

**ALASKA STATE LEGISLATURE
HOUSE SPECIAL COMMITTEE ON OIL AND GAS**

May 1, 2003

3:26 p.m.

MEMBERS PRESENT

Representative Vic Kohring, Chair
Representative Hugh Fate
Representative Jim Holm
Representative Lesil McGuire
Representative Norman Rokeberg
Representative Harry Crawford
Representative Beth Kerttula

MEMBERS ABSENT

All members present

OTHER LEGISLATORS PRESENT

Representative Mike Chenault

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(O&G) OUT OF COMMITTEE

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

WITNESS REGISTER

REPRESENTATIVE NANCY DAHLSTROM

Alaska State Legislature

Juneau, Alaska

POSITION STATEMENT: Testified as sponsor of HB 277; presented Amendment 1.

AL BOLEA, President

BP Pipelines (Alaska) Inc.

Anchorage, Alaska

POSITION STATEMENT: Testified in support of HB 277.

MARK HANLEY, Public Affairs Manager, Alaska

Anadarko Petroleum Corporation

Anchorage, Alaska

POSITION STATEMENT: Testified that significant problems exist with HB 277 even after Amendment 1; said it will create more uncertainty for some, that the Regulatory Commission of Alaska (RCA) is necessary, and that the existing process is fair.

GENE BURDEN, Senior Vice President for Government Relations

Tesoro Petroleum Corporation

Anchorage, Alaska

POSITION STATEMENT: Testified that his company has significant issues with HB 277, although glad for Amendment 1.

ROBIN O. BRENA, Attorney at Law

Brena, Bell & Clarkson

Anchorage, Alaska

POSITION STATEMENT: Testified in opposition to HB 277 as attorney who represents Tesoro before RCA; said the RCA process

is working; asked that facilities regulation not be removed from the Alaska Pipeline Act and that options not be taken away from the state; answered questions.

GREGG D. RENKES, Attorney General
Department of Law
Juneau, Alaska

POSITION STATEMENT: Testified on HB 277, specifying that he was speaking on behalf of the Department of Law, the Department of Natural Resources, the Department of Revenue, the governor, and the administration; said the bill was acceptable as amended, but suggested possible areas of improvement.

DAVE HARBOUR, Chairman
Regulatory Commission of Alaska (RCA)
Department of Community and Economic Development (DCED)
Anchorage, Alaska

POSITION STATEMENT: Expressed concerns that HB 277 will erode the regulatory scheme; suggested following the money; answered questions.

JEFF COOK, Vice President of External Affairs
Williams Alaska Petroleum, Inc.
North Pole, Alaska

POSITION STATEMENT: Testified on HB 277, saying Amendment 1 helps but that concerns remain; emphasized need for an ability to appeal rates.

MARGARET A. YAEGE, Vice President for Prudhoe Bay
ConocoPhillips Alaska, Inc.;
President, PHILLIPS Alaska Pipelines
Anchorage, Alaska

POSITION STATEMENT: During hearing on HB 277, emphasized the desire for certainty.

RANDAL G. BUCKENDORF, Counsel
Anchorage Legal Department
ConocoPhillips Alaska, Inc.
Anchorage, Alaska

POSITION STATEMENT: Testified in support of moving HB 277 from committee, but suggested the need for clarifying amendments.

ACTION NARRATIVE

TAPE 03-20, SIDE A
Number 0001

CHAIR VIC KOHRING called the House Special Committee on Oil and Gas meeting to order at 3:26 p.m. Representatives Kohring, Holm, and Fate were present at the call to order; Representatives Kerttula and Crawford arrived immediately thereafter. Representatives McGuire and Rokeberg arrived as the meeting was in progress. Also present was Representative Chenault.

HB 277-PIPELINE UTILITIES REGULATION

Number 0047

CHAIR KOHRING announced that the committee would hear 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."

Number 0081

REPRESENTATIVE NANCY DAHLSTROM, Alaska State Legislature, sponsor of HB 277, brought attention to Amendment 1, labeled 23-LS0980\D.1, Craver, 5/1/03, which read:

Page 1, lines 5 - 8:

Delete "**; 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**"

Page 4, lines 11 - 24:

Delete all material.

Re-number the following bill sections accordingly.

Page 6, line 7:

Delete "Sections 1 - 7 and 9 of this Act apply"
Insert "This Act applies"

Page 6, line 9:

Delete "of secs. 1 - 7 and 9"

Page 6, lines 10 - 19:

Delete all material.

Number 0160

REPRESENTATIVE DAHLSTROM, noting that she'd met with stakeholders, indicated her goal is to have legislation acceptable to all parties, and thus the amendment removes some of the more contentious bill sections.

The committee took an at-ease from 3:27 p.m. to 3:28 p.m. to distribute copies of the amendment, which had just been provided.

REPRESENTATIVE DAHLSTROM explained that Amendment 1 removes Sections 5 and 9.

CHAIR KOHRING suggested adopting it before the public hearing.

Number 0602

REPRESENTATIVE HOLM moved to adopt Amendment 1 [text provided previously]. There being no objection, it was so ordered.

Number 0668

AL BOLEA, President, BP Pipelines (Alaska) Inc., noted that he is the performance unit leader for his company's midstream assets in Alaska, which includes all its interests in the Trans-Alaska Pipeline System (TAPS) and the ships that carry Alaska's crude oil to West Coast markets. He thanked the chair and members for meeting with him during the past couple of weeks to discuss this bill. He then told the committee:

As you know, BP strongly supports HB 277 and encourages this committee to facilitate its movement through the legislative process. ... We support the bill because it helps to correct many serious flaws that currently exist in the Alaska Pipeline Act [APA]. These flaws create uncertainty for current and potential future investments, and must be rectified to ensure a healthy oil and gas industry in Alaska. In fact, these flaws are so significant, they need to be

addressed to ensure investment in risky ... projects like the Alaska natural gas pipeline.

While I will not cover all of the deficiencies nor all the recommended changes in the pipeline Act, I would like to touch on just a few key points. The current language in the pipeline Act creates uncertainty over jurisdictional issues, creating unnecessary overlap between regulatory agencies. This has allowed special interests to push the Regulatory Commission of Alaska onto a path of what I call "jurisdictional creep" into areas [for] which other agencies are responsible. This "creep" has created an awkward situation, it seems to us, in which the RCA is creating public policy by undoing the actions of other agencies that are implementing their regulatory responsibilities. We had always operated on the assumption that the legislature and administration create public policy, not the regulators.

House Bill 277 goes a long way toward fixing such ... problems in that, ... first, it clarifies that RCA's jurisdiction is limited to intrastate transportation, with the FERC [Federal Energy Regulatory Commission] having jurisdiction over interstate matters including interstate dismantlement, removal, and restoration - DR&R - expenditures. Second, it eliminates the RCA's jurisdiction over state right-of-way leases and oil and gas leases, and clarifies their authority over DR&R. The Department of Natural Resources [DNR] has jurisdiction ... over these matters and serves to protect public interest.

Number 0827

MR. BOLEA, noting that Amendment 1 removed Section 5, addressed remaining changes proposed in the bill. He said one is to clarify that the interest rate applicable to RCA-ordered refunds is "consistent with the main body of Alaska law and is not ... the punitive rate of 10.5 percent being sought by Tesoro and Williams." Finally, the Act, as amended, clarifies that the RCA has jurisdiction over intrastate transportation services; he said other regulatory bodies have jurisdiction over physical components of the pipeline system. He told members:

Together, the amended Act helps to reduce uncertainty in a way that will encourage, rather than reduce,

investment in Alaska. You will, no doubt, hear negative ... testimony that encourages you to maintain the existing language. Those special-interest voices are not the ones spending hundreds of millions of dollars on capital projects every year. But BP is - \$750 million this year on capital alone. They are not the largest private industry investor in Alaska. BP is. We invest in Alaska because it makes sense for our business, and [it] has been done in a way that has made mutual benefits for the residents of this state and our shareholders.

In closing my testimony, we believe those mutual benefits can and should continue. Your support of House Bill 277 will help the state move forward in a very positive way. It is a bill vital to the future of this state, a bill that is one of the essential ingredients that can support an Alaska [gas] pipeline becoming a reality.

MR. BOLEA told members that because of current litigation on pipeline issues, he'd asked the company's attorney, Jim Decker, to join him in handling any questions.

Number 1046

REPRESENTATIVE CRAWFORD asked Mr. Bolea how he proposed to make the interest rate fair and equitable.

MR. BOLEA recommended that the Alaska Pipeline Act adopt the same rates as "all the other main body of the Alaska ... legislation adopted in 1997, which is a floating rate." He said those floating rates are public information.

Number 1181

MARK HANLEY, Public Affairs Manager, Alaska, Anadarko Petroleum Corporation, indicated his company is one of the so-called special interests [referred to by Mr. Bolea]. He told members:

We're one of the world's largest independent exploration companies, and we are very interested in the exploration potential in Alaska. We're investing more all the time. We do not invest the kinds of dollars yet that BP and others do. We're actually partners with some of the people, and actually ConocoPhillips is one of our good partners in

exploring for oil and gas in Alaska. But at times you have differences with your partners.

Number 1245

MR. HANLEY called attention to a complicated, 486-page RCA decision issued last December, noting that tens of millions of dollars were spent in five years trying to determine what is a just and reasonable rate for shipping oil down this pipeline. He told members:

Let me just summarize ... what they found, what I think the real issue here is. ... And the real issue is that rates in Alaska are ... substantially too high. And according to the RCA, the carriers in this state have collected from the shippers almost \$10 billion in excess of what is a reasonable rate of return. That allows them to collect their capital investment, their operating costs, and a reasonable rate of return - and, on top of that, they've got another \$10 billion.

That's what this is about - it's a lot of money. And people are trying to protect that money, and I can't say as I blame them. On the other hand, companies like ours, if we're forced to pay \$1.00 or \$1.50 a barrel too much in transportation costs, it really affects the economics of our projects.

Now, companies that are integrated - that own both the exploration side and the transportation side - they can take the profit on either side. And, in fact, every dollar in excess of transportation costs above a reasonable rate costs the state 25 cents. They get to deduct their transportation costs before they have to pay royalties and severances. So there is an incentive for companies who are carriers to shift costs to a pipeline.

The way we are protected, both in-state refiners, exploration companies - both independents and majors that do not own part of the pipeline - [is] through the regulation of that pipeline. And for the first time since 1977, someone - the FERC or the RCA, and in this case the RCA - made a judgment call that those rates were excessive. ... To be very clear, that's exactly what this bill is about, in most cases.

Number 1402

MR. HANLEY thanked Representative Dahlstrom for Amendment 1, which removed sections he believed to be onerous and thereby improved the bill. He said, however, that the company has significant problems with the rest of the bill as well. He explained, "It continually pecks away at the authority of the RCA to effectively determine whether or not rates are just and reasonable. And I think for people that come in the future, exploration companies and others, it's critical that they have that authority."

MR. HANLEY referred to written testimony submitted by Dave Harbour, chair of RCA, and said:

He goes through section by section, not just the sections that were removed, and explains the problems or concerns, I guess, from his perspective, with the bill, suggesting that it does undo several recent RCA decisions and ... makes significant changes to the RCA's role in regulating all pipelines, in response to one or two [what] he calls "special interest parties" attempting to reverse an RCA order only affecting TAPS.

So I just want to say that we would agree with a lot of the things that he has said here. I will say that there are people following me who have an awful lot of expertise ... in these fields. It's very complex. There are integrated pieces of this program.

There's a report from ... a professor of law from the University of Texas who helped write the pipeline Act, and it talks about the nature and constitutional basis and explanation of the proposed pipeline legislation. And as you go through here - this is from 1972 - it was the basis for how this was put together. And they are very linked pieces.

MR. HANLEY suggested reading the foregoing because it describes exactly why this was put together the way it was. He added, "I would suggest that they would not claim it's duplicative. It protects the state's rights in many instances."

Number 1556

MR. HANLEY referred to reasons for the original pipeline Act and read from a report titled The Politics of Oil:

The independent producer's oil is frequently discriminated against through a range of practices and in effect flows only at the direction of the pipeline company. The pipelines serve to limit the marketability of crude oil produced by nonintegrated companies, forcing them to sell at the wellhead. They also block the purchases of independent refiners located ... away from the fields, while giving advantage to the integrated company that may build its refineries near consumer centers.

MR. HANLEY said that 86-page report from 1967 anticipates what will happen in the future for carriers, "exploration folks," and refiners. He cautioned about removing pieces from RCA that were put together as part of this package in a comprehensive fashion. He urged thorough evaluation and said:

We feel pretty strongly that some of the pieces being pulled out of here are going to make it more difficult; they're going create more uncertainty for us. They may create more certainty for some of the other players, but I can tell you, for people like us that don't own the pipe, it's going to create more uncertainty.

MR. HANLEY again encouraged members to spend time reviewing the issues and listening to experts who would testify after him.

Number 1667

CHAIR KOHRING, acknowledging that opinions differ among committee members as to what RCA's role should be, opined that perhaps RCA over the years had become onerous and controlling of the marketplace. He offered his belief that government's involvement should be as little as possible, removing obstacles but not guaranteeing any market share or providing any special considerations for participants.

Number 1736

MR. HANLEY responded that when there is a monopoly, there is a reason for regulation. He said his company would agree with wanting the minimal regulation possible, but emphasized the desire to have reasonable rates. He added that some sections

removed by Amendment 1 would have made Alaska unique in the U.S. in how rates are set, and suggested Alaska doesn't want to be known as the state that is unable to review whether rates are just and reasonable. Noting that there is an ability to shift rates up and down and thus recover costs, he went on to say:

We're just looking for reasonable rates. That's a standard process around the country. ... The interesting thing is, I haven't heard the other companies suggest that the decision has been wrong that was made out there, that suggested that the rates were excessive. ... The state is losing potentially billions of dollars, companies like ours are being affected, and future exploration is being affected. So I would agree with you that we're not looking for excessive regulation. But at some point you need somebody, on a regulated monopoly, to determine what a fair rate is.

CHAIR KOHRING said he disagreed in large part but respected Mr. Hanley's opinion.

Number 1834

REPRESENTATIVE HOLM asked whether, without RCA in place, there would be very little regulation of what is charged on the pipeline with regard to transportation costs.

MR. HANLEY replied that it is RCA's job to set rates on the intrastate portion. It evaluates costs that need to be recovered as well as the operating costs, the capital costs that have been invested, and amounts for DR&R.

Number 1874

REPRESENTATIVE HOLM asked Mr. Hanley whether he believes RCA is necessary to the state in order to have this process.

REPRESENTATIVE HANLEY said yes, he absolutely believes it is a necessity, unless it is replaced and called something different.

Number 1902

REPRESENTATIVE HOLM asked where FERC fits in and how Mr. Hanley would like to see the process be more fair to people who don't own the pipeline with regard to developing the rates.

MR. HANLEY replied that he believes the basic process that exists is appropriate. He explained:

If we see an unjust rate, we are able to go to the Regulatory Commission of Alaska for intrastate rates and appeal it on that basis. If we feel there's [an] inappropriate rate on an interstate rate, we can go to the FERC and appeal it ... at that place. So ... I guess I would say the system, as it exists, gives us the ability and gives those agencies the ability and the authority to review rates to determine if they are just and reasonable. And I think that's what we would support.

REPRESENTATIVE HOLM said he wasn't sure he agreed.

Number 1983

GENE BURDEN, Senior Vice President for Government Relations, Tesoro Petroleum Corporation, requested that Robin Brena join him at the witness table. Referring to Mr. Hanley's testimony, he agreed that Amendment 1 helps but that significant issues remain with the rest of the bill. He told members:

Tesoro is an operator of a refinery, a small pipeline, [and] service stations in Alaska - about 600 employees in the state. And we are very much dependent on the intrastate shipment of crude oil from both the North Slope and from the Cook Inlet area to our refinery; that's what we operate with. And over the years, going back to the early days, transportation of crude oil on the trans-Alaska pipeline, we bought a considerable amount of royalty crude oil and oil from some of the producers ... on the Slope. Over those same years, we became increasingly concerned that the rates that were being charged on the line were worthy of investigation because, as was previously indicated, there never had been a determination of what a just and reasonable rate is for the trans-Alaska pipeline until this decision that recently was issued by RCA.

MR. BURDEN said he wouldn't cover points just covered by Mr. Hanley, who did a great job, but would relay a couple of points before deferring to Mr. Brena. He told members:

This issue has tremendous financial implications for independent refiners and for independent exploration

and production companies in the state. And, just as importantly, it's got tremendous economic implications to the State of Alaska. Even taking Section 5 out, the issues dealing with ... DR&R ... are [of] enormous potential to the coffers of the State of Alaska, as well as to the future of the operation of that line.

Number 2133

MR. BURDEN said he'd spoken with some legislators and received the impression that there'd been a misunderstanding. He explained:

A lot of the incentive towards moving forward initially with this bill was based on a comment that was in a letter dated March ... 26, 2003, from Mr. Gallagher of ConocoPhillips to Representative Anderson, seeking rate certainty for all shippers and ... essentially indicating that the Regulatory Commission of Alaska had overturned a 1986 agreement with the state that ended seven years of litigation.

And that's just not the case. The decision of RCA did not overturn the agreement between the state and the TAPS owners. The decision was exactly within the provisions that the TAPS owners expressly acknowledged at the time that settlement was reached.

Number 2203

MR. BURDEN reported that he'd looked at the record from the time of that agreement, both written and [recorded] testimony from the State of Alaska and the TAPS owners. He said the record has abundant occasions when there were statements such as one made in a brief from the State of Alaska in support of commission approval of the TAPS settlement agreement: "Alaska and the TAPS carriers have explicitly asked the commission to approve the settlement on the basis that Petro Star, AEC [Alberta Energy Company Ltd.], and future shippers not be bound by the agreement's terms." Mr. Burden went on to say:

The TAPS carriers repeatedly expressed the same thing, both in writing and in testimony before the commission, as this was being approved. Counsel for the TAPS carriers, I quote: "Nothing in the agreement deprives the commission of its jurisdiction to look in the future at whether the TSM [TAPS settlement

methodology] rates are unreasonably high." That's exactly what took place.

When we talk about deals, this was part of the deal. And in retrospect, ... we can look back and we can be critical of the deal the state reached and say the state left a lot of money on the table. That's for somebody else to determine. That was part of the deal. The fact is, having the ability of shippers that were not signatory to the deal raise questions as to "just and reasonable rates" was also part of the deal.

... We have taken exception through the last few weeks as we've heard representations to the fact that this is something needed in reaction to a decision by RCA that interfered with or reversed the deal. It just didn't do that.

Number 2339

ROBIN O. BRENA, Attorney at Law; Brena, Bell & Clarkson, speaking as the attorney for Tesoro Alaska Company on matters before the Regulatory Commission of Alaska (RCA), noted that he'd distributed his testimony and bullet points. He told members:

Where I think we would all agree ... is that Alaska's natural resources should be developed efficiently and fairly. ... I think we'd all agree that the refinery infrastructure should be viable within the state. In order to accomplish those goals, the transportation rates on the Trans-Alaska Pipeline System have to be fair. If they're not fair, then independent producers will be forced off the Slope because they have to pay too much money to transport their crude oil off the Slope.

It wasn't that many years ago, members of the committee will remember, when Conoco was explaining why they left Milne Point and sold it. And their explanation was simple: "The transportation rates on TAPS are too high for us to develop the Milne Point field." Conoco was an independent producer at that time and had no interest in the Trans-Alaska Pipeline System, and they were forced out of Alaska because the

TAPS rates were too high. If the TAPS rates are too high, the state doesn't get its fair share of revenue.

... For every dollar that the transportation rate is too high, there's 25 percent of that that is royalty and severance taxes due the state, so the state doesn't get its fair share if the TAPS rates are too high. And, in fact, the current rates on TAPS are costing the State of Alaska between \$120 and \$150 million each year because of the current settlement that the state is in. So if the rates are too high, it's not fair to the state.

Finally, if the rates are too high, it's not fair to the refiners and the shippers who are the ratepayers on this system. We pay these rates. I am the person who filed the protest on behalf of Tesoro to get a fair rate for my client in late 1996. We protested the 1997 rates.

For the five years prior to that protest, the TAPS carriers had recovered between 102 and 134 percent return on their investment per year. Their entire remaining investment on the Trans-Alaska Pipeline System was recovered every year for five years before we filed our protest.

Number 2476

MR. BRENA called RCA's Order 151 an historic decision because it's the first time standard ratemaking practices have been applied to TAPS in 25 years of operation; it determined that the TAPS carriers have overcollected to date about \$10 billion. He said it has cost the state \$2.5 billion to date; if it goes on for another 10 years, it will cost the state another \$2.5 billion. He told members transportation rates are a real issue and that Order 151 set a just and reasonable rate. Referring to Chair Kohring's remarks earlier, he added:

No, I do not believe that the RCA was too onerous. It's the first time that a fair rate got set on this line in 25 years. It's what its statutory authority was to do. And what did it do? It allowed the TAPS carriers to collect 100 percent of their investment ... without any reduction whatsoever - 100 percent of every penny of their operating costs - and allowed them a 14-percent return. And the amount that they

collected above that was \$10 billion. That is what a "just and reasonable" rate is. The rates on this line are way excessive. They hurt production on the Slope. They hurt the state's revenues. They hurt the viability of the refining industry within ... Alaska.

Without regulation, there's nothing preventing them from charging \$100 a barrel and completely eliminating all revenue from royalty and severance taxes. ... They would have the complete ... ability, without a rate-setting process, to force every independent off the Slope and to close down the viability of the refining industry in Alaska. These are very important issues.

What ... House Bill 277 ... is about is that they lost a rate case and a rate got set that was fair. And they don't like that. And so they're here to try to undo that.

Number 2602

MR. BRENA addressed questions that had come up with regard to individual provisions. With respect to facilities regulation and whether it is duplicative, he told members:

Let me say that what the entire debate over facilities regulation truly is, is the fact that they have overcollected DR&R by over \$10 billion today. Why should the RCA have authority over DR&R? Because it's paid by the ratepayer; it's the ratepayer's money. And so what ... they're attempting to do through this legislation is - after they've overcollected \$10 billion from the ratepayer - they're trying to foreclose the ratepayer from receiving refunds of any of those overcollections. And the vehicle that they're using is this bill.

... If you eliminate facilities regulation from this line, you eliminate access. The RCA economically regulates the line. That isn't duplicative with what DNR does with regard with ... what you can do with pumps and what the right-of-way terms are. It's economic regulation of the facilities and carriers. If somebody wants to connect to this line, that is an issue for economic regulation. And without facilities regulation, ... someone can be denied access to a common-carrier line. It goes to [whether] the capacity

is insufficient to provide the service. With facilities regulation today, the TAPS carriers can be ordered to expand capacity to meet the service that's necessary.

Number 2685

MR. BRENA continued:

And abandonment - you can't shut the line down until there's a determination that it's in the public interest to do so. What they are effectively proposing is the federal regulatory regime with the Alaska Pipeline Act with regard to facilities - which is to say, FERC has no authority over facilities. They ... can't say who comes into business. They can't say who connects. They can't force the TAPS carriers to expand. And ... whenever they want to go out of business, they can go out of business ... and the FERC has no authority whatsoever to have a public-interest hearing to determine whether or not to permit that.

So please don't take the word "facilities" out of the Alaska Pipeline Act. I have a memo ... I'll make available to the committee. It was done by Professor Witherspoon; he was a professor of law at the University of Texas. He drafted both the [Alaska] Right-of-Way Leasing Act and ... the Alaska Pipeline Act. He drafted them so that the state would maximize its power over its common-carrier facilities. ... It's an 80-page report, and it explains ... that ... the basis for this authority is what's necessary. And in a large part why the pipeline Act is written the way it is, is to solve the failure of the federal regime.

So you've got a good Act here that's better than the federal Act; you've got the person that drafted it that made it stronger, that gave this state more options. And you're talking about taking those options away from the state. Please don't do that.

Number 2759

MR. BRENA turned attention to the interest rate and said:

We looked at this issue. I had a rate-of-return person take a look at a 10-year period to see what the internal rate of return on capital for the TAPS owners was. It was 16.5 percent interest.

So bear in mind that the only reason that they'll ever have to pay a penny of interest ... is if ... they file a rate they can't support. If they file a rate they can't support and they overcollect from their ratepayers, then they have to pay the money back; they make 16.5 percent on that money that they take that they can't support. And they have to pay it back currently at 10.5 [percent].

To make them pay it back at 4 [percent] gives them an opportunity to file whatever rate they want, collect it in the three years that it takes to resolve it, make 16.5 percent - and that's on our money - and then pay us back 4 [percent]. The interest rate in the statute today is too low and creates an incentive for the TAPS owners to charge rates that they can't support.

Number 2817

MR. BRENA urged care with regard to these issues. Acknowledging that he hadn't had time to analyze [the amendment], he also said the bill is a little confusing with the amendment. He explained:

It didn't change that orders go forward, prospective only. That isn't even what the FERC does. Let me give a hypothetical. Let's say they come in tomorrow and raise their rate 1,000 percent and they ... eliminate the economic viability of the refining industry in Alaska completely, and they collect that rate. And we go ask the commission to set a fair rate, and they do, five years from now. We don't get any refund - we don't get any money back. I believe, the way ... this is read, they get to keep all that money; ... they have the complete authority over ... what they charge.

MR. BRENA, mentioning the possibility of overcharging a tremendous amount, referred to page 6, lines 1-4, and requested clarification by the sponsor. He said, "What that provides now is, if you determine a rate's unjust and unreasonable, you

determine a 'just and reasonable' by order. But in the future language that's added, it eliminates the opportunity to go back and ... get the money back."

Number 2900

MR. BRENA told members the process is working before the RCA. He explained:

I understand the RCA isn't the favorite agency all the time with the legislature, and I appreciate the legislature's attempt to make it run more efficiently. But when they finally start doing something right and set fair rates on TAPS for the first time in 25 years, that's not the time to go take their authority away to do what they're supposed to be doing. So I would ask you not to do that.

MR. BRENA also asked the sponsor to clarify whether the bill is intended to determine all the pending litigation before the commission currently. He added:

We won a rate case and got a fair rate, and we're entitled to some refunds. And their rates are open for a while. And if what they're trying to do is keep the money that they weren't entitled to collect from us ... through this [legislation], I'd like that clearly stated.

MR. BRENA noted that he has done rate litigation for 20 years before FERC and before RCA and other state agencies.

Number 2968

REPRESENTATIVE McGUIRE referred to a document mentioned by Mr. Brena from a professor in Texas.

MR. BRENA said it explains the constitutional basis and thinking behind the way he'd drafted the Alaska Right-of-Way Leasing Act.

TAPE 03-20, SIDE B

Number 2966

[Mr. Brena handed out copies of the 80-page document to members.]

MR. BRENA noted that it explains the way the author set things up and all the good reasons for doing it, which [this bill contradicts].

Number 2955

REPRESENTATIVE HOLM said:

I'm not sure I quite understand why the rate ... was wrong for 25 years and then all of a sudden the rate is right. I know when I contract and want rates with my oil company, I pay them based ... on the dollars per gallon that I pay. And when I make a deal with them, they have to inform me when it changes or so forth and so on. Where was RCA in the past 25 years? And ... to go along with that, why did it take you 5 years to file ... a complaint when you knew there was a problem?

MR. BRENA replied:

First, to the degree there is blame to an agency, it was the APUC [Alaska Public Utilities Commission, the predecessor of RCA], and the RCA is relatively new. And since the RCA has been there, to its credit, it's taken this issue on and set a fair rate. ...

Let me explain that, in just trying to set this one rate, the TAPS owners spent \$15 million in litigation expenses against us. So, it's not something done lightly. Tesoro's crude supply is by some of these people. The ... regulatory system doesn't work very well if the regulator isn't engaged in protecting the rights of the ratepayer. If it relies on the ratepayers who have business relationships with others, it just doesn't work very well.

But let me say that, ... depending on your perspective, perhaps, and I won't ask the people that pay the bill, ... but they had to file cost reports against us. And when BP and ConocoPhillips and Exxon decide they do not want to be subject to economic regulation by this state, this state spent \$35 million trying to get a just and reasonable rate before FERC and was unable to do so, and settled on rates that are \$150 million higher than standard ratemaking practices

would allow. ... And the state has the hugest interest in all these issues.

So why does a small guy -- you know, there's a million barrels a day going through, and there's not very many of them that are ours. And they put huge resources to avoid the economic regulation, and they've done it for years so. So we were the first to challenge this rate, ... but it didn't come lightly. The decision didn't come lightly, sir.

Number 2822

MR. BRENA, in reply to questions from Representative Kerttula with regard to the intrastate-versus-interstate aspects, said:

Where should the RCA's authority end and ... the FERC's begin? Under the current law, the state regulatory agency has all authority that isn't preempted by federal law; it's a clear line. If there's federal preemption, the commission doesn't have authority; if there's not, they do have authority. I absolutely know where that line is. There is no federal preemption with regard to facilities regulation. There is no federal preemption with regards to abandonment. There is no federal preemption with regard to many DR&R issues. ... The federal regime fails in all of those areas.

So the state authority is quite broad in those areas. I know where that line is, and it needs to be drawn between intrastate and interstate. ... If you change the jurisdictional provisions of the Alaska Pipeline Act, I do not know where the jurisdictional line will be drawn, but I can guarantee that it'll be drawn after millions of dollars of effort to try to find the line that's being redrawn in a couple of days that got drawn by a professor after months of research.

Number 2722

MR. BRENA continued:

I believe the other question went ... to the state's TAPS settlement agreement. So let me paraphrase that entire settlement agreement in a sentence. ... The TAPS carriers agreed to charge rates at or below a

ceiling rate in exchange for the State of Alaska's agreement not to protest rates set at the ceiling or lower rate. That's it. ... You get into the methodology of determining ... that ceiling rate - doesn't matter. That is the whole deal.

The deal was also that it only bound them. And [Mr. Burden's] comments and, earlier, Section 5 - what Section 5 does is forces the ceiling rate in this deal on nonsignatory parties. It forces us to pay rates. And the deal at the time was -- I offered testimony in support of the TAPS settlement in 1986 when it was offered, so Tesoro supported that. But it only bound the state and TAPS owners, and they told us in return, if Tesoro disagrees with ... the ceiling rate that's set or any rate that's set, they can go to the RCA and set a fair rate.

We've done that. And now they're coming at us with [HB] 277 to try and take back what they offered us, but still keep the benefit of the deal. They have the benefit of their deal because the state's not protesting their rates; the state has the benefits of its deal ... because the TAPS carriers are filing at or below the ceiling rate. We're the ones being left out in the cold here.

Number 2634

REPRESENTATIVE KERTTULA acknowledged that Mr. Brena hadn't had time to reanalyze the effect now that Section 5 has been removed by Amendment 1. She then asked how DR&R is impacted by this bill. She offered her understanding that although RCA has the right to deal with the rates, it would be up to the Department of Natural Resources (DNR) and possibly the Department of Environmental Conservation (DEC) to ensure that cleanup, removal, and dismantling happen. She requested confirmation.

MR. BRENA replied in the affirmative and said:

In talking about DR&R, let's break it into two categories: the money that's collected from the shippers that needs to be collected through rate regulation ... from either jurisdiction, and then DNR's authority, ... my understanding of it is exactly how you stated it - they have the right of lease; they say what needs to come out. ... Let me give you an

example. Let's say they collect \$20 billion of DR&R. They collect and earn. They have collected from the ratepayers \$1.6 billion ... of DR&R, and they've earned an average of 16.5 percent return on [those] funds ever since, ... starting in 1977 forward. ...

The economic regulation is not duplicative. What about overcharges? What about refunds? What about if they charge too much? That - the economic regulation aspect - has nothing whatsoever to do with ... DNR. ... And the reason that this bill has provisions in it to take ... DR&R authority away from the commission is because it is in the middle of a docket addressing what to do, how to calculate the total amount that's been collected to date, and what to do ... to be sure that those funds are available to conduct the work.

Number 2514

REPRESENTATIVE KERTTULA asked whether the settlement actually envisions setting up a fund. She added:

Doesn't the RCA's ability really go more toward the rate itself? Now, I'm not saying that was a great idea or a great plan; it's just that the way that I've always understood it was that it was the rate, and that - fortunate or unfortunate for the state - there doesn't have to be any fund, that there has to be the absolute cleanup, and that it absolutely has to be taken care of, but there's sort of that missing piece in the middle, which ... the state may be bound by. I'm not sure how the effect goes, on you.

MR. BRENA responded:

The settlement is silent on the most important DR&R term, which is whether overcollections are or are not refundable. If they are refundable, then the state will recover another \$3 billion as of today, and ... that amount rose substantially. The settlement doesn't address the issue either way.

I understand the state's position to be that they are refundable and the TAPS owners' position to say they're not refundable. With regard to the separate fund, ... again, this is a ceiling-rate methodology. The RCA has not ordered a separate fund. Either way,

if they do order a separate fund -- I mean, the problem is, where's the money going to come from to conduct the DR&R?

Number 2444

MR. BRENA continued:

And from the state's perspective, they have two problems: where's the money going to come from - and their answer is "parent guarantee" - but, then, where are the overcollections going to come from, because the parent guarantees only cover the work and don't ever cover the refund of the overcollection.

So, let's fast-forward. We're at the end of the line. The TAPS has been out of service for four years. There's \$10 billion of DR&R that's been done. There's \$10 billion left over. How can the state get that money? The guarantees don't cover it. It's not in the fund. ...

To answer your question as directly as I can, the settlement's silent on these terms, and they're within the regulatory authority ... of the commission to address them. And they're in the process of addressing them, and I would encourage you to allow that process to go forward and see what comes out of it, and see to what degree the state's interest is preserved.

Number 2390

CHAIR KOHRING reiterated concern about RCA's being a tool for players in the industry to gain access to the pipeline and to get the rates they'd like. He also reiterated his desire for less regulation and greater ease in permitting so that the marketplace can control the situation. He suggested it should cut both ways and asked what happens if rates go in the opposite direction and the pipeline owners believe rates are too low, go to RCA, and demand a refund from [companies like Tesoro].

MR. BRENA agreed government should be efficient, but replied:

They monitor their rates. And this is the same with your electric utility, with your water and sewer utility, with everybody else. If they undercollect

the amount that they think they're entitled to, they're entitled to go in and ask for a rate increase. So it does work both ways - they can. ...

And I would love to be in a situation ... where they had a viable case ... that they were underrecovering on this line, when they're, in fact, recovering 100 percent per year. ... If that were the scenario, then it does work both ways, and they can go file a rate case in a heartbeat and get back every penny they're entitled to. ... And if we get to escrow it, if we get a temporary rate lower than the rate that's ultimately deemed to be fair, then it is.

And, if I may just make one brief comment: we didn't get the rate we wanted to see. We got a rate higher ... than we wanted to see. But the commission issued the order. ... How much more should someone be entitled to than 100 percent of their investment, 100 percent of their costs, and a 14-percent return? ... Your telephone company doesn't get that; your electric utility doesn't get that; your water and sewer doesn't get that. ... That's a fair rate, if you're going to set rates.

CHAIR KOHRING voiced appreciation for the company's investment in Alaska but also concern about excesses in government.

Number 2203

GREGG D. RENKES, Attorney General, Department of Law, informed members that he'd been asked by the governor at the last minute to attend, since Commissioner Irwin of DNR was in Anchorage. Attorney General Renkes said he was speaking for DNR, the Department of Revenue, the Department of Law, the governor, and the administration. He told the committee:

It's been difficult. The agencies have worked hard over the last week to look at this from a number of different directions. We think that there's a lot of positive things and a lot of positive concepts in this bill, and we'd like to see it move forward; we support it.

We do recognize, however, that there are concerns with Sections 5 and 9; those are particularly controversial, and we would support the amendment

that's been offered here today ... and moving this bill forward in the legislative process.

ATTORNEY GENERAL RENKES said while some concepts in Section 5 may have merit, he wanted to look at it over time with regard to providing some regulatory certainty, to allow all parties' interests to be heard and considered, but in a way that achieves more finality than traditional ratemaking provides with respect to tariffs now. Noting that Section 9 would make the interest provision retroactive to 1997, he told members:

Some have said that ... the provision is unconstitutional. We don't think that that's correct, but we do believe that at this time we can't support it as a matter of fairness.

We think the place ... to address ... Order 151, which we were just discussing, is in the appeal process and not through this legislation. With the amendment today on Sections 5 and 9, ... we think that maybe we can make some further improvements in the language ... during the legislative process.

Number 2071

ATTORNEY GENERAL RENKES continued:

But we do think the bill could help the state with some improvements in three important areas, and I hope that the committee will keep these areas in mind as you consider this. One is the strategic reconfiguration of the Trans-Alaska Pipeline System that Alyeska [Pipeline Service Company] is involved in. It's a \$400-million investment. It's going to upgrade 20-year-old technology. It's going to improve efficiency and safety ... and reduce cost of the transportation of oil in the pipeline - so very, very important.

The estimates that we've been briefed on it [suggest] that it will reduce the cost of transporting oil in the pipeline 60 cents a barrel; that's a significant reduction ... in the cost of transporting oil. This could help us develop our heavy oil fields on the North Slope. So anything we can do to streamline the permitting process - reduce the amount of time and cost involved in reconfiguring the trans-Alaska

pipeline, updating it, making it modern, reducing the cost of the transportation of our oil - is in the interest of the State of Alaska.

I think that there are elements of this bill that could help with that process - could reduce the time, the regulation, and cost of reconfiguration of the TAPS line. And that's something to look closely at. It's an important objective for the administration.

Number 1979

ATTORNEY GENERAL RENKES continued:

The second thing that I want to address is the Stranded Gas Act that you passed, a very important piece of legislation. We want to start the process to negotiate - and we're working with the legislature closely in that regard - ... the Stranded Gas Act ... fiscal package. We think that there are elements of this legislation that could help us, in those negotiations, provide ... fiscal certainty, which is the objective of the Stranded Gas Act negotiations.

So we want to look at this legislation with that in mind: how can ... we improve the process and strengthen the ability of the state to work with ... the project sponsors for the pipeline to produce a fiscal package that provides fiscal certainty for those people who are going to invest up to \$20 billion in the project, and the state in the future.

Number 1948

ATTORNEY GENERAL RENKES continued:

And then the third thing I have on my mind when I look at this legislation is our current effort to renegotiate the TAPS settlement agreement. We've heard a lot of testimony about "the tariff's too high." ... Listening to Mr. Brena's testimony, he thinks that the state negotiated just a terribly rotten deal in 1986. I don't think necessarily they see it that way. I think it's in the eye of the beholder. ... Some people would say that we saved ourselves \$23 billion in the settlement; other people think that we cost ourselves \$10 billion.

We certainly ended 10 years of litigation. I think it was probably an important settlement. And you can always "Monday morning quarterback" these things, but ... what is important is that we're going to have 30 more years of pipeline use, we've got new rights-of-way agreements in place, ... we're going to put more oil through the pipeline than was anticipated in 1986, [and] we're going to get a longer life out of the pipeline than we anticipated in 1986.

Conditions have changed, and ... we think it's appropriate to renegotiate the TAPS settlement agreement. Perhaps we can achieve lower tariffs; I think we should be able to. But, under the agreement, there's no responsibility to renegotiate until a call for renegotiations, 2006, that can be completed in 2009, and the agreement's in place till 2011. So, if we want to have earlier renegotiations, to know what the tariff's going to look like, 2011 or beyond, or maybe - and, of course, no one's agreed to this, but maybe even implement tariffs at an earlier date - we're going to have to be able to provide some certainty as part of that agreement.

Number 1841

ATTORNEY GENERAL RENKES continued:

So ... elements of this bill that will help us and give the state more leverage - give the state more tools to work with in renegotiating the TAPS settlement agreement, help bring the owners of the pipeline to the table to create an interest for them in renegotiating the TAPS settlement agreement - are important policy objectives for the state.

So I think those three things, which are really, I think, legacy issues - reconfiguration of the TAPS line after 20 years, renegotiating the TAPS settlement agreement, and negotiating a stranded gas fiscal package - these are very, very important items for the state. I think this legislation bears on those efforts that are currently underway, and we think that this legislation can help in that regard.

Number 1787

ATTORNEY GENERAL RENKES reported that there are some ambiguities in existing statute regarding who has jurisdiction over DR&R and whether RCA has jurisdiction beyond intrastate transportation services. He suggested it would be beneficial to provide clarity with regard to what the responsibility of the DNR and its commissioner is under the right-of-way lease terms, and what RCA's responsibility is. He also highlighted the importance of clarifying RCA's jurisdiction and that it is limited to intrastate matters, even when it comes to DR&R.

Number 1741

ATTORNEY GENERAL RENKES, in response to a question from Representative Fate, indicated the interstate rates were negotiated through a settlement agreement in 1986; that was reviewed by FERC. However, there was no settlement agreement with respect to intrastate shipment of oil.

Number 1676

REPRESENTATIVE KERTTULA referred to Section 7 and Mr. Brena's comments. Noting that the last sentence on line 4 says an order may not be retrospective in its application, she asked whether the attorney general thought it might be better to have it read, "prior to whatever it is being challenged". She said the language appears to be a possible bar to being able to properly recover under an order.

ATTORNEY GENERAL RENKES inquired whether she was asking if the language could be read to suggest that companies could keep overcollections accrued during the time of a proceeding.

REPRESENTATIVE KERTTULA added, "You might have a proper order that might not be able to be implemented." She suggested that probably wasn't intended.

ATTORNEY GENERAL RENKES replied, "I'm not sure that was the intent. And when I said we could work with the language to improve it in sections, that's one area that we flagged for improvement."

Number 1607

CHAIR KOHRING asked whether HB 277, as amended, is acceptable to the administration.

ATTORNEY GENERAL RENKES answered in the affirmative but added, "We'd like to reserve the opportunity in the legislative process to make some tweaks on this for issues like technical issues - that we can improve the language."

CHAIR KOHRING asked whether the attorney general sees the amended legislation as a hindrance to the negotiation process relating to the Stranded Gas Act that now is law.

ATTORNEY GENERAL RENKES replied no.

Number 1525

DAVE HARBOUR, Chairman, Regulatory Commission of Alaska (RCA), Department of Community and Economic Development (DCED), asked that his earlier written response to HB 277 be included in the record with the following correction: on pages 1 and 4, the reference to "TAPS between 1996 and 2000" should specify "TAPS between year-end 1996 and 2000". He then told members:

Mr. Chairman, I know that you're sensitive to the fact that ... I represent a party that is appointed by you and the governor to be an unbiased ratemaking entity to look after the just and reasonable rates that pipelines and utilities operate under, and to care equally for the consumers, ratepayers, as well as for the good health of the utilities. And I join the chairman and members in being obviously highly supportive of private enterprise.

And I just have to say, after listening to the articulate speakers that precede me, Mr. Chairman, welcome to my world. You are listening, as we do on a weekly basis, to some of the most well-schooled, well-thought, well-spoken advocates for their companies that are seen in Alaska. And oft times they are joined by colleagues - that is, attorneys from around the country - to present their cases to the commission. I'm appreciative of that opportunity as well.

But the job that we have ... is to carefully analyze all of the input that's given after reading thousands of pages of testimony and expert-witness material, listening to oral ... argument, questions, cross-examination, and then, based on the merit of the case by statute, are led to make a decision based on that

record. And frequently there is at least one unhappy party.

The legislature wisely set us apart from political influence and directed that we protect ratepayers while giving companies the opportunity to make a fair return on their investments. And ... after only about three months on the job, I am absolutely delighted to report to you that the commission is executing its appointed tasks in a way that would make you proud, and will be happy at any time to give you the details that fill in behind that broad statement.

Number 1301

MR. HARBOUR suggested that this year some companies in various industries have come before the legislature using phrases like "fiscal clarity" and "improved investment climate" to justify circumventing the regulatory decisions RCA has been set up by the legislature to make; he said he'd seen those companies argue their best cases before the commission. Concurring with Chair Kohring about the desire for minimal regulation, he said, however:

At the end of the 19th century, early 20th century, when utilities were in their infancy -- ... you've heard of water being carried in wood pipelines and you've heard about the ... beginning of electricity and how it began to grow slowly. And in the early days of those utilities, the complaints from customers, as well as the entreaties from the utilities themselves, went to their state legislatures. And after they began to grow in complexity and sophistication and their arguments began to grow more voluminous, state by state by state - until now all 50 states - concluded that they needed regulatory commissions to handle the very difficult, quasi-judicial, quasi-legislative adjudication that accompanied all these myriad requests to the legislature. And here we are today.

Number 1116

MR. HARBOUR continued:

I am going to suggest to you that all the people appearing before you today are representing their

companies well. I will also suggest to you the old theme of "follow the money." ... You've set us up to be unbiased. You've built statutes up to assure that the regulatory commission will not take consideration from the people it regulates. And, when you think about it, the only incentive that we have for doing a good job is to make you proud, and also to survive appeals from the court system. And we do very well at that: 2,000 orders over the last three years; only 16 have even been appealed.

So, I do suggest that we look at incentives. And I'm not going to get into detail, and I think you don't want me to, over open issues that we have before the regulated companies, that we do our best to understand and make wise decisions about.

But I will suggest that you follow the money. I will suggest that when it is claimed that "we are a big company and therefore the amendments we propose are valid and those who oppose them are special interests," ... at the end of the session, if such legislation is passed, follow the money. I would suggest that if those same interests say that the justification is to correct flaws, but the only flaws that were corrected result in a flow of money to that advocate, that that be seriously questioned.

Number 0983

MR. HARBOUR addressed questions posed earlier by committee members, as follows:

I believe it was Representative Holm asked about "why so long." The regulatory commission and its predecessor [APUC] did not set out to hear these matters. The regulatory commission, as is the role you gave to it, was available when ratepayers wished to have a forum for requesting investigation. And that was done responsibly. And, as you know, there's not been an outpouring of compliments for taking on the tough jobs, which this agency does and does right, per the incentives that I discussed with you just a minute ago.

I believe it was Representative Chenault ... talking about the difference between the regulatory

jurisdiction of FERC ... and this state commission. And I will remind you that when the Alaska Pipeline Act was being created in committee, ... some of us have an old friend named Senator Cliff Groh who was serving on that committee, and he said, ... on the record, that the objective should be [basically] - I can't remember the exact quote - but to fill the regulatory void between the federal and state jurisdiction in these matters. The FERC, ... I think you would find, would accept uncontested settlements, but does not set intrastate rates, and only deals with interstate issues.

Number 0862

MR. HARBOUR highlighted natural tension among state departments and remarked:

You have me here today as your, hopefully, most unbiased counselor, because the RCA is set out to hear the record on these issues. The State of Alaska, represented by the distinguished attorney general today, represents one party ... in the issues that we've been discussing. And it has an interest in that, and a valid interest.

And I'm just going to suggest to you that over a period of time, legislators who hear from different departments know that there's always a natural, flowing tension between departments like natural resources - seeking to maximize use of the land ... under certain conditions including protection of the environment - and the Department of Revenue, which seeks other objectives - or may in a given situation.

And today the attorney general spoke on behalf of them all. I'm not so sure that all of the departments of state would reflect the same opinion ... if asked to give them independently. But that's the prerogative of an administration to form a position and advocate it.

Number 0761

MR. HARBOUR cautioned that if this bill moves forward, a regulatory regime that properly represents Alaska and also fills the void between state and federal regulation would be seriously

eroded within a week's consideration. He cautioned that its rapid passage isn't in the interest of the people and added, "At the end of the day, I will just offer to you that because of the incentives that I've just discussed, the RCA is your last forum for independent counsel to you."

CHAIR KOHRING thanked Mr. Harbour for the RCA's work, doing what the commission has been asked to do through legislation enacted over the years.

Number 0520

JEFF COOK, Vice President of External Affairs, Williams Alaska Petroleum, Inc., told members:

We operate the state's largest refinery, at North Pole, refining some 70,000 barrels per day of Alaska North Slope crude into products consumed by businesses, industry, and individuals in Alaska. We employ 500 people in our refinery, at our two product terminals - one in Anchorage and one in Fairbanks - and our 29 convenience stores. We also own a 3 percent interest in the Trans-Alaska Pipeline System that was purchased in June of 2000, which is probably a significant date, and the percentage is significant also - or insignificant, as the case may be.

I am at a disadvantage in not having the amendments at hand. The amendments certainly do help. ... However, as others have said, there are remaining concerns with the bill. Our main concern is that we have an ability to appeal rates, including issues such as DR&R that impact those rates. As the major shipper other than the producers, we feel our interest in rates [parallels] those of the State of Alaska and the Alaska consumers.

MR. COOK concluded by saying although there have been significant improvements in the bill, his company still has concerns that parallel those discussed by the other refiners and independents. In response to Representative Rokeberg, he emphasized the need to have input and impact, through the appeal process, on anything that affects shippers' rates. He noted that certainly the issues with regard to DR&R affect rates.

Number 0250

MARGARET A. YAEGE, Vice President for Prudhoe Bay, ConocoPhillips Alaska, Inc.; President, PHILLIPS Alaska Pipelines, told members that she has responsibility for "our interests in all pipelines in Alaska as well as some other important assets." Noting that Mr. Buckendorf would provide more detail, she said:

Contrary to much of the testimony you've heard, we do not believe this is about the recent decision that was made. This is not about undoing Order 151. This is not about asking for legislative approval ... of TSM. And it's not about eliminating the Regulatory Commission of Alaska. And it's not about eliminating rate regulation. None of those things are what we're about here today.

What we're about here is certainty and the future. We need certainty in rate regulation, just as we need certainty in all of the other areas that you ... hear us talk about with regard to fiscal certainty. And ... we are investing a lot of money in ... Alaska; we are going to continue investing a lot of money in ... Alaska. And our appetite for investment is linked to the certainty of the environment in which we operate.

And it's very important to us that we get clarity from the legislature about these issues that we believe are vague in the pipeline Act, and that we believe the Regulatory Commission of Alaska has been interpreting much more broadly than the legislature intended - much more broadly than we read or the Department of Law reads the current regulation, the current pipeline Act.

Number 0086

RANDAL G. BUCKENDORF, Counsel, Anchorage Legal Department, ConocoPhillips Alaska, Inc., noted that he handles the company's environmental legal work and its pipeline regulatory legal work. He told members:

As Ms. Yaege has explained and as the attorney general opined upon, the changes we have advocated for, and as put forth by the bill's sponsor, are important for future certainty. You have heard testimony that this bill was designed to, and intended to, overturn recent RCA decisions. As Ms. Yaege explained, that was not

the intent. ... Especially with the elimination of Section 5, ... although I will discuss that a little bit further, a lot of the testimony and discussion you heard about that agreement are fine from a historical perspective, but they're not at issue in this bill.

[Not on tape, but in the witness's written testimony, was that this bill is about regulatory clarity and certainty and creating an atmosphere for the future whereby explorers like ConocoPhillips want to continue investing, exploring for new fields, and building pipelines.]

TAPE 03-21, SIDE A

Number 0001

MR. BUCKENDORF continued, "To that end, we have worked diligently in the last week, at the request of the sponsor, to work with other companies toward some compromise language." He expressed pleasure at the amendments proposed by the sponsor, that the attorney general was interested in some further clarifying amendments, and that Representative Kerttula had brought up one that his company also views as critical. Advocating for moving the bill out of committee, he offered the following analysis:

Essentially, Sections 1 and 3 provide clarity of jurisdiction. Sections 1 and 2 provide clarity of jurisdiction with respect to the Department of Natural Resources and right-of-ways. In contradiction to [RCA] Chairman Harbour's statement in his letter of last week, the changes to 1 and 2 would not remove RCA authority to oversee money collected on intrastate rates for DR&R. What it does is clarify, ... as Representative Kerttula pointed to, what jurisdiction the RCA properly has with respect to pipeline right-of-way leases.

Pipeline right-of-way leases are contractual arrangements between each pipeline owner and either the Department of Natural Resources, the Bureau of Land Management, or, in some case, private parties. Any implication that the RCA can attempt to insert itself into these leases - almost as if they were a signatory party, when clearly they are not - is unacceptable both from a contractual and a regulatory point of view. Jurisdiction is a fundamental premise of being a regulated entity, and it needs to be clear.

The administration, through Attorney General Renkes, also believes that to be the case. HB 277 provides that clarity in Sections 1, 2, and 3.

Number 0248

MR. BUCKENDORF continued:

Equal treatment in Section 6: the same interest rate that applies to judgments under the pipeline Act has always been the same interest rate that applies to other judgments; that was the legislative intent in 1978 when it wrote this section of the Act. And we believe the 1997 tort-reform amendments that pulled it back from what was termed "the usury statute" to a market-based rate - in response to Representative Crawford's question - that is based upon a market-based rate, the 12th Circuit [Court of Appeals] rate plus 3 percent interest. It fluctuates with the market.

We believe that the legislature intended that to apply to the pipeline Act, but it has been questioned about whether or not that is correct. As Chair Harbour pointed out in his testimony, this is a decision that the legislature can make and, we believe, should make. The removal of Section 9 would apply this decision point forward. We also agree with the attorney general's analysis that it can make that retroactive back to 1997; it would not be a constitutional violation. That's a decision for the legislature to make.

Third, retroactive ratemaking in Section 7, which also addresses a question that Representative Kerttula had: it's a common principle of regulated utilities that an agency like the commission cannot bypass a term that's called the "rule against retroactive ratemaking." Essentially, Section 7 was intended to make this clear.

Number 0399

MR. BUCKENDORF continued with Section 7:

However, just as Chair Harbour pointed out in his testimony and sectional analysis, our suggested change

to this section ... was mutated by legislative drafting, to say the least. ... Essentially, we suggested a change to this section that would make it clear that an order setting rates shall not affect rates in effect before the date of the protest, complaint, or commission action that initiated the investigation or hearing.

Essentially, this is the same as Chair Harbour pointed out in his sectional analysis. And that's the way ... the commission - the APUC and the RCA - have always interpreted that. However, they have been questioned recently to reinterpret that in a different manner. We believe that there should be clarification made to the bill in its current form because it does not do what was intended.

Finally, business certainty: as we've already explained, we are neither asking you to overturn the recent RCA decision in Order 151 on TAPS rates nor to legislatively validate the TAPS settlement agreement.

Number 0490

MR. BUCKENDORF addressed Representative Fate's earlier question about interstate-versus-intrastate agreements, saying:

There technically is an intrastate agreement. It is essentially ... to close out ... eight years of litigation and to cease what was anticipated to be ten years of additional litigation. The State of Alaska, through the Office of the Attorney General - in coordination with the U.S. Department of Justice, [which] wasn't a signatory; ... they agreed with it - entered into the interstate agreement. That agreement was, in fact, brought into and is, in effect, a nearly identical agreement on intrastate rates. And I do want to make that clarification regarding that agreement.

Number 0573

MR. BUCKENDORF referred to Representative Holm's question about where the RCA was for 25 years and the response that if there was any blame, it was to the APUC. He said:

The blame that was stated was incorrect. Where was the APUC? In 1986 the APUC approved that agreement for rates in effect ... prior to 1986. Again, in 1993, they approved that agreement for years prior to that time. They did not set just and reasonable rates under it - that is correct - but they did approve it. In 1993, that approval was subject to ... correct calculations and an evaluation of the input; ... that has yet to be done. But technically, even though ... the APUC at that time approved those rates, they are still open. And it is being argued that the recent order should be applied back to those rates - in the words of the State of Alaska in a recent briefing, applied back in time 17 years, back into the past century.

Number 0690

MR. BUCKENDORF provided further comment relating to the Witherspoon memorandum:

Professor Witherspoon was a brilliant oil and gas attorney, and he was hired for a reason. ... He came in and ... looked at statutory authority, and he created two Acts. Since that time, the [Alaska] Right-of-Way Leasing Act has been amended many, many times. Amendments need to happen. And it's the legislature that should decide the policy about when those should be made.

It's also interesting to note that the quote that Mr. Hanley made regarding Mr. Witherspoon at the time -- Professor Witherspoon wanted a futuristic look, and it's that same look regarding protection of rates in the future that ultimately led to the State of Alaska and the [U.S.] Department of Justice looking at - when they were entering into the settlement agreement - what they wanted. They knew that Prudhoe Bay - the ... owners of Prudhoe Bay - there was going to be a lot of oil coming through. And they knew that it was going to be a very profitable point in time. So what they wanted was to front-end load those rates, front-end load as many costs as possible ... to the profitable timeframe, because, essentially, if you have a flat rate base [and] you recover a flat period of time, that's allocated out amongst the barrels that are shipped. The more barrels, the lower the rate.

But what would happen in the future? What would happen now? In 2011? ... We have [lower] rates. If they have to share the same costs, the rate per barrel goes up. ... And the reason they did that was based on ... Professor Witherspoon's analysis. They front-end loaded it so that [for] explorers currently - ... or the latecomers, for example, Anadarko - coming in now, it would be more profitable in the future to explore for and seek natural resources in this state. ... We would like to see this bill moved out of committee.

Number 0865

The committee took an at-ease from 5:11 p.m. to 5:12 p.m. [There is some blank tape from that time; nothing is missing.] The committee took a second at-ease from 5:12 p.m. to 5:15 p.m.

[A motion to move the bill out of committee was made but withdrawn in order to take up an amendment.]

Number 1001

REPRESENTATIVE KERTTULA moved to adopt Conceptual Amendment 2. Noting that it was Mr. Buckendorf's language and related to the area in which the attorney general had suggested some clarification was needed, she specified the following:

In Section 7, ... in the second-to-last sentence, delete the words "in the future" and change the last sentence to read, "An order setting rates under this section shall not affect rates in effect before the date of the protest, complaint, or commission action that initiated the investigation and hearing."

REPRESENTATIVE KERTTULA offered that it would be the normal process, in line with what courts and regulatory agencies would order, and wouldn't preclude someone who won a case from being able to get a recovery.

Number 1132

CHAIR KOHRING asked whether there was any objection to adopting Conceptual Amendment 2. There being no objection, it was so ordered.

CHAIR KOHRING apologized for not recognizing Representative Crawford earlier so he could ask [Mr. Brena before he left] about a \$3-billion DR&R overcharge dispute and how would that be adjudicated if it were removed from RCA oversight. He announced that he would request a written response. He asked whether Mr. Burden could respond.

Number 1250

MR. BURDEN said he wasn't able to answer and that it's one of the "question marks." He said, however:

If you take it out of the independent review of RCA, how do those matters get handled? ... With the jurisdictional gap on the trans-Alaska pipeline that exists on the FERC side, about half the line, I understand, is on state lands, even though it only carries about 10 percent of the oil - that you've got a jurisdictional gap if you implement this provision over the state lands and ... over the components of a tariff related to DR&R. ...

One of the issues you run into is that, with about 10 percent of the oil being intrastate and 90 percent or so being interstate, ... you would think maybe the DR&R issue is a 10-and-90-percent issue, as well, but it doesn't sort of work out that way. ... I don't know that ... we're prepared to go into details that Mr. Brena could if he were still here. But we'll be happy to get you a response.

Number 1361

MR. HARBOUR added:

One of the policy decisions that's being made now is to that point. In addition to interests of the State of Alaska and federal lands, also the legislature, I know, is mindful of the interests of Native Alaskans and, therefore, Native lands and private lands that pipelines cross. So that is a policy consideration that this legislation is undertaking.

Number 1394

REPRESENTATIVE KERTTULA noted that Mr. Harbour's section-by-section analysis said removal of RCA authority over DR&R would

mean that there would be no regulatory authority over portions of a pipeline that didn't cross state land. She expressed concern about this.

MR. HARBOUR referred to the Alaska Pipeline Act and noted that in its formation, the objective was to have state jurisdiction where there was no federal jurisdiction. Noting that there are current issues pending [before the RCA] and that he therefore couldn't provide detail, he added, "I just think that if you ask legal advisors to analyze that section-by-section analysis I did, you will get the advice you need."

REPRESENTATIVE McGUIRE acknowledged that hint.

Number 1480

REPRESENTATIVE HOLM moved to report HB 277, as amended, out of committee with individual recommendations and the accompanying fiscal note(s).

REPRESENTATIVE FATE reminded members that the bill will be heard in the House Resources Standing Committee, which he chairs.

Number 1515

CHAIR KOHRING noted that no objection had been stated. He announced that CSHB 277(O&G) was reported from the House Special Committee on Oil and Gas.

ADJOURNMENT

There being no further business before the committee, the House Special Committee on Oil and Gas meeting was adjourned at 5:25 p.m.