

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

March 22, 2007

3:08 p.m.

**MEMBERS PRESENT**

Representative Vic Kohring, Chair  
Representative Kurt Olson, Vice Chair  
Representative Nancy Dahlstrom  
Representative Jay Ramras  
Representative Ralph Samuels  
Representative Mike Doogan  
Representative Scott Kawasaki

**MEMBERS ABSENT**

All members present

**OTHER LEGISLATORS PRESENT**

Representative Beth Kerttula  
Representative David Guttenberg

**COMMITTEE CALENDAR**

HOUSE BILL NO. 177

"An Act relating to the Alaska Gasline Inducement Act; establishing the Alaska Gasline Inducement Act matching contribution fund; providing for an Alaska Gasline Inducement Act coordinator; making conforming amendments; and providing for an effective date."

- HEARD AND HELD

**PREVIOUS COMMITTEE ACTION**

BILL: HB 177

SHORT TITLE: NATURAL GAS PIPELINE PROJECT

SPONSOR(s): RULES BY REQUEST OF THE GOVERNOR

03/05/07	(H)	READ THE FIRST TIME - REFERRALS
03/05/07	(H)	O&G, RES, FIN
03/06/07	(H)	O&G AT 3:00 PM BARNES 124
03/06/07	(H)	-- MEETING CANCELED --
03/08/07	(H)	O&G AT 3:00 PM BARNES 124
03/08/07	(H)	-- MEETING CANCELED --

03/13/07	(H)	O&G AT 3:30 PM HOUSE FINANCE 519
03/13/07	(H)	Heard & Held
03/13/07	(H)	MINUTE(O&G)
03/15/07	(H)	O&G AT 3:00 PM BARNES 124
03/15/07	(H)	Heard & Held
03/15/07	(H)	MINUTE(O&G)
03/19/07	(H)	O&G AT 8:30 AM CAPITOL 106
03/19/07	(H)	Heard & Held
03/19/07	(H)	MINUTE(O&G)
03/20/07	(H)	O&G AT 3:00 PM BARNES 124
03/20/07	(H)	Heard & Held
03/20/07	(H)	MINUTE(O&G)
03/21/07	(H)	O&G AT 5:30 PM SENATE FINANCE 532
03/21/07	(H)	Heard & Held
03/21/07	(H)	MINUTE(O&G)
03/22/07	(H)	O&G AT 3:00 PM BARNES 124

**WITNESS REGISTER**

JOHN KATZ, Deputy Associate General Counsel  
Office of General Counsel (OGC)  
Office of Energy Products  
Federal Energy Regulatory Commission (FERC)  
Washington, D. C.

POSITION STATEMENT: Answered questions during the hearing on HB 177.

ROBERT J. CUPINA, Deputy Director  
for Policy  
Office of Energy Products  
Federal Energy Regulatory Commission (FERC)  
Washington, D. C.

POSITION STATEMENT: Answered questions during the hearing on HB 177.

**ACTION NARRATIVE**

**CHAIR VIC KOHRING** called the House Special Committee on Oil and Gas meeting to order at [3:08:28 PM](#). Representatives Samuels, Doogan, Kawasaki, Olson, and Kohring were present at the call to order. Representatives Ramras and Dahlstrom arrived as the meeting was in progress. Representatives Kerttula and Guttenberg were also in attendance.

HB 177-NATURAL GAS PIPELINE PROJECT

[3:08:59 PM](#)

CHAIR KOHRING announced that the only order of business would be HOUSE BILL NO. 177, "An Act relating to the Alaska Gasline Inducement Act; establishing the Alaska Gasline Inducement Act matching contribution fund; providing for an Alaska Gasline Inducement Act coordinator; making conforming amendments; and providing for an effective date."

[3:11:21 PM](#)

JOHN KATZ, Deputy Associate General Counsel, Office of General Counsel (OGC), Office of Energy Products, Federal Energy Regulatory Commission (FERC), informed the committee that he and Deputy Director Cupina are FERC employees and their opinions given at this hearing are their own. Mr. Katz said that he and Deputy Director Cupina read HB 177 and did not find inconsistencies with the statutes that FERC enforces or with FERC regulations.

[3:12:03 PM](#)

REPRESENTATIVE DOOGAN recalled previous testimony that described a set of circumstances wherein a licensee is named, the open season is unsuccessful, yet a FERC certificate is issued. He asked for confirmation of this possibility.

ROBERT J. CUPINA, Deputy Director for Policy, Office of Energy Products, Federal Energy Regulatory Commission (FERC), noted that the FERC certificate could be issued under the circumstances described by Representative Doogan. The FERC certificate policy statement does not require a particular level of contract commitment. In addition, the Alaska Natural Gas Pipeline Act of 2004 (ANGPA), includes a finding of need. However, given the scope of this project and the commitment of resources involved, he said that he thought it is better to have shipper interest following the open season.

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REPRESENTATIVE DOOGAN asked if a successful applicant would have to demonstrate the ability to finance the project.

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DEPUTY DIRECTOR CUPINA responded that a finance exhibit is included in the FERC application, and financing is part of the proposal. Most projects are represented by contracts, he added.

[3:15:15 PM](#)

REPRESENTATIVE DOOGAN stated that the licensee would be required to indicate the availability of some financing, but not the completion of a successful open season.

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DEPUTY DIRECTOR CUPINA said yes, but that is not the typical application for a project of this size.

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MR. KATZ noted that an open season without commitments from shippers may result in raising the possibility that other entities would file challenges to the application.

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REPRESENTATIVE SAMUELS recalled that AGIA allows the successful applicant five years after the open season to get financing. He asked whether a FERC certificate can expire.

[3:17:13 PM](#)

DEPUTY DIRECTOR CUPINA relayed that a FERC certificate requires the completion of construction by a certain date. It could be justified, he said, for a large project to have a later completion date as part of the agreement.

REPRESENTATIVE SAMUELS asked whether the FERC certificate could be sold or transferred after it is issued, and whether the certificate could be owned by the state.

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DEPUTY DIRECTOR CUPINA answered that the certificate would have to be vacated, and new applications from potential successors would need to be submitted to the commission.

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MR. KATZ noted that FERC and Congress do not want to create a secondary market for certificates. It is possible that the entity holding the certificate can be bought or sold. He opined that, although a state has not held a FERC certificate before, the commission would consider state ownership for the Alaska gas pipeline project.

[3:20:06 PM](#)

REPRESENTATIVE SAMUELS referred again to the transfer of a FERC certificate. He asked if a certificate is vacated and sold for a profit by a contract between commercial entities, will FERC investigate or regulate that transaction.

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DEPUTY DIRECTOR CUPINA opined that ANGPA does not contemplate that the certificate will be sold; therefore, a sale would not be permitted.

[3:21:21 PM](#)

REPRESENTATIVE SAMUELS asked:

If I get to a certificate owned by company "A" after the certificate is, is owned, and they now partner with several people but they do not buy, you don't have a BP Conoco consortium buying Trans-Canada, but they want to join the consortium that owns the certificate. ... Without a commercial deal between the entities, after the certificate has been issued, where does that go, lead us to?

[3:21:49 PM](#)

MR. KATZ responded that most settlements are reached before the certificate is issued, as in the example of the dispute between Kern River Gas Transmission Company and Mohave Pipeline Company in California.

[3:22:29 PM](#)

DEPUTY DIRECTOR CUPINA added that the commission will consider acquisitions of facilities versus acquisitions of securities. The fact of one company acquiring another company's facilities would mean that the certificate would be under the jurisdiction

of FERC. However, the acquisition of another company's stock would not be under the jurisdiction of FERC.

[3:23:29 PM](#)

MR. KATZ opined that if the transfer of the certificate was to the benefit of all parties, the commission might view the acquisition favorably.

REPRESENTATIVE DOOGAN questioned whether FERC had an established procedure to review a company that purchases a large percentage of shares of stock from a FERC certificate holder.

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DEPUTY DIRECTOR CUPINA acknowledged that the creation of a joint venture or a partnership would need to be submitted to FERC for approval. However, a security acquisition or merger is not a FERC matter.

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REPRESENTATIVE DOOGAN remarked:

The question I am trying to get to is this: If there's a FERC procedure for dealing with the situation in which somebody was buying into the company as opposed to just buying stock. ... I would imagine that there would be situations in which FERC would rule that that isn't allowed.

[3:26:06 PM](#)

DEPUTY DIRECTOR CUPINA recalled that FERC action was required to approve the formation of limited partnerships when the certificate is passed to the limited partners. The new or combined entities would need to approach the commission with a request to amend or revise the authorization to reflect the new arrangement.

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REPRESENTATIVE DOOGAN observed that the amendment procedure would not cause the original licensee to vacate the license.

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MR. KATZ advised the committee that recommendations for hypothetical situations are difficult.

DEPUTY DIRECTOR CUPINA referred to a phrase in ANGPA which declares that the certificate holder must be able and willing to fulfill the requirements of the certificate.

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CHAIR KOHRING asked about the influence FERC holds over the regulation of Canadian companies.

[3:28:26 PM](#)

DEPUTY DIRECTOR CUPINA responded that a Canadian company that holds a FERC certificate is subject to FERC jurisdiction. However, if a Canadian company is dealing with Canadian assets, FERC would have no jurisdiction.

[3:29:01 PM](#)

REPRESENTATIVE GUTTENBERG noted that a pipeline passing through Canada will be subject to Canadian regulation. How are transitions for expansion and capacity handled between Canadian and U. S. agencies.

[3:29:41 PM](#)

DEPUTY DIRECTOR CUPINA affirmed that a pipeline originating in Alaska and traveling through Canada will be a relatively unique situation. However, similar projects have been completed successfully. The FERC holds a memorandum of understanding with the [Canada] National Energy Board (NEB) regarding cross border projects and a complete exchange of information is guaranteed. Although the FERC has no authority over the NEB, there is motivation to work closely together, he said.

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MR. KATZ added that the FERC, the NEB, and the [Mexico] Comisin Reguladora de Energa (CRE) meet tri-annually to address common issues. He noted that previous pipelines have crossed borders.

[3:31:26 PM](#)

REPRESENTATIVE DOOGAN questioned the authority of FERC over the section of the pipeline located in Alaska.

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DEPUTY DIRECTOR CUPINA stated that FERC regulation is required because the gas in the pipeline is being transported interstate.

[3:32:34 PM](#)

REPRESENTATIVE DOOGAN asked:

If, as has been suggested, there would also be on the Alaskan section of the pipeline, authority for the Regulatory Commission of Alaska (RCA) to be involved in these matters, ... do you have any kind of protocol with the RCA on something like this?

[3:32:57 PM](#)

DEPUTY DIRECTOR CUPINA replied that FERC also has a memorandum of understanding with the RCA, so a relationship has been established. He added that FERC would have jurisdiction over the interstate line and the RCA may have jurisdiction over the [off-take] delivery lines.

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REPRESENTATIVE DOOGAN observed that a pipeline could be built entirely in Alaska with the gas terminating at a liquefied natural gas (LNG) plant, and asked whether FERC would still retain authority.

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DEPUTY DIRECTOR CUPINA indicated that the gas will primarily be destined for the Lower 48 and not for foreign export.

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MR. KATZ recalled an informal opinion supporting Deputy Director Cupina's statement.

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REPRESENTATIVE DOOGAN remarked:

So, if the gas were going to be liquefied and then regassified and sold in the United States FERC would

have jurisdiction, if it were strictly for export you wouldn't....

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DEPUTY DIRECTOR CUPINA remarked:

Well, if it, in the first scenario it's going to the Lower 48, therefore, it's in interstate commerce, okay, it's FERC jurisdictional. ... FERC also has jurisdiction over facilities involved in export. ... If it were an export facility, like it was back in the '80s and early '90s for Yukon Pacific, there was a determination at the time, that the line from the North Slope down to the terminal was not FERC jurisdictional. But the terminal, of course, was jurisdictional.

[3:36:27 PM](#)

REPRESENTATIVE DOOGAN surmised that FERC would have jurisdiction over some portion of the project.

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DEPUTY DIRECTOR CUPINA pointed out that the U.S. Department of the Interior conducted an environmental impact study on the Yukon Pacific pipeline route because of the right-of-way. However, he confirmed that the project defined by AGIA would be FERC jurisdictional.

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REPRESENTATIVE SAMUELS remarked:

In the legislation we've got several rate-making questions, there's a prohibition on negotiated rates, there is the rolled-in tariffs which can't go more than 15 percent over the original recourse rates. ... [With] a presumption of rolled-in tariffs and the pipeline entity, the mid-stream entity has to approach you with this rate-making methodology. ... If Exxon, Conoco, and BP, if there is going to be a rate-making case, do they all approach you and say "no, we think this particular one should be incremental" ... What's your process when there's a dispute?

[3:39:01 PM](#)

DEPUTY DIRECTOR CUPINA explained that the process begins in the certificate stage. The initial rates are set based on estimated and projected costs, the debt to equity ratio, and rates of return. This initial rate, he said, goes into the tariff when the pipeline begins operation. If the pipeline company wants to increase its rates or initiate a pipeline expansion there would be a FERC rate change filing. This filing is often before a hearing judge, following the guidelines in the AGIA legislation.

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MR. KATZ added that Section 5 of ANGPA directs that any parties or the commission can decide that the rates are not proper and recommend that the rates be reviewed.

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REPRESENTATIVE SAMUELS requested confirmation that it is not a problem for FERC to dictate terms to the mid-stream agency for rates far in the future.

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DEPUTY DIRECTOR CUPINA clarified that FERC typically does not have a problem with companies entering into contracts; however, FERC is not bound by those contracts. The commission can not preclude a party from filing a rate change claim with them, even though it may have a contract with the state agreeing to certain rates.

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REPRESENTATIVE SAMUELS then asked, "How do you end up with a true base rate on the first day gas is shipped?"

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DEPUTY DIRECTOR CUPINA discussed the possibility of a certificate holder requesting to amend the initial rate before pipeline service began. This is another opportunity for shippers to protest the initial rates, he said. The FERC encourages the parties to settle risk-sharing issues prior to certification.

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REPRESENTATIVE SAMUELS asked, "How long would it take to set the base rate, once the gas is shipped, just on a typical pipeline?"

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DEPUTY DIRECTOR CUPINA answered that the initial rate is set in the certificate proceedings before the opening of the pipeline. When a change is requested before service begins there can be a quick response. After service begins, he advised, the rate change filing is a one year process.

[3:47:12 PM](#)

MR. KATZ agreed that a Section 4 rate change will take time, if contested.

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CHAIR KOHRING referred to the issue of abandonment. What would FERC's response be to a licensee that abandons the project, before or after certification.

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DEPUTY DIRECTOR CUPINA informed the committee that the commission would accept notice of withdrawal of the application for certification. Furthermore, after a certificate is issued, losses for not completing the project are borne by the licensee. Therefore, FERC would have no basis to mandate completion of the project.

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REPRESENTATIVE SAMUELS said, "Does the \$500 million grant automatically lower tariff?"

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MR. KATZ said he was unsure.

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DEPUTY DIRECTOR CUPINA stated that initial rates are cost-based, and reflect the reasonable costs; if the costs are lower the rates will be lower.

[3:51:10 PM](#)

REPRESENTATIVE GUTTENBERG questioned how pre-subscription agreements affect the open season.

[3:51:52 PM](#)

DEPUTY DIRECTOR CUPINA indicated that, ideally, an open season begins without promises of capacity. However, to launch a project of this size, it may be beneficial to have anchor shippers. Pre-subscriptions will have to be a matter of public record, and shippers with interest at the open season must be offered identical terms.

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MR. KATZ agreed that provisions must ensure that companies are not eliminated or disadvantaged by pre-subscriptions.

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REPRESENTATIVE GUTTENBERG asked, "Does this kind of arrangement exist anywhere else?"

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MR. KATZ answered yes.

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REPRESENTATIVE DOOGAN asked if FERC published a list of evaluation criteria for pipeline proposals.

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DEPUTY DIRECTOR CUPINA suggested that the committee review FERC's 1999 policy statement that contains the components of costs, and public interest, that FERC seeks to balance when considering an application. However, he added, every project is case-specific.

[3:55:12 PM](#)

MR. KATZ noted that the commission's policy is to let the market decide whether a pipeline should be constructed, provided that the builder takes an appropriate risk.

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REPRESENTATIVE DOOGAN requested that a copy of FERC'S policy be provided to the committee.

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DEPUTY DIRECTOR CUPINA offered to provide a copy.

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CHAIR KOHRING announced that the task of developing a committee substitute will be completed by a committee of the whole, instead of the previously identified subcommittee.

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REPRESENTATIVE SAMUELS said, "If we had a licensee today, how fast could you have an open season done, working with our licensee?"

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DEPUTY DIRECTOR CUPINA expressed his belief that 180 days would be sufficient. The response to the licensee's open season plan would be within 60 days. He stressed that the open season is not required to be completed prior to field work, prefiling, and application development. He advised that much of the work can happen simultaneously, as long as the open season is completed prior to the completion of the application for the FERC certificate.

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MR. KATZ added that FERC can expedite the process if the parties are amicable.

[4:02:36 PM](#)

DEPUTY DIRECTOR CUPINA agreed that the application process can be streamlined.

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CHAIR KOHRING asked for confirmation that AGIA does meet the Federal Energy Regulatory Commission requirements.

[4:04:07 PM](#)

MR. KATZ confirmed that there is no conflict between AGIA and FERC regulations.

CHAIR KOHRING offered to transmit any changes in the bill to FERC for review.

[HB 177 was held in committee]

[4:07:51 PM](#)

**ADJOURNMENT**

There being no further business before the committee, the House Special Committee on Oil and Gas meeting was adjourned at 4:07 p.m.