

SENATE FINANCE COMMITTEE  
THIRD SPECIAL SESSION  
November 1, 2015  
9:07 a.m.

9:07:15 AM

CALL TO ORDER

Co-Chair MacKinnon called the Senate Finance Committee meeting to order at 9:07 a.m.

MEMBERS PRESENT

Senator Anna MacKinnon, Co-Chair  
Senator Pete Kelly, Co-Chair  
Senator Click Bishop  
Senator Mike Dunleavy  
Senator Lyman Hoffman  
Senator Donny Olson

MEMBERS ABSENT

Senator Peter Micciche, Vice-Chair

ALSO PRESENT

Mark Myers, Commissioner, Department of Natural Resources;  
Pat Pitney, Director, Office of Management and Budget,  
Office of the Governor; Senator Mia Costello; Senator Cathy  
Giessel; Senator Kevin Meyer; Senator Gary Stevens;  
Representative Dave Talerico.

PRESENT VIA TELECONFERENCE

Joe Dubler, Vice President and Chief Financial Officer,  
Alaska Gasline Development Corporation.

SUMMARY

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

SB 3001 was HEARD and HELD in committee for  
further consideration.

#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."

9:08:33 AM

Co-Chair MacKinnon discussed that SB 3001 was an appropriation bill from the administration asking the legislature to approve a buyout of TransCanada, a current partner in Alaska's Liquefied Natural Gas (AKLNG) project. Additionally, the bill would approve a work program that would expand the project scope and associated dollars. The bill included a \$13 million-plus supplemental appropriation to the Department of Law (\$10 million) and to the Departments of Revenue and Natural Resources (\$3 million). She relayed that Joe Dubler, Vice President and Chief Financial Officer, Alaska Gasline Development Corporation (AGDC) was available for questions via teleconference. She shared that Daniel Fauske [President, Alaska Gasline Development Corporation] would be available to speak directly with committee members prior to a vote on the Senate floor. She discussed the agenda for the following day and relayed that a new committee substitute (CS) would be introduced. She detailed that the CS would be technical and would ensure the appropriate partners and dollar amounts were listed. She planned to follow up with Legislative Legal Services and Craig Richards, Attorney General, Department of Law to ensure that the timeline would be initiated as planned.

Co-Chair MacKinnon communicated that the following presentation would outline a timeline for the transaction. She detailed that there were many different agreements in place and a multitude of signators that needed to come online. She believed the state needed to modify its president agreement. The presentation would include points that could create a challenge or obstacle for the state to meet as far as delaying the state's ability to obtain the assets currently held by TransCanada. She furthered that Alaska would have the opportunity through AGDC,

specifically Mr. Dubler, to vote on behalf of the state for the continuation of the project.

9:11:59 AM

MARK MYERS, COMMISSIONER, DEPARTMENT OF NATURAL RESOURCES (DNR), provided a PowerPoint presentation titled "TransCanada Termination Timeline of Events" dated October 2015 (copy on file). He began on slide 8 titled "Modified Termination Timeline Schematic." He detailed that the slide provided a termination timeline. The goal was to make a smooth transition. He equated the transition to a change of command on a military base where there was an understanding of a clear passing of authority and responsibility (the current scenario also included funding and assets). He communicated that modification to terms in the Precedent Agreement was needed. He elaborated that the agreement did not address the time of the work plan and budget with the time of the termination. There was a termination date of December 31 [2015], but it could be moved up if all parties agreed. He expounded that the timeline schematic on slide 8 proposed moving the termination date up. The goal was to transition the assets to AGDC in a timeframe that would enable the agency to vote on the work plan and budget on December 4 [2015]. He communicated that the dollar amount the state anticipated would be paid out under the Precedent Agreement had been fully audited before the state had written the check. Under the proposal addressed in the presentation, TransCanada would be given time to provide its best cost estimate; the state would additionally have rights past the payout to audit TransCanada and "true up" at the end of that time period. He relayed that the changes would enable a smooth transfer to AGDC to vote on December 4, payment to TransCanada, and for the state to do the proper audits.

9:13:47 AM

Co-Chair MacKinnon asked if DNR had reviewed the number and TransCanada had agreed to the specific number allocated in the CS for SB 3001.

PAT PITNEY, DIRECTOR, OFFICE OF MANAGEMENT AND BUDGET, OFFICE OF THE GOVERNOR, replied that the administration felt relatively confident in the number, but would like the language to read "estimated to be" because the amount could change slightly on the margins. She explained that the

original bill had included the whole \$144 [million], reasoning that there was enough flexibility between the two numbers [CSSB 3001 included fund capitalization of approximately \$68 million] that would enable the pay to TransCanada if the cost was slightly higher.

Co-Chair MacKinnon asked if there had been a request to change the language in the CS to "estimated." Ms. Pitney replied in the negative.

Co-Chair MacKinnon requested that the administration notify the Senate Finance Committee as soon as possible if it had any concerns about the CS. She noted that the committee had asked all legislators to review the CS. She added that the goal was to address as many concerns as possible up front in order to avoid going to a conference committee.

Commissioner Myers relayed that there was another pertinent factor. He stated that the numbers worked to the termination date of December 31 [2015] in the Precedent Agreement. Under the proposal, the termination date would be earlier and TransCanada would owe money to the state on that date. He shared his intent to address the issues during the presentation. He noted that the money owed by TransCanada would be a lesser amount than it would have been under the original December 31 deadline.

Co-Chair MacKinnon requested any proposed changes from the administration or departments by 4:00 p.m. She reiterated that the committee would address a new CS the following day.

[9:16:35 AM](#)

Commissioner Myers addressed slide 2 titled "Overview":

This presentation will:

- Summarize how the TransCanada (TC) termination would work under the Precedent Agreement (PA) -which would not allow the termination to occur prior to December 4, 2015
- Summarize how the State and TC will amend the termination process under the PA to allow the termination to occur prior to December 4, 2015
  - o Upon termination, TC will transfer interest in TransCanada Alaska Midstream Limited Partnership (TAMLP) to State/Alaska Gasline Development

Corporation (AGDC), so that AGDC can vote on 2016 Work Program & Budget (WP&B) by December 4, 2015

9:17:29 AM

Commissioner Myers discussed slides 3 and 4 titled "Sequence of Events and Timing of Termination under PA as Currently Drafted":

1. Appropriation approved and Governor executes the appropriation bill
2. State provides notice of termination to TransCanada (TC)
3. Within 30 days of notice of termination TC must deliver to State a final report of the Termination Amount (development costs, plus interest)
4. Within 30 days of receiving the final report from TC, State must either pay the Termination Amount or provide notice of objection to the Termination Amount and present an alternate amount
5. If the parties fail to agree on the amount within 5 business days of the State's objection, then Alternative Dispute Resolution (ADR) will apply and State must pay the Termination Amount in full within 5 business days of notice of intent to commence ADR (disputed amounts paid into escrow pending dispute resolution)
6. State pays TC Termination Amount and TC transfers TAML interests to State/AGDC

Commissioner Myers elaborated that the official notice of termination to TransCanada would come from the DNR commissioner. He added that the termination amount would be TransCanada's absolute best estimate; the state could either pay or object to the amount within 30 days. He explained that if the state objected to the specified amount, it would present an alternative. A dispute resolution mechanism was also included in the event of any disagreements. He explained that if an agreement failed, the proposed transfer of assets by December 4 would not take place (the process had a 60-day minimum) and AGDC would not have the ability to vote on the work plan and budget at that time.

9:18:39 AM

Commissioner Myers explained that the dates included in the timeline were all made on an assumption of the date appropriation; if it was earlier, the dates could move up by a week or more. The timeframe was designed to achieve the work in time even if the bill did not pass until the last day of the current special session; the dates outlined in the structure were relative.

Commissioner Myers addressed slide 5, "Modified Termination Timeline, Assuming Appropriation is Approved."

- Currently, State and TC are drafting a Purchase and Sale Agreement (PSA) for the State's acquisition of TAMLPL [Finalize by November 13]
- State and AGDC are taking steps and drafting documents designating AGDC as the State's designee under the PA (e.g., legal instrument(s) to convey TAMLPL to AGDC) [Finalize by November 13]
- TC submits initial Termination Amount report, which State reviews [November 4]
- State and AKLNG Parties work together to address the continuation of TC pipeline secondees in AKLNG through the pre-FEED phase
- Appropriation approved and Governor Walker executes the appropriation bill [November 21-23]

Commissioner Myers expounded that the goal was to have the legal agreement negotiated between state institutions by November 13 [2015]. Co-Chair MacKinnon asked for verification that it was going to a subsidiary of AGDC. Commissioner Myers deferred the question to AGDC.

Co-Chair MacKinnon stated that the committee had been told by the Attorney General Richards and Mr. Dubler that a subsidiary had been created inside of AGDC. She detailed that one subsidiary was an aggregator that would look at instate gas and the ability to enter into some gas sales agreements to help bring energy to parts of Alaska and to possibly sell to another market. A second subsidiary had been created to receive assets from TransCanada. She asked for verification that her understanding was accurate.

JOE DUBLER, VICE PRESIDENT AND CHIEF FINANCIAL OFFICER, ALASKA GASLINE DEVELOPMENT CORPORATION (via teleconference), affirmed that AGDC had created a subsidiary. He clarified that the subsidiary would hold all

the assets of the AKLNG project for the parent company AGDC.

[9:21:48 AM](#)

Co-Chair MacKinnon asked for verification that legal counsel had advised the state that the subsidiary was the best way to secure the product and to maintain flexibility inside of AGDC. Mr. Dubler replied in the affirmative.

Commissioner Myers continued to discuss slide 5. He relayed that TransCanada would submit its initial report amount, which the state would review. The state and AKLNG partners would work together for the continuation of TransCanada pipeline secondees in AKLNG through the pre-FEED [Front End Engineering and Design] phase. He communicated that TransCanada was fully committed to getting the secondees in through May (there were 15 people active in the project). He stated that the action would be between the project (Steve Butt's organization [ExxonMobil executive]). The state would pay 25 percent of the cost of the secondees under the structure; the oil company partners would pay the remaining 75 percent of the costs. TransCanada had relayed that Mr. Butt was very positive on the transfer and wanted to ensure that it took place. He stated that it would be an internal project decision, but TransCanada was completely willing. He believed the company had agreed on the cost structure. He noted that the issue was an important piece of the equation for project continuity. The next step was the approval of the appropriation by the legislature and signature by the governor, which could occur on November 23, 2015. He clarified that the dates would move up if the appropriation was approved earlier.

Co-Chair MacKinnon wondered if the appropriate signators would be accessible and in-state when needed. She asked if the document could be signed electronically if someone was traveling. Commissioner Myers responded that he could not yet make the commitment because the firm dates were not currently known. He believed the parties would be willing to figure it out to obtain signatures either directly or through an authorization of delegation.

[9:24:38 AM](#)

Co-Chair MacKinnon hoped the administration would ensure that the required signatories were available when needed.

She thanked the administration and departments for their presence at the meeting.

Commissioner Myers discussed slide 6 titled "Modified Termination Timeline." The state would provide a notice of termination to TransCanada and immediately following the governor's signature the Purchase and Sales Agreement would be executed. TransCanada would then submit an updated termination amount for closing purposes by November 24. He expounded that by December 1 the interests would be transferred and the Precedent Agreement and Equity Option Agreement would be terminated. At that point AGDC would be in the position to approve the work plan and budget on December 4.

Co-Chair MacKinnon asked what and who would be doing specific tasks during the week of November 24 to December 1.

Mr. Myers deferred the question to the Department of Law (DOL). He did not know about all of the elements involved with the closing. The amounts would have been agreed upon prior to that time and the legal documents would be in place. He did not know what due diligence took place during that time.

Co-Chair MacKinnon had anticipated that the information would have been in the current presentation to the committee. She was happy to hear from DOL during the meeting or to receive the information in writing. She wanted to ensure that the state was prepared for the transition. She asked DOL to follow up with the information.

Commissioner Myers noted that TransCanada was in support of the specified time period.

[9:27:57 AM](#)

Commissioner Myers addressed slide 7, "Modified Termination Timeline." TransCanada would prepare a final termination amount report within 45 days of the closing. He relayed that the date of termination would be firm and the amount would be calculated for that specific date. One of the issues the termination timeline had faced was related to the fact that the date could flex; TransCanada wanted the ability to do a last calculation of actual costs for the

period. He believed the specified 45 days would allow TransCanada to get all of its cost data together. He added that the earlier the date was known, the better. He communicated that the state had 60 days after closing to perform the audit; the time was needed to conduct due diligence. He anticipated that the auditors would travel to Calgary in Alberta, Canada to conduct the audit from TransCanada's office. He noted that the nature of the audit was outlined in the Precedent Agreement. The state and TransCanada would agree on any termination amount adjustment (if any) and adjustment payments would be made. He communicated that the anticipated completion of the audit process and true-up payment should be no later than March 2016.

Co-Chair MacKinnon asked if the legislature would receive an update on the audit in the form of a presentation or report. Commissioner Myers believed so, but had not been party to discussions about the issue and did not know whether there were confidentiality concerns around the data or data transfer components. He was certain there would be a report, but did not know how detailed it would be.

Commissioner Myers concluded with slide 8 titled "Modified Termination Timeline Schematic." He reiterated that an earlier termination date would move the process up (items on the chart would shift to the left). The top priority was for the transfer of assets to occur prior to December 4 in order for AGDC to vote for the work plan and budget.

9:30:39 AM  
AT EASE

9:31:11 AM  
RECONVENED

Co-Chair MacKinnon asked what the process would be to deliver the assets to TransCanada and receive the information if DOL, DNR, and AGDC fully executed the plan.

Ms. Pitney answered that one piece related to the funding to TransCanada and the second related to the transfer of assets. The process for providing the funding to TransCanada was to establish an RSA [registration services agreement]; the RSA would be ready shortly after the bill passed albeit without the exact amount (the exact amount would be included when determined). The RSA would allow

AGDC to transfer the funds back to the state under DNR. She continued that simultaneously the state would set up a wire-transfer capability with TransCanada; therefore, as soon as the amount was determined and the RSA was signed the transfer could take place. The maximum timeframe would be a couple of days. The transfer of assets would become part of the legal agreement between ADGC and DNR; it did not require anything more from a financial standpoint other than noting the placement of the assets.

Co-Chair MacKinnon asked if the state had done transfers to and from TransCanada in the past. She asked if the state had the routing numbers. She wondered if the state would conduct a test run to ensure the money would land appropriately. Ms. Pitney replied that transfers may have been done through AGDC. She did not know that there had been transfers from the state. She affirmed that a test would be conducted prior to the actual transfer of assets.

Co-Chair MacKinnon wanted to ensure the accuracy of the routing numbers to be certain the transfer would be successful.

[9:34:26 AM](#)

Commissioner Myers stated that there were assets transferred from TransCanada to the state as well. He detailed that the data was stored in common; the data was commonly owned by the party participants for the particular piece. TransCanada's ownership of the piece would be transferred to the state, but the data was already in repositories with the project. He stated that cores were stored in a common location for all parties. He furthered that the assets would give AGDC the information on how to access the data sets in common; it would then have full access to the gas treatment plant and pipeline data sets.

Senator Olson asked if the modifications to the Precedent Agreement timeline and process had been recommended by the consultant. Commissioner Myers believed a draft version had been negotiated by Rigdon Boykin [South Carolina-based attorney serving as the state's lead negotiator on the AKLNG project]. He believed Mr. Boykin had been looking at the idea of an early termination, but it had not been one supported or fully vetted by DNR. He stated that there had been some discussion of other values (the information was confidential); however, he essentially had too many

concerns about the modified document and issues it brought forward. He stated that the document before the committee was a much cleaner transfer document.

[9:36:26 AM](#)

Co-Chair MacKinnon made a joking remark about daylight savings time.

Senator Olson asked if the modification put undue strain on the funding that put the state at a disadvantaged position. Commissioner Myers replied that he could not discuss it due to the sensitivity of the confidential information. He stated that the changes had not been executed and materially had not caused any stress. He believed the option he had presented to the committee during the current meeting offered a successful path forward that protected the interests of all involved parties. He was very satisfied with the outcome that was moving forward and was not interested in looking back at past pieces. He acknowledged the difficulty of negotiations and believed "we're in a good place now."

Senator Olson believed optimism was a positive attribute.

Co-Chair MacKinnon asked Mr. Dubler if he had any closing comments related to the transaction and timeline presented to the committee during the meeting. Mr. Dubler had no further comments.

Commissioner Myers thanked the committee for the opportunity to explain the changes. He asked committee members to provide the department with any additional questions they may have. He would follow up on questions asked during the meeting.

Co-Chair MacKinnon relayed that public testimony on SB 3001 was closed; however, it would be held for the House version of the bill the following week. She addressed the schedule for the following day.

#

ADJOURNMENT

[9:39:16 AM](#)

The meeting was adjourned at 9:39 a.m.