - in our view that doesn't mean that the extra 10 percent should be picked up by the intrastate shippers. ... That wouldn't be the right approach.

The right approach is, if 10 percent of it is being shipped on the intrastate side, they pay 10 percent of the cost. If the FERC didn't allow them enough, the carriers go back to the FERC and plead their case. And the same would be true if they allowed them to collect too much, from the RCA's view, on the FERC side; that doesn't mean the shippers get to ship for ... free on the intrastate side. ... You go to the agency that regulates that portion of the service. And ... I think that's the only way to keep it clear.

But certainly, under this language, nobody's trying to hide information. ... I have a lot of respect for the RCA. They're entitled to any information they think they may need to get a full picture of the operation of the pipeline.

Number 1684

CHAIR ANDERSON noted that several members had heard the bill in previous committees.

REPRESENTATIVE GUTTENBERG pointed out, however, that the latest version moved out of the House Resources Standing Committee without testimony or questioning, despite significant changes such as that the commission may not "base" as compared with "consider".

CHAIR ANDERSON said he hadn't realized that. He again called upon Mr. Harbour, chair of the RCA, to testify.

Number 1744

MR. HARBOUR told members:

I guess I'll start by saying that we are sometimes categorized as being on a side - and ... we're actually the only entity advising you that has no financial stake in the outcome of this debate. The state itself is a party to various open dockets that are related to the legislation that's been proposed, and we respect the state's advocacy, for under the agreements that it has with the TAPS owners, it's obligated to defend the agreement.

We are not obligated to defend the agreement. By statute and by terms of the pipeline Act that your predecessors established, we are obligated to look out after the public interest, as well as assure the proper relationship of rates ... to all of the parties involved. And that leads us to this particular bill.

Number 1789

MR. HARBOUR told members Section 1, rather than clarifying, obscures almost everything except the interest-rate issue. For example, paragraph (9), which discusses the role of the commissioner of natural resources, only appears to clarify the commissioner's role. He explained:

The ... commissioner of natural resources has a responsibility over state lands and state leases - and properly so - and for the proper execution of those

leases. And the assistant attorney general and we agree on that point. What's obscured is what's missing, that is, what entity then goes on to assure that those operating the pipeline have collected sufficient fees for the dismantlement of the project, and properly apply those, and that those are available and ..., further [adding] to this web of complexity, that proper rates are charged the intrastate shippers.

Number 1869

MR. HARBOUR addressed Section 2, saying that apparently an attempt to correct a fairly glaring error only added to the obscurity in relation to later portions of the proposed amendments. He explained:

After the words ... "carriers in the state", they took out the section "but only to the extent applicable to services", in essence pipeline services; so that would have removed from your regulatory commission the ability to look over any facilities, only services, and it would have seriously diluted [it]. However, the dilution is still in effect by virtue of the obscurities that I'll lead you to as we go down further. ... The bill before you reads now "shall regulate pipelines and pipeline carriers in the state", period, which is the way the law currently reads. The last version or the last two versions had that extra phrase put in that was removed in the [House Resources Standing Committee] ... yesterday.

Number 1930

MR. HARBOUR referred to the elimination in Section 2, paragraph (2), of the following: ", AND THE PERFORMANCE OF OBLIGATIONS UNDER AND COMPLIANCE WITH THE TERMS OF LEASES ISSUED BY THE STATE". He told members:

[That] goes back to the statement that I made on Section 1 with respect to the responsibilities of the commissioner of the Department of Natural Resources. Certainly, he, more than any other, has the jurisdiction and responsibility over terms of leases and how those leases are observed, and how DR&R, for example, under leases would be accomplished - the physical dismantlement ... and so forth. However, again, this specifically removes ... the commission

from the ability and the jurisdiction to be able to look over the law to the larger rate and collection issues, and even refund issues.

Number 1978

MR. HARBOUR referred to Section 2, subparagraph (8), on page 3, line 31. He said:

Note that the word "abandonment" [which is being deleted] ... seems like a small word. And the assistant attorney general might want to speak to that, but omitting "abandonment" as a responsibility of the commission under this section ... puts huge obscurity into the whole process, for if the commission ... does not have abandonment within its portfolio, then how may it - as it can now do on behalf of the people of the state of Alaska - ... certify ... that DR&R has been done, that is, to get statements from the Department of Natural Resources and the Bureau of Land Management and Native landowners and private landowners and then, at the request of a pipeline that wants to go out of business, certify it's done what it's supposed to have been ... done - the fees have been properly collected, properly refunded in some cases, and then a certificate for abandonment is given. So who will do that if this bill passes? That's another obscurity.

Number 2065

MR. HARBOUR noted that the language proposed in Section 3 reads:

(c) Notwithstanding any other provision of this chapter, the commission does not have jurisdiction over a pipeline carrier with respect to the dismantlement, removal, and restoration of any part of a pipeline facility, or over any amount collected or held by a pipeline carrier for performing dismantlement, removal, and restoration except amounts included in a pipeline carrier's intrastate rates.

MR. HARBOUR remarked:

These are current items ... for the commission, and the specific intent is to (indisc.) of such items. And then it goes on to say "except amounts collected

in a pipeline carrier's intrastate rates". And I have to tell you, ... when I paint this little picture for you, you'll clearly understand the obscurity I'm trying to define for you. How can you set an intrastate rate, ... one of whose components is DR&R, without knowing the total picture? And this seeks to make that obscure.

All of these items ... that I'm defining as obscure, I'm also going to suggest to you represent items of uncertainty and future litigation which will have cost impact indeterminate on the regulatory commission, but certainly represent uncertainty ... and significant potential litigation because of the huge, huge stakes involved.

Number 2131

MR. HARBOUR turned attention to Section 4 and said, "This is one that's so confusing that I've had several lawyers within the agency disagreeing on what the meaning that the author has in mind is." He read from Section 4, which stated in part:

The requirements of this chapter pertaining to permits and certificates of public convenience and necessity do not apply to the construction of a pipeline facility exclusively subject to federal jurisdiction or to the interstate portion of the business of a pipeline or pipeline carrier [EXCLUSIVELY] subject to federal jurisdiction

MR. HARBOUR noted that certificates of public convenience and necessity are something the RCA does on behalf of the people of Alaska when there is a pipeline in the state. He said:

This removes that jurisdiction for interstate pipelines and a pipeline ... proposed to be only interstate, or for an interstate pipeline ... that is subject to federal jurisdiction that has an intrastate component, ... and that includes rates, tariffs, charges, classifications, rules. We've concluded here that this provides rich, rich opportunity for employing lawyers ... for years, especially, then, when you go down a little further.

MR. HARBOUR read from the next sentence of Section 4, which stated:

However, the requirements of this chapter for permits and certificates of public convenience and necessity do apply to [ALL] the intrastate portion of the business of a pipeline or pipeline carrier subject to federal jurisdiction to the extent the pipeline or pipeline carrier is engaged [WHENEVER IT ENGAGES] in intrastate commerce, including rates, tariffs, charges, classification, rules, regulations, terms, and conditions pertaining solely to the intrastate portion of the business.

MR. HARBOUR remarked, "This seems to give back, but it's debatable if it gives back." He continued:

Then, the next sentence that [Ms. Levy] was referring to, "The commission may not base" - we do interpret basing differently than the assistant attorney general does, and believe that that also will lead to significant legal conflict. ... A couple of sentences down, "However, nothing in this section limits the power of the commission to consider"

OK, just above, we cannot "base" ... intrastate rates on revenue collected in interstate transportation, but ... thank goodness that we can "consider" both interstate and intrastate revenue. Again, that word ... is different than the word "rates" above, and it was changed from the word "cost" a couple of days ago.

Number 2263

MR. HARBOUR asked that someone provide a clear meaning for Section 4, suggesting it will provide a great deal of difficulty. He explained:

The framers of the pipeline Act 30 years ago ... set out to make sure that the State of Alaska's regulatory jurisdiction reached out, covered any "no man's land," until it touched federal jurisdiction. And what is done at the end of Section 4, at the very last sentence, is to remove that fundamental underpinning of the Alaska Pipeline Act ... by removing the words "set out in this chapter except to the extent they are preempted by federal law". [Then-Senator] Groh wanted to make sure that the State of Alaska had control of these facilities except to the extent preempted by

federal law. And that is very carefully and surgically removed from the Act.

Number 2305

MR. HARBOUR referred to Section 5 and asked why "reduce capacity" is being added and the following is being removed: "DISCONTINUE USE OF ALL OR ANY PORTION OF A PIPELINE OR ABANDON". He told members:

If you read the Alaska Pipeline Act tonight at home, ... it will take about 20 minutes and it will read clearly, as the framers intended. And then if you read these changes, you'll be scratching your heads, as the professionals are. ... This section is very deceptive. It looks as though it's saying that a pipeline carrier may not abandon or permanently reduce capacity, but you have to look carefully at the words and how the lawyers will interpret those words in future actions.

MR. HARBOUR said he respects all the regulated companies that come before the RCA, but is obligated to give the legislature straight advice and counsel as well, for legislators to accept or not. As an example, he posed a situation in which a pipeline has a certain amount of capacity that was partly made possible through a certain number of either pump stations, in terms of an oil pipeline, or compressor stations, in terms of a gas pipeline. The life of the pipeline is more than halfway over, throughput has peaked, and the owner believes it would be cheaper to remove one or more compressor stations or pump stations. The owner can argue that it hasn't permanently reduced the capacity. However, when a new explorer obtains reserves and then requests capacity, the answer will be no, that the number of pump stations or compressor stations has been reduced and there is [no room for the explorer's product].

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MR. HARBOUR said it is obviously in the interest of the State of Alaska to [be able to hear issues relating to capacity], which is why former legislators wrote the Act as they did. However, [this bill] makes it arguable that such a potential shipper can appeal to the commission for capacity. The commission currently has the ability to hear a record and issue orders that provide the capacity on a reasonable basis at reasonable rates. "If the legislature mindfully wants to lose that capability by cutting

off the arm of the commission to perform that kind of decision making, then that is one of the obscurities that the decision presents to you today," he cautioned.

Number 2360

MR. HARBOUR addressed Section 6, calling attention to the last part of it. He said:

The interest-rate matter is one that is in the pipeline Act now. It is clearly defined. It's defined otherwise for court judgments in other portions of our statutes. If the legislature wishes to clarify that particular number, then that's not something that the commission could find fault with.

Number 2335

MR. HARBOUR turned attention to Section 7 and told members:

The author of this ... maybe had a very clear understanding of the processes in the added section and maybe ... had not a very good understanding of our processes. But we have the ability to do temporary rates and interim and refundable rates ... before the commission. And in order to do what the author wants this to do, after the word "affect", the word "final" should be inserted so that it reads "affect final rates", because we do not go back and do retroactive ratemaking.

We do make rates interim and refundable or temporary, based upon the case before us and the evidence presented, or the lack of final resolution ... of the case. ... And the parties know that at the end of the decision process, those will be made final and ... that either refunds or other collections will be made, depending on the final order. So that correction should be made if this thing goes any further.

MR. HARBOUR, in response to Representative Gatto, specified that he was talking about the rates on line 13 previously and in the last few minutes was talking about "final rates" on line 26 in Section 7. In further response he said:

If the author wished to be accurate, the author should add the word "final" after "affect" and before "rates"

so it reads "not affect final rates", because otherwise it would apply to all rates, including interim, refundable, temporary ratemaking that the commission does.

CHAIR ANDERSON noted that Mr. Harbour must have a different document, because on his own copy it was on page 6, line 28.

Number 2231

MR. HARBOUR turned attention to Section 8 and said:

I don't think the intent is problematic. I do think that the legislature should consider the fact that, as ... in some current cases, the attorney general may be representing the state as a party to issues before the commission, ... in which case the legislature has defined ex parte communications and the attorney general should not be consulting under your current statutes with this commission on pipeline tariff matters and open dockets on which the attorney general is representing a party.

Number 2201

MR. HARBOUR addressed Section 9 and retroactivity. He referred to page 7, line 30, which says Sections 1-5 and 7-8 apply to matters pending before the RCA on or after the effective date of the Act. He also referred to testimony by the state and the bill's advocates that there is no intent to be retroactive. He estimated that if the bill passes in the near future, it will apply to approximately 30 open dockets that are pending. He added that these are "big issues that are the target of the obscurity that I have described to you."

Number 2079

REPRESENTATIVE CRAWFORD asked why [Section 9 says] Sections 1-5 and 7-8 apply to matters pending before the RCA on or after the effective date, whereas subsection (b) says Section 6 applies only to matters filed before the RCA on or after the effective date of this Act.

MR. HARBOUR suggested that Ms. Levy's reply would refer to the interest-rate section, which he said is the least cloudy of all the issues he'd presented.

MS. LEVY responded:

The applicability section [Section 9], ... I believe that Chairman Harbour is reading the bill correctly. I think this is what the previous committee intended to pass out. If you take it, looking at line 3, Section 6 is the interest section. So, for any pending matter, the 30 cases or so that he has referenced, if in fact as a result of the outcome of those cases there is ... a refund ordered, the interest rate will be the interest rate that applies today, not the one that's being put into effect by this bill.

The reason that the administration supports [subsection] (a) to the effect that the rest of the sections will apply to pending matters is - as I tried to say before, and perhaps I didn't do it too clearly - ... many of these charges are what we believe either are in the law or ought to be in the law, and it's appropriate and good policy for them to apply.

It's appropriate and good policy that DNR oversee its own leases. We do not believe that anything in this bill is going to impede the ability of the RCA to look at rates collected for DR&R. We don't think that it's their role, necessarily, to ensure that enough money has been collected because, in our view, whether the pipeline carriers collect enough money or not, they have to do what's required by the contract. If they fail to come to the commission and ask for that money, they may not get it from the shippers. And, indeed, that's what happened in Cook Inlet pipeline. The first 13 years of its life, it operated without any DR&R being collected. It is still going to have to perform DR&R, even though it didn't -- I don't know why it didn't, but it didn't ask for that to be collected in its rates, and the APUC didn't come in and tap them on the shoulder and say, "Excuse me, you forgot to ask for a DR&R collection". But they still have to do the job.

Number 1930

CHAIR ANDERSON asked Ms. Levy to respond to Mr. Harbour's comment about the 30 open dockets that will be affected.

MS. LEVY replied:

Well, as I said, if you walk through the different sections of the bill - ... if you're of the view that each of these provisions is good policy, and the administration is of that view - then we think it's appropriate that they apply now. And if there aren't really any rights being trampled on here, in the sense that we think this points everyone to the right result in any event - that, for example, there isn't anything pending before the RCA ... that discusses whether or not DNR has authority over its leases, really; that's not an issue in someone's case - if you were to say that this doesn't apply, it's not applicable, ... I don't know how you interpret that if you pass the law today.

It has to either apply now and in the future ... or not. It doesn't really apply to the case. The ones that do, ... in all fairness, ... it's the DR&R. ... That goes to the heart of the issue: ... should there be authority right now over DR&R. And we believe that over DR&R rates, yes, there should be. And this bill doesn't remove it. And so to the extent that those pending cases involve how much can be collected for DR&R - has it been overcollected, has it been undercollected - we believe that the RCA will absolutely still have the authority to make those determinations.

REPRESENTATIVE CRAWFORD asked to hear from both [Mr. Harbour and Ms. Levy]. Observing that it seems jurisdictions are being changed, he inquired whether the likelihood of litigation related to issues like DR&R is addressed in the fiscal notes.

CHAIR ANDERSON announced that he would hold that question.

Number 1790

REPRESENTATIVE GUTTENBERG pointed out that there was no House Finance Committee referral for the bill. He expressed concern about the indeterminate fiscal impact to the state and the zero-impact [fiscal] notes. He asked Mr. Harbour to expand on that.

MR. HARBOUR replied:

I'm in a challenging position, surrounded by companies and lawyers that I respect, and ... the governor has appointed me and you [the legislature] confirmed ... that appointment. And I'm in a position of having submitted a fiscal note to the administration, through channels, that ... says what I testified to, that we believe there is a fiscal impact on the agency as a result ... of litigation. And so all I can do is give that to you [verbally] as my testimony. As to whether the administration or the [DCED] - to which [the RCA is] administratively attached - wishes to issue that fiscal note or one that's revised, then one would have to respect their ability to do so.

MR. HARBOUR concluded with the following on the DR&R issue:

I know that the state has testified that each landowner has the ability through contract to make sure that DR&R is done ... as a result of that lease. And I just want to give you one example. Let's say you have some privately owned territory. And only about half of the pipeline is under state jurisdiction, and of the federal jurisdiction, the BLM doesn't assure the collection of DR&R funds, and the FERC doesn't assure the collection of DR&R funds. Only the RCA is the common stream that runs through all of those to assure it's all done properly.

And in the event that the pipeline owners, anxious to close the pipeline and leave the state, were to, say, pay off private landowners - say, ... "Here's some millions of dollars so that we don't have to perform the DR&R obligation" - it may be that they'd still be in trouble with environmental agencies or others, but there wouldn't be a regulatory commission to certify abandonment and that all the work had been done consistently throughout the length of the pipeline. So our objective is not to overreach - to get into DNR or BLM or anybody else's business or contracts - but to assure on behalf of you and the people of the state that any DR&R done is seamless and appropriate.

Number 1647

REPRESENTATIVE CRAWFORD asked Mr. Harbour to fax his proposed fiscal note or related information.

MR. HARBOUR replied:

Sir, I have a problem doing that. I have submitted it to the administration through channels, and it has not been approved by my administrative agency, the Department of Community and [Economic Development]. And, therefore, I think it would be inappropriate for me to submit my own draft.

Number 1594

RANDAL G. BUCKENDORF, Counsel, Anchorage Legal Department, ConocoPhillips Alaska, Inc. ("ConocoPhillips"), began by noting that he does his company's environmental and pipelines legal work. He told members:

As you know, 49 days ago, on March 26, I presented testimony to the subcommittee outlining why certain changes needed to be made to the Alaska Pipeline Act. The subcommittee recognized changes needed to be made, and Representative Dahlstrom took the concepts we presented, crafted HB 277, and has assisted since that time in getting the parties together, forcing discussions, and getting amendments in the current committee substitute drafted to address the various concerns that have been presented. ConocoPhillips supported changes before you then and supports this bill before you today.

MR. BUCKENDORF addressed what he characterized as myths and misperceptions with regard to the bill. He said:

HB 277 does not overturn the recent RCA order on TAPS rates, Order No. 151. I stated that that was not the intent to you 49 days ago. It was not the intent of the initial bill, and certain clarifications and actual deletions from that bill have been made to make sure that is not the case. HB 277 does not legislatively approve the 1985 TAPS settlement agreement. I think this bill makes that very clear. HB 277 does not remove RCA's jurisdiction over establishing intrastate [pipeline] tariffs. Ms. Levy's testimony made that very clear.

Number 1491

MR. BUCKENDORF continued:

HB 277 does not foreclose the state's right to ensure the proper development of its resources. It just allocates jurisdictional authority as between several agencies in a proper manner. HB 277 does not create a jurisdictional gap that will allow the pipeline owner to treat an affiliate shipper any differently than any other shipper of oil.

Rather, the bill is about clarity and certainty. HB 277 is about creating an atmosphere for the future where companies big and small alike are clear about the rules when they explore, develop, and build pipelines to develop those resources.

MR. BUCKENDORF noted that the sectional analysis he'd intended to address is very similar to that presented by the administration through Ms. Levy.

Number 1443

MR. BUCKENDORF offered the belief that Sections 1, 2, and 3 address jurisdictional overlap and discontinuity that currently exist between the RCA and DNR. He said:

Various amendments through [the House Special Committee on Oil and Gas and the House Resources Standing Committee] have provided clarity around what certain of those changes were intended to do, and we believe the current draft should be supported in doing that.

Pipeline leases are essentially contractual arrangements between every pipeline owner, whether it's for an Alpine pipeline owner and it's a lease between ... ConocoPhillips and Anadarko, or the trans-Alaska pipeline. All of those leases have recently been extended for an additional 30 years; we're signatories to them, and the Department of Natural Resources has signed them on behalf of the state. Any implication that the RCA can attempt to insert itself into those leases just as if they were a signatory party, when clearly they are not, is unacceptable both from a contractual and a regulatory point of view.

A myth that you will hear is that the bill will remove RCA authority to oversee money collected on intrastate

rates for DR&R. That is incorrect. Another myth that you will hear is that it is an essential duty of the RCA to make sure enough money has been collected to ensure DR&R is performed. I agree completely with Ms. Levy. That is not the case. We are bound by law and contract to perform DR&R on state, federal, and private lands, whether or not the money has been collected. I do our legal [work] for the Cook Inlet pipeline that Ms. Levy ... referenced. It was not collected. It was not allowed to be collected in arrears. And yet, still, we're responsible for that payment.

Number 1322

MR. BUCKENDORF turned attention to Sections 8 and 9, noting that they've generated a lot of questions. He said:

Section 8 is a new section proposed by the administration to further clarify the role of the [attorney general]. We also agree that that codifies current practice. I can speak from experience: the attorney general's office has challenged every single pipeline tariff ever filed in the state. I am positive they will continue to do so. This clarifies ... their role in doing that.

And finally, as to applicability [in Section 9] and certain of the questions surrounding Sections 1-5 and 7-8 of the Act, it is ... essential that those apply and that there not be two bodies of law applicable surrounding jurisdiction. Although we had recommended [it and] we do believe it is still a decision that the legislature ... could make to retroactively apply the interest rate, the administration is not supportive of that now, and we're not advocating for that at this time. But ... jurisdictional clarification is essential to apply at all points in time, and that is how the current practice has been whenever the legislature makes changes regarding simple jurisdiction.

MR. BUCKENDORF closed by submitting his written testimony.

CHAIR ANDERSON called on Mr. Hanley, noting that he is a former state Representative.

Number 1260

MARK HANLEY, Public Affairs Manager, Alaska; Anadarko Petroleum Corporation ("Anadarko"), pointed out that the version of CSHB 277(RES) being addressed by the committee, Version 23-LS0980\I, although it had been read across the House floor, wasn't what moved out of the House Resources Standing Committee. He expressed concern about some unspecified provisions.

REPRESENTATIVE DAHLSTROM responded, "This is a work draft and Mr. Hanley is correct - there are a few errors, technical errors, that were made ... from the version that was accepted and voted on in [the House Resources Standing Committee]." She indicated her staff could address the differences.

CHAIR ANDERSON asked when Representative Dahlstrom had found out about this. [There was no audible response.]

REPRESENTATIVE ROKEBERG inquired as to the problem areas.

The committee took an at-ease from 5:20 p.m. to 5:24 p.m.

Number 1174

CHAIR ANDERSON explained that there had been inadvertent errors in transferring CSHB 277(RES) from the House Resources Standing Committee. He suggested those errors probably wouldn't change much of the testimony of Ms. Levy or Mr. Harbour, in particular, but suggested it would be prudent to have public testimony, including from Mr. Hanley, after the proper version was obtained. [HB 277 was held over.]

ADJOURNMENT

There being no further business before the committee, the House Labor and Commerce Standing Committee meeting was adjourned at 5:25 p.m.