

**ALASKA STATE LEGISLATURE**  
**SENATE JUDICIARY STANDING COMMITTEE**

April 13, 2007

1:36 p.m.

**MEMBERS PRESENT**

Senator Hollis French, Chair  
Senator Charlie Huggins, Vice Chair  
Senator Bill Wielechowski  
Senator Gene Therriault

**MEMBERS ABSENT**

Senator Lesil McGuire

**COMMITTEE CALENDAR**

SENATE BILL NO. 104

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

HEARD AND HELD

**PREVIOUS COMMITTEE ACTION**

BILL: SB 104

SHORT TITLE: NATURAL GAS PIPELINE PROJECT

SPONSOR(S): RULES BY REQUEST OF THE GOVERNOR

03/05/07	(S)	READ THE FIRST TIME - REFERRALS
03/05/07	(S)	RES, JUD, FIN
03/14/07	(S)	RES AT 3:30 PM BUTROVICH 205
03/14/07	(S)	Heard & Held
03/14/07	(S)	MINUTE(RES)
03/16/07	(S)	RES AT 3:30 PM BUTROVICH 205
03/16/07	(S)	Heard & Held
03/16/07	(S)	MINUTE(RES)
03/19/07	(S)	RES AT 3:30 PM BUTROVICH 205
03/19/07	(S)	Heard & Held
03/19/07	(S)	MINUTE(RES)
03/21/07	(S)	RES AT 3:30 PM SENATE FINANCE 532
03/21/07	(S)	Heard & Held
03/21/07	(S)	MINUTE(RES)
03/21/07	(S)	RES AT 5:30 PM SENATE FINANCE 532

03/21/07 (S) Heard & Held  
 03/21/07 (S) MINUTE(RES)  
 03/22/07 (S) RES AT 4:15 PM FAHRENKAMP 203  
 03/22/07 (S) Heard & Held  
 03/22/07 (S) MINUTE(RES)  
 03/23/07 (S) RES AT 1:30 PM BUTROVICH 205  
 03/23/07 (S) Heard & Held  
 03/23/07 (S) MINUTE(RES)  
 03/24/07 (S) RES AT 1:00 PM SENATE FINANCE 532  
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 03/26/07 (S) RES AT 3:30 PM BUTROVICH 205  
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 03/27/07 (S) RES AT 3:00 PM BUTROVICH 205  
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 03/30/07 (S) Heard & Held  
 03/30/07 (S) MINUTE(RES)  
 03/31/07 (S) RES AT 12:00 AM BUTROVICH 205  
 03/31/07 (S) Heard & Held  
 03/31/07 (S) MINUTE(RES)  
 04/01/07 (S) RES AT 11:00 AM BUTROVICH 205  
 04/01/07 (S) Moved CSSB 104(RES) Out of Committee  
 04/01/07 (S) MINUTE(RES)  
 04/02/07 (S) RES RPT CS 6AM SAME TITLE  
 04/02/07 (S) AM: HUGGINS, GREEN, STEVENS, STEDMAN,  
 WIELECHOWSKI, WAGONER  
 04/02/07 (S) RES AT 3:30 PM BUTROVICH 205  
 04/02/07 (S) Moved Out of Committee 4/1/07  
 04/02/07 (S) MINUTE(RES)  
 04/04/07 (S) JUD AT 2:45 PM BELTZ 211  
 04/04/07 (S) Heard & Held  
 04/04/07 (S) MINUTE(JUD)  
 04/11/07 (S) JUD AT 1:30 PM BUTROVICH 205  
 04/11/07 (S) Heard & Held  
 04/11/07 (S) MINUTE(JUD)

04/11/07 (S) JUD AT 5:30 PM BUTROVICH 205  
04/11/07 (S) Heard & Held  
04/11/07 (S) MINUTE(JUD)  
04/12/07 (S) JUD AT 3:30 PM BUTROVICH 205  
04/12/07 (S) Public Testimony 5:30 pm to 7:00 pm  
04/13/07 (S) JUD AT 1:30 PM BUTROVICH 205  
04/13/07 (S) JUD AT 5:30 PM BUTROVICH 205

#### **WITNESS REGISTER**

Tony Palmer, Vice President  
Alaska Development  
TransCanada

**POSITION STATEMENT:** Discussed Canadian right of way and First Nation issues in the context of SB 104

Rob Carpenter, Legal Counsel  
Enbridge Inc,

**POSITION STATEMENT:** Discussed Canadian right of way issues in the context of SB 104

Ian McFeeley, Vice-President  
Gas Development  
Enbridge Inc.

**POSITION STATEMENT:** Discussed Canadian right of way issues in the context of SB 104

Marcia Davis  
Oil, Gas & Mining Section  
Department of Law (DOL)  
Anchorage, AK

**POSITION STATEMENT:** Provided information about triple damages in the context of SB 104

#### **ACTION NARRATIVE**

**CHAIR HOLLIS FRENCH** called the Senate Judiciary Standing Committee meeting to order at [1:36:04 PM](#). Present at the call to order were Senator Wielechowski, Senator Therriault, and Chair French. Senator Huggins arrived momentarily.

#### **SB 104-NATURAL GAS PIPELINE PROJECT**

[1:36:21 PM](#)

CHAIR FRENCH announced the consideration of SB 104 and said that two topics are on the agenda today. The first is Canadian right of way and First Nation issues and the second is triple damages.

Because the latter could cost the state billions of dollars, the committee would focus on that carefully, he said.

1:37:10 PM

TONY PALMER, Vice President of Alaska Development for TransCanada Corporation gave a slide presentation. He said he would go through the first half of the slides quickly due to the fact that they are similar to his testimony to other committees.

Slide 2 - TransCanada Natural Gas Pipeline Network.

- This map of TransCanada's natural gas pipeline system in North America shows 36,500 miles of wholly-owned pipeline. About 15 bcf/day of gas is moved every day. The line leaving Alberta heading to eastern Canada was put in place about 50 years ago. It was a complex pipeline for the time—at least as complex as and longer than the Alaska pipeline.
- Although it's depicted as a single line it has been continuously expanded and looped so there are actually six parallel pipes running in the same right of way.

Slide 3 - TransCanada's Pipeline Assets.

- TransCanada is North America's largest gas transmission company. It owns approximately two-thirds of the take-away capacity from the Alberta hub to North American markets.
- TransCanada owns 36,500 miles of natural gas transmission pipelines and provides service to Northeast Midwest, Pacific Northwest, California, Eastern Canada and Western Canadian markets.
- TransCanada also owns 360 bcf of natural gas storage capacity.
- One-third of the Alaska Highway Pipeline Project is in the ground and transporting approximately 3 bcf/day every day from Western Canada into U.S. markets.(Foothills Prebuild, Northern Border and GTN loops).
- TransCanada has strong cash flows (C\$2.4 billion in 2006) and growing financial capacity from its pipeline assets. One year of its cash flow is equivalent to the full equity component of the expected capital cost of the Canadian section of the pipeline. Also TransCanada sold \$1.7 billion in new shares when it acquired a large U.S. pipeline system earlier this year. It also has 7700 MW of power generation assets (in-service or under development).
- TransCanada has 50 years experience as a builder/owner/operator of cold-weather North American regulated pipelines.

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SENATOR THERRIAULT referenced the fourth bullet indicating that about one-third of the Alaska Highway project is in the ground and said that a lot of people think that the Alaska project is a new entity. He asked him to touch on the fact that part of the line is already built and when the last portion was expanded or put in the ground.

MR. PALMER explained that when the initial Alaska project was deferred at the end of the 1970s it was determined that there was a short term availability of surplus Canadian natural gas and so both governments decided to advance the project by pre-building the southern sections of the Alaska Highway project. The initial facilities went in the ground in 1981 and 1982. In Canada construction took place under the Northern Pipeline Act. Since that time the facilities have been expanded five times while meeting the environmental standards of the day each time. The last expansion occurred in 1998 and currently about 3 bcf/day of gas flows through the systems.

[1:42:54 PM](#)

Slide 4 - TransCanada - Proven Basin Developer.

Four maps indicate how the system in Alberta has developed over the last 50 years. The original 250 mile system serviced three customers and now it has some 15,000 miles, 300 customers and 1,100 receipt and delivery points. He explained that this was all developed under an independent pipeline model with rolled in rates. He surmised that many Alaskans would like to see similar access to natural gas in Alaska in 50 years.

SENATOR WIELECHOWSKI asked how much of the impressive increase in development could be attributed to the fact that there were rolled in rates.

MR. PALMER said two things drove development across the basin. One was rolled in tolls and the other was a postage stamp toll within the Province of Alberta so distance didn't matter. Clearly that was incentive to drive development out of southeastern Alberta and across the province. Both were significant and powerful factors, he stated. "Rolled in tolls allowed customers to know that they would not have a vintaging of tolls and they would not have a significant difference from their predecessors on the system nor their successors." Once a significant base is established as it is today, an increment of new facilities moves rolled in tolls very little, he said.

[1:45:24 PM](#)

Slide 5 - Alaska Highway Pipeline.

The blue line indicates what will be constructed from Prudhoe Bay to Alberta and the green line indicates the existing pre-built system that Senator Therriault mentioned.

Slide 6 - TransCanada's Interest.

- TransCanada has been a lead player in the project since its inception. It has more than \$2 billion and 30 years invested in bringing Alaskan gas to market.
- TransCanada's subsidiary, Foothills, holds valid and exclusive certificates issued under the Northern Pipeline Act (NPA) for the Canadian section of the project. The certificates do not have a sunset or expiry date, which is highly unusual in Canada. He noted the recent decision by the National Energy Board with regard to preliminary results on the Mackenzie Project indicating that a two year sunset date is likely for the parties to commence construction or they will lose the license. "This was not placed on this project because this was a project of national priority for both the United States government and for the government of Canada and therefore they went well beyond normalcy for this project. Not only did they issue a National Energy Board certificate to us, but they also passed an act of Parliament called the Northern Pipeline Act and, of course, there was a treaty signed between the two countries specifically for this project."
- Foothills is named Canadian Project Sponsor in the Canada/U.S. Treaty.
- TransCanada has an easement under NPA for the entire route in the Yukon that was recognized in the 1993 Umbrella Final Agreement between the Government of Canada, the Government of the Yukon and all Yukon First Nations.
- TransCanada also holds key land and environmental permits in Alaska.

SENATOR WIELECHOWSKI asked how long ago TransCanada received those certificates.

MR. PALMER replied it was in 1978.

SENATOR WIELECHOWSKI, noting that it was 30 years ago, questioned how certain he could be that the certificates are still valid.

MR. PALMER again explained that TransCanada constructed the pre-build with the certificates and it has subsequently constructed

five expansions, the latest of which was in 1998. "We're in a position to construct the remainder of the project under these certificates," he said. They aren't musty certificates that have been sitting unused in a drawer in Ottawa for the last 30 years. They're used every day.

[1:49:07 PM](#)

Slide 7 - Legislative/Regulatory Structure - Competition Held, and Canadian Project Sponsor Selected.

- The National Energy Board (NEB) held competitive hearings, open to all parties. There were 214 hearing days before the NEB.
  - Foothills was selected as the Canadian project sponsor.
  - Other applications were rejected (Arctic Gas).
- Canada and the U.S. subsequently negotiated a treaty for the Alaskan gas project.
  - Canada obtained benefits in exchange for access across Canada for Alaskan gas.
  - Foothills was the named sponsor in Canada for the treaty.
- Canada enacted the Northern Pipeline Act (NPA).
  - It enshrined Foothills rights and obligations in a specific act of Parliament for the pipeline.
  - It established a single-window regulator, which is complementary to the National Energy Board. It regulates the terms and conditions of service—the tolls & tariffs, and terms & conditions. The Northern Pipeline Agency regulates the construction of the project. In contrast, the Mackenzie Project has a multiple agency and longer process.
- Foothills was granted exclusive rights, which is the only reasonable interpretation.
  - Project expedition could not have been achieved without exclusive rights.
  - No commercial party would have invested billions of dollars without exclusivity.
  - No expiry or "sunset" date in Foothills certificates.

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Slide 8 - TransCanada's land status - Alaska.

- TransCanada holds key land and environmental permits.

- TransCanada holds a conditional FERC certificate that was granted under ANGSA. Under that legislation a consortium of companies was granted the certificates. TransCanada and its subsidiary, Foothills, are the only remaining partners in that partnership.
- TransCanada holds Clean Water Act wetlands permits.
- TransCanada holds a federal right of way.
- TransCanada has completed the state right of way application including the public hearing process. A final state decision has been pending for more than two years. TransCanada has openly stated that it is prepared to vend these assets to the successful party in Alaska, but there is one condition. The successful applicant must connect with TransCanada at the Canadian border.

SENATOR THERRIAULT asked what the stated conditions are on the conditional FERC certificate.

MR. PALMER said he believes that environmental permits would need to be updated but he doesn't know the specific terms and conditions. When ANGPA passed about two and a half years ago there were allowances for the provisions under ANGSA. If TransCanada pursues the project within Alaska, it would have the option to pursue it under either. TransCanada hasn't made that decision, he said.

[1:53:21 PM](#)

Slide 9 - Canadian Section.

This topography map indicates the routing of the project through Canada. The blue line shows the Alaska Highway, the green line is the Yukon segment of the pipeline project, and the red line is the Northern BC section. In the Yukon the route parallels the highway and in BC it varies a bit.

Slide 10 - TransCanada's land status in Canada.

- Yukon Easement.
  - It was received in 1983.
  - It was confirmed in 1993 by all Yukon First Nations in the Umbrella Final Agreement.
  - It has a width of 240 meters.
  - The easement is a federal right of way.
    - The Yukon government has publicly stated that this can not be replicated.

- Access is already granted.
- The NPA agency holds other reservations by notation. Those are compressor sites and land access and access roads. The actual right of way is in the TransCanada or Foothills name and the access roads and compressor station sites are under the Northern Pipeline Agency.
- TransCanada holds a map reserve in BC. Alberta is known as traditional pipelining territory.
  - The map reserve was registered in 1981.
  - It's a pipeline corridor that is largely Provincial Crown land and not on any First Nation Reserve land.
    - The width of the corridor is 1,600 meters.
    - There is a clear and identifiable process to perfect the map reserve through BC and Alberta lands.
    - There's no term or rental fee until the interest is perfected.
  - The map reserve has very few private land interests.
- The key difference between this and the Mackenzie project is that TransCanada holds a right of way and has access for the project today. It's not subject to First Nations title, which is a significant difference. The parties that are pursuing the Mackenzie project continue to negotiate with First Nations on access and benefits agreements. Also they wouldn't receive a right of way until they completed and received approval from the NEB for the project. A completed application for the Mackenzie project was filed in mid 2004 and the hope is that the hearings will be finished this year. A decision from the NEB is expected sometime in 2008, which is more than four years after the completed application was filed. In contrast, TransCanada already holds an NEB certificate and it holds access with the right of way. No other party has that.

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CHAIR FRENCH asked if it's fair to say that the First Nation issues are more contested in the Yukon than in BC.

MR. PALMER said if there were a Greenfield project that would be the case. But if you were to use the existing right and NPA that TransCanada holds, then that would not be the case. TransCanada

has access through all of the Yukon and they believe they can get it through BC as well.

CHAIR FRENCH asked if the 1993 Umbrella Final Agreement has been updated in last 10 years.

MR. PALMER said the 1993 umbrella agreement was to set the terms and conditions for the final land claims settlements. Subsequently they've been translated into final lands claims settlements by the individual First Nations. He noted that six of the eight right of way First Nations have final land claims in place today. The terms of the Umbrella Final Agreement and the specific notations and easements are specifically in those settlements, he said. The Umbrella Final Agreement isn't intended to be updated, but those terms will be translated into each of the final land claims settlements.

SENATOR WIELECHOWSKI asked him what percentage of the project through Canada already has easements.

MR. PALMER said the project through Canada extends about 1,000 miles from the Alaska/Yukon boarder to Alberta. About half is in British Columbia and half is in the Yukon. TransCanada has held an easement for the 500 miles through the Yukon since 1983 and it's held a map reserve for the 500 miles through British Columbia since 1981. That means that any party that takes action along that route understands that there's going to be a pipeline there. "We have, in our view, access entirely through the Yukon today and can readily get it for the entire project through British Columbia so that would be for 100 percent of the project to Alberta," he stated.

SENATOR WIELECHOWSKI said he assumes that the easements include construction, access in the remote areas, and access for repairs.

MR. PALMER said yes, the easement addresses construction, access, and operating access over the life of the project.

CHAIR FRENCH noted that under tab 13 in the AGIA binder there are letters to the previous administration from TransCanada.

MR. PALMER continued, skipping slides 11 and 12.

Slides 13 - TransCanada's Benefits to First Nations.

- The benefits of the NPA for First Nations derive from:

- Terms and conditions (obligations which are attached to Foothills' Certificates of Public Convenience and Necessity).
- Undertakings from the project hearings.
- Foothills is required to deliver significant benefits and minimize impacts of the project.
- The benefits are already secured.
- Government of Canada can impose penalties on Foothills should it fail to comply with the terms and conditions of the NPA.

Slide 14- TransCanada's Benefits to First Nations.

- NPA benefits for all northern residents:
  - Training and employment opportunities for construction and operations of the pipeline.
  - Northern business opportunities.
  - Opportunity for equity participation.
  - Natural gas supply to communities.
    - Beaver Creek, Burwash Landing, Destruction Bay, Haines Junction, Whitehorse, Teslin, Upper Liard and Watson Lake (many are First Nation communities).
    - Foothills has an obligation to provide specified financial assistance for gas off-takes.
  - Zonal tolls.
    - Lower tolls for Whitehorse or Ft. Nelson versus Alberta deliveries.

[2:02:43 PM](#)

Slide 15 - TransCanada's Benefits to First Nations.

- NPA specific benefits for First Nations:
  - Fair and competitive opportunity to participate in the supply of goods and services.
  - Representation on the board of directors for Foothills South Yukon.
    - 3 of 11 directors for First Nations are women.
  - Foothills must enhance First Nations participation in project employment, training, and entrepreneurial opportunities through detailed social-economic plans.

- Terms and conditions require Foothills to establish and maintain a consultation process with First Nations.
- Terms and conditions or undertakings from the hearings establish protection for biophysical, socio-cultural, and socio-economic environment of the communities and traditional lands.
- The Umbrella Final Agreement and Yukon First Nation Final Agreements acknowledge and respect the validity of Foothills' pipeline easement.
  - Setting aside new lands for a Greenfield project would be a difficult and slow process.

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Slide 16 - Summary.

- TransCanada holds critical assets for the project in Alaska and Canada.
  - Alaska.
    - Conditional FERC certificate.
    - Clean water permits and federal right of way.
    - Pending state right of way.
  - Canada.
    - TransCanada holds a certificate from the NEB and the NPA to construct this facility. There is a specific piece of legislation for this pipeline that is exclusive to Foothills.
    - A Canada/U.S. treaty establishes how property taxes and other things will be established in Canada for this project.
    - There is a single-window regulatory agency.
    - TransCanada holds a right of way through the Yukon.
    - There are specific benefits for First Nations and extensive history of consultation.

[2:04:21 PM](#)

SENATOR WIELECHOWSKI noted that an AGIA provision calls for maximizing Alaska hire and asked if TransCanada would commit to that.

MR. PALMER said "TransCanada will be fully committed to see that Alaskans have the full advantageous opportunity to construct the Alaska section of the project." However, there are specific provisions for Canadian labor to have certain opportunities within Canada. That's fair just as Alaskans will insist on Alaska hire within Alaska, he stated.

CHAIR FRENCH asked him to amplify the comment he made previously about the prospect of a pipeline without customers.

[2:06:11 PM](#)

MR. PALMER clarified that he said that the initial open season is a critical threshold for the project and the project must obtain customers and/or credit to be able to advance and complete the project. He relayed that he also said that TransCanada will do all it can to ensure that the initial open season is successful. It will do the necessary engineering to put forward credible tolls so that potential customers could make a decision. If the volumes advanced in the initial open season are insufficient to proceed, TransCanada doesn't intend down-tool and go home, he said. TransCanada would continue to pursue additional customers to attract project financing and they would also pursue alternative credit mechanisms if available. Several weeks ago you did hear that our preference is not to seek FERC certification, he said. But we also clearly stated that we would continue to seek the necessary customers and credit to make this a viable project that's put in service as expeditiously as possible.

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CHAIR FRENCH thanked Mr. Palmer and stated that Mr. Carpenter with Enbridge is next on the agenda.

[2:08:28 PM](#)

ROB CARPENTER, Legal Counsel for Enbridge Inc., introduced himself and Ian McFeeley, Vice-President of Gas Development. He relayed that he would focus on Canadian right of way (ROW) issues from the perspective of approaching the project under the Northern Pipeline Act (NPA) or the National Energy Board (NEB) process. We don't believe the difference is quite as great as Mr. Palmer would suggest, he said. Both processes will require about the same level of ROW acquisition because both processes would start from the same point in British Columbia and Alberta. Although he acknowledges that TransCanada holds map notations, those don't grant property and interests so it's difficult to see them as anything more than a notation to a future developer that TransCanada may have an interest in the area.

MR. CARPENTER said that TransCanada does have an easement agreement in the Yukon that was granted by the federal government, but before construction can take place the Minister must give written consent, which makes it somewhat unique. In his view it's difficult to believe that the Minister would give permission to construct the pipeline unless the various requirements in the NPA have been satisfied. That includes obtaining all necessary regulatory permits for land use, water use, fisheries authorizations, navigable waters authorizations, timber cutting in British Columbia, the Yukon, and Alberta. Enbridge believes that many of those permits would trigger environmental reviews and other assessments. In the end there isn't much difference in terms of ROW acquisition between an NPA process and an NEB process, he stated.

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VICE-CHAIR HUGGINS asked if he sees any marketable value to what TransCanada has in terms of rights of way.

MR. CARPENTER said not a great deal, but there's probably more value in the Yukon. TransCanada has what's called the first right of way, which allows investigations, but it doesn't allow digging and putting pipe in the ground. In his view that second step would require regulatory permits before the Minister would give written consent to construct.

VICE-CHAIR HUGGINS asked him to give his perspective on First Nation provisions in the Yukon with respect to TransCanada.

MR. CARPENTER said the issues in the Yukon and British Columbia are much the same and he has no doubt that TransCanada is currently having discussions with First Nations. However, the real issue is that aboriginal law has changed substantially in the last 30 years. For example, Canada passed a charter of rights in 1982 that guarantee aboriginal treaty rights and developers must consult with First Nations on a comprehensive level that wasn't contemplated in the Northern Pipeline Act. In contrast, pipelines have been built through the NEB process using modern aboriginal consultations and that process is better understood. He opined that the NPA is unique legislation, which leaves it more open to challenge.

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MR. CARPENTER said in summary he believes there are significant challenges for the NPA. In addition to the aboriginal challenges, environmental challenges will arise because of the

regulatory approvals that are required under the Northern Pipeline Act. In his view there will be much greater opportunity for environmental groups and others to challenge the project if that process is used. In fact, if he were advocating for a group that didn't support building the pipeline, he would want things to proceed under the NPA rather than the NEB process.

CHAIR FRENCH asked Mr. Carpenter to send his written comments to his office and he'd distribute copies to the other members.

SENATOR THERRIAULT asked if the Mackenzie gas pipeline is using the NEB process.

MR. CARPENTER yes, but it would be exactly the same for this project. "We would expect that there would be a much easier process that could be incorporated for the Canadian portion of the Alaskan pipeline."

SENATOR THERRIAULT commented that one would hope so because that process has been neither fast nor sure.

[2:19:45 PM](#)

CHAIR FRENCH announced the next topic to be triple damages, which is Section 43.90.540. He asked Ms. Davis to explain how she sees the provision working.

MARCIA DAVIS, Deputy Commissioner, Department of Revenue, explained that the purpose of Section 43.90.540, entitled "Licensed project assurances." is to seal the commitment by the state to the successful applicant, to receive the inducements and build the AGIA pipeline. The reason for having the provision relates to ensuring that the field of applicants that comes forward will be as broad as possible. Also it will measure the AGIA process as one that is fair and open and not subject to gaming. A concern that various participants have expressed is that just like last time some of the independents would feel that they would be put forward as a Stalking Horse but that ultimately they wouldn't be selected. The reason would be that only a pipeline project that's backed by the producers would be a sure thing. She said other provisions in AGIA leveled the playing field, but the independents continued to express concern that if an independent was picked the producers would still be in a position to withhold gas at an open season or perhaps cause the independent to fail. Then the state could say "look there it failed" and support a different project by someone who had perhaps sandbagged the AGIA process. It's possible that the state could then see logic in backing a project that's outside

the AGIA process. Meanwhile, the genuine applicant that stepped forward in the AGIA process and forked out millions and millions of dollars is left abused and bruised and without much recourse.

MS. DAVIS relayed that this provision shows the state's intent to play fair. It says that if the state decides to change to a different project or approach, the licensee that is following all the rules and adhering to their license and moving toward a FERC application would receive a benefit so it wouldn't be unduly harmed. "So we came up with a three hundred percent times the costs ponied up by that applicant." The focus is to protect the applicant. Imposing a hurdle ensures that the state carefully thinks through any decision to change projects.

MS. DAVIS said that the provision is designed to be carefully scripted in terms of scope and timing. The period of time over which the assurance is provided is from the time that the license is issued until that project commences operation. The scope of protection is that the state won't offer preferential monetary, tax, or royalty treatment. She emphasized that the word "preferential" is key because there is no intent to restrict the legislature's ability to look at taxes. If a future legislature decides to modify production taxes, nothing in the bill prohibits the legislature from changing tax rates. What it does do in the section that deals with tax exemption is to provide an exemption that puts the resource owner that has dedicated gas, in an equal economic position.

CHAIR FRENCH described it as making them whole.

MS. DAVIS said yes, but it doesn't take away the ability of the legislature to modify taxes. Even so she's heard from some sectors in the industry that this section would prohibit the legislature from changing the tax rate in an effort to influence a pipeline project. She disagrees with that interpretation. That isn't a preferential gas change; everybody's affected by it, she said. What it does do is prevent the state from throwing money at a specific project. It prevents the state from singling out a specific project and giving it preferential tax or royalty treatment.

2:25:40 p.m.

MS. DAVIS explained that in the current committee substitute (CS) the remedy is identified as the reasonable costs that have been incurred by the licensee as of the date that the state does the bad deed and backs a different project. Once it's activated, if the state does pay the penalty, it will at a minimum receive

all the project data. "So we're not getting absolutely nothing for that money," she said. Also, the current CS added a clarifier, that the intent in terms of defining competing projects clearly states that it doesn't include projects that were designed for instate gas delivery. Essentially that would be any pipeline projects that are less than 500 mcf/day. The intent is to not loop in the bullet gas line or spur line from the main line.

MS. DAVIS suggested the committee look at the language from the House oil & gas CS and consider whether it might be a fruitful change. It clarifies that the costs the licensee could be reimbursed for meet the definition of qualified expenditures. It makes it clear that they would not be reimbursed for overhead, litigation costs, criminal penalties or fines, or civil penalties or fines. A second area that merits further consideration is preferential royalty and tax treatment. The idea, she said, is to not include in the bucket of preferential tax and royalty, those situations where the state is currently exercising its contractual rights and its interpretation of state law rights. For example when there's a dispute with a lessee about how they've paid their royalty, DNR enters into a dispute resolution. Oftentimes there's a court or other type settlement that resolves the dispute. We don't want that type of settlement to be considered a preferential tax or royalty treatment, she said. The state is simply enforcing its existing rights under statute and its royalty provisions in its contracts.

MS. DAVIS highlighted other areas that clearly should be excluded. She explained that by statute DNR is authorized to look at leases and agree to modify the royalty rate for leases that have been unitized. In those situations DNR can essentially average the royalty rates within a unit for ease of administration. Another area in statute allows DNR to negotiate a more favorable royalty rate when a lessee can show by clear and convincing evidence that development in a particular field is challenged. Also, in end of field life situations DNR has latitude to ensure continued production from the field by modifying royalty provisions. Those are existing statutes that apply under specific conditions; their focus isn't to support a specific competing gas pipeline.

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CHAIR FRENCH asked for a worst case scenario estimate of how much money is at stake with this promise.

MS. DAVIS said different industry participants have indicated that the cost to get to an open season has ranged between 10s of millions of dollars up to 400 million dollars. It'd take about half of that or 25 to 200 million dollars for the licensee to get to an open season. After open season incremental amounts would be added to that. If the state's share is larger the net to the licensee would be lower so the exposure post open season would probably be a lot lower, she said.

CHAIR FRENCH observed that if the licensee spends 200 million dollars before the state jumps ship the state could be on the hook for 600 million dollars.

MS. DAVIS pointed out that the administration has acknowledged that if the state is making the decision to change to another project it's because it has identified another project that is superior and would provide greater value to the state. Certainly the cost of this provision would have to be factored into the economics of whether or not the state views another project as being more beneficial. "I would not underestimate the ability of...the state and the other commercial players to ensure that this price is not disparately impacting the state in that decision," she stated.

CHAIR FRENCH added that in making the decision the state would ask whether the other project plus \$600 million is worth it overall.

SENATOR WIELECHOWSKI asked if she would object to lowering it to double damages.

MS. DAVIS replied the question is whether there really is a magic number and she couldn't say. "We were just wanting to ensure that the applicants in the AGIA process had enough confidence and security that the state would not willy-nilly change ships." We have confidence in the commercial market that if another project comes along, that figure isn't going to be the deciding factor in judging whether it's vastly superior. Also we don't want the applicants to think that the state is looking for an out.

SENATOR WIELECHOWSKI pointed out that if the state makes a mistake or an applicant is dragging its feet the state should have the option to jump ship .

MS. DAVIS said if we've made a mistake we'd hope that it's because the applicant isn't adhering to the license

requirements. That, she said, is one of the benefits of having clear guidelines and benchmarks so if an applicant doesn't meet them this provision would not come into play. "This provision is actually qualified in that to receive this the applicant must be in compliance with the other provisions of its license," she stated.

CHAIR FRENCH asked if she would consider what Senator Wielechowski is talking about to be more an abandonment action.

MS. DAVIS said no, it'd be more a situation where the selected applicant is wrong because they aren't measuring up.

CHAIR FRENCH asked what process AGIA uses to end the license.

MS. DAVIS explained that if an applicant isn't in compliance with the license requirements, there's a provision for a 90 day period for the commissioners to attempt to resolve the failures to perform. If they aren't resolved, the commissioners have the authority to revoke the license and impose the various sanctions that are included in that section. Although she appreciates that Senator Wielechowski is thinking about situations that aren't as egregious as a license violation, she believes that would be a very narrow situation for the state to face. As to whether 200 percent or 300 percent is the right remedy, she said that is within the purview of this body to make that balanced decision.

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SENATOR HUGGINS referenced page 22, line 11, and asked if "monetary treatment" had been defined.

MS. DAVIS explained it was designed to reflect outright grants similar to the \$500 million matching grant that's incorporated in AGIA. The intention is for it to be something that would be a preferential monetary benefit to a competing pipeline project.

SENATOR HUGGINS asked if hiring a separate pipeline coordinator would be exclusionary.

MS. DAVIS said when this was written there was no intent to include that type of support in this provision. The idea was more for outright unfettered financial grants.

SENATOR HUGGINS said he recalls the federal pipeline coordinator says "any project" and this one says "the project." He wonders if there's any wisdom to widening the parameters so this

pipeline coordinator could potentially handle more than one project.

MS. DAVIS said by design the bill does everything it can to enhance and make the AGIA process attractive. In that effort the administration saw value in having a state pipeline coordinator and these explicit provisions regarding agency permitting acceleration and expediting. The administration continues to believe that is a valuable benefit associated with the AGIA licensing process. She noted that industry has expressed objection saying that the state as a sovereign should want to support alternate pathways for a gas pipeline. What has been identified, she said, is that DNR currently has statutory authority for large projects to facilitate both agency decisions within DNR as well as other agencies that interface with those projects. The question that remains is whether that is an adequate opportunity for the state as a sovereign to support alternate projects, or if it's more important to make this pipeline coordinator available across the board. The administration continues to believe the pipeline coordinator to be important as support for an AGIA license project, she stated.

SENATOR HUGGINS commented that he's had unofficial feedback that FERC may have difficulty with the two words being different.

MS. DAVIS acknowledged the remark.

SENATOR WIELECHOWSKI suggested a solution might be to add language to line 10 or line 11 saying that the state extends to another person preferential royalty tax or monetary treatment except as provided by law. Then he noted that the treble damages don't kick in unless it's before commencement of commercial operation of the project. He asked what that definition is and when that would occur.

MS. DAVIS said there is a definition in the current CS. She read the following from page 23, lines 24-25:

"commencement of commercial operations" means the first flow of gas in the project that generates revenue to the owners;

SENATOR THERRIAULT questioned whether receiving, processing, and granting a right of way would be preferential treatment if the state had an application for a second right of way.

MS. DAVIS said no; it wouldn't be preferential royalty tax or monetary treatment.

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CHAIR FRENCH referenced the language "the inducement provided in this chapter" on line 8 and questioned the use of the singular noun since there are several inducements.

MS. DAVIS explained that the inducement that's referenced is the enjoyment of an inducement by a pipeline company and the administration thinks of that as the matching contribution. The inducement to resource owners is the royalty and tax. It wouldn't be a problem to have the "s" since there is an indirect benefit to the pipeline company by having resource owners induced to participate, she stated. However, she added, we do tend to think more directly about the pipeline inducement.

CHAIR FRENCH commented that with a producer owned pipeline it might be an issue.

MS. DAVIS said yes.

CHAIR FRENCH referenced a competing natural gas pipeline project accommodating throughput of more than 500 mcf/day, and asked if she would object to the following language: "The delivery of more than 500 mcf/day to a market." He said he was thinking about a gas treatment plant or a reinjection facility that cycles a lot of gas. The idea is to address the fact that the facility would be accommodating throughput of 500 mcf/gas/day, but it wouldn't be going anywhere.

MS. DAVIS agreed to think about that. She wants to make sure it doesn't harm anyone because the gas isn't going anywhere.

CHAIR FRENCH said the bill is structured to make the licensee be reasonable and that's good because they would have their eye on that \$600 million prize.

MS. DAVIS said in that case you wouldn't necessarily limit it to 500 mcf/day because gas cycling that's directed at enhanced oil recovery or something like that you wouldn't necessarily need the volume limitation.

CHAIR FRENCH stated that he'd like to get "market" inserted to make it clear that it's a pipeline carrying gas to market.

MS. DAVIS said she understands.

CHAIR FRENCH asked if the preferential treatment claims would be argued in court.

MS. DAVIS said she envisions that a majority of the time there would be a debate or dispute, but she can also envision the state analytically and consciously looking at a situation, making a decision, and negotiating a resolution of the issue without going to court.

CHAIR FRENCH said she's probably right; he can see the state making an economic decision to change projects. But you're still asking the legislature to spend money on a decision without even knowing in what year it might occur. He referenced Article 9, Section 13 of the constitution, which says the state can't spend money without an appropriation so the legislature has to grant the authority. Typically, he said there's the implicit idea that all these promises to pay are subject to appropriation. He asked if there would be any objection to inserting the qualifier.

MS. DAVIS agreed to take that under consideration.

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CHAIR FRENCH said when Senator Huggins brought up monetary treatment he began to think about fairly small monetary gifts to another entity that certainly wouldn't result in a pipeline but nonetheless is a monetary encouragement. Say the state gives \$1 million to a competing project and because of that it's on the hook for up to \$600 million. Although he can see it from the licensee's perspective, he questions whether there shouldn't be some materiality or balance.

MS. DAVIS said you have to balance it out. Anything the state does to pull away from its commitment lessens the value of that commitment. But in terms of identifying materiality you'd need to think of the type of monetary commitment the state might make. For example if there is a science program that's looking at the development of gas in the Arctic, arguably it's not supporting a competing gas line so there'd be debate on that threshold rather than the monetary level. But if there really is a specific competing gas pipeline project, a materiality threshold might not cut it, she said. You're either supporting another line or you're not. If we did that it might substantially weaken the value of the assurance, she said.

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CHAIR FRENCH said when MidAmerican testified they repeatedly talked about economic certainty. I take it they were referring to this provision of AGIA and not the tax freeze and royalty provisions, he said. This is what an independent pipeline operator is looking to for surety.

MS. DAVIS said absolutely; this provision gives them confidence that there's investment stability.

SENATOR THERRIAULT asked if this would preclude consideration of a blending of competing proposals A and B if the successful applicant, A, found it was not advancing on its own.

MS. DAVIS said it wouldn't preclude it but that does bring in the value of the assignment clause. We anticipate that an applicant will arrive with a disclosed number of commercial participants, she said. Then in the timeframe between selection of the successful applicant and the filing of the FERC application there will be lots of negotiations and commercial evaluations where new partners may come into play. During that time a transition of the license from one legal entity to a new joint venture would not be unexpected, she stated. With respect to the instance he described, she envisions that commercial result arising by a combining of commercial entities behind the project and that would result as an assignment of the license to that entity.

CHAIR FRENCH asked if the administration crafted the provision or if it came from a model.

MS. DAVIS said it was specifically designed to address the explicit concerns related to the AGIA concept. The idea was to develop elements that would make it work smoothly, she stated.

SENATOR THERRIAULT asked if the resources CS made changes to this provision that the administration objected to.

MS. DAVIS said no.

CHAIR FRENCH asked if all the changes were made with consultation with the administration.

MS. DAVIS said yes.

SENATOR THERRIAULT recapped that she spoke about considering language that House oil and gas included, and she spoke about royalty or tax settlements not being considered preferential

treatment. He added that there were several other things he didn't write down.

MS. DAVIS said in terms of preferential royalty and tax language, the administration wants to make sure that there's coverage for the royalty and tax settlement authority that the state currently has. Also the existing DNR statutes that give rise to the right to negotiate royalty modifications need coverage.

CHAIR FRENCH asked if she has draft language on that.

MS. DAVIS said not at the moment but it will be forthcoming.

CHAIR FRENCH clarified that the idea is to carve out existing means for settling disputes.

MS. DAVIS said yes, the idea is that those would not be considered preferential support for another pipeline.

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CHAIR FRENCH recessed the meeting until till 5:30.