

ALASKA STATE LEGISLATURE
SENATE SPECIAL COMMITTEE ON ENERGY

July 29, 2008
1:13 p.m.

MEMBERS PRESENT

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

MEMBERS ABSENT

Senator Donald Olson

OTHER MEMBERS PRESENT

Senator Gene Therriault

COMMITTEE CALENDAR

SENATE BILL NO. 3001

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

HEARD AND HELD

HOUSE BILL NO. 3001(efd fld)

"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."

HEARD AND HELD

PREVIOUS COMMITTEE ACTION

BILL: SB3001

SHORT TITLE: APPROVING AGIA LICENSE
SPONSOR(s): RULES BY REQUEST OF THE GOVERNOR

06/03/08	(S)	READ THE FIRST TIME - REFERRALS
06/03/08	(S)	ENR
06/03/08	(S)	REPORT ON FINDINGS AND DETERMINATION
06/04/08	(S)	ENR AT 10:00 AM TERRY MILLER GYM
06/04/08	(S)	Heard & Held
06/04/08	(S)	MINUTE(ENR)
06/05/08	(S)	ENR AT 9:00 AM TERRY MILLER GYM
06/05/08	(S)	Heard & Held
06/05/08	(S)	MINUTE(ENR)
06/06/08	(S)	ENR AT 10:00 AM TERRY MILLER GYM
06/06/08	(S)	Heard & Held
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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
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06/09/08	(S)	ENR AT 10:00 AM TERRY MILLER GYM
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06/10/08	(S)	Heard & Held
06/10/08	(S)	MINUTE(ENR)
06/12/08	(S)	ENR AT 10:00 AM FBX Carlson Center
06/12/08	(S)	Heard & Held
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06/14/08	(S)	Heard & Held
06/14/08	(S)	MINUTE(ENR)
06/16/08	(S)	ENR AT 9:00 AM ANCHORAGE
06/16/08	(S)	Heard & Held
06/16/08	(S)	MINUTE(ENR)
06/17/08	(S)	ENR AT 9:00 AM ANCHORAGE
06/17/08	(S)	Heard & Held
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06/18/08	(S)	ENR AT 9:00 AM ANCHORAGE
06/18/08	(S)	Heard & Held
06/18/08	(S)	MINUTE(ENR)
06/19/08	(S)	ENR AT 9:00 AM ANCHORAGE
06/19/08	(S)	Heard & Held

06/19/08 (S) MINUTE(ENR)
06/20/08 (S) ENR AT 9:00 AM ANCHORAGE
06/20/08 (S) 9am - 5pm - Testimony <Invitation Only>
06/24/08 (S) ENR AT 1:00 PM MAT-SU
06/24/08 (S) Heard & Held
06/24/08 (S) MINUTE(ENR)
06/26/08 (S) ENR AT 1:00 PM KENAI
06/26/08 (S) Heard & Held
06/26/08 (S) MINUTE(ENR)
07/01/08 (S) BILL CARRIES OVER FROM 3RD SPECIAL
SESSION
07/01/08 (S) ENR AT 9:00 AM BARROW
07/01/08 (S) Heard & Held
07/01/08 (S) MINUTE(ENR)
07/08/08 (S) ENR AT 1:00 PM KETCHIKAN
07/08/08 (S) Heard & Held
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07/09/08 (S) ENR AT 1:30 PM TERRY MILLER GYM
07/09/08 (S) Heard & Held
07/09/08 (S) MINUTE(ENR)
07/10/08 (S) ENR AT 8:00 AM TERRY MILLER GYM
07/10/08 (S) Heard & Held
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07/11/08 (S) ENR AT 9:00 AM TERRY MILLER GYM
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07/14/08 (S) Heard & Held
07/14/08 (S) MINUTE(ENR)
07/22/08 (S) ENR AT 1:00 PM SENATE FINANCE 532
07/22/08 (S) Heard & Held
07/22/08 (S) MINUTE(ENR)
07/23/08 (S) ENR AT 1:00 PM SENATE FINANCE 532
07/23/08 (S) Heard & Held
07/23/08 (S) MINUTE(ENR)
07/24/08 (S) ENR AT 2:00 PM SENATE FINANCE 532
07/24/08 (S) -- MEETING CANCELED --
07/25/08 (S) ENR AT 1:30 PM SENATE FINANCE 532
07/25/08 (S) Heard & Held
07/25/08 (S) MINUTE(ENR)
07/28/08 (S) ENR AT 2:00 PM SENATE FINANCE 532

07/28/08 (S) APPROVING AGIA LICENSE
07/29/08 (S) ENR AT 1:00 PM SENATE FINANCE 532

BILL: HB3001

SHORT TITLE: APPROVING AGIA LICENSE

SPONSOR(s): RULES BY REQUEST OF THE GOVERNOR

06/03/08 (H) READ THE FIRST TIME - REFERRALS
06/03/08 (H) RLS
06/03/08 (H) WRITTEN FINDINGS & DETERMINATION
06/04/08 (H) RLS AT 9:00 AM CAPITOL 120
06/04/08 (H) Subcommittee Assigned
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
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06/10/08 (H) RLS AT 10:00 AM TERRY MILLER GYM
06/10/08 (H) Heard & Held
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06/12/08 (H) RLS AT 10:00 AM FBX CARLSON CENTER
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06/17/08	(H)	MINUTE(RLS)
06/18/08	(H)	RLS AT 9:00 AM ANCHORAGE
06/18/08	(H)	Heard & Held
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06/20/08	(H)	Heard & Held
06/20/08	(H)	MINUTE(RLS)
06/24/08	(H)	RLS AT 1:00 PM MAT-SU
06/24/08	(H)	Heard & Held
06/24/08	(H)	MINUTE(RLS)
06/26/08	(H)	RLS AT 1:00 PM KENAI
06/26/08	(H)	Heard & Held
06/26/08	(H)	MINUTE(RLS)
07/01/08	(H)	RLS AT 9:00 AM BARROW
07/01/08	(H)	Heard & Held
07/01/08	(H)	MINUTE(RLS)
07/02/08	(H)	BILL CARRIES OVER TO FOURTH SPECIAL SESSION
07/08/08	(H)	RLS AT 1:00 PM KETCHIKAN
07/08/08	(H)	Heard & Held
07/08/08	(H)	MINUTE(RLS)
07/09/08	(H)	RLS AT 1:30 PM TERRY MILLER GYM
07/09/08	(H)	Heard & Held
07/09/08	(H)	MINUTE(RLS)
07/10/08	(H)	RLS AT 8:00 AM TERRY MILLER GYM
07/10/08	(H)	Heard & Held
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07/11/08	(H)	RLS AT 9:00 AM TERRY MILLER GYM
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07/12/08	(H)	RLS AT 9:00 AM TERRY MILLER GYM
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07/13/08	(H)	RLS AT 12:30 AM TERRY MILLER GYM
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07/13/08	(H)	MINUTE(RLS)
07/14/08	(H)	RLS AT 9:00 AM TERRY MILLER GYM
07/14/08	(H)	Heard & Held
07/14/08	(H)	MINUTE(RLS)
07/15/08	(H)	RLS AT 9:00 AM CAPITOL 120
07/15/08	(H)	-- MEETING CANCELED --
07/21/08	(H)	RLS RPT 3DP 4DNP
07/21/08	(H)	DP: KERTTULA, GUTTENBERG, COGHILL

07/21/08 (H) DNP: JOHNSON, FAIRCLOUGH, SAMUELS,
HARRIS
07/21/08 (H) RLS AT 2:00 PM CAPITOL 120
07/21/08 (H) Moved Out of Committee
07/21/08 (H) MINUTE(RLS)
07/22/08 (H) BEFORE THE HOUSE IN THIRD READING
07/22/08 (S) ENR AT 1:00 PM SENATE FINANCE 532
07/22/08 (S) <Pending Referral>
07/23/08 (H) TRANSMITTED TO (S)
07/23/08 (H) VERSION: HB 3001(EFD FLD)
07/23/08 (S) ENR AT 1:00 PM SENATE FINANCE 532
07/23/08 (S) <Pending Referral>
07/24/08 (S) READ THE FIRST TIME - REFERRALS
07/24/08 (S) ENR
07/24/08 (S) ENR AT 2:00 PM SENATE FINANCE 532
07/24/08 (S) -- MEETING CANCELED --
07/25/08 (S) ENR AT 1:30 PM SENATE FINANCE 532
07/25/08 (S) Heard & Held
07/25/08 (S) MINUTE(ENR)
07/28/08 (S) ENR AT 2:00 PM SENATE FINANCE 532
07/28/08 (S) -- Testimony <Invitation Only> --
07/29/08 (S) ENR AT 1:00 PM SENATE FINANCE 532

WITNESS REGISTER

PATRICK GALVIN, Commissioner
Department of Revenue
Juneau, AK

POSITION STATEMENT: Explained the process for distributing the \$500 million AGIA inducement and answered questions about reimbursements after an open season.

DONALD BULLOCK, Attorney
Legislative Legal and Research Services Division
Legislative Affairs Agency
Juneau, AK

POSITION STATEMENT: Commented on legislative intent with regard to the \$500 million inducement in AGIA.

BONNIE HARRIS, Senior Assistant Attorney General
Department of Law
Juneau AK,

POSITION STATEMENT: Gave her legal perspective regarding withdrawn partner liability.

ACTION NARRATIVE

CHAIR CHARLIE HUGGINS called the Senate Special Committee on Energy meeting to order at [1:13:18 PM](#). Present at the call to order were Senators Wagoner, McGuire, Hoffman, Stevens, Stedman, Green, Thomas, Dyson, Wielechowski and Huggins. Senator Elton arrived soon thereafter.

SB 3001-APPROVING AGIA LICENSE
HB 3001-APPROVING AGIA LICENSE

CHAIR HUGGINS announced the consideration of SB 3001 and HB 3001 (EFD FLD) and said that today the committee would address what he called "policing" items. He asked Commissioner Galvin to review the bidding and how the concept for the \$500 million matching contribution evolved.

[1:14:13 PM](#)

PATRICK GALVIN, Commissioner, Department of Revenue, explained that the \$500 million matching contribution is the primary AGIA inducement to attract applications that would meet the state's "must haves." Regulations have been developed to define qualified expenditures and as the project proceeds and expenditures are made, the licensee will submit those to the Department of Revenue for review. If the expenditures are deemed qualified, a percentage payment will be made based on the particular time of the project and up to the \$500 million limit.

CHAIR HUGGINS asked him to provide information on the two reimbursement plateaus.

COMMISSIONER GALVIN explained that reimbursement is basically 50/50 up to an open season; after an open season reimbursement becomes 90 percent state and 10 percent licensee until reaching either the \$500 million total or FERC certification.

CHAIR HUGGINS asked if his recollection is accurate, that there is legislation for an additional \$6.2 million to look at financing attractive open seasons.

COMMISSIONER GALVIN replied there is a \$15 million request for the departments of natural resources, revenue, law, and the governor's office. One component of that is to look at changes the state has to make to ensure a successful open season, but no dollar figure has been tied to that particular component of the "task list."

CHAIR HUGGINS questioned why the reimbursement split increases from 50/50 to 90/10 after an open season.

COMMISSIONER GALVIN replied that the AGIA statute provides for a contribution of up to 50 percent leading up to an open season and up to 90 percent following an open season. Applicants could include a state matching contribution rate as part of their application. The TransCanada Alaska application specified 50/50 up to an open season and 90/10 after an open season.

[1:17:42 PM](#)

CHAIR HUGGINS clarified that he's trying to make sure everyone grasps the concept of why the reimbursement would change.

COMMISSIONER GALVIN related that when the bill was originally introduced the reimbursement was 50/50 throughout and a number of potential applicants expressed concern about the risk associated with advancing the project past an unsuccessful open season. Although it would be to the state's advantage to advance the project beyond an unsuccessful open season, it wouldn't necessarily be in the licensee's and best business interest. To attract an applicant willing to make the commitment, the statutory rationale was that it was appropriate for the state to increase its matching contribution past an open season - the more risky portion of the project.

[1:18:53 PM](#)

CHAIR HUGGINS observed that the trigger assumes an unsuccessful open season and after that time the reimbursement rate ratchets up to 90 percent.

COMMISSIONER GALVIN said that was the statutory rationale but the TransCanada application did not distinguish between a successful and unsuccessful open season. The contribution increases in either case, up to the \$500 million total.

CHAIR HUGGINS asked which is binding: the application or AGIA.

COMMISSIONER GALVIN replied that the AGIA statute is silent with respect to whether the open season is successful or not. It states, "After the open season the applicant could propose, in their application, a greater matching contribution." TransCanada chose to increase the match and not condition it upon the outcome of the open season.

[1:20:03 PM](#)

CHAIR HUGGINS asked what parties brought forward the idea to increase the contribution up to 90 percent.

COMMISSIONER GALVIN said the discussion proceeded in steps. He recalled from a year ago, that initially there was a 50/50 match throughout the entire process. Early on there was testimony about the perceived risk associated with moving beyond the open season and so an earlier committee increased the [state] contribution up to 80 percent.

Senator Elton joined the committee.

CHAIR HUGGINS asked the source of the amendment to increase the match to 80 percent. "Who brought that forward - not the person but the initiative?"

COMMISSIONER GALVIN answered that he didn't recall if a committee substitute was submitted or a particular legislator brought an amendment forward.

CHAIR HUGGINS asked if it was brought forward by someone sponsoring the administration's position, or a legislator's initiative.

COMMISSIONER GALVIN said it was both; The administration supported the amendment but the legislators would have to have supported it as well in order for it to pass. The administration worked with the legislature throughout and supported the increase from 50 percent to 80 percent and then to 90 percent.

CHAIR HUGGINS said he assumes that legislators did not talk to pipeline companies and other people who might have an interest. "There has to be some intermediary in there someplace that brings forward the concept of 50 percent is not adequate, hence we go to 80 percent."

COMMISSIONER GALVIN disagreed. He said he believes there were a number of potential pipeline applicants that talked directly to legislators about their concerns and suggested changes to make participation more attractive.

CHAIR HUGGINS asked what companies were present other than Enbridge and TransCanada.

COMMISSIONER GALVIN named MidAmerican, BG and the producers. They all participated in the legislative process at the hearings

and had individual discussions with both the administration and legislators.

[1:23:12 PM](#)

CHAIR HUGGINS asked him to address how the contribution increased from 80 percent to 90 percent.

COMMISSIONER GALVIN said it was primarily the administration's request because pipeline companies continued to be reluctant to proceed past an unsuccessful open season. The administration felt that rather than eliminating that key requirement, it would be more appropriate to increase the state match in order to encourage applicants to commit.

[1:24:14 PM](#)

CHAIR HUGGINS recalled reading somewhere that the match was increased to 90 percent primarily for TransCanada.

COMMISSIONER GALVIN said he didn't recall that. TransCanada was interested in eliminating the entire obligation to go beyond the open season. He clarified that it was a process in which the administration and the legislature had to identify how far to push in order to attract applicants. None of the applicants said they would participate under certain conditions. TransCanada, in particular, stated reluctance about participating in a process that required going beyond an unsuccessful season. The administration decided to alter the state match to induce reluctant pipeline companies to take on that obligation. "At no point did any of the companies, TransCanada included, say that if you bring it to 90 percent we're in."

[1:25:47 PM](#)

SENATOR STEDMAN said he remembers that through the AGIA process there was a lot of talk about how to move beyond an unsuccessful open season and encourage a company to go on to a FERC certificate. He did not recall the intent of AGIA being that the state would continue a reimbursement process after a successful open season. At that point the risk exposure to the applicant would have gone down substantially. He asked, "Why would we want to breach what I recall is the intent of the legislative process, to allow TransCanada's application to override that?"

[1:27:02 PM](#)

COMMISSIONER GALVIN responded that it would not be correct to say the legislative process determined the state's contribution should go down or be eliminated after a successful open season. Discussion did focus on the implication of an unsuccessful open

season and that is the primary reason for increasing in the incentive; but most of the committee discussion was silent about what the state's contribution should be after a successful open season. He agreed with the statement that the risk to the pipeline goes down with a successful open season but, he said, this is the application we have and it is consistent with the statute.

SENATOR STEDMAN asked what the outcome would be if the TransCanada application had been silent on that point.

COMMISSIONER GALVIN replied their application could not have been silent. The statute says that the application is obligated to state what the contribution rate will be "up to" a certain amount. "Their application was 50 [percent state match] and then to 90 [percent state match]."

[1:28:55 PM](#)

SENATOR STEDMAN said he understands the unsuccessful open season process, but the successful process is counterintuitive to what he recalls the legislature was attempting to accomplish with the \$500 million subsidy. He recalled that the intent was not to expense the entire \$500 million; the intent was to have a successful open season, minimize impact on the state and move forward toward construction of the pipeline.

[1:29:24 PM](#)

COMMISSIONER GALVIN reiterated that there was not a lot of legislative discussion about the impact of a successful open season; but a successful open season means that the state is contributing to a project that has a high likelihood of success. The economic analysis indicates it is a favorable investment opportunity in the sense that the state contributions will provide a significant return in the form of increased taxes and royalties because of the impact that the contribution has on the tariff. Although the discussion did not take place, it can't be concluded at this point that it wouldn't have been seen as an appropriate role for the state to contribute to lowering the tariffs of a project that is now even more likely to succeed.

[1:30:29 PM](#)

SENATOR MCGUIRE asked whether, since the percentage was not specified after a successful open season, the state could have paid 100 percent.

COMMISSIONER GALVIN replied that the statute said the state's contribution was up to 50 percent before an open season and up

to 90 percent after an open season. The statute did not distinguish between a successful and an unsuccessful open season because, in part, there is no globally accepted definition for a successful or an unsuccessful open season. Whether or not the commitments are sufficient to consider an open season a success depends on a myriad of potential interpretations. "The idea of actually trying to define within the statute what would be considered a successful or unsuccessful open season was something that we didn't feel was necessary."

1:32:23 PM

SENATOR MCGUIRE agreed with Senator Stedman. She recalled the committee discussed what the percentage would be after an unsuccessful open season and that was to reflect the risk of asking a pipeline company to proceed without FT commitments. She said it is a shock to some members that the state would pay a 90/10 split after a successful open season. She understands the difficulty in defining a successful open season, but she wonders if this doesn't go to her original point about synthesizing this into a contract. The specific point is that when AGIA is set up as a structure, bids come back that have unanticipated gaps. "I can pretty much guarantee that the votes in this committee would be against giving a 90/10 reimbursement after a successful open season." The committee reflected on this for a month and didn't see that, she said. That's the problem with dealing with something so complex and it's led to an almost absurd consequence. "I don't blame TransCanada at all." It's a great business practice, but is a concern because it wasn't the intent and the people of Alaska probably wouldn't be supportive. She asked if this makes him think about the need to synthesize everything and put it into terms that are concrete and understandable.

1:35:11 PM

COMMISSIONER GALVIN said the administration strongly believes that the agreement between the state and TransCanada is clear with regard to what TransCanada's obligations are to the state and what the state's obligations are to TransCanada. He suggested that she was not concerned about a lack of clarity; she wanted to renegotiate the terms after a year had passed and the process had played out.

SENATOR MCGUIRE said she meant "clarify" because there are 60 different views on how to interpret the statute.

COMMISSIONER GALVIN thought what Senator McGuire was getting at was whether or not the application reflects the statute. He

believed there was full recognition that the state was offering up to \$500 million. That was the price on the table and there was little, if any, discussion about creating an off-ramp so the state could get out of the contribution if the project were to get "legs." The expectation was that the state would put out a proposal with an offer of \$500 million and allow a sense of competition between projects to be the driver as to whether or not any of those projects would leave money on the table. The discussion was whether an applicant would give their application a leg up by deciding that if they had a successful open season they would forgo part of the match. That was not a statutory requirement; the applicants were allowed to dictate at what point the contribution would increase and at what point it would go down.

COMMISSIONER GALVIN said TransCanada made a proposal through this process, and now a number of legislators have expressed a desire to renegotiate. That isn't how the process was set up; the process is that a company makes an application and it is either accepted or rejected. "I don't think that the idea of moving to a contract resolves that unless the intent is to go to a contract and basically renegotiate these terms with TransCanada and negotiate things out that we had offered originally."

[1:39:23 PM](#)

SENATOR MCGUIRE said she is trying to highlight the feeling that this process is slightly absurd. "We know that TransCanada will be a part of building a gas pipeline. We know they have the right-of-way. They're good people; they're good partners" she said. But the legislature is not all-seeing and all-knowing; that is why the legislative process is dynamic - why there are amendments, committee substitutes and two bodies. The idea that at one moment in time the legislature could think of everything that has to be considered and lock into a position feels wrong. At some points this feels absurd because there are things that wouldn't benefit the state - things like paying someone 90 percent of their reimbursable costs when they clearly have a successful open season and the project is moving forward. "And we're going to be paying that because we just didn't think of it and that's just the way it is."

[1:41:00 PM](#)

COMMISSIONER GALVIN suggested that to say the state will be paying just because they didn't think of it sooner is an overstatement. He continued:

If we had thought of it a year ago, we would have gone down into the hole of can we define what is a successful or an unsuccessful open season and we probably would have thrown up our hands at some point. ... If the ultimate goal is to get a pipeline and if we recognize that the pipeline's going to provide tremendous benefit to the state - and the fact that the state is contributing to that is going to pay back that contribution as well - I think that it's very likely that we would have reached the same conclusion in the end, which was to allow the application process to define whether or not there's going to be a change in the state's contribution.

When you go back to the global position that you were taking when you were talking about your perceived absurdity about this process, one of the things that we're going to go through as we advance this gasline, is the entire process is one of taking one step and collecting information that we have at that particular time and making the best decision we can based upon the information we had then about what the next step is, recognizing that at that point we're going to collect information and reassess and then make another step.

And to expect that we're going to, again, like you said, be able to look into our crystal ball and know where the end point is going to be and strategically position ourselves all the way through is an unrealistic expectation. All we can do is make the best decision that we can with the information we have before us at that time. The decision that we made last year with regard to what the parameters of AGIA should be were based upon the best information we had at the time with regard to the competitive nature of what was going to drive people to ultimately take up the state's opportunity that we present in there, and what was the best balance for the state in terms of what we're going to give, from what we're going to get.

This year we have a discussion about, and I accept that the discussion has been twofold: whether or not this is the right thing to move ahead, and then looking back and saying is there something that we should have done differently a year ago. I would suggest that if we continue to do this as we move

forward, we're going to tie ourselves in knots. Because every year we advance and make a decision, if we beat ourselves up over whether or not the previous decision was the right one we're not going to get anywhere.

I'm still confident that the decisions that we made a year ago were the best decisions we could make upon the information that we had then. And there was no way that we were going to anticipate where we were going to be today.

But the next question goes to where do we go from here. Do we go from here with an AGIA licensed project or not? Now I guess I will somewhat disagree with the premise of your question when you said we know that TransCanada is going to be part of this project. I don't think we know that for sure at all. I think that there are a number of factors that are going to play out as this project moves forward that's going to dictate that one way or the other. And there are going to be commercial decisions that are made among a variety of players that's going to end up influencing that. And the state, as a commercial player in this, is going to have a role in how that shakes out.

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Now, when we look at what our options are right now, we have to make the best decision that we can based upon the information that we have today. And based upon that, we look at... OK what's the scenario if we are going forward without an AGIA licensed project. What's the situation we find ourselves in? Granted, ideally we'd like to see the producers and TransCanada get together and form a project that ends up benefitting both them and the state.

SENATOR MCGUIRE asked what efforts the state made on that point. She felt this is a very cutthroat, high-risk way to cut a deal. Many of the people at the table might vote no and still support a gas line; it's just a question of how to get there.

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SENATOR MCGUIRE said she had two final questions. She asked first what the administration would have done if another application had stated that the 90/10 would apply only in the event of an unsuccessful open season; and second, what this

administration, the Department of Revenue (DOR), and the Department of Natural Resources (DNR) had done to try to bring the parties into alignment prior to taking this route.

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COMMISSIONER GALVIN explained that in the first instance they would look at the evaluation criteria in statute, which is net present value to the state and likelihood of success. It is not possible to evaluate the likelihood of success without knowing who the other applicant is, but evaluating net present value would be a matter of looking at the overall economics of the project. Under a scenario where net present value is the same for the two projects, it would be a toss-up as to whether the state's net present value would be improved by dropping the state contribution after a successful open season. "I think that without any other adjustment the answer would be no, because our analysis has shown that the state contributing to the costs and having those reduce the tariff ends up paying us back and increasing our net present value by \$200 million out of the \$500." If the applicant dropped the state contribution and instead put its own equity in, that might increase the tariff and reduce the state's net present value. So it's not at all clear that a project that foregoes the state's contribution after a successful open season would come out higher under an analysis that follows the statutory parameters.

COMMISSIONER GALVIN turned to the second question and stated that before a license is granted it would be inappropriate for the state to try to bring the producers to a TransCanada project. However, discussions regarding what the producers need to advance their project are ongoing and tend to center on fiscal certainty, the terms for taxes and the judiciary system. He admitted that from the administration's perspective those discussions are going nowhere; but having a project that's moving ahead allows the state to have those discussions in the context of actual project economics as opposed to subjective numbers.

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SENATOR MCGUIRE opined that people don't like to be boxed into a position. From her perspective the state is using force rather than bringing people into a process that they feel a part of. "I see a reserves tax and I see litigation and I see quagmire and opportunity costs for this state and the people in this state who need these jobs and need this gas." She said she's tried to see things the way he's describing, but they could go very differently and lock the state up for a decade.

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COMMISSIONER GALVIN referenced her earlier comment about this being a cut-throat business and pointed out that the idea of taking a commercial position that's to your advantage over a competing party is a way of life. The state isn't doing anything in this effort that another commercial player wouldn't do if they had more than one option to develop their resource. "We're not backing them into a corner; we're not putting them in a position where they're going to react emotionally because these companies don't react emotionally to these things."

SENATOR MCGUIRE clarified that her point is that the producers have options about where to put their gas. "You just have a pipeline builder; you've got to have the gas."

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COMMISSIONER GALVIN agreed that it's been about getting the gas from the very beginning. The producers have to make a decision about where to put their gas in any event, because they're obligated to develop the gas when it is marketable. The state is presenting a path for doing that; but they could choose a different path without state concessions. What they cannot do is to move on to somewhere else in the world and do nothing with Alaska gas. Waiting is no longer going to be an option if there is a pipeline company with an economic project willing to develop it. These are serious business people, he said, who will do what is best for their companies. The state is simply providing motivation so they will move in a direction that is in the state's interest.

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CHAIR HUGGINS stated that this is an important conversation because a number of constituents do not understand the \$500 million. He said he hasn't been able to embrace the idea, but hopefully this will give them a better grasp of it.

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SENATOR THOMAS stated the belief that the AGIA process has moved things forward dramatically. In fact, over the last seven months two of the three producers have a precertification before the FERC. With that in mind, he asked, how much would TransCanada be able to claim under treble damages if the license were issued and then in August 2009 the state saw potential for something else to take place? If the state and TransCanada had each spent \$25 million, what would be the total payments TransCanada could

claim against the state if it decided to assist the other project?

[1:58:45 PM](#)

COMMISSIONER GALVIN said, based on those figures, the treble damages would be \$75 million.

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SENATOR STEDMAN asked Commissioner Galvin why the legislature would not go back and clarify this if the legislature's intent was not to give reimbursements after a successful open season.

[2:00:36 PM](#)

COMMISSIONER GALVIN explained that the state created a competitive process to create a contractual relationship, which is not subject to amendment by the legislative process. If it is determined that a contribution after a successful open season is inconsistent with statute, that would go back to the legality of the license itself.

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SENATOR STEDMAN clarified that the question was not the statute but the intent of the legislature.

[2:02:33 PM](#)

COMMISSIONER GALVIN said the scenario Senator Stedman is painting is one in which the legislative intent contradicts the statute. He said he doesn't know where to go with that. If the conclusion at this time is that the statute does not reflect what the legislature wanted it to, then the legislature has to decide the ramifications of going back and amending it.

[2:03:11 PM](#)

SENATOR STEDMAN asked if he'd had the opportunity to go back and check the record of the Resources and Finance Committees to see what the intent was.

COMMISSIONER GALVIN answered that he's had no reason to do so because the statute is clear. Usually legislative intent is relevant when there is an ambiguity in a statute. When the clear language of the statute reads a particular way, they usually accept that the language means what it says.

[2:03:37 PM](#)

SENATOR WIELECHOWSKI said he thinks it's reasonable to assume the producers will commit their gas to their own pipeline. He asked if Commissioner Galvin agrees with that.

COMMISSIONER GALVIN "Not necessarily."

SENATOR WIELECHOWSKI asked why he didn't believe they'd commit to their own pipeline.

COMMISSIONER GALVIN thought there would be a number of issues associated with the decision and they would commit their gas to the project with the best combination of economic and strategic values to them and the best likelihood of success. He said the administration believes, with the AGIA license for TransCanada, they will be able to provide an extremely attractive opportunity for the producers to commit their gas to the TransCanada line.

[2:05:24 PM](#)

SENATOR WIELECHOWSKI continued, "Let's assume there are two open seasons and Denali does have significantly lower tariffs. Is the state forced to move ahead with TransCanada?"

COMMISSIONER GALVIN countered that the question is whether TransCanada would want to move ahead.

SENATOR WIELECHOWSKI asked where the legislature would go next if they deny the license.

[2:07:07 PM](#)

COMMISSIONER GALVIN admitted plan B isn't very palatable. They would have to choose between going forward with discussions with the Denali project, which would basically put them back in the same dynamic as stranded gas development when the state had no leverage. Or they would have to go with the all-Alaska option, which would subject the state to tremendous risks because they don't have the gas or any expectation they could get gas committed to an LNG project. That is an extremely high-risk venture, to believe that "if you build it, they will come" and it isn't a direction they feel is prudent.

[2:08:36 PM](#)

CHAIR HUGGINS contended it isn't the same as stranded gas; the difference is the price of gas.

[2:09:38 PM](#)

COMMISSIONER GALVIN disagreed that things have changed that dramatically. The issue is what options are available to the state.

[2:10:31 PM](#)

SENATOR DYSON asked, if the legislature now realizes that the intent of the law they passed a year ago was not clear and they went back and modified it, would any of the applicants have a cause of action against the state for the time and money they spent preparing their response to the RFP as it was originally put out?

[2:11:38 PM](#)

COMMISSIONER GALVIN did not want to speculate on that; the question is one of good faith. If the committee now changes the terms, they will basically cast aside the competitive process the administration has gone through over the last 9 months, in which case is probably cleaner to just vote no on the license and do something different later on.

[2:12:51 PM](#)

CHAIR HUGGINS referred to Commissioner Galvin's term "reluctant partner" to describe why the state agreed to give 90 percent after a failed open season.

COMMISSIONER GALVIN did not recall using that term.

CHAIR HUGGINS agreed that he might not have, but continued to say that all of the conversation he has heard about the 90 percent was with regard to a failed open season. He reminded Commissioner Galvin that he had said the statute is silent on the issue of a successful open season and whether or not the state would continue to reimburse, and that TransCanada's application specified continuation of the reimbursement. If the statute is silent, he said, why would the legislature want to continue to reimburse a partner that is no longer "reluctant" for a project that is clearly economic instead of spending that money elsewhere?

[2:15:18 PM](#)

COMMISSIONER GALVIN answered that it would be ironic to go back to your constituents and say you voted against the license because you were afraid it would be successful. He said that seemed to be what Chair Huggins was saying, that he was afraid TransCanada would actually get the gas and the state would continue to contribute to them, recognizing that it would actually increase the value to the state.

[2:15:55 PM](#)

CHAIR HUGGINS interrupted that he did not say anything about voting against the license; he was talking about modifying or clarifying the license. Since the statute is silent regarding

the success of the open season, the legislature will have a voice in it.

COMMISSIONER GALVIN said Senator Huggins can characterize it as he wants; the bottom line is that the statute says an applicant can apply for a matching contribution that is up to 50 percent before an open season and up to 90 percent after an open season. There was a lot of discussion about this and the legislature clearly had the opportunity to make a distinction between a successful and an unsuccessful open season. They did not. They said the applicant could determine the contribution rate after an open season. To say now that the legislature is going to go back and modify that is to say they don't like the deal the state struck and are going to cast aside the TC Alaska application and do something different at some point in the future. In the end, it would come down to the fact that the legislature was afraid TransCanada was going to be successful and actually get gas and they didn't want to continue to contribute to their project if it was successful. Frankly, he said, he doesn't think that is in the state's interests. If the project is successful, it is a good investment.

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CHAIR HUGGINS called a 10 minute break.

CHAIR HUGGINS called the meeting back to order at [2:32:45 PM](#).

[2:33:11 PM](#)

DONALD BULLOCK, Attorney, Legislative Legal and Research Services and lead drafter on AGIA, commented on legislative intent with regard to the \$500 million and what options are available to the legislature. He said that the clearer the language in the statute, the greater the burden to prove that legislative intent was something else. The \$500 million, from the administration's standpoint, was clearly intended to be an investment that would reduce the tariff; so the amount had a purpose in itself, regardless of how it was paid out. The issue of how it would be paid out defined two periods; one was on or before the close of the first binding open season and the second was after the first binding open season. Those are both clear points and neither term contains any mention of a "successful" open season. The payments are not discretionary, the state "shall" reimburse, not "may" reimburse. As far as the maximum amount, in 43.90.130 (9), among the "must haves" it said the applicant shall propose a percentage and the total dollar amount for the state's reimbursement. It is not simply a question of whether or not the state needs to continue to pay out the money.

So to prove that legislative intent was so completely different from the letter of the law would be a challenge.

When the proposals went out, everyone who looked at this project saw what the state was offering. The state was primarily offering three things:

- Money to help move the project along in return for the commitments the applicants make to the state;
- A gasline coordinator to help "grease the skids" as the permit process goes forward;
- The Project assurance that the state will not provide inducements to another project that would endanger the gas available for the licensed project.

So, he said, the legislature has to be aware of whether they are changing the conditions under which the offer was made and whether, in negotiating with the licensee before them, they are giving that proposed licensee a benefit that other applicants might have considered at the time [they applied].

MR. BULLOCK insisted the job of the legislature during this special session is simple; it is to decide if they agree with the commissioners that this is the licensee whose project maximizes the benefits to the people of Alaska. If they agree that the applicant has met every requirement in AGIA and yet still doesn't provide a project that maximizes benefits to the state, then maybe there really is a problem with AGIA. But the issue right now is whether this project maximizes the benefits to the people of the state. If it doesn't do that without additional conditions, then perhaps the legislature should vote it down. If it meets the conditions and satisfies the intent of AGIA, then it would be reasonable to vote in favor of it. But, he cautioned, the legislature needs to compartmentalize their issues; is the problem with AGIA, or is it with this application?

He said a number of amendments had been offered in the House that had to do with putting preconditions on payments for qualified expenditures. However, AS 43.91.10 states if the licensee makes qualified expenditures within the 7 year time period those will be paid. If the payments are withheld, as would be the case with the indemnification amendment that was offered, it affects the viability of the project and the applicant's ability to carry forward with it. That is one of the issues that was specifically addressed within AGIA; not only whether the applicant has committed to everything that was

expected in AGIA, but whether it has the capability to actually carry out the project.

CHAIR HUGGINS asked Commissioner Galvin and Bonnie Harris, Department of Law, to come forward to address the issue of withdrawn partner indemnification and any place that is covered in the state's "contract."

[2:41:01 PM](#)

COMMISSIONER GALVIN explained that the issue of withdrawn partners has two components: the risk that any potential liability would be transferred into the tariff and increase the shipping rates; and the risk that a party entering into a partnership with TC Alaska in this project may somehow become liable for some portion of any liability that is successfully brought against TransCanada.

In response to the first component, the state has TC Alaska's commitment that if there is any liability from withdrawn partners, they will not attempt to recover it in the tariff. The administration is also confident that the FERC would not add it, even if it was somehow included in an application. The second component has been discussed in two contexts. First is whether the issue of withdrawn partners adversely affects TransCanada's ability to attract partners, financing or FT commitments so as to diminish a project's likelihood of success. Second is whether any potential liability is transferred to the state in this relationship or in anticipation of the state taking on a different role in the future and whether or not the state should seek indemnification today to shield itself from that liability.

He assured the committee that the administration has not been advised by any of the legal consultants that simply executing a license somehow creates exposure to the state with regard to withdrawn partners. If the state changed its relationship with TC Alaska and became an equity partner or somehow joined TransCanada as an owner of this project, then there would be a discussion about withdrawn partner liability in the context of the type of relationship created and the indemnification associated with that.

COMMISSIONER GALVIN reiterated that the execution of the license itself does not create a risk of liability; therefore the administration does not feel it is necessary to discuss indemnification at this time.

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BONNIE HARRIS, Senior Assistant Attorney General, Department of Law, Juneau AK, advised that her legal perspective is consistent with Commissioner Galvin's explanation. The Department of Law's research has not shown any way that issuing a license could result in a liability to the withdrawn partners. She said the idea that by issuing a license the state would somehow become liable would be analogous to the state issuing a drivers license to someone to enjoy the privilege granted by the state to drive, and that somehow making the state liable for the car payments. There just isn't that kind of legal connection in licensing.

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SENATOR STEVENS asked the commissioner how the state can trust the guarantee that any liability won't be rolled into the tariff.

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COMMISSIONER GALVIN answered that as he understands it, there would have to be a finding of a liability to the withdrawn partners of a subsidiary of TransCanada and that liability would have to be considered to extend to TransCanada Corporate. That is where the "deep pocket" is and where the liability would most likely rest. The question is whether TransCanada could try to mitigate or be reimbursed for that through the tariff rate. The FERC would not ask the shippers to pay for the liability without a request from TransCanada; so if the liability were added to the tariff, it would be a breach of the state's contract with TransCanada and TransCanada would be liable for the damages associated with that.

[2:51:12 PM](#)

SENATOR MCGUIRE asked where that guarantee is found.

COMMISSIONER GALVIN replied that it was received on January 24, 2008 in response to a request for additional information that was forwarded to TransCanada on January 16, 2008. In their response, TransCanada stated that they would not add the contingent liability into the tariff rate. The response was signed by the applicant and was included in the license itself as a binding portion of the contract. He read TransCanada's response into the record:

In the highly unlikely event the TransCanada AGIA applicants or any of their affiliates or subsidiaries were to somehow be required to pay an obligation to the withdrawn partners of ANGPA, the TransCanada AGIA applicants hereby commit not to include such payments

in the rates for the project proposed in the AGIA application. We confirm that this commitment will be binding on the TransCanada AGIA applicants if they are awarded the AGIA license.

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SENATOR MCGUIRE asked what legal forum was designated in the event of contract dispute.

COMMISSIONER GALVIN responded "Alaska State courts."

SENATOR MCGUIRE observed that the legislature could do requests for additional information on some of these other subjects. If that is a method the administration has used to "shore up" ambiguities in the contract, she queried, what would be the harm in the Senate identifying areas of clarification that could be reduced to writing, signed and notarized?

COMMISSIONER GALVIN explained that the administration has looked at that issue of requesting additional information at this time; the legal problem is that the commissioners have already made their finding and have found the license is in the state's interest. So it would not be something the state could add to the license as an additional, binding component. However the state does have the testimony that was provided and the clarifications that were made during this process, which serve to interpret any ambiguous aspects of the license. TransCanada could not contradict an explicit aspect of the license, but to the extent that something is found to be ambiguous, the testimony provided will go to clarify and establish the intent of the language.

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SENATOR MCGUIRE persisted, if it [TransCanada's commitment not to recover withdrawn partner liability in the rates] has been agreed to and signed and notarized, what would be the harm in amending AGIA to clarify that was the legislature's intent?

COMMISSIONER GALVIN said he did not understand what Senator McGuire was looking to clarify.

SENATOR MCGUIRE wanted to know if the legislature could go back and say that one of the "must haves" was indemnification from outstanding liabilities that don't directly pertain to the state. Mr. Bullock explained that if the legislature went back and redefined the terms in a way that would have affected the outcome, that could be a problem; but in this case it is clear

it was never the intent that the state would be liable so, she reiterated, what would be the harm in making that part of the statute?

COMMISSIONER GALVIN said the primary distinction is that to say the state would have no liability with regard to the withdrawn partners in its entirety would probably be an over statement. There is a chance the state may decide to become a full partner with TransCanada at some time in the future or to join the TC Alaska project in a different capacity and in that case, the state will have to look at the issue of withdrawn partners and whether it implicates that relationship. If the legislature were to retroactively amend AGIA and add indemnification as an additional "must have," it would change the terms in such a way that it would invalidate the competitive process that brought the state to this point.

SENATOR MCGUIRE recalled being initially concerned about it [withdrawn partner liability] and then getting information from Mr. Palmer that led her to believe it would not be a factor; that the state would be indemnified and it wouldn't impact the tariff structure. Since that time she said, the legislature has heard conflicting opinions from the FERC representatives: first that the FERC wouldn't allow the liability to be factored into the rates and then, in more recent communications, that it could be. She did not recall anything in the Senate Resources Committee's deliberations that would be inconsistent with the concept of the state reaffirming that any withdrawn partner liability will not be added to the rates and that the state will be indemnified.

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COMMISSIONER GALVIN stressed that the tariff issue is absolutely clear. TransCanada has already indemnified the state with their testimony. As for the FERC testimony, the question is only whether FERC would or would not include the liability [in the rates] if it was requested; the state has TransCanada's commitment that they will not request it and, if they do, they will be liable to the state for having done so. That is an indemnification as it relates to the tariff issue and that is the only aspect of the state's relationship with TransCanada that is being implicated by the issuance of an AGIA license. As for whether the state should deal with the withdrawn partner issue now in anticipation of a change in the state's relationship to TransCanada in the future, the administration's position is that it would be premature to even get into that discussion.

SENATOR MCGUIRE respectfully disagreed. She said she wrote a brief to the ninth circuit [court] on the "DEW line." [DEW line, a network of cold war era radar monitoring stations in Canada and Alaska that have now been abandoned.] An oil and gas company had a platform on federal land and someone was mauled by a polar bear. The victim settled with the oil and gas company and then came back to reach into the deep pocket of the federal government, because the platform sat on the DEW line. Things like that happen, she said, and she would feel more comfortable going into this potential partnership if it were made very clear that the state is indemnified and is not part of this withdrawn partner liability.

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COMMISSIONER GALVIN said the administration has looked at it very closely. The fact that some people refer to the AGIA license as a "partnership" is not a legally significant issue; it's a matter of what is the true relationship that's being created. The legal opinion is clear that it is not creating a risk of liability on this particular issue. But, he stressed, the administration does not want to provide the impression that the AGIA license takes care of any liability in the event that the state changes its relationship to TransCanada at some point in the future. It isn't an issue today; but if the state changes its position the liability issue will have to be considered.

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SENATOR STEDMAN said he understands that there is some possibility the liability could be included in the rates, depending upon whether the court ever asks the FERC to make a ruling.

COMMISSIONER GALVIN responded that there are two aspects to Senator Stedman's question. The issue of whether or not the liability exists is one. In that case, someone would first have to make a claim; then a court would have to substantiate it. Then TransCanada would have to seek to have that liability paid for by shippers on the Alaska portion of the line; and finally, the FERC would have to agree that it is an appropriate cost to be added [to the rates].

SENATOR STEDMAN said it seemed very clear from TransCanada's testimony that they would not request that it be rolled into the tariff.

COMMISSIONER GALVIN agreed. And if TransCanada doesn't request it, the state does not have a risk regardless of what a court might find on the liability issue.

SENATOR STEDMAN was not sure the language from TransCanada was strong enough.

COMMISSIONER GALVIN said he would get Senator Stedman a copy of TransCanada's response.

SENATOR STEDMAN said the conversation he had with the commissioners at the FERC seemed very clear that it was an unknown. If the court ever ruled for the FERC to look at it, the liability could be in, it could be out.

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COMMISSIONER GALVIN thought the nature of the question was "if it were requested... if it were put into the application... would FERC include it or not" and it sounds as if there isn't a clear answer to that. The premise of the question is that it is requested by the applicant; and the state has a commitment that TransCanada won't request it, which means that it will not be before the FERC commissioners for them to rule one way or the other.

SENATOR STEDMAN said he didn't interpret it that way. His understanding is that it could be challenged in court by one of the withdrawn partners and, if they were successful in that arena, FERC might or might not look at it.

[3:11:03 PM](#)

COMMISSIONER GALVIN reiterated that without an applicant bringing it forward, it will not come before the FERC commissioners. There may be a liability established by a court somewhere on TransCanada Corporate; they have liabilities that will be established continually on different things and FERC is not out there looking for liabilities that haven't been requested by a pipeline to include in a rate.

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SENATOR THOMAS was looking at the concept of withdrawn partners with regard to changing language that could be a potential problem. He asked who the withdrawn partners are and whether any have actually written off their interest.

[3:12:42 PM](#)

COMMISSIONER GALVIN did not have the information with him but said he would provide it.

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SENATOR WIELECHOWSKI wondered what would be the harm if the legislature amended the "must haves" to include a statement that anyone with withdrawn partner liability must indemnify the state against it. It would only impact TransCanada and he assumed they would agree to it.

COMMISSIONER GALVIN reiterated that changing the "must haves" would add an additional requirement to the state's completeness review, which TransCanada would not have met. Therefore the state's completeness determination regarding TransCanada's application would be eliminated, changing the state's ability to come forward with the license now before the legislature. That is Mr. Bullock's determination, he said, and Ms. Harris agrees with it. It would basically eliminate the existing license before the legislature.

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SENATOR WIELECHOWSKI asked Ms. Harris if she would expand on that.

MS. HARRIS agreed with Mr. Bullock that it would take the process back to the beginning. In the law of public contracts in general, when the public body solicits bids, there is an offer and the acceptance. The application in this case is the offer and if the acceptance has different conditions than the offer, it isn't the same contract.

SENATOR MCGUIRE asked Ms. Harris about change orders. She opined that there are mechanisms to amend a contract if both parties are in accord.

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MS. HARRIS agreed that there are methods to do that in public contracts however, those contracts generally have a provision for how change orders will work. AGIA has a provision that is similar to that. TransCanada's offer, if accepted by issuing a license, becomes a contract; and there is a provision in AGIA that allows for changes to the project plan under certain conditions: the change has to be approved by the commissioners; it cannot diminish the value to the state; and it cannot negate any of the "must haves." That is consistent internally with AGIA and allows necessary changes in the project plan after the contract is established.

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COMMISSIONER GALVIN clarified that the RFA [Request for Applications] would establish the parameters of any change orders. Similarly within AGIA, there can be changes to the project plan within the parameters established in AS 43.90.210 and the RFA, which established how modifications would be done. That is a different scenario than going back and actually changing the underlying statute, which would change the terms under which the RFA was issued and implicate the actual bid process.

[3:20:45 PM](#)

MS. HARRIS agreed with Commissioner Galvin's explanation.

[3:21:00 PM](#)

SENATOR HOFFMAN pointed out that the goal is to get a gasline. Once the license is issued, both the majors and TransCanada have said the line is not going to be built unless there is fiscal certainty. He asked if Commissioner Galvin agreed with that statement.

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COMMISSIONER GALVIN said he believes the producers have taken a strong position that they want fiscal predictability before making their gas commitments. AGIA reflects that in the provisions with regard to upstream fiscal certainty. The question becomes "what is meant by fiscal certainty?" The state's assurance of predictability in the gas tax for the first 10 years is something that is appropriate for the state to offer to gas shippers and is an inducement. The administration has stated throughout that it will be evaluating whether or not that is sufficient and appropriate as the project moves toward an open season. However, at this point the administration feels the economics of the project are sufficiently strong that the inducements offered should be enough to get gas committed to this line. Whether the producers may ultimately decide to forego fiscal certainty in favor of control over the pipe and go after the Denali project is something they will have to balance against other interests going forward. The finding and the administration's public statements recognize that they could decide that those other interests are more important to them than fiscal certainty.

[3:24:40 PM](#)

SENATOR HOFFMAN asked if the administration has spoken with Mr. Palmer and does he agree that the 10 years on the books is

enough fiscal certainty for them to proceed building the gasline under the provisions of this license.

COMMISSIONER GALVIN said the administration has not had discussions with TransCanada about that, but he believes the application speaks for itself. However, the issue has been raised that TransCanada remains on the sidelines with regard to discussions between the state and the shippers on fiscal terms.

[3:25:48 PM](#)

SENATOR HOFFMAN opined, therein lies the nut that needs to be cracked. If the administration has not discussed with TransCanada whether 10 years fiscal certainty is sufficient, then what can we do. If we go back and give fiscal certainty for a longer term, the producers may have applied under AGIA so it's a discussion we should have had before the application process.

[3:27:34 PM](#)

COMMISSIONER GALVIN said he sees the issue from the opposite side. That is, the state is placed at a disadvantage in negotiations if it has to reach an accord on fiscal certainty without sufficient information about the economics of the project and the implications on the decisions the shippers are making. The administration believes that continuing those discussions as the project moves forward and the economics are clearer will put the state in a better negotiating position.

[3:30:07 PM](#)

SENATOR HOFFMAN insisted that the administration should have asked the one remaining applicant, which had stated that the line would not be built without fiscal certainty, whether 10 years would provide enough fiscal certainty for them to proceed with the project.

[3:31:10 PM](#)

COMMISSIONER GALVIN said he must have misinterpreted Senator Hoffman's question. If the question is whether the 10 years of fiscal certainty is sufficient for TransCanada to advance the project, the answer is "Yes" and Tony Palmer has made that clear on the record. He thought the Senator was addressing a statement within TransCanada's application, which states that they expect the state to work with the shippers to identify whether there are additional concessions that need to be made to get the producers to commit gas to the line. TransCanada did not take a position regarding whether the state needs to make additional concessions; but they are saying that they hope the state is willing to entertain those discussions. TransCanada and TC

Alaska are not the ones that will dictate what fiscal certainty terms are needed in order to get the producers to this line.

[3:32:39 PM](#)

SENATOR HOFFMAN said it seems the legislature must be part of the process for any changes in the gas tax structure.

COMMISSIONER GALVIN agreed that any subsequent discussion about fiscal certainty will definitely have to include the legislature. As to when fiscal certainty will be established, the administration feels the best approach is to advance this project through the AGIA process until enough information is available to determine what fiscal certainty is appropriate.

SENATOR HOFFMAN asked what time frame that would be.

COMMISSIONER GALVIN believed it would be between now and the two open seasons, that is during the next 24-30 months.

SENATOR HOFFMAN queried, what are the chances of getting that question answered before the first open season?

[3:35:52 PM](#)

COMMISSIONER GALVIN felt they were fairly good.

SENATOR HOFFMAN said the problem he has is that the legislature has the time to answer that question now, before entering into the license and a one year delay will improve the net present value to the state of Alaska. He felt that if the administration will have the answer to that question before the first open season, the legislature should wait until that time and start the process over after making any adjustments to AGIA that may be necessary.

COMMISSIONER GALVIN responded, in reference to Mr. Dickinson's statement that "it's OK to delay this project for a year because it increases the net present value," that Mr. Dickinson was referring to an anomaly in the state's NPV analysis. If they drop the state's discount rate low enough, it appears that the value to the state increases with delay. He opined that everyone would agree getting the gasline built sooner rather than later is in the state's interest; it is not logical to think the state increases the value of the project by delaying it indefinitely.

He continued that there are a lot of moving parts right now, a lot of negotiation and positioning going on among the players. If the state wants closure on some of the major issues, they

will have to stop some of the pieces from moving. Some of that comes down to what the state is willing to accept and to give up. Some of that has to be locked in at some point in order to move forward; they have to establish deadlines and a fixed timeline.

3:40:30 PM

SENATOR HOFFMAN agreed that more moving parts need to be eliminated and the biggest moving part he saw was fiscal certainty.

3:40:56 PM

COMMISSIONER GALVIN said he agreed that is something they need to get closure on; but that isn't some thing the administration can decide unilaterally. They have to position themselves for discussions with the shippers.

3:41:30 PM

SENATOR WAGONER read a letter to Representative Samuels from Francis S. Chang, Senior Council for Pacific Gas and Electric Corporation, dated July 22, 2008. He said he felt it was important to have this on the record and that he wanted to know if Legislative Budget and Audit had received any other letters of this nature.

Regarding your letter to Mr. Stanford-Hartman, you asked several questions regarding rights and obligations owed to PG&E Corporation under the partnership agreement of the Alaska Northwest National Gas Transportation Company and in connection with TransCanada Corporation license application under the Alaska Gasline Inducement Act. As you know, PG&E Corporation is the ultimate corporate parent of Sealaska Energy Company, which is a withdrawn partner. Mr. Hartman requests that I respond to your letter. We have reviewed our files and based on this review, we do not believe that PG&E Corporation currently has any rights to waive with respect to TransCanada Corporation's application.

SENATOR WAGONER emphasized that this letter was not distributed to the Special Committee on Energy and wondered if any others had been received and had not been distributed.

CHAIR HUGGINS assured him that they would get the answer to that.

[3:43:45 PM](#)

CHAIR HUGGINS questioned Commissioner Galvin about the administration's capital request for \$3.5 million over the next ten months and asked what sort of inducements were on the table.

COMMISSIONER GALVIN said he was not familiar with the \$3.5 million request.

CHAIR HUGGINS explained that it is by the Department of Natural Resources, part of a \$15 million request that is expected to be expended between August of 2008 and June 2009 "to ensure success of the first open season and subsequent open seasons and to develop additional state inducements."

COMMISSIONER GALVIN said that is a direct follow-up to the discussion with Senator Hoffman. The administration anticipates discussions with regard to potential changes in the state's fiscal system in order to attract gas to the initial open season. As part of that, they anticipate the need for a tremendous amount of analysis in order to evaluate the financial impacts to the state associated with any particular proposal or idea that may come out of those discussions and will need access to expertise similar to that they used in analyzing the TC Alaska application. They are asking for the funds so that the state will be in the strongest position to participate in those discussions.

[3:45:59 PM](#)

CHAIR HUGGINS said he understands that. The question is what sort of inducements the administration is looking at for \$3.5 million. What's the menu of inducements?

[3:46:49 PM](#)

COMMISSIONER GALVIN clarified that the \$3.5 million is not to develop or identify additional inducements as much as it is to evaluate issues and information that relate to discussions associated with upstream fiscal issues.

CHAIR HUGGINS re-read the statement from the capital request.

[3:47:26 PM](#)

COMMISSIONER GALVIN could not respond.

CHAIR HUGGINS suggested Commissioner Galvin confer with DNR and get back to him. Assuming the legislature does whatever it is to spend that, he asked, when is the legislature going to be asked to consider that expenditure?

[3:48:32 PM](#)

COMMISSIONER GALVIN answered that it isn't a unilateral decision-making process. The money is for the administration to design terms based on discussions they will have with the shippers; so they have not developed a list of inducements.

[3:52:39 PM](#)

CHAIR HUGGINS commented that it is \$6.25 million over multiple years through June of 2013, so there is some kind of plan to spend a lot of money on this. He was not sure how they came to the conclusion that it would take that long to come up with the terms and inducements; but felt the legislature should be able to anticipate when they are going to be dealing with this huge issue.

[3:54:08 PM](#)

COMMISSIONER GALVIN agreed that as the administration reaches the point of needing legislative action, they would want to do it during a regular session; but he insisted that they have to remain flexible to deal with these parties successfully.

[3:56:05 PM](#)

SENATOR GREEN was curious why this request was not included in the spring 2008 budget.

COMMISSIONER GALVIN said it was tied to issuance of the license. During the spring 2008 budget the administration did not know the outcome of the licensing decision.

SENATOR GREEN asked what would happen if this request was not funded until spring 2009.

COMMISSIONER GALVIN asserted that if the entire amount was not funded, it would be detrimental to the state's ability to engage in discussions with regard to fiscal certainty, because they might not have the funds to properly evaluate the issues as they come forward in those discussions.

SENATOR GREEN queried "This is primarily for consultants?"

COMMISSIONER GALVIN responded that is most likely.

[3:58:00 PM](#)

SENATOR GREEN noted that supplemental budgets are very convenient but can distort the totals and she is always in favor

of including things in the actual budget cycle. She was disappointed that it didn't come sooner.

[3:58:39 PM](#)

SENATOR STEDMAN agreed. He thought it would have been more on point for the administration to come in with contingency language. In the event that they selected an applicant through the AGIA process, these are the expenditures they would like to include for the current fiscal year.

[3:59:46 PM](#)

CHAIR HUGGINS wondered, assuming the state has a fiscal package after spending this amount of money, who is this fiscal package applicable to?

[4:00:39 PM](#)

MS. HARRIS said it would not be for a specific company, but would apply to the category of activity.

CHAIR HUGGINS asked Commissioner Galvin about that because he thought that fiscal certainty applied exclusively to TransCanada.

[4:01:31 PM](#)

MS. HARRIS clarified that she answered within the general framework of the application of law rather than this specific scenario. She had no understanding of the specific fiscal package to which he referred.

[4:03:14 PM](#)

COMMISSIONER GALVIN responded that at this point, any question related to the fiscal package is premature because they don't know if they will need one or what it will look like. The root of the question goes back to the treble damages issue. The language of the project assurance section of AGIA says the state will not pass a preferential tax treatment to advance a competing project. If there is a general change in the production tax law, it would not trigger that. The question was asked, "What if we make a change that applies to everyone equally, but is actually intended to help advance one particular project." If the state does that, he feels they should admit it and accept treble damages.

[4:06:41 PM](#)

SENATOR WAGONER asked if the committee would deal with amendments and possibly move the bill tomorrow.

CHAIR HUGGINS stated that the culmination will be to vote on moving the bill. He held SB 3001 and HB 3001 in committee.

There being no further business to come before the committee, Chair Huggins adjourned the meeting at [4:07:28 PM](#).