

ALASKA STATE LEGISLATURE
SENATE JUDICIARY STANDING COMMITTEE

April 13, 2007

5:35 p.m.

MEMBERS PRESENT

Senator Hollis French, Chair
Senator Bill Wielechowski
Senator Gene Therriault

MEMBERS ABSENT

Senator Charlie Huggins, Vice Chair
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
 03/24/07 (S) Heard & Held
 03/24/07 (S) MINUTE(RES)
 03/24/07 (S) RES AT 3:00 PM SENATE FINANCE 532
 03/24/07 (S) Heard & Held
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 03/26/07 (S) RES AT 3:30 PM BUTROVICH 205
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 03/28/07 (S) Heard & Held
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 03/29/07 (S) RES AT 5:00 PM BUTROVICH 205
 03/29/07 (S) Heard & Held
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 03/30/07 (S) RES AT 1:30 PM BUTROVICH 205
 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

William Walker, General Counsel and Project Manager
Alaska Gas line Port Authority
411 4th Avenue, Suite 200
Fairbanks AK 99701

POSITION STATEMENT:

Clark Bishop, Commissioner
Department of Labor
Anchorage, AK

POSITION STATEMENT:

ACTION NARRATIVE

CHAIR HOLLIS FRENCH called the Senate Judiciary Standing Committee meeting to order at [5:35:02 PM](#). Present at the call to order were Senator Wielechowski, Senator Therriault, and Chair French.

^#SB104

SB 104-NATURAL GAS PIPELINE PROJECT

[5:35:13 PM](#)

CHAIR FRENCH announced the consideration of SB 104. He said that the first item on the agenda for the evening is to hear from Mr. Walker from the Port Authority. He would talk about antitrust issues in general as well as his particular experience.

[5:35:54 PM](#)

WILLIAM M. WALKER, General Counsel and Project Manager, Alaska Gas line Port Authority ("Port Authority") said he is happy to discuss the Port Authority's experience on the antitrust issue, but he would speak carefully since it's a legal matter.

CHAIR FRENCH reminded members that the Port Authority brief on this topic appears under tab 12 of the AGIA binder. The complaint was filed in U.S. district court against Exxon and BP. He opined that it's an excellent recitation of the history of

the gas line including the problems that have been encountered in trying to develop a gas line.

MR. WALKER explained that the Port Authority has been working since 1999 to put together a viable, competitive and financeable project. The last step that's needed is the acquisition of gas. As part of that the Port Authority submitted an offer to purchase gas in April 2005. Quite soon it became evident that the offer wouldn't even be engaged. That left the Port Authority with few choices, particularly in light of the fact that the administration at that time wasn't very supportive. He relayed that the Port Authority directed him to lay out the options regarding antitrust action against the producers as a result of the collective refusal to sell gas. After reviewing the data with David Boies a determination was made that there was a very good antitrust claim and so the action was filed in Fairbanks on December 19, 2005. ExxonMobil and BP responded with a motion to dismiss, which was successful on the standing issue.

5:39:00 p.m.

CHAIR FRENCH asked him to remind the public what that standing issue means.

MR. WALKER explained that the standing issue said that in filing the action the Port Authority was trying to bypass the Stranded Gas Development Act (SGDA) process. Clearly that wasn't the idea, he said. We did not and do not believe that it's necessary to file an application with the SGDA to build a gas line. We believe it was an option but it wasn't exclusive so we respectfully disagreed with the judge on that issue, he said.

MR. WALKER said they filed a request for reconsideration. "We were the only ones that applied twice. We applied once and were told to withdraw then we were asked by the administration to apply a second time and we did, so that's really what the stumbling block for us was." He added that the judge acknowledged the change in political climate and said it might remove the standing issue if the legislature or the administration gave its blessing.

MR. WALKER explained that at about the same time that the Port Authority headed into the ninth circuit court with its appeal, the former administration took back Pt. Thomson. He said that the Palin administration has upheld that action and so with this new day and the desire to focus on building a project rather than on the ninth circuit, the board authorized him to dismiss the appeal and he has done that.

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CHAIR FRENCH referenced page 5 of the complaint and read the following by Lee Raymond, then CEO for ExxonMobil:

Then you have these competing pipeline proposals, which is fine if that's what you to do. But the reality is, nobody is going to build a pipeline without the producers. You and I know how pipelines get built. The pipeline goes to the bank. The guy at the bank says, what are you going to put in your pipeline? Gas. Do you own the gas. No, I don't own the gas. Well, who does own the gas, and do you have a commitment from them that they are going to put it through the pipeline? Well, no, we don't have that. Then [says the bank] I don't think I'm going to give you much money to build a pipeline.

CHAIR FRENCH asked Mr. Walker if that's the essence of his case.

MR. WALKER said Mr. Raymond made that particular statement at about the time the Port Authority was trying to buy gas so that statement was a significant deciding point. It was clear that more of the same process wasn't going to be productive.

SENATOR WIELECHOWSKI noted that Exxon testified before the resources committee saying that the only way a pipeline will be built is if the producers build it. He asked if that's an accurate assessment and if statements like that would be a violation of the U.S. antitrust laws.

MR. WALKER stated that he firmly disagrees with the statement that only the producers can build a pipeline. Worldwide the way pipelines are built, financed, and owned is contrary to that because it's unusual for producers to be in an ownership position. With regard to the second question he said it takes a number of considered efforts for a violation of antitrust laws. Although the Port Authority wasn't successful in the standing issue, it does stand behind the facts that were asserted there, he said. "Beyond that...we have read the leases, we've looked at the law as far as the obligations under the leases, and we believe the reasonable expectation of profit is the threshold." He said we don't believe the producers can be forced to build a pipeline and that's probably not a good idea anyway, but there is an obligation to market. We were looking at the duty to

market the gas available, particularly the Prudhoe Bay gas that's being re-injected, he stated.

SENATOR WIELECHOWSKI asked if the producers could validly refuse to participate in an open season on this project.

MR. WALKER said we believe that if an open season includes a volume that's approved and available and if it's within the limits of the current off-take on the North Slope, then there's an obligation for the producers to participate. Their response may be conditional, but the leases don't allow them to sit back and wait for the timeframe that works best for them. "The leases...need to be developed at such point that there's a reasonable expectation of profit." Stating that that is a term of art that has been addressed by the courts, he opined that one thing that's been misunderstood for decades here in Alaska is that we felt we had to compete with every project on the planet and that we had to be the most profitable as well. But that isn't the law and that isn't what the leases say; reasonable expectation of profit is the threshold, he stated.

SENATOR WIELECHOWSKI asked if the court has given a definition for what is a reasonable expectation of profit. Also, how does the profitability of this project compare to others around the world?

MR. WALKER explained that the courts in Alaska haven't addressed a definition, but he'd be happy to ask their Texas special counsel to give his perspective on that in writing. As far as how this project compares to others, he said we believe we're absolutely competitive. For instance, other places where gas is at tidewater have a 22-27 day shipping time while this project would have a 5-6 day shipping time. Also, the ambient temperature here is 40 degrees rather than 90 degrees so liquefaction is 30-40 percent more efficient here. Beyond that he would point out that this project doesn't have to beat every other LNG project. It simply needs to be competitive to make sure the market wants the product.

SENATOR THERRIAULT noted that when the U.S. government went through a process to pick a project from the over-the-top option, the overland option down the Alcan Highway, and the tidewater option, the Carter administration selected the overland option. He asked if he knows the history that led to that decision.

MR. WALKER explained that there was strong competition for all three options and Alaska united and fought hard for the line to come through the state. Although the commissioners spoke favorably about that route because there would be no regulatory unknowns and there would be no aboriginal claims and rights issues from a different country, the ultimate decision was to run the line through Canada. Part of that decision was that there would be no producer ownership of the line. For financial reasons those regulations were modified during the Reagan administration and some producer ownership was allowed. That financing issue might not be completely gone, he added.

MR. WALKER said he really can't say why the Canadian route was selected because the federal government's testimony was very favorable for an all Alaska line.

SENATOR WIELECHOWSKI said he doesn't understand the rationale at that time to have no producer ownership in the line.

MR. WALKER said he believes the concern related to the amount of control the producers already had on the market and that increasing it might have a chilling affect on additional exploration and development in Alaska. It was more a concern about market and basin control, he stated.

SENATOR WIELECHOWSKI asked if he's referring to the ability to impact tariffs.

MR. WALKER said it was the tariff and exploration. The idea was to ensure the ability to have maximum exploration of gas in Alaska.

5:56:10 PM

CHAIR FRENCH summarized that the Port Authority tried to buy gas and couldn't so they brought a lawsuit against Exxon and BP on Sherman antitrust action. The suit was dismissed for lack of standing and the judge said:

The defendants would seemingly not be able to hold these gas reserves forever without making reasonable and good faith efforts to develop them.

CHAIR FRENCH commented that that was a bit of a legal nugget that came your way during the process.

MR. WALKER agreed and said the Port Authority thought that submitting an offer to purchase gas would begin a productive

process. When we brought participants from the marketplace as part of the offer we expected it would be taken more seriously than it was, he stated.

SENATOR WIELECHOWSKI asked if it would benefit the state to have a declaratory judgment action now saying that they would be in default if they don't show up for an open season.

MR. WALKER cautioned that from the market standpoint that might start a more lengthy process than might be productive. That's a decision you'll have to make, he said. Although there needs to be some understanding of what constitutes a failed open season, he is encouraged that the tenor of discussion is that this committee wouldn't be comfortable with no response and a failed open season.

[5:58:22 PM](#)

CHAIR FRENCH announced the next item on the agenda is project labor agreements by Commissioner Click Bishop.

[5:58:35 PM](#)

COMMISSIONER DESIGNEE CLICK BISHOP, Department of Labor and Workforce Development, delivered a PowerPoint presentation.

What is a Project Labor Agreement (PLA)?

- A PLA is a comprehensive collective bargaining agreement that sets the terms and conditions of employment on a project, for that project only.
- A PLA is a collective bargaining agreement that is negotiated between the licensee, or its agent, and an appropriate entity setting out the terms and conditions of employment on the project, typically including wages and benefits, and setting out other working conditions including no-strike, no lockout provisions, dispute resolution procedures, and the use of hiring facilities in the state.
- Contractors come under that umbrella. All contractors, union or nonunion who are interested in bidding on a project must follow the terms and conditions set out in the PLA.

[6:01:02 PM](#)

CHAIR FRENCH recognized Senator Joe Thomas in the audience.

CHAIR FRENCH noted that some interested parties have told him that a PLA would keep nonunion workers from getting a pipeline job. He asked if anything about a PLA would exclude a nonunion worker from getting a job.

COMMISSIONER BISHOP said no.

SENATOR THERRIAULT asked him to elaborate on how a nonunion worker would go about securing a job on a project that has a PLA and how a nonunion shop would bid on a job that has a PLA.

COMMISSIONER BISHOP explained that today all union hiring halls are open to nonunion workers to go in and register on any auto work list for employment. Under a PLA the only thing that would prohibit a nonunion entity from bidding a project is a desire not to participate, he said.

SENATOR THERRIAULT asked if his workers would have to go sign up at the union hall if his nonunion business submitted a bid on a project, or would his business just have to agree to pay the particular wage that's been negotiated. How does that work?

COMMISSIONER BISHOP said he can't speak for organized labor, but historically they could "key man" their people in on the pre-hire bargaining agreement with the union to assure that the shop could bring in its workers.

SENATOR THERRIAULT asked if there's a mechanism for his existing workforce to qualify so that he wouldn't have to dismiss them and hire from the names that are highest on the list.

COMMISSIONER BISHOP said there is a mechanism but he can't speak for each local union.

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COMMISSIONER BISHOP continued.

History of PLAs.

- Project Labor Agreements were first used in the 1930s and currently they're used widely in the private and public sectors.

PLA Precedents.

- Legal.
 - U.S. Supreme Court (Boston Harbor) 1933.
 - Alaska Supreme Court (Laborers Local 942 v. Lampkin) 1998.

- PLA-based Public and Private Projects.
 - Grand Coulee and Hoover dams.
 - TAPS.
 - San Francisco BART.
 - Puget Sound Transit.
 - Sutter and Sunrise Power Plants in California.
 - Seattle Airport.

6:05:48 PM

Why Have a PLA?

- Stable workforce guaranteeing no strikes or lockouts.
- Meets project scheduling challenges.
- Eliminates need to negotiate numerous separate contracts.
- Assures consistent terms and conditions for all contractors.
- It's a good vehicle for:
 - Alaska hire.
 - Apprenticeship opportunities.
 - Preference for underutilized groups.

6:06:45 PM

CHAIR FRENCH commented that a lot of the public thinks that once unions get involved there might be a strike and the pipeline wouldn't get built. He asked how a PLA prevents that from happening.

COMMISSIONER BISHOP said the two sides can bind one another by agreeing in writing that there won't be a strike or lockout. To his knowledge there hasn't been a walkout or strike on any North Slope projects since the inception of TAPS.

CHAIR FRENCH referenced page 9, lines 16-18, of the current CS dealing with applicant requirements. He read the following:

(16) commit to negotiate, before construction, a project labor agreement, to ensure expedited construction and labor stability for the project by qualified residents of the state;

CHAIR FRENCH asked if he or members of the administration are working on a more exact definition for project labor agreement within the context of AGIA.

COMMISSIONER BISHOP said yes.

CHAIR FRENCH asked him to forward it to the committee as soon as it's finalized.

SENATOR THERRIAULT posed another scenario. His business is a union shop that pays its employees, which are all year-around, a union negotiated wage. He asked how a PLA that came in might impact that type of agreement if the wage negotiated with the union is different than the wage that's negotiated with the individual union shop. Which one prevails?

COMMISSIONER BISHOP said that would be subject to negotiation between the licensee and the labor entity.

SENATOR THERRIAULT asked if local 302 could negotiate a wage for hiring out of its hall that would carry the day for that particular business.

COMMISSIONER BISHOP said they could.

SENATOR WIELECHOWSKI asked if it's fair to say that Davis Bacon laws would apply on this project.

COMMISSIONER BISHOP agreed that that would likely be the benchmark for starters for negotiation.

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[6:10:55 PM](#)

CHAIR FRENCH recessed the committee until 10:00 a.m. tomorrow.