

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

June 16, 2008

9:19 a.m.

MEMBERS PRESENT

HOUSE RULES STANDING COMMITTEE

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

SENATE SPECIAL COMMITTEE ON ENERGY

Senator Charlie Huggins, Chair
Senator Bert Stedman, Vice Chair
Senator Lyman Hoffman
Senator Lesil McGuire
Senator Donald Olson
Senator Gary Stevens
Senator Joe Thomas
Senator Bill Wielechowski

MEMBERS ABSENT

HOUSE RULES STANDING COMMITTEE

All members present

SENATE SPECIAL COMMITTEE ON ENERGY

Senator Kim Elton
Senator Lyda Green
Senator Fred Dyson
Senator Thomas Wagoner

OTHER LEGISLATORS PRESENT

Representative Bob Buch

Representative Harry Crawford
Representative Nancy Dahlstrom
Representative Mike Doogan
Representative Les Gara
Representative Berta Gardner
Representative Carl Gatto
Representative Max Gruenberg
Representative Mike Hawker
Representative Lindsey Holmes
Representative Kyle Johansen
Representative Scott Kawasaki
Representative Wes Keller
Representative Mike Kelly
Representative Bob Lynn
Representative Kevin Meyer
Representative Mark Neuman
Representative Kurt Olson
Representative Jay Ramras
Representative Bob Roses
Representative Woodie Salmon
Representative Paul Seaton
Representative Bill Stoltze

Senator Con Bunde
Senator Bettye Davis
Senator Fred Dyson
Senator Johnny Ellis
Senator Gene Therriault
Senator Thomas Wagoner

COMMITTEE CALENDAR

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

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

PREVIOUS COMMITTEE ACTION

BILL: HB 3001

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; Assigned to Subcommittee |
| 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 |
| 06/07/08 | (H) | Heard & Held |
| 06/07/08 | (H) | MINUTE(RLS) |
| 06/08/08 | (H) | RLS AT 1:00 PM TERRY MILLER GYM |
| 06/08/08 | (H) | Heard & Held |
| 06/08/08 | (H) | MINUTE(RLS) |
| 06/09/08 | (H) | RLS AT 10:00 AM TERRY MILLER GYM |
| 06/09/08 | (H) | Heard & Held |
| 06/09/08 | (H) | MINUTE(RLS) |
| 06/10/08 | (H) | RLS AT 10:00 AM TERRY MILLER GYM |
| 06/10/08 | (H) | Heard & Held |
| 06/10/08 | (H) | MINUTE(RLS) |
| 06/12/08 | (H) | RLS AT 10:00 AM FBX CARLSON CENTER |
| 06/12/08 | (H) | Heard & Held |
| 06/12/08 | (H) | MINUTE(RLS) |
| 06/13/08 | (H) | RLS AT 10:00 AM FBX CARLSON CENTER |
| 06/13/08 | (H) | Heard & Held |
| 06/13/08 | (H) | MINUTE(RLS) |
| 06/14/08 | (H) | RLS AT 10:00 AM FBX CARLSON CENTER |
| 06/14/08 | (H) | Heard & Held |
| 06/14/08 | (H) | MINUTE(RLS) |
| 06/16/08 | (H) | RLS AT 9:00 AM ANCHORAGE |

BILL: SB 3001

SHORT TITLE: APPROVING AGIA LICENSE

SPONSOR(S): RULES BY REQUEST OF THE GOVERNOR

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|----------|-----|--------------------------------------|
| 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 |
| 06/07/08 | (S) | MINUTE(ENR) |
| 06/08/08 | (S) | ENR AT 1:00 PM TERRY MILLER GYM |
| 06/08/08 | (S) | Heard & Held |
| 06/08/08 | (S) | MINUTE(ENR) |
| 06/09/08 | (S) | ENR AT 10:00 AM TERRY MILLER GYM |
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| 06/14/08 | (S) | MINUTE(ENR) |
| 06/16/08 | (S) | ENR AT 9:00 AM ANCHORAGE |

WITNESS REGISTER

J. MARK ROBINSON, Director
Office of Energy Projects
Federal Energy Regulatory Commission (FERC)
Washington D.C.

POSITION STATEMENT: Provided comments and responded to questions during the day's presentations.

JEFF WRIGHT, Deputy Director
Office of Energy Projects
Federal Energy Regulatory Commission (FERC)
Washington, D.C.

POSITION STATEMENT: Provided comments and responded to questions during the day's presentations.

MARK JOHNSON, Commissioner
Regulatory Commission of Alaska (RCA)
Department of Commerce, Community, & Economic Development
(DCCED)
Anchorage, Alaska

POSITION STATEMENT: Provided comments and responded to questions during the day's presentations.

JANIS WILSON, Commissioner
Regulatory Commission of Alaska (RCA)
Department of Commerce, Community, & Economic Development
(DCCED)
Anchorage, Alaska

POSITION STATEMENT: Provided comments and responded to questions during the day's presentations.

ACTION NARRATIVE

CHAIR CHARLIE HUGGINS called the joint meeting of the House Rules Standing Committee Subcommittee on AGIA and the Senate Special Committee on Energy to order at [9:19:17 AM](#).

HB3001-APPROVING AGIA LICENSE
SB3001-APPROVING AGIA LICENSE

[9:19:24 AM](#)

CHAIR HUGGINS announced that the first order of business would be a presentation of the Federal Energy Regulatory Commission (FERC) process.

[9:21:47 AM](#)

J. MARK ROBINSON, Director, Office of Energy Projects, Federal Energy Regulatory Commission (FERC), introduced Jeff Wright, Deputy Director of the Office of Energy Projects (OEP) for the Federal Energy Regulatory Commission (FERC). Mr. Robinson explained that the OEP is responsible for the maintenance, operation and licensing of 1,600 to 1,700 hydroelectric projects

throughout the country; the authorization and operation of the 6 or 7 liquefied natural gas (LNG) facilities, and several LNG projects that are under construction. He further explained that OEP is responsible for siting gas storage facilities throughout the country, typically along the East coast and the Gulf of Mexico. Additionally, he stated that the OEP is responsible for citing transmission lines, such as a 500 kV line between California and Arizona. Finally, the OEP is responsible for stipulating natural gas pipelines. He related that OEP provides the "steel and concrete" at FERC, to ensure adequate infrastructure and that the infrastructure is maintained and operated in an appropriate fashion. He touched on two points, first that the OEP is ready to process an application. Second, "the gas world is changing."

[9:23:49 AM](#)

MR. ROBINSON characterized his bias as "to see energy from the ground up" as opposed to "from the consumer back." He opined that a person's bias results in different answers to the same questions and same set of facts. He noted that people who see projects from the "consumer back" tend to think of the "tail end" incentives, or "How can we provide an incentive from 'way out on the pay back' to get something built?" However, someone who sees infrastructure "from the ground up" views it from the perspective of, "How are we going to get somebody to spend the 'first dollar'?" He related that discussions are held on plenty of projects, but this is different from projects for which the money is being spent. He elaborated that OEP does not make projections on the price of gas in 20 or 30 years. Instead, the OEP tracks actual expenditures in the U.S. to provide the best indicator of energy trends. He related that he personally learned this lesson in Alaska, when in the early 80s he was the environmental impact manager for the Susitna Hydroelectric Project. He stated that at that time, five economists all projected \$100 per barrel oil in six months to five years. He pointed out that the economists who predicted \$100 per barrel oil prices were berated in 1982. He recalled oil prices were at \$12 per barrel in 1983, which was the opposite of the economists' projections at the time. He continued:

The lesson I learned, and it's been repeated a hundred times through the remainder of my career has been that it's real hard to predict what things will happen with the cost of energy, or where energy is going to come from. You just have to live it and you have to react to it in 'real time.' That's the world I live in.

And I make judgments and answer questions based upon what I see right now as I live through it not what I think is going to happen 10 years from now. I just haven't had a lot of success in doing that...identifying biases.

[9:27:14 AM](#)

MR. ROBINSON related that FERC is ready and that "our process works." He offered that FERC has placed 12,000 miles of large diameter pipe in the United States (U.S.) since 2000. For comparative purposes, he noted that the number of miles of transmission lines in the Lower 48 that has crossed state lines since 2000 is 668 miles or 14 total segments. He reiterated that FERC has a process is a transparent, thorough, and tested process that performs well.

MR. ROBINSON referred to his PowerPoint presentation slide labeled, "Alaska Natural Gas Pipeline Project FERC's Environmental Review Process". He noted two areas of interest. The first portion of the slide shows the timeline for the pre-filing review and application preparation, and the second shows the statutory time limits for environmental review and FERC action. He explained that the pre-filing process developed by FERC has been in effect since 1995 and has been used at the state level throughout the Lower 48. He offered that the Congress requires this process for all LNG terminals. He elaborated that FERC pre-filing process involves all constituents at the earliest stage of the decision who become vested in the development of the application. He highlighted that FERC never advocates for a project. Instead, FERC advocates for the process of a project. Mr. Robinson opined that that this approach involves the parties to make joint decisions to shape the application into the best possible project. He explained that the next phase of the project is depicted in the second bar on the slide, during which the project is evaluated, judged, and assessed by FERC to determine if it is in the public interest. He stressed that FERC is "deeply involved" with the development of an application in the pre-filing process, but only to the extent that it works to create the best possible project before evaluating whether it makes sense to proceed with the project. He offered attributes to the pre-filing process such that FERC begins scoping the project with the agencies as the project is developed in order to ensure that the agencies are assisting in identifying EIS issues to implement the National Environmental Policy Act. He further offered that FERC prefers to resolve issues as they are

identified. He recalled previously an issue would arise and would become embedded in the agency's data storage system. Thus, the issue would "pop up" at every stage of the project's process. However, he surmised that when an issue can be resolved during the pre-filing stage, only the current issues remain for FERC commissioners to consider and evaluate. He characterized the primary benefit of the pre-filing process as "separating the wheat from the chaff." He recapped the pre-filing process as "getting everyone together, making them work together, solving the issues, getting them out of the way, and you are left with is what is significant."

[9:33:03 AM](#)

MR. ROBINSON reviewed the internal FERC application process. He explained that once FERC receives an application that collectively OEP's job is to create a record with recommendations that can withstand any challenge. While EIS's have been challenged in his 30 year tenure, he stated that FERC has never lost an EIS case. He opined that the process works "for everyone, not just the applicant, but also the states, the federal agencies, and the non-governmental organizations." Further, he highlighted that the non-governmental agencies support FERC process.

[9:34:22 AM](#)

MR. ROBINSON referred to the second slide labeled, "Alaska Pipeline Timeline," and projected that if the pre-filing process for a pipeline applicant began in June 2008, that FERC would act by August 2011. If an applicant does not begin the process very soon, the loss of another field season could set the project back a year, he opined. He noted that the critical path "for gas to flow in Alaska" begins with the pre-filing process. He acknowledged the legislature has spent a lot of time discussing the open season and how that process will work. He offered to answer questions, but stressed that from FERC's perspective it is critical to start the pre-filing process in order to identify the issues surrounding the project.

MR. ROBINSON asked to spend a few minutes to discuss the "state of gas." He offered that what makes a difference in "how real a gas find is" at the time the investments are made. He opined that companies don't invest \$1 billion or \$2 billion into a project without having "something you can put in that pipe." Thus, he stressed the importance of "watching where the money goes" with respect to the how a gasline project will fit into

the development of the growing world market on natural gas. He related that "lots of gas is out there" with discoveries of proven reserves of 61 hundred trillion cubic feet of gas (Tcf) largely due to oil exploration. He estimated that the Cutter field [Shell U.K. LTD's field in the southern North Sea] contains 900 trillion cubic feet (Tcf) of unassociated gas that is a proven reserve. He said, "The trick is monetizing that gas in the world market." He referred to investments in shale gas extraction ranges from the Barnett oil shales in North Texas, which he said is a 3.7 Bcf/d field projected to go as high as 9 Bcf/d; the Fayetteville shales in East Arkansas estimated at about 1 Bcf/day. He further related that "lots of big projects" are being produced on the East Coast of the U.S. including the Marsalis shales in West Virginia and Pennsylvania. He advised that infrastructure is currently being built. He offered that many countries are able to finance projects, even unlikely countries such as Nigeria - which is in the process of building a \$3 billion liquefaction facility. He pointed that currently the only country that is having difficulties in attracting investments is Iran. He opined that Iran will need foreign investment in order to bring its gas to market. Otherwise, he noted, everyone else is developing infrastructure to provide gas for a world market. He said, "It changes the face of the gas world on an almost daily basis."

[9:42:26 AM](#)

MR. ROBINSON referred to the Arctic region and related that the Snøhvit field in Norway has been developed. However, Snøhvit is currently shut down to address some issues due to the Arctic environment. He noted that FERC will need to "take a hard look at exactly how we're going to get that gas in the pipe and down to the market." He opined that Alaska among the gas fields is probably in the best "posture of any of them" to come to market due to its experience and existing corridor and infrastructure in place, in large part, that can "piggy back" and bring gas to market. However, he urged that in order to tie this all together, that Alaska will need to "spend that 'first dollar'" to pre-file and take advantage of that position to begin the necessary field studies. He maintained that FERC "stand ready" and has the experience and process that will work for everyone.

[9:45:19 AM](#)

SENATOR THOMAS, with respect to the Arctic gas issue, asked whether Mr. Robinson is referring to the conditioning plant that

may be difficult, or if he could identify what specific concept or ideas that compare with Snøhvit that may cause problems.

MR. ROBINSON answered that the issue is due to the conditions in the Arctic region. However, he noted that FERC commissioned an LNG facility in the Gulf [of Mexico] and despite planning and engineering that things don't always work well. While he acknowledged that Alaska has construction experience in the Arctic, he offered Snøhvit as an example to illustrate problems can accentuate and can "really go bad quickly."

[9:46:43 AM](#)

REPRESENTATIVE FAIRCLOUGH inquired as to whether Mr. Robinson could address the matter of FERC review for a license if Alaska only has 2 Tcf of gas available. She posed a scenario in which a licensee came forward without committed gas reserves. She noted that Prudhoe Bay has 2 Tcf available, but that the TransCanada proposal is based on a 4.5 line.

MR. ROBINSON answered that FERC reviews the sizing of a project and that FERC's engineers will determine whether the project is properly sized for gas volumes. However, he explained that the OEP will create the record and make recommendations to the five FERC commissioners, who are appointed by the President of the United States and confirmed by the U.S. Senate, and who will ultimately make any decisions. He offered that historically the commission has recognized that the country needs infrastructure and that the commission has accepted sizing that has been larger than what has been required. Therefore, the commission could potentially authorize a pipe for a smaller volume than requested, he noted.

[9:49:26 AM](#)

REPRESENTATIVE FAIRCLOUGH inquired as to whether the commission has ever awarded an application or recommendation for a pipe in the ratio for a 4.5 Bcf line with only 2 tcf "willing to come down the line."

MR. ROBINSON replied that the commission has never authorized a 4.5 Bcf pipe.

JEFF WRIGHT, Deputy Director, Office of Energy Projects, Federal Energy Regulatory Commission (FERC), offered that under its previous certificate policy a pipeline could be certificated for as little as 20 percent of the capacity contracted, which FERC

has previously authorized. He pointed out that under its most recent pipeline policy which came into effect in 1999, contracts are not required as "proof of need to come into FERC." However, when FERC approves a project, it requires as a condition of its approval that until the contracts are acquired, that "you cannot break ground." He explained that contingency is due to environmental sensitivity. He offered that the risk of under recovery is on the pipeline, not on "the people who ship the gas, or who buy the gas."

[9:51:45 AM](#)

SENATOR WAGONER inquired as to how FERC interfaces with the National Energy Board (Canada) (NEB) on projects that transports product through both countries.

MR. ROBINSON noted that FERC has adopted a memorandum of understanding (MOU) with the NEB. He offered that FERC meets with the NEB three times a year on cross-border projects. He further offered that FERC has fostered similar relationships with Mexico's Commission for Regulatory Energy (CRE). He characterized FERC's relationship with the NEB as an extremely good relationship.

MR. WRIGHT pointed out that the Alliance pipeline is a major example of cross border cooperation.

[9:53:20 AM](#)

SENATOR STEDMAN inquired as to how many certificates have been issued without any commitment to fulfill the gas shipment since the project under consideration is somewhere between \$20 and \$40 billion.

MR. ROBINSON answered that neither he nor Mr. Wright have a recollection of a project being authorized that did not have some portion - usually 50 [percent] or above - of firm commitments for gas transportation. Although no requirement exists, FERC must weigh its desire to have infrastructure in place against the possibility of some infrastructure being started that "has some Ramuel effects and there's no benefit since nobody ever ships gas."

MR. WRIGHT reminded committee members that while FERC staff makes recommendations, FERC's commissioners are free to make decisions based on what they think is best for the project and for the nation.

[9:55:19 AM](#)

SENATOR STEDMAN relating his understanding that if a project is not fully subscribed, that the entity building the gas incurs the liability to handle the issue [of full capacity], not "the folks that are shipping the gas."

MR. ROBINSON opined that it would be hard to imagine that a project of this magnitude could be constructed without having volumes under firm contract to pay for the pipe. He further opined that ultimately the shippers and their contracts would be held liable. He offered that the financial institutions will determine whether or not it can provide the financing and will evaluate the relationship between the volume of the pipe and the pipeline owner, construction costs to build the pipe, and the return based on the contractual costs of the shippers.

[9:57:38 AM](#)

SENATOR THERRIAULT related his understanding that shipping rates are set based on full shipping capacity. He asked for clarification of shipping rates. He posed a scenario in which a shipper bids on 50 percent of the pipe's capacity and the remaining 50 percent is not filled. He inquired as to whether the shipper would only pay for the 50 percent that was bid.

MR. WRIGHT answered that Senator Therriault is correct. He further explained that the shipper would not be responsible for any shortfall in contractual volumes. Instead, the shipper would pay the fair rate based on the capacity of the pipeline.

SENATOR THERRIAULT inquired as to the debt equity rate promised through AGIA. He related his understanding that FERC's usual practice is to accept a pipe's actual capital structure for rate making purposes as long as it is within a "zone of reasonableness."

MR. WRIGHT agreed with Senator Therriault.

SENATOR THERRIAULT related his understanding that the "zone of reasonableness" is determined by examining other pipeline projects.

MR. WRIGHT concurred.

SENATOR THERRIAULT further related his understanding that some pipelines have equity of up to 60 percent, noting that the Rockies pipeline has equity of 55 percent. He inquired as to whether the equity would be considered to determine the "zone of reasonableness."

MR. WRIGHT answered that FERC also evaluates risk in terms of projects that are similar in terms of risk. He pointed out that the TransCanada gasline is a highly risky project as opposed to a Rockies project due to the availability and accessibility of the gas in the Rockies project. He further noted the Rockies project is a \$2 billion project. He opined that the risk factors to assess the proper debt equity ratio would be different for a \$30 billion project.

SENATOR THERRIAULT inquired as to whether FERC's general "rule of thumb" is to focus on the "zone of reasonableness." He further inquired as to whether FERC would determine that it is too much equity specifically.

MR. WRIGHT replied that he did not think that "there is a handbook" per se to identify the debt equity ratio of a project. However, he offered that experienced personnel in the rate section would make a proper determination.

SENATOR THERRIAULT offered his understanding that AGIA license provides the state an agreement from the pipeline company license that the equity would be 30 percent, with 70 percent debt which makes a difference in the tariff of about a dollar. He pointed out that many are concerned that TransCanada has suggested it initially desires a rate of return of 14 percent. He related his understanding that if [the rate of return] goes up two percent or down two percent that would affect the tariff by about 25 or 26 cents. Thus, he surmised that it is very meaningful that the debt equity agreement the state would have through AGIA is a dollar on the tariff. He inquired as to whether the rate the state achieves through AGIA would be beneficial to Alaska.

MR. ROBINSON offered that he and Mr. Wright are expert in FERC process and can offer explanations on the review process. He opined that neither of them would comment for or against a particular position. He said that he emphasized early on that FERC does not make projections on the value or the cost, but solves problems as they arise. He opined that others can make decisions based on predictions, but reiterated "that's not how we do it."

SENATOR THERRIAULT said:

But, clearly because of this zone of reasonableness you could have a pipe approach you and ask for a much higher equity interest in the pipe, which would drive the tariff up and could very well be approved. But, if we have a partner that agrees to a lower equity, that's going to be taken into consideration.

MR. ROBINSON responded that FERC would "absolutely take it under consideration."

[10:02:59 AM](#)

SENATOR BUNDE inquired as to whether a \$30 billion project could be competitive.

MR. ROBINSON answered that he cannot make a prediction. He opined that at the point when the final investment decision (FID) is when someone will need to take "the hard look" and say, "Yes, we think we can sell the gas and make the money back." He noted that the FID [for the gasline] is too far out to make a determination.

SENATOR BUNDE inquired as to whether it would be reasonable to assume that delays would have a negative impact.

MR. ROBINSON related that FERC has made it clear in its reports to the Congress that "we felt like there was a need to move forward as quickly as possible." He continued:

There's so much money going into the ground in other places to bring so much gas to play that at some point, given the cyclic nature of how gas is worked in the U.S., that you go periods where there is too much gas and periods that there's not enough gas, and that is not based upon how much gas is in the ground. That's based on how much infrastructure has been put into place.

MR. ROBINSON explained that in 2000 the U.S. imported 0.2 Bcf/day of LNG. Last year, he noted the U.S. imported 3 Bcf/d. He explained that during that timeframe "money went into the ground to bring North American import capacities up to 20 Bcf/d by 2010." He stated that the infrastructure is in place, "the money has been spent," the gas exists, and that worldwide, 17

MMcf/day of new liquefaction capacity is under construction. He noted that the gas will supply some demand. He said, "At any point in time when there's a need for gas; it's best to move then."

SENATOR BUNDE asked whether FERC would view competing proposals as positive or negative.

MR. ROBINSON said:

Well, there is a personal answer and a professional answer to that. I'm responsible for the use of the resources. I've got 315 engineers and scientists and probably another 150 contract engineers and scientists that I have to direct to where I think it is appropriate to use them. Personally, I would love, if we have one application. Professionally, that doesn't happen. I've had many instances where I've had multiple projects proposed to serve essentially the same need and the commission, I think, quite wisely over the past 20 years has developed and held very firm under a lot of pressure to maintain the posture that we will entertain all the applications that come in and evaluate them. And determine if they're in the public interest, and if they are, to authorize them and let the market decide which particular project is going to be built. Having said that, every state I go to says, 'we're different.' Every state, and I've done infrastructure in just about every state.

MR. ROBINSON noted that Alaska is different. He opined that aspects of this project and this development make it less predictable than other projects. He noted that Alaska has legislative history, has had interactions with those principals trying to develop gas. He offered that some commissioners that will make the decisions have not yet been appointed since the commission will make its decision in August 2011 or later. He stated that FERC will have to make the decision at the time of investment.

[10:08:14 AM](#)

SENATOR MCGUIRE inquired as to whether Mr. Robinson views any downside to pre-filing.

MR. ROBINSON responded that it would be a downside if the company that pre-files is not ready and is denied by FERC.

However, he noted that if the applicant that is serious about the project and is willing to spend the money to make it happen, that there are no downsides.

SENATOR MCGUIRE offered a hypothetical situation in which a conglomerate - two of the three major producers - is serious about a gasline project, has the ability to finance the project, and has the experience. She inquired as to what would prevent the group from pre-filing.

MR. ROBINSON answered that he would answer specifically. He said that he advised the [Denali Project] to start pre-filing as soon as possible and that the group is currently working on pre-filing.

SENATOR MCGUIRE asked how long that process would take.

MR. ROBINSON answered that the best-case scenario would be that studies will be undertaken that would only take one season to complete. However, he stated that the OEP is planning on two summer seasons to complete the studies and the project engineering. He related that information is not available on the size and cost of the proposed project yet since it is part of the pre-filing process. He projected that it will take 18 months for pre-filing, although the OEP will advise the applicant when the pre-filing is completed and whether the application can be filed.

SENATOR MCGUIRE referred to Senator Bundy's earlier question with respect to the weight that FERC would give to two applications. She inquired as to the weight that FERC will give AGIA.

MR. ROBINSON responded that the OEP will evaluate the application it receives. He explained that his staff does not review the applicant's decision making process or board room discussions leading up to its application. However, the OEP evaluates applicants from that point forward. He related that benefits are derived from any consensus. He said, "Major projects are tough. They are really tough to get done. The greater the consensus that any area has on what should be done, the higher the probability that it will ultimately be successful." He surmised that it is pretty easy to disrupt a big project. The more that people coalesce, the higher the probability that the project will be built and the gas will flow, he opined.

[10:14:54 AM](#)

CHAIR HUGGINS asked for clarification on the group that Mr. Robinson urged to pre-file, noting that he assumes that he was referring to the Denali Project.

MR. ROBINSON agreed. He then explained the FID process is the point in time in which the project managers seek financing to build a project. He characterized the FID as the "real decision making point." He offered that FERC does not build anything, but allows projects to "go find out" if they can build a project and that [FERC] typically works with the investment community to "see if the money is going to flow to them or not."

MR. WRIGHT explained that some projects "fly through FERC process," and reach the FID point, but the market disappears and the project doesn't come to fruition. He said, "Just because our commission approves a project does not put it in the ground." He related that the market driven nature of the process ultimately decides what gets built.

[10:17:10 AM](#)

SENATOR ELLIS related a question on behalf of a constituent regarding the timing of oil and gas development. He asked, "How many billions of barrels of oil will FERC allow to be sacrificed by the premature withdrawal of gas from Prudhoe Bay when the gas can be had when oil production is complete?" He further asked, "Will FERC require hard factual data of the amount of oil remaining in Prudhoe Bay before allowing the withdrawal of gas - which he believes will sacrifice oil recovery?"

MR. ROBINSON answered that these questions are typical of the questions that FERC receives during its process. He further answered that the OEP will assess the issues. He offered that the OEP will give questions like these the analysis needed in order to respond to the question. He further offered that OEP proactively encourages people to ask those kinds of questions. He specifically answered, "I obviously do not know the answer to that." He elaborated that the OEP will assess the questions, provide the technical expertise to find out if some aspect of that has merit and will affect the public interest determination on whether the project should be authorized, or if a pipeline is authorized, what size of pipeline should be built. He offered to find out.

[10:18:58 AM](#)

REPRESENTATIVE HAWKER inquired as to whether it makes any difference to [FERC] if one applicant indicates that it is licensed by State of Alaska and nobody else holds a license.

REPRESENTATIVE ROBINSON responded no, that it does not change the process. He explained that FERC would still evaluate any applications that come to it. He said he does not know what the license would mean to "a sitting commission" and if it would have any bearing on FERC's ultimate decision. He answered that with respect to record development it would not have a bearing.

REPRESENTATIVE HAWKER recalled that some conclusions in the final FERC report were highly critical of any proposal that might come before FERC "without gas."

MR. ROBINSON recalled that he was quite familiar with the comment and said he could almost quote it since he recalled crafting the comment. He paraphrased that if FERC had a proposal that came without any agreements, "That would not be the best thing." He opined that the commission would rather have the agreements in place so it can move forward.

REPRESENTATIVE HAWKER explained that the legislature has before it the decision on whether to license a process [with TransCanada.] He speculated that the project would likely come before FERC without gas and that the state would then subsidize [the project] to ensure that the process continues. He inquired as to how much influence the state has on the process.

MR. ROBINSON said:

The state has a significant role to play, but it is one of many roles in FERC process. The FERC has to develop the record on the issue and the state will make a position known. Somebody else will make another position known. And it really boils down to where the facts are, what the record says, and how our five commissioners at that time, might interpret those facts and that record to reach their decision. Me personally: Infrastructure is politically the most sensitive issue that happens at FERC, believe it or not, because it directly affects constituents. We get more Congressional letters on infrastructure issues at the commission than everything else combined. It's not hard to understand why, when you look at putting a pipeline through some school yard or something.

People get upset. In 30 years of placing infrastructure to the commission, with all the different commissioners and different chairmen that I've worked directly for, every time a chairman or commissioner asked me to make a finding anywhere, finding this or finding that or recommending this or recommending that; I've had them get all over me about time; that's fair game and it's happened over and over again. Politically, things go on, but we are an independent regulatory agency. I protect our record-making process to the fullest. Because in my mind, that's the only way that the commission, when they do make those decisions, they can be protected, at that time. We'll give everybody's position a full treatment and a full exposure and an assessment of what's going on and then the facts will lead us to where we need to be.

[10:24:03 AM](#)

SENATOR WIELECHOWSKI asked the process FERC would take to review two competing proposals, with one proposal being proposed by a consortium of producers and another by an independent producer.

MR. ROBINSON responded that he thought the process for record development works effectively, irrespective of the applicant, so long as the applicant is serious about moving project forward. He said, "That's the key thing for us."

SENATOR WIELECHOWSKI recalled earlier testimony that an independent producer is more likely to have open access. In fact, one of the provisions contained in the AGIA addresses access issues, he noted. Additionally, other testimony indicated that producer-built pipelines are less likely to have expansions. He asked if these issues are addressed by OEP in its analysis of a project.

MR. ROBINSON answered that commissioners might bring that to bear during their review of a project. However, he noted that considering open access is not part of the process that the OEP uses in record development.

MR. WRIGHT interjected that pipeline ownership and access considerations are not necessarily part of the environmental review or the siting process at FERC. He said, "As long as they're serious, they've done their homework, and are ready for pre-filing, we're not going to turn them away."

SENATOR WIELECHOWSKI inquired as to whether the federal government would allow LNG to be piped to Valdez and shipped and overseas to an Asian market or another market.

MR. ROBINSON answered that what Senator Wielechowski described would be authorized by commission, but the export license is issued by the U.S. Department of Energy and would entail a decision about allowing export of Alaska natural gas to foreign markets. In further response to Senator Wielechowski, Mr. Robinson said that he could not speculate on the DOE's answer.

[10:27:08 AM](#)

The committee took an at-ease from [10:27:21 AM](#) to [10:46:36 AM](#).

[10:47:04 AM](#)

REPRESENTATIVE KELLY referred to open access, basin control issues, and anti-trust concerns with a producer pipe that has biennial open seasons. He inquired as to who is concerned about the [open access and expansion issues] in this process.

MR. ROBINSON answered that expansion was contemplated in Section 105 of the Alaska Natural Gas Pipeline Act of 2004 (ANGPA)[15 U.S.C. §§ 720 et. seq.]. He said that the Act contemplates expansion in instances in which the pipeline operator "didn't see a need to come to FERC in a voluntary fashion." He opined that Section 105 is a unique section, which allows the commission to conduct a hearing "with all the bells and whistles entailed to require expansion." He further opined that a tension exists for the Congress and the commission to attempt to satisfy the certainty of having a pipeline constructed as soon as possible and the desire to ensure that sufficient expansion paths will allow for exploration and development of the entire basin to enhance gas extraction. "That is a very tough balance and challenge to meet. I feel confident that FERC process would allow that to occur," he said. However, he noted that other approaches could also satisfy that balance. He pointed to Alaska's efforts to develop a relationship with an applicant that allows for periodic open seasons. He opined that the process would "no doubt work as well." Both approaches provide mechanisms, perhaps contractual, that would balance the desire to get a pipe built and allow for future expansion and development.

[10:51:01 AM](#)

MR. WRIGHT added, in terms of anti-trust, that FERC does not have problems with producer sponsored pipelines. He mentioned that many pipelines, such as the Alliance, originally were producer pipelines. The FERC regulations have evolved over time and the U.S. has created a market-driven system of open access that includes standards of conduct and affiliate rules. He pointed out that the open season rule expressed a need to promote competition and that states or producers did not appeal that order. The U.S. Energy Policy Act of 2005 gave FERC broad penalty authority that includes applying millions of dollars per day in penalties, which is a great deterrent to anti-trust activity, he opined. He said, "I think a producer sponsored pipeline can be considered by FERC without any anti-trust problems, as well as a traditional pipeline by someone like TransCanada."

MR. ROBINSON added that FERC's assessment would be based upon the project, the application, and the proposal in terms of their affiliate relationships. He noted that FERC process is transparent and allows all parties to comment and raise issues and concerns such as anti-trust issues.

MR. WRIGHT interjected that he would fully expect someone to raise anti-trust issues.

MR. ROBINSON noted that FERC frequently has previously worked with TransCanada. He offered that TransCanada is a major pipeline company who "know how to build pipe and know what it takes to get it built." He said he emphasizes that aspect because he has worked with many pipeline companies and characterized TransCanada as a "good group to work with."

[10:53:25 AM](#)

REPRESENTATIVE SAMUELS asked Mr. Robinson to elaborate on the process for appointment to FERC. He further asked for specifics on how Alaska is different and any ways that he could cite any ways that the U.S. Alaska Natural Gas Pipeline Act of 2004 recognized that "Alaska is different."

MR. ROBINSON explained that FERC is comprised of 1,400 staff, under the FERC chair, also the head of the agency. He noted that the FERC chair is 1 of 5 votes for any commission determinations and decisions. The FERC Chair guides the staff in terms of emphasis, but ultimately, when an order is submitted, that all five commissioners can bring their own

judgment and question specifics in the case. Ultimately, it takes 3 votes to pass an order. No more than 3 members can be from the party of the President of the United States, he noted. However, the commissioners also serve 5 year staggered terms. Energy issues typically have generally not been aligned along party lines, but differences are regional, he opined. He related that the decisions are fact-based and are also based on the experience that each commissioner brings to the process. The orders are subject to re-hearing, and if the party is not satisfied, the party can appeal the decision to the U.S. Court of Appeals, and then to the U.S. Supreme Court, which rarely happens. The court first looks to FERC record, which is why its record is so important, he offered.

MR. ROBINSON, regarding differences in Alaska, said that no other pipeline has special legislation that dictates how the commission should proceed, especially in terms of need. He said, "The Congress has already told us that this pipeline is needed. That has a profound influence on how we view this project. It really takes a whole area of analysis and assessment that we would otherwise do, and it sets it aside." Thus, FERC will examine the issue of how to build the best pipeline, he opined. The Congress's concern and balance between proceeding to construction of a pipeline and the longer term pipeline expansion "sort of work against each other in a process kind of way." The second aspect is that the balance between the two is laid out by the Congress with new authorities given to FERC. The third aspect that makes Alaska's project different is that the gas field in Alaska is a long way from the market. He pointed out that FERC recently authorized a project that is 1,700 miles long, with a 42-inch pipe producing about 1.8 Bcf per day. However, he noted that the proposed pipeline is even longer to bring gas from Alaska to the Lower 48. Additionally, the Canadian aspect, while not totally unusual, brings cross-border issues with the NEB and the Canadian government, he stated.

[11:00:33 AM](#)

REPRESENTATIVE KERTTULA asked if Mr. Robinson could "flesh out a little bit more" how FERC would consider anti-trust aspects of any application, and what FERC will consider, such as will FERC consider any previous work and how FERC would proceed if it finds actions are necessary.

MR. WRIGHT answered that FERC has a large and experienced Office of General Counsel that will address anti-trust issues. He

offered that FERC cannot prejudice an application. He acknowledged that some people may not like some aspects of producer owned pipelines. He related that a history exists with respect to producer owned pipelines and offered that FERC operates on the basis that it will take all applications and that it will address issues that arise.

MR. ROBINSON interjected that much has transpired since some of the initial concerns with producer owned pipelines at the commission, and the Congress as well. He noted that FERC has adopted significant Standards of Conduct regulations that govern how producers act with their affiliates. He asserted that FERC has the ability to monitor those actions and imposes significant fines when problems arise. During the development of the certificate, FERC also has the ability to impose any conditions necessary to ensure that those standards of conduct are met and to ensure an open and transparent process is executed for any pipeline project. He opined that anti-trust has connotations. However, FERC approach is to ensure competitiveness and that the behaviors are consistent with the competitive aspect of a natural gas pipeline, he highlighted.

MR. WRIGHT interjected that FERC's open season rules ensure that it will protect and not allow preferences such that "producers cannot prefer their own supplies for the pipeline."

REPRESENTATIVE KERTTULA asked if applicants have to follow conditions that FERC places on a certificate and to elaborate on FERC's rules.

MR. ROBINSON stated that that FERC frequently conditions certificates. The certificate holder must comply with those conditions and the tariff provisions, or would be subject to a million dollar a day civil penalty action, he noted.

[11:05:04 AM](#)

SENATOR THERRIAULT inquired as to whether an applicant approved for pre-filing is obligated to go through certification.

MR. ROBINSON answered no.

SENATOR THERRIAULT further inquired as to whether an applicant who is certified would be obligated to actually accept the certification.

MR. ROBINSON pondered why an applicant wouldn't want to accept certification, but added that an applicant would not be obligated.

MR. WRIGHT interjected that an applicant might not want to accept certification if FERC imposed conditions that the applicant deemed was too onerous. He concurred that the applicant does not have to accept the certificate.

SENATOR THERRIAULT recalled an earlier response in which Mr. Robinson discussed negotiator rate contracts or tariffs. He recalled that Mr. Robinson encourages the shipper and the pipeline company to establish and negotiate rates and provide them to FERC.

MR. WRIGHT answered:

In the sense that it fills the pipeline, yeah, that's within the purview of our regulations to have negotiated rates as long as you have a recourse rate, which is a cost-based rate that other people can use.

SENATOR THERRIAULT further inquired as to whether the negotiated rates could be written to shield the shipper against rolled-in rates.

MR. ROBINSON said, "You would be prejudging what the commission may do at the point of deciding on an expansion. I'm not sure that would really fly. I can't think of an instance where that has happened."

SENATOR THERRIAULT said:

In the 2005 [FERC] order here and one comment here in Section 114, you talk about the pipeline companies say that if the shippers were concerned about the effect of such treatment they can seek to avoid it through negotiated rates. They could insulate themselves from the rolled-in rates.

MR. WRIGHT answered that negotiated rates could happen, but he said, "I believe it also says you have to offer those rates to other prospective shippers."

SENATOR THERRIAULT posed a scenario in which all the shippers of a pipeline negotiate rates that FERC accepts, and inquired as to

whether the negotiated rates will insulate them from rolled-in rates.

MR. WRIGHT said, "You are getting back to the insulating from rolled-in, and I don't think we can say that right now."

SENATOR THERRIAULT asked if the state could arrive at a situation in which all the shippers have insulated themselves contractually. He inquired who would "pay the price" if a voluntary expansion occurs.

MR. WRIGHT answered that FERC does not have to approve negotiated rates and if FERC identifies something that "goes against our open season regulations that is a presumption of rolled-in rates for voluntary expansions, if there's something that insulates them from that, we don't have to accept the negotiated rate."

SENATOR THERRIAULT inquired as to whether it would be beneficial to have it stated "up-front" that the pipeline shipping company will contractually honor the requirement for rolled-in rates for voluntary expansion.

MR. ROBINSON said:

Would it be beneficial? It depends on where you're sitting. If you are looking at FERC process and you're trying to pre-judge what the commission may think is in the public interest at the time, if somebody comes to the commission for an expansion, the answer is 'no'. If you're trying to limit or in some way influence what the commission might do at that point, because you don't have any confidence in the commission 5, 10, 20 years down the road, doing what's in the public interest, given the facts of that day, then the answer is 'yes'.

[11:08:59 AM](#)

SENATOR STEDMAN asked for clarification of the concept of opening the basin. He posed a scenario in which a company builds a pipeline as a 100 percent owner, with substantial gas to fill the line, such as a 48-inch, 2,500 psi per day. He asked whether an independent gas company would have access to the pipe. He clarified that the company would have a path to the main pipe.

MR. ROBINSON offered that the independent could approach the pipeline company itself to determine if it would be willing to expand to accept those volumes. If that did not work, he surmised that the provisions within the Energy Policy Act of 2005 (EPAAct) would allow the independent company to petition the commission to require a hearing for expansion to ensure that the facts are supported. Thus, two avenues would be available that would allow the independent to have access to the pipe, he noted.

SENATOR STEDMAN further inquired as to whether that company previously mentioned would have an advantage over the independent companies. In response to Mr. Wright, Senator Stedman clarified that question assumes that the pipeline still had capacity.

MR. WRIGHT answered that if capacity existed in the pipeline that the independent company could not be precluded due to open access.

MR. ROBINSON agreed that the large company would not have an advantage over the independent in terms of existing capacity. He offered that due to open access everyone would have equal access to the pipeline.

SENATOR STEDMAN referred to The Energy Policy Act of 2005 (EPAAct) and asked if the purpose of the act is a 'basin opening' exercise to ensure that the arctic basin is opened up or if it is restrictive measure.

MR. ROBINSON answered that it was a balancing act prescribed by Congress and executed by the commission between the desire to "get a pipe going" and the desire to "allow for easy expansion and to encourage exploration and development of other gas sources in the basin. It tried to do both," he said.

[11:12:53 AM](#)

MR. ROBINSON, in response to Senator Stedman, answered that smaller companies have the protection of the open season provision that allows them to come in and bid on the capacity. He further offered that Section 105 [of ANGPA] allows the smaller companies to petition the commission to require the expansion and allow the volumes in the pipeline.

MR. WRIGHT explained that the initial allocation of capacity is termed an anchor shipper or shippers, in which the shipper has

contracted for all the capacity prior to the open season. Smaller shippers are afforded protection under federal law that allows them to match the rate, the terms, and the conditions that the anchor shippers contractually agreed to in order to obtain a prorated portion of the initial allocation of capacity.

SENATOR STEDMAN asked for clarification of how the allocation process would work and whether the larger anchor shippers have an advantage in the process.

MR. WRIGHT posed a scenario in which 3 units: 100 units, 100 units, and 5 units, were available and would "need to be squeezed down to 200 units," that each [of the large anchor shippers] would get a little less than 100 units each.

CHAIR HUGGINS asked for clarification of the term, non-open access pipeline.

MR. WRIGHT explained that a non-open access pipeline would be a proprietary pipeline, which might be an interstate pipeline, coming off a pipeline to feed a wallboard plant. He offered that FERC has previously approved those types of non-open access pipelines, but that the law dictates that the Alaska gasline will be an open access pipeline.

MR. ROBINSON added that even in those instances of non-open access pipelines, opportunities have been presented to determine if others needed access to the pipeline.

[11:17:14 AM](#)

SENATOR STEDMAN asked if it would be fair to characterize the Energy Policy Act of 2005 (EPA) as being in the best interest of the country since it would open up the basin and foster more exploration and development.

MR. ROBINSON responded that the Congressional action and FERC's regulations both recognize that it is important to ensure there are mechanisms in place to allow for further expansion and further exploration of the gas reserves that need the pipeline in order to get to market. He agreed the EPA serves that purpose.

[11:18:05 AM](#)

REPRESENTATIVE FAIRCLOUGH recalled the collaboration or partnerships FERC has had with NEB, and asked Mr. Robinson to

expand on FERC's experience in working with multiple jurisdictions internationally.

MR WRIGHT responded that FERC cooperates with scheduling, and information exchanges, but does nothing that would violate the sovereignty of the laws of each country. Another country decides on a project based on its laws and the United States based on our laws. He characterized the process as one of coordination and cooperation, and exchange of information to attempt to make things work more smoothly, more timely, and avoid the project being built in one country but not the other.

MR. ROBINSON interjected that FERC also avoids the development of information in one country that has to be duplicated with the development of information in another country. He related that aspect of the Memorandum of Understanding is to ensure that duplication doesn't happen. He stressed that FERC does not set the schedule for another country, and vice versa, but ensures that the other country is informed.

REPRESENTATIVE FAIRCLOUGH related her understanding that tariffs must be similar when "you go to decide" and asked for clarification.

MR. WRIGHT answered that the U.S. would have a tariff that Canada would have a tariff and rates would be paid to both entities.

MR. ROBINSON, in response to Representative Fairclough, answered that the rates can be different. Mr. Robinson confirmed that multiple rates are allowed.

REPRESENTATIVE FAIRCLOUGH related that the presentations to date on the licensing agreement show the end location of the tariff fees at AECO [Pipelines]. She inquired as to whether that was typical in the other agreements.

MR. ROBINSON answered, "No, because that's the only pipe that we have that would end in that place. The rest of the ones we have are bringing gas into the U.S. from a Canadian source."

REPRESENTATIVE FAIRCLOUGH said, "Mr. Chairman, my concern is if we're ending at AECO, 'How are we providing America gas?'"

MR. WRIGHT offered that what TransCanada has discussed running "rather empty" from AECO or the Alberta Hub going east. He related that TransCanada contemplates a lot of capacity to "take

on" Alaska gas, fill their pipelines, which as the Western Canadian sedimentary basin becomes drawn down, it is a natural complement to that capacity.

MR. ROBINSON interjected that it is not necessarily "the right way to look at it" in terms of whether the gas will get to the Lower 48. He explained that the gas pipeline system is an integrated North American market for gas. Thus, gas that might be used in Canada from Alaska also means gas in Canada might be used in the United States.

REPRESENTATIVE FAIRCLOUGH questioned whether an additional tariff would be added from AECO to a location into the American market.

MR. ROBINSON responded that a tariff exists for movement of gas on any pipeline so if a shipper wants to acquire gas and "move it from AECO on down, there would be another tariff."

REPRESENTATIVE FAIRCLOUGH explained that the legislature has been previewing a tariff cost to make this [TransCanada gasline] project economical ending at the [Alberta] Hub. She related her understanding that in 1980, FERC contemplated transportation costs and recalled that FERC denied allowing road improvements to be incorporated into tariff charges. She offered that currently the U.S. contributes federal highway dollars to maintain the Alaska Highway. She noted that the state is looking at the Haul Road and different infrastructure improvements to prepare for a gas pipeline. She inquired whether in the event that Canada would need to improve its highways, FERC would consider recommending including construction costs for roads in the tariff, either for Canada or the U.S.

MR. ROBINSON answered that FERC would not recommend to consider costs for road improvements in Canada since it is outside the U.S. jurisdiction. He stated that roads necessary for the project in the U.S. would be evaluated in that context when the issue arises as the facts of the case.

MR. ROBINSON, in further response to Representative Fairclough, answered that FERC will not review the tariff rate inside Canada.

MR. WRIGHT stressed that while FERC does not have knowledge of how TransCanada will structure its rates, he pointed out that TransCanada has a history of rolled-in rates. He surmised that

the U.S. might also have a rolled-in rate for transportation in Canada.

MR. ROBINSON interjected that the question is not how the tariff would be applied, but whether there would be a tariff.

REPRESENTATIVE FAIRCLOUGH expressed concerned over how Canada will calculate its tariff and stressed the importance of understanding FERC interaction with Canada.

CHAIR HUGGINS offered that he will continue to invite the NEB in order for members to ask pertinent questions.

[11:26:08 AM](#)

REPRESENTATIVE GARA stated that the state has certain interests in a pipeline that might lead it to push forward on an independently-owned project. He inquired as to whether FERC is allowed to consider the state's interest when two competing projects are moving forward. He posed an example such that many legislators believe the larger oil companies will deter production by competitors by preventing gas from entering the pipeline, which he opined undermines the state's interest. He further noted that many of us believe that by declining an independent project and supporting an oil-owned pipeline, the companies will be able to extract billions of dollars of tax concessions from the state. He inquired as to whether FERC can grant deference to the state's attempts to protect its sovereignty.

[11:27:52 AM](#)

MR. ROBINSON answered that the commission has the ability to review anything that affects its public interest determination including the position of the state. However, that is only one aspect of the commission's determination. He elaborated that the commission will review opposing views on those issues. The real concern is about what happens once the pipe is built, that both the Congress and FERC have recognized that as an issue. He opined that "the provisions are in place to ensure that nobody can just use the pipe for their own purposes." If expansion is required and it is not voluntary, it can be dictated. He said, "We think we have a process in place, that irrespective of who the applicant is, can ensure that when the pipeline needs to be expanded it will be expanded."

REPRESENTATIVE GARA expressed that under FERC rules, the open access provision causes the state concern, which is one reason why the legislature adopted a state law. He pointed out that under FERC's rules, the open access provisions cause some concern. He opined that some legislators believe that if the large oil companies own the gasline, that the producers will not seek voluntary expansions. Further, he opined that the large producers will need to be sued before FERC for a mandatory expansion. However, if a mandatory expansion occurs, FERC rule appears to allow incremental rates, which threaten to overcharge new producers, he offered. That's why the state requires voluntary expansions by anybody who bids on an AGIA process, he opined. Thus, if voluntary expansion happens, the state is more likely to get the rolled-in rates that ultimately will keep shipping costs down lower for new entrants, he surmised. Therefore, many legislators may prefer an independent pipeline and may also prefer rules that go beyond FERC, he concluded.

MR. ROBINSON opined that everything is available to be considered. The weight that the issues will be given depends on who is the commissioner at the time of the review, but the commission also must review its role as dictated by the Congress to ensure that some of the concerns just expressed are equitably treated for all parties, not just the interest of one group.

REPRESENTATIVE GARA recalled that Mr. Robinson stated that FERC would be concerned if a project came forward without any gas. He posed a scenario in which two competing proposals - one owned by the major producers and one by an independent company. He noted that the major producers may have a financial incentive to commit gas to its own pipeline, but when independent company comes forward, it is possible that the major producers would attempt to withhold gas to defeat the other pipeline. He inquired as to how FERC would handle two proposals given the importance that a project have gas.

MR. ROBINSON offered to parse out the motives from the question. He stated that FERC has the ability to examine and review two projects, and to also review a project that does not have presumed agreements on the gas necessary to fill the pipe. He said that FERC has made it clear in its reports to Congress that it is not FERC's preference to have an applicant come to us that doesn't have any presumed agreements associated with it. He maintained that FERC would prefer not to be in the position of having to treat that. He noted that applicants can submit to the pre-filing process, and FERC will review the pre-filing in

terms of whether the applicant can support the application process. He said:

When you've had an open season and people have shown up, and they've shown an interest, that gives you some level of confidence. Having said all that, Alaska is a unique case. We're well aware, and we have followed closely ... the machinations that have been involved in trying to get an application to the commission. That would be considered as well. So that would be considered as well. We would just prefer not to be put into that position where we're being questioned about our resource utilization for a project that doesn't have anybody signed up to utilize that project."

REPRESENTATIVE GARA stated that he hopes that FERC would not allow one consortium of companies to block a viable pipeline.

MR. ROBINSON responded that is not what FERC's open season process is about.

[11:34:01 AM](#)

SENATOR DYSON asked for clarification of the discussion related to national interest and natural monopoly multiple players.

MR. ROBINSON reiterated that the act of Congress puts the pipeline in a different perspective for FERC. He surmised that in instances in which more than one pipeline is proposed that essentially services the same market that ultimately one pipeline is built, even if two or three or more proposals are submitted to FERC to "move the same gas." He related that FERC may review and certificate all of the applications, but ultimately only one will be built. He said that he is confident that only one pipeline will be built.

MR. ROBINSON, in response to Senator Dyson, answered that the final matter will be decided by who is able to finance the pipeline.

MR. WRIGHT interjected that if company "X" cannot attract funds, the director will advise its board of directors to vote down the project.

SENATOR DYSON related his understanding that two certificates could be issued, and the companies would seek funding, with both

successful at some level. He inquired as to what allows the company to proceed.

MR. ROBINSON explained that both companies will seek financing, and the competition for items such as who would be able to finance it, how the money would be accumulated, the interest rates, and the level of equity. He surmised that somebody would successfully put together a financial package. Once that happens, he opined, it is highly unlikely anyone else would be willing to put together a "financial package." In response to Senator Dyson, Mr. Robinson answered that FERC will not perform a second review once the financing is secured.

MR. WRIGHT added that FERC will have conditions such that the applicant cannot break ground until it has the capacity under contract.

[11:38:10 AM](#)

REPRESENTATIVE HAWKER related his understanding that the legislature must establish extra standards to avoid the tariff issues that plagued the Trans-Alaska Pipeline System (TAPS). He inquired as to whether the gasline is this same situation.

MR. ROBINSON answered that it is not same situation. First, the [TAPS line] is a common carrier and the gasline is a contract carrier. Second, the gasline has a specific set of legislation that governs the gasline as well as the commission's regulations that contemplate the desire to see expansion. He said, "I just don't see them as being similar." He explained that FERC employs a model that is efficient and quick. He characterized the pipeline process as a "functioning everyday kind of process."

REPRESENTATIVE HAWKER referred to the enhanced or real open access project. He stated that FERC "looks out for the public interest, but not Alaska's interest."

MR. ROBINSON answered, "That's true and untrue." He related that FERC determines what is in the public interest and highlighted that Alaska's interests are a large part of that equation. He elaborated that FERC has input from Congress, reflected in FERC's regulations that direct it. He highlighted that FERC does not exclusively hone in on what will maximize the return to the producer, the pipeline, or the state. However, FERC goes beyond that and makes a judgment about what's in the

public interest to ensure that a pipeline gets built that can be expanded to accommodate new exploration and production.

REPRESENTATIVE HAWKER offered that one of the arguments being put forth is that FERC does not protect Alaska's interest in expansion. He stated his appreciation for clarification on the matter and for the approach that FERC uses to base its decisions on its experience and factual basis and that it does not attempt to predict the future. He inquired as to whether Mr. Robinson is aware of any historical instances in America of gas being stranded because producers refused to develop a pipeline.

MR. WRIGHT responded that it is just the opposite since the producers want to get gas to market in order to make money. He related that a prime example of that is in the Rocky Mountains.

[11:41:40 AM](#)

SENATOR STEVENS related his understanding that FERC will not have any control over the pipeline once it enters Canada. He asked Mr. Robinson to elaborate on the expectations and demands of Canada in transporting Alaska's gas to the contiguous U.S.

MR. ROBINSON responded that FERC cannot demand anything of Canada, in terms of its tariff provisions or its actions. However, he stated that [the pipeline crossing Canada] does not cause him concern since North America has an integrated natural gas system. He offered that he recently visited the Canaport liquefied natural gas (LNG) facility in Saint John, New Brunswick, Canada. He explained that the LNG is supplying gas to New England, primarily to Boston, Massachusetts via the Maritimes & Northeast Pipeline, L.L.C. pipe. He characterized the Canaport LNG gas as almost "dedicated" to supply LNG to the U.S. market. He added that the same market that is fed by Canaport is also available from [one of] TransCanada's pipelines. He continued:

It's really just getting gas into North America, into that system that's relevant from my perspective. That's what we...work with NEB for, is to make sure the pipes are there for easy access back and forth. I'm not overly concerned with where the individual molecule ends up. It's just that we get the molecules up and into that integrated system.

MR. WRIGHT added that the demand exists in North America for natural gas. He stated that Alaska's gas is needed and will be used by either Canada or the Lower 48.

MR. ROBINSON further added that similar situations exist on the Mexican border. He related several projects, such as one pipe that transported about 1 Bcf/d to Mexico from the Texas area, but that an LNG plant at Tampico in the Gulf of Mexico may make it possible for the gas to serve part of Texas via Mexico.

[11:45:55 AM](#)

REPRESENTATIVE KERTTULA inquired as to whether it would be easier to come in with an agreement to present to FERC for specific things that the state desires, such as rolled-in rates or offtake points.

MR. ROBINSON answered, "As long as nobody objects to it, yes."

[11:46:41 AM](#)

REPRESENTATIVE DOOGAN recalled that when Mr. Robinson said that the producers want "to get the gas out" that he assumes he meant that the producers want to get their "own" gas out.

MR. WRIGHT answered that a producer is in the business to produce gas, get it to a market in order to monetize that asset.

REPRESENTATIVE DOOGAN referred to Section 105 [of ANGPA]. He posed a scenario in which an independent producer files an appeal to FERC, under Section 105 of ANGPA for access to ship gas during expansion. He inquired as to the length of time for a decision from FERC.

MR. ROBINSON responded that since decisions have not been issued under Section 105 or ANGPA, he did not know. He offered that FERC has a history and record of issuing prompt decisions.

REPRESENTATIVE DOOGAN asked if Mr. Robinson could offer general timeframes for FERC's decisions.

MR. WRIGHT responded that the Kern River Pipeline [in the Rocky Mountains], FERC's first project under pre-filing, for a 900 mile natural gas pipeline, was approved in 10 months, including conducting its environmental work.

REPRESENTATIVE ROBINSON offered another example of a pipeline for 700 miles that involved 1,700 landowners took approximately 11 months to complete FERC review.

REPRESENTATIVE DOOGAN inquired as to whether the Section 105 [of ANGPA] provisions would add to the timeframes.

MR. ROBINSON said he thought that what would guide FERC is its experience. He related that the more opposition, the "tougher it is to get things done, but we have a way of overcoming hurdles."

[11:51:41 AM](#)

REPRESENTATIVE SAMUELS inquired as to whether Mr. Robinson believes that this gasline will be built in the next 10 - 15 years, that it is "a foregone conclusion". He prefaced his question with the observation that some projects have suffered problems, such as the pipeline in Norway that has not been built despite gas availability.

MR. ROBINSON answered that it is not a foregone conclusion. He opined that it is going to be a "tough job" that will require all parties to adopt an attitude that they have a common goal. He further opined that this project will be "easy to derail," that litigation is always available, and the ability to obtain financing will be heavily dependent upon "does it look like they have a clear path." He offered a concept he uses in construction called the "first dollar." Nobody invests the "first dollar" if they don't see a clear path, to some degree, of getting a project built in the long run and recouping the investment of that "first dollar". The higher the investment, the more significant that "first dollar" is, he stated. He asked legislators to give FERC process an opportunity to work and make the project happen by starting with the pre-filing and "getting it going."

MR. WRIGHT highlighted that if the state does not start that pre-filing that a 10 year projection is not realistic. He urged members to start the process now.

REPRESENTATIVE SAMUELS followed up by asking if any party has pre-filed thus far.

MR. ROBINSON related he received an email earlier today that FERC expects to receive a pre-filing application from the Denali project.

11:55:05 AM

The committee took an at-ease for lunch from 11:55 a.m. to 1:37 p.m.

1:37:01 PM

CHAIR HUGGINS called the meeting back to order at 1:37 p.m. He announced that a copy of the June 15, 2008 pre-filing application by the Denali Project is available for members.

1:38:30 PM

REPRESENTATIVE CRAWFORD recalled a recent newspaper article that advised that the Denali Project intends to buy 5 million tons of steel while TransCanada intends to purchase 2.5-2.75 million tons of steel. He acknowledged that TransCanada can take advantage of some pipeline already constructed. He inquired as to whether FERC can consider the steel when considering the proposal. In response to Mr. Wright, Representative Crawford clarified that that the Denali Project proposes to bypass the hub in Alberta as opposed to TransCanada project that would take advantage of existing pipeline.

MR. WRIGHT answered that FERC takes it into account in terms of making rates, since obviously it is a cost component that applies to rates. When FERC approves or recommends an order to the commission it will contain proposed initial rates that will reflect labor, material costs, etc; the outcome that will be presented to FERC, whether it is TransCanada or the Denali Project, will reflect different rates due to different inputs. Mr. Wright said, "Now if your question's going, 'Are we going to recommend denying Denali because they're using 5 [million] tons of steel versus 2.5 [million] tons?'" and answered, "I don't think so."

REPRESENTATIVE CRAWFORD asked:

Even though it would mean a much higher tariff and [the Denali Project] would be shifting the production dollars down to transportation dollars and it would mean a huge difference in the amount of money that goes to the state, that wouldn't be something you would consider.

MR. ROBINSON responded:

Every issue would be considered so yes, it would be, but predicting the outcome because it is more than just the tons of steel that will be used. It's the project that is being proposed and the attributes it brings with it. It may in one instance be very much worthwhile, having a project that uses twice the steel and goes farther; than in another instance it may not, depending upon the entirety of the fact base. I think that what Jeff [Wright] meant was, is that the commission would not make a decision just on its 2.5 million tons of steel versus 5 million tons of steel. You have to look at the entirety of the project to see if it makes sense and is in the public interest to certificate the project that involves 5 million tons of steel.

1:42:30 PM

REPRESENTATIVE CRAWFORD opined that it seems that \$6 billion is approximately what it would cost to build a line using 2.5 million tons of steel, but \$12 billion is what it would cost to build the line to bypass the existing pipe. He further opined that there would be such an innate advantage to using what exists, rather than creating a parallel pipeline.

1:43:10 PM

MR. ROBINSON pointed out that a project has not been submitted, so he did not know what a proposal would entail or its attributes. He opined that a proposal can vary substantially from one project to another and may or may not justify a specific end point or size of the project. He offered that without reviewing the details and performing the analysis, an assessment cannot be made solely on the basis of the amount of the projected steel that will be used.

MR. WRIGHT offered that pre-filing is all about identifying issues and discuss them.

1:44:04 PM

REPRESENTATIVE RAMRAS inquired as to how many of the five competing certificates in Oregon enjoy a state subsidy and whether Mr. Robinson could provide a history of projects with state subsidies that didn't include ownership.

MR. ROBINSON said offhand he did not recollect instances in which states have taken an interest in a project and definitely not in Oregon.

MR. WRIGHT recalled that Wyoming set up public authorities that issue bonds for developing infrastructure within the state for electric and for its natural gas pipeline. He surmised that the state could have the ability to take equity positions if it chose to do so, but he is not aware that it has done so to date.

MR. ROBINSON agreed.

[1:46:17 PM](#)

REPRESENTATIVE RAMRAS inquired as to whether states have opened themselves up to treble damages.

MR. ROBINSON answered that Wyoming is the only state that FERC is aware that has set up public authorities, but that he does not know for certain. He elaborated that FERC is not committed to reviewing what's behind the development of an application. Rather, he related, FERC is committed to receiving the applications, treating the applicants fairly through FERC determination process to decide what is in the public's best interest. He noted that any actions that transpire prior to the application being pre-filed "is somebody else's business."

[1:47:01 PM](#)

REPRESENTATIVE RAMRAS recalled his visit to FERC office in Washington D.C. and that one of the statistics mentioned is that by 2008, 6 Bcf/d would be imported into the U.S. and by 2010 that number will increase to 20 Bcf/d. He inquired as to whether any benefit exists to concentrate on monetizing a project first and then contemplate of expanding project from 4.5 Bcf/d to 6 Bcf/d.

MR. ROBINSON responded that the legislation contemplated [ANGPA] and FERC regulations codified the dual purpose of constructing a gas pipeline, and the Congress and commission through its regulations to encourage additional gas fields in Alaska with a mode for future expansion capability. He opined that is the reason for Section 105 [ANGPA], and provisions in FERC's open season regulations that provide for ease of expansion, when it becomes necessary. The FERC clearly understands that dual purpose aspect of the development of the Alaska gas pipeline, he opined. He surmised that FERC will maintain that position as it

reviews the application along with the tariff and mechanics of engineering of the pipe. He said he anticipates that FERC will examine the exact location for the compressor stations and the thickness and size of the pipeline in terms of the ease of the expandability of the pipe at the appropriate time.

[1:49:53 PM](#)

REPRESENTATIVE FAIRCLOUGH recalled that it has been proposed that Alaska has distance sensitive rates. One, it's proposed that Alaska should have one rate. Second, it's proposed at each of the five different offtake points that different distance sensitive rates would not include any charge for gas as it moved beyond that particular point, or in and through Canada. She inquired as to how FERC will review tariff charges in an application that provides for distance sensitive rates for in-state offtake of gas.

MR. ROBINSON answered that FERC would review any issue in the same manner. The issue will be proposed, noticed, parties would comment, and then FERC will decide what's in the public's best interest in matters such as providing for state needs. He opined that FERC would obtain the best balance between the producers, the shippers, and the pipeline company to set the tariff in the public's best interest and that it would not favor one group over another.

REPRESENTATIVE FAIRCLOUGH noted that Alaska is geographically unique and that its offtake points will be significantly different. She opined that other states may have incremental tariffs, but that Alaska's issue will be whether it can capitalize the entire cost inside of Alaska and how that cost will be fairly spread for Alaskans. She inquired as to whether FERC has reviewed similar cases.

MR. WRIGHT answered that a pipeline of that size usually has zones and the points closest to the source of the gas will be the cheapest transportation. As you go zone by zone it becomes more expensive. He opined that gas transported from the North Slope to the Canadian border would have the highest charge. However, incremental points along the way would represent lesser costs due to the lesser distance, he noted.

REPRESENTATIVE FAIRCLOUGH surmised that throughput will be an issue for that type of tariff.

MR. WRIGHT answered that throughput is always an issue. "It's actually the design of the pipe; how big is the pipe going to be; what's its capacity, and that's how you design rates."

MR. ROBINSON interjected that once the rate is set, that the rate doesn't change by how much gas is transported through the pipe.

[1:53:08 PM](#)

REPRESENTATIVE FAIRCLOUGH related her understanding that FERC has approved distance sensitive rates by zones.

MR. WRIGHT answered yes.

MR. ROBINSON concurred. In response to Representative Fairclough, Mr. Robinson answered that he is not familiar with the potential \$10 million contingency liability for Alaska.

MR. WRIGHT concurred that he did not have a familiarity with the liability issue either.

REPRESENTATIVE FAIRCLOUGH related that TransCanada's financial "notes" list a \$250 million liability that could potentially increase by 14 percent due to partners of previous partnership. She inquired as to what position FERC has on that type of liability and further, if the liability could be tacked on as a U.S. tariff.

MR. ROBINSON opined that that matter would represent a unique finding for the commission. He reiterated FERC process is to raise an issue, perform fact finding, and present to the commission for it to determine the outcome. He offered that FERC does not have a history with that type of problem associated with a pipeline.

[1:54:02 PM](#)

REPRESENTATIVE FAIRCLOUGH inquired as to whether FERC has experienced other lawsuits and rolled litigation costs into tariff rates.

MR. ROBINSON answered that there may be cases, but that he could not recall any instances.

[1:54:25 PM](#)

REPRESENTATIVE SEATON asked for clarification on pro-rated volume. He recalled that prior presentations have related that oil pipelines are common carriers and if someone has new oil that it can get prorated and rolled in that volume. He said he thought that FERC mentioned the same thing about gas volumes, if someone finds new gas and our earlier discussions were that it would need to go through expansions and not through pro-rating.

MR. WRIGHT pointed out that oil pipelines are common carriers. A producer arises with oil to ship and the pipeline must pro-rate the capacity to accommodate the new producer, regardless of the rate that is being paid. He explained by offering a scenario in which anchor shippers used all the capacity prior to an open season, during the initial capacity allocation for an Alaska pipeline, and another potential shipper arose during an open season - and matched the rates, terms, and conditions that the anchor shippers agreed to - that the capacity would need to be prorated for the new potential shipper. He offered that the scenario described is the only instance for proration. He pointed out the distinction of common carriers is that it doesn't matter what the rate is because the new shipper must still be accommodated. He noted that an Alaska pipeline would provide for such an accommodation.

REPRESENTATIVE SEATON related his understanding that after the pipeline is flowing and a new shipper has gas to ship, that if it required an expansion, that action would be considered an expansion and not a proration. He related his understanding that a proration only occurs at the initial bidding for volumes in the pipeline.

MR. WRIGHT answered, "Exactly." He noted that if one person requests an expansion, the pipeline would offer an expansion for them if it is feasible - voluntary, or involuntary. However, during a subsequent open season, if multiple parties requested additional capacity, it is possible that the pipeline could economically only expand so much, and then "you could go into that proration for the expanded capacity," he said.

MR. ROBINSON interjected:

Let's say the next engineering increment of feasible expansion is another \$100 million and they have 3 or 4 people that want to do it and they total out to \$120 million. The next expansion of that isn't available up to \$500 million. You've got \$20 million that you can't handle under that expansion. Then you might

have to do a proration for that one expansion to get it back to the \$100 million again. That's kind of rare.

MR. WRIGHT highlighted that action would apply so as long as the parties are paying the same rates, terms, and conditions.

REPRESENTATIVE SEATON asked for clarification that proration would be among the parties bidding for expansion gas or would the initial shippers be proration and have their volume reduced.

MR. WRIGHT answered, "proration for expansion volumes."

[1:58:09 PM](#)

REPRESENTATIVE SEATON expressed concern for mandatory expansion that doesn't have the presumption of rolled-in rates. He posed a scenario in which 2 producer proposals were submitted, that were in a mandatory expansion, with incremental rates. He surmised that the new exploration would be subject to much higher tariffs. He further surmised that would likely slow down exploration since companies would not want to submit to contesting for expansion or pay incremental rates. He inquired as to how FERC would handle two projects, one that embodied the scenario just described, and the other being that the pipeline was required to propose rolled-in rates.

MR. ROBINSON related that a number of assumptions are built in to Representative Seaton's question. He said, "I'm not sure all the assumptions I would necessarily agree with. The Congress contemplated a method for expansion and FERC issued regulations associated with [ANGPA]. The FERC regulations do not preclude rolled-in rates for involuntary expansion. It's just that there is no rebuttable presumption that they are appropriate. So, the test is not as high. However, any rate making action is subject to the facts, including testimony by those who support or oppose the action, then the commission deliberates on all aspects, and makes its decision. He opined that it is very difficult to speculate how something would play out on an expansion without the facts associated with it at the time of the determination. He offered that some people may see a clear path, and they may be right, but that it is hard to predict that far out.

MR. WRIGHT interjected:

You may have an involuntary expansion, and ...the project operator ... in terms of I don't know if they

really want to "cut off their nose to spite their face." A lot of times you get cheap expansibility and it's to their benefit sometimes to roll it in because it could actually reduce their rate. You see that a lot with compression expansion, which I would assume for a good deal of the expansions of an Alaska pipeline would be expression related expansions.

2:01:52 PM

SENATOR THERRIAULT, with respect to mandatory expansions, recalled the language in [Section] 105 [ANGPA] discusses that it is not supposed to adversely impact the pipeline operations, economic viability, not create a subsidy. He inquired as to whether FERC has defined any of those terms previously and what process FERC uses to define a subsidy such as whether it is the initial rate or the lowest point on a "J curve."

MR. WRIGHT answered that "subsidy" as used in FERC's current pipeline certificate policy is anything that would raise the system rate. He noted that if an expansion happens that everyone would pay a higher rate, which FERC would consider as a subsidy.

SENATOR THERRIAULT surmised that under Section 105 [of ANGPA] that FERC may need to review that again. He inquired as to the length of that process and if the commission has a specific time to decide a case, such as within a year. He surmised that if the matter was appealed, that the courts would not have time constraints in which to make its decision.

MR. ROBINSON related that any decision the commission makes is subject review by the courts. He offered that the specific timeframe associated with a particular case is set by the facts of the case.

MR. WRIGHT reiterated that FERC does not have a statutory requirement for a time limit to decide voluntary or involuntary expansion. However, he stressed that FERC attempts to expedite cases while ensuring the public safety and the environment.

MR. ROBINSON interjected that FERC has an extensive record, which is readily available, in terms of the length of time it takes to complete its review. He characterized FERC's reputation as one "to move projects" and he gave his assurance that he will do everything he can to ensure its reputation is not tarnished.

2:04:39 PM

REPRESENTATIVE HAWKER recalled the legislature's review of the gasline, and pointed out the one issue that seems to be "driving the debate" is the subject of expansion. He inquired as to whether Mr. Robinson could explain on a calendar timeline when expansion will "really be an issue for us."

MR. ROBINSON answered that it would be beyond 10 years. He opined that if the process began immediately, it will likely be 10 years before gas is flowing. He recognized that some expansions have happened while in midst of a project, but he surmised that it would be unlikely in Alaska. He noted that expansions have happened during construction when the market changed radically over a 2 year period. He opined that with the size and scope of the Alaska pipeline that he suspects the project will likely get pipe in place. He speculated that a new discovery could change a project from 4.5 Bcf/d to 7 Bcf/d and that FERC would accommodate that scenario.

2:07:09 PM

REPRESENTATIVE HAWKER inquired as to the expansion process.

MR. ROBINSON related that during 2000-2001 California energy crises, that the KERN project delivered about 1 Bcf/d of natural gas to southern California. However, he explained, it became apparent that California needed more natural gas. He noted that FERC went through an expansion on that project in about 6 weeks, and authorized it. It included hundreds of miles of looping, new compression, which increased the delivery significantly, he noted.

MR. WRIGHT clarified that the project Mr. Robinson mentioned is a different expansion in the Kern project than the one referred to in today's earlier testimony.

REPRESENTATIVE HAWKER related that discussions have been had that expansions are expensive and can increase the cost. He said he wanted to have on the record that the initial expansion stage can "work in the opposite direction."

MR. ROBINSON agreed. He related that expansions are project specific. He said, "Yes, sometimes they do result in tariffs that are greater, other times they result in reductions."

2:09:14 PM

REPRESENTATIVE HAWKER recalled that Mr. Robinson has mentioned, "first dollar" on several occasions. He related that expansion is speculative. He inquired as to whether the committee should be prioritizing and making the expansion issue as "great an issue as we seem to be making it." He further inquired as to whether the committee is making too much of an issue of it at the risk of missing the "first dollar."

MR. ROBINSON said, "I think that is something you really have to ask yourself." He related that during a proposed storage facility in Arizona that the state legislature took some actions that precluded that storage from being built. He stated that during a visit to Arizona, a legislative leader said that Arizona really needs storage and that he supported it. Mr. Robinson advised him that it is too late. He surmised that the legislature took actions that "killed" the project. He asked, "Who's going to spend the 'first dollar'" in Arizona, when a reasonable project had an action taken that "cut the feet out from under their project." He said he did not believe that a proposal has been submitted for storage in the last 7 or 8 years. He said, "You have to create environment where people want to spend the "first dollar" with some reasonable expectation of it coming to fruition and then recouping the investment on that "first dollar" investment."

REPRESENTATIVE HAWKER stated that Mr. Robinson just cited a case in which government action distorted the reasonable actions of a free market, and attracting that "first dollar" became almost impossible. He expressed concern that the state is attempting to do that without a clear path forward by providing \$500 million in state funding, which could distort the actions of a free market.

MR. ROBINSON, in response to Representative Hawker said he would not comment on the state's actions. He offered that FERC is looking for an applicant to work with and that FERC never takes a position.

MR. WRIGHT added that the state has to get pipeline built first and then consider expansion. He stated that the state should be concerned about how expansions are handled, but "getting the 'first dollar'" and "getting the pipeline in the ground" is the paramount importance. He said, generally speaking, "you hook on compression, that's cheap, but when you start breaking ground, and looping, putting a pipeline in the ground, another one

beside the original, that's when things gets get really expensive with expansions."

[2:13:15 PM](#)

REPRESENTATIVE GARA inquired as to whether the "no subsidy rule" only applies to forced or mandatory expansions.

MR. WRIGHT answered, "For voluntary, you get the presumption of rolled-in rates. For involuntary, you do not get a presumption; that's not to say you can't have rolled-in rates for an involuntary expansion."

REPRESENTATIVE GARA stated that he understood that distinction. However, he referred to the rule that says, "in an expansion, an expansion can't be subsidized."

MR. ROBINSON answered that irrespective of voluntary or required. He said, "that non-subsidization goes to expansion."

REPRESENTATIVE GARA related his understanding that the rule that says you can't subsidize an expansion applies whether it is a voluntary or involuntary expansion, and whether it is rolled-in or incremental rates.

MR. ROBINSON said he believes that is correct.

[2:14:59 PM](#)

REPRESENTATIVE GARA posed a scenario in which an initial pipeline owner who also owns the gas subsequently receives a demand for expansion of the pipeline. He related his understanding that under an incremental rate proposal, the original cost would be the same, but new shippers would be charged for their expansion. He said, "Say, the original shippers said, 'with rolled-in rates all of our costs are going to go up and therefore I'm subsidizing somebody else's expansion.' In that circumstance would you then reject the concept of rolled-in rates or can you not say."

MR. ROBINSON answered that in viewing historically how the commission has defined it, I think that the way you've stated it is correct. But, again, given the unique legislation, and that term in the context of the legislation, may be something that people would debate at the time it would get in front of the commission.

MR. WRIGHT interjected:

Remember that when you have a voluntary expansion, this is something that differs from our current pipeline certificate policy; you get the presumption of rolled-in rates. That's a subtle, maybe not so subtle difference between our current pipeline certificate policy for voluntary expansions on an Alaska pipeline only.

REPRESENTATIVE GARA related that the policy behind AGIA was that the legislature wanted to encourage that as much as possible so the legislature required voluntary expansions.

MR. ROBINSON said, "There is a second term that we keep dropping, the rebuttable presumption."

REPRESENTATIVE GARA related if two projects, the TransCanada and Denali Project, moved forward, and if both meet FERC qualifications, will FERC leave it to the marketplace to determine which project is financed.

MR. ROBINSON responded that FERC has historically authorized projects that meet the public interest and that the market will pick the one that will bring the lowest cost gas to the consumer.

[2:18:39 PM](#)

REPRESENTATIVE ROSES asked whether it would be considered a subsidy if the pipeline owner were to come forward with scenario in which they were to change their debt to equity ratio at the time of expansion since that has the potential for changing the rates.

MR. WRIGHT answered that it could be considered a subsidy, but that it would need to be analyzed at the time of the filing.

REPRESENTATIVE ROSES asked for clarification of how FERC would view the debt to equity ratio in terms of what is reasonable.

MR. WRIGHT answered that FERC would have to evaluate it at the time given that the expansion could occur 5 to 10 years or even longer.

REPRESENTATIVE ROSES asked for a historical perspective, as to how often FERC has experienced a scenario in which an expansion

occurred and the pipeline owner wanted to change the debt-to-equity ratio.

MR. WRIGHT answered that has happened numerous times. He explained that sometimes the debt equity ratio does not change due to the conditions of the market such that rates fluctuate and so returns on equity vary. Additionally, the debt equity mix can be changed as well.

REPRESENTATIVE ROSES inquired as to whether FERC would examine each expansion individually in the instance that a proposal was submitted to FERC and all the expansions after initial expansion were at a 60:40 debt ratio as opposed to if the initial construction ratio had a 70:30 ratio. He further inquired as to whether FERC would allow the fact that the original agreement was that the producer would bring forward a 60:40 debt ratio for every expansion.

MR. WRIGHT answered that FERC would look at the market at the time and that FERC would not "tie the hands of future commissions on the debt equity ratio."

[2:21:13 PM](#)

REPRESENTATIVE GARDNER related that under the current proposal before the legislature, the ownership construction operation of the gas treatment plant (GTP) is not necessarily part of the proposal that will be submitted to FERC. She inquired as to whether the gas treatment plant would be subject to FERC regulation. She explained that part of the legislature's concern is that regardless of the terms for access to the pipeline, if parties can't obtain access to the GTP, that it could potentially be a bottleneck. She recapped her question to ask if a proposed gas treatment plant is owned by another entity and not part of the proposal what FERC's role would be, if any.

MR. WRIGHT recalled that with the Alliance Pipeline project that FERC has jurisdiction over the gas treatment plant (GTP). He said he was not quite sure and offered to provide information to the committee.

MR. ROBINSON interjected, "We have it both ways."

[2:22:29 PM](#)

REPRESENTATIVE KERTTULA asked to have explained the presumption and the rebuttal presumption for the public.

MR. WRIGHT answered:

Rolling in your cost is simply when you have a pipeline that is in existence; you do an expansion, the cost of that expansion is rolled-in to the existing rate base, or the original 'pot of dollars' along with the volumes that are added, and you create a new rate. When you roll it in if it's cheap expansibility - doing the math there - you could actually come out with a cheaper rate; you could come out with a more expensive rate than usual. Sometimes though, when you come out with a rate that's higher, that's what we would consider at FERC to be a subsidy. Under our current pipeline certificate policy, we do not allow subsidies ergo you would have to price that - what we call incrementally - and that is the shipper or shippers that benefit from the new facilities would pay the entire cost of that expansion divided by the new volumes that they add to the system. The original shippers would still pay the same rate they had always been paying. Now, when you have an expansion, and it's voluntary under the open season regulations you get a rebuttable presumption of rolled-in pricing, that is it could be subsidization as we consider under our current pipeline certificate policy, but we could see given the circumstances when an expansion is proposed that having that rolled-in rate, even if it might result in some sort of subsidy might be beneficial and we would allow that to go through. Involuntary...there is no rebuttable presumption of rolled-in pricing. Therefore, you probably would revert to our pipeline certificate policy and if we see it would be a subsidy, we would require an incremental rate. If it actually reduced the cost, and reduced the rate for the original shippers, we would allow it to be rolled-in.

MR. ROBINSON said, "For the benefits for the folks back home. This means that they get the benefit of the doubt for the rolled-in rates."

REPRESENTATIVE KERTTULA opined that they don't if it not voluntary.

MR. ROBINSON agreed.

2:25:06 PM

REPRESENTATIVE DOOGAN referred to slide 2 labeled, "Alaska Pipeline Timeline," to the Example Case and inquired as to whether this is a reasonable timeline.

MR. ROBINSON answered yes.

REPRESENTATIVE DOOGAN recalled copies of a letter from the Denali Project that had a timeline that pushed the schedule two years forward into the future. He read, "Denali would expect to submit its complete application to the commission by August 2011. Denali would desire commission approval no later than August 2013. He asked for clarification or comment on the Denali Project schedule."

MR. ROBINSON replied that he could not. He explained FERC process: the applicant requests pre-filing and establishes a timeline that it believes is reasonable; FERC reviews the application and can modify the schedule and timeline for what FERC believes is appropriate and necessary. He said that the Denali Project application has just been received and will be examined. He said, "We think this is a reasonable proposal. Someone else may look at it and think, okay, we need three field seasons. We don't know. Maybe they think this field season is already too late to get anything done. We just don't know."

REPRESENTATIVE DOOGAN related his understanding that this is their "opening bid" on the schedule.

MR. ROBINSON answered that the applicant's schedule is what Denali perceives as the appropriate schedule. He noted that FERC has not reviewed it yet to determine whether it agrees.

2:27:10 PM

REPRESENTATIVE GATTO referred to the existing pipeline corridor and posed a scenario in which one applicant would propose a 36-inch pipe fully compressed, which he opined would essentially close the basin to new explorers; and a competing applicant proposed a 48-inch pipe, which he opined would render the basin wide open to additional exploration. He inquired as to whether as to whether FERC would grant one certificate in favor of another or if it would issue certificates to both applicants.

MR. ROBINSON related that FERC could consider that scenario. He explained that FERC has seen every variant including combining

pipe over certain distances through certain rights-of-ways to reducing the right-of-way width to accommodate different sized pipe, to separating them for infrastructure redundancy purposes for security purposes. He noted that FERC has full flexibility in reviewing projects to determine what is in the public interest, in terms of sizing, location, and alignments with other rights-of-ways. He reiterated that FERC performs its review by engaging everyone that has a role in the project, identifying the issues, and resolving the issues.

[2:29:14 PM](#)

REPRESENTATIVE GATTO inquired as to whether FERC would ever "act as a go-between." He opined that it did not seem "fathomable" that the state would have two lines and he wondered if FERC has a vested interest nationally to make a determination between two applicants that would build the same line.

MR. ROBINSON answered that the commission has an office that acts to facilitate those kinds of decision making processes. He related that the market decides in instances in which two projects that basically serve the same purpose and are evaluated as in the public's best interest. However, he said that in instances in which a restriction is "something that drives it down," and for technical reasons there can only be one pipe, the FERC could make use of its administrative dispute resolution service.

[2:30:45 PM](#)

REPRESENTATIVE KELLY inquired, with respect to the subsidy test for the existing shippers whether the measurement is from the initial rate or - in the case of a couple of compression expansions - if the commission considers an increase as the current spot on the "J-curve" below the initial rate as a subsidy that has to be checked.

MR. WRIGHT answered that it is as simple as, "Here's the rate that's in the tariff." He noted that if more dollars are added to the rate base and more volumes are added "in the numerator," that once the math is performed that if it yields a higher rate, it is a subsidy.

REPRESENTATIVE KELLY related his understanding that it is the latter; that an existing shipper would have the advantage of the compression if that resulted in a lower rate.

MR. WRIGHT answered, "If it gave you a lower rate, yes."

REPRESENTATIVE KELLY inquired as to whether it is possible that both applicants will have "finance ability" [TransCanada and Denali Project] available and FERC determination will be key. He posed as scenario in which one applicant has a ratio of 75:25 with \$3 tariff; and the other applicant has a ratio of 60:40 with \$3.50 tariff. He further inquired as to whether either party would have an advantage given the final rates to consumer is also important to FERC.

MR. WRIGHT answered that a rate differential would be taken into account by the commissioners during the voting process. He opined that if financing is not an obstacle, it would come down to the authorization for construction, which would not be approved until "you have volumes under contract."

[2:34:07 PM](#)

SENATOR WIELECHOWSKI recalled discussions in which government actions halted a project and the importance of "first dollar" being spent. He inquired as to whether Mr. Robinson could comment on if the state would be in a better situation or a worse situation by granting TransCanada a license.

MR. ROBINSON prefaced his answer by saying, "We're not experts in the state process and won't comment on it. We just want an applicant." He opined that the legislature has to review that and decide what is in the state's best interest. From FERC's perspective, moving forward with a pipeline project translates into "having somebody to work with under pre-filing." He stressed the emphasis should be "getting somebody up and moving on an application and then working the problems as the problems arise." He opined that more problems will arise "than anybody in this room can contemplate or project on what they might be." He further opined that FERC will resolve problems as they arise to keep the project moving.

[2:35:48 PM](#)

SENATOR WIELECHOWSKI asked for clarification of why the producers would want to build a pipeline that would earn a much lower rate of return than what the producers would typically make on "an upstream."

MR. ROBINSON said, "That's not my business. I don't know why they would do it. You'd have to ask the people that are doing

it." In further response to SENATOR WIELECHOWSKI, Mr. Robinson said, "I mean, you can speculate, but it'd just be that." He surmised that it could be that the producers want to have a greater degree of control given the significance of the investment, or that it could be due to tax rationale.

[2:37:03 PM](#)

SENATOR WIELECHOWSKI inquired as to whether FERC commissioners are appointed on a staggered term. He further inquired as to whether the current appointees or future appointees will make the decision.

MR. ROBINSON answered that each appointee serves a five-year term. He noted one term expires June 30th of each year. He pointed out that some commissioners do not serve their full terms. He opined that it is not predictable who the commissioners will be since the date that FERC will make decision is also not known.

SENATOR WIELECHOWSKI inquired as to whether the presidential election will have an impact.

MR. ROBINSON reiterated that energy isn't a "party thing," but that it is a regional thing. He opined that an amazing amount of consensus on infrastructure issues at the commission. He offered an example in which a tremendous Democratic opposition arose with the Broad Water LNG project in the Long Island sound, yet the 3 Democrats and 2 Republicans serving on FERC unanimously approved the project.

[2:39:41 PM](#)

MR. ROBINSON, in response to Representative Ramras, explained that FERC offers a process that has been tested over time and has been found to be an effective way of making decisions that are in the public interest and in "getting pipelines built." He recapped the proven record and FERC process that works. He suggested that the state contact other pipeline companies to gain a sense of the effectiveness and process that FERC uses. He opined that if the project is worthwhile, if the state is willing to work with FERC and the public to make the project as "palatable as possible," that the commission will efficiently review the project, and if it is in the public interest, will authorize the project. He further offered that the commission then becomes a proponent for

satisfying the public interest by "getting that project built, consistent with the requirements of the commission."

[2:42:16 PM](#)

REPRESENTATIVE SAMUELS recalled that part of the TransCanada proposal is that the gas must go into their hub as opposed to "new pipe," such as from the Alberta border to Chicago. He inquired as to what caveats that could be placed on firm transportation (FT) commitments - if the State of Alaska wanted to take FT or one of the oil companies wanted to take FT - and how FERC would view that contingent language that the gas must go into the TransCanada hub. He further asked, "In your experience - across the country - is FT given - "we'll ship the gas 'if', and in particular, with that example, is that they'd be required to put the gas into somebody else's pipe at a given rate."

MR. WRIGHT answered:

Well, that sounds like a condition that would have to go into FERC jurisdictional tariff, in theory, i.e., you want FT service through Alaska it has to go into the hub. And I just don't see that as flying. I mean, that's my personal opinion. I don't see us restricting the transportation as such. Transportation in Canada - that might be a whole different thing. That's the key. We wouldn't bind ourselves for transportation on another - one pipeline for transportation on another pipeline in another country.

The committee took an at-ease from [2:43:55 PM](#) to [3:07:56 PM](#).

[3:08:41 PM](#)

REPRESENTATIVE FAIRCLOUGH inquired as to whether a \$500 million subsidy as part of an application would be viewed as an advantage over another application.

MR. ROBINSON answered that he could not perceive that it would give an applicant an advantage, in terms of moving forward on an application. However, if some aspect of the \$500 million that affected the ultimate project and the project was "fully vetted," he said he thought the commission could consider it. Although, he noted that he did not know what that might be.

REPRESENTATIVE FAIRCLOUGH asked Mr. Robinson to elaborate for the public the effect a \$500 million subsidy would have on the tariff.

MR. ROBINSON characterized the \$500 million subsidy's effect on the tariff rate as an issue that is fair to determine and what it would mean to the consumer. He said that he wouldn't speculate at this time. In further response to Representative Fairclough, Mr. Robinson said that in terms of any effect on the consumer that he would look to a future commission to determine how it would treat any subsidy.

[3:10:22 PM](#)

REPRESENTATIVE HAWKER recalled Representative Samuel's question with respect to not being able to contractually obligate shippers to ship on other lines under certain circumstances. He asked for clarification on the question and the answer since it seems relevant, but he said he wasn't sure if he fully understood the question.

[3:11:04 PM](#)

REPRESENTATIVE SAMUELS recapped his question as relating to the TransCanada's requirement that it would build the pipeline, but that the gas had to go into its hub.

MR. ROBINSON interjected and said:

I don't think the commission has a history of providing in their tariff revisions, limitations on 'where the gas can go.' Now, as a matter of the certificate, it will have an end point - the certificate goes to "X" - and in this particular instance our certificate would authorize up to the Canadian-Alaska border. And that would be basically that the tariff provisions would be in that context. The point that we tried to make in responding earlier to Representative Samuel's question is that what happens in Canada is something that would be specific to the NEB and the tariff provisions there; how they might treat that and what they may put into a tariff provision or allow to be put into a tariff provision is something we have no role in. Did that clarify, I hope.

[3:12:14 PM](#)

REPRESENTATIVE HAWKER said that he thought it was a different question, but noted that Mr. Robinson's answer was very clear. He continued:

My actual, original question...[relates to] the interplay and your perception of your regulatory counterparts on the Canadian side of the border. You discussed the role of the NEB at some length here - the Memorandums of Understanding and well established relationships with those- but another issue that has come up in this discussion of the AGIA proposal is the presumption that the NPA would be regulatory authority in Yukon, and of course as we sit and listen to all sides of these discussions; certainly the proposer, TransCanada, believes it has an exclusive authority granted under that Act some time ago in the treaty with the U.S. Listening to other highly competent qualified pipeline operators up there, particularly those operating the Alliance Pipeline; they disagree very strongly with that presumption. I'm wondering, does - do you folks at FERC- can you shed any light on that for us or open any doors?

MR. ROBINSON replied no. He related that FERC does not have a position as to how the regulatory authority will function in Canada. In further response to Representative Hawker, Mr. Robinson answered that he does not want to speculate on whether that process will be a "sticky wicket" that would probably require litigation to resolve. He maintained that he could not speculate how the regulatory oversight would "play out" in Canada.

[3:14:04 PM](#)

CHAIR HUGGINS announced that the committee has invited the NEB, but that they have not come forward. However, he offered to continue to pursue an invitation for them to participate.

[3:14:21 PM](#)

REPRESENTATIVE KERTTULA related her understanding that FERC has a different standard for "public interest." She inquired as to whether the state must take its own actions in instances in which the state identifies a matter as being in the public interest, such as the offtake points.

MR. ROBINSON answered that the state has a right and responsibility to make it clear to FERC in its process what it believes to be appropriate with regard to the construction of its project. He characterized that approach as "very reasonable." He pointed out that FERC sometimes has 1,000 people in opposition to a project and that the FERC evaluates comments taken as part of its determination.

[3:15:38 PM](#)

REPRESENTATIVE KERTTULA asked, "Would you condition the certificate upon getting the pipeline through Canada and back out to us? Would you make that kind of a condition, having the authority to cross Canada?"

MR. ROBINSON related his understanding that Representative Kerttula was asking if FERC might condition the project; that it would not allow the pipeline to be constructed unless there was satisfaction of some condition that said, "The proponent for the project has been able to demonstrate to the commission that there is also going to be a Canadian pipeline and an exit to the U.S. Yes, that FERC could do that," he said.

[3:16:31 PM](#)

REPRESENTATIVE GUTTENBERG related his understanding that FERC is regulating the pipeline from Prudhoe Bay to the Alaska-Canadian border and from the point the pipe comes out of Canada enroute to Chicago or other markets. He inquired as to how FERC "deals with that gas" and whether its [authority extends] in totality of that line or just when the line re-crosses the border enroute to Chicago or Boston.

MR. ROBINSON answered that FERC takes responsibility [in the U.S.] for the pipeline and sets tariffs and certificates expansions for new lines.

REPRESENTATIVE GUTTENBERG asked, "But would you look at the upstream, and I mean "way upstream" that part south of the border in addition to that part north of the border."

MR. ROBINSON answered that FERC can consider impacts associated with developing a pipeline in Canada since it in the public's interest and would be a reasonable outcome of the FERC's certification of a pipeline in Alaska since something "may disturb it." He characterized the process as a "two-tier down" consideration. He offered that sometimes FERC is asked to

consider what effect a proposal might have on the development of "congestion in a town" that would be economically stimulated by the project's presence. He surmised that FERC would consider that issue. However, he opined that it would need to be a significant concern and that it would be "a secondary response" associated with the primary review [of the project].

3:19:05 PM

REPRESENTATIVE GUTTENBERG recalled a discussion of the gas treatment facility in Prudhoe Bay. He offered that the pipeline would "hopefully be open access." He related that the gas treatment facility "may or may not" be part of the project. He inquired as to whether FERC would regulate the facility for open access. He surmised that "for many of us" the ability to "get into pipeline" happens at a point prior to the pipeline, that it happens when "you are allowed to get access to the facility" and the tariff rate at that point.

MR. WRIGHT answered that FERC does not regulate gas treatment facilities since they are upstream of the transmission. He noted that FERC authority relates to gas transmission. Thus, if gathering lines take gas from the field to a gas treatment facility, that generally would not be under FERC jurisdiction, which begins at the "tailgate" of the gas treatment facility at the point gas is transmitted [through the pipeline.]

MR. ROBINSON pointed out the unique status of the [Alaska gasline] project and that the Congress has established incentives to ensure exploration and pipeline expansion. He stated that it could be presented to FERC that [the gas treatment plant] might be used to limit that development of gas and FERC might examine that in terms of defining what constitutes "transportation" and what constitutes "gathering."

3:21:08 PM

SENATOR MCGUIRE related her understanding that FERC has an outward public record; the part that is subject to potential challenge and review, but she said she assumes that FERC is involved in many discussions in order to make its determinations. She expressed concern that by offering the subsidy/investment, the state may be "tying our hands." She inquired as to whether AGIA's provision that prohibits the state from entertaining any competing projects causes any concern for FERC.

MR. ROBINSON answered that he is not commenting on AGIA, because "it's really not what we do." He stated that FERC process is to "shine the light on every issue," and to search out issues to discuss, particularly with those who have opposition to a project so that FERC has an opportunity to mitigate the issue and find the best project for the consumer.

SENATOR MCGUIRE inquired as to whether if FERC has precedence and experience in conditions such as AGIA. She maintained her concern that the statutory framework obligates the state to refrain from other competing applicants. She asked, "How would you deal with it?"

MR. ROBINSON related that FERC has frequently encountered situations in which the state's position is in opposition to a project. He said that he cannot think of an instance in which a state has indicated that it would not participate. He opined that if a group refuses to participate that it would not stop FERC process. He further opined that FERC is very good at surmounting hurdles. He highlighted that due to the Congress's actions that FERC will do everything that it can to develop the record, resolve issues, and allow FERC Commission to vote on whether a particular proposal is in the public interest.

[3:27:12 PM](#)

REPRESENTATIVE COGHILL related his understanding that the proposal the state is proposing is to enter the Alberta Hub and whether that is feasible with respect to the likely rate for the Alaska section, the provincial sections and a part "that spreads across the hub." He inquired as to how FERC reviews what passes through the Henry Hub, which he surmised might provide information to assist the state.

MR. WRIGHT answered that the Alberta Hub and Henry Hub are two different things. He related that the Alberta Hub is basically the pipeline in Alberta. He further said:

The Henry Hub is the point at which approximately 16 different pipelines cross; that's a pricing point for the New York Mercantile Exchange for natural gas futures. People key off that in terms of contract; figure out basis differentials, all kinds of financial trading instruments. It's not really part of gas contracts, when they say, 'I'm going to transport my gas from point "X" to the Henry Hub.' It's not that kind of thing. What they use the Henry Hub for is,

'I'm going to agree to pay a rate that is equal to the Henry Hub plus something.' I think the Alberta Hub - and anyone can correct me if I'm wrong and I may be - is just an idea of getting the gas from the Alaska-Canada border into the existing Alberta infrastructure to be transported by the existing TransCanada facilities from that point on.

REPRESENTATIVE COGHILL offered "that helps and it doesn't help." He says that transportation costs are assumed. He said, "You don't follow the molecules, you just follow the volume, is the way I understand it." He further offered that the legislature is trying to determine if it's reasonable. He continued:

And we'll probably be presented, somewhere along the line with the Denali Proposal that is a single line that goes past that. And hence, the question is, can you force them to take it in through the NEB and what does that mean for the tariff rate? That's one of the questions we'll have to discern. I was looking for some comparison and it doesn't sound like this is a comparison.

MR. WRIGHT agreed. He encouraged the legislature to discuss Canada's pricing with the NEB or the appropriate Canadian agency.

[3:30:28 PM](#)

REPRESENTATIVE DAHLSTROM offered her concern that the representatives from the NEB are not present at the hearings. She related her understanding that the NEB reports to another Canadian agency that has jurisdiction over the NEB, but that the agency with oversight is currently understaffed and not available to participate [at the legislative hearings] at this time. She inquired as to whether FERC could comment.

MR. WRIGHT said,

What I know is that the Northern Pipeline Act (NPA) has controlling [authority] which is comparable to Alaska Natural Gas Transportation Act, {ANGTA 15 U.S.C. §§ 719 et. seq] for us, and that administers whoever would transport Alaska gas. As I understand the Northern Pipeline Act, I want to say it's probably in the hands of the interior ministry and they may

make an assignment, which logically would be NEB personnel.

REPRESENTATIVE DAHLSTROM expressed interest in expanding the committees' invitation to other entities.

REPRESENTATIVE SAMUELS advised that other entities were invited such as the NEB and the broader government policy entity, as well as the U.S. Department of Energy. He noted that to date these entities have declined to participate.

[3:33:21 PM](#)

REPRESENTATIVE ROSES recalled an earlier question by Representative Kerttula, with respect to whether a stipulation could be added to a certification that required delivery of gas to the Lower 48. He further recalled that the answer was that FERC could stipulate. He inquired as to what the likelihood is that FERC would do so.

MR. ROBINSON answered that FERC has the ability to place any condition that it determines is in the public interest into a certificate. He said that it is a different question as to whether that stipulation [for gas delivery to the Lower 48] would be found to be in the public interest. He continued:

I can see the possibility of the commission deciding, 'look, our business is in what is necessary to get a pipe built in Alaska and leave it to the Canadians and the benefits they might see for a pipeline going across Canada, to do what it is that they do. We're not going to put any preconceived notions on where it's got to end up, or what has to happen in Canada. A commission easily could do that. It doesn't mean that we couldn't. It's just not necessarily something that the commission would necessarily do.

REPRESENTATIVE ROSES related his understanding that it is possible FERC could [stipulate gas delivery to the Lower 48] but that it is highly unlikely it would do so.

MR. ROBINSON answered that he never tries to predict what a commission that doesn't even exist might do. He continued:

But, the history of it is that it's probably going to be a big enough task with enough controversy associated with it - to get a pipeline authorized and

under construction in Alaska - to try to extend the commission's regulatory oversight into what happens in Canada, even if we could do that through our own tariff mechanisms is probably something that wouldn't happen.

REPRESENTATIVE ROSES stated that he is attempting to sort out the benefits and detriments to passing AGIA, not trying to put FERC "on the spot." He related his understanding that the only control is up until the pipeline arrives at the Canadian border and that anything else is pure speculation in terms of tariff, expansion rates, or transportation costs to the Lower 48. He further related his understanding that FERC will make its decisions based on an application and the record it develops, regardless of state's position.

[3:37:17 PM](#)

MR. ROBINSON offered that he hopes he made it clear that FERC would give great weight to state's position. He said that it is not because the state's position doesn't matter, rather that ultimately everyone's position matters. He further stated that the only way it can dismiss a position, is if the record is developed that the position isn't supportable.

[3:38:12 PM](#)

REPRESENTATIVE ROSES said:

I didn't mean to state that the state's position doesn't have any merit whatsoever, or had no weight. What I meant to say is that it doesn't have any particularly more weight than any other position would be in terms of somebody bringing another position forward, or a counterproposal that would come forward.

[3:38:37 PM](#)

REPRESENTATIVE DOOGAN opined that while FERC acts in the public interest, that identifying the public interest is "a slippery notion." He inquired as to whether FERC would consider a matter in the public interest if all the principal parties were in agreement such as the state, the pipeline company, the existing shippers, the explorers, or anyone involved in the question.

MR. ROBINSON related that ultimately FERC commissioners have to determine by its vote what is in the public interest. He said,

"If you have everybody lined up, my history at the commission has been that the commission 'really really' likes that. And that they have a great tendency to vote the position of the public interest consistent with that agreement that involves all the parties. There is a huge history of that."

REPRESENTATIVE DOOGAN asked whether it is in the state's best interest to limit the number of other positions that would be presented to FERC.

MR. ROBINSON answered, "We actively pursue quite the opposite of that and irrespective of what one party may try to do." He reiterated that FERC recruits other parties in order to make the process visible and then lets the best argument win.

MR. WRIGHT stressed that the pre-filing process entails identifying all the issues and attempting to resolve the issues.

REPRESENTATIVE DOOGAN related his understanding that consensus is the best and strongest position and that anything short of complete consensus isn't an advantage.

MR. ROBINSON clarified that it must be consensus that is legal. He said, "You can't all agree that we're going to break the law and do this." He related that some filings of settlement agreements before FERC from one party. He opined that even if .9 of the parties can agree, if the .1 opposing party has the merit from the record, that FERC has the ability to decide in favor of the .1 position. He offered that FERC hopes to facilitate consensus in its process and he strongly encouraged that effort to reach consensus.

[3:43:41 PM](#)

CHAIR HUGGINS asked for clarification regarding the Alliance Project.

MR. WRIGHT answered:

The Alliance Project was a group of gas producers in British Columbia and Alberta that, for lack of any other explanation said, 'We've got to get this gas to market. Let's build a high-speed - being a high-pressure- pipeline from that area to Chicago.' Basically, there's no delivery points off of it; all the liquids stay in it; it goes in the pipeline, goes through Canada, Alberta, maybe even Saskatchewan, I'm

not sure, it goes into the U.S. ends in Chicago, and has a gas treatment facility - I kind of mentioned before - that is at the end of the line in Chicago. It was a shining example of Canadian/American cooperation, in terms of getting the line being timely; it matched up at the border - that was a good thing- it was same time period. It wasn't like we were advancing far ahead of our compatriots in Canada. Again, it's probably 1 Bcf/d or more pipeline, traveling somewhere over 2,000 pounds per square inch. So, it's been a good thing.

[3:45:15 PM](#)

CHAIR HUGGINS inquired as to whether FERC generally sustains Mr. Robinson's recommendations.

MR. ROBINSON said:

I think the commission, through the years, has demonstrated that they have a lot of confidence in the expertise and the rigorous approach that staff brings to the authorization of pipelines. They review our work very carefully. They make modifications where they think it is appropriate. We, being staff, have the advantage of knowing the history of the commission and what it is that they think are important to them and we make sure we cover that. If we're doing our job well, then the commission has an opportunity to affirm our recommendations, but they also have every opportunity to say, 'Boy, did you all get it wrong,' and go a completely different direction.

[3:46:27 PM](#)

CHAIR HUGGINS asked FERC's staff presenters if they would like make summation comments.

[3:46:34 PM](#)

MR. ROBINSON expressed appreciation for the opportunity to clarify FERC. He related that as FERC staff, that he and Mr. Wright do not have all the answers. He said, "It's because nobody has all the answers for this." However, many issues will be worked out over time. He continued:

It's time to get started. It's time to start moving down the road to figuring out the issues and figuring out the answers using our process to develop the best project we possibly can. That's the commitment we'll make at FERC to the citizens of Alaska, to the State of Alaska, to the producers, to the shippers, that everybody will have an equal opportunity to influence that decision and come up with what best serves all parties. We've done it a long time and we'll do it here. Just get us an application, get us the parties and we'll make it happen from there with everybody, including everybody in the State of Alaska.

MR. ROBINSON thanked the committees for the opportunity to explain FERC's process. He offered to answer further questions.

[3:48:05 PM](#)

MR. WRIGHT thanked the legislature for the opportunity to testify. In conclusion, he said, "The world is not waiting for Alaska, so Alaska let's go."

The committee took an at-ease from 3:50 p.m. to 3:55 p.m.

[3:55:44 PM](#)

MARK JOHNSON, Commissioner, Regulatory Commission of Alaska (RCA), Department of Commerce, Community, & Economic Development (DCCED), relayed that in contrast to the RCA, the FERC takes direction from federal legislation that sets forth a specific framework for handling applications for an interstate pipeline; the RCA instead takes direction from Alaska statutes, has been developing regulatory history since statehood, and follows case law that applies.

MR. JOHNSON noted that the presenters from the FERC who testified earlier today were FERC staff and, as such, acknowledged that the FERC itself might not follow their recommendations when making a particular determination in any given case. In contrast, he and the other commissioners that present information to the legislature are actually the ones responsible for making the decisions. Thus, any statements the RCA commissioners make in legislative committee hearings are sometimes specifically referred to in filings. As a quasi-judicial entity, the RCA is necessarily constrained in its responses to questions; for example, the RCA would have declined

to answer the vast majority of the questions that were posed earlier to the FERC staff.

MR. JOHNSON said that the RCA is a "creature of statute" and performs those duties that the legislature authorizes under strict statutory guidelines. He then related that Janis Wilson has had 30 years' experience in regulating oil and natural gas pipelines in Alaska, and is the lead RCA commissioner with regard to pipeline matters. He mentioned that at one time in Alaska there were two distinct commissions - the Alaska Public Utilities Commission (APUC), which regulated utility matters [and later became the RCA], and the Alaska Pipeline Commission, of which Ms. Wilson was a member; the Alaska Pipeline Commission's duties were merged into the APUC and subsequently inherited by the RCA.

4:02:16 PM

JANIS WILSON, Commissioner, Regulatory Commission of Alaska (RCA), Department of Commerce, Community, & Economic Development (DCCED), noting that the Alaska Pipeline Commission merged into the APUC in 1981, observed that it has been a very long time since first the APUC, and now the RCA have regulated pipelines. Referring to a PowerPoint presentation, specifically to a slide outlining what the RCA regulates, she noted that the RCA regulates both utilities and pipelines, and in this respect is different from the commissions in many other states that regulate only utilities. Furthermore, the RCA can regulate a natural gas pipeline under two different statutes, as either a pipeline or as a utility - under AS 42.05 for utilities, or under AS 42.06 for pipelines - and the RCA determines which statute to regulate a particular pipeline under - whichever statute fits best with the public interest.

MS. WILSON said that the RCA has primarily regulated [natural] gas pipelines under AS 42.05; for example, all the ENSTAR Natural Gas Company's pipelines have been regulated under AS 42.05 as part of the "ENSTAR gas distribution utility." Recently, however, pipelines in Cook Inlet that transport gas have voluntarily submitted to the RCA's regulatory jurisdiction under AS 42.06. She noted that the FERC, in contrast, regulates oil pipelines under the Interstate Commerce Act and regulates gas pipelines under the Natural Gas Act. The RCA's relationship to the FERC and where the RCA's jurisdiction "touches and begins and ends" is determined by the federal Act. The legislature has given the RCA the authority to regulate oil and gas pipelines up to the point at which the RCA's jurisdiction touches federal

jurisdiction, so one must look to the federal Act to determine where the RCA's jurisdiction is, which is very different for oil pipelines than for gas pipelines, she offered.

MS. WILSON explained that with regard to the Trans-Alaska Pipeline System (TAPS), for example, the RCA sets the intrastate rate from Prudhoe Bay to [Golden Valley Electric Association's (GVEA's)] connection near Fairbanks and North Pole, and the intrastate rate to the Tesoro refinery in Nikiski, whereas the FERC sets the rates that apply to all the shipments [transported] to the Lower 48 or elsewhere. So although it might seem that something similar would apply to gas deliveries as well, that's not the case because the Natural Gas Act provides exclusive jurisdiction to the FERC to regulate interstate gas pipelines. Therefore, the RCA really doesn't have a role with regard to the main line, but does have an important role regulating any gas that comes off the main line and is subsequently delivered and consumed within Alaska - that is the extent of the RCA's jurisdiction with regard to gas. So the RCA would regulate the rates on a spur line or a Y-line, but not the intrastate rates from Prudhoe Bay to the offtake points within the state - that would fall under the FERC's jurisdiction.

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MS. WILSON said that this wasn't truly clear before the enactment of the Alaska Natural Gas Pipeline Act (ANGPA) wherein the RCA's jurisdiction was granted by Section 108(a) such that if the RCA regulates "those rates and services," they will not be subject to FERC jurisdiction, but will instead fall exclusively under the RCA's jurisdiction. She indicated that Appendix P1 - Major U.S. Regulatory Approvals - of the TransCanada application contains no mention of regulatory approval by the RCA. This is correct, she added, because the main line doesn't need any authority from the RCA to proceed.

REPRESENTATIVE KELLY questioned whether the RCA would regulate a Y-line going to Valdez that produces LNG for transport outside of Alaska.

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MS. WILSON characterized that as an unsettled question. If the liquefied natural gas (LNG) were to go to Asia, for example, then it is less likely that the FERC would assert jurisdiction over that Y-line. The state currently exports LNG to Asia and

the pipelines that feed that LNG plant are not regulated by the FERC even though the plant itself needs federal approval from the Department of Energy to export. However, she added, "This being a much higher profile and larger project, we are not certain that the FERC would not find some way to assert jurisdiction over [it], and certainly that might be true more especially if those exports from Valdez actually went to the United States or to the United States via Mexico."

REPRESENTATIVE DOOGAN - noting that there has been some discussion regarding having offtake points on the main pipeline for propane that could be delivered to rural Alaska - asked whether the RCA currently has the authority to regulate the delivery of that product after it leaves the main pipeline or whether the RCA would need to be given additional authority by the legislature.

MS. WILSON, noting that she couldn't speak for the RCA as a whole, said:

This is something that would probably be briefed by parties in front of us in an adjudicatory docket, and we would make a decision as to where our jurisdiction lay on that; we would certainly feel more comfortable if you would give us the explicit authority - ... assign us that task specifically if you wanted us to do that.

MR. JOHNSON agreed that the preferable approach would be for the legislature to explicitly extend that authority to the RCA.

[Not on the legislature's official recording, but obtained from another audio source was the following:

REPRESENTATIVE DOOGAN surmised, then, that with regard to alternative delivery systems, there might still be some question with respect to the RCA's authority.

MR. JOHNSON concurred.]

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MS. WILSON [in response to a question not captured on the audio recording] said, "Again, ... that's a very unsettled issue that we have discussed from time to time amongst ourselves at the commission." The RCA's authority is really for pipelines, but it also has authority over adjacent facilities; in this

instance, however, the facility would not be adjacent to the RCA's authority unless the legislature were to explicitly give the RCA authority over "gathering lines" or over the gas treatment plant itself.

SENATOR THERRIAULT asked whether the RCA regulates the existing Kenai LNG plant or has the authority to do so.

MR. JOHNSON answered that the RCA does not currently regulate that plant, nor has the question of whether the RCA ought to regulate that plant been raised with the RCA. He declined to answer whether the RCA currently has the authority to regulate such a plant.

MS. WILSON added that although she's never really considered the issue, it seems that [that plant] is not really a part of a total system of pipe that the RCA would regulate as a pipeline.

REPRESENTATIVE GRUENBERG said that it sounds like there are a lot of unsettled questions regarding the RCA's jurisdiction and asked what they are with respect to "these various projects."

MR. JOHNSON indicated that a consultant for the "gasline authority" has conducted an analysis of deficiencies in the RCA's regulatory and statutory framework, but the RCA itself has not due to its workload and a shortage of resources.

MS. WILSON, in response to a question, indicated that the RCA has a six-month deadline in which to process a certificate of public convenience and necessity, but for rate cases, when regulating a pipeline under AS 42.06, the RCA doesn't have a specific deadline.

MR. JOHNSON added that the Alaska Superior Court has interpreted the statutory deadlines such that should the RCA fail to act within the deadline, the RCA is deprived of jurisdiction and the application is deemed to have been granted. He characterized that as an unproductive way to do business, and opined that that default position doesn't serve the public interest.

MS. WILSON offered her belief that the statutory deadline applies only to an application under AS 42.05; under AS 42.06 there is no automatic granting of the application [because] the six-month deadline is in regulation as opposed to statute.

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REPRESENTATIVE FAIRCLOUGH, offering her view that the Alaska natural gas pipeline wouldn't be a utility even with five offtake routes, asked whether AS 42.05 or AS 42.06 would apply.

MR. JOHNSON posited that since that might become a contested issue, the most prudent course would be to decline to answer that question at this point; the RCA would only want to respond to such a question on the basis of a fully developed record.

REPRESENTATIVE FAIRCLOUGH argued, however, that it might behoove the state to clarify that point first in order to avoid "gaming" of the system. Should the RCA choose to regulate the pipeline under AS 42.05, she said, she is wondering whether the RCA has sufficient staff to respond within the six-month deadline.

MR. JOHNSON acknowledged that the RCA isn't adequately staffed to answer questions in a timely fashion; the RCA's resources are a function of the regulatory cost charge (RCC), which is assessed annually and has a statutory cap. He said, "We do not, in my opinion, have adequate resources under the current RCC cap to conduct the business we currently are charged with doing," and so regardless that the RCA is well suited to be making determinations regarding a natural gas pipeline, the kinds of resources necessary for the RCA do so would be extraordinary. He opined that the RCA is not funded from the state's general fund and currently faces severe resource limitations. He offered that it would be an interesting personal and professional challenge to be involved in this type of inquiry and decision making process, which he opined he would be delighted to be involved in at a professional level. However, the RCA would need a lot of resources and as much direction, specificity, and clarity from the legislature as possible to undertake this project.

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REPRESENTATIVE FAIRCLOUGH remarked that the legislature and administration should consider the issue of adequate funding for sufficient agency personnel necessary to move the project forward. She then asked for clarity regarding the possible [tariff] rates required under AGIA - a flat rate as opposed to distance-sensitive rates.

MS. WILSON replied:

I can only speak to that in terms of our precedent, and we, unfortunately, have very little precedent

under [AS] 42.06 for gas pipelines, but we have a great deal of precedent in [AS] 42.06 for oil pipelines, and we have set distance-related rates. However, we don't have that many points on the TAPS ..., which is the line we've set distance-related rates on; we have a \$.01 difference, I think, between the "Petro Star connection" that goes to the [Petro Star, Inc.] refinery and the Valdez terminal, and we have quite a difference, about half for that, that goes to the Golden Valley [Electric Association] connection at North Pole.

REPRESENTATIVE FAIRCLOUGH asked whether there would be a difference [in tariff] for a common carrier as opposed to a contract carrier, and, if so, whether that would impact the RCA's decision-making process regarding setting tariff rates.

MS. WILSON declined to answer. She noted, though, that the tariff to the offtake point on the main line is set by the FERC, not the RCA, but that once the product leaves the line and goes elsewhere by pipeline, then the RCA sets the tariff on "that further pipeline." So whether a differential rate would apply between Barrow and Fairbanks will be determined by the FERC.

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REPRESENTATIVE DAHLSTROM mentioned possible future legislation that would address the previously mentioned six-month deadline, and acknowledged the challenges faced by the RCA with regard to staffing, workload, and resources.

REPRESENTATIVE FAIRCLOUGH asked how the RCA will ensure that any savings realized by applying distance-sensitive [tariff] rates get passed on to the consumers.

MR. JOHNSON said that in establishing [tariff] rates, the RCA attempts to ensure, as best it can, that those who invest in a facility receive an adequate rate of return, and that the rates are just and reasonable. And although the RCA will not have any say in where the gas ultimately gets sold, the RCA will still be sensitive to the resulting tariff rates because of their implications for consumers. In the end, the RCA must ensure that an operation remains "a going concern," and there will be a variety of things to consider; for example, for an oil pipeline, there are royalty implications to consider when setting the tariff. The complexity of the issue precludes him from

providing a more definitive answer at this point in time, he added.

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REPRESENTATIVE FAIRCLOUGH asked whether the legislature can do anything to ensure lower prices for gas used in-state.

MR. JOHNSON indicated that perhaps having more legislative guidance could be of assistance to the RCA. In closing, he said he believes that as an institution, the RCA is well-suited to make the required decisions, though the legislature may wish to provide the RCA with more resources as well as more statutory authority and guidance.

[HB 3001 and SB 3001 were held over.]

ADJOURNMENT

There being no further business, the joint meeting of the House Rules Standing Committee Subcommittee on AGIA and the Senate Special Committee on Energy was adjourned at 4:40 p.m.