

**ALASKA STATE LEGISLATURE
JOINT MEETING
SENATE RESOURCES STANDING COMMITTEE
SENATE SPECIAL COMMITTEE ON ENERGY
ANCHORAGE LIO CONFERENCE ROOM**

June 23, 2009
2:06 p.m.

MEMBERS PRESENT

SENATE RESOURCES

Senator Lesil McGuire, Co-Chair
Senator Bill Wielechowski, Co-Chair
Senator Hollis French
Senator Bert Stedman
Senator Thomas Wagoner

SENATE SPECIAL COMMITTEE ON ENERGY

Senator Lesil McGuire, Chair
Senator Bill Wielechowski
Senator Bert Stedman

MEMBERS ABSENT

SENATE RESOURCES

Senator Charlie Huggins, Vice Chair
Senator Gary Stevens

SENATE SPECIAL COMMITTEE ON ENERGY

Senator Lyman Hoffman
Senator Albert Kookesh

OTHER LEGISLATORS PRESENT

Senator Joe Paskvan - via teleconference
Senator Gene Therriault
Senator Johnny Ellis
Representative Berta Gardner
Representative Chris Tuck - via teleconference
Representative Cathy Muñoz - via teleconference
Representative Craig Johnson

COMMITTEE CALENDAR

Alaska Gas Pipeline Updates

PREVIOUS COMMITTEE ACTION

No previous action to record

WITNESS REGISTER

TONY PALMER, Vice President
TransCanada, Alaska Development

POSITION STATEMENT: Presented update of AGIA contract.

MARTY MASSEY, U.S. Joint Interest Manager
ExxonMobil Production Company

POSITION STATEMENT: Commented on EM's alignment with TransCanada.

BILL WALKER
Alaska Gasline Port Authority (AGPA)

POSITION STATEMENT: Continuing to advance their project.

BUD FACKRELL
Denali Pipeline Projects

POSITION STATEMENT: Said BP and ConocoPhillips formed this company to build the Alaska gas pipeline.

COMMISSIONER PAT GALVIN
Department of Revenue (DOR)

POSITION STATEMENT: Presented the administration's response to the agreement between TransCanada and Exxon.

KENNETH MINESINGER
Greenburg Traurig, LLP
States gasline team's outside counsel

POSITION STATEMENT: Took a careful look at TransCanada and EM agreement and did not see any red flags.

ACTION NARRATIVE

2:06:03 PM

CO-CHAIR LESIL MCGUIRE called the joint meeting of the Senate Resources Standing Committee and the Senate Special Committee on Energy to order at 2:06 p.m. Present at the call to order were Senators Stedman, Stevens, Huggins, Hoffman, French, Wagoner, Therriault, Dyson, McGuire and Representative Gardner.

Alaska Gas Pipeline Updates

2:06:14 PM

CO-CHAIR MCGUIRE said the subject of today's meeting is an update on the Alaska Gas Pipeline. This will include the recent alignment of TransCanada-Alaska (TC) with ExxonMobil (EM); an update from Bud Fackrell with the Denali Project; a briefing from Bill Walker with the Alaska Gasline Port Authority (AGPA); and Pat Galvin with the AGIA gas team.

TONY PALMER, Vice President of Alaska Development, TransCanada, and Marty Massey, U.S. Joint Interest Manager, ExxonMobil Production Company, introduced themselves.

MR. PALMER explained that the TC presentation first will deal with EM entry into the TC project. Second it will address project-specific issues. Mr. Massey would support the first part of the presentation, but not contribute to the second part due to regulatory considerations. EM is actively participating in the joint project and the joint project team is independent of EM's producing and marketing interests. The lead manager for the project is Paul Pike, an EM employee and he will report to the management committee, which Mr. Palmer said he would chair. Once discussion about the alignment is complete, Mr. Massey would excuse himself from the table.

2:09:02 PM

MR. PALMER said there will be immediate integration with EM; they are already working together to jointly advance the project. EM is contributing prior study results, particularly the ANS (Alaska North Slope) producer study report that was completed in 2001, as well as existing right-of-way data from TAPS.

TransCanada Alaska and Foothills remain the AGIA licensees, he stated. The project schedule and scope is unchanged as a result of the alignment, and their initial open season target is still to be concluded by the end of July 2010. They are designing a gas treatment plant and a pipeline from Prudhoe Bay to Alaskan delivery points, and for LNG via Valdez if customers want to redeliver to the Lower 48 or to Asian markets and to Lower 48 markets by the Alberta Hub. In addition they are advancing a proposal for a gas transmission line from Pt. Thomson to the gas treatment plant; that is outside AGIA and therefore would not be reimbursable. In the open season package they will advance next year, customers will have the opportunity to select a piece of

pipe just like they will have the opportunity to select service on the gas treatment plant, the pipeline to the border, and the pipeline to Valdez and then continuing on to Canada. That section of pipe will be offered for service, but there will be no request for reimbursement under the AGIA provisions.

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MR. PALMER said the current TC/EM alignment is not contingent on any commitments by the state and TransCanada can progress the project independently if they want using all the jointly developed assets and information. However, that is not their intent; their intent is to work jointly with EM to make this project a success. But if they are not able to do so, all of those assets will reside with the licensees and TransCanada can progress the project.

He said the Alaska Natural Gas Pipeline Act (ANGPA) will be used in Alaska and the Northern Pipeline Act (NPA) will be used in Canada. Their proposal had a \$83-million expenditure through the open season, but that has increased to \$150 million. The additional spending will be on early execution and construction planning, additional efforts in regulatory, environmental and lands issues, as well as the gas treatment plant. He recalled that this body had appropriated \$45 million to date for the project; it's his expectation based on their "spend" that will take them through the end of this year and into the first quarter of 2010 when they will be sitting in a regular session. They would expect to ask the administration for an additional authorization at that time.

MR. PALMER said the development costs will be shared by TransCanada and EM, but TransCanada retains a majority interest and there will be no change to the state's reimbursement contribution of \$500 million.

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To describe how they got to this point, Mr. Palmer said they were approved by the legislature at the beginning of last August and they commenced discussions with EM. They went beyond discussions into negotiations in the fall, and by the first of May they had concluded an arrangement and were ready to move forward. They kept the administration apprised that they were in discussions with EM, but no details were released. In early May they took it (confidentially) to the governing bodies of AGIA for approval according to its provisions. The entire transaction was disclosed to the administration, and everyone agreed that this did not constitute a project change. TC believes this

alignment constitutes real progress to align all essential parties necessary for a successful project and that a combination of the two companies brings unrivaled expertise and experience to the project. TransCanada and EM share a common goal - realization of an Alaskan pipeline project.

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(Slide 6) Objectives of the two parties:

- Perform work necessary to facilitate completion by the licensees of the open season in the U.S. and Canada by the July 2010 target
- Pursue the required regulatory authorizations for pipeline construction.

He recalled that under AGIA they are going to conduct the initial open season, but regardless of the outcome, they are proceeding beyond that with the regulatory work. He explained that EM and TC have entered into an interim project agreement (IPA) that will conduct the work for the open season. That project work will be transferred to the project funding agreements to the AGIA licensee, and those entities will earn non-voting interest in the licensee. At this point in time, TC remains 100 percent a voting interest and the TransCanada licensee; EM will be earning a non-voting interest in those entities as a result of completing the work. They will convert the non-voting interest into voting interest once EM has resolved its outstanding issues with the state. The project work will be completed by the IPA parties, and in the event that is deemed to be qualifying work under AGIA, those expenses will be passed on to the state in an invoice.

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(Slide 7) MR. PALMER said the IPA establishes the basis under which TransCanada and EM are working together; the project funding agreements (PFA) are companion agreements that are executed simultaneously. There is a separate project funding agreement for U.S. and Canada just like there are separate licensees for the U.S. and Canada. The PGA provides the bridge between the licensees and the IPA parties. TransCanada licensees are the interface with the state and retain all the AGIA obligations, which stand unchanged as a result of this transaction. The licensees retain sole discretion over requested paid reimbursement for qualified expenditures. So, dependent on what comes forward from those IPA parties, the TransCanada licensees will have a judgment call as to whether they go forward as qualified expenditures and the state will deem

whether or not they truly meet the test of qualifying, and if they do, there will be reimbursement.

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SENATOR THERRIAULT asked if EM performed a work task and TransCanada submits it for reimbursement, does the state have absolute access to that information - if in fact the state has paid for it.

MR. PALMER answered "yes." (Slide 8) He said the TransCanada licensees have the right to all the work provided to them by the IPA parties for the purposes of meeting the TransCanada AGIA obligations. That is critical not just for TransCanada to be able to meet its obligations, but in the event that the project was somehow stalled, the state has the right to take it over and gets access to that information.

All the major project components, including regulatory filings and open season contracts, will be made and entered into in the name of and on behalf of the AGIA licensees. The FERC prefiling was made in the name of TransCanada Alaska; nothing has changed as a result of this alignment. The licensees have the right at all times to advance alone if they so choose - but, he remarked:

We're not aligning to then come apart shortly thereafter; we're aligning to make this project a success, but in the event that we choose to do so, that we have to do so, we have the right to all the jointly developed work products and both parties will retain the rights to the information, but the actual assets will be retained by TransCanada, the AGIA licensee. And, of course, if we do come apart, there must be a reasonable transition period to sole management by TransCanada. In the event of a termination the EM guys can't go home the next day. It has to be a reasonable transition in the circumstance, and we've agreed to that.

During the term of the PFA, the IPA parties are earning non-voting interest in the licensee when they transfer the work product.

(Slide 9) When EM becomes a participant in the licensees, those non-voting interests will convert to voting interests. The state reimbursements will follow the costs that are expended by the parties and the reimbursements will be in proportion to the

participating interests. The IPA includes typical joint venture terms.

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Management Structure of the Company

MR. PALMER said the ownership will be "end-to-end" and they intend to operate on an integrated basis; they have a fully integrated team of 70 people already up and running. The bulk of TransCanada's folks are focused on the pipeline with some supplement by EM, and the bulk of the people working on the gas treatment plant are EM staff supplemented by a modest number of TransCanada people.

EM is the IPA lead, and Paul Pike is responsible for day-to-day management of the project team. He will report to a management committee made up of EM and TransCanada participants with Mr. Palmer as chair. Under Mr. Pike, TransCanada is a sub-IPA lead for the Canadian portion, but through the open season, TransCanada is leading the entire pipeline section, and EM is leading the gas treatment plant. They have tried to apply the expertise that each company has to the specific areas of the project.

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(Slide 10) The benefits of alignment with EM represent real progress. EM supports the alignment and is ready to work with the state to become a full participant in the AGIA licensees. The combination of TC and EM bring unrivaled expertise and experience to the project.

MR. PALMER remarked that last year they heard that TransCanada's cost estimates wouldn't be accurate without having a producer inside the tent, but that issue is now resolved with EM's participation. Not only do they provide expertise on the pipeline side, but they are an absolute industry leader in the gas treatment field. While EM is involved in developing the cost estimates across the project, he hoped that similarly situated producers would also see that a forecast and a cost estimate prepared by the companies has significant credibility across the industry.

TransCanada has 2,000-plus pipeline employees responsible for transporting 20 percent of North American gas every day - a record he was willing to match with any competitor here or across North America. While TransCanada expanded its major North American pipeline system in the 90s, currently it has the \$12-billion Keystone project (1 million barrel/day) oil pipeline,

which they now own 100 percent of under construction. The first phase will be in service in less than 12 months. From the date of the announcement to the date of in-service will be just over four years for the first phase. The second phase is in regulatory approvals in Canada and the U.S. Assuming those approvals are obtained on a timely basis, the second phase will be complete down to the Gulf Coast market by 2012. TC also has a large \$2 billion gas pipeline project from Northwestern Alberta to Northeastern Alberta, a 42-inch line being constructed in the winter only. The Bison Project is moving Rockies gas to the Midwest and TransCanada was recently granted the authority to construct a pipeline from Manzanita to Guadalajara.

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(Slide 11) EM merits. Mr. Palmer said that some skeptics thought that TransCanada might not be able to raise the funds to build the project, but in the last seven months in a very difficult environment it has raised \$7 billion in equity. Unquestionably, though, EM brings global, financial and project management strengths to the table. They are the recognized industry leader in the execution of large complex projects. They are the largest holder of discovered North Slope natural gas resources as well as the leader in gas treatment expertise; they have been here for decades and they are bringing concrete assets to the table - and they are committed to timely delivery of the project. They have agreed that it is critical to maintain low costs and the schedule for the project. TC and EM share a common goal to realize an Alaskan pipeline project under AGIA, but they need the full support of the state, U.S. and Canadian governments, North Slope producers, including ConocoPhillips and BP, and other interested parties.

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SENATOR STEDMAN asked Mr. Massey to clarify that EM has not signed on to the AGIA "must haves."

MR. MASSEY said EM is working with TC outside of the AGIA obligations, which remain with TC.

SENATOR STEDMAN expressed concern that clearly EM has no commitment to the AGIA requirements, and this appears to be a clever way to get access to some of reimbursement funds, which was not the intent.

MR. PALMER responded that TC retains all of the AGIA requirements and is obliged to the state under the AGIA license - just as they feel the state is obliged to them. The \$500-

million reimbursement will first come to TC and ultimately will flow to TC and EM parties and is exactly the same amount of money the state has committed. "That is unchanged." EM is keen to become a full licensee, but they do have some outstanding issues with the state.

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SENATOR STEDMAN directed attention to slide 9 and commented that the word "when" EM becomes a participant probably should be "if."

MR. PALMER responded that perhaps he was being too optimistic; clearly if EM becomes a participant in the licensees the non-voting interest will convert to voting. Maybe he was contemplating that would occur, but it has not to date. And if it doesn't happen, they will not convert.

SENATOR STEDMAN said he doesn't have an issue with reimbursing TransCanada, but he does have an issue with reimbursement to any of the other big three producers that have not agreed to AGIA requirements or accessing any portion of it.

MR. PALMER said he respected Senator Stedman's opinion, but commented that the work that is being conducted jointly by EM and TransCanada will improve the information available to them. EM is already contributing assets that are not reimbursable including the NS producer study. TransCanada was looking for someone to advance the gas treatment plant, part of the AGIA project, and they think they have the best possible party to do that with ExxonMobil. Their participation improves the probability of success in the open season. Taking those considerations into account, TransCanada hopes that EM can become a full participant. If that is achieved, that will also be an important step towards the success of this project. For this project to come to fruition it needs both customers and regulatory approval. Significant advances have been made on both those fronts as a result of this alignment.

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CO-CHAIR MCGUIRE noted that Senator Ellis had joined the committee.

SENATOR FRENCH said that slide 9 looks as though the non-voting shares in the TransCanada licensees at some future date could be converted into voting interests, but in the original documents that TransCanada supplied to them the percentage of ownership each outfit would acquire is kept secret.

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MR. PALMER said that certain things are privileged. They are in a very competitive environment - first there is already a direct competitor for this project and secondly, they would like to attract other parties to join in the alignment, and it would be counterproductive to reveal the current arrangement to the parties they might be negotiating with.

SENATOR FRENCH asked the conditions for shifting to voting shares. Is it likely that EM or a subsidiary would then own a chunk of the license the state granted to TransCanada?

MR. PALMER answered yes, if EM resolves its issues with the state, they would become a minority partner in the TransCanada Alaska and the Foothills subsidiary AGIA licensees. He said they are clearly looking for a commitment of EM's gas to the pipeline project and that hadn't occurred yet.

SENATOR FRENCH said that brings up the issue of what happens if another company wants to acquire part of the license that state awarded under AGIA to TransCanada. Provisions were inserted that say before any of that license leaves the grantee, there must be commissioner approval. So, it is curious because the eventuality of that transfer is buried in the deal that they haven't had that commissioner approval. He was told by DNR that they looked it over and decided this arrangement didn't need to be reviewed by them as being a transfer. He anticipated that DNR's view of oversight is that it would happen when "that trigger gets flipped."

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MR. PALMER said the administration will be involved as they go forward, but the department did not think the alignment with EM triggered a project plan change. However, he preferred that the DNR respond to that.

SENATOR FRENCH said the arrangement requires that should a falling apart take place, the work product is passed along to the state. He asked if EM is able to take that work product as well and maybe develop its own pipeline.

MR. PALMER replied that TC and EM will jointly have access to the information - engineering and other studies - but they will not have access to the assets. If the IPA is able to secure right-of-way regulatory permits, they will all reside with the

AGIA licensees and would have to be reconstituted by EM if they were no longer in the partnership and pursuing another project.

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SENATOR HUGGINS asked if \$75 million of the \$150 million could potentially go to EM.

MR. PALMER replied if the entire \$150 million qualified as expenditures and the state agreed with that, then \$75 million would come back to TransCanada as the licensee and it would be distributed pro rata between EM and TransCanada based on their proportionate shares and TransCanada will be in the majority.

SENATOR HUGGINS said assuming that EM got \$75 million and then did not become a voting interest and went their own way, what happens to the \$75 million?

MR. PALMER said that EM would take the money, but TC will retain the work product, the assets that had been jointly developed, and as a result both TransCanada and the state would be obtaining value for the monies they are expending.

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SENATOR HUGGINS asked what else EM wants to become a voting member besides just a part ownership in the pipeline.

MR. PALMER answered that TC and EM are currently aligned on all aspects of the project in terms of the work that is under way. If EM resolves the issues with the state and commits its gas to the project, it will then become a part owner in the license and have a financial and a voting interest.

SENATOR HUGGINS asked to hear from Mr. Massey about what it will take to become a voting interest.

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MR. MASSEY said TransCanada retains all of the obligations under AGIA. EM is eager to become an owner in the license and resolve their issues with the state "and all that goes with that." A key item is predictable fiscal terms, and so far EM has no commitment from the administration to address those terms. So they are coming into this arrangement with that understanding. EM also understands that the administration has said if EM makes the case that something needs to change, they will sit and listen to them. And they will be ready to do that at the appropriate time. EM has come to understand that AGIA is the law in the State of Alaska and that is how EM has to address what is

needed from a predictable and durable fiscal terms standpoint. That is one of the main reasons EM joined TC. He further clarified:

We have looked at it from the standpoint that we believe that is going to give us the best chance for success, really. The best chance for success is aligning with the State of Alaska and TransCanada, and really the best chance of success of aligning with the other parties we need, in particular, ConocoPhillips and BP. That's why we've done the deal with TransCanada.

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SENATOR HUGGINS said he mentioned that they are looking for two items - equity and durable fiscal terms.

MR. MASSEY said EM has an understanding with TransCanada in terms of what equity they would be entitled to under the license - if they were able to resolve the other matters - the other matters being the predictable and durable fiscal terms, the issues in AGIA they have mentioned from time to time - and TransCanada is requiring that EM commit its gas to their project. All of those have to be in place before EM's shares convert from a non-voting to a voting interest.

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CO-CHAIR MCGUIRE asked, on that point, if the changes he envisions to AGIA would have to be in place along with the fiscal certainty prior to any firm transportation commitments (FT) EM would make between May and July of 2010.

MR. MASSEY replied that it's always good to resolve issues early in the life of a project, but TransCanada is obligated to go forward even if these are not resolved by an open season. The IPA has been structured such that EM can participate past an open season if it's not totally successful. The key decision point is if you are going to construct the project or not - after getting the regulatory certificate.

CO-CHAIR MCGUIRE said AGIA allows a gas tax to be locked in for ten years, and asked what fiscal terms EM is looking for. She also wanted to know what parts of AGIA are untenable for them.

MR. MASSEY said AGIA has a 10-year "moral obligation," but the legislature could change that. What is needed to go forward depends on the total package of the deal that is ultimately

struck – that’s what he means when he says durable and fiscal certainty.

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CO-CHAIR MCGUIRE asked if there was a failure to get enough FTs after the first open season to make the project viable, what would EM do.

MR. PALMER recalled that when AGIA passed, TC testified that it did not want to go forward beyond an unsuccessful open season, but that was included in the law. TC had to consider that in deciding to apply for the license. They did apply for the license, at least partially, because the state was going to make a \$500-million contribution to the development of this project. In the event there is an unsuccessful open season, TC will continue with the regulatory process. In the event that fiscal certainty issue is resolved a year later, they will “take them on” and not delay the project. That is one of the strengths of AGIA. However, he explained that the obligation to continue means that his shareholders are exposed to risk just like the State of Alaska is.

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CO-CHAIR MCGUIRE observed and questioned that EM will have an unspecified equity position commensurate with the FT commitment they might make in July 2010.

MR. PALMER responded that TransCanada and EM as project sponsor intend to continue the project as pipeline developers.

CO-CHAIR MCGUIRE asked Mr. Massey to respond as producer shipper.

MR. MASSEY said it’s hard as a producer shipper to know what the pipeline company might do. He understands that under AGIA they will continue to go forward. The IPA can continue past an open season essentially on behalf of the AGIA licensees.

SENATOR HOFFMAN stated that on one hand Mr. Massey says he understands AGIA is the letter of the law, and that is why they have entered this venture with TransCanada, but on the other hand he says some things are still unresolved. “So, obviously you think that AGIA isn’t still the complete answer.” It seems as though EM is still in the same position it was before while AGIA was being developed.

He stated that EM still wants the state to make changes to its tax structure. That was the downfall of the negotiations they had under the Murkowski administration and one of the provisions that the Palin administration insisted on not addressing. That continues to be their number-one issue. How did he envision that being resolved and getting the administration on board?

MR. MASSEY responded that AGIA is the law and TransCanada will execute that project according to its obligations. He also understands that AGIA is the framework under which the state wants to address the project and he is hopeful that EM can have a conversation under that framework about what can be done for predictable and durable terms to make the project commercially viable, but he has no commitment from the administration that that will occur. However, as they have all heard, if EM can prove to the administration that something needs to be done, they are willing to listen. EM is willing to move forward on that basis.

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SENATOR THERRIAULT said some detractors have said that TC as the state's partner is now the message carrier for EM and other potential producers to pressure the state into changing the tax structure and give commitment on certainty. Yet TC committed to the legislature that it would not allow itself to be put into that position. He asked Mr. Palmer if there is anything in the agreement with EM that will get TC into the middleman position.

MR. PALMER responded that TC has committed in its application and through testimony that it will not be party to fiscal discussions. Those discussions will be between the sovereign and the producer-shippers and not the pipeline company. The pipeline company has no role in that, but will be an interested observer. "I will not participate in it, TransCanada will not participate in that and our commitment that we made last year stands," he said.

SENATOR THERRIAULT said on the issue of EM being reimbursed for some of the work - that TC always spoke about reserving equity ownership for partners to come on board.

MR. PALMER explained that TransCanada has contracted with certain large contractors to do the pre-FEED (final engineering and design) work. Subsequent to the open season, there will be a separate request for contractors for the actual FEED work; those may be different parties and the parties that perform the pre-FEED work may be competitors. That occurs all the time as they

hire engineering and environmental firms. So, the fact that EM will be reimbursed, while they are not just like a contractor, they are providing work that is good and valuable for getting them to a successful open season – in the same fashion that URF's work is for the gas treatment plant and Colt Worley Parsons' work is for the pipeline.

3:05:08 PM

SENATOR THERRIAULT said in their initial application TransCanada always spoke about reserving equity ownership for partners to come on board.

MR. PALMER affirmed that and said they always described that they wanted another party to handle the gas treatment plant, because that wasn't their core area of expertise, and with regards to the entire project, particularly the pipeline, they indicated they would be available to talk about an equity participation to parties that commit a significant threshold volume.

SENATOR THERRIAULT said in one of his slides he talked about going up to 100 percent ownership in Keystone and he asked if TransCanada was actively looking for 100 percent ownership or if ConocoPhillips was just actively looking for a buyer.

MR. PALMER said he couldn't discuss the details of that transaction, but TransCanada is in the process of getting approval for 100 percent ownership.

SENATOR THERRIAULT asked Mr. Massey when the state was apprised of this arrangement and looked at the details, was there any discussion about a link between this and Pt. Thomson.

MR. MASSEY answered no.

3:07:04 PM

SENATOR PASKVAN asked if EM retains the right to use its own work product if it has received \$30 million, but does not become a participant in the TransCanada licensee.

MR. PALMER replied that EM would retain the right to use the information (engineering and other studies), but not the right to the assets, either regulatory or physical. Those would remain with the TransCanada licensees.

SENATOR PASKVAN asked if EM work could be viewed in part as a contribution for equity ownership under the current agreement.

MR. PALMER answered that EM is earning a non-voting interest today, and if issues with the state are resolved, their work will be converted into common shareholding interest at the time. They are obtaining a financial interest today, but not a voting interest. If they resolve issues and become a full participant, that work will in effect cause them to become a voting interest if they have committed their gas.

3:09:06 PM

SENATOR PASKVAN asked specifically as far as a percentage-vote equity ownership in the new entity if EM's current work is viewed in part as a contribution for that equity ownership under the current agreement.

MR. PALMER answered using his example of \$30 million worth of work. If that were EM's contribution and in the event that they did resolve things, that \$30 million worth of work, if they become a full participant, would become \$30 million worth of voting shares.

3:10:41 PM

SENATOR FRENCH asked how EM stands in this arrangement in comparison to a subcontractor that might be hired to do some engineering work on the pipeline. They might authorize a subcontractor to do work, for instance, but not take the information that they performed with them when the contract was over.

MR. PALMER answered, "To some degree, that's accurate." But major consulting firms often have proprietary technology; they often supplement that for a specific job. They will restrict information they are willing to isolate because they are in the consulting business on a long term basis and won't preclude themselves from being in that consulting business as a result of one particular task they undertake. In many cases they want to be free to conduct the next piece of work for the next client.

SENATOR STEDMAN said while he is glad Exxon is on board, this early disbursement seems like a step around the intent of AGIA that they "cooked up" just to get to the reimbursement. They hadn't signed on to the AGIA requirements.

MR. PALMER said it's important to remember that EM as a producer shipper still has issues with the state. However, their commitment towards developing a high quality cost estimate for this project is also clear. And they are doing that separately

and distinctly from their producer-shipper role. He believes this will improve the quality of the work and that will improve the likelihood of success in the open season. This is what they are seeking reimbursement for, not the other issues that Mr. Massey described that he has to resolve in his producer-shipper role.

SENATOR STEDMAN asked for help in understanding the voting and non-voting shares.

[3:15:05 PM](#)

MR. PALMER answered that the non-voting shares are common shares in the Canadian section and preferred in the U.S. section.

SENATOR STEDMAN said he would want help with legal expertise on this issue.

[3:16:05 PM](#)

SENATOR WAGONER said the administration spent six weeks reviewing the agreements between TransCanada and EM. The legislature granted the license, but it's up to the administration to administer it.

CO-CHAIR MCGUIRE said this is the point at which Mr. Massey will have to excuse himself.

SENATOR THERRIAULT said he had a question for Mr. Massey before he leaves. He said Exxon had always been upright about wanting fiscal terms, but his response has always been he understands why he would ask for it, but the state doesn't have the data to make that decision. As they move towards open season, perhaps the state will get a much better idea of the cost of the gas treatment plant and the resulting tariff, perhaps that question will come much more in focus. So the state will have then the data it needs to evaluate their requests. Without it, they would be setting a tax just because somebody asked for it. He asked if he agreed.

[3:18:19 PM](#)

MR. MASSEY responded that as things firm up, you obviously have better information, but that doesn't mean you can't do it with that uncertainty - for instance through how the terms might change associated with the uncertainty and cost. Many ways exist to address this issue, if you put your mind to it, and it should be done as soon as possible.

SENATOR THERRIAULT said both Mr. Massey and Mr. Hames have both said the sovereign made a decision, and from EM's point of view that is the new lay of the land. And Exxon decided to play. He asked if they are having good communications with the state agency now, because they weren't before.

MR. MASSEY said they are having good communication with the state agencies, but they have made no commitment to enter any sort of fiscal discussion. He hoped to be able to present that issue to them.

CO-CHAIR MCGUIRE thanked Mr. Massey for his updates.

3:21:10 PM

MR. PALMER continued his presentation:

(Slide 12) TransCanada map of pipeline project.

(Slide 13) Project schedule. The FERC pre-filing request used to be in 2011, but that has been advanced to April 2009. FERC approved it on May 1. The only other change is the Canadian counterparts to the U.S. timeframes. The open season will be complete by the end of July 2010, and they will continue to solicit the market at least every two years.

(Slide 14) Project Accomplishments in June 2008. Alignment was achieved with issuing the license on December 5; the AGIA coordinator, Mark Myers, is now in place, and the alignment with EM is significant. They began work in August last year to maintain schedule. Pre-FEED contractors have been retained; a significant number of them are Alaskans. As the project gets ramped up that number will increase.

3:23:21 PM

(Slide 15) He said again that bringing EM personnel on board broadens the expertise. They are having ongoing discussions with potential customers for deliveries in Alaska for the LNG alternative and for Lower 48 markets by the Alberta Hub, but those discussions have not turned to negotiations with any other party but EM. He reminded the committee that when they received the license last year, they were commencing on a project to be in service in 2018. This is what has occurred in just the first year.

3:24:52 PM

On the LNG side, cost estimation and commercial terms are underway. Their application under AGIA had a 2 bcf/day alternative, but after discussions with potential customers,

that was revised to 3 bcf/d, and that is what they will be designing. Potential customers can select Valdez as the delivery point if that is the best alternative for them or they can select the one going through Alberta if that is better.

3:25:47 PM

(Slide 16) Mr. Palmer said he was questioned last year about Canadian regulatory issues and the applicability and feasibility of the Northern Pipeline Act (NPA), and now EM has reviewed and endorsed that structure as the Canadian regulatory model for the project. Re-staffing of that agency is underway and it is coordinating within the government of Canada and across Canadian provinces. Multi-department meetings have been completed with other federal agencies, British Columbia and Yukon, and individual meetings are underway.

SENATOR THERRIAULT asked when they will be entering into agreement with FERC on the third-party contractor.

MR. PALMER replied that they are still having discussions with FERC on that. If TransCanada's preference is honored, that will come later in 2010 rather than this year.

3:27:06 PM

(Slide 17) He was also asked what relations they have had with Canadian First Nations; terms and conditions have been in place for 30 years that give them specific rights. However, TransCanada has moved forward and they have put proposals in front of all those right-of-way First Nations to negotiate. Five of eight have indicated they are ready to discuss and negotiations have been commenced with some of them.

He was also asked if they would not be able to advance the project because of the original partnership (ANNGTC withdrawn partners) in Alaska. But all the individual regulatory assets - the FERC conditional certificate, the federal right-of-way, Section 404 water rights - that were owned by ANNGTC have been returned to government. That Partnership is in dissolution. TransCanada is seeking mutual releases from all six of the withdrawn parties and have five in hand; one is remaining - and he assured them that they were working hard to get it. This has not in any way stalled the project.

3:29:10 PM

MR. PALMER said that Fort Nelson is about 200 miles from the Alberta/B.C. border and they described a way the cost could be commercially averaged downstream into the Alberta section of the

pipeline. That would save 18 cents/mmbtu/day - about \$300 million per year. It was not something TransCanada could provide; first they had to get regulatory approval in Canada. He described their advancements so far. TransCanada's Alberta system has been provincially regulated for 50 years. TransCanada made an application to the government of Canada and the National Energy Board (NEB) to put into regulation that the system could go outside of Alberta both physically and commercially, and they have been successful in getting their decision to advance that. So it is now federally regulated, a significant advance that improves the chances of achieving Fort Nelson upside.

TransCanada also is proposing a couple of small pipelines into the shale gas regions of British Columbia. If they are successful in completing those projects and can average them into the Alberta, those are good precedents for the Alaska project. He couldn't guarantee anything, but they are making good progress towards that goal.

[3:30:43 PM](#)

(Slide 18) FERC required TransCanada to do an in-state gas study; they have contracted with Northern Economics to do that and it is now underway. It will be completed and available later this year. This will assist TransCanada in identifying the five or more in-state gas locations for off-takes. Their Anchorage office was opened early in 2009 as agreed in AGIA.

[3:31:38 PM](#)

(Slide 19) He said over the next 13 months they will complete the capital cost estimate (end of March 2010), finalize commercial terms and precedent agreements to put in front of FERC and potential customers, advance Canadian First Nations participation agreements and the Fort Nelson issue, complete the in-state gas study, continue discussions with potential customers, and maybe EM will have discussions with the state on their unresolved issues.

[3:33:03 PM](#)

SENATOR WAGONER asked the breadth of their environmental field work.

MR. PALMER replied it has been somewhat limited so far; the bulk of the field work will start in 2010 - post open season. Geotechnical bore holes will be completed this winter.

SENATOR THERRIAULT asked if cap and trade discussions would affect the pipeline.

[3:34:15 PM](#)

MR. PALMER said the carbon legislation might be put in place and that could have an impact, but that should favor gas, which should mean an increase in the demand for gas generically - and therefore increase their demand for this project as well.

SENATOR THERRIAULT asked if anything else is in the works in D.C. besides Senator Murkowski's initiative to increase the loan guarantee to \$30 billion.

MR. PALMER responded that TransCanada has been supportive of increasing the federal loan guarantee as well as providing access to the federal financing banks. It has passed out of committee, but it still needs to pass the body. That would be positive for the project. As a rule of thumb for what the value could be as the federal government moves forward on that front he said a 1 percent decrease in the interest rate lowers the toll by 9 cents/mmbtu, about \$150 million per year. TransCanada has not been active on other fronts in D.C. since the last election.

SENATOR THERRIAULT asked his view of the shale gas development.

MR. PALMER said shale gas will be a significant player going forward in terms of providing natural gas to markets in North America, but it doesn't have a dedicated market. Neither does Alaskan gas. It is a new low cost source of natural gas; so they will be competing. If this project has gas prices at \$6-8 and can maintain costs at \$3 or less, he thinks it can be competitive. But it is critical to maintain the schedule, maintain alignment and keep the costs low.

[3:38:05 PM](#)

SENATOR THERRIAULT asked what the advantage is for getting FERC approval for a third party later.

MR. PALMER explained that it is unusual that a prefilings would occur this early in the game; usually they occur after the open seasons has been conducted and after a significant amount of environmental work has been completed. However, FERC strongly expressed a desire that they prefile early and they did so. Hiring a third-party contractor needs to be aligned with the timing of the project, and is a significant cost for any project proponent. The appropriate time to retain that group is later rather than now so the cost of the project can be lowered while meeting all the requirements of FERC.

3:40:11 PM

BILL WALKER, Alaska Gasline Port Authority (AGPA), said they are continuing to advance a project that gets gas to Alaskans as quickly as possible at the lowest possible price anchored by an anchor tenant on the west coast of the U.S., the State of Hawaii, Asia or the world. Alaska has two options, the ACCO Hub and a world market. It is fortuitous that TransCanada has the LNG alternative in its application.

MR. WALKER said they have reviewed the TransCanada filing and their efforts to advance the LNG option early with FERC. Legislative intent language continues to be beneficial to the Port Authority as their partners continue to review this project.

He said that Sempra LNG just opened its second LNG receiving terminal in Louisiana on the Gulf Coast and entered into a contract to bring LNG in from Qatar. Their other terminal is the only one on the West Coast in Mexico that brings gas into the California market from there.

He said the Port Authority has used the Governor's A0 242 and have had talks with Commissioner Irwin to get to an open season for a pipeline only to Valdez, not the liquifaction piece of it. They continue to ask the administration for participation and assistance in that process.

They continue to work with Mitsubishi Corporation, a major player in the world market that brings over 50 percent of the LNG into the Asian market. They have been in frequent contact with terminals on the U.S. West Coast to see if there is more interest in bringing LNG to the West Coast. The recent announcement from the Department of Energy that the U.S. has 116 years of self-sufficiency in gas is pretty long-term, but ships go wherever they are needed to go. That's the beauty of LNG; if there is a need on the West Coast, one of their partners has the only receiving terminal. While three are currently being negotiated in Oregon, two on the Columbia River and one at Coos Bay, realistically only one will be built. They are encouraged that an open season is scheduled for July and they will continue to do what they can to advance getting gas to Alaskans.

SENATOR THERRIAULT asked if TransCanada should be doing something they are not now doing to accommodate a project to tidewater.

MR. WALKER answered that they are doing what they said they would do.

3:46:42 PM

CO-CHAIR MCGUIRE announced a break.

4:05:41 PM

CO-CHAIR MCGUIRE called the meeting back to order at 4:05.

BUD FACKRELL, Denali Pipeline Projects, said BP and ConocoPhillips formed this company to build the Alaska gas pipeline. Nothing has changed, and they are on track.

(Slide 2) Denali is uniquely qualified to deliver this complex project and has unparalleled North Slope (NS) Arctic and worldwide construction experience and as well as a strong balance sheet. They are positioned to conduct their open season in 2010; the economy has not changed their focus.

4:07:09 PM

(Slide 3) He said it is important to focus on where the gas and operations are on the North Slope. There are 35 tcf of gas resources that have been discovered on the NS primarily at Prudhoe Bay and Pt. Thomson; BP and ConocoPhillips hold leases on half of that. They also operate 99 percent of the current NS production; the only field they do not operate that is on production is the Oooguruk Field that Pioneer operates. So, BP and ConocoPhillips essentially built the North Slope, its infrastructure and its gas plants and Denali brings all of that to bear on this project.

(Slide 4) Regulatory Frameworks. The pipeline will have to be approved by FERC in the U.S. and the National Energy Board (NEB) in Canada. AGIA is not an exclusive license to build a pipeline; Denali can proceed outside of AGIA and that is what they are doing with their own money. NEB and FERC have a long history of cross-border projects.

4:08:51 PM

(Slide 5) Denali Terms of Service. Denali is an open-access pipeline; that's the law. Their project includes a gas treatment plant and it has distance sensitive rates for local use, and it will use the FERC-mandated rolled in rates. The design of the project is efficient for expansion and they plan on soliciting expansion every two years so those individuals or corporations who don't have gas initially will have an opportunity to get in

the pipeline. This is important because only 35 tcf have been discovered, enough for the first 15-20 years at 4.5 bcf/day. So, more gas will be needed.

Denali will have at least five off-take points in Alaska and they will look at an appropriate number for Canada.

4:10:05 PM

(Slide 6) Over the last year Denali has spent \$100 million. They have mobilized their project team and have a core team of 80-90 people located in their Anchorage headquarters and Calgary office. They prefled over one year ago and have weekly conversations with FERC. They have also filed a right-of-way for the federal lands in Alaska with the Bureau of Land Management (BLM), about a third of the pipeline length and have a reimbursable service agreement with BLM that allows them to work together on a regular basis as the right-of-way is progressed.

MR. FACKRELL said they have had a very successful 2008 summer field program; it was focused on the 200-mile corridor between Delta Junction and the Canadian border. They did hydrology, archeology work, contaminated sites and so forth. They also did spot work up and the down corridor from Prudhoe Bay to Delta Junction filling in the gaps. They have had continual community outreach programs in both Alaska and Canada. A piece of it is working with entities on workforce development. For instance, they have funded a program with UAF training archaeological assistants in a field camp rather than in the class room. They also have agreements with a number of agencies for surveyor training apprentices and have graduated 10 this summer. This was a combined effort between the Alaska Department of Labor, the federal government, the Tanana Chiefs Conference, the Teamsters and a number of private companies in the state.

MR. FACKRELL said Denali has met with all of the federal and local state agencies and they have awarded two very important contracts, one was a contract to Fluor/Worley Parsons on the gas treatment plant and the second was to Bechtel on the pipeline. These are important because Denali's workforce is being augmented with world-class engineering skills.

4:13:38 PM

(Slide 8) They are very focused on their open season in 2010 and are working on refining the cost estimates that will give everyone confidence, particularly the shippers. They continue to work with all departments and agencies and are working with FERC on pre-filing requirements and are in the process of engaging a

third-party environmental contractor, Argon National Labs. FERC guides the work they are going to do.

4:14:43 PM

Denali is working with the Alaska DOT on infrastructure requirements. Existing infrastructure is quite old; it all needs to be upgraded before turning dirt and moving pipe. Stakeholder engagement continues to be a major focus in Alaska as well as Canada. BP and ConocoPhillips have large operations in Canada and they have been able to "piggyback" on those relationships and build their own relationships with First Nations and Aboriginal groups there. Finally, they are progressing their commercial work getting ready for open season.

4:15:50 PM

SENATOR WAGONER said TransCanada is a Canadian company and already has the right-of-way by treaty all the way through Canada. They feel fairly comfortable they will be able to negotiate with the First Nations. He asked if Denali has a Canadian partner, and how they will address the fact that TransCanada has the existing right-of-way.

MR. FACKRELL replied they established an office in Canada eight months ago and have existing relationships with the Canadian officials. They have also had very good conversations with the NEB and other ministries inside Canada on how their project would proceed.

4:17:47 PM

SENATOR THERRIAULT asked on page 2 when they say "superior commercial offering" does that mean a lower tariff.

MR. FACKRELL replied an offering includes the tariff and other terms and conditions. Denali believes they will have the fundamentals in place to have a superior offer.

SENATOR THERRIAULT asked if FERC would allow a small percent of added compression before something is determined to be a subsidy for new shippers.

MR. FACKRELL answered that FERC hasn't issued anything on how they define "subsidizing tariffs." They have said there is a presumption of rolled in tariffs. They are going to have to act on the cases as they come forward. So, they are working up the engineering for various physical parameters on the pipeline and are discussing those with shippers. Their base design case has

expansion capability built into it, and they expect when they go to expansion, those rolled in tariffs might be lower.

4:23:32 PM

(Slide 9) Mr. Fackrell summarized that they are essentially moving forward and they are on track.

SENATOR FRENCH said he didn't know if it was fair to the other participants for EM to be able to discuss terms of AGIA with TransCanada "on the pipeline landscape." What did he think about a possible change of rules downstream of when his two companies made their decision to participate in the AGIA application process?

MR. FACKRELL answered that BP and ConocoPhillips did not submit an application under AGIA because they didn't believe its conditions would result in a profitable pipeline project. So they struck out on their own without any funding, and they are not bound by the terms of AGIA. He viewed Exxon coming on with TransCanada as a positive because now they are at the table playing with everyone else. Nothing else has changed. They are moving forward to open season; their goal is to attract customers to the pipeline.

SENATOR FRENCH said he didn't understand if he would agree or disagree that the deal has been sweetened for another economic entity.

MR. FACKRELL replied as he understands that, that would mean they are changing the terms and conditions of AGIA. And if they were going to do that, other parties might be willing to participate in it. He said he is always asked, "When are you and TransCanada going to join together." The problem is that his owners do not agree with the terms and conditions of AGIA and that keeps them from joining with TransCanada. "If they were changed, then it's a bit of a new ballgame."

SENATOR FRENCH asked if it were changed, would that make it more likely that Denali would join the effort.

MR. FACKRELL replied they would see what happens. Right now they clearly have two competing projects.

SENATOR WAGONER asked how many of their employees work in Alaska and Canada.

MR. FACKRELL replied about 75 percent work in Alaska. It's primarily an Alaskan company based in Anchorage.

SENATOR WAGONER asked for a specific date for their open season.

MR. FACKRELL answered they have committed to commence with it before the end of the year. He doesn't view this as a race and wants to be ready with the very best cost estimate and alignments when they go to open season. If they can do it earlier than that they will.

4:25:43 PM

SENATOR THERRIAULT asked if he meant they had spent \$100 million so far or what.

MR. FACKRELL replied they have spent \$100 million in the last year - \$55 million since June of last year and about \$45 million this year. Their plan in 2009 is to spend about 50 percent more than they did last year.

SENATOR THERRIAULT said he talked to some contractors in Fairbanks whose contracts had been cancelled. What was that about? Also when BP joined the Denali effort there was a statement about having a target spend of \$600 million-plus; was that up to certification or to open season? Has that planned expenditure changed?

MR. FACKRELL explained that their program in 2009 is much broader than what they had in 2008, which was focused on the field program to close the gap they had between Delta Junction and the Canadian border. A lot of extra contractors were needed to do that field work. The focus now is broader - on cost estimates, putting commercial work together, furthering engagement with the shareholders along the route - getting ready for an open season. Maybe they will spend over \$100 million at the end of this year. They are on track with the schedule and are spending the money they need to.

SENATOR THERRIAULT asked what the total spend will be up to open season.

MR. FACKRELL replied they hadn't put their budget together for next year yet, but well over \$100 million by the end of this year.

4:28:55 PM

CO-CHAIR MCGUIRE asked if they will enter into discussions with TransCanada Alaska and EM this summer and fall to look at whether or not the project could come together.

MR. FACKRELL answered they haven't had discussions with TransCanada because they are the AGIA licensee, and his owners do not agree with its terms and conditions. As long as they exist as they are today, they probably won't have discussions. "If it changes, then we'll have to reconsider that."

CO-CHAIR MCGUIRE said one opinion in the Exxon case is that the state has allowed them to be an equity partner without being subject to AGIA on some level.

SENATOR WAGONER asked where it leaves everybody if EM commits its gas to the TransCanada project and BP and ConocoPhillips commit its gas to their project.

MR. FACKRELL replied, "First of all there's only going to be one pipeline built here, and as I've stated before there's not enough gas for two. And we need to get some more discoveries to fill this one up for 50 years." Denali is a pipeline company, separate from the shippers of BP and ConocoPhillips. So they haven't committed their gas to Denali as EM has not committed its gas to TransCanada. So they are both going about an open season to attract these customers to have the best commercial offering possible. All of the pipeline companies - Enbridge, TransCanada MidAmerican, Denali - have testified that the shippers are going to want to have some fiscal certainty. So, they are hoping for something in that arena.

SENATOR WAGONER said the Keystone Project was originally a 50/50 project with TransCanada and ConocoPhillips, and now TransCanada is going to end up with a purchase agreement for the 50 percent ConocoPhillips has. How was that set up originally? Did TransCanada have a separate pipeline company under an LLC to do the Keystone part of that pipeline?

[4:32:36 PM](#)

MR. FACKRELL said he wasn't privy to that information; he worked for BP before he came to Denali.

SENATOR WIELECHOWSKI asked if BP's and ConocoPhillips' boards have any influence over Denali.

MR. FACKRELL explained under FERC regulations there has to be a separation the pipeline company and the shippers. FERC

understands and the rules for open season recognize that companies can be vertically integrated and have both pipelines and resources. So they are going through the process of separating themselves from the shipping arms of the company, "and so we don't speak for the shippers and they don't speak for us." TransCanada and Denali both have to submit a compliance plan and code of conduct for the open season to the FERC for its endorsement. That ensures that the information to shippers is shared fairly. In his case, BP and ConocoPhillips does not have an unfair advantage over anyone else out there in the market and that will apply to any pipeline company. For that reason they are being very careful to put up firewalls.

4:34:48 PM

SENATOR WIELECHOWSKI asked with these firewalls in place, Denali itself has never itself built a pipeline.

MR. FACKRELL replied that Denali is a new company, but the people on his team have built pipelines - like its operation manager who built the Caspian Pipeline that goes from the Caspian Sea to the Mediterranean - they are fine people. Denali has the two companies that built the North Slope; it already has Arctic and Alaskan experience.

SENATOR WIELECHOWSKI said the firewall between BP and ConocoPhillips is an important point.

MR. FACKRELL said most of the people in Denali came from those two companies.

CO-CHAIR MCGUIRE said they continue to hear rumors about Enbridge partnering with Denali.

MR. FACKRELL said he wouldn't comment on private conversations.

4:36:51 PM

MR. FACKRELL said Denali is on track, moving ahead to conduct an open season, and it is positioned to have a superior commercial offering. They are not requiring anything from the state and the economy and competition has not changed their focus.

CO-CHAIR MCGUIRE asked how the Prudhoe Bay operating agreement which links them all together plays out in coming to the open season.

MR. FACKRELL replied how the separation works is a very important point. BP operates Prudhoe Bay on behalf of a number

of other companies, and BP has set up an information protocol to go through to insure that everyone has equal access to the same information.

4:39:31 PM

CO-CHAIR MCGUIRE asked how one could break off from the operating agreement if gas could be economically delivered. Who is obligated or is everyone open to bid on whatever projects they choose in that first open season?

MR. FACKRELL explained that first of all you have to separate producer-shippers from the pipeline company. Denali is a pipeline company, so it has no say in how the owners, shippers and producers are going to distribute their gas or who they are going to go to. They make those choices themselves. So, under FERC regulation Denali has to go out and offer space in their pipeline to everyone. EM and TransCanada will have to do the same thing; the shippers on the other side will have to individually decide what they are going to do in that regard. The AOGCC inside Alaska has a role in saying how Prudhoe Bay is produced to insure that the resources are efficiently produced. FERC ensures that it is fair to all parties. In the end they are trying to attract customers and they all have to be treated equally.

CO-CHAIR MCGUIRE asked if one of the open seasons fails, would the legal question come up about whether or not there was an obligation by someone to bid for capacity.

4:43:24 PM

MR. FACKRELL replied that it is the role of the shipper-producers to meet their own obligations, not the role of the pipeline. "The role of the pipeline is to insure that everyone has free and open access to bid on space on our pipeline."

SENATOR WIELECHOWSKI said he has heard two interpretations of the Prudhoe operating agreement. Interpretation one is that no gas can be bid unless everyone agrees to bid their gas. Interpretation two is exactly the opposite which is if one company bids a certain amount, then all the other companies are required to bid their gas.

MR. FACKRELL said he was sure the shippers and the operators would answer that question for him.

4:44:19 PM

SENATOR THERRIAULT said he has still heard concerns over the one withdrawn partner. Is it still a concern?

MR. FACKRELL replied that five of the six had been resolved and perhaps that one would go away.

CO-CHAIR MCGUIRE thanked him for his presentation and asked him to keep them updated. She wished them luck.

COMMISSIONER PAT GALVIN, Department of Revenue (DOR), said he was asked to present the administration's response to the agreement between TransCanada and ExxonMobil. He was asked if the state needed to do anything at this point under AGIA, Section 210, which requires commissioner approval for any modification of the license itself. So, he put together a team on legal issues that may be impacted by this transaction. They got documents, asked clarifying questions and got both oral and written answers to better understand the transaction. The legal team determined that because there was no actual control, no voting interest that was being created under this agreement, that it didn't diminish the state's rights under AGIA.

4:49:56 PM

However, if ExxonMobil moved into a voting interest, that couldn't happen until the state did public notice, notified the legislature and was approved by the commissioners. So, at the end of the day they determined no action was required at this time based on these agreements. The administration is supportive and excited by this event, and they believe it is in keeping with AGIA's intent, which was to keep the project moving and allowing it to advance on commercial terms.

4:51:25 PM

SENATOR FRENCH said he was worried about AGIA losing some of its integrity if Exxon wants to talk to the state about fiscal certainty and a couple of other AGIA must-haves to reach sort of a global solution that would allow them to convert those non-voting shares into voting shares, acquire a piece of the license, commit their gas and move forward. Because the AGIA statutes require the commissioner to bless that transfer should it occur, he is concerned there may be some sort of slippage of his role as an umpire of whether or not that transfer is a good idea.

COMMISSIONER GALVIN responded that there is a whole unending variety of ways in which they can move forward from here that is not laid out in any particular way. It is not the

administration's intent to undermine the responsibilities of the legislature to exercise its right to change statute. He didn't see the linkage that Senator French was describing. He further explained:

If there is a recognition by the state at some point in the future that adjustments to the upstream fiscal terms are appropriate and are needed by the companies, that that would be something that the legislature would be fully involved in, and it wouldn't be something that we end up being the sole arbiter or umpire in determining.

SENATOR FRENCH said they are moving towards a strong producer interest in the pipeline, if not ownership. The legislature wrestled with this a lot in passing AGIA. He came across a fascinating presentation called "How AGIA Addresses Competitive Issues Raised by a Producer-Owned Pipeline" presented in his Judiciary Committee in May 2007. He felt like he achieved a trifecta today when Mr. Minesinger walked in, because he is the person who gave it.

COMMISSIONER GALVIN said a producer being in a position of influence or control over this project is not precluded by AGIA. Further, he stated:

The purpose of AGIA was to insure that any project that comes out of this process would act like a third-party pipeline regardless of who actually owns it. That the bulk of the defenses, the bulwarks that have been built into AGIA, that have been built into those must-haves, have anticipated that the pipeline is going to be motivated elsewhere than as an independent pipeline. The bulk of that has been put in place with the anticipation of producer involvement in the decisions of the pipeline. The state's interests are protected through those contractual obligations that are imbedded in AGIA regardless of who the owner of the pipeline will ultimately be.

[4:57:37 PM](#)

SENATOR WIELECHOWSKI asked what happens when producers put in a bid contingent on fiscal certainty or new terms negotiated with the state.

COMMISSIONER GALVIN replied their view is the same; that the state has an existing legitimate and sufficient fiscal system.

AGIA provides what they consider to be an adequate durable upstream inducement. If the producers feel something else is needed, they need to tell them. The timing of whether that happens before the open season or after is a matter of other factors that are going to play out. The state doesn't necessarily have to set it.

The purpose of AGIA and TransCanada having to come to grips with the obligation to move the project through the initial open season, even if it fails, is to protect the state's interest to see the project continue to advance even after an unsuccessful open season.

He said the producer's fiscal system doesn't have to take place until they get to project sanction. Having that unresolved until that time will not slow the project. But it's in all of their interests to not have to fret about it that whole time and it would be nice to have it get out of the way. But there is no obligation or necessity for the state to put itself in the position of becoming desperate for a deal. This is a very important point. If they end up reaching a fiscal deal, it will be based upon the best information available. That's going to continue to evolve and the state will be in a better position moving forward than it is in today.

5:00:27 PM

SENATOR THERRIAULT asked if Mr. Minesinger was part of the team that evaluated the TransCanada EM deal and if he saw anything that raised red flags.

KEN MINNESINGER, Greenburg Traurig, LLP, the State gasline team's outside counsel, answered no; they took a careful look at it and did not see any red flags. TransCanada and EM have taken a step towards bringing one of the producers on board, and so there is minority producer ownership on the project in a sense. "But AGIA did contemplate that. This isn't a case of something the administration didn't expect." AGIA was open for any company to come in and bid - whether it be an independent pipeline or a producer. The must-haves insured that regardless which company came in, they would effectively act like an independent pipeline in various ways - for lowering the tariff, expansion provisions and so forth that benefit the state. Nothing in this changes that.

5:03:51 PM

CO-CHAIR MCGUIRE thanked everyone and said they would keep getting updates. There being no further business to come before the committee, she adjourned the meeting at 5:03 p.m.