

**ALASKA STATE LEGISLATURE
HOUSE RESOURCES STANDING COMMITTEE**

March 1, 2013

1:02 p.m.

MEMBERS PRESENT

Representative Eric Feige, Co-Chair
Representative Dan Saddler, Co-Chair (via teleconference)
Representative Peggy Wilson, Vice Chair
Representative Mike Hawker
Representative Craig Johnson
Representative Kurt Olson
Representative Paul Seaton
Representative Geran Tarr
Representative Chris Tuck

MEMBERS ABSENT

All members present

OTHER LEGISLATORS PRESENT

Representative Lora Reinbold

COMMITTEE CALENDAR

CS FOR HOUSE CONCURRENT RESOLUTION NO. 1(EDT)
Relating to the establishment and operation of a state food resource development working group.

- MOVED CSHCR 1(EDT) OUT OF COMMITTEE

SPONSOR SUBSTITUTE FOR HOUSE BILL NO. 4

"An Act relating to the Alaska Gasline Development Corporation; making the Alaska Gasline Development Corporation, a subsidiary of the Alaska Housing Finance Corporation, an independent public corporation of the state; establishing and relating to the in-state natural gas pipeline fund; making certain information provided to or by the Alaska Gasline Development Corporation and its subsidiaries exempt from inspection as a public record; relating to the Joint In-State Gasline Development Team; relating to the Alaska Housing Finance Corporation; relating to the price of the state's royalty gas for certain contracts; relating to judicial review of a right-of-way lease or an action or decision related to the development or construction of an oil or gas pipeline on state land; relating to the lease of a right-

of-way for a gas pipeline transportation corridor, including a corridor for a natural gas pipeline that is a contract carrier; relating to the cost of natural resources, permits, and leases provided to the Alaska Gasline Development Corporation; relating to procurement by the Alaska Gasline Development Corporation; relating to the review by the Regulatory Commission of Alaska of natural gas transportation contracts; relating to the regulation by the Regulatory Commission of Alaska of an in-state natural gas pipeline project developed by the Alaska Gasline Development Corporation; relating to the regulation by the Regulatory Commission of Alaska of an in-state natural gas pipeline that provides transportation by contract carriage; relating to the Alaska Natural Gas Development Authority; relating to the procurement of certain services by the Alaska Natural Gas Development Authority; exempting property of a project developed by the Alaska Gasline Development Corporation from property taxes before the commencement of commercial operations; and providing for an effective date."

- HEARD & HELD

PREVIOUS COMMITTEE ACTION

BILL: HCR 1

SHORT TITLE: STATE FOOD RESOURCE DEVELOPMENT GROUP

SPONSOR(S): REPRESENTATIVE(S) STOLTZE

01/24/13	(H)	READ THE FIRST TIME - REFERRALS
01/24/13	(H)	EDT, RES
01/29/13	(H)	EDT AT 11:15 AM BARNES 124
01/29/13	(H)	Heard & Held
01/29/13	(H)	
		MINUTE(EDT)
01/31/13	(H)	EDT AT 11:15 AM BARNES 124
01/31/13	(H)	Moved CSHCR 1(EDT) Out of Committee
01/31/13	(H)	MINUTE(EDT)
02/01/13	(H)	EDT RPT CS(EDT) 7DP
02/01/13	(H)	DP: GATTIS, HIGGINS, JOHNSON, PRUITT, DRUMMOND, TARR, HUGHES
03/01/13	(H)	RES AT 1:00 PM BARNES 124

BILL: HB 4

SHORT TITLE: IN-STATE GASLINE DEVELOPMENT CORP

SPONSOR(S): REPRESENTATIVE(S) HAWKER, CHENAULT

01/16/13	(H)	PREFILE RELEASED 1/7/13
01/16/13	(H)	READ THE FIRST TIME - REFERRALS

01/16/13	(H)	RES, FIN
01/30/13	(H)	SPONSOR SUBSTITUTE INTRODUCED
01/30/13	(H)	READ THE FIRST TIME - REFERRALS
01/30/13	(H)	RES, FIN
02/04/13	(H)	RES AT 1:00 PM BARNES 124
02/04/13	(H)	Heard & Held
02/04/13	(H)	MINUTE(RES)
02/06/13	(H)	RES AT 1:00 PM BARNES 124
02/06/13	(H)	Heard & Held
02/06/13	(H)	MINUTE(RES)
02/13/13	(H)	RES AT 1:00 PM BARNES 124
02/13/13	(H)	Heard & Held
02/13/13	(H)	MINUTE(RES)
02/15/13	(H)	RES AT 1:00 PM BARNES 124
02/15/13	(H)	Heard & Held
02/15/13	(H)	MINUTE(RES)
03/01/13	(H)	RES AT 1:00 PM BARNES 124

WITNESS REGISTER

REPRESENTATIVE BILL STOLTZE

Alaska State Legislature
Juneau, Alaska

POSITION STATEMENT: As the prime sponsor, introduced HCR 1.

DARREN SNYDER, Agent
Cooperative Extension Service
University of Alaska Fairbanks
Juneau, Alaska

POSITION STATEMENT: Testified in support of HCR 1.

DANNY CONSENSTEIN, Alaska Director
Farm Service Agency
U.S. Department of Agriculture (USDA)
Palmer, Alaska

POSITION STATEMENT: Testified in support of HCR 1.

JOE BALASH, Deputy Commissioner
Office of the Commissioner
Department of Natural Resources (DNR)
Anchorage, Alaska

POSITION STATEMENT: Testified in support of HCR 1.

RENA DELBRIDGE, Staff
Representative Mike Hawker
Alaska State Legislature
Juneau, Alaska

POSITION STATEMENT: On behalf of the joint prime sponsors, provided a PowerPoint presentation to explain proposed Amendment 1 to SSHB 4.

TINA GROVIER, Contract Attorney
Alaska Gasline Development Corporation (AGDC);
Shareholder, Birch Horton Bittner & Cherot
Anchorage, Alaska

POSITION STATEMENT: During hearing of SSHB 4, answered questions.

DARYL KLEPPIN, Manager
Commercial Team
Alaska Gasline Development Corporation
Anchorage, Alaska

POSITION STATEMENT: During hearing of SSHB 4, answered questions.

ACTION NARRATIVE

[1:02:50 PM](#)

CO-CHAIR ERIC FEIGE called the House Resources Standing Committee meeting to order at 1:02 p.m. Representatives Hawker, Tuck, Johnson, P. Wilson, Seaton, Saddler (via teleconference), and Feige were present at the call to order. Representatives Olson and Tarr arrived as the meeting was in progress. Representative Reinbold was also present.

HCR 1-STATE FOOD RESOURCE DEVELOPMENT GROUP

[1:03:18 PM](#)

CO-CHAIR FEIGE announced that the first order of business is HOUSE CONCURRENT RESOLUTION NO. 1, Relating to the establishment and operation of a state food resource development working group. [Before the committee was CSHCR 1(EDT).]

[1:03:37 PM](#)

REPRESENTATIVE BILL STOLTZE, Alaska State Legislature, as the prime sponsor, introduced HCR 1, noting that his district of Chugiak and southern rural Matanuska-Susitna are home to much of the state's produce and truck farming. He said HCR 1 is about Alaska's agricultural and fisheries resources. Many different components of the state's government have responsibilities for

food policy, fisheries, and agriculture, so his idea is to integrate and provide some direction for the administration. The Department of Environmental Conservation (DEC) has policies that affect the ability to use pesticides and regulations on fertilizers. The University of Alaska has educational components and assistive components. The Department of Education and Early Development has a role in student nutrition and education about agriculture. The Department of Natural Resources houses the Division of Agriculture. The Department of Health & Social Services has nutrition programs. The point is that he could go on - HCR 1 has nine whereas clauses, but seventeen resolved clauses. He noted that Joe Balash, Deputy Director, Department of Natural Resources, has followed the progress on this resolution representing the governor's interest in having this direction to tie together this discussion on Alaska's food policy at the cabinet level. In addition to land-based agriculture, Alaska's ocean resources are a big part of the state's food supply chain. Even the Department of Military & Veterans' Affairs has a role in participating in a collective voice on a policy. Representative Stoltze reported that HCR 1 enjoys broad support and enthusiasm. No one has been asked to testify on it; rather, it has been a pied piper of interest. People he has never met before are calling in and wanting to be involved. He expressed his appreciation for the committee taking time to hear HCR 1.

[1:08:12 PM](#)

CO-CHAIR FEIGE opened public testimony on HCR 1.

[1:08:46 PM](#)

DARREN SNYDER, Agent, Cooperative Extension Service, University of Alaska Fairbanks, noted that in addition to his work as a cooperative extension agent, he has statewide responsibilities with the Alaska Food Policy Council as a governing board member. He stated he is before the committee to provide oral testimony in support of HCR 1 on behalf of the Alaska Food Policy Council. The council's goals include primarily strengthening Alaska's food system. The resolution does a lot to support this goal. The resolution is primarily focused on Alaska food and the economic development that can come from supporting food producers, which will support the success of Alaska communities. He said some of the on-the-ground work being done by the Cooperative Extension Service and the Alaska Food Policy Council includes work with the Division of Homeland Security & Emergency Management to help them with the division's state plan around

mass care and feeding. Those issues also include his two agencies' community work and templates to help communities map their local food systems and develop preparedness and response protocols for food storage, emergency harvest, and distribution. So, it is day-to-day economic development and how to feed people who are currently hungry, as well as emergency preparedness issues.

[1:11:22 PM](#)

DANNY CONSENSTEIN, Alaska Director, Farm Service Agency, U.S. Department of Agriculture (USDA), offered his strong support of HCR 1 in his role with the U.S. Department of Agriculture. He said the USDA works with farmers, ranchers, and growers across Alaska trying to provide Alaska capital and support in their business planning and risk management strategies. He said he is also on the governing board of the Alaska Food Policy Council. The council recognizes there are many different interests across the state in building a stronger food system. The council is comprised of health professionals, farmers, ranchers, fishermen, agency people, university people, and private sector people from across Alaska who believe it makes sense to coordinate and collaborate to build a strong food system. The council is in the process of developing recommendations for policy makers on ideas and ways that Alaska's infrastructure can be strengthened for building a stronger food system in Alaska. He said HCR 1 recognizes that increased coordination among state agencies is an important strategy. There are so many different state agencies with jurisdiction and responsibility for Alaska's food system, so it makes a lot of sense for good government to help improve that coordination among the agencies. This can benefit Alaska's communities by creating more jobs, healthier communities due to more access to healthy foods, and increasing security in times of emergencies. From the secretary on down, the USDA supports HCR 1 and the work of the Alaska Food Policy Council.

[1:14:22 PM](#)

JOE BALASH, Deputy Commissioner, Office of the Commissioner, Department of Natural Resources (DNR), testified that the DNR is the lead agency with regard to matters of agriculture and the management of agricultural lands in the state. He said DNR would like to go on record in support of HCR 1. He thanked Representative Stoltze for bringing the issue forward and said he looked forward to implementing the will of the bodies.

[1:15:00 PM](#)

CO-CHAIR FEIGE closed public testimony after ascertaining no one else wished to testify at this time.

[1:15:09 PM](#)

REPRESENTATIVE SEATON offered his appreciation to Representative Stoltze for introducing HCR 1. He related he has been contacted by farmers in Homer who are appreciative of the resolution.

REPRESENTATIVE TUCK offered his appreciation to Representative Stoltze for introducing the resolution. He said he does not want Alaska to have to rely on the rest of the world or the Lower 48 for its food supply because of the state's remoteness. He said Alaska needs to provide food for its people. He noted that at one time the U.S. used to have massive storage facilities for food for times of emergency.

REPRESENTATIVE P. WILSON commented that a natural disaster, such as an earthquake, or any other type of disaster could leave Alaska in grave disaster of running out of food. She said HCR 1 is a good idea for a multitude of reasons.

[1:17:44 PM](#)

REPRESENTATIVE SEATON moved to report CSHCR 1(EDT) out of committee with individual recommendations and the accompanying fiscal notes. There being no objection, CSHCR 1(EDT) was reported from the House Resources Standing Committee.

[1:17:58 PM](#)

The committee took an at-ease from 1:17 p.m. to 1:21 p.m.

HB 4-IN-STATE GASLINE DEVELOPMENT CORP

[1:21:55 PM](#)

CO-CHAIR FEIGE announced that the next order of business is SPONSOR SUBSTITUTE FOR HOUSE BILL NO. 4, "An Act relating to the Alaska Gasline Development Corporation; making the Alaska Gasline Development Corporation, a subsidiary of the Alaska Housing Finance Corporation, an independent public corporation of the state; establishing and relating to the in-state natural gas pipeline fund; making certain information provided to or by the Alaska Gasline Development Corporation and its subsidiaries

exempt from inspection as a public record; relating to the Joint In-State Gasline Development Team; relating to the Alaska Housing Finance Corporation; relating to the price of the state's royalty gas for certain contracts; relating to judicial review of a right-of-way lease or an action or decision related to the development or construction of an oil or gas pipeline on state land; relating to the lease of a right-of-way for a gas pipeline transportation corridor, including a corridor for a natural gas pipeline that is a contract carrier; relating to the cost of natural resources, permits, and leases provided to the Alaska Gasline Development Corporation; relating to procurement by the Alaska Gasline Development Corporation; relating to the review by the Regulatory Commission of Alaska of natural gas transportation contracts; relating to the regulation by the Regulatory Commission of Alaska of an in-state natural gas pipeline project developed by the Alaska Gasline Development Corporation; relating to the regulation by the Regulatory Commission of Alaska of an in-state natural gas pipeline that provides transportation by contract carriage; relating to the Alaska Natural Gas Development Authority; relating to the procurement of certain services by the Alaska Natural Gas Development Authority; exempting property of a project developed by the Alaska Gasline Development Corporation from property taxes before the commencement of commercial operations; and providing for an effective date."

[1:22:14 PM](#)

REPRESENTATIVE HAWKER moved the committee adopt Amendment 1, labeled 28-LS0021\0.9, Bullock, 2/28/13, the text for which can be found at the end of these minutes.

REPRESENTATIVE TARR objected to Amendment 1.

[1:22:36 PM](#)

REPRESENTATIVE HAWKER explained that Amendment 1 proposes amendments to the regulatory section of SSHB 4. Amendment 1 defines and clarifies the RCA oversight and regulatory responsibilities with respect to an in-state natural gas pipeline. The amendment addresses various dispute resolution measures as well as regulation of rates of return and various tariff matters. The committee, he noted, has been provided a copy of Amendment 1 as well as a PowerPoint explanation that his staff is prepared to present and there is a red-lined document of the regulatory section in order to view Amendment 1 in the

context of the legislation as a whole. He also noted that Frank Richards is present to answer any committee questions.

[1:25:00 PM](#)

RENA DELBRIDGE, Staff, Representative Mike Hawker, Alaska State Legislature, speaking on behalf of the joint prime sponsors of SSHB 4, paraphrased from the presentation entitled "An Alaska Natural Gas Future for Alaskans," which read [original punctuation provided]:

Resolves regulatory uncertainties

- Regulatory uncertainties add risk, which adds costs and can deter private sector participation. AGDC needs to know how a pipeline will be regulated before soliciting private sector partners

House Bill 4:

- Allows natural gas pipelines to operate as contract carriers through changes to the Right-of-Way Leasing Act and through Regulatory Commission of Alaska oversight

- Reinforces state policy that pipelines should be fair; offer reasonable access to new/future shippers; and encourage future development of Alaska's oil and gas resources

Why a contract carrier?

- Shippers need to know that the space they are 'reserving' by signing long-term commitments will be available

- Those firm, uninterruptible contracts are the way gas pipelines are financed

- The future income promised through those contracts secures revenue bonds

- House Bill 4 establishes contract carrier status while providing for expansions in the future

[1:26:46 PM](#)

CO-CHAIR FEIGE, referring to future shippers on the pipeline, inquired as to how the sponsor proposes to accommodate future shippers if there is a contract carrier.

MS. DELBRIDGE pointed out that although there are long-term commitments on a gas pipeline, there might also be a series of shorter term commitments. As those short-term commitments expire, there are opportunities for newcomers to come on to the pipeline. Furthermore, there is the hope that there is the opportunity in the future to expand the capacity of the pipeline, in which future shippers would have the opportunity to transport gas in an expanded volume.

[1:27:36 PM](#)

REPRESENTATIVE TARR inquired as to how that expanded volume would not be in conflict with the terms of the Alaska Gasline Inducement Act (AGIA).

MS. DELBRIDGE answered that although the terms of AGIA place a size capacity on the design limitations of this pipeline at an undesignated point in the future, those terms may no longer be in place in the future in which case the pipeline capacity could be expanded.

[1:28:14 PM](#)

MS. DELBRIDGE, returning to the presentation, reviewed the slide entitled "Definitions," which read [original punctuation provided]:

Definitions

(Not official definitions ... but practically speaking)

Tariff: A package of the rates and the terms and conditions that a pipeline offers. Rates may be a 'schedule' of rates distinguishing different classes of service.

Recourse tariff: A tariff that is kept on file as the pipeline's official 'offering'. The recourse rate is available to customers who do not negotiate rates with the pipeline.

Just and reasonable: A concept; generally, just is fair to all, reasonable is within a range of acceptableness.

MS. DELBRIDGE added in relation to the definition of tariff that the terms and conditions are items that govern the pipeline operations and tend to be uniform for all shippers. Terms and conditions might be factors such as the quality the gas has to be to enter the pipeline, operating pressures of the pipeline, and the billing cycle that will be used to collect from shippers. With regard to the recourse tariff, Ms. Delbridge characterized it as a sticker price.

[1:30:19 PM](#)

MS. DELBRIDGE then moved on to slide 5 entitled "Refresher: The Process," which read [original punctuation provided]:

Refresher: The Process

Pipeline puts together a project

Before taking that project to the market to sign up customers, pipeline has to develop its rates and terms/conditions of service = the tariff

Pipeline has to file the tariff as a 'recourse tariff' with the RCA before holding an open season to sign up customers

Recourse tariff is the sticker price; customers can negotiate final price

Supported by a full cost study

Amended, HB 4 would require RCA pre-approval of recourse tariff before an open season

MS. DELBRIDGE emphasized that the recourse tariff has to be supported by a full cost study; all the numbers of the various elements, including the operating costs, taxes, depreciation, and expected profit.

[1:31:25 PM](#)

MS. DELBRIDGE continued reviewing the process with slide 6, which read [original punctuation provided]:

Refresher: The Process

With an approved recourse tariff, the pipeline holds an open season

Pipeline negotiates rates with potential customers: price, volume, where the gas comes into the line, where the gas leaves the line, etc.

Once a deal is reached, the pipeline signs up customers with a 'precedent agreement'

May include conditions the pipeline has to meet over the next couple years

If the conditions are met, the precedent agreement eventually becomes a firm transportation agreement

MS. DEBRIDGE explained that a "precedent agreement" is a contract that is conditioned on a few outcomes. Once the precedent agreement becomes a firm transportation agreement, the terms are locked in for the length of that contract term.

[1:32:15 PM](#)

MS. DELBRIDGE referred to slide 7, which read [original punctuation provided]:

Refresher: The Process

Negotiated contracts in an open season is one of several ways a customer can sign up for pipeline service

A customer could simply sign up using the recourse rate (instead of negotiating)

Or, the pipeline and a customer could make a 'presubscription agreement' before the open season starts - but only using the same terms/conditions everyone else will get, and subject to the same standard of review as all the open season contracts

[1:33:04 PM](#)

REPRESENTATIVE TUCK surmised that the pre-subscription agreement is when consumers express interest to the pipeline company as it's prior to an open season and prior to the recourse tariff.

MS. DELBRIDGE related her understanding that the recourse tariff would need to be in place because the RCA would have to have approved all the terms and conditions that go to everyone, including the rate schedules. Once the RCA approves the terms and before the open season starts, one can sign a pre-subscription agreement with a customer or customers. Often those pre-subscription agreements might be for large volume, anchor customers. She suggested that locking up such agreements may make the rest of the pipeline able to happen.

[1:34:17 PM](#)

REPRESENTATIVE TUCK asked what the time period is between the recourse rate and the open season as that is the time period when the pre-subscription agreement would occur. He further asked whether one would be ready for the open season once the recourse rate is set.

MS. DELBRIDGE answered that would be up to the pipeline as it will proceed with its commercial package and build its shipper interest as it deems fit, as would be the case with each step. There is nothing statutorily, she clarified, that would require any certain movement in that way.

[1:35:04 PM](#)

REPRESENTATIVE TUCK surmised then that after the recourse tariff is established, the pipeline may not be prepared to go to an open season for other reasons.

MS. DELBRIDGE deferred to Frank Richards of AGDC. She clarified that she wasn't trying to indicate that they weren't prepared but rather that they may still be working with potential anchor tenants on pre-subscription agreements. "They will have their time period as to go forward," she said.

[1:35:36 PM](#)

REPRESENTATIVE TUCK related his understanding, then, that once there is a recourse tariff a pipeline company can solicit for the pre-subscription prior to the open season.

MS. DELBRIDGE confirmed that to be correct.

REPRESENTATIVE HAWKER offered that this is business convention in the pipeline world and is not something that is being created for this pipeline.

1:36:48 PM

REPRESENTATIVE SEATON related his understanding that normally a pipeline that is receiving bids would not have a limitation on the size. He then asked whether the pre-subscription agreement could be less than the recourse rate even if there are recourse rate customers available at that time. He further asked whether the pre-subscription agreement precludes customers offering the recourse rate on the full price rather than a negotiated lower price.

MS. DELBRIDGE explained that part of the pipeline's terms and conditions has to include how the capacity is allocated. With regard to other pipelines, she confirmed that generally they would not have a limit on size that way. Furthermore, in the Lower 48 an open season is not necessarily a requirement but rather something many companies choose to do on a commercial basis in order to solicit from a broad range of interested parties. As Representative Seaton noted, if size is not limited, then those bids could simply increase the size of the pipeline if they so warranted.

1:39:00 PM

MS. DELBRIDGE, returning to her presentation, directed attention to slide 8, which read [original punctuation provided]:

Refresher: The Process

After the open season, the pipeline keeps working on design, permitting, engineering, commercial structures

And, the pipeline turns all those precedent agreements in to the RCA

RCA needs to decide whether those agreements are 'just and reasonable'

These contracts, once approved, cannot be changed by anyone, including the RCA (unless the contract allows for the contracting parties to make changes)

Disputes about the contract terms, if they arise, get handled through a dispute resolution method that is spelled out in the recourse tariff

[1:40:38 PM](#)

REPRESENTATIVE TUCK asked whether there would also be dispute resolution that is written in the contracts, such that there are two separate resolution processes.

MS. DELBRIDGE clarified that there will be one process. The carrier can have [the dispute resolution method] in the contract, but it must be uniform for everyone. [The dispute resolution method] will be the same as that in the recourse tariff so that any contractor/customer will know the process and it will be the same process.

[1:41:31 PM](#)

MS. DELBRIDGE, continuing the presentation, moved on to slide 9, which read [original punctuation provided]:

Refresher: The Process

Just and Reasonable - What does it mean?

Just and reasonable is a standard - in this case, a contract must meet this standard

Just: Everyone is treated fairly and in a reasonable way

Reasonable: Not too much, not too little: within an acceptable range and defensible

How do we know?

Was the contract made at arm's length?

Arm's length is a legal principle pulled from contract law. An agreement is arm's length if it was made by independent parties, on equal footing; if parties are connected by 'shared interests', an arm's length agreement that stands up to scrutiny is important.

[1:42:22 PM](#)

MS. DELBRIDGE then referred to slide 10, which read [original punctuation provided]:

Meeting the Arm's Length Standard

Start with the contract. Does it include the recourse rate offered to everybody?

YES: Contract is at arm's length and acceptable.

NO: Next step: Was the contract made between two state entities?

YES: Contract is at arm's length and acceptable.

NO: Next step. Is the contract between two unaffiliated parties?

YES: Contract is at arm's length and acceptable.

NO: Parties are affiliated. Next step: Is the contract 'substantially similar' to one made between unaffiliated parties?

YES: Contract is at arm's length and acceptable.

NO: Next step. Triggers deeper review by the RCA to determine 'just and reasonable' by new standards, using all cost data, digging into the details - BUT, the RCA must also consider the consequences of failing to approve the contract at hand.

[1:43:47 PM](#)

REPRESENTATIVE TUCK related his understanding that this pipeline would not be considered a state agency.

MS. DELBRIDGE responded that AGDC would be a state entity, and noted that this applies to any pipeline that applies under this chapter.

REPRESENTATIVE TUCK surmised then that it does not have to be a state entity and that some other organization could be formed and follow the same standards of SSHB 4.

MS. DELBRIDGE replied yes, and pointed out that this regulatory chapter applies to any contract carrier, natural gas pipeline.

[1:44:34 PM](#)

MS. DELBRIDGE, returning to the presentation, moved on to slide 11, which read [original punctuation provided]:

Refresher: The Process

Once construction ends, the pipeline will know a lot more detail about costs

At that point, the pipeline has to go back to the RCA with that 'actual' information, and update the old 'recourse tariff' that was based on estimates (HB 4 amended)

The pipeline also has to update the recourse tariff in the future, whenever the pipeline plans an open season to expand the pipeline or to ask for customers for capacity if extra space becomes available (HB 4 amended)

[1:45:33 PM](#)

REPRESENTATIVE HAWKER, returning to Co-Chair Feige's earlier question regarding how SSHB 4 accommodates future shippers, specified that it is part of the legislation and is not part of Amendment 1, which is clarifying the original legislation. He then directed the committee's attention to page 43 of SSHB 4 that creates a new regulatory section, AS 42.08.300(d), which he said is essentially a mandatory consideration of expansion. However, due to the constrained economic environment caused by the state's contractual obligations under AGIA, proposed AS 42.08.300(d) also recognizes that no expansion of the pipeline can be considered if it is a competing natural gas pipeline under the terms of AGIA.

[1:47:25 PM](#)

REPRESENTATIVE TARR asked whether there is a threshold that would then require the open season to begin.

REPRESENTATIVE HAWKER said that it is stated in the aforementioned statute.

REPRESENTATIVE TARR opined that it does not make it clear what portion of the capacity would be left available to trigger the [open season].

MS. DELBRIDGE surmised the question is regarding how much interest does there have to be to warrant an open season for an

expansion. The language currently reads if one has "a commercially viable expansion opportunity." She explained that a pipeline knows what reasonable increments in which it can expand based on compression and engineering. She further explained that a company that wants to ship a very small volume of gas on the pipeline will likely not be enough on its own to warrant an expansion. However, several entities could trigger an expansion; it needs to be a commercially reasonable proposition.

[1:48:47 PM](#)

REPRESENTATIVE SEATON, regarding the RCA with actual information and the recourse tariff that includes the rate of return, recalled that there have been problems with other gaslines in the state such that funds provided by municipalities or other entities is rolled into the base and thus the rate of return is structured on funds that were not actually invested by the company. In this case, there could be a state contribution or other contributions of funds that were not borrowed and were not paying an interest. He then asked whether the legislation includes language to ensure that such an extra contribution of money by the state or another entity not be included in a rate of return calculation.

MS. DELBRIDGE answered that any contribution of cash or equity is something regulatory bodies expect one needs to earn a return on. For example, a private entity that is part-owner of the pipeline that provides a certain amount of equity in exchange for some debt to finance will expect and is entitled to an allowable rate of return on that. If the state provided funds directly to [the pipeline], the legislature would have to decide whether it was a direct subsidy on which there was no expectation of a return or whether there was the desire to restrict the use of the funds at that point in time to areas that would directly lower the rate without needing a rate of return on that.

[1:51:33 PM](#)

REPRESENTATIVE SEATON remarked that normally he would not think this is something that would need to be considered, except that there has been a problem with a gas entity that has received contributions in aid of construction from those to whom it is supplying gas. Although that value is not put forward by the gas company, it is rolled into [the gas company's] value on which it earns a rate of return. He expressed the need to

ensure there is not this glitch going forward. Representative Seaton further expressed the need to ensure that the pipeline company cannot include in the [rate of return] calculation anything that finances the pipeline such that the pipeline company has to pay a rate of return or it is their money that is provided, or if for some reason there is a contribution in the aid of construction that is not getting a rate of return.

MS. DELBRIDGE said she has noted Representative Seaton's concern.

[1:53:06 PM](#)

REPRESENTATIVE HAWKER, as a joint prime sponsor of SSHB 4, characterized this as a policy call for the legislature. On page 10 of SSHB 4, proposed AS 31.25.090(c) incorporates a policy call that state entities need to provide to the pipeline natural resources that are at the state's disposal and those may not be included in a rate base proceeding under AS 42. Representative Hawker stated he is not comfortable at this time with a policy call that automatically disqualifies the state from earning a rate of return on investment should the state wish to financially contribute to the pipeline project. He opined that it's an appropriation decision, an investment decision, the parameters of which should be debated on its merits at a future time rather than now. He reminded the committee that SSHB 4 is more than just a single pipeline project rather it provides the state with the resources necessary to participate in any pipeline project that becomes viable under any manner that's appropriate for the state. "It may very well be appropriate for the state to be earning a rate of return on an investment if we take a stake through AGDC or through financial investment by the state, in a pipeline that's largely owned or controlled by others as well," he said. Representative Hawker said that it is not an oversight but rather a policy decision that the committee must make.

REPRESENTATIVE SEATON clarified that he was not suggesting that the committee make a policy call that the state should or should not earn a rate of return. However, there is a situation in which funds paying for pipelines that is in aide of construction, which is required to be provided by other parties, is rolled in as if an investment by the pipeline. He reiterated the need to ensure there is not a "RCA glitch."

[1:56:57 PM](#)

MS. DELBRIDGE, returning to her presentation, began review of Amendment 1 itself as related on slide 12, which read [original punctuation provided]:

Amendment:

1. Significantly increases the RCA's role in resolving disputes, offering better accountability to potential shippers; the public; and interested parties
2. Ensures that all parties with shipping contracts and potential shippers have an opportunity to participate in disputes not directly involving them
3. Protects against the potential of 'runaway' rates of return, making the pipeline more accountable to customers and ratepayers
4. Amplifies the role of the recourse tariff by adding substantial RCA review, creating a more accountable, open and fair process for shippers, future shippers, related customers, and ratepayers

[1:58:18 PM](#)

REPRESENTATIVE JOHNSON inquired as to whether the process used by the RCA to set the recourse rate is standard. He further inquired as to whether there is an opportunity to set a recourse rate that might not be attractive enough or cause balking. Will the RCA, he asked, have enough information to set a reasonable [recourse rate] that works.

MS. DELBRIDGE confirmed that is a concern the sponsors have had as well. Under Amendment 1 the RCA would not be allowed to set a rate. The carrier, she explained, proposes the recourse tariff, including the rates, and the RCA reviews those in terms of whether the rate elements are within a reasonable range. The RCA also reviews the terms and conditions to ensure they are not unduly discriminatory. The RCA does not actually get to set those rates. She agreed with Representative Johnson that the carrier going into an open season will use estimated data. However, the data has to be proved up fairly well because it is the data and rates that are being taken to the commercial parties/interests. Therefore, the data will have to stand up to the scrutiny of those who promise 20 years of contracts in the pipeline.

[2:00:08 PM](#)

REPRESENTATIVE JOHNSON recalled that Ms. Delbridge had testified earlier that the RCA must set the recourse tariff prior to an

open season. He inquired as to whether it would be more accurate to say the RCA approves a rate brought by the pipeline.

MS. DELBRIDGE replied yes, the RCA needs to approve or disprove a rate and does not set [the recourse tariff].

REPRESENTATIVE JOHNSON remarked that he is more comfortable with that situation.

[2:00:38 PM](#)

REPRESENTATIVE TUCK inquired as to whether it would be a failed open season if an open season is not commercially viable for some and they are lower than the approved recourse tariff.

MS. DELBRIDGE surmised that Representative Tuck is inquiring as to what happens if the recourse tariff is not affordable to certain customers. The recourse tariff is the "sticker price," and thus if the pipeline wants customers, it will have to put forth a defensible recourse tariff that is a true representation of what it will cost to build and operate the pipeline with a reasonable rate of return on the investments. There is not a lot of room to reduce the recourse tariff without reducing the operating and construction costs. The expectation is that the pipeline has a recourse tariff, but potential shippers negotiate the rate at which they will sign a contract. Therefore, it is unlikely to be that "sticker price," she said.

[2:02:03 PM](#)

REPRESENTATIVE TUCK asked then whether it is unlikely that the pipeline would sign anything less than the recourse tariff.

MS. DELBRIDGE specified that it is likely that the pipeline would sign contracts with rates less than the recourse rates, although there is nothing that specifies that it has to be lower. There may be someone who may be willing to pay more for certain volumes or to get gas in at a place on the pipeline that is difficult for the carrier and is going to cost more. The aforementioned are negotiable.

[2:02:35 PM](#)

REPRESENTATIVE TUCK inquired as to whether there is a floor with the negotiated price.

MS. DELBRIDGE responded that there has to be a floor because the pipeline knows what it needs to charge in order to provide the service.

REPRESENTATIVE HAWKER reminded the committee that this is in the context of an initial open season for any pipeline. The open season, he stated, is about obtaining the long-term commitments from potential shippers that are taken to the financial marketplace, which thoroughly scrutinizes the project. The floor is clearly established by the markets should someone approach them with an unreasonable request for financing.

[2:04:14 PM](#)

REPRESENTATIVE TARR, referring to slide 11, pointed out that this is addressing the point at which the pipeline is built and actual construction costs and other costs are known. She then inquired as to what would happen in a situation in which construction was delayed for a natural disaster and ultimately the costs were substantially more expensive because of the delay.

MS. DELBRIDGE related that the force majeure provision, which most of these contracts include, would address a large disaster causing massive problems such that the deals are off. The contracts also tend to include an allocation of risk and responsibility for cost overruns in construction.

[2:05:50 PM](#)

REPRESENTATIVE TARR surmised then that prior to making adjustments to the recourse rate prior to an open season, the new customers would likely be under the new rate that may be higher than the original rate.

MS. DELBRIDGE specified that the revised recourse tariff prior to an open season would be the most current and accurate reflection of the real operating costs of the pipeline.

[2:07:05 PM](#)

MS. DELBRIDGE, continuing her presentation, turned attention to the dispute process as related on slide 13, which read [original punctuation provided]:

Amendment: Disputes

1. Contracts between shippers and a pipeline can include a dispute resolution method
2. If so, the method must be included in the pipeline's recourse tariff (terms and conditions of service)
3. A dispute resolution method must:
 - Notify all shippers of a dispute
 - Result in a process determined by an independent third party/panel
 - Allow existing shippers and creditworthy potential shippers to participate
 - Participants must meet the RCA's standards for intervention

[2:08:17 PM](#)

REPRESENTATIVE JOHNSON asked whether the participants that must meet the RCA's standards for intervention include external third parties to the contract.

MS. DELBRIDGE clarified that the participants have to be existing shippers with the contract or creditworthy potential shippers that have requested pipeline capacity. She reminded the committee that this is referring to contractual disputes.

[2:08:58 PM](#)

MS. DELBRIDGE, resuming her presentation, referred to slide 14, which read [original punctuation provided]:

Amendment: Dispute resolution, con't.

When can the RCA step in?

1. Disputes related to things that are not subject to contractual dispute resolution methods (catch-all)
2. Complaints brought by someone who doesn't have a contract with the pipeline
3. Complaints about the way an open season is conducted
4. Disputes that cannot otherwise be resolved that involve a public utility and would result in an immediate threat to the public health and safety

MS. DELBRIDGE noted one substantial caveat with disputes is that the RCA can intervene and address those disputes involving a public utility receiving gas when it would result in the immediate threat to the public health or welfare. There is no

desire to allow a contractual dispute to result in a power utility in Fairbanks, say, not getting the gas it needs.

[2:10:03 PM](#)

REPRESENTATIVE TUCK related his understanding that there does not have to be a dispute resolution when there is a dispute between two parties; they can use the courts to resolve the dispute.

MS. DELBRIDGE explained that the carrier has the option to provide by contract a dispute resolution method. If the carrier chooses to do so, it has to be included in all of the contracts. The carrier [through Amendment 1] is being given the option upfront. She noted that theoretically, the carrier could decide it wants the RCA or the courts to adjudicate everything, in which case it has to go into the recourse tariffs and the contracts. Therefore, it essentially becomes one of those terms and conditions of service that does not get to change between parties.

[2:11:54 PM](#)

REPRESENTATIVE TUCK requested that Ms. Delbridge make note of those sections as she continues her review.

MS. DELBRIDGE, per Representative Tuck's request, pointed out that the resolution process is located on page 1, line 13, through page 2, line 13, as well as on page 7, lines 16-28, of Amendment 1.

[2:13:05 PM](#)

REPRESENTATIVE JOHNSON asked whether dispute resolution will hold up a deal because of the various ways in which it can be handled.

MS. DELBRIDGE answered that generally speaking, everyone just wants to know that there is a method for disputes.

REPRESENTATIVE JOHNSON said he just wanted to ensure that provisions are not included in SSHB 4 that could potentially cause discomfort.

MS. DELBRIDGE related that although AGDC has helped craft this language and the language is acceptable to AGDC, she offered to raise that issue with AGDC.

REPRESENTATIVE JOHNSON noted that AGDC will not be shipping any gas.

[2:15:14 PM](#)

MS. DELBRIDGE, in response to Representative Tarr, related her understanding that she is referring to a situation in which the initial recourse tariff is approved and the precedent agreements become firm transportation agreements there is a revised recourse tariff. She further understood Representative Tarr to be asking whether [at the point of having the revised recourse tariff] a new dispute resolution can be negotiated. In response, Ms. Delbridge explained that the contracts are final for all the shippers, and thus everything stands. To materially change a term or condition of service that impacts other shippers on a pipeline that is to substantially amend a precedent agreement, one would need to go before the RCA and justify why it is necessary to change the terms and conditions being offered.

[2:16:50 PM](#)

REPRESENTATIVE OLSON inquired as to whether portions of the Trans-Alaska Pipeline System (TAPS) contract language has been included this.

MS. DELBRIDGE deferred to Tina Grovier, contract attorney to AGDC who has a specialty in regulatory matters, and thus helped with a number of the elements that are included in this section.

[2:18:50 PM](#)

TINA GROVIER, Contract Attorney, Alaska Gasline Development Corporation (AGDC); Shareholder, Birch Horton Bittner & Cherot, related her understanding that the [dispute resolution] language was not taken from TAPS or existing statutory language but rather was created to address a specific point.

[2:19:32 PM](#)

MS. DELBRIDGE, returning to her presentation, directed the committee's attention to slide 15, which read [original punctuation provided]:

Amendment: Excessive rates of return protection

Excessive rates of return are not anticipated, however:

Every three years the carrier has to submit a detailed cost study to the RCA

-Actual, current costs, within 90 days of the close of the pipeline's annual accounting period

-Report has to include a calculation of the three-year average actual return on equity

[2:20:33 PM](#)

MS. DELBRIDGE moved on to slide 16, which read [original punctuation provided]:

Amendment: Excessive rates of return protection, con't.

- The RCA must review the cost study and verify if the rate element 'actuals' are the same as the RCA previously approved [recourse tariff]
- If the elements do not match, the RCA requires a corrected report
- If there is more profit than allowed per the approved rate of return, the excess has to go into a segregated operating reserve fund
- The pipeline has to keep putting excess into the fund, until the fund hits 20% of the annual average operating costs of the pipeline
- Once the fund is full - 20% - the pipeline uses any remaining excess to reduce the firm service rates for all shippers in the next 3-year period
- The pipeline can draw on these reserves in three-year periods in the future when operating costs are high and result in a shortage of rate of return

[2:22:25 PM](#)

REPRESENTATIVE P. WILSON asked what occurs in a scenario in which the [shippers] make less.

MS. DELBRIDGE reminded the committee that the rate of return is not a guarantee rather it is an opportunity to earn it in terms of managing the business well and keeping operating costs under control. Therefore, if the pipeline did not receive the rate of

return it desires, then it likely needs to operate in a different way.

[2:23:27 PM](#)

REPRESENTATIVE TUCK, referring to the requirement for the pipeline to maintain a segregated operating reserve fund, related his understanding that [the pipeline] is not susceptible to the volatility of gas pricing as that will be based on how much the pipeline is able to efficiently run the operating portion of the transportation of the gas.

MS. DELBRIDGE indicated agreement that Alaska is so separate from other gas markets that it tends not to be dramatically impacted by them. She noted that the [pipeline's] operating gas will likely be for something for which they have contracted for a length of time.

[2:24:37 PM](#)

MS. DELBRIDGE, continuing the presentation, moved on to slide 17, which read [original punctuation provided]:

Amendment: Recourse tariff

Previously, required the pipeline to file a recourse tariff in advance of an open season; an open-to-all-comers sticker price

Now, RCA must use a pipeline's cost study to review and approve a recourse tariff

Heightened scrutiny

Standard of review: not unduly discriminatory (fair)

The recourse tariff must include the procedure for conducting open seasons

[2:25:45 PM](#)

MS. DELBRIDGE, referring to slide 18, explained that with Amendment 1, a recourse tariff would have to be filed before the first open season for a new pipeline; after construction, a revision will have to be filed; and a revision would also have to be filed in advance of any open season for new capacity or pipeline expansions. She reminded members that the recourse

tariff is the sticker price and these are the terms that anyone has the option of using to get in on the pipeline, regardless of whether they want to negotiate. With the recourse tariff everyone has the opportunity to get in on the pipeline on the same terms. She then noted that the recourse tariff is commonly used for short-term interruptible capacity, when available.

[2:26:44 PM](#)

REPRESENTATIVE TARR asked whether there would be an opportunity to negotiate above the recourse rate for short-term capacity of the pipeline.

MS. DELBRIDGE answered that such capacity is generally going to be short-term capacity and it is in the pipeline's interest to have someone using available capacity. A long-term contract would be firm uninterruptible service and one would likely negotiate below the recourse tariff.

[2:28:00 PM](#)

REPRESENTATIVE JOHNSON posed a scenario in which shipper A is committed to a specific amount of gas and shipper B has to shut down, and asked whether shipper A could take on [that capacity left by shipper B] at a recourse rate because [shipper A] has an opportunity overseas. Current shippers, he said, will take advantage of excess capacity. He inquired as to how it would work.

MS. DELBRIDGE responded that volume of an existing contract would not guarantee that space because the terms have already been negotiated and it is not a fair opportunity to automatically grant through negotiations any excess space to any one person. Therefore, the contract will be for a set volume. In the existing regulatory framework when there is excess capacity, the pipeline would need to notice it so that those interested in shipping it can do so. She noted that Lower 48 pipelines commonly use an electronic bulletin board that posts available capacity and its details.

[2:29:27 PM](#)

REPRESENTATIVE JOHNSON clarified his scenario as one in which shipper A has a rate below the recourse rate, for a certain volume. In such a situation in which a certain volume becomes available, he asked whether any additional gas shipped to fill the excess capacity would fall under the recourse rate or the

contract rate [of shipper A]. He asked if Ms. Delbridge is saying that [shipper A] is not guaranteed a rate, regardless of volume.

REPRESENTATIVE HAWKER stated that the discussion is moving into the area of how pipelines operate in general and the interplay of contract law. Ultimately, a pipeline is an assemblage of contracts between commercial parties who then go forward, build a pipeline, and move gas through it. He emphasized that one must remember that these long-term anchor contracts are "take or pay" contracts, such that if a shipper does not meet its shipping commitment it still pays the pipeline as if it shipped all the gas it had to ship. He explained that how the lack of gas in the pipe or ullage is filled and managed is part of the terms and conditions in the precedent agreements with all the parties; the commercial agreements that underpin the operations which are determined between the various parties to the pipeline.

[2:31:47 PM](#)

REPRESENTATIVE JOHNSON remarked that he was looking at an opportunity for profit. He clarified that he was looking at a situation in which a shipper on the pipeline does not fulfill his shipping commitment but will pay the pipeline per the shipping commitment. In such a situation would someone wanting to use that available capacity do so under the recourse rate or their current rate.

REPRESENTATIVE HAWKER reiterated that the ullage management would be in the terms and conditions of precedent agreements that ultimately become firm transportation agreements.

[2:32:30 PM](#)

REPRESENTATIVE JOHNSON asked whether under RCA rules there is the capability for one shipper to say he will fill in for another shipper in order to avoid the process.

REPRESENTATIVE HAWKER remarked that Representative Johnson has posed a good question. If a shipper finds itself unable to meet its obligations and has to pay for them, the shipper is likely to attempt to acquire the necessary gas in order to fulfill shipping commitments. However, the gas would be acquired under a separate contractual agreement outside of selling pipeline capacity. Representative Hawker reminded members that what an

individual shipper wants can be negotiated at the front end of the contractual process.

[2:33:54 PM](#)

REPRESENTATIVE JOHNSON commented that some of these problems won't be foreseen, and inquired as to whether RCA approval would be required. In response to Representative Hawker, Representative Johnson agreed that he would like to sell the space twice.

REPRESENTATIVE HAWKER characterized these issues, in the contracting and business world, as the known unknowns, which he said are common. He offered to provide the committee with more information regarding how pipelines operate.

[2:35:06 PM](#)

REPRESENTATIVE JOHNSON related that he would like to keep the RCA out of it and ensure that nothing in Amendment 1 forces RCA involvement in the negotiations of private parties.

MS. DELBRIDGE stated that there is nothing that lets the RCA have involvement in the negotiations that private parties conduct.

[2:36:03 PM](#)

MS. DELBRIDGE, resuming her review of Amendment 1, paraphrased from slides 19-21, which read [original punctuation provided]:

Amendment: Recourse tariff, con't.

Review process:

RCA must review and approve initial recourse tariff, and any substantial amendments

1. Terms and conditions may not be 'unduly discriminatory'
2. Rates need to be supported by an accompanying cost study

RCA looks at rates and, weighing the risks of the particular pipeline, looks at:

1. Is the proposed rate of return within a reasonable range per recent FERC decisions?

2. Does the cost model incorporate a reasonable depreciation method and economic life?
3. Does the cost model use a reasonable capital structure?

RCA can deny recourse tariff; RCA must rule on a recourse tariff within 30 days

What is "reasonable?"

These elements are reasonable if they are "commonly accepted or used by the commission or the Federal Energy Regulatory Commission"

- Same review process, standards, apply for recourse tariff revisions in the future
- Rate elements previously ruled 'reasonable' now have to match what the RCA initially allowed
- RCA shall deny recourse tariff revisions if terms/conditions are unduly discriminatory
- RCA shall deny recourse tariffs if they do not include the previously approved rate element values, unless the pipeline can prove the new element is just and reasonable
- For recourse tariff revisions, the RCA has 90 days to act

[2:38:20 PM](#)

REPRESENTATIVE JOHNSON inquired as to what happens [to the recourse tariff revisions] at the end of the 90 days if RCA does not act.

REPRESENTATIVE HAWKER interjected that he has another amendment that will address some of these concerns.

MS. DELBRIDGE directed attention to subsection (c) on page 5 of Amendment 1, which read:

(c) Unless a recourse tariff is denied because it includes a proposed term or condition of service that is unduly discriminatory or includes a proposed rate element that does not comply with (b) of this section, the commission shall approve the initial recourse tariff. If the commission does not issue its ruling

within 30 days, the initial recourse tariff filing shall be considered approved.

[2:39:47 PM](#)

CO-CHAIR FEIGE inquired as to why there is such a difference in the timeframe for the RCA to act as it has 90 days to act on the recourse tariff revision versus 30 days to act on the original decision.

MS. DELBRIDGE reminded the committee that on the initial recourse tariff estimates are being used while the future/revisions of the recourse tariff use actuals. Therefore, there is less of a need to delve too deeply into the estimates whereas when the actuals are available there is more to explore. In response to Representative Tuck, Ms. Delbridge confirmed that regardless of the reason if the RCA does not act within 30 days [on the initial recourse tariff], then it is automatically approved.

[2:41:02 PM](#)

MS. DELBRIDGE, returning to the presentation, directed attention to slide 22, which read [original punctuation provided]:

Amendment: Overall

1. Because the amendment creates a significant review and approval process for the recourse tariff, the recourse tariff becomes more important
2. So, the amendment has some pieces where the recourse tariff plays a greater role; for example, the tariff must include procedures for holding an open season, and the recourse tariff will be the 'official' record of the pipeline's offering (rates, terms/conditions)
3. Also, some housekeeping: giving the RCA greater latitude (similar to other regulatory chapters) to investigate; to access pipeline accounts, financials and records;
4. And, as we've directed the RCA to clearly 'do' some things in relation to the recourse tariff, we go back into the 'General Powers and Duties' to be clear on the boundaries of the RCA's powers

2:42:15 PM

MS. DELBRIDGE pointed out that this can be found on page 2, line 17, of Amendment 1. While the RCA was told that a carrier has to make a recourse tariff filing at certain points, the language also says that the RCA cannot otherwise make them do such a filing. Therefore, the RCA cannot go beyond what has been specified and try to make other things happen. Ms. Delbridge said that is a review of Amendment 1 in a conceptual light and offered to answer any questions.

2:43:21 PM

REPRESENTATIVE TUCK inquired as to who approves a contract as referred to in Amendment 1 on page 2, lines 25-26, which read:

(4) conduct further review or investigation of a contract that is approved, considered approved, or filed under this chapter."

MS. DELBRIDGE said that is the RCA's general powers and duties piece, and thus it would be the RCA that had to have approved or would have been "considered approved" if it was a situation in which the RCA failed to act. In further response to Representative Tuck, Ms. Delbridge clarified that this is the general powers and duties and it tells the RCA that, except for the things that the chapter tells the RCA it can approve, it cannot delve back into those things that it has already approved.

2:45:00 PM

REPRESENTATIVE TARR, regarding ullage and Representative Johnson's hypothetical scenario, asked whether when a contract including a provision [that allowed shipper A to help shipper B meet its ullage] would mean that there would not be an open season because the capacity would be met.

MS. DELBRIDGE explained that individual shippers will have individual contracts with the carrier. Therefore, shipper A giving to shipper B would not necessarily be part of the relationship between the carrier and either of the shippers, unless the two shippers have an agreement otherwise. [Such an agreement] is not part of the pipeline transport but rather is part of the production and sale of gas prior to entering the pipeline.

[2:46:13 PM](#)

REPRESENTATIVE TARR surmised then that it would not be in the original terms and conditions of the original recourse tariff as to how capacity issues are met should there be a situation in which capacity is not met by one of the contracts.

MS. DELBRIDGE clarified, with regard to ullage, that it is in everyone's interest to maintain certain volumes. Therefore, the carrier is going to have terms as to how they will handle that. However, one company getting more gas to another is something that happens prior to it even going into the pipe. Furthermore, because it is not a contract with the pipe for shipment, it would not be relevant to those.

[2:47:22 PM](#)

REPRESENTATIVE TUCK noted his objection to Amendment 1. He then directed attention to the change on page 3 of Amendment 1 that would on page 42, line 28, delete "proposed" and insert "approved". He pointed out that line 28 includes the term "proposed" twice, and therefore he inquired as to the intent of that change.

MS. DELBRIDGE explained that the precedent agreement will not have been made yet, and thus one will use a proposed form whereas the recourse tariff needs to be approved prior to the open season during which the precedent agreements would be made. Therefore, page 42, line 28, of SSHB 4, would be amended to read: "contain the approved recourse tariff, the proposed form of the precedent agreement,".

REPRESENTATIVE TUCK suggested then that the change to page 42, line 28, in Amendment 1 should specify that the "proposed" being deleted is following the language "contain the".

MS. DELBRIDGE concurred that only the first "proposed" on page 42, line 28, of SSHB 4 is to be replaced with "approved".

REPRESENTATIVE HAWKER interjected that having this clarification on the record should suffice for Legislative Legal Services when it incorporates Amendment 1 into SSHB 4.

[2:50:16 PM](#)

REPRESENTATIVE TUCK then directed attention to the following change proposed in Amendment 1:

Page 43, line 27, following "basis":

Insert "and may be levelized over the depreciation life of the pipeline"

REPRESENTATIVE TUCK recalled discussion regarding having a three-year average in determining the 20 percent that can be held in reserve, anything above that can be returned. He related his understanding that [the language being inserted on page 43, line 27] applies to that. He inquired as to what the language actually means.

[2:51:57 PM](#)

MS. DELBRIDGE began by stating that this provides the carrier the option to levelize rates over the depreciation life of the pipeline when the carrier determines its capital structure. For further response, she deferred to AGDC staff.

[2:52:43 PM](#)

DARYL KLEPPIN, Manager, Commercial Team, Alaska Gasline Development Corporation, explained that the language allows for levelized tariffs in the recourse tariff, which is determined prior to the open season and after the actual costs are known. Those levelized costs are primarily around the capital structure that is how much equity and debt one has. There will always be a slight variation with the operating costs because those aren't precisely known until the pipeline is operating. Therefore, the costs aren't completely flat over the course of the 30 years but mostly flat with small variations around operating costs. He echoed Ms. Delbridge's comment that the aforementioned is an option not a requirement for the carrier.

[2:53:39 PM](#)

REPRESENTATIVE TARR inquired as to whether 30 years is the standard time period used as the depreciation life of the pipeline.

MR. KLEPPIN answered that for its project and update, that's the term AGDC has used for the pipeline for depreciation. He acknowledged that the pipeline may have an economic life that goes beyond 30 years.

[2:54:16 PM](#)

REPRESENTATIVE TUCK directed attention to page 4, lines 8-13, of Amendment 1 and inquired as to why the language "Rules, regulations, terms, and conditions not included in the tariff of an in-state natural gas pipeline carrier shall be included in the contract with each shipper."

MS. DELBRIDGE explained that if everything goes into the recourse tariff, then there should be no additional terms and conditions left to be negotiated.

[2:56:56 PM](#)

REPRESENTATIVE TUCK returned to the issue of what's included in the dispute resolution.

MS. DELBRIDGE pointed out that page 7 of Amendment 1 discusses what a contractual dispute mechanism looks like.

[2:58:06 PM](#)

REPRESENTATIVE TUCK surmised that the language on page 7, lines 24-28, of Amendment 1 permits the participation of existing shippers and creditworthy potential shippers that make a good faith request, but does not require them to go into dispute resolution. He recalled that a pipeline company that has contracts that include dispute resolutions requires that all the [shippers] have the same dispute resolution in their contracts. However, the aforementioned new language being inserted by Amendment 1 to page 47, lines 30-31, of SSHB 4 would merely permit the participation of existing shippers.

MS. DELBRIDGE clarified that the language permits the participation of existing shippers in a dispute someone has with the pipeline. Therefore, at least they have an opportunity to step in and defend their interests in the pipeline in relation to the dispute.

REPRESENTATIVE HAWKER interjected that this is a "context of the whole" issue. Therefore, one must consider the language in terms of the subsection under which it falls, which read: "(b) The recourse tariff or a contract filed by an in-state natural gas pipeline carrier may include a dispute resolution procedure. A dispute resolution procedure shall". Therefore, a recourse tariff or a contract may include a dispute resolution. If there is a dispute resolution, it must include the items specified in

numbers (1)-(3). He pointed out that although number (3) uses permissive language, it falls under subsection (b) that requires a dispute resolution procedure to include numbers (1)-(3) if the recourse tariff includes dispute resolution.

3:02:04 PM

MS. DELBRIDGE, in response to Representative Tuck, confirmed that the dispute resolution process would have to permit/allow the participation. The participation of other parties is not required, but those who might be affected by a dispute with one contracting party have to be allowed to represent their interests in that.

REPRESENTATIVE TUCK surmised then that the pipeline companies are required to offer [a dispute resolution process], but not every contract is required to have it. Therefore, if one contract has [a dispute resolution procedure], then they are required to offer it but it does not necessarily mean they have to have it in each contract.

MS. DELBRIDGE pointed out that there is the dispute resolution process that is laid out versus the management of that process. Therefore, the process is there for everyone. There can be a requirement that people sign a contract that has dispute resolution [procedures], but one cannot require someone's involvement in any dispute that arises under that dispute resolution process. For example, if two parties have a dispute and another interested party in the pipeline fears his/her interest may be impacted by how the two parties in the dispute resolve the dispute, the process in contract for resolving disputes must allow that other interested party to have the opportunity to participate.

3:04:08 PM

REPRESENTATIVE SEATON directed attention to the proposed change on page 3, lines 19-20, of Amendment 1, and pointed out that were it to be adopted the language in SSHB 4 on page 43, lines 30-31, would read, "An in-state natural gas pipeline carrier may contract to provide firm transportation service on terms and conditions and for rates different than those in the recourse tariff." Although he understood that the recourse tariff would have the terms and conditions that were offered to all, this new language would seem to allow contracts with different terms and conditions to be offered than those in the recourse tariff.

MR. KLEPPIN commented that typically when people discuss "terms" they refer to "terms and conditions". Therefore, the language "and conditions" was added for consistency. Since there will be slightly different terms and conditions, tariff rates, between different classes of shippers, fundamentally the key terms and conditions will be the same in all contracts. There are variations when one does not "unduly discriminate." He noted that there would be differences in off-take points and etcetera, which would be differences in terms and conditions but would not unduly discriminate.

[3:07:31 PM](#)

REPRESENTATIVE SEATON related his understanding that the tariff was going to have a schedule of rates that would take into account those different classifications. He related his further understanding that those terms and conditions would be there for everyone. However, the proposed change on page 3, lines 19-20, of Amendment 1 seems to say maybe that is not the case, which is of concern.

MS. DELBRIDGE explained that the terms and conditions do have to be reviewed by the RCA as not unduly discriminatory. Therefore, Mr. Kleppin is correct that a different class of service may have slightly different rules. However, the point is that under the recourse tariff one sees what different classes are going to have. Furthermore, in order to not be unduly discriminatory one would have to have a reason and explain why there would be something different given to one group than another. For example, one could have customers with different seasonal demands than most of the other customers.

REPRESENTATIVE HAWKER interjected that the addition of "and conditions" on page 43, line 31, following "basis" is technical.

[3:10:02 PM](#)

REPRESENTATIVE SEATON clarified that he is not concerned with the rates because he understands they are going to be negotiated. In subsection (b) on page 43, lines 25-29, of SSHB 4, the firm transportation service for the recourse rates is being set. However, subsection (c) then says that firm transportation will be offered on terms and conditions at variants to the recourse rate schedule that is to apply to everyone.

MS. DELBRIDGE said that Representative Seaton is correct and perhaps the language "conditions" was inserted in a place where language other than "terms" should have been used. There are terms and conditions of pipeline operations that should not change, such as quality of gas standards and accounting procedures, and then there are rates that can vary across shippers. Mr. Kleppin spoke to other factors that influence the rate, such as volumes and where the gas comes in and goes out. There are also terms that might be part of a negotiated contract that are not part of this "terms and conditions", such as when a shipper needs transportation service. Therefore, she questioned whether this proposed change to page 43, line 31, of SSHB 4 is overreaching and the change should have instead been to change the word "terms".

REPRESENTATIVE SEATON concurred that is what he was addressing.

[3:13:30 PM](#)

REPRESENTATIVE TARR related her understanding that there are 180 days to approve the contract carrier agreement, 30 days for the initial recourse tariff filing, and 90 days for the recourse tariff upon completion of construction. She explained that she's reviewing the timeline in terms of the workload for the RCA.

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MS. DELBRIDGE opined that those timelines are correct, but noted that they will be spaced out over time rather than all at once. The RCA will not have to review all those things at once. The recourse tariff will be present before a carrier even has an open season. After an open season, there is a window to approve the outcome of that, the [participating area] PA. Later, when a revision is filed, the [RCA] will have 90 days to review.

[3:14:33 PM](#)

The committee took an at-ease from 3:14 p.m. to 3:38 p.m.

[3:38:50 PM](#)

REPRESENTATIVE TUCK moved that the committee adopt Conceptual Amendment 1 to Amendment 1, such that the proposed change listed on page 3, line 2, of Amendment 1 would read:

Page 42, line 28, following "contained the"

REPRESENTATIVE TUCK explained that adoption of the aforementioned change to SSHB 4 would result in the language on page 42, lines 27-28, to read: "The notice shall contain the approved recourse tariff, the proposed form of the precedent agreement" Conceptual Amendment 1 to Amendment 1 is necessary, he explained, in order to delineate which of the two "proposed" words on line 28 of SSHB 4 is to be deleted and replaced with "approved".

There being no objection, Conceptual Amendment 1 to Amendment 1 was adopted.

[3:42:09 PM](#)

CO-CHAIR FEIGE noted now the committee has before it the motion to adopt Amendment 1, as amended. He further noted that Representative Tarr had objected, but was not present at this time. He then inquired as to whether there was further objection. There being no further objection, Amendment 1, as amended, was adopted.

[3:42:34 PM](#)

REPRESENTATIVE TUCK commented that [the adoption of Amendment 1, as amended] is a big improvement from the original legislation and thanked the sponsor for the clarifications and improvements, although the comprehensive nature of it may have been better served as separate legislation. He said he was glad for the earlier discussion, which educated him regarding that SSHB 4 applies to all pipelines.

[3:43:16 PM](#)

CO-CHAIR FEIGE announced that SSHB 4 would be held over and that the committee would address the remainder of the amendments to it on March 4, 2013.

Amendment 1 to SSHB 4

Page 40, following line 21:

Insert a new paragraph to read:

"(3) to the extent necessary to perform the duties of the commission under this chapter, have access to, and may designate its employees, agents, or consultants to inspect and examine, the accounts, financial and property records, books, maps,

inventories, appraisals, valuations, and related reports kept by an in-state natural gas pipeline carrier, or kept for an in-state natural gas pipeline carrier by others, that directly affect the interests of the state and directly relate to in-state natural gas pipelines located in the state during normal business hours;"

Renumber the following paragraph accordingly.

Page 40, line 28, through page 41, line 10:

Delete all material and insert:

"(1) review and approve recourse tariffs filed by an in-state natural gas pipeline carrier under this chapter;

(2) review and approve contracts;

(3) investigate on its own motion or after receiving a complaint, a dispute

(A) related to rules, regulations, services, practices, and facilities that are not subject to the dispute resolution provisions in an in-state natural gas pipeline carrier's contracts or recourse tariff;

(B) presented by a complainant that does not have a contract with the in-state natural gas pipeline carrier;

(C) related to the conduct of an in-state natural gas pipeline carrier's open season under AS 42.08.300; or

(D) related to an unreasonable diminution in quantity or quality in the provision of service to a public utility that

(i) is a violation of the in-state natural gas pipeline carrier's tariff or contract with the public utility;

(ii) has not been resolved by the in-state natural gas pipeline carrier; and

(iii) will result in immediate injury, loss, or damage to the peace, health, safety, or general welfare of the public as clearly demonstrated by specific facts shown by affidavit or verified complaint;"

Renumber the following paragraphs accordingly.

Page 41, lines 25 - 29:

Delete all material and insert:

"(c) Except as provided in this chapter, the commission may not

(1) require rates, rate design, or tariff rates or regulations;

(2) require an in-state natural gas pipeline carrier to make a recourse tariff filing;

(3) order a modification of a contract that is approved, considered approved, or filed under this chapter; or

(4) conduct further review or investigation of a contract that is approved, considered approved, or filed under this chapter."

Page 42, line 26, following "shall":

Insert "include in its approved recourse tariff the procedures for conducting open seasons for uncommitted firm transportation service and for expansion. At a minimum, the in-state natural gas pipeline carrier shall"

Page 42, line 28:

Delete "proposed"

Insert "approved"

Page 43, following line 21:

Insert a new subsection to read:

"(f) An in-state natural gas pipeline carrier shall file revised recourse rates before conducting an open season under (c) and (d) of this section unless the in-state natural gas pipeline carrier filed revised recourse rates during the immediately preceding two-year period."

Page 43, line 23, following "agreement":

Insert ", a recourse tariff,"

Page 43, line 27, following "basis":

Insert "and may be levelized over the depreciation life of the pipeline"

Page 43, line 31, following "terms":

Insert "and conditions"

Page 44, line 7, following "service":

Insert "and any substantial amendments"

Page 44, line 12, following "chapter.":

Insert "In this subsection, "substantial amendment" means an amendment that materially changes a rate or term and condition of service."

Page 45, lines 9 - 11:

Delete ", the natural gas pipeline carrier shall provide to the commission a cost study that shall be used solely for the purpose of this subsection"

Insert "under (c)(2) of this section, the commission may consider the in-state natural gas pipeline carrier's approved recourse tariff, including the cost data underlying that tariff"

Page 47, line 4:

Delete "all recourse tariffs"

Insert "a complete recourse tariff containing rates"

Page 47, lines 8 - 13:

Delete "The in-state natural gas pipeline carrier shall maintain copies on file at its principal business office and at places designated by the commission and make copies available to, and subject to inspection by, the general public on demand. Rules, regulations, terms, and conditions not included in the tariff of an in-state natural gas pipeline carrier shall be included in the contract with each shipper."

Page 47, lines 14 - 20:

Delete all material and insert:

"(b) The terms and conditions under which an in-state natural gas pipeline carrier offers its services and facilities to the public shall be governed strictly by the provisions of its currently effective recourse tariff as supplemented and modified by contracts that have been approved by the commission. A legally filed and effective recourse tariff rate, charge, rule, regulation, or condition of service may not be changed except as provided in this chapter. The in-state natural gas pipeline carrier shall maintain copies of its recourse tariff on file at its principal business office and at places designated by the commission and make the copies available to and subject to inspection by the general public on demand.

(c) A change in a recourse tariff rate, charge, rule, regulation, or condition of service is not effective until filed under (a) of this section. If

more than one recourse tariff rate or charge may reasonably be applied for billing purposes, the recourse tariff rate or charge most advantageous to the shipper shall be used.

(d) The commission may reject the filing of all or part of a recourse tariff that is not consistent with this chapter. A recourse tariff rate or provision so rejected is void.

(e) Initial and revised recourse tariffs shall be filed in the manner provided in AS 42.08.350.

Sec. 42.08.350. Initial or revised rates. (a) An in-state natural gas pipeline carrier may not establish or place in effect an initial recourse tariff containing rates, charges, rules, regulations, conditions of service, or practices without providing notice to the commission and to the public at least 30 days before establishing or placing in effect the initial recourse tariff. Notice shall be filed with the commission before an open season and by making the recourse tariff provisions available for public inspection. The notice shall plainly indicate the time when the recourse tariff will go into effect and include a supporting cost model. The commission may prescribe additional requirements for the notice and the form in which the notice must be provided. The commission, for good cause shown, may allow initial recourse tariffs to take effect on less than 30 days' notice under conditions the commission prescribes by order. Submission of a precedent agreement or an associated contract is not subject to this section.

(b) The commission shall review the proposed initial recourse tariff and verify that the proposed terms and conditions of service are not unduly discriminatory. The commission also shall review the supporting cost model provided with an initial recourse tariff filing and verify, taking into consideration the expected risks, that the proposed rate of return on equity is within the range of permissible rates of return as determined by the Federal Energy Regulatory Commission in recent decisions related to the construction of natural gas pipelines, that the cost model incorporates a reasonable depreciation methodology and economic life, and that the cost model uses a reasonable capital structure. A proposed depreciation methodology, economic life, or capital structure is reasonable if

it is commonly accepted or used by the commission or the Federal Energy Regulatory Commission.

(c) Unless a recourse tariff is denied because it includes a proposed term or condition of service that is unduly discriminatory or includes a proposed rate element that does not comply with (b) of this section, the commission shall approve the initial recourse tariff. If the commission does not issue its ruling within 30 days, the initial recourse tariff filing shall be considered approved.

(d) An in-state natural gas pipeline carrier may not establish or place in effect a revised rate, charge, rule, regulation, condition of service, or practice contained in a recourse tariff before providing notice to the commission and to the public at least 90 days before taking the action. After construction of the pipeline, and any time thereafter that a carrier files for a revised recourse rate, the carrier shall file a supporting cost study. Notice shall be given by filing with the commission and keeping open for public inspection the revised recourse tariff provisions, which shall plainly indicate the changes to be made in the schedules then in force and the time when the changes will go into effect. The commission may prescribe additional means of giving notice. The commission, for good cause shown, may allow changes to take effect on shorter notice under conditions the commission prescribes by order. Submission of a precedent agreement or an associated contract is not subject to this subsection.

(e) The commission shall review the proposed revised recourse tariff and verify that a new or revised term or condition of service is not unduly discriminatory. The commission shall review the cost study supporting a revised recourse tariff filing and verify that, for the rate elements specified in (b) of this section, the carrier is using the same elements that were last approved by the commission. A proposed recourse tariff with a new or revised term or condition of service that is unduly discriminatory shall be denied. The commission also shall deny a revised tariff rate that does not use the previously approved value of the specified rate element, unless the carrier proves that the new value is just and reasonable. If the commission does not issue its ruling within 90 days, the revised recourse tariff filing shall be considered approved.

(f) A person initiating a change in an existing recourse tariff bears the burden of proving the reasonableness of the change. The in-state natural gas pipeline carrier bears the burden of proving the recourse tariff terms and conditions are not unduly discriminatory.

(g) An in-state natural gas pipeline carrier shall provide for separate rates for one or more classes of firm transportation service and for interruptible transportation service in a recourse tariff filed with the commission under (a) of this section. An in-state natural gas pipeline carrier may impose a reservation fee or similar charge for reservation of capacity in an in-state natural gas pipeline as a condition of providing firm transportation service, but may not impose a reservation fee or similar charge for reservation of capacity in an in-state natural gas pipeline for interruptible transportation service."

Page 47, line 21:

Delete "**Sec. 42.08.350**"

Insert "**Sec. 42.08.360**"

Page 47, line 25:

Delete "**Sec. 42.08.360**"

Insert "**Sec. 42.08.370**"

Page 47, lines 30 - 31:

Delete all material and insert:

"(b) The recourse tariff or a contract filed by an in-state natural gas pipeline carrier may include a dispute resolution procedure. A dispute resolution procedure shall

(1) provide that notice of a dispute be given to all shippers;

(2) culminate in a process that is determined by an independent third party or panel; and

(3) permit the participation of existing shippers and creditworthy potential shippers that have previously made good faith requests for firm transportation service; a participant must satisfy the commission's standard for intervention in an adjudicatory proceeding and demonstrate that the participant has a property, financial, or other significant interest in the dispute."

Page 48, line 1:
Delete "**Sec. 42.08.370**"
Insert "**Sec. 42.08.380**"

Page 49, line 6:
Delete "**Sec. 42.08.380**"
Insert "**Sec. 42.08.390**"

Page 50, following line 12:
Insert new material to read:
"Article 5. Accounts, Records, and Reports.
Sec. 42.08.450. Accounts; records; triennial reports. (a) To the extent necessary for the commission to perform the duties of the commission under this chapter,
(1) the commission may by regulation require an in-state natural gas pipeline carrier or affiliated interest engaged in activities relating to pipelines to establish and maintain as part of its system of accounts continuing property records showing, as to property that is actually being used in pipeline activity in this state, the year of placement in service, original cost, and current location, and, as to a pipeline system, accounts and records in a manner showing, on a current basis, the original cost of the system in the state and related reserves for depreciation;
(2) the in-state natural gas pipeline carrier shall
(A) keep its accounts for its pipeline facilities located in this state separate from any accounts relating to any other business, including another pipeline facilities business or a subsidiary business, in which it engages, directly or indirectly; except as the commission provides, property, expense, or revenue used in or derived from the other business may not be considered in establishing the rates and charges of the facility;
(B) keep books, accounts, papers, and records required by this chapter or by regulations adopted by the commission under this chapter in an office in this state and may not remove them from the state except upon written authority by the commission; and
(C) file a report with the commission that contains an updated cost study and a calculation of the three-year average actual return on equity; the

report shall be filed every three years after the pipeline begins operations, within 90 days after the close of the annual accounting period for the in-state natural gas pipeline carrier, or within additional time granted by the commission upon a showing of good cause.

(b) The commission shall review the cost study described in (a)(2)(C) of this section and verify that, for the rate elements specified in AS 42.08.350(b), the carrier is using the same elements that were last approved by the commission. If the carrier does not use the correct rate elements in its triennial report, the commission may require the carrier to recalculate and file a corrected report. If, on the date the report described in (a)(2)(C) of this section is delivered, the report reflects that the three-year average actual return on equity exceeds the approved rate of return, the carrier shall, not later than 90 days after the date the report is delivered, deposit an amount equal to the excess in a segregated operating reserve fund. The carrier shall continue to deposit the excess described in this subsection at the times described in this subsection until the amount in the operating reserve fund is equal to 20 percent of the most recent three-year average of the carrier's annual operating costs. The carrier may use money in the operating reserve fund to offset any shortage in the recovery of operating costs set out in another triennial report. If a deposit will cause the operating reserve fund to exceed 20 percent of the most recent three-year average of the carrier's annual operating costs, the amount exceeding 20 percent must be used to reduce, on a volumetric basis, the firm transportation service rates for all shippers for the next three-year period."

Page 50, line 13:

Delete "**Article 5**"
Insert "**Article 6**"

Page 50, line 30:

Delete "AS 42.08.220(b)(2)"
Insert "AS 42.08.220(b)(3)"

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ADJOURNMENT

There being no further business before the committee, the House Resources Standing Committee meeting was adjourned at 3:44 p.m.