

ALASKA STATE LEGISLATURE
SENATE JUDICIARY STANDING COMMITTEE

April 17, 2007

3:15 p.m.

MEMBERS PRESENT

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

MEMBERS ABSENT

All members present

COMMITTEE CALENDAR

SENATE BILL NO. 104

"An Act relating to the Alaska Gasline Inducement Act; establishing the Alaska Gasline Inducement Act matching contribution fund; providing for an Alaska Gasline 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
03/24/07 (S) MINUTE(RES)
03/26/07 (S) RES AT 3:30 PM BUTROVICH 205
03/26/07 (S) Heard & Held
03/26/07 (S) MINUTE(RES)
03/27/07 (S) RES AT 3:00 PM BUTROVICH 205
03/27/07 (S) Heard & Held
03/27/07 (S) MINUTE(RES)
03/28/07 (S) RES AT 3:30 PM BUTROVICH 205
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03/29/07 (S) RES AT 5:00 PM BUTROVICH 205
03/29/07 (S) Heard & Held
03/29/07 (S) MINUTE(RES)
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) Heard & Held
04/13/07 (S) MINUTE(JUD)
04/13/07 (S) JUD AT 5:30 PM BUTROVICH 205
04/13/07 (S) Heard & Held
04/13/07 (S) MINUTE(JUD)
04/14/07 (S) JUD AT 10:00 AM BUTROVICH 205
04/14/07 (S) Heard & Held
04/14/07 (S) MINUTE(JUD)
04/15/07 (S) JUD AT 11:00 AM BUTROVICH 205
04/15/07 (S) -- MEETING CANCELED --
04/16/07 (S) JUD AT 1:30 PM BUTROVICH 205
04/16/07 (S) Heard & Held
04/16/07 (S) MINUTE(JUD)
04/17/07 (S) JUD AT 3:30 PM FAHRENKAMP 203

WITNESS REGISTER

Cathy Foerster, Commissioner

Alaska Oil & Gas Conservation Commission (AOGCC)

Anchorage, Alaska

POSITION STATEMENT: Delivered the public summary for "Prudhoe Oil Pool Gas Offtake Reservoir Study"

Larry Ostrovsky, Chief Assistant Attorney

Oil, Gas & Mining Section

Department of Law

Anchorage, Alaska

POSITION STATEMENT: Described litigation regarding ExxonMobil and Pt. Thomson

ACTION NARRATIVE

CHAIR HOLLIS FRENCH called the Senate Judiciary Standing Committee meeting to order at [3:34:50 PM](#). Present at the call to order were Senator Huggins, Senator Wielechowski, Senator Therriault, and Chair French.

SB 104-NATURAL GAS PIPELINE PROJECT

[3:35:23 PM](#)

CHAIR FRENCH announced the consideration of SB 104, including a presentation from the Alaska Oil and Gas Conservation Commission on gas offtake and a briefing from the Department of Law on the Pt. Thomson litigation.

CATHY FOERSTER, Engineering Commissioner, Alaska Oil and Gas Conservation Commission (AOGCC), explained that the commission's role in North Slope gas sales is to ensure that sales do not result in hydrocarbon waste. To that end AOGCC determines the allowable gas offtake rates for North Slope fields, but most notably from Prudhoe Bay and Pt. Thomson.

[3:37:46 PM](#) Senator McGuire arrived.

Although it is quite well known that 35 tcf of gas have been discovered at Prudhoe Bay and Pt. Thomson, she said, it is less well known that hundreds of millions of barrels of oil and condensate could be lost if the gas offtake is not managed correctly. In fact one or two alpine fields are at risk, and AOGCC is working to ensure that they do not get lost in the shuffle. Describing oil as a bird in the hand and gas a bird in the bush, she said AOGCC is working to ensure that the former is not harmed while attempting to get at the latter.

MS. FOERSTER said that, as a general rule, maintaining reservoir pressure increases oil recovery, but producing gas depletes reservoir pressure so gas reserves in most fields are typically sold only after the liquid hydrocarbon reserves have been depleted. Until then the gas that is produced is used to increase liquid production in a number of different ways. One way is to reinject the gas into the reservoir to provide the needed energy to get the liquid hydrocarbons to the surface. Another way the gas may be used is to enhance oil recovery operations. North Slope gas is being used both those ways right now, so the charge that the gas is being held hostage simply is not correct. "They are using our gas to get more oil and the gas will still be there when we're ready to produce it."

MS. FOERSTER said the North Slope gas sales project will involve some tradeoffs between oil and gas recovery, and the two documents on establishing allowable gas offtake rates for Prudhoe Bay and Pt. Thomson explain the physics and engineering of the tradeoffs. She suggested that members read both documents and contact her if they elicit any questions.

She said the normal process is for a gas field operator to apply to AOGCC for pool rules. Those are specific rules stipulating

how to develop a reservoir for maximum oil and gas recovery. Prudhoe Bay is currently operating under the original pool rules that were established shortly after the field was discovered in the early 1970s. The rules have been modified a number of times to reflect necessary changes as more was learned about the field in terms of how it produces and how it should be managed.

MS. FOERSTER noted that AOGCC has not received an application for pool rules for Pt. Thomson, but Pool Rule 9 for Prudhoe Bay was established in 1977, and it set the allowable gas offtake at 2.7 bcf/day. She emphasized that since then 30 years have passed and 11 billion barrels of oil have been produced, yet the Prudhoe Bay leaseholders have not filed for a change in the gas offtake rate. There has been no need to file for an amendment because there is no gas pipeline. Nonetheless it is important for two reasons, she said.

The first reason is that a great deal more is known about how the reservoir works and what might be an appropriate gas offtake. Secondly, most gas sales under public discussion—including the producer's proposal—would probably require an increase in the allowable Prudhoe Bay gas offtake. "So it's probably appropriate that that Rule 9 be rebooked," she said. Normally AOGCC waits for the operator to make application before initiating necessary studies to make a rule change.

[3:42:33 PM](#)

MS. FOERSTER said these studies can delay decisions, especially in complex reservoirs like Prudhoe Bay. Pt. Thomson is complex, too, she said. "In the case of Prudhoe and Pt. Thomson, this kind of delay could disrupt the timetable for a potential gasline project by getting us out of sync with an open season." No one wants that, she stated. The AOGCC needs to complete its evaluations and make its rulings for both of them before the open season, so the approved gas offtake allowables will be known in time for the open season process that is required under the Federal Energy Regulatory Commission (FERC).

MS. FOERSTER said the AOGCC has chosen to take a proactive approach in one of two ways. It can arrange for consultants to conduct independent reservoir studies or it can participate with the operators in their studies. If adequate cooperation from the operators can be assumed, that is the favored approach because it has a lower cost to the state and takes less time to complete. Also, the studies will include more data and the best reservoir evaluation tools will be used.

[3:45:03 PM](#)

MS. FOERSTER noted that in 2005 the commission held hearings to inquire whether the gas offtake rate from Prudhoe Bay should be updated. The commission decided the offtake allowable must now be redetermined using the 30 years and 11 billion barrels worth of reservoir description and performance information that is now available. As part of that hearing process, BP, its partners, and the commissioners agreed on principles on which to perform collaborative studies. "So that was a very wonderful thing." The report of the inquiry and the resultant study principles that came of those hearings was issued by the AOGCC in December of 2005. It is on the Internet, she noted.

[3:46:11 PM](#)

CHAIR FRENCH asked where the AOGCC is now. "It sounds like even though there's been no formal application for a Rule 9 amendment—that's the amendment that sets the allowable gas offtake for Prudhoe Bay—the AOGCC is moving ahead with a study on that topic. Is that correct?"

MS. FOERSTER said yes; the study began in January 2006.

CHAIR FRENCH asked what WIO refers to.

CHAIR FOERSTER said it is the working interest owners—the three producers: BP, ConocoPhillips, and ExxonMobil.

[3:47:05 PM](#)

MS. FOERSTER continued. She said the AOGCC contracted reservoir evaluation consultants to assist its technical staff in the Prudhoe study. BP and partners agreed to provide access to their simulators, including the underlying geologic and geophysical information for their reservoir models. They voluntarily set up a data room equipped with computers and software to allow the commission to review their simulator results. The AOGCC determined that the information given to it met the standards of statutes and regulations. The information is entitled to be held confidential during the study period. The study process began in January of 2006 and was completed in late 2006. In February 2007, "our technical staff and consultant presented to the three commissioners a summary report, which is in your information packet and it is also available to the public on our website." Some other information is confidential and not in the packet.

CHAIR FRENCH surmised the study is complete and in the commissioners' hands but not released to public.

MS. FOERSTER said the details of the study have been described to the commissioners, but those details are not publicly available. At some future time, prior to an open season, either BP with its partners will submit an application to amend the Prudhoe gas offtake allowable, or the AOGCC will call for a hearing. In either case, there will be public hearings to review the development plans associated with the proposed gas sales. BP and partners will be required to submit, for the record, reservoir studies that best reflect a reasonable range of offtake options and their effects. The AOGCC may request, by subpoena or otherwise, any other pertinent information that has been used in the study but is not included. Claims of confidentiality will be determined during hearings by the AOGCC under the governing law at the time. The AOGCC will require that the public is comfortable with the process.

CHAIR FRENCH summarized: the study is complete, it is confidential, and you are assuming that BP will request a Rule 9 amendment in the future. Then there will be public hearings about the study.

MS. FOERSTER said that's correct. If the state feels the hearing is needed before BP does, we can always call that hearing on our own, and our intent is to hold the hearing in time for BP to include a new gas allowable offtake in an open season determination.

CHAIR FRENCH asked why the AOGCC hasn't asked for the hearing and for a rule amendment.

[3:52:30 PM](#)

MS. FOERSTER said the AOGCC doesn't want it to drag on too long because the data gets old. But it shouldn't be done before it knows when, how much, and what is going to be done in the meantime. There is not a simple answer with a single variable equation. The amount of gas we tell them that they can produce is going to depend on when the production starts and what they have done in the meantime to get as much oil out of the ground and to protect the oil that's still in the ground from being lost. So, until BP has a plan for when the pipeline is coming on line, "we can't give them a number."

SENATOR WIELECHOWSKI said many studies assume a 48-inch pipe, and he asked if there is enough gas on the slope to accommodate that size.

MS. FOERSTER said it is possible that by the time the pipeline is built, Prudhoe Bay gas could fill it. It is possible there won't be enough to fill it. It is possible that Pt. Thomson could fill the remainder. It is equally possible that either there won't be a determination at Pt. Thomson or that AOGCC may give a low gas offtake allowable. There is a lot of gas to be discovered, she said. "When you go looking for oil, you find gas," but there has been no benefit in finding gas at this point.

SENATOR WIELECHOWSKI asked how many bcf/day are available for offtake on the North Slope that could be put in a gas pipeline.

MS. FOERSTER said the studies should tell us that.

SENATOR WIELECHOWSKI said, "We have no idea what the minimum number is?" That is a frightening proposition, he added.

MS. FOERSTER said, "Let me assure you that by the time we have an open season...if we continue to get cooperation from operators, we have plenty of time to know the answer to that question before an open season."

SENATOR WIELECHOWSKI said there are people who are going to be submitting proposals within the next six months. They will need to know what size of line to propose.

MS. FOERSTER said she assumes they will need to do that.

[3:56:16 PM](#)

CHAIR FRENCH asked about Rule 9. "Isn't there a ruling right now that you could take 2.7 bcf/day off Prudhoe?"

MS. FOERSTER said yes there is that allowable gas offtake at Prudhoe Bay, but "if AOGCC felt any real threat that anyone was going to take gas from Prudhoe Bay today, we would probably call for a hearing to re-evaluate that allowable. And it's possible that we would take that allowable to zero, because of what I said to you earlier about every bit of that gas being used right now to get more oil out of the ground—oil that [they] won't be able to get if that gas is gone."

CHAIR FRENCH noted that AOGCC did a study and have information on this topic. He asked who has the information—the governor?

MS. FOERSTER said not the governor, but only the AOGCC, its consultants, and the Prudhoe Bay working-interest owners.

CHAIR FRENCH asked if that is set in statute.

MS. FOERSTER said they signed a confidentiality agreement after looking at the statutes and determining the information fell within the requirements for confidentiality. It is in the best interest of the state to make that agreement and to honor it, "so that we can maintain the working relationship that is allowing us to do the evaluations that we need to do."

SENATOR WIELECHOWSKI said he's concerned that the information is available to the producers but not to other explorers and pipeline builders. He assumes those entities really need that information.

MS. FOERSTER said she signed a confidentiality agreement and "I can't make that information public." She said she is trying to do her job.

[3:59:34 PM](#)

CHAIR FRENCH said the committee is just trying to figure out the lay of the land. One comment he has heard frequently is: "My goodness, we haven't even gotten to the place where the producers have asked for a change in this rule—this rule that we know was set in 1977 and hasn't been updated in a long time." He said even though they haven't asked for the change, he sees that AOGCC at least has fresh data on what an offtake rate could be for Prudhoe Bay, but he shares the concern that the information has only been shared with working interest owners.

MS. FOERSTER said, "Even though we have data, we don't have a number." The amount of gas that will be allowed to be taken off at Prudhoe Bay depends on when the sale starts, how much oil has been taken out in the interim, and what other mitigating steps the operator takes to protect that oil from future losses. Without those variables, there is no number.

SENATOR THERRIAULT asked if the AOGCC can make a grid with different assumptions of the variables. "If you do these things, you can start taking off a particular volume eight years from now, nine years from now...with certain mitigating steps." He asked if she could do such a projection.

MS. FOERSTER said the AOGCC does that kind of thing all the time.

SENATOR WIELECHOWSKI asked if she has that grid. People bidding need to know what gas would be available, he said.

MS. FOERSTER said some of those analyses have been done; however, she cannot violate a confidentiality agreement.

SENATOR WIELECHOWSKI said he understands that, but "this is just absolutely unbelievable to me that we have absolutely no sense of how much gas is available for offtake on the North Slope for this gas pipeline project. That's just unbelievable to me."

MS. FOERSTER said she doesn't know what to say.

CHAIR FRENCH said she doesn't have to respond; the statement speaks for itself.

MS. FOERSTER continued. In spite of all of the uncertainties, she feels comfortable that, unless a substantial delay occurs, the state has enough of an analysis that it will be prepared to address a Prudhoe Bay gas offtake allowable amendment when a scenario is proposed that includes a start date and what will happen in the meantime. "I'm confident that...we have enough background work done that we can amend Rule 9 for Prudhoe Bay." But for Pt. Thomson, "I have anything but confidence."

[4:03:43 PM](#)

MS. FOERSTER said the commission was encouraged because of how well things went with Prudhoe Bay. But when it pursued a similar process with ExxonMobil and its partners, it was delayed and then finally slated to begin about the same time that DNR found ExxonMobil and its partners to be in default on their leases. The AOGCC and its consultants had one meeting with them but got only a very small fraction of the necessary data to perform the study. ExxonMobil put the study on hold to take care of its legal issues. She was told in February that the study could resume, but then she was told it wouldn't until all legal issues are resolved, and ExxonMobil estimated it to be a 5-year delay. The commission has been pleased with BP and its partners at Prudhoe Bay but stymied by Pt. Thomson.

[4:07:30 PM](#)

CHAIR FRENCH asked if the state can proceed with the Pt. Thomson study without the cooperation of ExxonMobil and BP.

MS. FOERSTER said that the only way to proceed would be to call a hearing of our own motion and subpoena information, "and then

we'd end up back in the courts in another fight over whether we had the rights to the information."

CHAIR FRENCH said the state could, but it would be the hard way.

MS. FOERSTER said yes, unless ExxonMobil and its partners decide to resume the study.

CHAIR FRENCH asked if there has ever been a Pt. Thomson study.

MS. FOERSTER said the producers have done many studies, but the AOGCC has not done a full-blown reservoir study, which is needed. There is none like the 1977 Prudhoe study, she added.

SENATOR WIELECHOWSKI asked if there is anything keeping the state from doing its own Pt. Thomson study.

MS. FOERSTER said the state doesn't have any of the data. A reservoir study needs the information that Exxon and its partners have.

SENATOR WIELECHOWSKI asked if the state will get that data if it takes back the lease, and what might be the cost to get the data independently.

MS. FOERSTER said she is not a lawyer, but she guessed they would keep their data because they paid for it. The data was obtained by drilling multi-million dollar wells—more than the state would be willing to spend.

SENATOR WIELECHOWSKI said, "If we've got 8 tcf of gas and 200 million barrels of oil, maybe we do want to spend the money."

MS. FOERSTER said the data ExxonMobil would supply would be regional seismic study that is worth "millions and millions and millions of dollars." Geologists would need to map that, and then several exploratory wells of \$15 million a piece would need to be drilled. Then the wells would be tested and millions would need to be spent to analyze and model the information. It would be a multiyear, high-risk process.

SENATOR WIELECHOWSKI asked if other parties might take the lease that the state takes back.

MS. FOERSTER said, in her opinion, there would be a lot of them. "If I were a billionaire, I would be one of them."

[4:13:13 PM](#)

LARRY OSTROVSKY, Chief Assistant Attorney, Oil, Gas & Mining Section, Department of Law, said the litigation at Pt. Thomson stems from the basic bargain in an oil and gas lease that a lease doesn't exist in perpetuity without production. The "primary term" is the set period to bring the lease into production, and it can only be extended if hydrocarbons are being produced from the lease or if the lease is part of an oil and gas unit in good standing. A unit is an area where separate leases overlap and are consolidated for joint development. The costs and benefits are allocated among the various lessees, he explained. All of the oil and gas development in Alaska occurs on units.

MR. OSTROVSKY said units are legal descriptions, but oil and gas reservoirs are geologic. There are different kinds of units, and some can be created by the AOGCC, but all the production in Alaska are in units that are under DNR authority. Lessees apply to DNR, which then can approve the unit. To maintain a unit in good standing beyond its primary term, lessees must submit plans for exploration or development to move toward production. He said the plans include long-range proposed activities to bring the reservoir into production and to maintain it. It ensures that lessees are taking appropriate steps to bring the unit to production. Failure to comply is grounds for unit default, he explained.

[4:16:35 PM](#)

MR. OSTROVSKY said that the current Pt. Thomson lawsuits arise from decisions from the director of Oil and Gas on the 22nd plan of development for the Pt. Thomson unit that was submitted by ExxonMobil in 2005. At the time of that unit decision, Pt. Thomson contained some leases issued more than 40 years ago, and all but two of the leases are well beyond the primary terms. The usual primary term is between 5 and 10 years, he stated. The Pt. Thomson unit has vast known reserves of liquids and gas and has never been put into production. In mid-2005 Exxon submitted the 22nd plan of development for approval. Additional studies were proposed to determine the possibility for a commercially viable project. "Amazingly that plan also included admission by Exxon that it could find no viable way to put the unit into production without royalty and tax concessions in construction of a gas pipeline." In 2005 DNR rejected that plan "because it does not set out a plan to bring the Pt. Thomson unit into commercial production within a reasonable timeframe." That decision warned Exxon that the unit would be terminated if it failed to cure the

default with a revised plan, he said. Leases are property rights, so DNR provides an opportunity to cure.

MR. OSTROVSKY said Exxon later revised the plan and submitted nearly 5,000 pages to Commissioner Menge who affirmed the decision that Exxon refused to provide a commitment to develop the unit and found it in default. That led to current actions. Exxon and the other owners filed an administrative appeal and the same decision was affirmed by Rutherford last year. Exxon also filed an original action of breach of contract, and the state has moved to dismiss that action. In February of this year, significantly, the director of the Division of Oil and Gas terminated the Pt. Thomson leases. The leases were not held by a unit and were many years or decades beyond their primary terms. Working-interest owners are appealing that within the administrative process. They recently filed a motion to stay the termination of the leases, and that was in court this afternoon. He doesn't yet know how that turned out.

4:20:40 PM

MR. OSTROVSKY said the state is obviously interested in moving it forward and getting a judicial determination to release the leases. In March the Superior Court set a briefing deadline of June 1 for them to file their opening briefs, and the state has until July 2 to respond. "We intend to respond very timely and do whatever we can to drive this towards a decision." He said it is hard to comment on the representations to Commissioner Forester; "obviously if you're party to litigation...you might tell the other side [that] this will take many, many years to resolve, but of course one has to take that in the spirit that it's given—it's given by the party that...is litigating; they control, to some degree, the pace of the litigation, and plus it would certainly be in one's interest to persuade the other side that they'll be tied up for many decades." He said he has done many administrative appeals, and "it seems to me the court has indicated that they want to hear this timely. I would hope that the judge could make a decision this fall and I would hope we could persuade the Supreme Court to deal with this matter in a timely fashion."

CHAIR FRENCH asked about the procedural posture; "It's the decision by the director of the Division of Oil and Gas to terminate the leases that's being appealed, not the decision to reject the project development plan."

MR. OSTROVSKY said everything that can be appealed is being appealed. There is an appeal of the decision of the director,

and affirmed by the commissioners, to terminate the unit because of an inadequate plan of development, and that is in court. There is also an administrative appeal within DNR of the decision to terminate the underlying leases.

[4:23:30 PM](#)

CHAIR FRENCH asked if either appeal is dispositive. "If you eliminate the unit development, does that pretty much mean that leases have got to come back?" He asked if both have to be litigated all the way to the end and if they will always be on separate tracks or will merge.

MR. OSTROVSKY said there are about 40 leases in the unit and some have different conditions. There may be 2 leases that are not beyond primary terms, and there are leases within an expansion area that are a "separate issue." There are leases that had certified wells that the commissioner's decision found were no longer certified, because "they were old plugged and abandoned wells." The unit decision may be dispositive for some of the leases, but it's hard to say, he said. In the state's view, plugged and abandoned wells shouldn't hold leases in perpetuity, "and we believe that the unit decision should be dispositive of every well that's beyond the primary term."

CHAIR FRENCH asked if Mr. Ostrovsky is hoping for a decision on the unit by year end.

MR. OSTROVSKY said yes, and if that is upheld, there is nothing holding the leases beyond their primary terms, except there might be a question with the certified well leases. "We don't agree that those wells should hold them but...the working interest owners have a different view."

CHAIR FRENCH said the public can't help but think about the Exxon Valdez spill case and the endless delays. "What makes these types of actions different from that type of action?"

[4:25:50 PM](#)

MR. OSTROVSKY said this is in state court, and there are limited avenues. He noted that, typically, if the Supreme Court finds a flaw in an administrative appeal, it won't remand back to the Superior Court, but it will remand back to the agency to reconsider a portion of its decision. There are fewer levels of review. In Alaska, decisions are made quicker because the Superior Court judge has to issue a decision within 180 days. The courts have been sensitive to issues of great public importance where time is of the essence. Everybody agrees the

lease issues have to be resolved quickly. He said not to be afraid of "these tales" of lengthy litigation. The state has to be prepared to enforce the obligations made to it.

SENATOR WIELECHOWSKI asked if the state can obtain the research data from the explorer if the state wins the litigation.

MR. OSTROVSKY said he believes that information belongs to the lessee. They would likely want to sell it.

SENATOR WIELECHOWSKI asked about modifying leases to obtain that information. "Aren't there provisions that we can put in leases to cut back on the amount of litigation that we have to go through. It seems we're always in court."

MR. OSTROVSKY said to discuss the first question with DNR. There may be provisions one could add to speed these things up, but it must allow due process. The state is sovereign and the legislature can set appellate rights, he added.

[4:29:56 PM](#)

There being no further business to come before the committee, Chair French adjourned the meeting at [4:30:33 PM](#).