

HOUSE CONCURRENT RESOLUTION NO. 18

IN THE LEGISLATURE OF THE STATE OF ALASKA

TWENTY-SIXTH LEGISLATURE - SECOND SESSION

BY REPRESENTATIVE RAMRAS

Introduced: 1/19/10

Referred: Resources, Finance

A RESOLUTION

1 **Requesting the governor, the commissioner of natural resources, the commissioner of**
2 **revenue, and TransCanada Alaska Company, LLC, and Foothills Pipe Lines Ltd.,**
3 **jointly as licensee, to enter into a memorandum of understanding concerning the state's**
4 **potential liability to the licensee under the Alaska Gasline Inducement Act should the**
5 **state pursue the development of an intrastate gas pipeline.**

6 **BE IT RESOLVED BY THE LEGISLATURE OF THE STATE OF ALASKA:**

7 **WHEREAS** the commissioner of revenue and the commissioner of natural resources,
8 acting jointly, have issued the license to TransCanada Alaska Company, LLC, and Foothills
9 Pipe Lines Ltd., jointly, under AS 43.90 (Alaska Gasline Inducement Act); and

10 **WHEREAS**, under AS 43.90.110, the state is obligated to pay to TransCanada Alaska
11 Company, LLC, and Foothills Pipe Lines Ltd., jointly as licensee, matching contributions for
12 qualified expenditures incurred in the development of the natural gas pipeline up to a
13 maximum of \$500,000,000; and

14 **WHEREAS** AS 43.90.440 entitles TransCanada Alaska Company, LLC, and
15 Foothills Pipe Lines Ltd., jointly as licensee, to a payment from the state of an amount equal

1 to three times the total amount of the expenditures incurred and paid by the licensee that are
2 qualified expenditures for the purposes of AS 43.90.110 that the licensee incurred in
3 developing the licensee's project if, before the commencement of commercial operations,

4 (1) the state extends to another person preferential royalty or tax treatment or
5 grant of state money for the purpose of facilitating the construction of a competing natural gas
6 pipeline project in this state; and

7 (2) the licensee is in compliance with the requirements of the license and with
8 the requirements of state and federal statutes and regulations relevant to the project; and

9 **WHEREAS** the people of the state have a present need for natural gas produced from
10 the North Slope and it may be in the best interests of the state to pursue a means for delivering
11 natural gas produced from the North Slope to the people of the state before the
12 commencement of commercial operations of the project proposed by TransCanada Alaska
13 Company, LLC, and Foothills Pipe Lines Ltd., jointly as licensee; and

14 **WHEREAS** the development of a project for the delivery of natural gas from the
15 North Slope before the commencement of commercial operations of the project proposed by
16 TransCanada Alaska Company, LLC, and Foothills Pipe Lines Ltd., jointly as licensee, may
17 require the state to extend to another person preferential royalty or tax treatment or grant of
18 state money for the purpose of facilitating the construction of an intrastate natural gas
19 pipeline; and

20 **WHEREAS** current revenue projections for Alaska indicate that the state will be
21 facing a budget deficit in the years ahead, further jeopardizing the state's ability to pay treble
22 damages to the licensee should the state become liable to the licensee for violating the
23 assurance to the licensee in AS 43.90.440; and

24 **WHEREAS** the public has a right to know, and the administration has a fiduciary
25 duty to report periodically to the public and the legislature on, the risk to the state of incurring
26 treble damages if the state provides inducements to a competing intrastate gas pipeline; and

27 **WHEREAS** uncertainty regarding the extent of the risk of liability for damages to
28 TransCanada Alaska Company, LLC, and Foothills Pipe Lines Ltd., jointly as licensee, under
29 AS 43.90 (Alaska Gasline Inducement Act), is an impediment to planning and going forward
30 with the development of an intrastate natural gas pipeline to meet the energy needs of the
31 people of the state; and

1 **WHEREAS** the state must consider the risk of potential liability to the licensee under
2 AS 43.90 (Alaska Gasline Inducement Act) when considering any incentives or preferential
3 tax treatment to facilitate the development of an intrastate natural gas pipeline for delivering
4 natural gas to the people of the state; and

5 **WHEREAS** the means for determining the amount of qualified expenditures that are
6 the basis for determining the payment for which the state could become liable under
7 AS 43.90.440 should be clearly understood by the state and TransCanada Alaska Company,
8 LLC, and Foothills Pipe Lines Ltd., jointly as licensee; and

9 **WHEREAS** an agreement between the state and TransCanada Alaska Company,
10 LLC, and Foothills Pipe Lines Ltd., jointly as licensee, concerning the factual situations under
11 which the state would become liable for the payment under AS 43.90.440 and the means by
12 which the amount of the payment would be determined would help the state determine the
13 best means for facilitating the development of an intrastate natural gas pipeline;

14 **BE IT RESOLVED** that the Alaska State Legislature requests the governor,
15 commissioner of natural resources, and commissioner of revenue, together with TransCanada
16 Alaska Company, LLC, and Foothills Pipe Lines Ltd., jointly as licensee, to develop an
17 agreement and to incorporate the agreement into a memorandum of understanding or other
18 writing stating the circumstances under which the state would become liable for payment to
19 the licensee under AS 43.90.440 and the means by which the amount of the payment would
20 be determined; in particular, the memorandum should address whether the qualified
21 expenditures on which the payment under AS 43.90.440 is based are the net amounts
22 expended by the licensee after reimbursement by the state, whether preferential royalty or tax
23 treatment or expenditure of state money for facilitating the construction of a 24-inch diameter
24 intrastate gas pipeline capable of transporting more than 500,000,000 cubic feet of gas a day
25 would make the state liable for the payment under AS 43.90.440, and whether a generally
26 applicable modification of the tax applicable to the production of natural gas under AS 43.55
27 for the purpose of encouraging a natural gas producer to commit to any pipeline project in an
28 open season would trigger the liability for the payment under AS 43.90.440; and be it

29 **FURTHER RESOLVED** that the Alaska State Legislature requests the governor,
30 commissioner of natural resources, and commissioner of revenue to report to the legislature
31 on progress toward reaching the agreement on the state's liability to the licensee within 60

- 1 days after this resolution is passed by the legislature and within each 30-day period thereafter
- 2 until the agreement is signed by the state and TransCanada Alaska Company, LLC, and
- 3 Foothills Pipe Lines Ltd., jointly as licensee.