

**ALASKA STATE LEGISLATURE
HOUSE LABOR AND COMMERCE STANDING COMMITTEE**

May 14, 2003

9:20 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."

- MOVED CSHB 277(RES) OUT OF COMMITTEE

HOUSE BILL NO. 227

"An Act increasing the jurisdictional limit for small claims and for magistrates from \$7,500 to \$10,000; increasing the jurisdictional limit of district courts in certain civil cases from \$50,000 to \$75,000; and amending Rule 11(a)(4), Alaska District Court Rules of Civil Procedure, relating to service of process for small claims."

- SCHEDULED BUT NOT HEARD

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 <Meeting Postponed to 4:00 PM>
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)	FN(S): 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 -- Recessed to a call of the Chair --
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 --
05/09/03		(H)	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 Recessed to after TRA Mtg Approx 7 PM
05/12/03		(H)	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
05/13/03		(H)	Heard & Held -- Meeting Postponed to 4:00 PM --
05/13/03		(H)	MINUTE(L&C)
05/14/03	1661	(H)	FIN REFERRAL ADDED AFTER L&C
05/14/03		(H)	L&C AT 3:15 PM CAPITOL 17

WITNESS REGISTER

REX SHATTUCK, Staff
to Representative Nancy Dahlstrom
Alaska State Legislature
Juneau, Alaska

POSITION STATEMENT: Reviewed the changes incorporated in
Version Q of CSHB 277(RES).

MARK HANLEY, Public Affairs Manager, Alaska
Anadarko Petroleum Corporation
Anchorage, Alaska

POSITION STATEMENT: Related Anadarko's opposition to HB 277.

ROBIN O. BRENA, Attorney at Law
Brena, Bell & Clarkson, PC
Anchorage, Alaska

POSITION STATEMENT: As the attorney representing Tesoro Alaska
Company and Anadarko Petroleum Corporation, expressed concerns
with HB 277.

AL BOLEA, President
BP Pipelines

POSITION STATEMENT: Encouraged the committee to support passage of HB 277 [Version Q].

ACTION NARRATIVE

TAPE 03-53, SIDE A
Number 0001

CHAIR TOM ANDERSON called the House Labor and Commerce Standing Committee meeting to order at 9:20 p.m. Representatives Anderson, Lynn, Dahlstrom, Gatto, Rokeberg, Crawford, and Guttenberg were present at the call to order.

HB 277-PIPELINE UTILITIES REGULATION

CHAIR ANDERSON announced that the first order of business would be 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."

CHAIR ANDERSON announced that before the committee is CSHB 277(RES), Version 23-LS0980\Q. He explained that Version Q has minimal changes from [CSHB 277(RES) Version 23-LS0980\I].

REPRESENTATIVE ROKEBERG noted that former Representative Mark Hanley caught the error in [Version I]. He also noted that the legislation was properly transmitted from the House Resources Standing Committee, read into the journal, and is properly before the House Labor and Commerce Standing Committee.

Number 0185

REX SHATTUCK, Staff to Representative Nancy Dahlstrom, Alaska State Legislature, highlighted the changes encompassed in Version Q. The language "services and facilities" was inadvertently left out of Version I, but is now included in Version Q on page 3, line 11. He pointed out that on page 5,

line 1, of Version I the language referred to "interstate rates", which was changed to "intrastate rates" on page 4, line 31, of Version Q. On page 5, line 12, of Version Q the language was changed so that it reads "reduction in transportation services" rather than "reduction in services". On page 6, line 11, of Version Q the language was changed to refer to "such payment" rather than "the [SUCH] payment". He continued by pointing out that on page 6, line 29, of Version Q, the language now refers to "earliest" rather than "earlier", which was used in Version I. [Although Mr. Shattuck noted that the language on page 10, line 28, of Version I was changed in Version Q to read "the best interests of the state", the language in Version I already read that way.]

Number 0599

REPRESENTATIVE DAHLSTROM, speaking as the sponsor of HB 277, paraphrased from her sectional analysis. The sectional analysis reads as follows [original punctuation provided]:

Section 1. This does not represent any change in existing practice; DNR [Department of Natural Resources] issues and enforces the leases now. But the section would clarify statutes in this regard. This section would make the commissioner of DNR the lead agency to investigate the performance of obligations under and compliance with state leases issue[d] by DNR, including dismantlement, removal, and restoration (DR&R) obligations under state right of way leases.

Section 2. Specifies that the commission regulates pipelines and pipeline carriers in the state to the extent applicable to intrastate transportation. This language is consistent with current statutory intent, and is an improvement over the bill's original language. Something the committee process has worked to improve on. Additionally, this section would remove from the commission's jurisdiction any oversight of the performance of a pipeline carrier's obligation under state leases. The lease is a contract between the state and the carriers for the use of state land and the state would prefer not to have the commission interpreting or enforcing its contracts. The leases do not contain the regulation of the pipelines. The commission retains that jurisdiction under its authority to issue certificates

of public convenience and necessity and its other statutes and regulations.

Section 3 would provide expressly that the commission would not have jurisdiction over DR&R, over the amounts collected from interstate shippers for DR&R, but would have jurisdiction over amounts collected from intrastate shippers for DR&R.

Section 4. This section would again clarify that the commission has jurisdiction over rates and charges where the pipeline is engaged in intrastate commerce, including the intrastate portion of a pipeline that is also subject to federal jurisdiction. The section would prohibit the commission from considering interstate revenues (amounts collected from interstate shippers) when evaluating intrastate rates. Similarly, the FERC does not consider intrastate revenues when it makes clear that the commission can consider the total costs of operating the pipeline - both interstate and intrastate - as needed in order to determine how much of that amount can properly be included in the intrastate rates.

Section 5 would delete the requirement that a carrier obtain commission approval for discontinuing use of all or part of a pipeline, so long as the carrier is not permanently reducing the capacity or discontinuing the service. If transportation services [are] being [discontinued] or capacity is being permanently reduced, the carrier must seek commission approval. The change will allow a carrier to make necessary changes to infrastructure for safety, efficiency or other reasons, without having to go to the commission, so long as transportation services are not affected.

Section 6 would replace the existing interest rate of 10.5% for amounts to be refunded with a new interest rate, which floats with or is tied to the 12th District, Federal Reserve discount rate in effect in each year for which refunds are due. (for your info the present rate is 2.25 percent)

Section 7 would provide clear statutory language for what rates are affected by a commission order. The section would provide that an order would not affect rates that had been charged before the protest,

complaint, or other action that initiated the proceeding. This change would alert a carrier that its rates are being challenged and may be subject to refund, but would not contravene the filed rate doctrine by allowing an order to reach back [and] affect earlier rates that had not been protested.

Section 8. This section would codify existing practice with regard to the attorney general's role over tariff matters. It would provide that among the duties of the Attorney General is the duty to consult with affected agencies regarding pipeline tariff matters, and to participate in tariff proceedings on behalf of the state. Current RCA statutes make clear that the attorney general represents the state in tariff matters before the FERC, but it is not stated expressly with regard to proceedings before the RCA. This section would clarify this role, similar to the clarity [provided] in Section 1 with regard to [the] DNR commissioner's authority over state leases and DR&R, and in other sections dealing with the RCA's authority over regulating pipelines and pipeline carriers.

Section 9. This section would make the Act applicable to matters pending before the commissions on or after the effective date of the Act. The Act would not apply to the commission's order 151, which is pending before the superior court.

Section 10. This section provides for an immediate effective date.

Number 0980

MARK HANLEY, Public Affairs Manager, Alaska; Anadarko Petroleum Corporation (Anadarko), informed the committee that in December of last year the RCA made a ruling that transportation rates for intrastate transportation of oil was significantly too high, 57-70 percent too high which is \$1.00-\$1.50 per barrel too high. Therefore, Anadarko is concerned because if it is paying too much to ship its oil down the pipeline, it creates a significant impact on the economics regarding whether the company can drill for more oil. Furthermore, the aforementioned RCA ruling impacts the state because for every dollar in excess transportation costs for the oil to go down the pipeline, the state loses about \$.25. He explained that pipeline carriers who

are also producers can ship the profits either between the exploration side and the carrier side. If the profits go to the carrier side, the state as well as companies who don't have an ownership interest in the pipeline, such as Anadarko, lose money. Then this legislation was introduced.

MR. HANLEY related that Anadarko has a number of concerns with HB 277. Anadarko is concerned with regard to how the rates will be impacted because it views this legislation as reducing the authority of the RCA to adequately evaluate the rates, particularly with regard to the DR&R issues. Mr. Hanley said he would echo the points Mr. Harbour, Chairman of the RCA, made last night. Anything that removes the ability to assure that the rates are reasonable is of concern to Anadarko. Mr. Hanley noted that access to the pipeline is also of concern to Anadarko. He pointed out that the RCA has the ability to require interconnects into the pipeline as well as expansion of the pipeline. However, Section 4, which limits the RCA's [authority] to intrastate rates only, limits the RCA's ability to deal with interconnect policies and access issues for interstate issues. Anadarko doesn't want to have to go before the RCA and prove that its oil is only going intrastate so that the RCA can regulate some of the access issues that it can currently regulate.

MR. HANLEY turned to the issue of the retroactivity of this legislation. Although the retroactivity doesn't directly affect Anadarko, Anadarko is concerned with the [possibility] of people coming to the legislature to try and change the law retroactively in order to influence cases. Mr. Hanley related his belief that the aforementioned is exactly what is going on with this legislation. Sections 1-5 and Section 7-8 are intended to influence [pending] cases. Although he acknowledged that some have said that [coming to the legislature and requesting legislation to retroactively influence pending cases] is the current practice, he suggested that if that is the case the legislature should review each case and make a policy call. He pointed out that investment decisions have been made based on the law at the time.

MR. HANLEY reiterated that he would highlight some of Mr. Harbour's concerns and comments. Specifically, Anadarko believes there are conflicts in a number of sections, which leads to uncertainty and more litigation. Mr. Hanley summarized by specifying that Anadarko believes that this legislation creates more uncertainty, carries the risk of creating higher rates, and creates concerns over access issues for independents

that are pipeline owners. Moreover, Anadarko is concerned with the retroactive aspects of this legislation. He concluded by pointing out that each section of the legislation, save Section 1, creates concern for Anadarko.

Number 1284

MR. HANLEY, in response to Representative Rokeberg, specified that Section 4 deals with the limitation on interconnectivity and access. He noted that an attorney working for Anadarko and Tesoro Alaska Company (Tesoro) is working on this issue and can help with issues beyond his expertise.

REPRESENTATIVE ROKEBERG turned to Section 9 and said that after a quick review of the language, it doesn't seem to include retroactive type language.

MR. HANLEY clarified that Sections 1-5 and Sections 7-8 apply to matters pending before the RCA on the effective date of this legislation. Therefore, this legislation will apply the changes in law it encompasses to any of the matters pending when the legislation passes and thus is effectively a retroactive change of the law. In further response to Representative Rokeberg, Mr. Hanley explained that Section 9(c)(1) is RCA Order 151, which has been decided and is on appeal.

Number 1394

REPRESENTATIVE ROKEBERG directed attention to the DR&R language and inquired as to how it would impact Anadarko's access to the line. He also inquired as to the impact on tariffs.

MR. HANLEY specified that DR&R doesn't have to do with access, rather it has to do with whether excessive tariffs are able to be refunded. The access issue is found in Section 4 and has to do with the deletion of the language "exclusively" in the phrase "exclusively subject to federal jurisdiction". Furthermore, the access issue is related to the RCA's inability to regulate a pipeline on permit and certificate of convenience issues when there is some federal regulation involved.

Number 1449

REPRESENTATIVE DAHLSTROM related that conversations with Legislative Legal and Research Services believes that the language of the legislation isn't retrospective.

REPRESENTATIVE ROKEBERG returned to Mr. Hanley's earlier explanation that the retroactivity of the legislation is in its ability to impact dockets that are currently underway. Therefore, this legislation, although not specifically retrospective, is the same as being retrospective.

REPRESENTATIVE GATTO asked if Mr. Hanley was understating Anadarko's position by saying it is concerned.

MR. HANLEY clarified that Anadarko is opposed to HB 277 because it isn't good for the company. He noted that there are a few sections with which the company has no problem.

REPRESENTATIVE GATTO asked if Anadarko feels the DR&R tariff is excessive.

MR. HANLEY explained that the concern is whether excessive charges for DR&R can be refunded. In further response to Representative Gatto, Mr. Hanley related his understanding that agencies such as the RCA and FERC choose what [they think] is a legitimate amount for DR&R to include in the rates. However, once the pipeline is removed and the DR&R is performed, there is the possibility that money may be left. Therefore, the question becomes how that money can be recovered. He recalled that Mr. Harbour contends that the language of this legislation is such that it may require the state to charge more on intrastate rates. When the chairman of the RCA relates that this legislation may cause it to raise rates, it is of concern.

Number 1610

REPRESENTATIVE GATTO posed a situation in which the pipeline is closed and DR&R is two-thirds complete, and [there is no more money to complete DR&R]. He asked if one would turn to the producers [for the remainder of the funds for completion.]

MR. HANLEY deferred to others with a better understanding.

REPRESENTATIVE GUTTENBERG turned to the concern of connectivity. He pointed out that the state is actively pursuing both Arctic National Wildlife Refuge (ANWR) development and the National Petroleum Reserve - Alaska (NPR-A). According to those in the industry, the future lays in independents. Therefore, he inquired as to how the inter- and intrastate conflict on rate structure is going to impact being able to connect with a new oil field.

MR. HANLEY again deferred to others with a better understanding.

Number 1712

ROBIN O. BRENA, Attorney at Law, Brena, Bell & Clarkson, PC, informed the committee that he had been retained by both Tesoro and Anadarko to assist them in reviewing HB 277. Mr. Brena said that it has been difficult to obtain reasoned economic regulation of the Trans-Alaska Pipeline System (TAPS); there hasn't been a just and reasonable rate set on TAPS in 25 years. [Tesoro and Anadarko] filed a protest because they viewed the rates as too high. In fact, under the rates five years prior to the filing, the TAPS owners had collected 132-134 percent return on the investment each year for those five years. Under [Tesoro's and Anadarko's] protest, the RCA [required that] the full-line rates be lowered. The RCA held that those rates were 70 percent higher than standard ratemaking procedures. Therefore, for the first time in 25 years, there was the ability to obtain a just and reasonable rate on TAPS. He recalled when he started in this business 20 years ago, the TAPS owners' position was that the state had no authority to set a rate different from the federal rate because it would violate the Interstate Commerce Act. Mr. Brena said, "So, there has been a wholesale assault on the jurisdiction of the commission, for over 20 years, trying to avoid reasoned economic regulation." Mr. Brena viewed HB 277 as the latest way to continue that assault. He informed the committee that Tesoro spent [in one year] \$15 million when it tried to set a just and reasonable rate. Now, Tesoro is forced to again win the rate case before the legislature because this legislation is designed to undermine the principles that had finally been established on TAPS. Mr. Brena emphasized the importance of fair transportation rates on TAPS because most of the wealth of Alaska is going to flow through a monopoly transportation corridor. "What the rates are and whether they're fair and who has access to those is absolutely critical to resource development in this state. And it's critical for the independent producers who do not own that infrastructure that they must rely on. It's critical for the state to be sure they get the property, royalty, and severance taxes that they deserve," he pointed out. Mr. Brena related that TAPS is overcharging Tesoro over \$10 million a year every year for the use of its infrastructure.

MR. BRENA noted his agreement with Mr. Harbour's testimony. Within the RCA, there are several attorneys who have handled hundreds of rate cases. Furthermore, the RCA is an independent

third-party. Therefore, Mr. Brena stressed the need to really listen to Mr. Harbour's comments that [this legislation] undermines his ability to regulate as specified by the legislature. Mr. Brena acknowledged that he may be viewed as a biased witness, however Mr. Harbour is not. Everyone, [excluding the RCA but] including the state has a stake in this. In fact, the state opposed Tesoro's rights to obtain fair rates on TAPS.

Number 1948

MR. BRENA turned to applicability and informed the committee that there are 40 open dockets. No one has reviewed the impact this legislation's new rules and regulations would have on those dockets. He acknowledged that the legislation does include an exception for RCA Order 151. However, RCA Order 151 involves the smallest sum of money for any of the TAPS dockets. Some of the pending cases go back to 1986, he noted. The TAPS rates are temporary and refundable from 1986 to date, he related. Therefore, Mr. Brena said this legislation uses fancy language that merely attempts to foreclose on the ratepayer's right to recover tens of millions of dollars in overcharges.

MR. BRENA said if HB 277, as amended, [Version Q] passes, the TAPS carriers that overcollected the rates will be able to keep those overcollections. In Section 7, retroactive ratemaking is redefined as a concept and it's redefined inconsistently with law. Furthermore, that new definition is applied to cases all the way back to 1986. Mr. Brena posed a situation in which the rule is that one would have 60 days to file a protest, but 10 years later the legislature passes legislation specifying that protests must be filed in 30 days and applies it retroactively. In such a situation, cases in which entities filed a protest within 60 days [but more than 30 days] couldn't be heard. The aforementioned is what is being attempted in Section 7 and Section 9 attempts to foreclose the ratepayers' rights. This type of action shouldn't be sanctioned by the legislature, he charged. Mr. Brena recalled that Mr. Harbour had suggested inserting the language "final" before "affected rates" because the section could be read such that one wouldn't be able to obtain a refund from a currently temporary and refundable rate. Mr. Brena explained that in the RCA's practice, a rate increase is filed and the rate before filing the rate revision is the final rate. After the filing, the RCA can either allow the rate to go into effect because there is no cause to investigate. In this case, the rate filed becomes the final rate. On the other hand, the RCA could suspend it and start an investigation, which

would mean the rate is a temporary rate subject to refund. However, the language in Section 7 has nothing to do with the language that identifies which rate is which because it merely refers to "rates in effect". The TAPS owners use the "rates in effect" language on purpose. This language takes the litigation position that temporary and refundable rates are rates in effect, and therefore aren't refundable. The aforementioned is an example of the gamesmanship in this legislation, and this type of drafting gamesmanship shouldn't be tolerated, he said.

Number 2145

MR. BRENA turned to the applicability provision and AS 42.06.245, which has been rewritten. Currently, if the federal government doesn't have the authority, the state government does. In fact, the last sentence of AS 42.06.245 specifies that "nothing limits the powers of the commission set out in this chapter except to the extent they are preempted by federal law." Therefore, there is no regulatory gap. He questioned why the state would want to delete that sentence. He further questioned why the state would want to give away its authority over a monopoly common carrier, over which [the state's] entire wealth has to move. With regard to those who say there is no regulatory gap, Mr. Brena questioned why the language specifying there is no regulatory gap would be deleted if there is no regulatory gap.

MR. BRENA addressed DR&R. He said that [this legislation] takes away the RCA's authority to ensure that the mess [DR&R] is cleaned up. With regard to state lands, DNR is available and right-of-ways have been negotiated. Furthermore, the U.S. Department of Interior did the same with federal lands. With regard to Native and private lands, Mr. Brena inquired as to who would cleanup the mess. The entity that has economic regulatory authority over the common carrier should be able to expect that the mess is cleaned up. However, the real DR&R issue is with regard to overcollections. To date, on TAPS there have been overcollections in the amount of \$10 billion. He informed the committee that the state just filed a brief with the RCA specifying that the law suggests that overcollections of DR&R are refundable. Mr. Brena explained that first attorneys define the legal scope of the DR&R responsibility and then engineers describe how much it will cost to perform the specified DR&R. After the aforementioned is determined, an even amount is collected from all ratepayers so that when the line goes out of service there is enough money to [pay for the DR&R]. Currently, TAPS carriers have overcollected \$10 billion and by 2011 the

TAPS carriers will have overcollected \$30 billion. He said he agreed with the state that those overcollections are ultimately refundable; however, he questioned how the state will obtain its money. Mr. Brena stressed the need to maintain the authority to the degree its not preempted by federal law.

Number 2310

REPRESENTATIVE CRAWFORD related his belief that overcollections should be addressed.

MR. BRENA pointed out that Section 3 of the current legislation restricts the scope of the RCA's authority only to intrastate DR&R, which is only 4 percent of the money. However, [the RCA] is responsible for 100 percent of the job. Under the federal regime, there is no way to obtain the overcollections. The state is taking away its own regulatory authority to ensure that it gets refunds and perhaps additional dollars in royalties and severance taxes. Mr. Brena agreed with Representative Crawford in that the issue of DR&R overcollections should be addressed. Mr. Brena related his belief that DR&R overcollections should be addressed such that to the degree not preempted by federal law, the state should exercise maximum authority in this area for its own financial interest as well as for the protection of ratepayers and landowners.

TAPE 03-53, SIDE B

REPRESENTATIVE GUTTENBERG posed a situation in the future in which the pipeline is dismantled, DR&R is done, and an overpayment remains. He inquired as to how that overpayment would be handled as far as a refund would go.

MR. BRENA posed a situation in which what was originally contemplated for TAPS comes to fruition. Therefore, TAPS would go out of service in 2011 with DR&R funds in the amount of \$10 billion. Then DR&R would commence for four years after TAPS ends service, and therefore in 2014 \$10 billion would have been spent and the [DR&R] would be complete. However, \$30 billion in collections and earnings on collections would remain. Therefore, the question becomes how those overcollections will be obtained. The commission held under this existing DR&R docket, which will be impacted by the retroactivity provisions of HB 277, that no federal law, federal regulation, or federal order exists addressing post collection treatment of interstate DR&R allowance on TAPS. Under the current Act, the state has authority to the degree not preempted by federal law.

Therefore, the state could fill that void [left by the federal government] and require that those funds be escrowed or guaranteed by parent companies in order to ensure that the refunds are paid. Without the [RCA's] authority and order, Mr. Brena said that he didn't know any way those refunds would be repaid because the FERC, even if it did have authority, would only have authority over a common carrier that has been out of service for four years and has no reserves or assets.

MR. BRENA, in response to Representative Guttenberg, explained the federal government [through FERC] sets rates. With regard to post collection treatment of collections, there is no federal law or order with regard to how those are treated. The federal government has no authority over facilities, certification, access, or abandonment issues. The RCA has held that the FERC may not have authority with regard to interstate collections, that is post collection treatment of interstate rates. Although the RCA could be wrong, he questioned why one would take the risk when the existing law specifies that if the federal government doesn't have the authority, then the state does. However, this legislation specifies that the RCA doesn't have the authority over interstate refunds. He reiterated that this would mean that the RCA would be eliminated as an instrument of collection of \$7.5 billion in royalty and severance taxes. "Why do that to yourselves," he asked.

Number 2239

REPRESENTATIVE GUTTENBERG returned to the matter of access and developing other oil fields that would need access to TAPS. He inquired as to how [this legislation] would impact independents and other people trying to gain access to TAPS.

MR. BRENA explained that if the authority of the RCA is limited to intrastate matters only, then the state has forfeited the authority necessary to guarantee access for interstate purposes. Currently, the FERC has no authority to give a connection, require additional capacity, or to [require] a certificate of abandonment. The FERC doesn't regulate facilities, and therefore specifying that the RCA only has authority over intrastate matters only highlights the question of how the independents can move their oil out of the state. More importantly, if all regulation was eliminated and the incentives of the monopoly carrier were relied on, then the question becomes under what terms and conditions would access be afforded. Therefore, there would be no certainties to companies such as Anadarko. Mr. Brena highlighted that 90 percent of

Alaska's oil goes out of the state and the most important thing for the state is to not give up regulatory control. Mr. Brena informed the committee that the drafter, Professor Witherspoon(ph), of the [original] Act said, "We are going to regulate interstate activities to the degree they're not covered by federal law because we have important state interest in the development of natural resources." The aforementioned is what HB 277 will gut.

Number 2128

AL BOLEA, President, BP Pipelines Alaska, informed the committee that he is responsible for all BP's interests in Alaska's common carrier pipelines and for all the ships used to move all of BP's crude oil to the West Coast. Mr. Bolea began by pointing out that Alaska's future does depend upon oil and gas investments in the state. There are two types of investments that the legislature and the administration should consider when anticipating policy. There is the investment in exploration, appraisal, and development activities as well as the investment in infrastructure. Because Alaska is so far away from the dominant market for oil, infrastructure such as roads, pipelines, and ships are essential. Mr. Bolea explained that a healthy infrastructure must be maintained because it is the prerequisite and catalyst for growth. Investors need to have confidence and certainty in order to make investments. This is extremely important for pipelines because they are long-lived, which means that the investments and the returns are recovered in very small increments over a long period of time. Pipelines recover costs over the full life of the pipeline, while typical oil and gas investments recover costs and gather investments in a much shorter time. Mr. Bolea pointed out that TAPS has been in operation for 25 years and from the years he could track the tariffs have been under some form of litigation for at least 15 of those 25 years. Therefore, the situation hardly provides confidence and certainty for investors or anyone else. The Pipeline Act is the source of the uncertainty when it comes to pipeline investments.

MR. BOLEA turned to the current draft of HB 277 [Version Q], which he said fixes quite a few of the deficiencies, although not all. The legislation certainly helps BP Pipelines as a major investor. Therefore, BP Pipelines is a bit more comfortable with future investments in TAPS and other pipelines in this state. Mr. Bolea concluded by encouraging the committee to support passage of HB 277 [Version Q].

Number 1945

REPRESENTATIVE CRAWFORD inquired as to Mr. Bolea's opinion regarding whether this legislation would impact the 40 open dockets.

MR. BOLEA related his understanding that this legislation would deal with those issues on appeal or remanded on appeal. The open dockets would be treated under the conditions of this legislation, which Mr. Bolea said he believes is fair.

REPRESENTATIVE GUTTENBERG pointed out that Mr. Bolea makes it sound as if TAPS hasn't paid for itself and not doing well. However, that doesn't bear out from what he has heard over the years. Representative Guttenberg noted that he, too, has concern with being comfortable with future investments as well as other developers having access to the line. He requested that Mr. Bolea address the aforementioned.

MR. BOLEA highlighted that the recovery of costs and the return the investor's of TAPS receive is a matter of public record. There is no dispute with regard to the structure and way in which TAPS has recovered its costs. He explained that back in 1986 the state wanted the TAPS owners to recover their costs upfront, and effectively defer obtaining it slowly over the life TAPS. Under the structure of the TAPS [tariff] settlement methodology (TSM), the TAPS owners haven't recovered all of their costs or the return the state expected. "That's public information. There's just no debate about that," he stated. Furthermore, RCA Order 151 disrupts the late-life return for the interstate piece of TAPS' return. The TAPS owners will argue their position on that in the courts. He indicated that RCA Order 151 creates uncertainty about the future, and therefore he questioned how TAPS owners can feel confident about investing more money in TAPS when there is no certainty with regard to the recovery of costs or return on investment.

CHAIR ANDERSON, upon determining no one else wished to testify, closed public testimony.

Number 1730

REPRESENTATIVE CRAWFORD moved that the committee adopt Amendment 1, which reads as follows:

Page 4, Line 8-13; delete all language and replace with:

***Sec. 3.** AS 42.06.230 is amended by adding a new subsection to read:

c) Notwithstanding any other provision of this chapter and to the extent not preempted by federal law, the commission has jurisdiction over all amounts collected and earned by a pipeline carrier for performing dismantlement, removal, and restoration. In the exercise of its jurisdiction, the commission shall provide the amounts collected and earned are available and sufficient to satisfy the legal obligations of the pipeline carrier to perform dismantlement, removal, and restoration and shall provide that any excessive collections and earnings are available for refund. In determining the legal obligations of the pipeline carrier to perform dismantlement, removal, and restoration, the commission shall look to the in rights-of-way agreements and leases between the pipeline carrier and the affected land owners and to the environmental regulations of the appropriate federal and state agencies.

CHAIR ANDERSON objected for purposes of discussion.

REPRESENTATIVE CRAWFORD related his belief that there should be a free and independent RCA because he believes that's the only way the state can be protected with regard to DR&R. He reminded the committee of the overcollections of DR&R, which continue to accumulate earnings. Amendment 1 would deal with the accumulated earnings and how to refund it. Furthermore, Amendment 1 assures that the funds will be available to perform DR&R in Alaska under federal law when it is adequate and state law when federal law isn't adequate. The amendment also ensures that there are sufficient funds available to perform DR&R on Native and private lands. The amendment also protects ratepayers and the state's interest in refunds due to overcollections of DR&R. This amendment separates the RCA's role from that of the landowner and makes clear that the RCA is economically regulating the pipeline carrier while the landowner is defining the legal duty and scope of DR&R on its lands.

REPRESENTATIVE ROKEBERG remarked that there could be some merit in Amendment 1, but, at this time, he said he would defer to the judgment of the sponsor of this legislation. He noted that HB 277 has another committee of referral.

A roll call vote was taken. Representatives Guttenberg and Crawford voted in favor of adopting Amendment 1. Representatives Dahlstrom, Gatto, Rokeberg, Lynn, and Anderson voted against it. Therefore, Amendment 1 failed by a vote of 2-5.

REPRESENTATIVE GUTTENBERG explained that Amendment 2 basically deletes Section 4. He related his understanding that the federal government, through FERC, has certain authorities and the state government has everything else.

Number 1482

REPRESENTATIVE GUTTENBERG moved that the committee adopt Amendment 2, which reads as follows:

Page 4, line 14 to page 5, line 2: delete all language.
Re-number sections accordingly.

CHAIR ANDERSON objected for purposes of discussion.

REPRESENTATIVE GUTTENBERG explained that Amendment 2 is consistent with the comments of the Chairman of the RCA, Mr. Harbour. This amendment would mean that the state, through the RCA, would have the regulatory authority to regulate to the degree not preempted by federal law. The passage of HB 277 [as is] would mean that a lot of authority would be left hanging.

A roll call vote was taken. Representatives Guttenberg and Crawford voted in favor of the adoption of Amendment 2. Representatives Lynn, Dahlstrom, Gatto, Rokeberg, and Anderson voted against it. Therefore, Amendment 2 failed by a vote of 2-5.

Number 1350

REPRESENTATIVE CRAWFORD moved that the committee adopt the following Conceptual Amendment 3:

Page 6, line 26, after "affect"
Insert "final"

REPRESENTATIVE DAHLSTROM said that she couldn't accept Conceptual Amendment 3 as a friendly amendment.

A roll call vote was taken. Representatives Guttenberg and Crawford voted in favor of adopting Conceptual Amendment 3. Representatives Lynn, Dahlstrom, Gatto, Rokeberg, and Anderson voted against it. Therefore, Conceptual Amendment 3 failed by a vote of 2-5.

Number 1241

REPRESENTATIVE GUTTENBERG remarked that in many ways this legislation is critical to the future of oil development in the North Slope. However, there is no understanding of all the implications that would result from the passage of this legislation. For example, there are no answers with regard to how [funds for] DR&R are accounted for or where they are. There hasn't been the time or the structural understanding to understand this legislation. "You're talking billions of bucks," he emphasized. Representative Guttenberg posed a situation in which Congress passes ANWR and asked who would have access to the state. Furthermore, the independents have indicated that the uncertainty created by this legislation will cause them not to explore. However, Governor Murkowski has talked about economic development through the pipeline. Representative Guttenberg said he didn't believe this legislation provides any fiscal certainty. Representative Guttenberg acknowledged that he could be wrong, but pointed out that the other side could be wrong as well and either way, he said he didn't want to abdicate responsibility.

REPRESENTATIVE GUTTENBERG informed the committee that he worked in the oil fields for 25 years, and therefore he knows what it's all about. Furthermore, he knows what the pipeline means as far as jobs, families, and health and welfare programs. Representative Guttenberg said, "Is the state spending money to lobby ANWR or to push for NPR-A when nobody's going to come in and develop it, doesn't make any sense to me at all." Representative Guttenberg expressed the need to understand this legislation.

Number 1032

REPRESENTATIVE LYNN noted that he was concerned about the economic development of the state. He expressed the need to ensure that the independents can make a profit like everyone else. How well the state facilitates economic development will [be seen] in how much funding is available for education, the longevity bonus, and health programs. Although HB 277 isn't

perfect, Representative Lynn related his belief that this legislation offers the best chance for economic development.

CHAIR ANDERSON remarked that it's difficult for him not to take Mr. Hanley's testimony to heart. However, if this legislation isn't moved to the House Finance Committee, the legislation dies. Chair Anderson acknowledged that the House Finance Committee has gutted other legislation, but he didn't believe that will be the case with HB 277.

Number 0836

REPRESENTATIVE LYNN moved to report CSHB 277(RES), Version 23-LS0980\Q, out of committee with individual recommendations and the accompanying fiscal notes.

REPRESENTATIVE GUTTENBERG objected.

A roll call vote was taken. Representatives Lynn, Dahlstrom, Gatto, Rokeberg, and Anderson voted in favor of reporting CSHB 277(RES) out of committee. Representatives Guttenberg and Crawford voted against it. Therefore, CSHB 277(RES) was reported out of the House Labor and Commerce Standing Committee by a vote of 5-2.

ADJOURNMENT

There being no further business before the committee, the House Labor and Commerce Standing Committee meeting was adjourned at 10:46 p.m.