

SENATE FINANCE COMMITTEE
THIRD SPECIAL SESSION
October 29, 2015
9:08 a.m.

[9:08:13 AM](#)

CALL TO ORDER

Co-Chair MacKinnon called the Senate Finance Committee meeting to order at 9:08 a.m.

MEMBERS PRESENT

Senator Anna MacKinnon, Co-Chair
Senator Peter Micciche, Vice-Chair
Senator Click Bishop
Senator Mike Dunleavy
Senator Lyman Hoffman
Senator Donny Olson

MEMBERS ABSENT

Senator Pete Kelly, Co-Chair

ALSO PRESENT

Vincent Lee, Director, Major Projects Development, TransCanada; Senator Mia Costello; Senator Gary Stevens; Senator Cathy Giessel; Senator Kevin Meyer; Senator John Coghill; Representative Matt Claman; Representative Liz Vasquez; Representative Lora Reinbold.

SUMMARY

SB 3001 APPROP: LNG PROJECT & FUND/AGDC/SUPP

#sb3001

SENATE BILL NO. 3001

"An Act making supplemental appropriations; making appropriations to capitalize funds; making appropriations to the general fund from the budget reserve fund (art. IX, sec. 17, Constitution of the State of Alaska) in accordance with sec. 12(c), Ch. 1, SSSLA 2015; and providing for an effective date."

[9:08:30 AM](#)

Co-Chair MacKinnon made opening comments.

^PRESENTATION: TRANSCANADA

[9:09:43 AM](#)

VINCENT LEE, DIRECTOR, MAJOR PROJECTS DEVELOPMENT, TRANSCANADA, explained that he served as TransCanada's (TC) commercial lead for the AKLNG project and represented TC on the project's management committee. He related that in late 2013 a Memorandum of Understanding (MOU) was developed between TC and the state that established the material terms for TransCanada holding equity participation interest in AKLNG and to provide gas treatment and transportation services for the state's share of gas. He furthered that subsequent to the passage of SB 138 [GAS PIPELINE; AGDC; OIL & GAS PROD. TAX - Enacted 09/19/2014] TransCanada entered into a Precedent Agreement (PA) with the state in June, 2014 that formalized the material terms that were agreed upon in the MOU. The PA allowed either party to terminate the agreement. He relayed the governor's current recommendation to terminate the agreement with TransCanada. He declared that TC agreed with the recommendation, asserting that it was "no longer commercially reasonable... to remain in the AKLNG project." He informed the committee that TC was working diligently with the administration to formulate an exit plan that did not interfere with the project's momentum. TransCanada had been involved in advancing a natural gas pipeline in Alaska for over four decades and the decision to exit the AKLNG project was difficult. He held that it suited all of the parties' interest to terminate the agreement. He wished the state and all of the project partners great success.

Senator Dunleavy referred to Mr. Lee's comments regarding the project as no longer commercially viable for TransCanada and asked for an explanation. Mr. Lee answered that TC had to manage the risk with any project; the administration's desire to terminate the agreement created a misalignment that made it difficult for TC to positively move forward with the project.

Senator Dunleavy requested clarification that Mr. Lee was not suggesting that the project itself was not commercially viable. Mr. Lee affirmed that the project "had a lot of

potential." He trusted that TransCanada's orderly exit would not negatively impact the project's progress.

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Senator Hoffman further clarified that Mr. Lee stated that "it was no longer reasonable to continue to participate" in AKLNG. He referred to the administration's premise that a TransCanada buyout would be more economically viable and offer better financial terms for the state than continuing in the partnership. He asked whether any "financing differentials" between the amounts of the state's financing for midstream operations opposed to TransCanada's financing options factored into TransCanada's decision to exit the project. Mr. Lee answered in the negative, and explained that he was not privy to the administration's project financing analysis, and felt he could not offer comments. Senator Hoffman considered that TC had been an excellent partner and furthered the project more under the current administration than "under the last five governors" due to the credibility and hard work performed by TransCanada.

Co-Chair MacKinnon asked Mr. Lee to speak to the auditing terms and elucidate TransCanada's process of submitting expenses to the project "to arrive at the approximately \$70 million" cost to buyout TransCanada's share in the project. Mr. Lee responded that the figure consists of three major categories of costs: the cash call from AKLNG; TransCanada's actual internal costs for managing the investment, participating in the project's governance bodies, and advancing all of the future agreements; and finally the 7.1 percent interest payment. He detailed that TransCanada provided quarterly cost reports to the state and that there had been ongoing cumulative cost reporting. TransCanada will perform a "post-closing adjustment" subsequent to termination, receipt of the costs and interest payment from the state, and TransCanada's investment entity transfer to the state, when a final cost report will be presented to the administration. The state may audit and examine the expenses and any final cost adjustments would be made to either the state or TransCanada.

Senator Dunleavy asked whether any seconded employees from TransCanada could remain with the state to retain their expertise. Mr. Lee stated that 15 seconded employees would remain with the state via an agreement with the

administration to continue through May of next year. He listed that the secondees included the pipeline lead and the engineering manager as well as other individuals with project, design, management, and engineering expertise.

[9:20:59 AM](#)

Co-Chair MacKinnon wondered where the secondees were placed within the project team and what expertise they provided in order to advance the project. Mr. Lee related that in addition to the 15 secondees, TC had "a number" of staff outside of the project team working on various agreements between the state and the other entities in AKLNG, participating on the finance team, and were involved in "upstream matters." He described that over the last year, TC had made progress on the various agreements, yet differences existed. He illuminated that as the commercial lead, he sat on the governance team and was also involved in all of the commercial negotiations including the "firm transportation services agreement." He felt that overall very good progress had been made but more work was needed to advance the project to the next stage.

Co-Chair MacKinnon wondered whether there were two TC secondees working on the project that were part of the management team. Mr. Lee affirmed that there were two TransCanada secondees on the leadership team: one employee was the pipeline lead and the other was the facilities engineering manager. Co-Chair MacKinnon asked whether the individuals had signed confidentiality agreements. Mr. Lee responded in the affirmative.

Co-Chair MacKinnon asked about the "expansion terms" being negotiated and who was part of the expansion team. Mr. Lee answered that the expansion component had involved all parties, including AGDC and the administration. He felt that the negotiations had progressed well and recognized that the issue was critically important to the state.

[9:25:45 AM](#)

AT EASE

[9:26:44 AM](#)

RECONVENED

Co-Chair MacKinnon asked whether the attorney general (AG) was involved in any of the conversations with individuals

that were required to sign confidentiality agreements. Mr. Lee affirmed that the AG had attended "some of those meetings." Co-Chair MacKinnon asked whether the attorney general had signed a confidentiality agreement. Mr. Lee replied in the negative. Co-Chair MacKinnon asked if his participation was considered typical business practice. Mr. Lee relayed that it was his understanding that meeting attendees were required to sign a confidentiality agreement.

Co-Chair MacKinnon asked Mr. Lee to discuss the timing and importance of the upcoming meeting on December 4th [2015], and wondered if he could provide insight as to why the administration wanted the legislature to "move expeditiously" regarding the TransCanada buyout and the "expanded work program." Mr. Lee stated that December 4th was the deadline for parties to vote for the 2016 work plan and budget. He stressed the importance of individuals voting on that date in order to maintain the projects momentum and funding. He informed the committee that TC could not vote affirmatively for the work plan and budget because it was contractually considered acting in bad faith.

[9:30:25 AM](#)

Senator Hoffman asked whether TC had officially, in writing, made a request or statement that TransCanada was terminating its agreement with the state. Mr. Lee responded that the termination was initiated by the state. Senator Hoffman thought it was apparent in Mr. Lee's presentation that TransCanada also wanted to leave the project and had the option to do so. He repeated his initial question whether TransCanada would make an official request for termination. Mr. Lee reiterated that the administration initiated its right to terminate the PA with TransCanada and it was within the right of TC to terminate the PA as well. He agreed that it was the "best path forward" in light of the administrations wishes. He was concerned that the buyout could not be completed by the December 4th meeting. Senator Hoffman asked for clarification regarding Mr. Lee's concern. Mr. Lee was concerned that if TransCanada exercised its right of termination, a termination plan with the administration was not currently in place. He thought there was a risk that the buy-out transaction would not be completed by December 4th, which would put the work plan and budget at risk.

Senator Hoffman asked if it was fair to say that TC was interested in terminating and was waiting to submit a formal request for termination after the legislature took action. Mr. Lee thought TC's focus had always been to work in cooperation with the administration on moving forward on the current path and that termination offered the best scenario for all parties.

Vice-Chair Micciche referred to Mr. Lee's opening remarks and his words "commercially reasonable" and believed that he meant "philosophically comfortable" and asked whether that was a "fair statement." Mr. Lee responded in the affirmative.

Vice-Chair Micciche presumed that issues regarding "the arrangement of the 25 percent, the state's voting and interactions with TransCanada was an unusual piece" and were "uncomfortable terms" for TransCanada. He queried whether his statement was a "fair" assessment. Mr. Lee referred to the philosophy and focus of the current administration which included applying "as much influence on the current project as possible" and the ability of the state to finance its 25 percent interest at a lower cost that would result in the state's long term economic benefits. He summarized that the philosophical issues were related to the priorities of the administration.

Vice-Chair Micciche thought that the differences were philosophical rather than commercial and understood the situation. He believed the 25 percent split was complicated for both parties. He supported the state's direction and HB 3001. He expressed appreciation for TC's efforts in order to avoid obstacles, as well as their willingness to leave crucial employees to further advance the project for Alaska. He inquired about the nomination process for the leadership team and wondered whether the state would be adequately represented in the leadership structure. Mr. Lee thought the nomination process was a good process that was based on the principle of "the best player plays." He elaborated that the objective was to provide fair representation for all entities. He felt that the state's representation depended on who the Alaska Gasline Development Corporation (AGDC) would nominate and the extent of the qualifications the nominee possessed.

Vice-Chair Micciche discussed the potential politicizing influence of some elements of the nomination process, and

asked whether Mr. Lee worried that it would "dilute" the best player plays concept. Mr. Lee hoped that it would not be the case. He shared that the senior project manager "had done a very good job" to create a stable environment that shielded the project team from the politics and ensured that the deliverables had been completed on schedule.

[9:40:44 AM](#)

Vice-Chair Micciche thanked Mr. Lee and TC for its decades of expertise on behalf of the state, the successful completion of the AGIA license, and its involvement in SB 138. He wondered whether TC would be available to do an analysis of possible improvements; items that the legislature could evaluate to ensure success of the project. Mr. Lee offered several observations. He observed that creating a stable environment so that work could be completed on time and issues could be openly and frankly discussed in order to achieve a timely resolution were necessary. He had heard the other parties discuss alignment extensively and noted the different opinions and priorities of the partners, but emphasized the importance of having a common goal in order to overcome the differences and attain the objective.

[9:43:43 AM](#)

AT EASE

[9:45:15 AM](#)

RECONVENED

Senator Dunleavy asked if there had been an orderly transition plan discussed with the administration, and what it entailed. Mr. Lee stated that discussions regarding a transition plan were in progress which currently outlined an overall approach. He reiterated the general process of the transition; TransCanada would transfer the investing entity it used to invest in AKLNG to the state, the state would pay the costs TransCanada incurred plus interest, a post-closing adjustment process would occur, and the 15 seconded employees would remain through May of next year.

Senator Dunleavy asked whether Mr. Lee was confident that a seamless transition plan would occur with passage of the legislation. Mr. Lee responded in the affirmative.

Senator Olson remarked on the positive 7.1 percent interest rate of return that was a provision from the existing agreement between the state and TransCanada. He requested comments. Mr. Lee commented that the rate of return was one aspect of the investment, and another was risk. He specified that the administration decided to assume the entire 25 percent stake in the project and that TransCanada's participation depended on the strong support of its partners. He anticipated that it would be very difficult to negotiate reasonable terms in future agreements and without favorable agreements, TC would be at risk by the loss of influence on the project. He agreed that the return was reasonable but TransCanada lost its ability to manage its own risk in the project.

Senator Olson referred to the [governor's] project consultant Rigdon Boykin and asked for Mr. Lee's evaluation of his objectives. Mr. Lee relayed that he also worked with Mr. Boykin, and offered that he had "his own style" of doing things. Senator Olson asked, hypothetically, whether TransCanada would hire Mr. Boykin if he was available. Mr. Lee communicated that he could not speak on behalf of TC on the subject.

[9:51:17 AM](#)

Senator Dunleavy asked whether TransCanada had ever experienced a similar business dissolution. Mr. Lee related that previous partnerships had many varied reasons for not working. He had experienced similar situations working with other partners upon discovering that priorities had changed.

Senator Bishop thanked Mr. Lee and expressed that it was always a pleasure to work with TransCanada and relayed personal experience. He expressed the advantages of dissolving business partnerships amicably in order to keep the door open for future collaborations on other business opportunities. Mr. Lee concurred, and thought it was always easiest and most sensible for all parties to find a way to work together when beginning or ending a business partnership.

Senator Bishop asked for an example of the transfer of hard assets, such as engineering documents or LIDAR [Light Detection and Ranging] work, and whether the transfer had been addressed. Mr. Lee explained that TransCanada's

investment entity owned or had rights to the work products from the project. Once the entity transfer to the state was completed, the state would have access to the information.

Co-Chair MacKinnon mentioned the governor's proposition to change the project to a 48-inch diameter pipe for the pipeline, which was purported to be more economical and drive down the tariff rates. She wondered where 48 inch steel pipe could be manufactured in North America. Mr. Lee did not believe that there was currently any steel mill in North America that had the capacity to produce steel pipe with the qualities required to withstand the high pressure in the larger diameter pipeline.

[9:57:27 AM](#)

Co-Chair MacKinnon asked where Alaska could purchase 48" pipe. Mr. Lee thought that the pipe would need to be sourced from Japan or Europe. Co-Chair MacKinnon had hoped the pipe could be sourced in the United States to stimulate domestic job creation.

Co-Chair MacKinnon referred to SB 138 testimony and discussed alignment and the administration's analysis that "upside potential of an equity interest bringing in \$400 million annually" could repay the state's debt. She shared that TransCanada had made "cash calls" on behalf of the state. She referred to the assertion by the administration, that there could be "future misalignment regarding votes and that the voting structure was complicated." She asked whether previously there had ever been any impasse in negotiations, misalignments, or issues when the state had aligned with TransCanada's interest. Mr. Lee reflected that since the signing of the PA all of the management committee votes were "consistent" with the direction of the state and no misalignments had occurred. He observed that there were potential areas under which the state's view differed from TransCanada's, but could not predict whether they would have come to an agreement. He elaborated that structurally, the fact that TransCanada owned the mid-stream voting rights and AGDC owned downstream voting rights a potential misalignment could have developed. He communicated that thus far, TC had been "quite successful" in coming to consensus with the state.

[10:02:10 AM](#)

Co-Chair MacKinnon cited TCs discussion of risk, and the administration's "assertion of misalignment on voting rights and direct access to information," which she felt were valid concerns. She had heard the claim from the state that TransCanada was not bearing risk in the project. She interpreted that account to indicate that the state was obligated to pay allowable expenses with an interest rate of 7.1 percent until construction. She wondered whether TC's stated risk related to "the specific management of the project" and lacking direct voting access rights and that TransCanada would lose corporate control over the costs of the pipeline and subsequently the tariff. Mr. Lee stated that the future unknowns made it difficult for TransCanada to quantify the risk.

Co-Chair MacKinnon asked whether a more accurate reflection of the interest rates paid to TransCanada was 7.1 percent to FEED (Front End Engineering and Design) stage and 6.75 percent from FEED to construction. Mr. Lee recounted that the 7.1 interest rate applied to the beginning of the development phase to the end of the second year of operations unless the 30 year U.S. Treasury rates changed during that time. Subsequent to the second year of operations the rate dropped to 6.75 percent.

[10:05:17 AM](#)

Vice-Chair Micciche complimented Mr. Lee on his mastery of the English language, and thanked him for his transparency and frankness. He referred to Mr. Lee's comment on the state to endeavor to create a stable project environment, and wondered if he was commenting on an existing issue of instability. Further, he mentioned Mr. Lee's comments regarding "the ability to openly and frankly discuss issues" and presumed that was a problem he encountered. He professed that the legislature wanted to help the administration succeed and was "on the same team." He requested that Mr. Lee author a letter to the committee offering suggestions for the successful advancement of the project. Mr. Lee communicated that his earlier comments related to a stable environment and openness in discussions was a general statement. He thought discussions had been open and frank and that a stable environment was something all entities strove for. He emphasized consistency in approach, messaging, and priorities among all parties to promote understanding and compromise in decision making and unifying around a common goal.

Vice-Chair Micciche stated that companies such as TransCanada, Exxon, ConocoPhillips, and BP engaged in projects like AKLNG daily. He suggested that the state "learn" to appreciate the "value" that the entities had to offer and thought that the state lacked the appreciation for what the parties had to offer the state in experience. His goal was to ensure the state achieved maximum value for its 25 percent investment. Mr. Lee thought it was difficult to comment, as he did not have extensive knowledge regarding the state's expertise.

[10:10:31 AM](#)

Co-Chair MacKinnon asked Mr. Lee whether he supported the buyout of TransCanada by the state. Mr. Lee answered in the affirmative. Co-Chair MacKinnon asked whether he supported the approval of the new work plan proposed by the project and the administration in SB 3001. Mr. Lee replied that as an individual he supported the legislation but could not comment for TransCanada. Co-Chair MacKinnon asked whether he was "providing continuity and resources" in order to stabilize the project under the governor's methodology. Mr. Lee responded in the affirmative.

Co-Chair MacKinnon clarified that the "administration had decided to change courses" and she was not clear what the new course was. She acknowledged that the new "blueprint" excluded TransCanada's participation. She related that she had previously not been supportive of TransCanada's involvement with the state but was convinced by the previous administration that TransCanada's involvement was necessary. She believed that politics were playing a role in the current process but the process should be apolitical. She described TC as an honorable player over the last 6 months. She believed the issue boiled down to contractual terms and appreciated TransCanada's support of the governor's buyout proposal.

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ADJOURNMENT

[10:14:34 AM](#)

The meeting was adjourned at 10:14 a.m.