

HB

705

"An Act relating to the powers of the Alaska Pipeline Commission; and providing for an effective date."

COMMITTEE REPORT

2/10/76

HOUSE

Mr. Speaker:

Date March 18, 1976

The Committee on JUDICIARY has had HB 705

under consideration. A Majority of the members of the Committee

() recommends it DO PASS

() recommends it DO NOT PASS

() recommends it DO PASS WITH ATTACHED AMENDMENT(S)

() recommends it BE REPLACED WITH CS FOR HB 705 AND THAT

CS FOR HB 705 DO PASS

() "and" recommends it BE REFERRED TO THE _____

COMMITTEE

() reports it back WITHOUT RECOMMENDATION

() "other"

Members signing the Majority report:

<u>[Signature]</u>	_____	<u>[Signature]</u>	_____
<u>[Signature]</u>	_____		_____
<u>[Signature]</u>	_____		_____
	_____		_____

Members NOT concurring in the Majority report:

_____ recommends:

_____ recommends:

_____ recommends:

_____ recommends:

_____ recommends:

[Signature] Chairman

ALASKA PIPELINE COMMISSION

ANNUAL REPORT

1975

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ALASKA PIPELINE COMMISSION

1975 Annual Report

INTRODUCTION

With the discovery of substantial reserves of oil and gas on state-owned lands in the 1960's, and with the emergence of general concern regarding the importance of the transportation systems to be utilized in moving these resources to market, it became apparent to state lawmakers that transportation of oil and gas by pipeline was a business which involved a public interest.

As a result of extensive study, examination, and review of the innumerable facets of oil and gas pipeline transportation and regulation, the Alaska Legislature in 1972 enacted legislation (Alaska Pipeline Commission Act; Ch. 139 SLA 1972; AS 42.06) which brought into being the Alaska Pipeline Commission. This commission was given broad comprehensive powers to regulate (to the extent not preempted by federal authority) pipelines and pipeline carriers in the state, including the rates, classifications, tariffs, services, practices, and facilities of pipeline carriers. It was also given the responsibility to represent the interests of the state in any proceeding relating to pipelines and pipeline facilities before any officer, department, board, commission or court of this or of another state of the United States.

In the course of its work, the commission naturally adheres to the legislative declaration of policy stated in the Act (AS 42.06.010) and that is to (1) promote and oversee the development of an oil and gas pipeline transportation system in the state properly adopted to the present and future needs of the domestic commerce of the state and of the interstate and foreign commerce of the United States; and (2) promote and insure, in conjunction with the Alaska Public Utilities Commission within its jurisdiction, non-discriminatory, efficient and economical oil and gas pipeline transportation at reasonable rates.

It was not until April 1974 that three members were officially appointed to the Alaska Pipeline Commission. One member, acting as chairman, was appointed on a full-time basis and the remaining two members assumed part-time status. A vacancy on the commission in December 1974 followed the resignation of Martin A. Farrell, Jr. (the attorney member) and the position remained vacated until October 15, 1975.

At that time, Russell E. Mulder was appointed on a full-time basis to fill the remainder of Commissioner Farrell's unexpired term.

SUMMARY OF SIGNIFICANT ACTIVITIES -- 1974 TO PRESENT

Trans-Alaska Pipeline Certification

The first formal action of the commission, following the appointment of the commissioners in April 1974, was issuance of Certificates of Public Convenience and Necessity to the seven owner companies of the Trans-Alaska Pipeline System (TAPS). This action was mandated by the legislature in Section 240 of the Alaska Pipeline Commission Act. In essence, this section of the Act eliminated, for all practical purposes, the requirement that all pipeline carriers engaging (now or in the future) in the transportation of oil and gas subject to the jurisdiction of the commission be scrutinized by the commission before they are issued a certificate of public convenience and necessity. This provision exempted pipeline carriers already engaged in transportation of oil and gas by pipeline or construction of an oil or gas pipeline on or before January 1, 1974 (January 1, 1974, was substituted by the legislature for January 1, 1973, by an amendment enacted during the special legislative session of 1973). The inclusion of these "grandfather" rights foreclosed any possibility of lengthy hearings and proceedings by the Alaska Pipeline Commission which might have delayed construction of TAPS.

This mandatory issuance of certificates was also conducted for those pipeline carriers other than TAPS who were operating in Alaska and who fell within the parameters of the statutory exemption.

Knowledge of Pipeline Regulation

During the latter half of 1974, the commission initiated a concerted effort to acquire a thorough understanding of oil and gas pipelines and the regulation of them by both state and federal authorities.

In addition to acquiring, studying, and analyzing the basic written materials available on the subject of pipeline regulation, the commission attempted to familiarize itself with the practices in other states and at the federal level in regard to this type of regulation. In the course of this endeavor, the members of the commission found it

both necessary and informative to make a number of trips to meet and discuss matters of mutual concern with representatives of other states and the federal government.

The commission met with the Texas Railroad Commission and the California and Washington State Public Utilities Commissions.

It became obvious to the members of the commission that other states did not have a compelling desire, from a public interest standpoint, in regulating pipelines. The reasoning behind this was varied, but seemed to originate from several factors: competitive forces in the transportation field tended to hold pipeline rates down to what most state officials termed "acceptable" levels; complaints against pipeline carriers and their rates were rare; many lines were interstate and thus regulation was left to federal authorities; and pipelines transported production to a great extent from lands leased from private and federal interests. Consequently, most state efforts in the field of pipeline regulation were reduced to one of monitoring such activities.

Commission members traveled on various occasions to Washington, D.C., to ascertain the federal scheme of regulation.

It became abundantly clear from a number of these encounters with the federal government that the Interstate Commerce Commission (ICC) lacked both the resources and the desire to regulate crude oil pipelines. (For the commissioners, this was not so much a matter of gaining new insight as it was a matter of confirming often mentioned criticism of the ICC.) Lack of certification authority and power over connections, abandonment, throughput, and so forth left it with essentially two functions: establishing valuation and approving (not setting) rates. The ICC's enforcement powers, however, enable it to investigate carriers and rates on its own motion (which is practically unheard of) or on complaint by a third party (a rare event).

The Federal Power Commission, on the other hand, was found to vigorously regulate gas pipelines and aggressively assert its powers. Its scheme of economic regulation is clearly defined and it possesses broad authority through its power of certification.

Against these comparative methods of regulation, and comprehending the reasoning behind the need for pipeline regulation at the state level, the commission proceeded to undertake the task of drafting regulations applicable to carriers operating in the State of Alaska.

Commission Practice and Procedure Regulations

Regulations governing rules of practice and procedure before the commission became effective in January 1976.

These regulations are of paramount importance because they establish the methods by which the commission is to carry out its appointed functions. Namely, they set forth the manner in which interested persons can bring relevant issues before the commission, the procedures to be employed by the commission in affording due process of law to all persons having dealings with the commission; the reporting and confidentiality of carrier financial and technical information; the filing of applications and tariffs; the institution of investigations and hearings; and the rules to be followed by the commission when hearings are held.

This endeavor was formally initiated by the Commission in February of 1975 when the Attorney General's Office granted permission for the commission to seek outside counsel due to the complex nature of the regulations. In June of 1975, a legal consultant was retained and by August 4 a tentative draft of the regulations was completed and submitted to the Department of Law for its review. Following some minor technical changes, the Department of Law completed its review of the regulations and they were finally noticed to the public on September 23, 1975, as required by the Administrative Procedure Act.

On September 29, 1975, the commission again submitted its version of these regulations to the Department of Law so it could further review and comment on them before they were forwarded to the lieutenant governor. On December 19, the regulations were finally filed with the Lieutenant Governor's Office and became effective on January 18, 1976.

Ex Parte No. 308, Valuation of Common Carrier Pipelines

Relative to federal regulatory practices, the Pipeline Commission had been watching closely during 1974 the progress of a protest proceeding before the Interstate Commerce Commission with respect to the tentative valuation of Williams Brothers Pipe Line Company filed by a group entitled the Mid-Continent Petroleum Shippers.

Although this is an extremely controversial and complicated proceeding involving a change in ownership of a pipeline, the details of which will not be dealt with in

this report, the early encounters between the parties culminated in the administrative law judge broadening the scope of issues involved in the case and thus a separate proceeding in August 1974 designated Ex Parte No. 308, Valuation of Common Carrier Pipelines, came into being. Ex Parte 308 deals expressly with the issue of valuation methodologies employed by the ICC and may have important long-term ramifications for all federally regulated pipelines.

This is an historic proceeding in that it is the first time since Ajax Pipe Line Corporation (Valuation Docket No. 1284, December 14, 1949), almost three decades ago, that the ICC has been forced to re-examine its valuation methodologies and manner which it employs in establishing a carrier's final elements of value.

Realizing the importance to Alaska of this landmark proceeding, the Pipeline Commission chose to petition the ICC for leave to intervene and became a party in the proceeding in June 1975.

In this endeavor, the commission sought out and employed what it thought to be one of the most competent and experienced legal counsels available. Donelan, Cleary and Caldwell of Washington, D.C., was retained on June 2, 1975, to provide legal service to the commission in regard to its intervention in Ex Parte 308.

This particular law firm has considerable experience in practicing before the ICC. In addition, they represent the MidContinent Petroleum Shippers group in their protest action against Williams Brothers Pipe Line Company and have accumulated considerable knowledge of regulatory practices employed by the ICC. Further, the commission chose this firm also because it was possible to share the costs of participation in Ex Parte 308 with the Mid-Continent Petroleum Shippers group.

While it must be recognized, of course, that state participation in Ex Parte 308 is by no means an assurance that ICC valuation methodologies will be altered, the commission believes its intervention and continued efforts in this regard will assist in precipitating a comprehensive review of the pipeline industry. If this endeavor is successful, Alaska, as well as the ICC, will be able to ascertain whether or not there needs to be a change, as viewed from a public policy standpoint, regarding valuation upon which rates of return are applied to arrive at allowable earnings.

In this regard, Ex Parte 308 seeks to ask if there is extensive prorationing within the industry (an indication of insufficient capacity); if pipelines are being prematurely

and perhaps unnecessarily abandoned; and if new construction is lagging. Answers to these questions may suggest the need for upward adjustments in the valuation base sufficient to attract capital and encourage an appropriate level of investment.

Conversely, if it is found that most pipeline traffic consists of shipper-owner commodities (particularly in light of various accounting and tax treatments allowing substantial benefits from the affiliate to accrue to the parent company), it may be appropriate to reduce the valuation base (and thereby earnings) to encourage access by non-owner shippers at reasonable rates.

A further benefit from Ex Parte No. 308 would be the simple clarification, and in some cases interpretation, of the valuation process which would eliminate present ambiguities and prevent arbitrary determinations currently employed in arriving at final value.

Kenai Pipe Line Tariff Protests

On August 4, 1975, a protest and petition for suspension was filed with the ICC by the Alaska Pipeline Commission (APC) through its Washington, D.C., legal counsel. The protest claimed that proposed tariff charges filed with the ICC by Kenai Pipe Line Company (Kenai) to become effective August 15, 1975, were unlawful and not justified. Kenai operates a crude petroleum system for transporting crude oil production from Swanson River Oil Field and Middle Ground Shoal (from onshore treating facilities near Nikishka) to storage and delivery facilities located at Nikiski, Kenai Peninsula Borough, for delivery to marine tankers and to connections with nearby refineries.

The protest action was initiated because Kenai failed to provide APC with justification for an increase in line-haul charges from 5.3¢ to 6.0¢ per barrel (a 13.2% increase) for delivery to pipelines of others; an increase from 8¢ to 10¢ per barrel (a 25% increase) for delivery to ship's rail; and for establishment of a new 10¢ per barrel terminal service charge for receiving, storing and delivering crude oil to pipelines of others.

After extensive deliberation, the APC decided to utilize the federal forum (as authorized by AS 42.06.140(7)) at that time in lieu of asserting its own statutory powers for two specific reasons. First, time was absolutely of the essence. By the time the commission was made aware of the proposed tariff changes, it only had a day or so to act or

forego its option to protest. Once the new tariff became effective (a nearly automatic process) the burden of proof as to whether the new rates were reasonable or not would then have shifted to the state. Preparing and proving a case under these circumstances is a difficult and time-consuming endeavor, and one which could be avoided by a timely protest on the state's behalf. Second, the APC felt that while it had the statutory authority to bring a proceeding on its own behalf to challenge the tariffs in question, it needed an established procedure, consistent with due process of law, to effectively handle the matter. This course of action was precluded at that time because the commission's practice and procedure regulations were only in their formative drafting stages and in the hands of the Department of Law for its review.

Upon learning of the protest, Kenai then postponed the effective date of the line haul tariffs, filed a new tariff for the proposed terminaling service, and furnished data to the APC purporting to justify the proposed charges. After reviewing the Kenai material, the APC concluded that the justification did not properly reflect the current economic environment, particularly as it related to Kenai's claimed depreciation on its delivery facilities in respect to the new proposed service. This allegation was based on an examination of Kenai's depreciation schedule on file with the ICC at that time which had not been revised to reflect current conditions.

Specifically, the APC contended that the new service proposed by Kenai constituted a substantial change in the company's overall services and sources of revenue. The APC further contended that the service life and volume of future business for Kenai's delivery facilities would be directly linked to the potential economic life of refineries served by Kenai and other developments and growth in the State of Alaska. The APC felt that it would no longer be appropriate to relate the depreciable life of the delivery facilities to the life of producing fields served by Kenai as reflected in Kenai's depreciation schedule.

On this basis, it was concluded by the APC to pursue the protest but not to seek suspension by the ICC of the proposed tariffs (especially the new terminaling service), as this might have cut off movement of crude petroleum from tankers to the refineries served by Kenai.

Therefore, on September 3, 1975, a supplemental protest on behalf of the APC was filed. It withdrew the request for suspension but sought an investigation by the

ICC of the lawfulness of the proposed charges under Section 15(7) of the Interstate Commerce Act (49 U.S.C. Section 15(7)). The protest detailed the inadequacies of Kenai's justification for the proposed charges, particularly in the area of depreciation expenses.

On September 10, 1975, the ICC's Suspension and Fourth Section Board declined to place the protested terminal charge under investigation. This action on an informal record by the Board was appealed by the APC to Appellate Division 2 of the ICC on September 11, 1975. On September 12, 1975, Division 2, which consists of a panel of three of the eleven Commissioners, placed the terminal charges tariff under investigation in Docket No. 36244. Subsequently, on September 19, 1975, the Board placed the tariffs increasing the line-haul charges (which had a later effective date) under investigation in Docket No. 36244 (Sub No. 1).

On October 3, 1975, pursuant to the ICC's orders providing for handling the two proceedings on modified procedure (Under Rules 4554 of the ICC's General Rules of Practice, 49 C.F.R. Section 1100.4554), Kenai submitted its opening statement. After reviewing Kenai's latest depreciation study submitted to the ICC, the APC prepared a Statement of Facts and Argument and filed it with the ICC on November 12, 1975. The Statement, which included a Verified Statement (Affidavit) by Chairman John Werner of the APC and Argument prepared by counsel, pointed out the deficiencies in Kenai's case-in-chief. On November 28, 1975, Kenai filed its Reply Statement. Because this statement appeared to include material and facts not part of a proper reply, the APC on December 24, 1975, filed a motion to strike the reply statement, to which Kenai responded on January 9, 1976.

These two proceedings now stand submitted to the ICC for decision.

The Alaska Pipeline Commission's objective in respect to these actions against Kenai is to compel the carrier to recast its depreciation schedule to reflect the long-term realities of the new service they wish to provide.

Watching Service

In light of lag time between the date a tariff is formally filed with the ICC and the time such filing is noticed to the state, the Pipeline Commission retained a private watching service in Washington, D.C. (William B. Edwards), who is capable of notifying the commission by

telephone or telegram of all tariff filings on pipelines within Alaska.

This is important because effective dates of tariffs are 30 days following the filing date for tariff revisions and 10 days for new service.

Application of Nikiski Alaska Pipeline Company

On November 7, 1975, Nikiski Alaska Pipeline Company (Nikiski) submitted an application for a certificate of public convenience and necessity for the construction, operation, and maintenance of a refined petroleum products pipeline from Nikishka, Kenai Peninsula Borough, to the vicinity of the Port of Anchorage.

Nikiski is a wholly-owned subsidiary of Gulf Interstate Company, a Houston, Texas, based corporation specializing in investments and engineering of transportation and storage systems for distribution of a variety of forms of energy and related materials.

The proposed 10-3/4 inch pipeline will have the initial capacity to transport 40,000 barrels per day (bpd) of refined products. The majority of its anticipated initial throughput of 21,850 bpd will originate from the Tesoro refinery at North Kenai. Additional shipments will be accepted from the Socal refinery in the same vicinity during periods of heavy icing in the Upper Cook Inlet.

The pipeline will follow a relatively straight line from Nikiski to Point Possession, and will cross approximately 17 miles of water at Turnagain Arm, coming ashore at Point Campbell. After passing under the proposed North-South Runway at Anchorage International Airport, it will roughly parallel Northern Lights Boulevard and the Alaska Railroad right-of-way to the Port of Anchorage.

Because the APC was convinced that time was of the essence in acting upon the Nikiski application so that Nikiski would be able to commence and finish the proposed project during 1976, the APC issued an order on December 12, 1975, scheduling a public hearing and shortening the time for holding that hearing.

The hearing was conducted on December 30, 1975, to solicit public opinion in favor of or in opposition to the granting of authority to the applicant to operate as a common carrier pipeline.

Under the Alaska Pipeline Commission Act, a mandatory 30-day waiting period is required between the time of a hearing on an application and the time a certificate is issued.

To assist the commission in its analysis of the economic and technical feasibility of the project, the consulting firm of Van Scoyoc and Wiskup, Public Utility Consultants, Washington, D.C., was retained.

This firm was chosen primarily because of Mr. Wiskup's extensive and special knowledge of pipeline regulation at the federal level. In addition, the firm has previously performed work in Alaska, has an excellent reputation, and as a matter of policy has consistently represented the public interest.

A comprehensive study of project feasibility, markets, shippers, and safety was conducted by the APC with the assistance of its consultant. This in-depth analysis revealed the project to be feasible but that certain terms and conditions attached to the certificate were appropriate to protect the public interest.

In an analysis of this nature, the commission determined it essential to ascertain (AS 42.06.270) that the project was a viable one from an engineering and economic standpoint, that the applicant and its affiliated interest (Gulf Interstate) were fit and able to undertake the project (technically and financially), and that the project would be now and in the future in the public convenience and necessity.

On February 11, 1976, by order of the commission, a certificate was issued and it was formally accepted by Nikiski on February 19.

The significance of this event lies in the fact that the Nikiski project underwent comprehensive public scrutiny prior to the granting of authority to operate. Further, appropriate and reasonable terms and conditions reflecting proper regulation were imposed which, in the long run, the commission believes will protect the public interest and yet preserve an economic environment conducive to the construction and operation of pipelines in this state.

TAPS Audit

At the beginning of 1976, the commission forwarded a letter to Chairman Stafford of the ICC in regard to an audit of Alyeska Pipeline Service Company. Mr. Stafford

directed the ICC's regional auditor from San Francisco to meet with the commission in mid-January. The purpose of the auditor's visit to Alaska was to determine the scope of a financial audit of Alyeska to ensure conformance and compliance with ICC reporting requirements.

This audit is to be conducted in several stages with completion scheduled prior to mid-1977. The Pipeline Commission requested access to reports and information developed from this audit and determinations in this regard are pending from the ICC.

Acquisition of Information

The commission has acquired the complete records of all pipeline carriers currently operating within the state and they are on file with the commission's office. This includes carrier valuations, annual reports, and tariff filings for each year that a carrier operated in the state. In addition, the commission has attempted to accumulate as much literature, legal documents, textbooks, and research studies as is available concerning the history, economics, and operation of pipelines in this country.

1976 FORECAST

Regulations

Special priority in 1976 will be placed on the adoption of substantive regulations. These regulations will address themselves to matters generally dealing with the scheme of economic regulation to be employed by the commission. For rate purposes, this will include the commission's valuation methodology, depreciation guidelines for various classes of property, and treatment of income tax deferrals and credits.

Pursuant to valuation, criteria will be established in respect to property dedicated to common carrier use (including land and rights-of-way) and measures dealing with property out of service or classified by the commission as excess capacity.

These regulations will also stipulate appropriate treatment of carrying charges for property under construction and for interest incurred during construction. Working capital requirements and restrictions will be defined as well as such traditional additions to carrier valuation as administrative and engineering overhead incurred prior to and during construction and before placement of carrier property into service.

As work on this aspect of the regulations progresses, attention will be devoted to additional substantive matters dealing with operating safety, prorating, retirement, abandonment, connections, and plant extensions and additions.

The emphasis on adoption of these regulations is necessary because the governing statutes do not clearly define how the commission must regulate, but they provide the basic framework within which regulatory policy can evolve wisely over time.

With the existence of common carrier pipelines operating in the state or under construction, and especially those certificated under the "grandfather" provisions of AS 42.06.240, it is imperative and prudent to establish commission regulatory policy as rapidly and comprehensively as possible in a manner conducive to thorough public scrutiny.

This includes public hearings and adequate opportunity for the public and industry to provide comments, criticism, and recommendations. It is the commission's belief that nebulous and arbitrary regulatory practices such as those engendered and perpetuated at the federal level are undesirable and not in the public interest. The commission seeks to avoid any performance where the rules of the game are not known in advance.

Contracts and Studies

To carry out the job of developing regulations and to assist the commission in its difficult task of proper regulation, consulting contracts will be sought to study certain aspects of the economics of pipeline regulation.

These studies will center around various valuation methodologies, financing, accounting treatments, and the effects that functional and physical depreciation play on component service life and on system life in general.

The information derived from these studies will provide valuable insight and perspective in the complex task of ascertaining fair and reasonable rates of pipeline carriers.

Additional study concerning the activities of carriers operating within the state and interstate pipelines in other states will provide necessary background information and data on which to formulate policy of the commission.

Staffing

In terms of staffing requirements, three positions have been identified and recruiting efforts will take place shortly.

The positions are: accountant, economist, and engineer, all of which will be placed in service on a contractual basis initially. The economist position requires a well-rounded person with experience in transportation and marketing. The engineer position will require someone with expertise in the area of mechanical or, preferably, petroleum engineering.

The purpose of retaining permanent staff is that there needs to be a continuing body of knowledge and expertise built up within the commission to accomplish tasks in-house as directed by commission members. It is somewhat inconvenient and expensive to retain special outside expertise for relatively routine undertakings.

Nikiski Pipeline

In November 1976, the Commission anticipates a rate hearing following completion of the Nikiski Alaska Pipeline project. Although the rate setting process involved with Nikiski may not be extensive, the project itself will be closely monitored during and after construction. This is an excellent opportunity for the commission to familiarize itself with the actual construction process, particularly from a cost standpoint. Further, operating safety requirements will consume a portion of the commission's time this year in regard to Nikiski.

Trans-Alaska Pipeline

Public concern has been voiced about the rapidly escalating construction cost on the Trans-Alaska Pipeline.

Because of the enormous investment in this project, there is a legitimate basis for concern insofar as it relates to unwarranted and unreasonable expenditures on behalf of the builders of the pipeline. Unwarranted and unreasonable does not apply to requirements imposed on the builders over which they have no control (i.e., inflation, logistical problems, weather, governmental restrictions, and so on). However, it is logical to assume that owners of the pipeline will wish to recover total system costs through their proposed rates.

Therefore, it is incumbent on this commission to ascertain the proper total system cost for rate purposes, which may or may not coincide with costs presented by owners of the pipeline.

A massive financial audit of Alyeska Pipeline Service Company could reveal items of an excludable cost nature (e.g., fraud, waste, collusion, errors in reporting). However, it is doubtful that the benefits derived would justify the expense and effort necessary to uncover such items.

Rather, an audit undertaken by the commission would be more appropriately oriented toward management. In essence, questions may be raised in reference to costs incurred due to lack of or imprudent management decisions. This could involve failure to initiate cost reduction incentive programs, lack of proper security, improper design, and so forth.

Admittedly, this is a difficult task and perhaps one which would be unproductive. Nevertheless, the commission is considering the prospect of such an audit in cooperation with selected state agencies.

Jurisdiction

One extremely important question which was not fully resolved by the express terms of the Alaska Pipeline Commission Act, or later amendments to it during the special legislative session of 1973, was what are the exact bounds on the commission's legal jurisdiction, if any. From what the commission has been able to ascertain from the legislative proceeding in regard to this matter, it appears that in light of the fact that all aspects of the jurisdictional issue could not be definitively determined (because of the complexity of legal questions involved) at the time of passage of the Act, such questions would be decided later on a case-by-case basis as they arose.

No one, of course, can foresee at this time when, or even if, the commission's jurisdiction will be questioned, nor can anyone presently envision the nature or extent of such a challenge. Even with this situation in existence, which can at best be classified as one of speculation, the commission feels it is essential that it be prepared to defend the state's interest to the utmost in the event such a confrontation is forthcoming.

In an effort to take a strong position in this regard, and one the commission feels was intended by the legislature in 1972 and 1973, the commission has already

taken various preliminary steps to either reduce the likelihood of a challenge to its jurisdiction or to put itself in a posture of readiness in case such a confrontation arises. Some of the preliminary actions taken by the commission include preparing practice and procedural regulations (after affording ample public and industry input) which are as unburdensome to parties dealing with the commission as possible and which it feels are consistent with due process of law. Also, the commission has done some preliminary research into the legal question of jurisdiction on its own and requested an in-depth analysis of the question from the Department of Law. The Department of Law has been working on this project for some time and has assured the commission that its findings would be forthcoming in the immediate future.

Although some progress has been made toward understanding and resolving questions of jurisdiction, the commission nevertheless plans to place more emphasis on this matter in 1976. This is especially true because the commission feels that with the knowledge and experience it has acquired during the previous year, it is now in a far better position to look into and make intelligent decisions with regard to this issue. While the commission cannot presently foresee all the circumstances relative to this problem, it nevertheless plans to take an active role in asserting its jurisdiction when necessary and be prepared to defend its actions to the ultimate degree at any time such a determination is required. Further, the commission strongly believes that it must continue to strive for a more complete knowledge of the jurisdictional question; and in order to accomplish this end, it plans to make an all-out effort to acquire any information and expertise available which would be helpful to the commission and the state in resolving this issue.

Proceedings Before the Federal Government

Since circumstances are continually changing when proceedings are before the ICC (as a result of actions of other parties and decisions issued by federal administrative law judges and appellate opinions emerging from various boards and similar bodies within the ICC decision making structure), it is extremely difficult for the commission to outline, at this point, exactly how, when, and to what extent it will be involved in actions before the ICC. It may be generally stated, however, that the commission intends to keep constant surveillance on any pipeline matters coming before the ICC. This effort will be undertaken by the members of the commission (through their personal contacts

with ICC staff and policy makers), the continued utilization of the ICC watching service, and the continued relationship with the commission's legal counsel for ICC matters located in Washington, D.C.

Looking at the commission's future activities before the ICC on a more specific level, it intends to continue its efforts with regard to Ex Parte No. 308, Valuation of Common Carrier Pipelines, and ICC Docket No. 36244, Charge for Terminalling and Storage, Kenai Pipe Line and No. 36244 (Sub No. 1), Increased Rates on Crude Petroleum, Kenai Pipe Line, until they are resolved.

In summary, the commission will initiate complaints, protests, and other formal actions with the ICC, FPC and any other such agency whenever carriers or their activities are in violation of federal statutes, orders, decrees or, in the judgement of the commission, whenever the activities or rates of such carriers clearly have an adverse impact on or are detrimental to the interests of Alaska.

CONCLUSION

The members of the Alaska Pipeline Commission believe they have taken an aggressive and positive stance in carrying out the intent of the Alaska Pipeline Commission Act.

It is firmly believed that the commission can achieve its objectives if given the necessary resources, cooperation, and time. Determinations and policy of the commission are elements which cannot evolve overnight if it is expected that the commission is to continue to maintain credibility and effectiveness. This is particularly true when interfacing with federal agencies, which are notoriously slow and frequently unaware of local concerns.

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2/15/97

Re HB 705

*Come into copy
minutes from committee
mtg. at to get
copies of some info in
files re this bill.*

STATE OF ALASKA

JAY S. HAMMOND, GOVERNOR

DEPARTMENT OF COMMERCE &
ECONOMIC DEVELOPMENT

ALASKA PIPELINE COMMISSION

338 DENALI ST./12TH FLOOR
ANCHORAGE 99501

March 26, 1976

The Honorable Terry Gardiner
Chairman, House Judiciary Committee
Alaska State Legislature
Pouch V
Juneau, AK 99811

Dear Terry:

Thank you for your letter of March 23. I wish to convey to you our appreciation for your continued interest in the Alaska Pipeline Commission, and to emphasize my strong belief in the commission concept and the potential benefit it can render the state and its people.

In answer to your questions regarding the Commission's budget, I will briefly summarize what has happened to date.

For FY-76, the Legislature appropriated \$375,100 to the Commission. In September of 1975, the Department of Commerce and Economic Development unilaterally cut \$102,600. Following my appointment in October of that year, a portion of those funds presumedly were restored to cover my salary, but we have no documentation to that effect.

In October of 1975, Chairman Werner presented a proposed budget of \$376,800 to the Governor's Budget Review Committee. The committee reduced this request to \$330,400, and this amount is presently before the legislative finance committees.

Since appearing before your committee and discussing the matter with legislators generally, the Commission feels it essential that its budget request be updated to reflect present and future concerns of both the legislature and administration. For example, if HB 705 and HB 706 are enacted (as well as other pending legislation; i.e., HB 728 or HB 851), and if another full-time commissioner is appointed, various adjustments will have to be made. We have already begun this reassessment and will have the figures to you and your colleagues as quickly as possible. We also are working on a statement of goals that the Commission believes are attainable in FY-77 and a plan of action which will both be forth-coming in the immediate future.

The Honorable Terry Gardiner
Page 2
March 26, 1976

Additionally, the Commission would like to receive a transcript of the committee meeting you held on HB 705. I don't know the procedure to follow in this regard, but we hereby authorize Carol Elliott of Action Secretarial Service, 128 Seward St., Juneau (586-1715) to act as our agent for the purpose of having these tapes transcribed. I hope this meets with your approval.

Thank you again, Terry, for your continued interest and concern. I hope we will be able to provide you with further information in the next week or so.

Best regards,



Russell E. Mulder
Commissioner

cc: Carol Elliot

STATE OF ALASKA

DEPARTMENT OF COMMERCE & ECONOMIC DEVELOPMENT

ALASKA PIPELINE COMMISSION

file with members

JAY S. HAMMOND, GOVERNOR

338 DENALI ST./12TH FLOOR
ANCHORAGE 99501

February 23, 1976

Representative Terry Gardiner
Chairman, House Judiciary Committee
Pouch V
Juneau, AK 99811

Dear Mr. Chairman:

Recently two proposed pieces of legislation (HB 705 and HB 706) were introduced which taken either separately or together would have a tremendous impact upon the proper functioning of the Alaska Pipeline Commission and further could have a severe effect upon the ability of this commission to represent the best interests of the state.

As you are well aware, HB 705 has been referred to your committee for consideration. First, the members of this commission would like to impress upon you and your colleagues on the committee that they believe HB 705 (especially when considered in conjunction with HB 706 which was referred to the House committee on commerce and finance) is not only unnecessary proposed legislation but also has the potential of being extremely dangerous to the entire concept embraced in the Alaska Pipeline Commission Act (Ch. 139 SLA 1972 as amended). Enclosed is a brief summary of our comments which hopefully will give you some idea of our thinking. If you would like us to go into further detail, we would be more than happy to do so.

Second, the commission would like to have the opportunity to appear before you and your committee when HB 705 is brought up for consideration in order that the members of the commission could personally give you their views on the bill and adequately answer any questions you might have. If you could offer us this opportunity, we would appreciate it very much.

Sincerely,



Russell E. Mulder
Commissioner

REM:alk

Enclosure

DEPARTMENT OF COMMERCE & ECONOMIC DEVELOPMENT

TO: APC

DATE: 2/10

(~~SENATE~~ HOUSE) BILL 705 and 706

RE: powers of APC

Check One:

- 1. TOP PRIORITY - in favor of _____
- 2. FAVOR - in favor of, but not top priority _____
- 3. OK - no definite stand _____
- 4. NOT IN FAVOR _____
- 5. TOP PRIORITY - "Strongly Opposed" _____ X
- 6. BILL DOES NOT PERTAIN TO DIVISION _____
- 7. Bill does not directly pertain to division, but I am interested in its progress. Keep me informed. _____

COMMENTS: (Justification must be stated for #1 - #6 above. Continue on another page if needed).

While HB Nos. 705 and 706 must be considered together when weighing the ultimate effect they could have on the state, it is perhaps more helpful if each piece of legislation were discussed separately.

First, HB 705 is considered by the Commission to be a very real threat to the overall concept of having one governmental body (The Alaska Pipeline Commission) responsible for and instrumental in protecting the state's interests in matters of oil and gas pipeline regulation. This legislative intent in enacting the Alaska Pipeline Commission Act (Ch. 139 SLA 1972), which is supported by considerable authoritative testimony on the subject, is readily detected when one considers the broad latitude the legislature gave the Commission for dealing with matters of oil and gas pipeline regulation. Besides being vested with the general responsibility of regulating pipelines, the Commission is also directed to promote and oversee the development of an oil and gas pipeline transportation

(Continued)

Writer's Signature: [Signature]
Writer's Title: Chairman

(Note: Please return to Information Officer/Leg. Ass't Office of the Commissioner)

(DEADLINE 24 hours)

Comments on HB 705 (Continued)

system in the state (see AS 42.06.010 and 42.06.020). Further, and more specifically, the Act claims very extensive jurisdiction for the Commission and also vests in the Commission wide authority to pass upon the validity of tariffs filed by pipeline carriers. These aspects of the Alaska Pipeline Commission Act reveal the obvious intent to keep the various segments of oil and gas pipeline regulation contained in one governmental unit and not distributed among many.

In addition, one can observe from the statutory provisions relating to the makeup of the Commission (AS 42.06.060) and the authority and tools it is given to carry out its duties (AS 42.06.120) that the Commission is presently structured in such a way as to maintain continuity and to gain the knowledge and expertise necessary to function properly in the public interest.

With this background in mind, it is apparent to the Commission that splitting up of functions between the Commission and the Department of Law would only add confusion, interfere with the Commission's policy making functions, make pipeline regulation (including promotion of them) subject to political pressure and manipulation from the executive branch, and weaken the state's credibility and posture before the federal courts and regulatory bodies.

Funds appropriated through HB 706 would be needlessly expended, since much of what is sought through the appropriation has already been accomplished by the Commission, including contracts for the services indicated.

In conclusion, the Commission cannot comprehend the net benefits to be gained by the state in splitting up its legislatively mandated functions with the Department of Law. Under AS 42.06.110, the Department of Law is the Commission's counsel in legal matters arising from the discharge of the Commission's duties and in actions to which it is a party. This is consistent with the process employed by the ATC and PUC.

Terry Gardiner

Box 1092, Ketchikan, Alaska 99901 Pouch V, Juneau, Alaska 99811

March 23, 1976

Russell Mulder
Alaska Pipeline Commission
338 Denali Street/12th Floor
Anchorage, Alaska 99501

Dear Russ,

Although the Judiciary Committee did pass out HB 705 this does mean that we do not have any further interest in the Alaska Pipeline Commission. On the contrary, I think the interest of the Legislature and the Administration in HB 705 is indicative of the concern to see the Commission function as originally envisioned at the time of the passage of the legislation in 1972 and subsequent revisions in 1973.

We are still interested in receiving the budgetary information that we requested. We intend to make some recommendations to the House Finance Committee to insure that there is adequate funding to allow the Alaska Pipeline Commission to function properly. Any additional information that you may have at this time in terms of budgetary requests that were not submitted to the Governor's budget review committee would also be appreciated.

Sincerely,

Terry Gardiner

STATE OF ALASKA

JAY S. HAMMOND, GOVERNOR

DEPARTMENT OF COMMERCE & ECONOMIC DEVELOPMENT

ALASKA PIPELINE COMMISSION

338 DENALI ST./12TH FLOOR
ANCHORAGE 99501

March 17, 1976

The Honorable Terry Gardiner
Chairman, House Judiciary Committee
Alaska State Legislature
Pouch V, State Capital
Juneau, AK 99811

Dear Terry:

This morning I heard from Juneau that last night your committee acted on HB 705 with everyone recommending it "do pass" except Eliason and Specking who were not present. Also, as I understand it, AS 42.06.230 was amended by deleting "exclusively" in regard to the commission's jurisdiction (necessary for consistency).

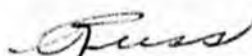
If I had not spent so many years working with the legislative process, I guess I would say I was surprised or even stunned by your committee's action last night. However, after going through my confirmation hearing before the joint House and Senate Resources Committee and discussing the entire matter with as many legislators as possible, I believe I understand the prevailing sentiment of both the legislature and the administration. In light of all this, my bewilderment has lessened substantially. It is naturally disappointing to know that our arguments against HB 705 and HB 706 were obviously not persuasive but nevertheless John Werner and I appreciate the fact that you and your committee at least gave us the opportunity to try.

In view of what transpired with your committee last night, do you still want us to compile the budgetary information you requested when we appeared before you? It seems to be a moot question now, but if you still desire it, please let us know.

Again, thank you for asking us down to testify and for taking the time to let us present our side of the story. Both Commissioner Werner and I wish to thank you for your courtesy.

Personally Terry, it was good seeing and talking with you again, and I hope you the best for the remainder of the session.

Best regards,



Russell E. Mulder
Commissioner

HB 705 - Pipeline Commission

HB 706 appropriates 100,000

Pipeline Tariff - subtracted from refinery price
to give wellhead value

1972 PASSED

1973

1974

1975

1976

Oil Companies will move profit margin into pipeline

- Need Aggressive Action from Commission -

APC should represent us before ICC

	FY 1975	FY 76	FY 77
	282,000	295,000	330,000

Actual

94,200

Obtained contractual Monies

Annual Report submitted this year

1. Have requested ICC Audits
2. Considering "Management"

Free Conference in 1975 - \$100,000 for professional
fees - legal counsel for rate hearings

Charles Parker - Paid \$ on hourly basis
Dec 74 - Russ filled Marty Ferrello part time
Oct 75 became full time

Admin Ass

Contractual Services

Legal Counsel - Donald, Chamy, Caldwell D.C.

I.C.C. 2 proceedings before I.C.C.

Feb 15

When Weaver Appointed? April 74
- Why only 94,200 spent?

~~Did you see~~

Are you satisfied with operations of APC?
If you're not what have you requested in change?

① Need 3rd fulltime Commissioner

Delay of Regulations - Contract through Gov office
6 Mo. to get Regulations approved

Operation Expenses }
Capital Expenses }

ICC will probably accept Alyeska figures on
Construction/Management costs unless somebody protests

Receive Quarterly Reports from Alyeska Now

Get ~~ICC~~ Alyeska annual financial audit
ICC Audit will be completed in one year

Are going to let contract for pipeline Model