

ALASKA STATE LEGISLATURE
JOINT MEETING
SENATE SPECIAL COMMITTEE ON ENERGY
HOUSE RULES STANDING COMMITTEE

July 12, 2008

9:05 a.m.

MEMBERS PRESENT

SENATE SPECIAL COMMITTEE ON ENERGY

Senator Charlie Huggins, Chair
Senator Bert Stedman, Vice Chair
Senator Kim Elton
Senator Lyman Hoffman
Senator Gary Stevens
Senator Joe Thomas
Senator Bill Wielechowski
Senator Fred Dyson
Senator Thomas Wagoner

HOUSE RULES

Representative John Coghill, Chair
Representative Anna Fairclough
Representative Craig Johnson
Representative Ralph Samuels
Representative Beth Kerttula
Representative David Guttenberg

MEMBERS ABSENT

SENATE SPECIAL COMMITTEE ON ENERGY

Senator Lyda Green
Senator Lesil McGuire
Senator Donald Olson

HOUSE RULES

Representative John Harris

OTHER LEGISLATORS PRESENT

Senator Con Bunde
Senator Johnny Ellis
Senator Hollis French

Senator Thomas Wagoner
Senator Gary Wilken
Representative Mike Chenault
Representative Harry Crawford
Representative Andrea Doll
Representative Mike Doogan
Representative Bryce Edgmon
Representative Les Gara
Representative Berta Gardner
Representative Carl Gatto
Representative Max Gruenberg
Representative Mike Hawker
Representative Kyle Johanson
Representative Craig Johnson
Representative Reggie Joule
Representative Scott Kawasaki
Representative Wes Keller
Representative Mike Kelly
Representative Gabrielle LeDoux
Representative Kevin Meyer
Representative Kurt Olson
Representative Jay Ramras
Representative Bob Roses
Representative Woodie Salmon
Representative Ralph Samuels
Representative Paul Seaton
Representative Bill Stoltze

COMMITTEE CALENDAR

SENATE BILL NO. 3001

"An Act approving issuance of a license by the commissioner of revenue and the commissioner of natural resources to TransCanada Alaska Company, LLC and Foothills Pipe Lines Ltd., jointly as licensee, under the Alaska Gasline Inducement Act; and providing for an effective date."

HEARD AND HELD

HOUSE BILL NO. 3001

"An Act approving issuance of a license by the commissioner of revenue and the commissioner of natural resources to TransCanada Alaska Company, LLC and Foothills Pipe Lines Ltd., jointly as licensee, under the Alaska Gasline Inducement Act; and providing for an effective date."

HEARD AND HELD

PREVIOUS COMMITTEE ACTION

BILL: SB3001

SHORT TITLE: APPROVING AGIA LICENSE

SPONSOR(S): RULES BY REQUEST OF THE GOVERNOR

06/03/08	(S)	READ THE FIRST TIME - REFERRALS
06/03/08	(S)	ENR
06/03/08	(S)	REPORT ON FINDINGS AND DETERMINATION
06/04/08	(S)	ENR AT 10:00 AM TERRY MILLER GYM
06/04/08	(S)	Heard & Held
06/04/08	(S)	MINUTE(ENR)
06/05/08	(S)	ENR AT 9:00 AM TERRY MILLER GYM
06/05/08	(S)	Heard & Held
06/05/08	(S)	MINUTE(ENR)
06/06/08	(S)	ENR AT 10:00 AM TERRY MILLER GYM
06/06/08	(S)	Heard & Held
06/06/08	(S)	MINUTE(ENR)
06/07/08	(S)	ENR AT 10:00 AM TERRY MILLER GYM
06/07/08	(S)	Heard & Held
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06/08/08	(S)	ENR AT 1:00 PM TERRY MILLER GYM
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06/10/08	(S)	ENR AT 10:00 AM TERRY MILLER GYM
06/10/08	(S)	Heard & Held
06/10/08	(S)	MINUTE(ENR)
06/12/08	(S)	ENR AT 10:00 AM FBX Carlson Center
06/12/08	(S)	Heard & Held
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06/14/08	(S)	ENR AT 10:00 AM FBX Carlson Center
06/14/08	(S)	Heard & Held
06/14/08	(S)	MINUTE(ENR)
06/16/08	(S)	ENR AT 9:00 AM ANCHORAGE
06/16/08	(S)	Heard & Held
06/16/08	(S)	MINUTE(ENR)
06/17/08	(S)	ENR AT 9:00 AM ANCHORAGE
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06/19/08 (S) ENR AT 9:00 AM ANCHORAGE
 06/19/08 (S) Heard & Held
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 06/20/08 (S) ENR AT 9:00 AM ANCHORAGE
 06/20/08 (S) Heard & Held
 06/20/08 (S) MINUTE(ENR)
 06/24/08 (S) ENR AT 1:00 PM MAT-SU
 06/24/08 (S) Heard & Held
 06/24/08 (S) MINUTE(ENR)
 06/26/08 (S) ENR AT 1:00 PM KENAI
 06/26/08 (S) Heard & Held
 06/26/08 (S) MINUTE(ENR)
 07/01/08 (S) BILL CARRIES OVER FROM 3RD SPECIAL
 SESSION
 07/01/08 (S) ENR AT 9:00 AM BARROW
 07/01/08 (S) Heard & Held
 07/01/08 (S) MINUTE(ENR)
 07/08/08 (S) ENR AT 1:00 PM KETCHIKAN
 07/08/08 (S) Heard & Held
 07/08/08 (S) MINUTE(ENR)
 07/09/08 (S) ENR AT 1:30 PM TERRY MILLER GYM
 07/09/08 (S) Heard & Held
 07/09/08 (S) MINUTE(ENR)
 07/10/08 (S) ENR AT 8:00 AM TERRY MILLER GYM
 07/10/08 (S) Heard & Held
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 07/11/08 (S) MINUTE(ENR)
 07/12/08 (S) ENR AT 9:00 AM TERRY MILLER GYM

BILL: HB3001

SHORT TITLE: APPROVING AGIA LICENSE

SPONSOR(S): RULES BY REQUEST OF THE GOVERNOR

06/03/08 (H) READ THE FIRST TIME - REFERRALS
 06/03/08 (H) RLS
 06/03/08 (H) WRITTEN FINDINGS & DETERMINATION
 06/04/08 (H) RLS AT 9:00 AM CAPITOL 120
 06/04/08 (H) Heard & Held; Subcommittee Assigned
 06/04/08 (H) MINUTE(RLS)
 06/04/08 (H) RLS AT 10:00 AM TERRY MILLER GYM
 06/04/08 (H) Heard & Held
 06/04/08 (H) MINUTE(RLS)
 06/05/08 (H) RLS AT 9:00 AM TERRY MILLER GYM
 06/05/08 (H) Heard & Held
 06/05/08 (H) MINUTE(RLS)

06/06/08	(H)	RLS AT 10:00 AM TERRY MILLER GYM
06/06/08	(H)	Heard & Held
06/06/08	(H)	MINUTE(RLS)
06/07/08	(H)	RLS AT 10:00 AM TERRY MILLER GYM
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06/18/08	(H)	RLS AT 9:00 AM ANCHORAGE
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06/26/08	(H)	MINUTE(RLS)
07/01/08	(H)	RLS AT 9:00 AM BARROW
07/01/08	(H)	Heard & Held

07/01/08 (H) MINUTE(RLS)
07/02/08 (H) BILL CARRIES OVER TO FOURTH SPECIAL
SESSION
07/08/08 (H) RLS AT 1:00 PM KETCHIKAN
07/08/08 (H) Heard & Held
07/08/08 (H) MINUTE(RLS)
07/09/08 (H) RLS AT 1:30 PM TERRY MILLER GYM
07/09/08 (H) Heard & Held
07/09/08 (H) MINUTE(RLS)
07/10/08 (H) RLS AT 8:00 AM TERRY MILLER GYM
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07/11/08 (H) Heard & Held
07/11/08 (H) MINUTE(RLS)
07/12/08 (H) RLS AT 9:00 AM TERRY MILLER GYM

WITNESS REGISTER

DAVE VAN TUYL, Manager
Alaska Gas Commercialization
BP

POSITION STATEMENT: Participated in roundtable discussion during hearing on SB 3001 and HB 3001.

MARTY MASSEY, Manager
U.S. Joint Venture
ExxonMobil

POSITION STATEMENT: Participated in roundtable discussion during hearing on SB 3001 and HB 3001.

JOHN ZAGER, General Manager
Chevron - Alaska Area

POSITION STATEMENT: Participated in roundtable discussion during hearing on SB 3001 and HB 3001.

WENDY KING, Vice President
External Affairs
ConocoPhillips

POSITION STATEMENT: Participated in roundtable discussion during hearing on SB 3001 and HB 3001.

DAN DICKINSON, Consultant to the
Legislative Budget & Audit Committee

POSITION STATEMENT: Participated in roundtable discussion during hearing on SB 3001 and HB 3001.

SCOTT SMITH, Senior Vice President
Black & Veatch Corporation
Consultant to the Administration

POSITION STATEMENT: Participated in roundtable discussion
during hearing on SB 3001 and HB 3001.

PATRICK GALVIN, Commissioner
Department of Revenue
Juneau, AK

POSITION STATEMENT: Participated in roundtable discussion
during hearing on SB 3001 and HB 3001.

TONY PALMER, Vice President
Alaska Business Development
TransCanada

POSITION STATEMENT: Participated in roundtable discussion
during hearing on SB 3001 and HB 3001.

BILL SPARGER
Energy Project Consultants, LLC
Consultant to the Administration

POSITION STATEMENT: Participated in roundtable discussion
during hearing on SB 3001 and HB 3001.

STEVEN B. PORTER, Consultant to the
Legislative Budget & Audit Committee

POSITION STATEMENT: Participated in roundtable discussion
during hearing on SB 3001 and HB 3001.

RICH RUGGIERO, Area Manager and Senior Advisor
Gaffney, Cline & Associates
Consultant to the Administration

POSITION STATEMENT: Participated in roundtable discussion
during hearing on SB 3001 and HB 3001.

SCOTT HOBBS
Energy Capital Advisors
Consultant to the Administration

POSITION STATEMENT: Participated in roundtable discussion
during hearing on SB 3001 and HB 3001.

CATHY FOERSTER, Commissioner
Alaska Oil and Gas Conservation Commission
Department of Administration
Anchorage, AK

POSITION STATEMENT: Participated in roundtable discussion
during hearing on SB 3001 and HB 3001.

ACTION NARRATIVE

CHAIR CHARLIE HUGGINS called the joint meeting of the Senate Special Committee on Energy and the House Rules Standing Committee to order at [9:05:06 AM](#).

SB3001-APPROVING AGIA LICENSE
HB3001-APPROVING AGIA LICENSE

CHAIR HUGGINS brought SB 3001 and HB 3001 before the committees for a roundtable discussion.

[9:06:18 AM](#)

SENATOR FRENCH asked: All else being equal, given a pipeline that offers the 10 years of statutory fiscal stability and one that doesn't, to which would the companies nominate gas?

[9:07:46 AM](#)

DAVE VAN TUYL, Manager, Alaska Gas Commercialization, BP, answered that as a shipper, BP would look at the fiscal regimes offered. As for whether the Alaska Gasline Inducement Act (AGIA) provides 10 years of statutory fiscal stability, BP believes it offers none. He recalled that "contractual by nature" in the original AGIA version last year was specifically removed, so fiscal terms are subject to legislative review each session, as for any other project. Also, the stability was limited to the gas production tax.

MR. VAN TUYL said AGIA doesn't provide certainty on regulations for the tax regime, how switching between royalty in kind (RIK) and royalty in value (RIV) would be resolved, how valuation would work, and so on; those have yet to be determined. He emphasized how critical the stability and the fiscal regime are for a shipper to consider.

MR. VAN TUYL gave his understanding that TransCanada's application said it would rely on the state to reach a mutually agreeable solution to Alaska's fiscal regime in order to make an open season a success; he agreed this would increase the likelihood of success. This is work to be done, he said, noting BP doesn't see AGIA as providing any particular advantage.

[9:10:24 AM](#)

MARTY MASSEY, Manager, U.S. Joint Venture, ExxonMobil, responded that ExxonMobil would look at projects offered at the time to see which would be commercially viable. That would determine

whether to commit gas at an open season. He agreed with Mr. Van Tuyl in terms of describing the need and so forth.

9:11:10 AM

JOHN ZAGER, General Manager, Chevron - Alaska Area, highlighted the caveat of "all else being equal." He said some statement of intent of fiscal stability would be slightly better than none. Chevron would look at that to determine its level of confidence.

9:11:55 AM

WENDY KING, Vice President, External Affairs, ConocoPhillips, responded to Senator French that if ConocoPhillips is asked to sign up for a 20- or 25-year firm transportation (FT) commitment at the open season, it will have a responsibility to predict the revenue stream for its shareholders and to communicate what the taxes will be. The 10-year statutory provision could be changed every year.

SENATOR FRENCH said from the legislature's perspective, that 10 years is taken seriously, although he could see how the companies could view it differently.

9:13:14 AM

SENATOR FRENCH referenced the commissioners' written findings and asked whether the companies agree a tax change 10 or so years after gas shipment begins would only affect their net present value (NPV) a small amount because of how money works.

MR. VAN TUYL answered that he agrees with how the mathematics of discounting works; any future change when calculating NPV will have relatively less value when discounted than if it had occurred earlier in time. While NPV is one measure of value that is important to a shipper, he said it isn't the only one or necessarily the paramount measure.

MR. VAN TUYL said one thing that distinguishes this project from many others that BP considers is its ability to generate cash for decades. This will require a binding commitment of billions of dollars for 25-35 years. Facing a significant tax change every legislative session will have a huge impact; BP won't know how to run its economics.

MR. VAN TUYL interpreted testimony from the administration to mean AGIA may prevent the state from even entertaining a broad-based tax change that applies to every shipper and owner of the resource; it would be subject to the review of TransCanada, which might view it as assisting another project and therefore

subject to a claim for treble damages. He said that also causes BP concern. He opined that it benefits all shippers if the fiscal regime is defined in a manner that enables making FT commitments. Roadblocks may prevent those in the first place.

MR. ZAGER replied to Senator French as well, saying when one looks to years 15-25, discounting on an NPV basis will have the impact that the math dictates. But Chevron also needs to ensure cash flow to cover its obligations. Asking rhetorically whether the state should offer tax certainty for years 10-25 because it would have a low impact to the state's NPV, he also indicated discounting isn't the only thing that has an effect.

[9:18:08 AM](#)

DAN DICKINSON, Consultant to the Legislative Budget & Audit Committee (LB&A), responded to Mr. Zager. He gave his understanding that in the current documents including the Black & Veatch analysis, the mathematics of discounting is such that delay helps the state, a billion dollars in additional NPV for every year of delay.

MR. DICKINSON explained that the state is discounted at 5 percent, but the producers at 10 or 15 percent. Thus the mathematics won't follow the outlines of what Mr. Zager suggested; a dollar further out is discounted more for the producers and less for the state. He cautioned that discounting for one purpose cannot be applied to all.

[9:19:30 AM](#)

SCOTT SMITH, Senior Vice President, Black & Veatch Corporation, Consultant to the Administration, explained that given the base-case assumptions, the analysis showed some increase in the state's NPV relative to two factors: 1) progressivity in the ACES tax structure - from the Act known as Alaska's Clear and Equitable Share - such that as one goes further out in time, with higher prices, there is a higher state share; and 2) a price assumption that had a growth factor slightly higher than the discount rate. Although assumptions using other price scenarios would give different results, those two factors create a favorable impact under the base case.

MR. MASSEY emphasized that ExxonMobil doesn't want to delay the project and wants to get the benefit from the gas as soon as possible. He suggested this highlights that just looking at one measure can give a wrong answer. He said what's really important for this project, as mentioned by Mr. Van Tuyl and Mr. Zager, is long-term cash flow and profitability.

SENATOR FRENCH suggested the state shouldn't offer tax certainty beyond 10 years because the state isn't a commercial player and has gone to the very limit of what it can do constitutionally. Saying the state made a fair promise and has a good record of keeping its promises, at least as good as the producers' record, he requested that it be valued a little more highly.

9:21:52 AM

SENATOR FRENCH asked: Are the potential shippers seeking fiscal stability just for the natural gas taxes or more like the comprehensive fiscal stability seen previously in the proposed Stranded Gas Development Act (SGDA) contract?

MR. ZAGER replied that he couldn't answer directly, since Chevron hadn't done all the analysis, though certainly the gas tax would be a first step to look at. Noting the ACES tax was a big change since the SGDA was enacted, he expressed hope that oil taxes won't go beyond that.

MR. MASSEY responded that the contract, which addressed both oil and gas, obviously wasn't acceptable. Whether the next situation has to include oil depends on the total deal. ExxonMobil would look at a comprehensive solution, whether there is comfort in being able to predict its share of the revenue as well as the state's share, and would analyze whether that split delivers a commercially viable project. He said ExxonMobil is ready to work together to see how that can be put in place.

MR. VAN TUYL concurred, saying there are lots of ways to solve the fiscal issue and he doesn't know the state's needs. All parties need to come together to talk about it. Recalling that the administration said it wouldn't be time to discuss fiscal issues on gas until there is an updated cost estimate on the pipeline, he said that was one of BP's motivations to form Denali with ConocoPhillips and try to get more definition on the project and costs. He added that BP would be happy to engage with the state any time regarding gas and whatever else folks want to discuss in trying to find a mutually agreeable solution.

9:25:19 AM

MS. KING responded that in November through February, when ConocoPhillips offered a proposal to the state, ConocoPhillips clarified that it was willing to make significant changes from the previous deal, including the scope and depth of oil taxes; she said ConocoPhillips was focusing on gas taxes. However, the administration specifically requested that ConocoPhillips wait

until there is an updated cost estimate, at which time the appropriate fiscal terms could be reassessed.

MS. KING said ConocoPhillips, as a shipper, is therefore watching to see what Denali does and what an updated cost estimate becomes. At that point, it'll be willing to discuss with the administration what an appropriate tax structure would be for the project. If asked to sign up for a 20- or 25-year FT commitment, ConocoPhillips will look for some predictability in the tax structure during that period.

MS. KING clarified that while ConocoPhillips recognizes there might be a need for some change over time, the company is seeking something robust and predictable, that if the cash flow streams turn out to be a certain way, ConocoPhillips will know what the State of Alaska's revenue stream and its own would be - not necessarily a fixed dollar amount for the taxes.

[9:27:41 AM](#)

CHAIR HUGGINS recalled that during the AGIA debate it was described as a process to bring competition, and that Mr. Palmer had testified that TransCanada proposed some things it wouldn't have proposed without competition. He asked: Is it true that the fiscal regime won't be offered equally to both competitors, Denali and TransCanada's proposed AGIA project?

[9:28:54 AM](#)

PATRICK GALVIN, Commissioner, Department of Revenue (DOR), answered that as these two projects go forward, competition remains. The question is what is received for what is given. If fiscal certainty is given, will the state receive a pipeline that meets its long-term needs? Under AGIA, that is spelled out. If Denali approaches the state at some point, the state will similarly have to ask whether, in return for what it gives, it receives a pipeline that meets the state's long-term needs.

COMMISSIONER GALVIN noted if the state decides the Denali project provides the better balance and outcome, AGIA doesn't preclude choosing that, although there'd be a price to satisfy the state's obligations to the licensee. However, the administration believes AGIA provides significant long-term value and thus it is to the state's advantage to emphasize attracting gas to that AGIA project and to focus on the fiscal-certainty "gives" for it.

[9:31:12 AM](#)

CHAIR HUGGINS asked: If the offers from both projects were equal, would the state make an equal offer to both? And how do the treble damages fit in?

COMMISSIONER GALVIN replied that he wasn't saying whether there'd be equal offers to either; they are different projects. Rather, the state's choice is what to give either, with the decision based upon the package of "gets" and "gives." If it chooses to give something to Denali, the state likely will be liable for treble damages to TransCanada. That is the nature of what was set up in order to have competition.

CHAIR HUGGINS conveyed his understanding that the federal pipeline coordinator is available for any project coming out of Alaska. He asked whether the Alaska pipeline coordinator is available up front for any pipeline project in the competitive process.

COMMISSIONER GALVIN answered that the AGIA pipeline coordinator is only for the AGIA-licensed project. But this service is available to the Denali project. Discussions are underway to reach a reimbursable services agreement (RSA), as is done for other large projects to establish a coordinator position, which is paid for by the applicant.

CHAIR HUGGINS asked: Do you envision a coordinator for both projects at some point?

COMMISSIONER GALVIN replied he assumes so, since he believes the Denali project, if serious about moving forward, would do what other large project applicants do - set up an RSA to establish that coordinator position to expedite the permitting process. In further response, he said it would happen as soon as Denali sets up the RSA with the state.

[9:34:00 AM](#)

MR. DICKINSON offered his understanding that the tax regime in place at the time of a successful open season is the one that gets 10 years of stability. The question is whether the legislature would look at other tax regimes and make changes that apply to anybody. He asked whether others read it as he does, that this wouldn't trigger damages or payments under that clause.

COMMISSIONER GALVIN said the issue is whether there is a preferential tax treatment provided with the purpose of advancing a competing project. If a tax is passed - even if

it's stated as being equal to everyone, but everybody knows the purpose is to advance a competing project - folks shouldn't fool themselves into thinking that somehow will avoid the liability. If it's passed for no advantage for a competing project, however, it doesn't apply to the treble damages issue.

[9:35:46 AM](#)

MR. VAN TUYL clarified that fiscal stability from the state won't be sought by Denali. Rather, it is the shippers that will seek fiscal stability, as for any pipeline project, seeking to understand the rules before entering into such a commitment. He said that is the case whether BP is considering an open-season offer by Denali or any other party.

COMMISSIONER GALVIN concurred with that distinction, adding that he believes the context of the discussion is a matter of whether the state will provide a fiscal-certainty package for Denali or TransCanada that is directed to the shippers.

CHAIR HUGGINS noted some constituents see competition between two projects and want one to be successful so Alaska has a project. Mentioning equal opportunity, he expressed concern that a regime set for TransCanada wouldn't be available for the other project in order to have a successful pipeline, since it would have the same shippers and gas.

COMMISSIONER GALVIN responded by referring to Mr. Zager's rhetorical question about why the state should perhaps offer fiscal certainty for year 10 and beyond. He said there is a reason for the offers being made. The administration wants a reaction, a decision by shippers to commit their gas to a project. The administration doesn't want to offer something that won't effect that. The state is giving something to get something in return.

COMMISSIONER GALVIN said discussions about fiscal certainty will be highly specific to get this result, focusing on a particular project. In separate discussions, shippers will come forward with their expectations of whether it will be in the direction of the TransCanada project or the Denali project. Rather than just laying out a level playing field, which he said isn't realistic, the administration will choose which benefits it wants to give to which project. That will be brought before the legislature. It inherently will be a competition.

[9:40:33 AM](#)

TONY PALMER, Vice President, Alaska Business Development, TransCanada, noted he'd committed not to comment on the fiscal regime, but said when talking about a level playing field and equal opportunity, one should consider both the obligations and opportunities of the parties. If granted the license, TransCanada will have certain obligations to the state. That must be considered relative to any competitor that doesn't hold those same obligations. As for a level playing field, he suggested the need to consider both what the state is giving and is obtaining.

MS. KING said this conversation was causing her concern. As a shipper, she wants a gas pipeline to happen. If any project can do so, she'd like to see it advanced, though not at any cost. She voiced concern that awarding the license potentially limits the ability of one project to compete against another. She said she's hearing that the desire isn't for a competitive process, but to have one project win.

MS. KING specified that the foremost concern is the treble damages clause. She gave her understanding that the administration interprets it to mean that if there is even a general tax change in Alaska, the state could be liable for treble damages. She surmised that will be a deterrent for the state to be able to sit down and talk with another project.

MS. KING suggested the need to talk about how to enable this project to proceed from a shipper perspective. In the end, she said, the shippers carry the risk. She emphasized that this pipeline depends on getting FT commitments from the companies represented at this table. That is where the financial obligation comes, she said. That is why Denali and TransCanada will be seeking FT commitments.

[9:43:24 AM](#)

COMMISSIONER GALVIN reiterated the opportunity for shippers to express their preferences for one pipeline or the other, including what they'd like from the state and would offer in return. He said the state has the option throughout to choose whatever is to its advantage, and nothing precludes a separate project from being the one that provides the best package.

COMMISSIONER GALVIN opined that the shippers' concern is the combination of the current tax system and whether taxes will be predictable in the long term. Whether there can be a change to the tax system today isn't the issue and isn't how AGIA is set up. Without an AGIA project moving forward, there'll be no

competition. The question is whether it is better for the state to issue the license and have the TransCanada project progress, recognizing that the competition also will move forward and that the state's options remain.

MS. KING emphasized that nothing in federal or state law prohibits another pipeline company including TransCanada from starting a project and doing what Denali is doing. She disagreed with any notion that there isn't an open and competitive process already. But through AGIA, she said the state is tying itself to one project. She expressed concern that the treble damages clause could deter the state from being able to provide support to any other project, not just Denali.

[9:47:32 AM](#)

MR. VAN TUYL concurred, saying the statement that there is no competition without a licensed project troubles him, since nothing prevents TransCanada or any pipeline company or set of sponsors from advancing a project. That is the process in the U.S. and Canada - under the Federal Energy Regulatory Commission (FERC) and Canada's National Energy Board (NEB) - that fosters open competition in the marketplace.

MR. VAN TUYL also voiced concern with Commissioner Galvin's comment that having a level playing field isn't realistic but that inherently there'll be competition. Citing reasons discussed yesterday and over the past year, he specified that BP has concerns about facing an open-season commitment to an AGIA licensee under the terms talked about yesterday, as well as TransCanada's historic liabilities on this project.

MR. VAN TUYL said tilting the playing field in that direction creates impediments that may or may not be solvable. As a shipper, BP wants to get its gas to market and thus wants a successful open season. Creating barriers may prevent realizing that goal, which he suggested isn't in BP's interests or even the state's interests as a resource owner also wanting to get the resource to market.

COMMISSIONER GALVIN highlighted the context, saying it's interesting to him when the three major North Slope producers talk about wanting a level playing field. On the issue of a gas pipeline, there is no level playing field right now when the producers clearly are able to decide how this project will advance when they decide where to put their gas commitments.

COMMISSIONER GALVIN said the matching contribution in AGIA partly recognized that to induce participation in this process, the state needed to be a catalyst to create that competition. Of course, those with the advantage don't want anyone else in and want the playing field kept free for the existing structure to play out. However, this package will come about through discussion with the players and some form of agreement that will be brought forward as a proposal. He surmised inevitably it will be connected to one of the projects now moving forward.

COMMISSIONER GALVIN added that AGIA provides the opportunity for either project to be the one that reaches that point. If the state abandoned that opportunity, yes, someone else could spend hundreds of millions of dollars to try to advance a project to an open season, recognizing there'd still be a question of necessary shipping commitments. Also, while the treble damages will factor into the state's decision, that isn't a brick wall preventing the state from considering other options.

[9:53:13 AM](#)

REPRESENTATIVE DOOGAN asked the producers: Having been against the AGIA legislation and having chosen not to participate in the AGIA competition, why would you expect that the state would now offer you the same benefits that TransCanada would get because it is offering what the state wants?

MS. KING replied that as an owner in Denali, ConocoPhillips isn't asking for the \$500 million, but hopes the state will provide equal access to the statutory authority that was provided, the AGIA coordinator. Citing AS 38.05, she expressed hope that if something in there expedites permitting for one project over another, the state will be willing to provide an equivalent expedited permitting process for any project.

MS. KING added that Denali is saying it will go forward to an open season, one thing the state wanted to see, and will hold the nonbinding open seasons, provide the offtake points within the state, and have distance-sensitive rates within the state; she mentioned going forward within a three-year timeframe. But Denali hasn't asked for the same things that TransCanada has under AGIA, the \$500 million or treble damages, and she said there is associated risk.

REPRESENTATIVE DOOGAN replied he was happy to hear that because he'd recalled hearing something different.

[9:56:43 AM](#)

REPRESENTATIVE DOOGAN told Mr. Van Tuyl and Ms. King, as representatives of the companies that founded Denali, that he'd understood that they didn't agree with the NPV analysis by the Black & Veatch team. He asked whether they were willing to share whatever financial calculations had convinced them it was a good idea to go forward with a gas pipeline proposal.

MR. VAN TUYL responded that he didn't necessarily take umbrage with the NPV analysis, but had referenced the mathematical impact of discounting on the current valuation of future cash flows and that any future event will have less impact the more it is discounted. It isn't saying the analysis is wrong, but it doesn't tell the whole story.

MR. VAN TUYL turned to the decision to go forward with Denali, saying BP's main reason is wanting to ensure it can offer prospective shippers the best possible terms to encourage those commitments required at an open season. Of concern to BP is that AGIA makes it difficult, if not impossible. One important aspect, already commented on, is how AGIA shifts the balance.

MR. VAN TUYL explained that in the Alaska Natural Gas Pipeline Act (ANGPA) of 2004, Congress recognized that an important balance needed to be struck between 1) getting a gas pipeline built and 2) stimulating exploration and development and having future expansions available. Congress instructed FERC to pass open-season rules to sort out that balance, resulting in FERC Orders 2005 and 2005-A. However, AGIA shifts the balance, dissuading initial shippers by saying their rates might rise as the pipeline is expanded. That creates additional risk.

MR. VAN TUYL voiced concern that a shipper might decide to sit out the initial open season and be the second shipper in, to get preferred treatment. Without initial FT commitments, a pipeline might never get built; this was an important consideration for BP in looking at Denali. Also, BP wants to be able to offer terms consistent with the balance Congress struck and FERC's 2000 order, which offers negotiated rates that are open and therefore enables sitting down with customers to find something that works. He said that's what Denali has committed to do.

MS. KING said as a Denali owner, ConocoPhillips doesn't have a joint economic model yet. The organization is still being staffed and existing economic models are individual, proprietary models. She offered to sit down to discuss economic methodologies and provide more detail on the decision to invest \$600 million to advance to an open season, saying ConocoPhillips

has been willing to do that with the state in the past and has shared its views, but cannot share its views on prices.

REPRESENTATIVE DOOGAN replied that the state has had access to a couple of feet of documents, and an offer to sit in his office doesn't help. He again asked about providing everyone with the financial basis of the decision.

MS. KING answered that the full economic models are proprietary.

[10:02:57 AM](#)

MR. PALMER remarked that it appears Denali proposes to meet some conditions under AGIA, but besides access to the pipeline coordinator and expedited permitting, also wants the same fiscal terms, with the same degree of fiscal certainty for shippers on the Denali project as may occur on the TransCanada project. He noted when TransCanada decided to participate, it looked at the entire statute, including its obligations and the benefits. He surmised every party did so in deciding whether to participate.

MR. PALMER referred to FERC and rolled-in tolls. He recalled that the potential shippers here today said over the last year or so that they opposed the AGIA provision requiring rolled-in tolls up to 115 percent. He said that will make it more difficult for TransCanada to attract them as customers.

MR. PALMER added that from his understanding of the statute, however, it is critical to the state, an integral component. If TransCanada takes on that obligation, it expects some benefits in return and has no reason to believe the state will provide equivalent benefits to a third party that hasn't taken on the same obligations.

[10:05:40 AM](#)

MR. DICKINSON asked whether the producers concur with what Mr. Massey said a few days ago during ExxonMobil's presentation, that one way to mitigate risk is to have producer ownership equal the FT commitment.

MR. ZAGER affirmed that on behalf of Chevron.

MS. KING replied that ConocoPhillips normally seeks to align its ownership interest in a pipeline with its shipping commitments for many economic reasons already addressed, primarily yesterday. However, it is possible that value could be added by being slightly off in that alignment or by looking at a different structure in that context. So that isn't ruled out.

MS. KING also clarified that the withdrawn-partner liability that exists with TransCanada remains a concern. She indicated it has been put on the record a number of times that ConocoPhillips provided communications to the state, in December through February, about these concerns, which relate to the company's ability to partner on this particular project.

10:08:03 AM

MR. VAN TUYL said generally BP also seeks as a shipper to match its ownership with its FT commitments as a way to hedge the risk. However, there are a number of ways to commercially structure FT commitments and arrangements with third parties. As said before and since forming Denali, the company would welcome the participation of third parties, potentially including pipeline companies, which usually don't own gas.

MR. VAN TUYL suggested a wellhead sale could be arranged, for instance, which it would be willing to do under commercially reasonable terms. Or an arrangement could be made with a third party that doesn't currently own gas in Alaska. The state is a royalty owner. If the state didn't choose to be a direct equity participant in the project, that's another avenue. As an example, the Alliance Pipeline was originally owned by some producers that came together; over time, their interests were diluted and deals were packaged to bring in others, and today there is no producer interest.

MR. VAN TUYL said the key difference between the projects is that Denali isn't seeking a contractual commitment or license from the state. He reiterated that it isn't Denali that is seeking the fiscal terms; it will be the shippers, whether they ship on the Denali project or any other.

10:10:52 AM

COMMISSIONER GALVIN interpreted Van Tuiyl's comment about how AGIA shifts the balance to mean FERC might end up doing something different than it would otherwise. He suggested it means if the state, through AGIA, is getting an applicant to present an application to FERC that meets the state's interests, the result may be closer to the state's interests.

COMMISSIONER GALVIN offered a clarification to yesterday's discussion. He recalled that Ms. King said if the shippers take up the state's upstream AGIA offer and make a shipping commitment in the initial open season, they'll be precluded from contesting FERC provisions including rolled-in rates. He said

that was modified during the legislative process; now the prohibition only kicks in if FERC has dropped the presumption of rolled-in rates. So the shippers can oppose rolled-in rates at FERC if there is a presumption of rolled-in rates.

The committees took an at-ease from [10:13:27 AM](#) to [10:34:18 AM](#).

CHAIR HUGGINS noted on members' desks was page 6, "Key Take-Aways," from ExxonMobil's previous presentation.

REPRESENTATIVE GATTO began by pointing out that no one - neither the producers nor TransCanada - asked the state for the \$500 million; it was an offer in return for specific things. As for treble damages, he highlighted the upper limit. He also said no one can guarantee a revenue stream over 20-25 years.

REPRESENTATIVE GATTO referred to tornado diagrams shown previously. Noting that the price of gas was the most important part of the project costs and revenue and that the bar depicting the tax portion was relatively narrow, he asked the producers: Why concentrate on fiscal certainty and ignore the price?

[10:37:56 AM](#)

MR. MASSEY agreed that price risk is a big variable. He said it is important for ExxonMobil to work on what it can control. With respect to fiscal predictability, it is important to understand the range of outcomes to better predict its revenue share and the state's share over the life of this project. Until that point, ExxonMobil cannot analyze the returns and economics. This will be evaluated under a range of prices to determine whether it's viable to go forward.

MR. ZAGER said tornado charts are interesting, with lots of assumptions including the range around variables. Price is certainly the top one; the bars for taxes and so forth are a function of the assumptions. As to why Chevron would focus on that, some things are controllable and some aren't. In a big project like this, while that bar may be narrow, the absolute dollars are large. Chevron must try to control what it can. For gas prices, however, it can only analyze scenarios for expected results.

MS. KING concurred with the other producers, saying certainly natural gas price is the big risk, something each company will look at independently. One critical uncertainty is the cost estimate, and Denali will be getting an updated cost estimate and studying the fields with respect to reserves and

deliverability for this long-term shipping commitment. The tax structure, a continuing variable, and the associated fiscal predictability will continue to be looked at as a risk.

MR. VAN TUYL agreed, noting price predictions five or ten years ago all turned out wrong. The company wants to manage what it can control such as finance risk and project costs; those go into the toll, and the desire is to have those be low to maximize upstream returns. Some things can be done to manage volume and deliverability risks as well. While the company can't do anything directly about fiscal risk, the state can. If this important risk to future cash flows isn't defined, he said it's yet another variable to consider.

10:43:27 AM

COMMISSIONER GALVIN offered the state's view on managing its risks. He said the first area is associated with cash flow. The state has changed the tax system over the past few years so that now it accepts more of the same risks the companies described, including price and cost risk associated with operations of these companies.

COMMISSIONER GALVIN said the second area is the risk of having to provide significant financial concessions. He pointed out that the full gamut of what will be on the table wasn't mentioned today. He recalled that the proposed contract under the SGDA had included gas taxes; oil taxes; taking the state's judiciary off the table as a risk factor that the producers no longer wanted to deal with; and constraining the state's administration of the leases because the companies wanted to manage that risk factor.

COMMISSIONER GALVIN said the state continues to face the risk that those will be put back on the table as items it must provide for a project to proceed. One way to manage that risk is to avoid having only one option. Through the AGIA license and bringing TransCanada into the equation, the state manages the risk relating to what the concessions may be, which he suggested is important in managing the state's resources.

REPRESENTATIVE GATTO said he'd wait to follow up because he is looking for more information. He emphasized that every business has risks, especially the oil business. At least with AGIA the risks are somewhat mitigated, since it clarifies what is given and received in return.

REPRESENTATIVE GATTO indicated U.S. Senator Ted Stevens had said the federal government is concerned and expects this gas to be available somewhere in the country; there is a risk that the federal government will take this project over. Representative Gatto voiced the need for the producers to have conversations with the licensee and the administration.

10:49:14 AM

REPRESENTATIVE GARA addressed Mr. Massey, saying he wants to get a sense of how rocky the road may be as this project proceeds. While the other producers say they'd like to own part of the pipeline, ExxonMobil seems to take it a step further. He referred to page 6, "Key Take-Aways," from ExxonMobil's presentation a few days ago, which had these points:

Successful gas pipeline project requires:

- 4.5 BCFD initial gas sales with low cost expansions
- Point Thomson gas available
- Ownership equal to FT
- Fiscal and tariff predictability

Agreement on the above will maximize value to State

EM committed to the development of Alaska's gas resources

EM ready to work with the State, TransCanada, ConocoPhillips, BP

REPRESENTATIVE GARA questioned whether the items in the first paragraph are actual requirements. Noting each company has a different corporate culture, he said ExxonMobil's seems to be this: If it doesn't get its way, it digs in its heels.

REPRESENTATIVE GARA cited 20 years for the Exxon Valdez litigation and delays over a decade for Canada's Mackenzie Valley pipeline, where ExxonMobil is a majority owner and where he's heard ExxonMobil has refused to cut a favorable or fair deal with the Native organizations that own land there, so it has gone from a \$2 billion project to about \$10 billion now.

REPRESENTATIVE GARA related his understanding that ExxonMobil is the only producer that hasn't tried to get in on the pipeline deal either under AGIA or Denali, and yet ExxonMobil is saying if it has 30 percent of the gas in the pipe, it wants 30 percent ownership and that is a requirement. If every company got an amount equal to its FT commitment, TransCanada could own zero

and there could be no independent companies. He asked Mr. Massey whether that statement on page 6 really is a negotiating position or is actually a nonnegotiable requirement.

10:52:23 AM

MR. MASSEY responded that every word was carefully chosen. He said ExxonMobil's responsibility here is to describe what it believes is necessary for a commercially viable project to go forward. ExxonMobil would make an FT commitment equal to its gas throughput and believes ownership equal to FT is necessary for a project to be commercially viable for the company. As to whether there could be a situation without ownership equal to FT commitments, he said there could be, but ExxonMobil's analysis is that it would be highly difficult for that to occur.

MR. MASSEY explained that it might occur, for instance, if another company offered to come up and buy ExxonMobil's gas at the North Slope and transport it. The mostly likely outcome in that case, however, is that the other company would want a significant discount of the wellhead value of the gas, to where it would be more valuable for ExxonMobil to make the FT commitment and transport it itself. So it could happen if a company were willing to take that risk, but the practicality is that nobody will be willing to make that sort of commitment.

10:53:58 AM

REPRESENTATIVE GARA responded that if every company took the same strong stance, no independent company could own a pipeline. Once all the producers got ownership equal to their FT commitments, that would be 100 percent.

MR. MASSEY recalled that issue arose yesterday. He agreed if all the producers required ownership equal to their FT commitments, there wouldn't be much of an ownership percentage for a third-party pipeline. Noting some situation might dictate a different result, he said if the state elected to take some of its royalty gas and sold it to a third party as a pipeline owner, for instance, that might be a percentage that a third-party pipeline owner could have.

10:55:07 AM

REPRESENTATIVE GARA gave his understanding that ExxonMobil owns 9.5 percent of the Maritimes & Northeast Pipeline project, but produces 40 percent of the gas. Asking why ExxonMobil hadn't insisted on an equal ratio there, he again surmised ExxonMobil is taking a negotiating position on the AGIA project.

MR. MASSEY answered that he wasn't too familiar with that other project, but it is supported by the FT commitments made by ExxonMobil. Today that pipeline isn't full. It's an excellent example of why FT commitments need to equal throughput.

MR. MASSEY, in further response, said ExxonMobil is very willing to sell its gas to a pipeline on commercially reasonable terms and conditions, which means getting a fair price and understanding the sales terms including the tariff and fiscal regime under which the gas is being sold.

REPRESENTATIVE GARA asked how likely it is that ExxonMobil will sell its gas if the deal doesn't include an ownership percentage of the pipeline equal to the FT commitment.

MR. MASSEY replied it's unlikely. The company prefers to put its own gas in the pipeline and own it equal to the FT commitment. However, it doesn't mean it won't happen, and ExxonMobil would entertain offers to buy gas at the wellhead.

[10:57:47 AM](#)

REPRESENTATIVE GARA noted the state is trying to get ExxonMobil to produce gas at Point Thomson and there are various opinions about who is at fault for the current logjam. He asked: Is ExxonMobil's position that it won't likely sell gas from Point Thomson unless it gets an ownership share of the pipeline equal to its Point Thomson production?

MR. MASSEY replied it is the same situation at Point Thomson or Prudhoe Bay.

REPRESENTATIVE GARA said if ExxonMobil is requiring the aforementioned as a negotiating condition, and since no one has negotiated this with ExxonMobil, it seems an agreement to sell its gas from Point Thomson isn't close.

MR. MASSEY reiterated that if someone is willing to buy its gas from Point Thomson, ExxonMobil will entertain those offers.

[Technical difficulties caused the loss of about three minutes of audio starting at 10:59:11 a.m. The committee secretary reconstructed the following using audio from other sources.]

REPRESENTATIVE GARA noted passage of AGIA last year provided conditions that must be met for someone to receive an AGIA license. He said BP had a level playing field as of last November and could have applied, but chose not to, and now wants

the state to equally favor the Denali project. He gave his view that this won't happen and asked why Denali should get treatment equal to the project that chose to comply.

MR. VAN TUYL replied that interstate gas transmission is regulated by FERC, and BP believes some terms under AGIA are inconsistent with FERC policy. Thus BP had provided a list of concerns and said it would like to be able to bid under AGIA, but some terms prevented doing that. He indicated there'd been previous testimony on these concerns including a complete markup of the bill. [End of reconstructed section]

11:02:43 AM

MR. VAN TUYL voiced concern that AGIA would require the company to offer terms to its shippers that it didn't feel were commercially reasonable and therefore would put advancing a pipeline project at risk; that wouldn't be in its commercial interests as a pipeline company or a shipper wanting to get its gas to market.

MR. VAN TUYL mentioned a level playing field and asked hypothetically: If the Denali project continues as planned and a completed state right-of-way (ROW) application is submitted and afterwards TransCanada applies for the same ROW, under AGIA could the state approve Denali's ROW before TransCanada's?

COMMISSIONER GALVIN affirmed that if Denali had the materials and answers to the questions that generally arise in a ROW adjudication process ahead of TransCanada, then the state could advance the Denali ROW ahead of TransCanada's.

REPRESENTATIVE GARA surmised many legislators would favor the project that follows AGIA. He relayed his opinion that someone who doesn't comply with that law doesn't get to demand a level playing field.

MS. KING responded that the law doesn't require bidding under AGIA to advance a gas pipeline. This is a federally regulated pipeline. While state law says someone must apply under AGIA to get AGIA's inducements, she recalled discussions that nothing in this statute precludes advancing a pipeline through another mechanism that doesn't require a \$500 million incentive.

REPRESENTATIVE GARA agreed that the law allows going forward, but surmised the state won't list conditions to protect the public and then equally favor a project that doesn't follow

those. He suggested that if the Denali project wants the state to champion it, Denali should have applied under AGIA.

MS. KING maintained that everyone wants to see a pipeline happen.

[11:06:34 AM](#)

REPRESENTATIVE OLSON asked Mr. Palmer to comment on an Edmonton Journal article six days ago that said if the Alaskan pipeline comes on line first, it will kill or delay Canada's Mackenzie Valley project because there isn't enough labor, steel, or equipment to build both at the same time.

MR. PALMER agreed that it would be extremely challenging to build both on a simultaneous time schedule.

REPRESENTATIVE OLSON asked Mr. Palmer about a statement by Joe Handley of the Northwest Territories; as he recalled, Mr. Handley blamed the Mackenzie project's delays on the Canadian government's lack of forthrightness on royalties, taxes, and infrastructure.

MR. PALMER suggested also asking ExxonMobil and ConocoPhillips, much larger participants in the Mackenzie Valley project. He opined that a number of factors have delayed it. A significant one is the NEB regulatory process established over the last several years that has a joint review panel and involves several parties in the Northwest Territories. Those parties, the Mackenzie Valley sponsors, applied in 2004 and hope for a decision from NEB and the joint review panel in 2009. This is for an unopposed project, he noted.

MR. PALMER gave his view that other factors include lack of a single-window regulatory agency to advance the project; the land-claims structure and that the project crosses aboriginal-owned land; and that the Mackenzie Valley project sponsors have asked the Canadian government to provide certain assistance that hasn't been forthcoming to date. He highlighted how small TransCanada's participation is, perhaps 3-5 percent.

CHAIR HUGGINS asked: Should Alaskans be concerned with the escalating cost assessments of the Mackenzie project? And what is the length of that pipeline?

MR. PALMER answered that ExxonMobil, Shell, and ConocoPhillips are the bigger partners and can better speak to escalating costs over time. It is about 1,220 kilometers long, 800 or so miles.

To his understanding, the application four years ago had an original expected volume just over 0.8 billion cubic feet a day (Bcf/d). Proven reserves are about 6-9 trillion cubic feet (Tcf), approximately 50 percent of the contractual commitments.

COMMISSIONER GALVIN called on Bill Sparger, who as a member of the administration's technical team had looked somewhat at Mackenzie Valley project costs.

[11:12:07 AM](#)

BILL SPARGER, Energy Project Consultants, LLC, Consultant to the Administration, said this is a high-level look from information from the Internet and other sources. He opined that part of the problem with the Mackenzie Valley article is that the estimates are apples and oranges.

MR. SPARGER gave examples. He indicated the \$16.2 billion includes facilities not in the \$7 billion number. The \$4 billion may be preliminary, whereas the \$7 billion was filed. Also, the \$16.2 billion includes \$5 billion for production-related facilities in the field and \$3.5 billion for gathering and natural gas liquids (NGL) pipelines. The gas pipeline itself had that \$16.2 billion as being about \$7.8 billion.

MR. SPARGER explained that while all numbers have escalated over time, the escalation isn't the same for each component. The pipeline-component escalation is in round numbers, 30 percent in that timeframe, mostly attributable to massive increases in labor and materials. While the aforementioned article isn't inaccurate, he said it fails to specify what is included in each number, and it isn't an apples-to-apples comparison.

CHAIR HUGGINS asked that Mr. Sparger come back with a response to this question: If the \$16.2 billion and other elements weren't correctly accounted for, what is the right answer?

MR. SPARGER agreed to that.

[11:14:25 AM](#)

REPRESENTATIVE ROSES returned to happens if both Denali and TransCanada apply for permits, noting Commissioner Galvin had said the state could issue a permit, but not whether it would.

COMMISSIONER GALVIN responded that the state would issue the permits when the application information is complete. The state wouldn't hold up either project for any purpose, and the projects would be advanced as expeditiously as possible.

REPRESENTATIVE ROSES surmised the commissioner didn't envision that it would trigger treble damages.

COMMISSIONER GALVIN replied no; it's clear in the statute.

REPRESENTATIVE ROSES reported there were processes by which the House Resources Standing Committee had moved forward with amendments to AGIA that the administration agreed to at the time; however, when it came time to vote, the administration spoke against those. He recalled that when he'd asked what had changed overnight, the response was that there'd been conversations with some of the pipeline people about impacts.

REPRESENTATIVE ROSES asked the producers: When we were considering AGIA, did you ever have discussions with the administration about whether you did or didn't like the amendments being offered?

MS. KING indicated she didn't remember discussions with Commissioners Galvin and Irwin when those were being addressed in the House Resources Standing Committee.

CHAIR HUGGINS suggested asking Commissioner Galvin, who'd synchronized those efforts.

COMMISSIONER GALVIN responded that regarding particular amendments, it would be difficult to recall who talked to whom at that moment. A series of conversations occurred with ConocoPhillips and BP; this was through different parties including Deputy Commissioner Marcia Davis, not necessarily just him or Commissioner Irwin. Discussed throughout the process were the implications of both the bill and what was proposed. As Mr. Van Tuyl indicated, a number of proposals came from the producers, both publicly and internally.

REPRESENTATIVE ROSES opined that many legislators believed there'd be several bidders and so voted "yes" on AGIA. However, those companies either didn't bid or were eliminated because they didn't meet the so-called must haves. So one company remains. If a "no" vote on this license makes the must haves disappear, he surmised those companies might wish to come back and partner with Denali, for instance.

REPRESENTATIVE ROSES also noted that TransCanada said it would have bid differently if it had known it would be the only

bidder. He asked whether it's fair to say TransCanada, Enbridge, BG Gas, or MidAmerican might show up again.

11:20:22 AM

COMMISSIONER GALVIN suggested there is much more significant competition by advancing the license than by not. While theoretically anyone could propose to advance a project, from a practical standpoint there'll be no competition if this license is voted down.

COMMISSIONER GALVIN asked: Who would jump in and put up hundreds of millions of dollars to get to a point of securing the expectation of going forward? He said it isn't likely, although nothing about approving the license prevents those other companies from coming in either.

REPRESENTATIVE ROSES replied that if those other companies came in, some legislators would see it as an attempt to advance a project outside AGIA, as Denali is doing. One shouldn't be treated differently than the other.

REPRESENTATIVE ROSES said, however, it goes to the likelihood of partnering with TransCanada and having to live with the so-called must haves that those other companies didn't like or else partnering with Denali. He opined that there are plenty of opportunities for competition, whether the vote is yes or no.

COMMISSIONER GALVIN responded that competition between viable projects provides options to the state. If there's only one choice, that won't change if these companies join with Denali.

11:24:50 AM

MR. PALMER agreed it goes to the likelihood of competition. If TransCanada is granted a license, there'll be competition between Denali and TransCanada. Highlighting the project's history and TransCanada's 30 years' involvement, he said while others talked about a project, under SGDA the parties that put forward a proposal and actually followed through were the three producers and TransCanada; others participated short term or not at all. He opined that without an AGIA license being granted, the likelihood of competition would be much less.

CHAIR HUGGINS remarked that he assumes TransCanada's board wasn't happy to hear about the Denali competition.

MR. PALMER responded that TransCanada isn't surprised there's competition and has faced similar competition on just about every project it has pursued around the world.

11:27:09 AM

REPRESENTATIVE LeDOUX asked Commissioner Galvin: If the administration was reasonably certain that the Denali project would proceed, would you still encourage the legislature to approve a license to TransCanada?

COMMISSIONER GALVIN replied that if Denali announced today that BP and ConocoPhillips were putting in writing that they were committing their gas to the project and ExxonMobil had joined on, so that the project was a definite go and there was a list of what Denali would provide to the state, then competition wouldn't be needed. If the state didn't need to give anything and Denali guaranteed a pipeline, there'd be nothing left to talk about, including this license.

COMMISSIONER GALVIN said, however, that the state doesn't know what will be requested or given in return, including open-access provisions or the lowest possible tariff. Until that point, the state is in the position of advancing this license.

REPRESENTATIVE LeDOUX asked: What if the administration knew Denali would proceed to an open season?

COMMISSIONER GALVIN answered that it doesn't get the state anywhere. While Denali says it will go to an open season, it is the shippers that decide whether to commit their gas; the question is the cost to the state, the terms under which the shippers will agree to do so. Until that point, the state must advance the TransCanada project to provide options and thus have some control over the value exchange.

11:30:44 AM

REPRESENTATIVE LeDOUX asked whether her understanding from yesterday was correct, that under TransCanada's proposal, if it decides against constructing the pipeline and the producers had committed gas to an open season, the producers would still have to pay TransCanada something for its costs.

MR. PALMER clarified that between the time when a precedent agreement is executed and the point of sanctioning the project to go forward, the customer is at risk of having to repay TransCanada for TransCanada's share of the development costs to date, but not the state's share of those costs.

REPRESENTATIVE LeDOUX asked whether this is a common scenario.

MR. PALMER answered that how this risk is shared is often negotiated between the customers and the pipeline company.

MR. VAN TUYL gave his understanding from talking with BP folks internally that this isn't something BP has done. It is another risk to consider.

MS. KING concurred, adding that when this was reviewed internally, it raised flags as being atypical from a shipper perspective.

MR. ZAGER said he had nothing to add.

MR. MASSEY noted his company's review was similar.

11:33:36 AM

COMMISSIONER GALVIN pointed out that negotiations between the shippers and the pipeline company will determine whether this is actually expected of the shippers. What's in the application is TransCanada's opening offer. No individual aspect of that set of shipping conditions should be seen as indicating where it will end up. He recalled that Mr. Palmer said it is unprecedented in his experience to have to put these items out publicly far ahead of actual discussions with shippers.

The meeting was recessed from 11:35:04 AM to 1:20:07 PM.

CHAIR HUGGINS called the meeting back to order.

REPRESENTATIVE KERTTULA highlighted the pipeline structure and longstanding disagreements relating to the tax tariff. She asked Mr. Porter and Commissioner Galvin: Don't we run the same risks with producers controlling the fields, possibly the pipeline, and the markets? Won't there be some of the same structural problems include access, tariff costs, and, perhaps most importantly, the flow of information? She compared this to a classic antitrust problem.

COMMISSIONER GALVIN referenced the findings and agreed those concerns influenced the decision. He deferred to Mr. Porter.

1:22:33 PM

STEVEN B. PORTER, Consultant to the Legislative Budget and Audit Committee, indicated Commissioner Galvin had partly addressed

one issue before the resources committee, the FERC decision-making process for TAPS versus a gas pipeline. That aside, Mr. Porter opined that the two best ways to address such a concern are: 1) ensure access to as much of the accounting data as possible and 2) own a piece of the pipeline, which allows being at the table and understanding the details.

MR. VAN TUYL responded that FERC regulation for gas is far more intensive than for oil. Specific affiliate rules impose substantial penalties if information flow is inappropriate or affiliates are found to be favored.

MR. VAN TUYL turned to the question of an overlying antitrust concern about producer ownership. He said in the state's findings, one of the state's consultants referenced an attorney general's opinion, a decision made in the 1970s, when access regulations for gas were different and there weren't affiliate rules and so on. In the 1980s, that limitation was overruled by Congress.

MR. VAN TUYL said now there is an entirely different commercial structure and environment. Passed in 2004, ANGPA specifically provides for producer-owned pipelines. There also are State of Alaska opinions issued regarding producer ownership in this gas pipeline project. He noted in 2005 Wilson Condon said, based on what was known then, there was no reasonable likelihood that FERC would deny certification of a producer-owned pipeline. On competition grounds, Mr. Van Tuyl said FERC has ample remedies.

MR. VAN TUYL also noted the state's legal counsel said in 2006 that producer ownership of this project doesn't raise significant competitive concerns; that's because of FERC rules for affiliates and so forth. Reporting that Denali recently applied for a National Environmental Policy Act of 1969 (NEPA) pre-filing with FERC, which FERC approved, Mr. Van Tuyl opined that this indicates FERC has accepted the prospect of a producer-owned pipeline.

[1:26:57 PM](#)

REPRESENTATIVE KERTTULA asked that tomorrow Mr. Shepler or the commissioner respond. Recalling that the state hadn't done too well going before FERC for TAPS, a common carrier for oil, she said she and Representative Holmes might be the only current legislators who, as attorneys, have practiced before FERC. She said there have been a lot of concerns about trusting a federal agency, and she has even more heightened concerns about gas.

REPRESENTATIVE KERTTULA also recalled an allusion yesterday that somehow the state's requirement of 115 percent might contradict federal law. She said she doesn't know any reason it would. As in many cases relating to TAPS, she'd think Alaska would be much better off going in to FERC with an agreement, rather than nothing. She asked whether Commissioner Galvin had anything specific on this issue.

1:28:08 PM

COMMISSIONER GALVIN agreed that oil and gas pipelines are regulated differently by FERC and that a message was received saying the state should trust federal regulators to protect its interests. Reminding members that AGIA's "must haves" are to protect Alaska's interests and that this relates to discussion yesterday with Representative Hawker, he said the issue with AGIA is to protect the state by getting the pipeline company to act independently, even if it's controlled by the producers.

COMMISSIONER GALVIN asserted that for the state, it's critical that the interests of the pipeline and the shippers be independent of each other. Otherwise, it will be a different outcome regardless of who regulates it. From the state's perspective, trusting the federal regulators isn't the way to go. Taking responsibility for Alaska's needs is the state's responsibility and AGIA's intent. As to the 115 percent, he deferred to Mr. Van Tuyl, who'd made the allusion yesterday.

1:30:15 PM

MR. PORTER responded about the 115 percent, saying he doesn't believe the contractual obligation to have somebody come forward to submit something to the federal government violates FERC regulations. He pointed out that while the state wants the pipeline company to act independently, it's also trying to get the pipeline company to support things the state has determined it values; thus the state is providing the \$500 million.

MR. PORTER, with respect to trusting the federal government, opined that the vast majority of times the state has gone to FERC, FERC decided in the state's favor and has been the state's ally over the past few years, including the last decision. He expressed a fair degree of comfort in this respect.

REPRESENTATIVE KERTTULA replied that she had other cases and it wasn't always. She explained that she believes, as an Alaskan, that if the state can make a deal in its best interests, it is much better to go to the federal regulator with that. It isn't an aspersion on the federal agency, she clarified. Her concern

is wanting to be in control, rather than turning it completely over to the federal regulator; this relates to almost every interaction involving the federal government.

1:32:15 PM

MR. DICKINSON noted the legislature took a big step last year in protecting some of the state's interests. The state gets four major cash flows from oil and gas development. For two of the smaller ones, property tax and income tax, the higher the tariff, the better the state does. The two larger pieces are royalties and, at current prices, production taxes, which are several times the royalties. The legislature has put in place a remedy for the production taxes.

MR. DICKINSON said under AS 43.55.150, if a producer who pays the production tax has any interest in the pipeline carrier, the downstream transportation cost isn't what is paid. Instead, it is the lower of the actual cost or the reasonable cost. By regulation, DOR can use any reasonable method to define the reasonable cost.

MR. DICKINSON gave an example. He said if the state had a major FERC rate case for any pipeline involving an affiliation between carriers and shippers, and if the state had said aspects were reasonable and fair but had lost the case, it would almost be obligated to come back and put that in regulation for tax purposes. He noted he hadn't done any work before FERC.

1:34:08 PM

MR. PALMER told members TransCanada is an independent pipeline company. He believes its interests are inherently aligned with the state, with the goal of expanding and having additional customers. However, AGIA specifically requires TransCanada to sponsor rolled-in tolls before FERC up to 115 percent.

MR. PALMER explained that this is the norm for all of TransCanada's Canadian system, but without a limit of 115 percent. This is a policy decision the Canadian government took decades ago and, to his understanding, the State of Alaska took a year ago. Granting an AGIA license ensures that a pipeline company at least sponsors that in front of FERC.

MR. PALMER also noted that, because of AGIA, TransCanada is committing to a certain debt/equity ratio. He indicated that without AGIA, a number of parties had described that they would sponsor proposals with a much thicker equity ratio that might be granted by FERC.

1:36:04 PM

MR. PORTER said there has been substantial energy wrapped around the rolled-in rates and 115 percent, much more than the statistical chance of it ever occurring. Rolled-in rates will happen to approximately 6.5 Bcf/d, which includes a 2 Bcf/d expansion that is huge

MR. PORTER explained that to commit their gas, companies have to find enough to even meet their contractual obligations. Furthermore, the profile for Prudhoe Bay, even if Point Thomson is included, will tail off in 12-14 years. So the 115 percent shouldn't be an issue and won't likely ever occur, even though TransCanada is willing to do it.

MR. PALMER asked whether Mr. Porter had examined every possible engineering increment between 4.5 up and 7.2 Bcf/d, computing the hydraulics and understanding the potential timing. He said TransCanada hadn't done so, although it looked at certain scenarios.

MR. PALMER said for the scenarios it provided, with an increase from 4.5 to 5.9 Bcf/d, incremental tolls are actually lower. However, if individual increments are looked at, moving up by about 250 million a day, he surmised there could be a circumstance wherein incremental tolls are higher than rolled-in tolls before getting to 7.2 Bcf/d. With the 115 percent control issue, he opined that the state is in very good shape.

MR. PORTER replied that he was using TransCanada's data provided to LB&A, which showed that rolled-in rates up through 6.5 Bcf/d basically didn't exceed the original toll.

MR. PALMER pointed out that TransCanada gave two specific volumes going from 4.5 to 6.5 Bcf/d, not every particular increment.

1:40:26 PM

MR. DICKINSON took issue with what he interpreted from Mr. Palmer's comments, that the interests of an independent pipeline and the state are inherently aligned. He opined that Mr. Palmer had given a very good analysis of how the state decided to encourage and protect exploration interests and, through AGIA, created ways to align with TransCanada in that respect. But he said the reason that's important is this: The inherent alignment is between the producers and the state.

MR. DICKINSON referred to discussion by Representative Gatto this morning and explained that the "price" part of the bar determines the amount of upstream rents. Those get divided among the state and the companies, the lessees. How much exists to be divided is determined by market price and transportation costs. In that sense, the producers and the state are aligned in trying to keep transportation costs low.

MR. DICKINSON mentioned the debt/equity ratio. He said he isn't questioning what TransCanada has done, but directionally that is moving money from the pockets of the producers/state to a third-party pipeline. There can be more or less alignment, depending on how these are structured.

MR. PALMER clarified that TransCanada is aligned with the state in wanting expansions and fostering upstream competition so there are many customers over time, not just the initial customers. He said there is no question that producers as shippers want the pipeline company to have a low rate of return and attractive commercial terms, whereas the pipeline company often wants a higher rate of return. However, the producers as pipeline owners or corporate entities may have different interests than shippers.

MR. PALMER noted he has expressed over the past 40 days that it is also TransCanada's interest to have low tolls. He said TransCanada has promised to provide attractive commercial terms under the AGIA application. Highlighting TransCanada's record of successfully expanding its pipeline systems over time, he noted it wasn't accomplished through overcharging its customers.

MR. PALMER agreed that on issues like rate of return there is a difference of opinion between shippers and TransCanada. Any royalty collector also has that dichotomy in relation to a pipeline company. But he suggested TransCanada's 50-year history shows success in balancing those interests, sometimes with the assistance of a regulator and sometimes through negotiated rates. He said this success hasn't been through misalignment with customers or governments.

[1:44:45 PM](#)

MR. VAN TUYL said as a shipper, with respect to whether a rolled-in rate results in a subsidy, BP has two issues. The provision says initial shippers are charged one rate, while those wanting to expand or come later get charged a different rate, which will be lower because subsidization can occur. It diminishes the likelihood of a successful initial open season,

since shippers will want to come second, not first. As a shipper, BP wants to get its gas to market and wants that open season to be successful.

MR. VAN TUYL reported another concern, how AGIA works in combination with TransCanada's application. Article 130, paragraph 7, talks about the ratemaking that AGIA requires, and TransCanada's application says the shippers cannot oppose those rates before FERC. He expressed concern that this prevents the very negotiation needed to come up with an agreement.

MR. VAN TUYL turned to the pipeline owner perspective. Referring to Mr. Palmer's indication that owners would seek a thicker debt/equity ratio, he cited a structure negotiated with the state two years ago wherein BP agreed to "seek" but not actually commit because financing hadn't been arranged yet.

MR. VAN TUYL explained that the desire was to avoid locking in something up front that couldn't be financed, and the agreement was to seek an 80/20 ratio that would have resulted in a lower tariff than AGIA requires. He also specified that, as a pipeline company, Denali absolutely wants customers, too, and wants upstream competition and to keep the pipeline full for decades to come.

[1:47:29 PM](#)

COMMISSIONER GALVIN returned to alignment. He said the state is aligned for tax and royalty purposes with potential shippers in wanting a wellhead price as high as possible. At the same time, its interests align with the pipeline to maximize throughput, whatever producer or new explorer may come along. So its interests depend on the goal. The pipeline will be motivated or required to act in a way that is in the interests of the pipe to expand, which shouldn't be influenced by the ownership. Referring to Mr. Porter's comments, he said the question is where the interests align.

COMMISSIONER GALVIN explained that in some cases, the state is providing a matching contribution to try to attract an applicant, while for a producer the state's desire is to ensure it's driven by the motivations of an independent pipeline company for rolled-in rates, expansions, and so on. He said the state will be driving the independent pipeline company applicant towards lower tariffs. It's a balance, having the independence and potential conflict between those two interests.

CHAIR HUGGINS asked members to hold questions relating to FERC until Monday if possible.

1:50:01 PM

MR. PORTER pointed out that he didn't know of anything in AGIA that creates a lower tariff. He asked Commissioner Galvin to elaborate.

COMMISSIONER GALVIN replied that AGIA required the applicant to come forward with a particular debt/equity ratio. As the application came in, there were other provisions regarding return on equity and other aspects of the potential tariff that will be part of the negotiation and, ultimately, the adjudication at FERC. As detailed last year, the debt/equity ratio is a significant driver of the ultimate tariff. The end result of the ratio required by AGIA will be a lower tariff.

COMMISSIONER GALVIN acknowledged that other pipelines may come in and have a 80/20 ratio, but indicated the state was looking at other pipelines proposed in other locations where the debt/equity ratios are significantly lower than the 70/30 or 75/25 seen here. He asserted that the state has a much greater assurance of the debt/equity ratio under AGIA than if going forward with another pipeline project, given the industry standards.

1:51:56 PM

SENATOR BUNDE said he understands the producers' concerns about a 25-year FT commitment, but asked the shippers: If Denali became a viable pipeline, wouldn't it want a similar commitment? And if there were a shorter commitment, would it call into question how arm's length the Denali shippers were from the ConocoPhillips/BP producers?

MR. ZAGER suggested that this be directed to the owners.

MS. KING responded that she doesn't believe Denali has said clearly what its FT period would be, though she envisions 20 or 25 years. She expressed confidence that Denali is preserving its ability to have those conversations with customers to determine what terms for shipping commitments would attract customers.

MS. KING explained that if a certain amount of costs need to be recovered, a shorter timeframe likely will raise the toll; with a longer timeframe, usually the toll goes down. From a pipeline perspective, the balance sought is being able to recover costs

appropriately and yet have risks that shippers will accept. She indicated most companies that have talked about this pipeline have looked at a 20-year-type shipping commitment.

MR. VAN TUYL added that Denali will consult with all prospective shippers to find out their needs and structure the tariff accordingly. That includes folks with no resources currently, producers exploring for gas today who want to perhaps have it available at the initial open season or down the road. The terms of service that are offered will come as a result of those consultations; the same terms of service will be offered to all similarly situated shippers, not just affiliated parties, which he said is the definition of open access.

1:56:15 PM

SENATOR BUNDE noted a concern about the FT commitment has been that it is listed as debt and impacts the economic viability of this project. He recalled, however, that Econ One said it really shouldn't be listed as debt. He asked about this.

COMMISSIONER GALVIN offered to make available Econ One's report to the legislature from a couple of years ago.

MR. DICKINSON noted he'd also given a presentation a year ago and had a copy with him. Mentioning disclosure of long-term obligations, he said what's really at stake isn't the accounting, which he believes is fairly clear. Rather, it's how the disclosures in the footnotes are used by financial analysts. As heard yesterday, credit analysts and equity analysts look at it differently.

MR. DICKINSON suggested the issue is whether there is a balance sheet impairment, a cost to a company of making an FT commitment, or whether it can be written off and the value doesn't really transfer until years later. To fairly represent a company's financial position, one must disclose those, and they are debt-like. As to the critical issue of what it means, he said there is a reason that finance is an art and not a science. There are different ways to look at it.

1:59:33 PM

RICH RUGGIERO, Area Manager and Senior Advisor, Gaffney, Cline & Associates, Consultant to the Administration, focused on the difference between economic viability and how something ranks within a company's investment portfolio. Referring to AGIA, the Black & Veatch analysis, and the base case that ExxonMobil and its expert didn't disagree with, he said for the cash flows

there is \$160 billion in profit allocated to the producers within that model. It's an internal modeling and investment decision-making process that says, for ExxonMobil and a number of other companies, that they must treat FT as debt.

MR. RUGGIERO explained that each company develops criteria for how it chooses to invest its money. Even though the NPV may be zero when the economics are run on a discounted basis in that model, there's still \$160 billion of profit, positive cash to the companies above their expenses and costs in the project. The economic viability didn't change.

MR. RUGGIERO told members that there isn't a universal treatment across the industry on FT. In his time working for a major oil company, he has seen FT treated as unbooked debt; not treated as unbooked debt, subject to the credibility of the customer to which the gas ultimately was delivered to; and treated just as a footnote. Circumstances have changed over time, and in the 20-plus years he has worked with FT, he has seen the rules and the treasury departments of the various oil companies treat it differently under different circumstances.

[2:01:49 PM](#)

MR. SMITH of Black & Veatch added to the comments of both Mr. Ruggiero and Mr. Dickinson, highlighting statements from Goldman Sachs yesterday. Mr. Smith said there are two issues: 1) economic viability, cash flows, and benefits of those to various parties, and 2) implications to the balance sheet, whether it effectively becomes a liability and impairs the ability to borrow more money and so on.

MR. SMITH said not considered in the discussion was this: If FT is treated as debt and shows up as a liability, what about the asset that shows up on the balance sheet as well? That should be factored into the analysis along with the associated benefit the producers would have, listing that asset as a liability associated with reserves. It is complicated, and he indicated Black & Veatch has seen many opinions about it.

MR. SMITH emphasized the balances and asked: If it is an obligation and potentially affects the ability to borrow, what about the associated benefits that the equity holders have, and that they're now flowing the gas through the pipeline and realizing those revenues?

[2:03:15 PM](#)

COMMISSIONER GALVIN responded that for him that's the important point. The FT issue is both positive and negative. On the negative side is committing to make these payments over a long period. On the positive side is the ability to make a lot of money. What is heard from the shippers emphasizes the negative.

COMMISSIONER GALVIN recalled that the Econ One report says this will affect the producers' ability to borrow money. If it is additional debt, he surmised it would add to the debt load and reduce the capacity to borrow money. It needs to be discussed in the full context of the value exchange. Someone who makes an FT commitment gets to monetize a lot of gas, he said, but takes on a financial obligation. That balance must be weighed.

[2:04:42 PM](#)

MR. DICKINSON concurred, but pointed out that due to what accountants call the "principle of conservatism" it isn't symmetrical. Different rules apply when booking things like assets compared with the timing for booking an obligation or liability. He gave his understanding that Econ One was saying an analyst viewing this will look at the disclosed footnotes, what project it was part of, and whether or not it will likely strengthen or hinder the company.

MR. DICKINSON relayed his understanding that yesterday Goldman Sachs said for some companies this might be an impairment, while for others it might be a benefit as part of the entire project. He said this is why some folks are good at this kind of financial analysis and others aren't. It's not simply adding up numbers. There are different ways of looking at it.

MS. KING said they've been debating this four years and haven't figured out to succinctly describe what happens with respect to how the company treats FT. This project is unique. When that FT commitment is made, it could be eight years before first gas, so the lead time on this project is a big issue. It is a huge financial obligation because the project costs and natural gas prices aren't known. The FT commitment is significant and clearly is something the company must account for.

MS. KING asserted that in a lease-versus-buy analysis, it cannot be gotten around by saying it isn't a true cost just because there is an agreement to pay someone else for that service for a long time. The timing of when that shipping commitment happens is a big issue. To offset that, when the company books reserves there are clear federal Securities and Exchange Commissioner (SEC) criteria.

MS. KING said one criterion is that it be economic. But the company won't know whether the reserves are economic for many years. Highlighting the complexity when booking reserves, she said the timing for this particular project is different in many regards from the timing of taking this obligation on.

2:08:45 PM

SENATOR BUNDE said while he has heard concerns from shippers about rolled-in rates and paying a premium or subsidizing other folks, those who show up initially will get to ship gas 365 days a year, for several years, before the new rolled-in rates. He asked: Isn't there some amortization of that subsidy because of the NPV and that the company is gaining value long before having to pay additional rates?

MR. VAN TUYL answered that BP as a shipper will make an FT commitment if the terms offered in the open season are commercially reasonable. As stated before, BP is concerned about the terms required in AGIA and offered in TransCanada's application, as well as issues such as the withdrawn-partner liability TransCanada is exposed to.

MR. VAN TUYL said those cause concern in evaluating an open season under AGIA. However, BP is committed to get its gas to market and wants to be able to hold an open season that enables customers to entertain commercially reasonable terms, which he said is part of the reason BP and ConocoPhillips joined together to form Denali.

MR. PORTER responded also, saying he was trying to figure out if and how an explorer would wait. For instance, an explorer might realize it didn't have to show up to the initial open season, but could wait for an expansion and thus wait to drill a well. However, the range of possibilities for a prospect is wider for a company that drills now rather than later. Drilling later requires finding enough gas to propose an expansion.

2:12:20 PM

SCOTT HOBBS, Energy Capital Advisors, Consultant to the Administration, noted he was a pipeline executive in the Lower 48 for about 25 years and thus has a fair amount of experience negotiating FT contracts. He said this clearly is a significant, important commitment. However, the potential shippers have done an excellent job today in focusing on risks.

MR. HOBBS emphasized that this also can be a highly valuable asset. It opens up the stranded gas, this incredible resource that has been sitting there a long time. Noting how sophisticated the producers are at negotiating a contract like this, he predicted at an open season they'll negotiate points along the line as cost estimates are continually refined and so on. Up to project sanctioning, he proposed that they'll probably be asking TransCanada to give them an escape hatch if costs get too high and will work out some way to cover those.

MR. HOBBS told members this is what happens in a negotiating process. This is a good thing and is what AGIA promotes, the effort to get the parties moving this project forward. While he agreed it absolutely is a significant risk to the producers, he emphasized that this asset also could create tremendous wealth for those producers. There are two sides to it.

MR. HOBBS added that these same producers took capacity on his own pipeline and were actually shipping gas, in some cases without equity gas and in some cases with equity gas, their own gas flowing through. He said they viewed that transportation capacity as an asset that allowed them to move less-valuable gas to a more valuable market.

The committees took an at-ease from [2:15:46 PM](#) to [2:38:28 PM](#).

[2:38:55 PM](#)

COMMISSIONER GALVIN returned to positive and negative aspects of the FT commitment. He agreed it is worth something; absent other considerations, he said it is the key to a gas pipeline. In the next year or so, there'll be discussion with the producers, the shippers. The key question will be how much the state must throw into the kitty to get a commitment. The question isn't whether it has value, but how to put a price on that. He surmised there won't even be agreement among the shippers as to the price tag. Thus discussions will be fairly complicated and perhaps unique to each shipper.

COMMISSIONER GALVIN opined that maybe this process has been misconstrued as a vote for either the TransCanada or Denali project. Instead, he asserted, this vote is to establish competition in order to provide a choice at some point, to allow an assessment as to whether one is better than the other, what it will cost, and the possibility of having it work one way or the other.

[2:43:01 PM](#)

MS. KING noted TransCanada's application references that it expects the state to thoroughly evaluate and seriously consider the financial and commercial feasibility of dedicating significant state resources to underwriting an alternative financing mechanism for the project. She asked the administration: If the State of Alaska had to take the entire shipping commitment for this pipeline, how would you treat it?

COMMISSIONER GALVIN referred to the first hearing in Juneau and said he'd indicated those are things TransCanada has proposed that it would like the state to perhaps consider doing at some point. However, the administration hasn't done that analysis or made that determination.

MS. KING asked: If the state were asked to sign up for hundreds of billions of dollars of shipping commitment, would it have a financial impact on the state?

COMMISSIONER GALVIN replied yes; the impact would be both positive and negative. Referring to testimony from Goldman Sachs and others, he said one must look at both obligations and opportunities. If the state took an FT commitment, he surmised it would go along with some sales contract whereby the state had the gas as well. As Mr. Ruggiero had indicated, there'd be a tremendous amount of profit as that went forward. All that would be taken into consideration.

[2:45:34 PM](#)

CHAIR HUGGINS remarked that he'd have assumed because it's a potential scenario - whether remote or not - and because it's in the application, the state would have evaluated that somewhat.

MR. PORTER replied that during the stranded gas process the state evaluated participation in a pipeline and believed it could handle 20 percent participation. However, the desire was to not make that choice until the point of project sanctioning and the financial investment decision.

MR. PORTER explained that at that time, there'd be the best chance of understanding project costs and so forth. The state could sell down its interests and receive 100 percent of the value back for each segment including the gas treatment plant (GTP), the Alaska portion, and so on, down to the level of risk that could be handled then. So 20 percent was somewhat high, but there were several outs. He said that economic analysis is there and would just need to be updated.

COMMISSIONER GALVIN stressed the numerous possibilities and indicated the administration had done the analysis necessary to provide information needed on this decision. There will be future decisions; the context is yet to be determined or discovered. For this particular issue, in terms of the state potentially taking a role it hasn't even contemplated, he said no analytical time was spent - it wasn't relevant to the current decision. If it's put on the table at some point, it will be analyzed based on information presented at that time.

[2:48:08 PM](#)

MR. ZAGER said his company doesn't necessarily have a stake in whether the line is built by TransCanada or Denali. He related a lesson learned from business: Keeping options open is a very expensive proposition. In this case, he said, it's not just the money but also the resources if two projects go forward.

MR. ZAGER noted the object is a successful open season. If an open season fails, it goes back to square one. He suggested sitting down and diagramming the two paths, step by step, for getting to a successful open season, an acceptable position considering the timeline, even if it means not every desired detail is included.

[2:49:43 PM](#)

MR. PORTER agreed that there are benefits to ongoing competition but cautioned about duplication. He said the parties plan to put any costs from this point forward into the tariff. The longer duplication occurs, the more somebody's cash will disappear; sunk costs won't show up in the tariff. He gave his understanding that FERC won't allow two separate projects to do research on the same information and put that into the tariff.

MR. PORTER posed an example, saying he doesn't expect it to occur. If TransCanada went through to the FERC certificate and had spent \$160 million, that would be \$160 million in duplication; that cost would have to either be "eaten by the negotiations" or be a sunk cost. That is an additional burden on this project, he asserted, expressing hope that somehow this relationship is fixed soon enough to avoid this scenario.

COMMISSIONER GALVIN agreed generally that keeping options open has costs, but again spoke about the benefits of continuing competition and keeping options open. While there potentially will be duplication if both projects proceed, he said it is stated within the AGIA process that TransCanada won't put any costs that are reimbursed by the state into the tariff; there's

no duplication there. He indicated one project is proceeding under a guarantee, while another is based upon an independent decision of the owners, with no particular guarantee. From the state's perspective, costs versus benefits must be analyzed.

2:53:54 PM

REPRESENTATIVE FAIRCLOUGH asked: Has the administration accepted stipulations from TransCanada inside of the AGIA licensing application that are different from those reviewed by the legislators who voted yes on AGIA? She said she'd never voted on a specific route, a termination point, or tying into a particular line, for instance. While the administration accepted an application that complies with AGIA, it is different from what was voted on by this legislature.

COMMISSIONER GALVIN indicated AGIA created a competitive process under which different potential outcomes were available, and TransCanada provided one.

REPRESENTATIVE FAIRCLOUGH said TransCanada has different stipulations that the state, in approving the license, will accept. It is a different vote. The legislature isn't voting again on the 20 so-called must haves; those are included in the licensing application. But there are different requirements and trade-offs with respect to risks and success, values within the new application.

COMMISSIONER GALVIN replied that using the term "stipulations" gives the impression that it puts obligations on the state that would be in addition to what's in the AGIA statute. He said TransCanada has included a description of a project plan that has a number of different factors that clearly are new and that the legislature had no knowledge of when they voted on AGIA.

COMMISSIONER GALVIN said while those are clearly relevant to this discussion, they aren't set in stone. They can be modified so long as they don't diminish the value to the state or decrease the likelihood of success, and they may change going forward. He said that is a point just between the shippers and the pipeline that is important to today's conversation.

2:57:01 PM

REPRESENTATIVE FAIRCLOUGH made the point that some media people say because the legislature voted for AGIA, it should also vote on this application because the administration has negotiated or accepted a proposal that has a different structure inside of it.

It has been suggested that some items relating to risks and rewards perhaps could be negotiated.

COMMISSIONER GALVIN agreed with the premise. He clarified, however, that the administration didn't negotiate or approve, but evaluated and is bringing forward and recommending.

REPRESENTATIVE FAIRCLOUGH gave her understanding that the administration did request additional clarification from TransCanada in the process that the administration used for four months in evaluating those applications.

COMMISSIONER GALVIN concurred, saying he hadn't meant to contradict that.

REPRESENTATIVE FAIRCLOUGH gave her understanding that the legislature is considering something in addition to AGIA that the administration believes will benefit Alaska.

COMMISSIONER GALVIN agreed.

REPRESENTATIVE FAIRCLOUGH said while constituents have contacted her in support of both AGIA and the Denali project, before the legislature is a yes-or-no question on TransCanada's license. In evaluating the license's likelihood of success, she must consider the availability of gas.

REPRESENTATIVE FAIRCLOUGH noted it was news to her in June that Point Thomson is off the table. She recalled that Commissioner Galvin was asked a question that gives her pause today, relating to the fact that the cost hadn't been calculated to the state in terms of NPV, litigation, or time and how it will affect this project.

REPRESENTATIVE FAIRCLOUGH said Point Thomson has been characterized as an oil field. She gave her understanding that this year additional reservoir information was provided to the Alaska Oil and Gas Conservation Commission (AOGCC) to determine whether the blowdown will be "a way forward." She asked Ms. Foerster about a timeline for AOGCC to thoroughly evaluate the information it has and determine whether it agrees or disagrees with ExxonMobil's findings.

[3:01:13 PM](#)

CATHY FOERSTER, Commissioner, Alaska Oil and Gas Conservation Commission, Department of Administration, indicated there are several ways an evaluation could go. One is that DNR and

ExxonMobil could continue their dispute over lease ownership, and ExxonMobil could decide it's not in its best interests to continue sharing confidential information and could say it is done. The timeline would be over, she noted, since AOGCC would have no ability to evaluate it.

MS. FOERSTER said another way is that the dispute could continue, but ExxonMobil could choose to continue the study because it feels that's in its best interests. Should the dispute continue, AOGCC hopes that'll be the path taken. If so, AOGCC's target for completing the data exchange is the end of 2008 or early 2009. Consultants that AOGCC has hired will probably take an additional three to six months to analyze all that data. So a completed analysis would be mid-2009.

MS. FOERSTER noted there'd be all kinds of bifurcations here. She said if, at completion of AOGCC's analysis, it was clear that ExxonMobil's interpretations were correct, then it would be up to ExxonMobil to come to AOGCC with a request for pool rules that allow developing the field as a gas field. Unless ExxonMobil waited until AOGCC's analysis was complete before doing that, a timely response from AOGCC would be difficult.

MS. FOERSTER said assuming ExxonMobil waited until mid-2009 and then requested pool rules, unless AOGCC continued the hearing by requiring more information and analysis, AOGCC should be able to respond to the request within a month or so after the hearing. So AOGCC would have that answer before the end of 2009, which she believes would be before the open season. That is one possible path.

3:04:12PM

MS. FOERSTER said another possible path is if AOGCC didn't come to the same conclusion as ExxonMobil. If disputes continued, it would stop there. But if ExxonMobil and the state came to some agreement and ExxonMobil returned to acting on the 23rd plan of development (POD) it had proposed, then its timeline has first production from Point Thomson in a small-scale cycling project and two horizontal wells into the oil rim. This would be needed to answer remaining AOGCC questions, whether it's really an oil reservoir and oil rim and whether the gas is in need of cycling.

REPRESENTATIVE FAIRCLOUGH asked whether cycling in those two wells must be explored to understand the timeline.

MS. FOERSTER replied possibly; AOGCC's analyses with its consultants might lead it to the same conclusion as ExxonMobil.

If not, and if it's going down the path where ExxonMobil has the ability to go in and develop, then ExxonMobil's timeline says it may be 2013 or 2014 before first production.

MS. FOERSTER added for the oil rim, if that's going to be a failure, AOGCC will know that pretty quickly, perhaps weeks to a month. If the oil is as viscous as AOGCC believes, the gas will cone down and the water will cone up, and it won't be an oil well anymore. As for cycling, it could take up to six months. In that scenario, AOGCC likely wouldn't have the answer until late 2013 or 2014.

MS. FOERSTER opined that the only way Point Thomson couldn't be available for an open season is if ExxonMobil and DNR were still in dispute. If AOGCC completed its analysis and agreed with ExxonMobil that it is a gas field and that gas can be nominated, and with Mr. Massey's confidence, she surmised ExxonMobil could certainly put its reputation on the table at an open season and nominate Point Thomson gas, betting on the eventuality that in 2014 "we'll get smart."

[3:07:21 PM](#)

MR. PORTER asked: If it is believed that there will be a gas-cycling project, is there a range of time? And what amount of reserves is believed to be necessary?

MS. FOERSTER replied that this is where it gets unfortunate for ExxonMobil and Point Thomson coming into a gas line. The proposed POD that ExxonMobil has offered has only two wells. She asked how much condensate would be produced from cycling.

MR. MASSEY answered 10,000 barrels a day.

MS. FOERSTER said if it produced that and didn't start until 2013 or 2014, then by the time it was wanted for the gas line, less than 5 percent of the condensate would have been produced with just those two wells. If it became her job to convince Mr. Massey that she was right, then in order to get Point Thomson gas into the line in a reasonable amount of time, ExxonMobil would have to undertake a highly accelerated development program to get more cycling production.

[3:09:11 PM](#)

REPRESENTATIVE FAIRCLOUGH indicated Commissioner Irwin of DNR wasn't present and said she understood that there was litigation and that the state needed to protect itself, but also recalled on May 28 in Anchorage he'd said, "Trust me, this team has done

our homework." Saying she needs verification and is seeking confidence, she emphasized that her top criterion is whether there are gas commitments, but she isn't getting clarity on Point Thomson. She asked: Where's the gas?

COMMISSIONER GALVIN noted the administration hasn't taken the position that the legislature had passed the AGIA law and therefore must pass this license. The administration is here to present information on the license and why it believes this is the right one, and to answer questions.

COMMISSIONER GALVIN said the administration's position throughout the AGIA process has consistently been that this project is economically viable with or without the Point Thomson gas being available on day one. Noting this has been supported by the state's analysis and the economic analysis by Black & Veatch, he indicated legislators could accept that or not.

REPRESENTATIVE FAIRCLOUGH gave her understanding that Point Thomson was a consideration when the applications were submitted. She asked: Did TransCanada and the other applicants believe Point Thomson gas would be available to bid?

COMMISSIONER GALVIN deferred to Mr. Palmer.

[3:12:42 PM](#)

MR. PALMER responded that when TransCanada bid last November, it expected the proven reserves on the North Slope would be available, not having the depth of understanding of either the leaseholders or the State of Alaska government.

REPRESENTATIVE FAIRCLOUGH interpreted this as "yes" - proven reserves would have included Point Thomson. She said she wasn't trying to be critical, and quotations say it is hugely economical. But to her, it was always a consideration that Point Thomson had to be included to fill up the pipe. She said she could move past this point, however.

COMMISSIONER GALVIN replied that the administration last year, when testifying on AGIA, expected Point Thomson gas to be included; the same was true last fall. When it reviewed the applications, it found TransCanada expected Point Thomson gas to be available.

COMMISSIONER GALVIN said not until it was amidst its analysis did information began to come in with respect to 1) technical information on what Ms. Foerster had just discussed and 2) how

long it was expected to work through those issues. Only then did the administration recognize the need to be able to tell legislators whether the project's viability depends on Point Thomson, regardless of how things work out on the lease dispute.

COMMISSIONER GALVIN noted that analysis of the more conservative base case, assuming no Point Thomson gas, showed it is fine economically in terms of providing the commercial opportunity for the gas shippers. So the administration believes Point Thomson isn't a critical aspect of this decision.

COMMISSIONER GALVIN suggested a question for Ms. Foerster is whether the remaining fields can supply sufficient gas to fill these pipes. He said when it comes to the life of the project, Point Thomson becomes part of the discussion about a gap between FT commitments at the beginning and what is known to be available immediately.

COMMISSIONER GALVIN explained that gas will come from existing fields, Point Thomson, and yet-to-find (YTF) gas. It's a matter of timing. The economic question right now is whether there's sufficient gas expected, absent Point Thomson, to make this project go. He said the administration believes there is.

3:17:26 PM

REPRESENTATIVE FAIRCLOUGH noted while she's heard that answer over the last 40 days, the calculated costs for the whole project don't include the expense of time or money on that field, Point Thomson. She suggested there is a litigation cost that isn't in the economic model but is a cost to Alaska as a whole. It includes employment, time, and attorney fees, though it might not be an appropriate cost to add to the mix.

REPRESENTATIVE FAIRCLOUGH cited the question of whether the state would permit an ice road this year to bring in rigs to look at cycling. She said the answer received in Anchorage was that it's "squishy" as to whether DNR can say if it will let those permits be approved if the state is in litigation with ExxonMobil over Point Thomson; the state is fighting for its right to take that back. She said she wasn't being derogatory.

3:20:17 PM

COMMISSIONER GALVIN referred to the findings and said in the analysis, particularly for the conservative base case, various production charts show where the administration expects the gas to come from. Primarily due to the state's tax system, the location significantly affects the economics. If it comes from

existing fields, there'll be a lower cost to invest for exploration or development, for instance, and thus there'll be a higher margin economically. With YTF gas, however, the economic calculations had to include all costs associated with exploration, development, and production. Then the timing becomes a question of when it will fill the pipe.

COMMISSIONER GALVIN explained that the economic analysis assumes flat throughput. For the conservative case, if Point Thomson comes in, the assumption is it wouldn't happen until existing production declined to the point where Point Thomson and the other YTF gas nearly fills it up to the initial throughput. In that regard, it was pushed out quite a distance. He mentioned being highly conservative in the economics and saying it won't come in right away or within the first five years.

COMMISSIONER GALVIN also mentioned the litigation and building an ice road, indicating the cost would be fairly insignificant compared with the amounts assumed for exploration and development associated with these projects; he surmised it wouldn't sway the economics much and would become a matter of timing. He opined that the administration had pushed it out so far, it isn't a driving force in that analysis. If it is assumed to come in sooner, it is assumed that it will expand and all the economics will become improved.

3:23:31 PM

MS. FOERSTER emphasized that for three and half years she has been saying Point Thomson might not be available.

COMMISSIONER GALVIN apologized for the oversight.

MR. PORTER asked whether his understanding from the charts was correct, that the YTF gas was defined as half coming from the state and half from onshore federal lands.

MR. SMITH affirmed that.

MR. PORTER asked how Black & Veatch had come to that conclusion. Referring to federal reports upon which he said most of the Black & Veatch analysis was based, Mr. Porter said it suggests about one-sixth of the gas would come from state onshore lands and the rest of the 50 percent would come from federal onshore lands, with roughly half coming from federal offshore lands.

MR. SMITH mentioned the uncertainties of where the gas will come from, indicating similar reports address near-term availability

of supply focused on onshore resources, whereas the longer-term supply incorporates offshore resources. Given the 25-year evaluation period that Black & Veatch utilized in the project, the assumption was a half-and-half split of state and federal onshore properties.

MR. PORTER suggested that is something to be concerned about when looking at economics. If exploration follows the money, the most recent lease sales from onshore state land were marginal at best; he doubted whether they even paid for the processing time for the sales.

MR. PORTER cited examples, saying the National Petroleum Reserve-Alaska hasn't been that aggressive in lease sales as well, and Shell has been aggressive in spending perhaps billions of dollars in the federal Outer Continental Shelf (OCS). Those are examples of concerns he would have with the economic data that the state is proposing on this project.

[3:26:40 PM](#)

MR. SMITH added that one thing Black & Veatch didn't do in analyzing the conservative case of 4.0 Bcf/d without Point Thomson was to include Point Thomson over that entire evaluation period. If it is available at some point down the road, that gas would be onshore-related production that would roll into the mix and enhance the economics for the parties.

COMMISSIONER GALVIN noted ConocoPhillips also has invested a great deal in the OCS.

CHAIR HUGGINS suggested postponing follow-up questions from Representative Fairclough until after the 4 o'clock break.

[3:27:41 PM](#)

REPRESENTATIVE RAMRAS asked if the committees would hear from DNR about the Point Thomson unit.

CHAIR HUGGINS answered that the commissioner of DNR was present, but DNR was concerned about the legal ramifications of testifying on Point Thomson.

COMMISSIONER GALVIN clarified that the Department of Law had advised DNR not to testify with regard to the litigation.

REPRESENTATIVE RAMRAS asked how long TransCanada Alaska has been an entity.

MR. PALMER answered it was formed last year in order to make this application.

REPRESENTATIVE RAMRAS asked: When do you anticipate deciding whether you'll live in Alaska, and will your residency reflect where the headquarters or jobs are, for instance?

MR. PALMER replied that determination will be made in due time if TransCanada is granted the license.

3:30:32 PM

REPRESENTATIVE RAMRAS recalled that during orientation the new legislators were cautioned against falling in love with their own legislation. He asked Commissioner Galvin: Do you think you've fallen in love with this legislation, or is this truly in the best interests of the State of Alaska?

COMMISSIONER GALVIN answered that he loves his wife and family, whereas legislation can come and go. The nice thing about AGIA is that the ultimate question wasn't within its bounds. It went beyond whether this project provides the most NPV and greatest likelihood of success; it asked whether this maximizes benefits for Alaskans. That was freeing in the analysis.

COMMISSIONER GALVIN said there is a different environment now than when AGIA was passed. The bill allowed the commissioners, in the analysis, to look at all options available to the state and choose any path at this point in association with any project that has come forward or could come forward in the future. He said the determination, with a great deal of confidence, was "yes." That wasn't because of falling in love with AGIA or the process; it was because, in the clear analysis of all the options available now, this is the best one.

3:34:10 PM

MR. PORTER said the sovereign's responsibility is to provide legislators and the public with the findings or understandings of a particular law or bill. That includes both positives and negatives. One concern about the presentations to date is what he calls "be wary of the perfect proposal."

MR. PORTER explained that he didn't recall hearing a negative statement about this proposal from the administration, though he is sure there are both positives and negatives. When someone believes in a proposal, there is a tendency to advocate for it, rather than go through an analytical process.

COMMISSIONER GALVIN agreed that was a valid point. He indicated he considers the legislature part of the sovereign and also opined that the findings identify a number of places where there may be something problematic in the application. He said when the conclusion was reached that this maximizes benefits for Alaskans, the administration became an advocate for that conclusion.

COMMISSIONER GALVIN offered to go through anything in the analysis that someone considers lacking or incomplete. He said, however, that he didn't believe there'd been anything specifically called out with regard to the analysis that was indicated as lacking.

[3:36:49 PM](#)

MR. PORTER pointed out that several minutes ago he'd explained a specific piece of the analysis that seems incorrect.

COMMISSIONER GALVIN responded that there has been an extensive discussion of YTF gas, the justification for the assumptions used within the findings for the breakdown of where the administration expects the gas to come from and the expected timeframes. Referring to Mr. Smith's explanation, he said he believes the administration gave a response to the criticism. He added he doesn't believe that indicates a bias in the review, which was based on the best information Black & Veatch had available.

MR. PORTER contended that it is contrary to the best information available, the best information in the report during the years proposed. Unless the administration decides not to follow the report and the analysis and the decisions in the report, he opined, they cannot come up with the conclusions that were reached. He said the report is very clear.

COMMISSIONER GALVIN recalled that Mr. Smith said the report was only one aspect of the analysis; not everything was based on it.

[3:38:24 PM](#)

REPRESENTATIVE RAMRAS told members he thought AGIA would fail. He recalled a schedule showing maximum state exposure of \$877 million if treble damages are asked for, if it ends up "flopping over to Denali" as he anticipates.

REPRESENTATIVE RAMRAS asked Commissioner Galvin: Given that the state through the permanent fund or other entities earns 8.25 percent over a period of time, can you develop a worksheet in a

reasonable time showing the future value of \$877 million if it stays in the state's treasury over the same 25-year period discussed for FT commitments, invested in the highest-earning vehicles available?

COMMISSIONER GALVIN answered yes.

[3:40:18 PM](#)

REPRESENTATIVE RAMRAS said he was more interested in monetizing first gas than expansion of the pipeline. He asked the producers: Which entity is likely to deliver first gas, TransCanada or the Denali project?

MS. KING replied that with what she knows now, as a prospective shipper she'd have more confidence that the Denali project would deliver first gas sooner.

MR. ZAGER answered that he didn't have any particular expertise on this and is fairly impartial right now. However, since one key risk is getting to a successful open season, it is important to weigh the probability of each project getting through a successful open season. Whichever is more likely to do that will be the first to get to first gas, to his belief.

MR. MASSEY responded that he didn't know; neither has the necessary ingredients to result in a successful project. He suggested that the parties involved - the state, ExxonMobil, BP, ConocoPhillips, and TransCanada - need to get together and put in place what's necessary to ensure a successful open season for one project and to move the project forward, rather than duplicating efforts on two projects for something this massive and of this scale and complexity.

MR. VAN TUYL replied that during discussions of the AGIA legislation, BP testified before both the House Finance Committee and the Senate Finance Committee, indicating its desire throughout the process to be able to submit a bid under AGIA. He said BP wanted to be able to participate, but also had expressed concerns about some AGIA provisions, providing a list on a slide of concerns and a complete markup of the bill.

MR. VAN TUYL noted one thing on the slide was that as AGIA was drafted, it was difficult to envision circumstances that allow BP to make a FT commitment to a licensed project under AGIA. He said this was because of many reasons BP has talked about - the unavailability of a negotiated rate protection, subsidization of competitors, and so on.

MR. VAN TUYL, asserting that the Denali project doesn't have those encumbrances, said BP is fully committed to making Denali a success and wants to be able to offer terms to shippers that attract bids at open season. He added that BP wants to be able to get its gas to market, and Denali wants to have customers to fill its pipe for a long time to come.

3:44:41 PM

REPRESENTATIVE RAMRAS asked Commissioner Galvin whether he believes TransCanada or Denali will have the first successful open season.

COMMISSIONER GALVIN answered that he'd like to have that question a year from now. Today the question is whether to award the license, providing competition between the two. What happens will depend on a number of factors that aren't known now, so somebody couldn't really choose between the two.

3:45:50 PM

REPRESENTATIVE KELLY commented that he has increasing respect for the administration, TransCanada, and the producers and wasn't surprised when BP and ConocoPhillips came up with a pipeline project; there was dialogue about that when AGIA went through, so they weren't stepped on. He noted he likes where this is and is leaning strongly toward keeping it that way, with the competition.

3:48:56 PM

REPRESENTATIVE ROSES stated that it was news to him when he heard Ms. Foerster say the administration should have known three years ago that Point Thomson gas wasn't considered available in the open season. At some point, TransCanada will determine whether this is economic. While it was clear during the bid process that the administration was including Point Thomson, now, after looking at the economics, it says Point Thomson isn't there.

REPRESENTATIVE ROSES voiced concern that this opens the door for TransCanada to say it based its bid on having Point Thomson gas available. He then asked whether the AGIA license has three parts: the AGIA bill, the state's request for applications (RFA), and TransCanada's application.

COMMISSIONER GALVIN affirmed that.

REPRESENTATIVE ROSES requested confirmation that parts of TransCanada's application are subject to negotiation on items other than the must haves.

COMMISSIONER GALVIN answered that it's subject to approval by the commissioners and the restriction on the commissioners' discretion, that it can only be changes which don't diminish the value to the state or decrease the likelihood of success.

REPRESENTATIVE ROSES asked: What constitutes the license we're voting on? Did the commissioners approve the application that came in from TransCanada as a whole or parts of it? If the latter, what parts were left out?

[3:52:24 PM](#)

COMMISSIONER GALVIN replied that he wouldn't use the word "approved." Reviewed was the license as a whole, including all requests for clarifying information. All that is part of the application. What has been brought forward and recommended is that if the legislature approves it, the administration will issue the license constituted by all those documents. The whole package becomes the license, and any changes to the parameters are subject to having to be approved by the commissioners, with the condition that it doesn't diminish the value.

REPRESENTATIVE ROSES asked if the legislature gets an up-or-down vote, without the possibility of amending this in any way.

COMMISSIONER GALVIN replied yes.

REPRESENTATIVE ROSES lauded this forum, saying he believes this is one of the best pre-negotiation hearings he has ever witnessed, but it's also a perfect opportunity for a pretrial hearing. He asked: If the legislature approves this bill, is it your understanding that along with it there is an effective date for the license?

COMMISSIONER GALVIN affirmed that.

REPRESENTATIVE ROSES asked: If we change that effective date, would that be considered an amendment?

COMMISSIONER GALVIN answered that he didn't believe the legislature would actually establish that effective date. As the statute is written, the legislature would approve the license and it would be issued as quickly as practical. Depending on the effective date of the bill, that establishes

when the state has the authority to issue the license. That effective date would be the date it is actually issued.

REPRESENTATIVE ROSES asked: So there's an effective date on the bill that we could modify as part of our process and it wouldn't be amending the bill, just the effective date?

COMMISSIONER GALVIN suggested that is a good question for the lawyers. He said the caveat was because the question becomes whether the effective date has to be before the deadline.

[3:55:29 PM](#)

REPRESENTATIVE ROSES responded that he'd get a legal opinion. He explained that he'd asked because TransCanada may lose this summer's work because it cannot do the major fieldwork for next year. Thus he suggested it might be in the state's best interests to delay the effective date in order to continue the necessary dialogue and hopefully get some other issues out of the way and perhaps come out of it with a partnership.

COMMISSIONER GALVIN deferred to Mr. Palmer to discuss what TransCanada would do once the license is issued, absent field work, that would drive the schedule.

MR. PALMER responded that, as he has described to the parties over the last month, TransCanada assumes now that the license will be issued at the beginning of August. A delay past that will delay the open season, FERC filing, and in-service date.

The committees took an at-ease from [3:56:56 PM](#) to [4:10:08 PM](#).

[4:13:16 PM](#)

REPRESENTATIVE OLSON asked Ms. Foerster: If the 23rd POD had been approved and implemented by the partners in the Point Thomson unit, would that have provided enough information to have a grasp of the offtake available from there?

MS. FOERSTER replied that if the 23rd POD had been approved in the last six months or so, it would have bought six months' time, moving back those timelines she'd described. If the analyses with AOGCC's consultants were enough to give the answer, AOGCC likely would have an answer by the end of this year, but not today. If production were required in order to get an answer, then it would still be 2013.

REPRESENTATIVE OLSON acknowledged the litigation and that Commissioner Galvin perhaps couldn't answer. He asked if the 23rd POD was rejected because it was "too little and too late."

COMMISSIONER GALVIN responded that he wouldn't comment primarily because he wasn't involved directly enough to say whether that was an accurate generalization.

REPRESENTATIVE OLSON noted that was the excuse he'd received whenever he'd asked someone why it was rejected.

4:15:45 PM

REPRESENTATIVE FAIRCLOUGH mentioned the likelihood of success and opined that Point Thomson should have been part of that picture; she acknowledged the difference of opinion. Turning to access and voting rights, she said there should have been some kind of contract and surmised there is less risk for the shippers if the throughput matches the owner equity. She asked how TransCanada would establish voting rights, recalling that its application seeks equity interests for the shippers.

MR. PALMER answered that TransCanada has heard clearly from members of the legislature that they want TransCanada to attain more than 51 percent. ExxonMobil and others say they'd like shipping commitments to equal their equity. However, that leaves TransCanada at zero, and TransCanada has no interest in being a builder-operator of someone else's pipeline.

MR. PALMER said if granted a license, therefore, TransCanada will have to balance those desires, including its desire to get something out of its investment of time, talent, and money. Items like voting interests are premature at this point and will be established as discussions ensue with potential partners.

4:19:00 PM

REPRESENTATIVE FAIRCLOUGH asked Commissioner Galvin to explain the difference between the owner-equity issue for the TransCanada pipeline versus the Denali pipeline.

COMMISSIONER GALVIN asked that Representative Fairclough narrow the question.

REPRESENTATIVE FAIRCLOUGH said the question was specific as far as voting goes. There are two ways to solve the problem on equity interest. One would be that voting interests are different from equity and throughput. She asked the shippers to

confirm that there is less risk if their committed throughput matches their equity.

MS. KING answered yes, her company sees less risk if the ownership interest aligns with the shipping commitment.

CHAIR HUGGINS asked whether there was a contrasting perspective.

REPRESENTATIVE FAIRCLOUGH said her point was that TransCanada, inside its licensing application, allows an owner equity interest. She asked how that is different from the Denali project that would pull shippers together in the same way.

COMMISSIONER GALVIN responded that he believes the only difference between the two is what the pipeline company's obligation would be to the state. Under TransCanada's proposal, when it brings in equity partners it would still be obligated to the state's "must haves" and to comply with the obligations of the license. Under the Denali project there wouldn't be those obligations.

REPRESENTATIVE FAIRCLOUGH said TransCanada under AGIA has no percentage requirement of ownership.

COMMISSIONER GALVIN replied the end result is this: TransCanada Alaska is getting a license. At any point and under the terms of AGIA, it can transfer that to other parties or bring in equity partners, subject to approval by the commissioners. The company has offered to have shippers negotiate terms of their equity participation. But it's still bound by the AGIA requirements, the contractual obligations to the state.

[4:23:09 PM](#)

REPRESENTATIVE FAIRCLOUGH said she understands that within the limited liability company (LLC) partnership, the company would have to have all 20 "must haves" for the state; specific to owner-equity interest, however, there really isn't a difference except in compliance with those. The shippers could still own the entire line, with 25 percent each for Chevron, ExxonMobil, ConocoPhillips, and BP; that is the extreme under either the TransCanada pipeline or a Denali pipeline.

COMMISSIONER GALVIN replied that the entire license must be complied with. The commissioners couldn't approve a change in the license that would violate the 20 must haves, but also couldn't approve any change in the license that would diminish its value. That would be the obligation of the licensee,

whether it's owned by TransCanada or owned in equal shares by the producers.

[4:24:56 PM](#)

REPRESENTATIVE FAIRCLOUGH said her point is that the same people could end up owning the line.

MR. PALMER responded that while that could happen, it's not likely that TransCanada will decide to end up with zero percent interest in this pipeline after pursuing this project for the last year under AGIA and going through this legislative process.

REPRESENTATIVE FAIRCLOUGH said her point is a range of possibilities, with that being an extreme case, as is 100 percent ownership; she mentioned being able to finance the pipeline.

MR. PALMER replied that TransCanada has the ability to finance 100 percent of this project if it owns 100 percent and obtains solid transportation agreements. TransCanada is also offering to bring in parties as partners if they wish to do so; it would dilute its ownership in that case.

[4:26:54 PM](#)

MR. PORTER said Representative Fairclough had a good point. There are various options for ownership in the pipe. One example is that TransCanada is not interested in owning the GTP. As for the Alaska portion of the line, he said he didn't know TransCanada's position on that, but there has been discussion in the past indicating the company would be willing to have a different proportion in that, compared with the Canadian portion. He said for each portion of the line, negotiations can occur and ownership can be adjusted accordingly so there may be a solution that works for all parties.

[4:27:44 PM](#)

REPRESENTATIVE FAIRCLOUGH mentioned gas and financing capacity. She asked Mr. Palmer whether having multiple participants reduces risk, as she has heard consistently. She specifically asked whether having other equity interests would mitigate some of TransCanada's risk.

MR. PALMER replied that if that became something valued by potential customers as they determine whether to commit their gas, yes, that would improve the likelihood that the project would proceed. If those parties do become parties in the project, they'll take a portion of the project risk as a result,

and TransCanada will proportionately reduce its potential opportunity.

REPRESENTATIVE FAIRCLOUGH said the third criterion for the likelihood of success that she's using for evaluation is working inside a government structure. She noted Canadian First Nations issues are an unknown risk, whereas the rights-of-way held by TransCanada are definitely a plus in her review. Also uncertain is Canada's taxing structure and what NEB will do inside Canada. Furthermore, the permitting process inside Canada will be perplexing, and the Mackenzie project and the availability of labor and steel must be considered.

REPRESENTATIVE FAIRCLOUGH said the risk - or the investment, whichever way one chooses to look at it - is the \$500 million purse Alaska is putting up. She recalled Representative Gatto had talked about treble damages and a limitation, but said it's a floating number and she isn't sure what it is; she commended the commissioner for trying to provide a number between a \$700 million range and \$2 billion range. She indicated she needed to feel confident about the ranges in order to vote yes and take a chance on this license.

REPRESENTATIVE FAIRCLOUGH also said the previous partnership liability has been mitigated by what she has heard, although the shippers still have concerns; she expressed willingness to tell her constituents it isn't such a red flag. However, she said the "locking and tying" of the distribution, raised by shippers over the last two days, interests her; she mentioned passing on the termination costs and expressed hope that if the license is approved, that will be negotiated.

4:31:10 PM

REPRESENTATIVE GATTO said if the state decides to throw TransCanada under the bus at the worst possible time and TransCanada loses an estimated \$20 billion in potential gains, the treble damages are capped at perhaps \$1.8 billion, an unknown number that is a great deal less than the amount of revenue TransCanada could claim it is entitled to because it was awarded a license. He asked Mr. Palmer whether the treble damages are disadvantageous to TransCanada in that regard.

MR. PALMER answered that the treble damages clause, as TransCanada understands it, does restrict the amount of money TransCanada could receive if the state changed its mind and provided fiscal advantages to a competing project. So, yes, it restricts the amount of money that TransCanada could claim from

the state and it stipulates that amount; he noted Commissioner Galvin had provided some estimates during the last month or so.

4:32:44 PM

CHAIR HUGGINS thanked the participants. SB 3001 and HB 3001 were held over.

CHAIR HUGGINS adjourned the joint meeting of the Senate Special Committee on Energy and the House Rules Standing Committee at 4:33:44 PM.