

SB

108

Final CS for short version BIC

5-0553L
Bradley
4/10/87

Original sponsor: Coghill

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IN THE SENATE BY THE JUDICIARY COMMITTEE

CS FOR SENATE BILL NO. 108 (Judiciary)

IN THE LEGISLATURE OF THE STATE OF ALASKA

FIFTEENTH LEGISLATURE - FIRST SESSION

A BILL

For an Act entitled: "An Act relating to decisions on right-of-way lease applications."

BE IT ENACTED BY THE LEGISLATURE OF THE STATE OF ALASKA:

* Section 1. AS 38.35.100 is amended to read:

Sec. 38.35.100. DECISION ON APPLICATION. (a) The commissioner shall promptly determine, on an application filed under AS 38.35.050, whether the applicant is fit, willing and able to perform the transportation or other acts proposed in a manner that will be required by the present or future public interest. In making a determination the commissioner shall consider whether or not

(1) the proposed use of the right-of-way will unreasonably conflict with existing uses of the land involving a superior public interest;

(2) the applicant has the technical and financial capability to protect state and private property interests;

(3) the applicant has the technical and financial capability to take action to the extent reasonably practical to

(A) prevent any significant adverse environmental impact, including but not limited to, erosion of the surface of the land and damage to fish and wildlife and their habitat;

(B) undertake any necessary restoration or revegetation; and

(C) protect the interests of individuals living in the general area of the right-of-way who rely on fish, wildlife and

1 biotic resources of the area for subsistence purposes;

2 (4) the applicant has the financial capability to pay
3 reasonably foreseeable damages for which the applicant may become
4 liable on claims arising from the construction, operation, maintenance
5 or termination of the pipeline;

6 (5) the applicant has agreed that in the construction and
7 operation of a pipeline within the right-of-way the applicant will
8 comply with and require contractors and their subcontractors to comply
9 with applicable and valid laws and regulations regarding the hiring of
10 residents of the state then in effect or that take effect subsequent-
11 ly.

12 (b) If the commissioner makes the [THESE] determinations under
13 (a) of this section favorably to the applicant, then the commissioner
14 may grant the whole or part of the application. If the commissioner
15 makes the determinations under (a)(1) - (5) of this section favorably
16 to the applicant but determines that the applicant is not then fit,
17 willing, and able to perform under the application, the commissioner
18 may grant the application subject to conditions established by the
19 commissioner that will ensure that the applicant will, within a pre-
20 scribed period of time not exceeding 10 years, establish that the
21 applicant is fit, willing, and able, under (a) of this section, to
22 perform the transportation or other acts that will be required by the
23 present or future public interest. An applicant is not entitled to a
24 notice or authorization to proceed to construction, or its equivalent,
25 under a conditional lease until the commissioner determines in writing
26 that the applicant has satisfactorily established that the applicant
27 is then fit, willing, and able to perform under (a) of this section.
28 Otherwise, the commissioner shall deny the application.

29 (c) The commissioner may offer the applicant a lease under this

1 section. If the applicant does not accept a lease offered under this
2 section within 30 days, the lease offered is withdrawn [IN ORDER TO
3 GRANT THE WHOLE OR PART OF THE APPLICATION THE COMMISSIONER SHALL

4 OFFER A LEASE TO THE APPLICANT FOR ITS ACCEPTANCE THROUGH SIGNING OF

5 THE LEASE AND AGREEING TO COMPLY WITH ITS TERMS, CONDITIONS, AND

6 OBLIGATIONS. ONLY UPON PROPER ACCEPTANCE OF OFFERED LEASE BY THE

7 APPLICANT WITHIN 30 DAYS AFTER ITS HAVING BEEN PRESENTED IS THE GRANT

8 OF THE APPLICATION CONSUMMATED].

9 * Sec. 2. AS 38.35.100 is amended by adding new subsections to read:

10 (d) The commissioner shall include in a conditional lease each
11 requirement and condition of the covenants established under AS 38.-
12 35.120. The commissioner may also require that the lessee agree to
13 additional conditions that the commissioner finds to be in the public
14 interest. In place of the covenant established under AS 38.35.-
15 120(a)(9), the commissioner shall require the lessee to agree that it
16 will not transfer, assign, pledge, or dispose of in any manner, di-
17 rectly or indirectly, its interest in a conditional right-of-way lease
18 or a pipeline subject to the conditional lease, unless the commis-
19 sioner, after considering the public interest, authorizes the trans-
20 fer. The commissioner shall also require the lessee to agree not to
21 allow the transfer of control of the lessee without the approval of
22 the commissioner; as used in this subsection, "transfer of control of
23 the lessee" means the transfer of 30 percent or more, in the aggre-
24 gate, of ownership interest in the lessee in one or more transactions
25 to one or more persons by one or more persons.

26 (e) The commissioner shall require a conditional lessee to agree
27 that

28 (1) in the absence of the approval of the commissioner, a
29 transfer may not relieve the lessee of an obligation assume' under the

1 lease;

2 (2) a transfer, including the transfer of lessee, that
3 occurs without the approval of the commissioner is ineffective to
4 transfer interests in and obligations under the lease; and

5 (3) a transfer constitutes a default under the lease.

6 (f) In an application for the approval under (d) of this section
7 of a transfer of an interest, the commissioner shall consider whether
8 the proposed transferee will be fit, willing, and able to perform the
9 transportation or other acts proposed under the conditions established
10 in the conditional lease and whether the transfer is in the public
11 interest. In approving the transfer of an interest under (d) of this
12 section and this subsection, the commissioner may impose any condition
13 on the transfer that the commissioner considers in the public inter-
14 est.

15 (g) If the commissioner determines under (a) of this section
16 that the applicant is fit, willing, and able to perform the transpor-
17 tation or other acts proposed in a manner that will be required by the
18 present or future public interest, the commissioner may amend the
19 conditional right-of-way lease to insert the covenant established in
20 AS 38.35.120(a)(9) in place of the covenant against a transfer estab-
21 lished under (d) and (e) of this section.

22 (h) The issuance of a conditional lease does not prevent the
23 commissioner from issuing other conditional or unconditional leases
24 for the same right-of-way. An applicant or conditional lessee accrues
25 no priority rights to a particular right-of-way until the commissioner
26 makes a determination that the applicant or conditional lessee is then
27 fit, willing, and able to perform the transportation or other acts
28 proposed under (a) of this section.

29 (i) The commissioner shall insert a provision implementing the

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requirements of (a)(5) of this section into each agreement entered into by the commissioner for the construction and operation of a pipeline within the state.

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Sent to Ron Lorenson for
final info. BK
on this
longer version

5-0553X
Bradley
4/13/87

Original sponsor: Coghill

1 IN THE SENATE BY THE JUDICIARY COMMITTEE
2 CS FOR SENATE BILL NO. 108 (Judiciary)
3 IN THE LEGISLATURE OF THE STATE OF ALASKA
4 FIFTEENTH LEGISLATURE - FIRST SESSION
5 A BILL

6 For an Act entitled: "An Act relating to decisions on right-of-way lease
7 applications; and providing for an effective date."

8 BE IT ENACTED BY THE LEGISLATURE OF THE STATE OF ALASKA:

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14 the present or future public interest. In making a determination the
15 commissioner shall consider whether or not

16 (1) the proposed use of the right-of-way will unreasonably
17 conflict with existing uses of the land involving a superior public
18 interest;

19 (2) the applicant has the technical and financial capabil-
20 ity to protect state and private property interests;

21 (3) the applicant has the technical and financial capabil-
22 ity to take action to the extent reasonably practical to

23 (A) prevent any significant adverse environmental
24 impact, including but not limited to, erosion of the surface of
25 the land and damage to fish and wildlife and their habitat;

26 (B) undertake any necessary restoration or revegeta-
27 tion; and

28 (C) protect the interests of individuals living in the
29 general area of the right-of-way who rely on fish, wildlife and

1 biotic resources of the area for subsistence purposes;

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3 reasonably foreseeable damages for which the applicant may be
4 liable on claims arising from the construction, operation, maintenance
5 or termination of the pipeline;

6 (5) the applicant has agreed that in the construction and
7 operation of a pipeline within the right-of-way the applicant will
8 comply with and require contractors and their subcontractors to comply
9 with applicable and valid laws and regulations regarding the hiring of
10 residents of the state then in effect or that take effect subsequent-
11 ly.

12 (b) If the commissioner makes the [THESE] determinations under
13 (a) of this section favorably to the applicant, then the commissioner
14 may grant the whole or part of the application. If the commissioner
15 makes the determinations under (a)(1) - (5) of this section favorably
16 to the applicant but determines that the applicant is not then fit,
17 willing, and able to perform under the application, the commissioner
18 may grant the application subject to conditions established by the
19 commissioner that will ensure that the applicant will, within a pre-
20 scribed period of time not exceeding 10 years, establish that the
21 applicant is fit, willing, and able, under (a) of this section, to
22 perform the transportation or other acts that will be required by the
23 present or future public interest. An applicant is not entitled to a
24 notice or authorization to proceed to construction, or its equivalent,
25 under a conditional lease until the commissioner determines in writing
26 that the applicant has satisfactorily established that the applicant
27 is then fit, willing, and able to perform under (a) of this section.
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2 section within 30 days, the lease offered is withdrawn [IN ORDER TO
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7 APPLICANT WITHIN 30 DAYS AFTER ITS HAVING BEEN PRESENTED IS THE GRANT

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9 * Sec. 2. AS 38.35.100 is amended by adding new subsections to read:

10 (d) The commissioner shall include in a conditional lease each

11 requirement and condition of the covenants established under AS 38.-

12 35.120. The commissioner may also require that the lessee agree to

13 additional conditions that the commissioner finds to be in the public

14 interest. In place of the covenant established under AS 38.35.-

15 120(a)(9), the commissioner shall require the lessee to agree that it

16 will not transfer, assign, pledge, or dispose of in any manner, di-

17 rectly or indirectly, its interest in a conditional right-of-way lease

18 or a pipeline subject to the conditional lease, unless the commis-

19 sioner, after considering the public interest, authorizes the trans-

20 fer. The commissioner shall also require the lessee to agree not to

21 allow the transfer of control of the lessee without the approval of

22 the commissioner; as used in this subsection, "transfer of control of

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24 gate, of ownership interest in the lessee in one or more transactions

25 to one or more persons by one or more persons.

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28 (1) in the absence of the approval of the commissioner, a

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2 (2) a transfer, including the transfer of lessee, that
3 occurs without the approval of the commissioner is ineffective to
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7 of a transfer of an interest, the commissioner shall consider whether
8 the proposed transferee will be fit, willing, and able to perform the
9 transportation or other acts proposed under the conditions established
10 in the conditional lease and whether the transfer is in the public
11 interest. In approving the transfer of an interest under (d) of this
12 section and this subsection, the commissioner may impose any condition
13 on the transfer that the commissioner considers in the public inter-
14 est.

15 (g) If the commissioner determines under (a) of this section
16 that the applicant is fit, willing, and able to perform the transpor-
17 tation or other acts proposed in a manner that will be required by the
18 present or future public interest, the commissioner may amend the
19 conditional right-of-way lease to insert the covenant established in
20 AS 38.35.120(a)(9) in place of the covenant against a transfer estab-
21 lished under (d) and (e) of this section.

22 (h) The issuance of a conditional lease does not prevent the
23 commissioner from issuing other conditional or unconditional leases
24 for the same right-of-way. An applicant or conditional lessee accrues
25 no priority rights to a particular right-of-way until the commissioner
26 makes a determination that the applicant or conditional lessee is then
27 fit, willing, and able to perform the transportation or other acts
28 proposed under (a) of this section.

29 (i) The commissioner shall insert a provision implementing the

1 requirements of (a)(5) of this section into each agreement entered
2 into by the commissioner for the construction and operation of a
3 pipeline within the state.

4 * Sec. 3. AS 38 is amended by adding a new chapter to read:

5 CHAPTER 36. RESIDENT EMPLOYMENT PREFERENCE UNDER STATE RIGHTS-OF-WAY.

6 ARTICLE 1. HIRING PREFERENCE.

7 Sec. 38.36.010. STATE POLICY. It is the policy of the state to
8 develop the state to provide the maximum benefit to the people of the
9 state as required by the Constitution of the State of Alaska. The
10 benefits include employment opportunities in projects under AS 38.35
11 for residents qualified for the employment, as well as receipt of
12 state revenue from the development.

13 Sec. 38.36.020. LEGISLATIVE FINDINGS. (a) The legislature
14 finds that

15 (1) because of its unique climate and its distance from the
16 contiguous states, the state has historically suffered from unique
17 social, seasonal, geographic, and economic conditions that result in
18 an unstable economy;

19 (2) the unstable economy is a hardship on the residents of
20 the state and is aggravated by the large numbers of seasonal and
21 transient nonresident workers;

22 (3) the rate of unemployment among residents of the state
23 is one of the highest in the nation;

24 (4) the state has one of the highest ratios of nonresident-
25 to-resident workers in the nation;

26 (5) the state has a compelling interest in reducing the
27 level of unemployment among its residents;

28 (6) the construction industry in the state accounts for a
29 substantial percentage of the available employment;

1 (7) construction workers receive a greater percentage of
2 the unemployment benefits paid by the state than is typical of other
3 states;

4 (8) chronic unemployment can breed severe social problems
5 including alcoholism and domestic violence;

6 (9) the rate of unemployment in the construction industry
7 in the state is historically higher than the rate of unemployment in
8 other industries in the state;

9 (10) the influx of nonresident construction workers contri-
10 butes to or causes the high unemployment rate among resident construc-
11 tion workers because nonresident workers compete with residents for
12 the limited number of available construction jobs;

13 (11) the rights-of-way on state land are owned by the state
14 and belong to the residents of the state;

15 (12) the vast majority of the state's revenue is derived
16 from income resulting from the development of the state rather than
17 from other forms of taxation;

18 (13) because the state has no personal income tax or sales
19 tax, nonresident workers use services provided by the state but do not
20 contribute fairly to the costs of those services; and

21 (14) Alaskans, more than the residents of other states,
22 suffer economically when nonresidents displace qualified residents
23 since resident workers contribute local taxes as well as their share
24 of the royalties from natural resources.

25 (b) The legislature further finds that

26 (1) the findings of the Department of Labor of the State of
27 Alaska in its report entitled "Nonresidents Working in Alaska in 1985"
28 support the need for a resident hiring preference;

29 (2) there is a need for timely, accurate information on the

1 number of nonresident and resident workers in industries in the state;

2 (3) the state has a continuing interest in determining
3 whether indirect benefits, including employment opportunities, from
4 state expenditures, construction projects, and agreements concerning
5 the development of the state's resources accrue to residents of the
6 state or to nonresidents;

7 (4) a major factor in the unemployment problem is the
8 failure of some employers engaged in the development of the state and
9 under leases or other agreements granted or permitted by the state to
10 employ state residents;

11 (5) whereas at an earlier stage of the state's history it
12 was asserted that high unemployment in the state was due to cultural
13 and geographical migration barriers, the state now has many residents
14 who are qualified, trained, and available for employment in the explo-
15 ration, development, production, and extraction of natural resources
16 on state land;

17 (6) the state has made significant investments in training
18 programs and vocational education to help furnish industry with qual-
19 ified residents able to work in the development, exploration, produc-
20 tion, and extraction of natural resource products on state land;

21 (7) the state's investment in training and education pro-
22 grams will be of little avail unless state residents receive employ-
23 ment opportunities in construction projects on state land;

24 (8) employment of nonresidents displaces qualified resi-
25 dents from work in the development of the state; therefore, the number
26 of nonresidents hired for work on the development of state land is a
27 peculiar source of the unemployment problem now besetting the state;

28 (9) the number of state residents who are unable to find
29 work is considerably higher than is reflected by unemployment rates

1 based on nationally accepted measures;

2 (10) many rural state residents who wish to work do not seek
3 employment as frequently as necessary to meet federal definitions of
4 unemployment because of continuing lack of employment opportunities in
5 rural areas of the state.

6 Sec. 38.36.030. UNAVAILABILITY OF PREFERRED WORKERS. (a) An
7 employer subject to hiring requirements under AS 38.35.100 may request
8 the commissioner of labor to assist in the location of qualified,
9 eligible employees under AS 36.10.070. After receiving a request for
10 assistance, the commissioner of labor shall refer qualified, eligible,
11 and available residents to the employer to fill the employer's hiring
12 needs.

13 (b) If the commissioner of labor is unable to refer a sufficient
14 number of qualified, eligible, and available residents able to perform
15 the work, the commissioner of labor may approve the hiring of resi-
16 dents who are not eligible for preference and nonresidents for the
17 balance of the request.

18 Sec. 38.36.040. REGULATIONS. The commissioner of labor shall
19 adopt regulations under the Administrative Procedure Act (AS 44.62) to
20 implement this chapter and encourage and require the hiring of resi-
21 dents to the maximum extent permitted by law.

22 Sec. 38.36.050. PREFERENCE IN ZONE OF UNDEREMPLOYMENT. (a) For
23 the full two fiscal years following a determination by the commis-
24 sioner of labor that a zone of underemployment exists, qualified
25 residents who are eligible for an employment preference under AS 36.-
26 10.140 shall be given preference in hiring for work on each right-
27 of-way project on state land under AS 38.35 that is wholly or partial-
28 ly sited within the zone of underemployment. The preference applies
29 on a craft-by-craft or occupational basis.

1 (b) The commissioner of labor shall determine the amount of work
2 that must be performed under this section by qualified residents who
3 are eligible for an employment preference under AS 36.10.140. In
4 making this determination, the commissioner shall consider the nature
5 of the work, the classification of workers, availability of eligible
6 residents, and the willingness of eligible residents to perform the
7 work.

8 (c) The commissioner of labor shall determine that a zone of
9 underemployment exists on a determination that

10 (1) the rate of unemployment within the zone is substan-
11 tially higher than the national rate of unemployment;

12 (2) a substantial number of residents in the zone have
13 experience or training in occupations that would be employed on a
14 project;

15 (3) the lack of employment opportunities in the zone has
16 substantially contributed to serious social or economic problems in
17 the zone; and

18 (4) employment of workers who are not residents is a pecu-
19 liar source of the unemployment of residents of the zone.

20 Sec. 38.36.060. PREFERENCE IN ECONOMICALLY DISTRESSED ZONE. The
21 hiring preference established in AS 36.10.160 for residents of an
22 economically distressed zone who qualify under AS 36.10.140 applies to
23 work on each construction project on a state right-of-way under
24 AS 38.35 that is wholly or partially sited within the economically
25 distressed zone.

26 Sec. 38.36.070. GENERAL REQUIREMENTS. (a) If the governor has
27 declared an area to be an area affected by an economic disaster under
28 AS 44 285, then the preference for residents of the area estab-
29 lished under AS 44.33.285 - 44.33.310 supersedes a preference under

1 this chapter.

2 (b) The commissioner of labor shall define the boundaries of a
3 zone in which a preference applies. The boundaries may include a
4 portion of the state or the state as a whole.

5 Sec. 38.36.080. DETERMINATION OF QUALIFICATIONS, TRANSFERS, AND
6 CERTIFICATION. (a) An employer shall determine and judge the work
7 qualifications of applicants for employment.

8 (b) An employer may make a bona fide transfer of management
9 employees from one project or business activity to another. A posi-
10 tion filled by a bona fide transfer under this subsection is not
11 considered to have been a vacancy for the purposes of the hiring
12 requirements under AS 38.36.050 - 38.36.060.

13 (c) An employer subject to a resident hiring requirement under
14 this chapter shall certify that individuals employed as residents
15 under a preference were eligible for the preference at the time of
16 hiring.

17 (d) A labor organization that dispatches members for work on a
18 right-of-way project on state land under AS 38.35 under a collective
19 bargaining agreement shall certify that individuals dispatched as
20 residents to meet a preference were eligible for the preference at the
21 time of dispatch.

22 (e) An employer or labor organization may request assistance
23 from the commissioner of labor in verifying the eligibility of an
24 applicant for a hiring preference under this chapter.

25 Sec. 38.36.090. INCORPORATION INTO CONTRACTS. (a) In order to
26 create, protect, and preserve the right of eligible qualified resi-
27 dents to employment on right-of-way projects on state land under
28 AS 38.35, the commissioner shall incorporate into each lease or condi-
29 tional lease a provision requiring compliance with this chapter,

1 regulations adopted under this chapter, and each later amendment to
2 this chapter or the regulations, and authorizing penalties under
3 AS 38.36.210 for failure to comply.

4 (b) The commissioner shall incorporate into each lease or condi-
5 tional lease a requirement that the lessee include in each contract
6 with contractors or subcontractors who will be operating on a state
7 right-of-way project under AS 38.35 a provision requiring compliance
8 with this chapter, regulations adopted under this chapter, and each
9 later amendment to this chapter or the regulations, and authorizing
10 penalties under AS 38.36.210 for failure to comply.

11 Sec. 38.36.100. REPORTING PROVISIONS. An employer obligated to
12 employ residents under this chapter shall comply with the reporting
13 provisions that the commissioner of labor determines are necessary to
14 carry out this chapter. Except for statistical data, information
15 concerning specific employees is confidential and may not be released
16 to the public by the department. The confidential employee informa-
17 tion may be shared between departments for purposes of this chapter.

18 Sec. 38.36.110. RESIDENT CERTIFICATION. (a) The commissioner
19 of labor may implement a certification system for state residents.
20 The commissioner of labor may charge applicants for certification a
21 reasonable fee to cover the costs of the certification system.

22 (b) An employer who reasonably relies on a certification by the
23 commissioner of labor that an applicant or employee is a resident is
24 not liable for penalties under this chapter based on the nonresidence
25 of the applicant or employee.

26 ARTICLE 2. ENFORCEMENT.

27 Sec. 38.36.210. CIVIL PENALTY FOR WILFUL NONCOMPLIANCE. (a)
28 The commissioner of labor may conduct investigations and hearings to
29 enforce compliance with this chapter. After a hearing, if the

1 commissioner of labor finds that an employer has wilfully failed to
2 comply with this chapter, the commissioner of labor may impose a civil
3 penalty in an amount no greater than

4 (1) \$5,000 for the first rejection of a qualified eligible
5 applicant or other violation of this chapter;

6 (2) \$10,000 for the second and each subsequent rejection or
7 other violation of this chapter.

8 (b) In addition to the imposition of other penalties under this
9 section, if the commissioner of labor finds that an employer has
10 wilfully rejected a qualified eligible applicant or terminated a
11 qualified eligible employee in violation of this chapter, the commis-
12 sioner may require the employer to pay the person the amount of wages
13 the person lost and may require additional amounts to reimburse the
14 person for actual expenses incurred as a result of the wrongful
15 action.

16 (c) The commissioner of labor may impose the penalties under
17 this section on an employer only if the employer itself has failed to
18 comply with this chapter, regulations adopted under this chapter, or
19 later amendments to this chapter or the regulations, or if the em-
20 ployer has failed to incorporate into its contracts the provision
21 required under AS 38.35.100(h) and AS 38.36.090(b).

22 (d) In addition to the imposition of penalties under this sec-
23 tion, the commissioner of labor may seek injunctive relief against a
24 person who is not in compliance with this chapter and the enforcement
25 of penalties imposed under this section.

26 Sec. 38.36.220. PENALTIES FOR APPLICANTS AND EMPLOYERS. (a) An
27 individual who makes a false sworn statement in connection with a
28 certification of eligibility for an employment preference under this
29 chapter is subject to criminal prosecution for perjury under

1 AS 11.56.200.

2 (b) An individual who makes an unsworn falsification with the
3 intent to mislead a public servant in the performance of a duty in
4 connection with a certification of eligibility for an employment
5 preference under this chapter is subject to criminal prosecution under
6 AS 11.56.210.

7 (c) In addition to criminal penalties imposed by state law, an
8 individual who is convicted of a crime in connection with a false
9 statement made in a certification required under AS 38.36.080, if the
10 conviction is not reversed, forfeits all future rights to eligibility
11 for an employment preference under this chapter.

12 Sec. 38.36.230. CIVIL PENALTIES FOR FALSE CERTIFICATIONS. (a)
13 In addition to any criminal penalties imposed and to penalties imposed
14 under AS 38.36.210 and 38.36.220, after a hearing the commissioner of
15 labor may impose a civil penalty on an individual who, in connection
16 with certification of eligibility for an employment preference under
17 this chapter,

18 (1) made a false sworn statement; or

19 (2) made an unsworn falsification with intent to mislead a
20 public servant in the performance of a duty.

21 (b) The amount of the civil penalty under (a) of this section
22 for an individual who falsely certifies that the person is eligible
23 for an employment preference under this chapter is not more than \$400
24 for each false certification. The individual also forfeits all future
25 rights to eligibility for an employment preference under this chapter.

26 (c) The amount of the civil penalty under (a) of this section
27 for an employer who falsely certifies that an employee is a resident
28 eligible for a preference under this chapter is not more than \$2,000
29 for each of the first five false certifications. The penalty for the

1 sixth and each succeeding false certification made by an employer is
2 at least \$2,000 and not more than \$4,000.

3 ARTICLE 3. GENERAL PROVISIONS.

4 Sec. 38.36.310. APPLICABILITY OF CHAPTER. This chapter applies
5 to each right-of-way project on state land under AS 38.35. The pref-
6 erence applies only to employment that is performed directly for an
7 employer.

8 Sec. 38.36.390. DEFINITIONS. In this chapter

9 (1) "employer" means a person other than the state who is a
10 party to a lease or conditional lease under AS 38.35.100 on state land
11 and the person's affiliate, principal, subsidiary, contractor, or
12 subcontractor if the activity of the affiliate, principal, subsidiary,
13 contractor, or subcontractor is performed on state land;

14 (2) "qualified" has the meaning given in AS 36.10.990;

15 (3) "resident" has the meaning given in AS 36.95.010;

16 (4) "right-of-way project on state land" means a project
17 authorized by a lease or conditional lease for the construction and
18 operation of an oil and gas pipeline under AS 38.35 if the state is a
19 party to the lease and the project is performed in whole or in part on
20 state land;

21 (5) "state land" means all land, including shore, tide, and
22 submerged land, belonging to or acquired by the state.

23 * Sec. 4. AS 38.36, enacted in sec. 3 of this Act, applies to a lease
24 or conditional lease for the development of state rights-of-way under
25 AS 38.35 entered into on or after the effective date of this Act and to a
26 renegotiation of the lease or conditional lease under AS 38.35. AS 38.36
27 applies to the renegotiation on or after the effective date of this Act of
28 a lease or conditional lease entered into before the effective date of this
29 Act if the renegotiation results in a major change in the duties of a

1 party.

2 * Sec. 5. This Act takes effect immediately under AS 01.10.070(c).

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5-0553L ✓

Bradley

4/9/87

Original sponsor: Coghill

1 IN THE SENATE

BY THE JUDICIARY COMMITTEE

2 CS FOR SENATE BILL NO. 108 (Judiciary)

3 IN THE LEGISLATURE OF THE STATE OF ALASKA

4 FIFTEENTH LEGISLATURE - FIRST SESSION

5 A BILL

6 For an Act entitled: "An Act relating to decisions on right-of-way lease
7 applications."

8 BE IT ENACTED BY THE LEGISLATURE OF THE STATE OF ALASKA:

9 * Section 1. AS 38.35.100 is amended to read:

10 Sec. 38.35.100. DECISION ON APPLICATION. (a) The commissioner
11 shall promptly determine, on an application filed under AS 38.35.050,
12 whether the applicant is fit, willing and able to perform the trans-
13 portation or other acts proposed in a manner that will be required by
14 the present or future public interest. In making a determination the
15 commissioner shall consider whether or not

16 (1) the proposed use of the right-of-way will unreasonably
17 conflict with existing uses of the land involving a superior public
18 interest;

19 (2) the applicant has the technical and financial capabil-
20 ity to protect state and private property interests;

21 (3) the applicant has the technical and financial capabil-
22 ity to take action to the extent reasonably practical to

23 (A) prevent any significant adverse environmental
24 impact, including but not limited to, erosion of the surface of
25 the land and damage to fish and wildlife and their habitat;

26 (B) undertake any necessary restoration or revegeta-
27 tion; and

28 (C) protect the interests of individuals living in the
29 general area of the right-of-way who rely on fish, wildlife and

1 biotic resources of the area for subsistence purposes;

2 (4) the applicant has the financial capability to pay
3 reasonably foreseeable damages for which the applicant may become
4 liable on claims arising from the construction, operation, maintenance
5 or termination of the pipeline;

6 (5) the applicant has agreed that in the construction and
7 operation of a pipeline within the right-of-way the applicant will
8 comply with and require contractors and their subcontractors to comply
9 with applicable and valid laws and regulations regarding the hiring of
10 residents of the state then in effect or that take effect subsequent-
11 ly.

12 (b) If the commissioner makes the [THESE] determinations under
13 (a) of this section favorably to the applicant, then the commissioner
14 may grant the whole or part of the application. If the commissioner
15 makes the determinations under (a)'1) - (5) of this section favorably
16 to the applicant but determines that the applicant is not then fit,
17 willing, and able to perform under the application, the commissioner
18 may grant the application subject to conditions established by the
19 commissioner that will ensure that the applicant will, within a pre-
20 scribed period of time not exceeding 10 years, establish that the
21 applicant is fit, willing, and able, under (a) of this section, to
22 perform the transportation or other acts that will be required by the
23 present or future public interest. An applicant is not entitled to a
24 notice or authorization to proceed to construction, or its equivalent,
25 under a conditional lease until the commissioner determines in writing
26 that the applicant has satisfactorily established that the applicant
27 is then fit, willing, and able to perform under (a) of this section.
28 Otherwise, the commissioner shall deny the application.

29 (c) The commissioner may offer the applicant a lease under this

1 section. If the applicant does not accept a lease offered under this
2 section within 30 days, the lease offered is withdrawn [IN ORDER TO
3 GRANT THE WHOLE OR PART OF THE APPLICATION THE COMMISSIONER SHALL
4 OFFER A LEASE TO THE APPLICANT FOR ITS ACCEPTANCE THROUGH SIGNING OF
5 THE LEASE AND AGREEING TO COMPLY WITH ITS TERMS, CONDITIONS, AND
6 OBLIGATIONS. ONLY UPON PROPER ACCEPTANCE OF OFFERED LEASE BY THE
7 APPLICANT WITHIN 30 DAYS AFTER ITS HAVING BEEN PRESENTED IS THE GRANT
8 OF THE APPLICATION CONSUMMATED].

9 * Sec. 2. AS 38.35.100 is amended by adding new subsections to read:

10 (d) The commissioner shall include in a conditional lease each
11 requirement and condition of the covenants established under AS 38.-
12 35.120. The commissioner may also require that the lessee agree to
13 additional conditions that the commissioner finds to be in the public
14 interest. In place of the covenant established under AS 38.35.-
15 120(a)(9), the commissioner shall require the lessee to agree that it
16 will not transfer, assign, pledge, or dispose of in any manner, di-
17 rectly or indirectly, its interest in a conditional right-of-way lease
18 or a pipeline subject to the conditional lease, unless the commis-
19 sioner, after considering the public interest, authorizes the trans-
20 fer. The commissioner shall also require the lessee to agree not to
21 allow the transfer of control of the lessee without the approval of
22 the commissioner; as used in this subsection, "transfer of control of
23 the lessee" means the transfer of 30 percent or more, in the aggre-
24 gate, of ownership interest in the lessee in one or more transactions
25 to one or more persons by one or more persons.

26 (e) In an application for the approval under (d) of this section
27 of a transfer of an interest, the commissioner shall consider whether
28 the proposed transferee will be fit, willing, and able to perform the
29 transportation or other acts proposed under the conditions established

1 in the conditional lease and whether the transfer is in the public
2 interest. In approving the transfer of an interest under (d) of this
3 section and this subsection, the commissioner may impose any condition
4 on the transfer that the commissioner considers in the public inter-
5 est. The commissioner shall require a conditional lessee to agree
6 that

7 (1) in the absence of the approval of the commissioner, a
8 transfer may not relieve the lessee of an obligation assumed under the
9 lease;

10 (2) a transfer, including the transfer of lessee, that
11 occurs without the approval of the commissioner is ineffective to
12 transfer interests in and obligations under the lease; and

13 (3) a transfer constitutes a default under the lease.

14 (f) If the commissioner determines under (a) of this section
15 that the applicant is fit, willing, and able to perform the transpor-
16 tation or other acts proposed in a manner that will be required by the
17 present or future public interest, the commissioner may amend the
18 conditional right-of-way lease to insert the covenant established in
19 AS 38.35.120(a)(9) in place of the covenant against a transfer estab-
20 lished under (d) and (e) of this section.

21 (g) The issuance of a conditional lease does not prevent the
22 commissioner from issuing other conditional or unconditional leases
23 for the same right-of-way. An applicant accrues no priority rights to
24 a particular right-of-way until the commissioner makes a determination
25 that the applicant or conditional lessee is then fit, willing, and
26 able to perform the transportation or other acts proposed under (a) of
27 this section.

28 (h) The commissioner shall insert a provision implementing the
29 requirements of (a)(5) of this section into each agreement entered

1 into by the commissioner for the construction and operation of a
2 pipeline within the state.
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HAROLD MOLES - N.W. AK. PIPELINE

Lines 15, 16, and 17 (that will through public interest.)
replaced with the following language:

that will ensure that the applicant will, within a prescribed period
of time not exceeding years, establish that it is fit, willing
and able, as prescribed in subsection (a) of this section, to perform
the transportation or other acts that will be required by the present
or future public interest. Applicant shall not be entitled to enter
upon state land pursuant to such conditional lease until the commissioner
has rendered a written determination that the applicant has satisfactorily
established that it is then fit, willing and able to perform, in
accordance with subsection (a) of this section.

SENATE COMMITTEE REPORT

FIRST COMMITTEE OF REFERRAL

Date of Feb. 12, 1987 5-DAY NOTICE
IN ACCORDANCE WITH UNIFORM RULE 23

FURTHER: JUDICIARY
FINANCE

**FISCAL NOTE(S) ATTACHED **
IN ACCORDANCE WITH AS 24.08.035
(see below)

2/5/87

DATE TURNED INTO OFFICE Feb 18, 1987

Mr. President:

TRANSPORTATION

Committee considered SB 108

relating to decisions on right-of-way lease applications.

and recommended:

replace with CS SB 108 Trsp same title
 attached amendment(s) and new title

do pass

do not pass

no recommendation

individual recommendations

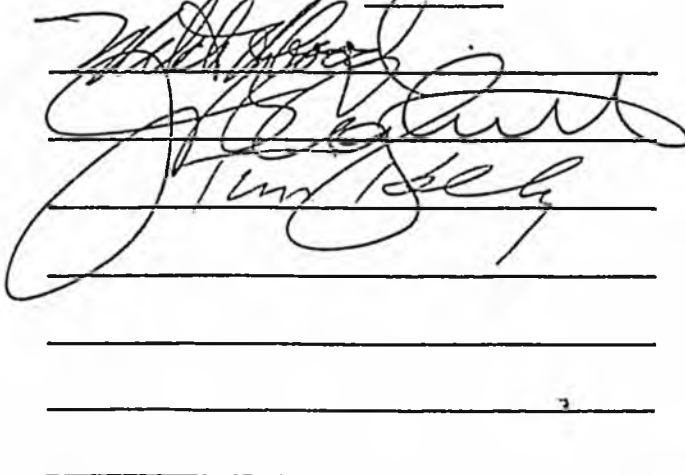
further referral to _____

letter of intent adopted and attached

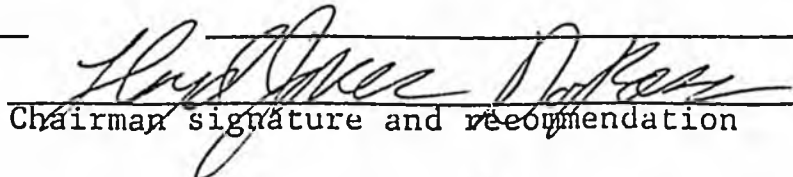
** Committee attached or adopted fiscal note(s)
 zero fiscal impact

MEMBERS SIGNING DO PASS

OTHER RECOMMENDATIONS



Fehrunkamp no-rec
until criteria explained


Chairman signature and recommendation

Committee Backup Attached

Senator John B. (Jack) Coghill
Alaska State Legislature

Pouch V
Juneau, Alaska 99811
(907) 465-4921

Box 55028
North Pole, Alaska 99705
(907) 488-0862



March 23, 1987

MAR 30 1987

MEMORANDUM

To: Members of the Senate
Judiciary Committee

From: Senator John B. Coghill

Re: SB 108, "Decisions on ROW Lease Applications"

Presently under AS 38.35.100(b), the Commissioner of DNR must make the determination that the applicant is "fit, willing and able to perform the transportation" prior to issuing a right-of-way lease.

Past interpretation of this standard has meant that any applicant must have the financial capability to go forth with the project which would utilize the right-of-way.

In today's world a right-of-way permit has a value all its own when negotiating financing. To make financing a condition of the ROW lease application hampers a project's chances of becoming a financial reality.

This bill amends the Right-of-Way Leasing Act so that the Commissioner can condition a grant of right-of-way so that the applicant can receive the right-of-way but must demonstrate that it is "fit, willing and able" prior to being allowed to start construction on that right-of-way.

The current standard of "fit, willing and able" is not circumvented but the finding is postponed to a later phase in the process.

This legislation applies to all right-of-way applicants equally and allows those who have been seeking a permit to benefit from these provisions. Invested time, effort and financial input can now show results instead of stagnation.

I believe it is important in these times to allow modifications in our statutes that assist industry in the real world, without lifting our standards.

STATE OF ALASKA

DEPARTMENT OF NATURAL RESOURCES

OFFICE OF THE COMMISSIONER

Back-up

STEVE COWPER, GOVERNOR

400 WILLOUGHBY AVE.
JUNEAU, ALASKA 99801
PHONE: (907) 465-2400

February 16, 1987

The Honorable Lloyd Jones
Chairman
Senate Transportation Committee
Alaska State Legislature
P.O. Box V
Juneau, AK 99801

Dear Senator Jones:

Subject: Senate Bill 108, relating to decisions on right-of-way lease applications.

Position: The Department of Natural Resource supports the amendment to the oil and gas pipeline right-of-way leasing statute (AS 38.35.100(b)) described in this bill.

Background: Senate Bill 108 would allow the commissioner to issue a conditional pipeline right-of-way lease even if the applicant is not presently "fit, willing and able."

The existing "fit, willing and able" standard requires the applicant to be nearly ready to begin construction before a right-of-way lease can be issued. In other words, financing has to be reasonably assured, gas sale contracts and markets in place, and construction designs substantially completed.

The commissioner currently has only one alternative to finding an applicant "fit, willing and able," and that is to deny the application. This bill would provide the commissioner with an additional alternative; the ability to issue a conditional right-of-way lease, subject to conditions that ensure the applicant will become "fit, willing and able."

This bill would have a positive effect on the economic development of pipeline projects in Alaska and would not reduce the "fit, willing and able" standards an applicant would be required to meet prior to actual construction of a pipeline.

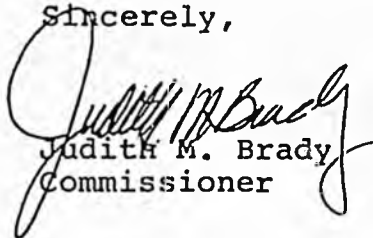
The Honorable Lloyd Jones -2-

February 16, 1987

Recommendation: To ensure that the applicant is required to become "fit, willing and able" within a reasonable period of time, add the words "within a prescribed amount of time" to line 15, after the word able.

Please let me know if you would like additional information.

Sincerely,



Judith M. Brady
Commissioner

cc: Committee members
Governor's Legislative Liaison

**STATE OF ALASKA 1987 LEGISLATIVE SESSION
FISCAL NOTE**

REQUEST: _____

Bill Version: CSB 108 (TRSD)
Publish Date: _____

Revision Date: February 16, 1987

Agency Affected: Natural Resources
BRU: Land and Water Management

Title: Right-of-way Lease Decisions

Sponsor: Senator Coghill

Components: _____

Requestor: Senate Transportation

EXPENDITURES/REVENUES: (Thousands of Dollars)

OPERATING	FY 87	FY 88	FY 89	FY 90	FY 91	FY 92
PERSONAL SERVICES						
TRAVEL						
CONTRACTUAL						
SUPPLIES						
EQUIPMENT						
LAND & STRUCTURES						
GRANTS, CLAIMS						
MISCELLANEOUS						
TOTAL OPERATING	-0-	-0-	-0-	-0-	-0-	-0-

CAPITAL						
---------	--	--	--	--	--	--

REVENUE						
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FUNDING: (Thousands of Dollars)

GENERAL FUND						
FEDERAL FUNDS						
OTHER						
TOTAL	-0-	-0-	-0-	0	0	0

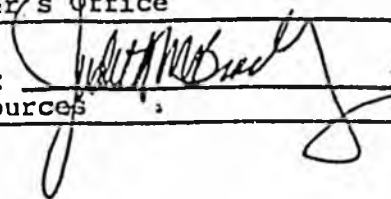
POSITIONS:

FULL-TIME						
PART-TIME						
TEMPORARY						

ANALYSIS : (Attach a separate page if necessary)

Prepared by: Carol J. Wilson
Division: Commissioner's Office

Phone: 465-2400
Date: 2/16/87

Approved by Commissioner: 
Agency: Natural Resources

Date: 2/16/87

- Distribution (by preparer):
- Legislative Finance
 - Legislative Sponsor
 - Requestor
 - Office of Management and Budget
 - Impacted Agency(ies)
 - Senate Secretary

Are the Japanese and South Koreans finally getting ready to buy Alaskan natural gas?

Gas for the lamps of Seoul?

By Lawrence Minard

IF THE JAPANESE, Koreans and Taiwanese are serious about reducing their trade surpluses—\$81 billion, combined, last year—against the U.S., there is a U.S. product to which they could quickly commit: Alaskan natural gas. So much natural gas comes up with the crude oil on the North Slope that the Prudhoe Bay field's owner-operators, Standard Oil and Arco, are reinjecting the gas at the rate of 2.6 billion cubic feet a day (bcf/d).

Over the years, several schemes have been advanced to create a market for the gas. One was the Alaska Natural Gas Transportation System (Angts) proposal, which was approved by the U.S. and Canadian governments in 1977. Under it, a 4,790-mile pipeline would have been built from the North Slope through Canada, piping the gas into mid-western and California markets (see map). Projected cost in 1980: about \$40 billion, which reflected inflation and interest rates at the time.

The Angts proposal remains the only federally approved gas pipeline project. But falling energy prices have postponed the project, perhaps indefinitely: five of the original ten members of the consortium backing Angts have dropped out. Says a leading North Slope oil executive bluntly: "Angts is dead."

What may have more

life in it is a five-year-old competing proposal by Anchorage's Yukon Pacific Corp. to ship liquefied natural gas across the Pacific. Yukon Pacific has substantial backers, including CSX Corp., with a one-third interest, former Alaska Governor Walter J. Hickel and other investors, with another one-third, and Supra Corp., one-third. Supra's owners include former Arco Chairman Robert O. Anderson and shipping magnate Daniel K. Ludwig.

Yukon Pacific's proposed Trans-Alaska Gas System (Tags) would run a pipeline along most of the existing Trans-Alaska oil pipeline's right-of-way 800 miles south to Valdez. There

the gas would be liquefied and shipped to Asia.

In his modest Anchorage offices, Yukon Pacific Chief Executive Howard Griffith says he would like to market all 14 million metric tons of liquefied natural gas a year (the equivalent of around 2 billion cubic feet daily) of North Slope gas available. But Tags, he adds, could be viable on half that volume.

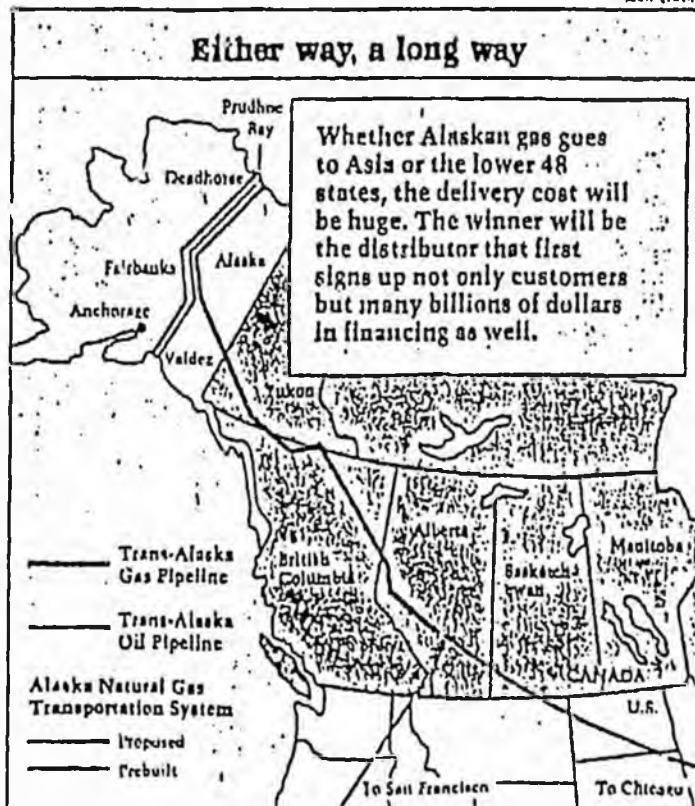
Japan is the most obvious prospect. It currently consumes around 28 million metric tons of gas annually, most of it imported from Indonesia and Brunei. Projecting energy needs is notoriously difficult. But according to the Japan Gas Association's latest forecast, Japanese gas consumption will rise to 42 million metric tons annually, by the year 2000. Yet contracts and commitments have been signed for up to 35 million metric tons. Yukon Pacific wants to supply the additional 7 million or 8 million metric tons.

But so large is Tags' scale, says Yukon Pacific Treasurer Mead Treadwell, that "it's too big for any one country to take on." For Tags to work well, Korea would have to sign on for around 6 million metric tons a year. Or Taiwan would have to.

Why have the Asians so far failed to commit to Alaskan gas? Price, mainly. In 1982 the estimated cost of Tags' pipeline, compressor stations and 15 LNG tankers was \$14 billion (some \$27 billion, factoring in inflation and prevailing interest rates).

That put Alaskan gas at a steep disadvantage against gas from Indonesia and Brunei. Alaskan gas is still at a disadvantage, but somewhat less so. Falling inflation and interest rates, and improved knowledge of arctic and subarctic construction gleaned from the North Slope's 1974-84 building boom, have sharply reduced all North Slope construction cost projections. Says Treadwell: "Once we applied a lot of study to that \$14 billion number, we came up with less than \$10 billion, at least 10% less."

Treadwell expects the U.S.-Japan Energy Working Group, created by President Reagan in 1983 to promote U.S. energy exports to Japan, will conclude this year that Tags is viable. He predicts the



Japanese will sign letters of Intent to buy Alaskan gas early next year, with deliveries beginning in 1995 or 1996. Treadwell also notes that the Commerce and State departments have forcefully raised the gas issue in trade talks with the Japanese and Koreans. "Support like that," says Treadwell, "doesn't go unnoticed over there."

If Yukon Pacific can sell gas to the Asians and arrange Tags' financing, it

will still face a fight from its primary competitor, the Alaska Natural Gas Transportation System. Late last month, lawyers for Angts insisted to the Federal Energy Regulatory Commission that Angts has exclusive right to market existing North Slope gas reserves, implying that Yukon Pacific has nothing to sell. On Yukon Pacific's side in this debate is the state of Alaska. It doesn't care who trades

in its gas, so long as someone does.

Standard Oil President Frank Mosier would also like to sell his Prudhoe Bay gas. Mosier doubts that either Angts or Tags will move ahead until oil gets back over \$25 a barrel. But he says: "If someone can make Tags work, we stand ready to make our gas available. We'd feel blessed if something happened to allow us to market our North Slope gas." ■

MMS plans to revamp gas royalty valuation regs

The U.S. Minerals Management Service has proposed revised royalty valuation regulations for natural gas production from federal and Indian land.

The regulations are similar to those MMS recently issued for crude oil and coal production (OG), Feb. 2, p. 16). The gas valuation rules will be issued in final form about Aug. 15.

The proposed rules generally declare royalty values to be equal to the "gross proceeds" the lessee receives for production under a contract signed as a result of arm's length bargaining.

What's proposed. Royalties will be due on gas avoidably lost or wasted but not gas used in lease equipment on unitized leases.

Royalties also will be required on all residue gas and gas plant products resulting from processed gas, less a processing allowance determined by MMS.

MMS will allow royalty free use of a

reasonable volume of residue gas for operation of the processing plant.

A deduction will be allowed for transportation costs but will be limited to half the value of the transported gas unless the lessee submits data to MMS that shows a higher allowance is warranted.

The rules require that processing costs be allocated among all gas plant products and a processing allowance determined for each product. MMS will limit that allowance to 66.6% of the value of each gas plant product at the tailgate of the plant, although greater allowances can be approved if warranted.

MMS will not require lessees to obtain prior approval before using a valuation basis or allowance, but the methods will be subject to review and audit.

It acknowledged the high costs of some offshore operations and exten-

sive facilities needed to process deep, sour gas.

MMS asked for comments on whether final regulations should provide that unusual or unconventional production costs be allowed as a deduction in determining royalty values regardless of whether those costs are incurred on or off the lease.

Definitions. The agency defined arm's length contracts as those between nonaffiliated entities. It will consider two parties affiliated if one owns an interest in the other.

If a product is not sold under an arm's length contract, MMS will set royalty values by comparing the production with gross proceeds from other production in another field.

Gross proceeds will be defined as money paid to the lessee or money the lessee is entitled to receive, including take or pay payments and reimbursements.

Canadian Arctic gas line seen a decade away

Plans are still alive for a Canadian Arctic gas pipeline, but it likely won't be in place for more than a decade, says Esso Resources Canada Ltd.

The company believes the earliest date for operation of an export-oriented line is in the late 1990s, even if a construction decision is made soon.

Esso said there has been no commitment to build, and discussions on Arctic gas with the National Energy Board (NEB) have been limited to how northern gas will fit into the overall export picture.

Esso and partners hold substantial gas reserves on the Mackenzie Delta and in the Beaufort Sea. There also are large reserves farther north in the Arctic Islands, discovered by a group led by Panarctic Oils Ltd.

Esso said in-house work on an Arctic pipeline has been limited to preliminary cost estimates and the outlook for gas markets in the U.S.

A U.S. company executive told a Canadian parliamentary committee the U.S. gas surplus will end between 1988 and 1993, and U.S. customers will want gas supplies from the Canadian Arctic.

Dick Snyder, planning director of Tennessee Gas Transmission, Houston, told the committee in Ottawa the gas bubble will end by 1993 at the latest.

Snyder said there is "considerable

urgency" at this time to proceed with planning for connection of Canada's frontier resources.

Tennessee Gas is a member of the Polar Gas group, which includes TransCanada Pipelines Ltd., Panarctic, and Petro-Canada. Polar Gas proposes to lay a gas line from the Beaufort Sea via the Mackenzie Valley to connect with systems in northern Alberta (OG), Jan. 6, 1986, p. 76).

Polar Gas estimates the cost of its line at \$3.4 billion and says it would be economical at a price of about \$3/Mcf. Current export prices are about one-third lower than that.

Export policies. Meanwhile, NEB plans to begin hearings Apr. 13 in

Ottawa on Canada's gas export policies. The board has received notice from 66 parties that they want to appear at the hearings.

NEB will examine whether current surplus tests will be appropriate after full deregulation of gas markets and what alternatives are available.

The board wants to hear arguments on whether reliance on market forces to balance gas supply and demand in Canada would be an acceptable substitute for the surplus test. The test requires a 15 year supply of gas to be reserved for domestic markets before additional shipments to the U.S., Canada's only export customer, are authorized.

Chevron switches to midgrade in Florida

Chevron Corp. has become the latest U.S. major oil company to drop leaded regular for an unleaded midgrade.

The Chevron Plus midgrade (89 R+M/2) was introduced at nearly 220 stations in eight South Florida counties covering Miami, Fort Lauderdale, West Palm Beach, and Fort Pierce.

Chevron has about 800 outlets in Florida selling 536 million gal/year of gasoline, about 10.5% of the total Florida market. The midgrade con-

tains Chevron's proprietary detergent additive Techroline. Chevron's nearest refinery is its 295,000 b/cd Pascagoula, Miss., plant.

The company described its move as a "market introduction," not a test as some other oil companies have called their introduction of midgrades. The move allows Chevron to meet midgrade competition from Amoco Oil Co., which last year launched its midgrade sales in Florida.

CSSB 108
AN ACT RELATING TO DECISIONS ON RIGHT-OF-WAY LEASE
APPLICATIONS
(Proposed Amendment to AS 38.35.100(b))

ISSUE PAPER

As Yukon Pacific's representative candidly admits, Senate Bill No. 108 was drafted by Yukon Pacific and the bill was introduced on its behalf in order to allow the Commissioner of Natural Resources the discretion to issue Yukon Pacific a Right-of-Way Lease for its so-called TAGS Project without Yukon Pacific having to comply with requirements of existing State law that mandate that an applicant for a Right-of-Way Lease be determined to be "fit, willing and able" before issuance of the Right-of-Way Lease.

Existing law, in AS 38.35.100(a), requires the Commissioner to determine, prior to issuance of a Right-of-Way Lease, whether a lease applicant is "fit, willing and able to perform the transportation or other acts proposed in a manner that will be required by the present or future public interest." In making this determination, the statute sets forth a series of factors that the Commissioner must take into consideration dealing with the technical and financial capabilities of the applicant and whether the proposed use would unreasonably conflict with existing uses of the land involved in the proposed use or be in the superior public interest. Thus, under existing law, the Right-of-Way lease signifies that the Commissioner, after carefully considering the lease applicant's technical and financial capabilities, has found that the applicant is "fit, willing and able" to do what it proposes to do. In other words, existing law is designed to assure that the Commissioner follow an orderly and objective procedure before issuing a lease over lands that the State holds in trust for all Alaskans, both present and future.

In contrast to existing law, Yukon Pacific's proposed bill would give the Commissioner discretion to issue a "conditional" lease to an applicant who in

fact was determined not to be "fit, willing and able." The Right-of-Way lease itself would become a mere preliminary, and legally deceptive, document. Rather than signifying the determination of State government that the applicant was technically and financially capable of performing and that it was "fit, willing and able," a conditional lease would actually signify that the applicant was found not to be technically and financially capable and therefore "unfit, unwilling and unable" to perform.

While proposed as an amendment only of AS 38.35.100(b), Senate Bill No. 108 (now CSSB 108) actually makes meaningless the standards and criteria set forth in AS 38.35.100(a) also. Under the proposed amendment, it really doesn't matter whether an applicant is or is not financially and technically capable of performing, and doesn't really matter whether an applicant is "fit, willing and able" - the Commissioner is given the discretion, without specific reference to any objective standards or criteria, to issue a conditional lease to any applicant regardless of its financial or technical capabilities and regardless of fitness, willingness, or ability to do what it proposes to do.

The potential for abuse in the absence of objective standards or criteria is obvious:

- 1) What conditions will be imposed upon an applicant who is not financially or technically capable and who is not "fit, willing or able" to perform?
- 2) Why is there no specific cross-reference in Sub-section (b) to the factors in Sub-section (a) that must be considered under existing law to justify a determination by the Commissioner that an applicant is "fit, willing and able?"
- 3) How will the Commissioner differentiate between applicants if criteria and standards are not set forth in the statute or regulations?

- 4) If objective criteria and standards do not exist against which the "discretion" of the Commissioner can be judged, what assurance is there that Alaska's Right-of-Way leasing laws will not become part of a promoter's public relations efforts both in the State and elsewhere for whatever dubious, ill-conceived promotion?
- 5) How can there be any way to differentiate between applicants if an applicant who demonstrates financial and technical capability and is found "fit, willing and able" gets a lease and an applicant that is unfit, unwilling and unable, also gets a lease?
- 6) Do applicants under existing law automatically get their leases before new applicants who admittedly cannot comply with the existing law get their conditional leases under the proposed law?

The obvious questions that arise from the proposed amendments make clear that the real intent of the bill is to fundamentally change existing law so that any applicant can, in the discretion of the Commissioner, get a document called a lease but which in fact is a mere preliminary permission to go out and try to promote a project, and hopefully at some time in the future become technically and financially capable of performing and become "fit, willing and able."

LLOYD V. ANDERSON**
LUANN E. BAILEY
SUSAN P. BEHLKE
RONALD G. BIRCH**
WILLIAM H. BITTNER**
KATHRYN A. BLACK
RODNEY B. CARMAN**
JOSEPH M. CHOMSKI**
PAUL L. DILLON
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March 27, 1987

HAND DELIVERED

Jay Kerttula
Arlis Sturgulewski
Joe Josephson
Rick Halford
Pat Rodey
Alaska State Senate
P.O. Box V
Juneau, Alaska 99811

Re: SB108

During the March 26 Senate Judiciary Committee hearing on SB108 (amending the State Right of Way Leasing Act), Senator Sturgulewski requested that I supply a synopsis of the five steps which are included in Phase I of the Yukon Pacific Project. In addition, at the conclusion of the hearing I was asked about my reference to letters sent by the State Pipeline Coordinator's office to Northwest Pipeline in June 1982. It is these letters which prompted the need for the amendment to the Right of Way Act. Enclosed are both a copy of the 1982 letters and the promised synopsis.

Finally, I wish to correct a statement I made while I was testifying before the Committee. I stated that the Northwest line was an "ambient air temperature" line. That was a misstatement. Both proposals are chilled gas pipeline proposals and I hope I didn't confuse matters.

MAR 27 1987

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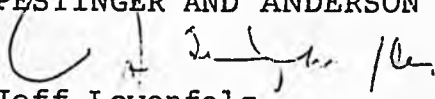
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*D.C. BAR ONLY
**D.C. AND ALASKA BAR
ALL OTHERS ALASKA BAR ONLY

If you have any questions about the Project or the impact of the proposed amendment on it, please do not hesitate to contact me.

Very truly yours,

BIRCH, HORTON, BITTNER,
PESTINGER AND ANDERSON


Jeff Lowenfels

JBL/rmm

Enclosures

cc: Jack Coghill

YUKON PACIFIC ACTIVITIES/PERMITTING

1. Answer Federal Energy Regulatory Commission (FERC) jurisdictional question. (A request for declaratory judgment of non-jurisdiction has been filed with the Federal Energy Regulatory Commission.) The State of Alaska has joined in support of the request. The request is opposed by Northwest Pipeline and Foothills Pipeline.

2. Obtain Presidential approval for the export of Alaska Natural Gas as per § 12 of the Alaska Natural Gas Transportation Act of 1976 (15 U.S.C. 719) (efforts have begun).

3. Obtain an economic Regulatory Administration export license pursuant to the Natural Gas Act (15 U.S.C. 717W). (Draft application has been prepared and discussed with ERA.)

4. Obtain federal right of way lease pursuant to the Mineral Leasing Act (30 U.S.C. 181 et seq.).

5. Obtain State of Alaska right of way lease (conditional) as pursuant to AS 38.35 et seq.

These activities are being conducted in conjunction with active negotiations with Japanese, Koreans and Tiawanese and the North Slope producers.

NWA-82-038

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DEPARTMENT OF NATURAL RESOURCES

DIVISION OF PIPELINE SURVEILLANCE



June 18, 1982

Edwin A. Kuhn, Director
Government & Environmental Affairs
Northwest Alaskan Pipeline Company
One Lafayette Centre
1120 20th Street, N.W., Suite S-700
Washington, D. C. 20036

Re: Major Issues

Dear Mr. Kuhn:

Reference is made to the Northwest Alaskan Pipeline Company (NWA) letters dated November 5, 1981, (GOA-81-1133), January 3, 1982, (GOA-82-1004), February 16, 1982, (GOA-82-1021), and March 29, 1982, (GOA-82-1034) regarding NWA's application for a right-of-way lease for the gas pipeline and the Alaska Gas Conditioning Facility. In these communications, specifically the February 16, 1982, letter, NWA responded to some of the major issues identified by the State in previous letters.

The purpose of this letter is to address and explain, in further detail, the State's position with respect to the pending NWA application for a lease. I will attempt to respond to each point covered in your recent letters, and I also will identify other outstanding concerns which continue to be important but which NWA has not addressed.

State-Selected and Tentatively Approved Lands

Your assessment of my previous verbal statements regarding Tentatively Approved (TA'd) lands is correct, except that I have never thought the State's control of TA'd lands could be in question and have considered any such question to be frivolous.

At the time land becomes TA'd, the Federal government has no further alternative but to patent the land to the State upon survey. Thus, only the State issues the Right-of-Way (ROW) lease on TA'd land. The only exception to this is that TA'd lands which were withdrawn and properly

selected pursuant to Alaska Native Claims Settlement Act (ANCSA), but not yet conveyed, may be leased with the concurrence of the State, the Native corporation(s), and the Federal government.

The topic of selected lands has not, to the best of my memory, been raised before. Pursuant to Federal regulation, land is segregated at the time it is selected by the State. Prior to Alaska National Interest Lands Conservation Act (ANILCA) no procedure was spelled out in the law for conveyance of any interest in selected lands to a third party. Arguably, prior to ANILCA selected lands could not be conveyed to a third party at all, until becoming TA'd, whereupon the State could convey. However, the standard procedure, which was acceptable to the State, was that, following the State's concurrence, the Federal government could convey interests in selected land to third parties. You will note that this procedure was followed on the TAPS project. However, at no time has the Federal government notified the State that it wished to issue a ROW grant to NWA on selected lands; thus, it did not seek the State's concurrence prior to the issuance of the Federal ROW grant as is required, and which was required even prior to ANILCA, for the conveyance to a third party of interests in selected lands.

Since State concurrence to convey rights to selected land was neither sought nor obtained by Department of Interior (DOI) for the NWA ROW grant, the Federal government did not convey a ROW grant across selected lands, because it lacked the authority, without prior State concurrence, to do so. (Again, where State-selected land was opened for Native selection pursuant to ANCSA and selected by a Native corporation, all parties must concur in any grant or lease to third parties.)

At some point, should the project become an imminent reality, NWA would appear to be well advised to seek a Right-of-Way Grant from the Federal government to cover those lands which (1) were validly State-selected on December 1, 1980, and (2) still remain in that category. (Clearly those lands which were State-selected on December 1, 1980, and which have become TA'd or patented since will be covered by the State Right-of-Way Lease.) Such a grant would have to receive the formal concurrence of the State, prior to its issuance. The State's concurrence would probably be conditioned on the Federal lease's lapsing at the time of TA with the State lease becoming effective simultaneously. The State lease must contain a provision for the inclusion of lands which "hereafter" become TA'd, patented, or otherwise acquired. If a Federal Grant covering selected lands is ultimately obtained by NWA, the TA would, of course, be subject to the Federal grant conditions to the extent that the State recognizes prior authorized activities conducted pursuant to that grant prior to TA.

Any actions by Northwest on TA'd lands which do not comply with the above-outlined procedure could place NWA in a trespass posture and would be dealt with accordingly by the State.

Socioeconomic Matters

I was pleased to receive NWA's proposed socioeconomic planning activities attached to your letter of February 16, 1982. However, as indicated by NWA in the initial, and only, negotiating meeting of July 12, 1981, and corroborated by my letter to Kuhn of August 12, 1981, I have been awaiting NWA's written response to the draft Socioeconomic Stipulations given to NWA on March 18, 1981. Thus far, there has been no response by NWA, except for the NWA socioeconomic planning document of February 16, 1982.

It appears that your proposed socioeconomic planning activities of February 16, 1982, constitute a further elaboration of your letter of December 8, 1980, (COA-80-1139), in which you outlined similar plans. As you noted in your December 8, 1980, letter, "the impact plans are presumably a part of the Stipulations, and a complete assessment requires us to review them in their larger context" (emphases added).

While it appears that you have reassessed the plans outlined in your December 8, 1980, letter in light of the initial draft Socioeconomic Stipulations transmitted to your office on March 18, 1981, we are unable to comment upon their adequacy in the absence of knowing how the proposed planning fits into the larger context of the proposed Stipulations which, as you correctly observed, needs to be done.

The State views NWA's obligation to minimize the cost impact to the potential rate-payers as being parallel to, and not in conflict with, sound social impact management. Minimal disruption of services and infrastructure both inside and outside the corridor upon which the project depends for support can only enhance the smooth progress of project construction. NWA estimates (Center Point Justification, Vol. V, July 1, 1980, page 4-12) that each break in project cadence will cost two million dollars, and, given the close and complex interrelationship between project activities and State and local support systems, the possible points of inadvertent conflict and disruption are many. NWA recognizes this, as you point out in your December 8, 1980, letter.

We believe that planning in these areas is important both to the success of the project and for the avoidance of unnecessary disturbance to Alaskan communities. However, the plans which you have set forth fall far short of the extent of those promised by the April 1978, agreement signed by Mr. McMillian and Governor Hammond. Clearly, NWA still has a great deal of work to do.

NWA has expressed cost concerns for its potential rate-payers; however, the State sees little virtue in the concept of its communities and some of its citizens suffering severe, adverse, unmitigated socioeconomic impacts in order to reduce costs to the rate-payers. NWA has equally as important an obligation to mitigate adverse impacts on Alaska as it does

to attempt to mitigate the cost impact to the potential rate-payers. We see no possible reason for the Alaskan communities and adversely impacted citizens to become, essentially, paying partners in the project while not receiving the benefits which the other equity partners and the rate-payers would receive.

Similarity of Federal and State Right-of-Way Grant/Lease

The State has been working to have the technical and environmental segments of the State Right-of-Way Lease be as consistent with the Federal Right-of-Way Grant as is prudent at the time of offering of the lease. Though I anticipate the similarities to be very considerable, differences are deemed necessary to reflect:

- A) NWA's response, to date, to the Federal stipulations;
- B) Movement of the NWA pipeline RCW location, after development of the Federal stipulations, to close proximity to State highways at locations extending over approximately 270 miles of the right-of-way;
- C) Socioeconomic implications (including plans identified in my letter of March 18, 1981) to citizens of Alaska not addressed by the Federal Right-of-Way Grant;
- D) Additional State concerns for the health, safety, and welfare of State citizens;
- E) Additional Stipulation 1.6.1 Plans to cover the Haul Road and the possible choice by contractors to use snow/ice workpads and roads;
- F) The State Lease Stipulations will not contain a preamble; and
- G) The State Lease will contain additional language dealing with Stop Orders and other matters which, in the Federal Grant, are covered by regulations incorporated by reference.

You have expressed concerns regarding the potential inclusion of a field authorization procedure in the State Right-of-Way lease. It is the State's position that field authorizations to proceed are necessary since Notices to Proceed (NTP's) will be issued, generally, many months prior to the beginning of work and prior to contractors' bidding on the work covered by the NTP. It is not the purpose of the proposed field authorizations to change the stipulations of a Right-of-Way Lease. The principal purpose of the field authorization is to provide a check on field conditions, field staking (where necessary), and compliance of the contractor's work plan, submitted immediately prior to the initiation of work, with the lease stipulations. I certainly agree that the contractor must not be exposed to the possibility of having conditions of the

lease, principally the stipulations, subject to unilateral change by the State during the course of the bidding and contract award processes or during the mobilization and construction processes.

It is also important for a high level of government authority to be located in the field to expedite field changes proposed by the contractors through the project sponsors. The field authorization also will allow this to be achieved, and it should be a positive improvement of the State Right-of-Way Lease over the Federal Right-of-Way Grant.

You have mentioned that the field authorization concept may affect "fixed-price contracting." I think your concerns have been addressed above; however, the State is concerned about possible interpretations of what "fixed-price contracting" actually is. Does NWA mean that it will contract on the basis of a fixed-cost for a completed spread of pipeline or a completed foot of pipeline, or does it mean, on the other hand, that NWA will contract, for example, on a fixed-unit basis per cubic yard of excavation for trench, workpad, haul, etc.? The concept of a fixed-unit price bid for each of the separate components of a completed unit of pipeline is not a fixed-price bid, but is, rather, an open-ended bid. Such unit-cost bidding would not meet the concept of fixed-price bidding required by the President's Decision and would certainly leave the possibilities for cost overruns wide-open. Indeed, it would probably promote cost overruns. The State is curious to know what NWA's precise definition of the term "fixed-price contracting" is.

Highway Matters

You have expressed concern about the State's position that all highway-related matters must be brought to agreement simultaneously.

On January 26, 1981, (NWA-81-70), the SPCO informed NWA of the key issues which require negotiation between NWA and the Alaska Department of Transportation and Public Facilities (ADOT/PF). Included with that letter was an identification of 13 points requiring resolution in addition to Highway Indemnification. It is the intent of this office to include as a binding part of the lease an agreement between ADOT/PF and NWA which addresses the following:

- Highway Indemnification;
- Alignment;
- Construction scheduling (minimize conflicts between NWA and ADOT/PF highway improvement programs);
- Yukon River Bridge (risk analysis);
- Ice Cut Hill;
- Five-Mile Airport;
- Governor's Haul Road Policy;
- Pipe Haul, corresponding permits, methods, and scheduling;
- Regulatory enforcement (weights, measures, public safety);
- Security within the camps and along the Haul Road;

- The use of various State airports and the need for improvement of existing facilities;
- Atigun Pass; and
- Availability of Mineral Materials.

Thus far, NWA has been quite anxious to reach agreements with the State on those critical areas in which NWA desires to obtain special concessions from the State to allow the pipeline to be constructed within the Dalton Highway and, in some cases, beneath the road surface, while exposing the State and the driving public to the attendant risks, hazards, and traffic delays on this most important of the State's industrial highways, not to mention additional risks to the Yukon River Bridge's integrity and to the transportation (and production) of crude oil from the North Slope. For more than two years, the State has repeatedly, (by letter and verbally), indicated that NWA must develop, for the State's review and approval, thermal analyses and appropriate mitigation designs for thaw settlement for the approximately 270 miles of workpad, which would severely impact the short-and long-term stability of the highway, immediately adjacent to the Prudhoe Bay highway. To date, though NWA has developed preliminary proposed designs and construction plans for the Yukon River Bridge, Ice Cut Hill, and Atigun Pass, no such long-term thermal design or thaw settlement mitigation designs have been presented by NWA to the State for review.

NWA's construction plans call for considerable highway-hauling of pipe and gravel in an overload or over-dimension mode. Such loads are hazardous to the driving public and generally destructive to the highways involved. NWA has stated that it wants to be treated in a "non-discriminatory" fashion with regard to highway usage. It interprets the term "non-discriminatory" to allow NWA to inflict highway damages which the State has estimated to potentially be approximately \$170 M (1980 \$'s). Thus, on the one hand, NWA wishes the State to "sign off" now on the very considerable concessions which NWA desires from the State that will clearly discriminate against the traffic rights of other users of the highway and will certainly create massive additional road maintenance problems; while, on the other hand, NWA wishes to delay, until some undesignated future time, resolution of the important matters of thermal design of 270 miles of work pad and of the highway damages which NWA's work plans clearly indicate will occur to the State's highways. In addition, NWA's risk analysis supporting its desire to locate its pipe on the Yukon River Bridge has ignored the potential losses of revenue to the State and the North Slope oil producers which a possible disastrous gas pipeline-generated accident could cause. That risk analysis has also ignored construction activities risks. Thus, the risk analysis, by virtue of its incompleteness, really does not answer the question, "What is the risk to the State and others of the construction and operation of the NWA pipe on the Yukon River Bridge?"

The State declines to accept hundreds of million of dollars of NWA highway and other damages while simultaneously giving NWA hundreds of millions of dollars of concessions for which the State and travelling public would incur indirect expenditures. It also declines to needlessly endanger the continued, timely production of crude oil from Frudhoe Bay. Thus, the State insists that all highway related matters must be resolved simultaneously in a single agreement. The State Department of Transportation and Public Facilities is prepared, as it has been for the past two years, to discuss any or all highway matters with NWA which would lead to a complete, acceptable agreement.

Separate Lease for Pipeline and Conditioning Plant

The State accepts the concept of separate RCW leases for the gas conditioning plant and the pipeline across State lands, when highway related and socioeconomic matters are satisfactorily resolved for inclusion or reference in the two RCW leases and when NWA has satisfied certain other conditions (discussed later).

On April 17, 1981, Commissioner LaRasche waived the requirements for the filing of a separate Form DL1C-130 (pursuant to 11 AAC 80.005) for the Conditioning Plant because the Plant was to be included as an addendum to the Pipeline Right-of-Way Lease. Since NWA has recently determined that it desires separate leases for the pipeline and conditioning plant, a Form DL1C-130 for the Conditioning Plant lease must be filed.

Certainly, according to the present project schedule, the two leases can be developed and could go to the required public hearings well in advance of initiation of construction unless, of course, NWA continues to ignore the State's important highway and socioeconomic concerns.

Subsistence

Not discussed in your letter of February 16, 1982. is the topic of subsistence, addressed in my letter of May 14, 1981. The impacts of the project on various rural subsistence users (subsistence hunting, fishing, trapping, etc.) may be quite important. In my letter I noted that NWA would have to be prepared to identify and set forth the potential subsistence impacts of the project and commit to appropriate impact mitigation plans. I stated that subsistence use of resources requires the continued presence, during construction, of normally usable resources and the timely accessibility to the resource for the users. NWA studies, to date, address the present existence of some subsistence resources. This and information documenting the present subsistence use of such resources must be related by NWA to the presence and accessibility of the resources to subsistence users during the construction process. If the construction process and scheduling cannot reasonably accommodate normal subsistence resource harvests in the area, proper mitigation

procedures must be set forth by NWA for review and discussion among the people affected so that a suitable set of mitigation procedures, where necessary, may be finalized, approved by the State, and implemented by NWA.

Applicability of AS 28.35 to Temporary Facilities

NWA requested, in the January 9, 1982, and the March 29, 1982, letters, that the State RCW lease (AS 28.35) cover temporary facilities. Whereas I had initially hoped that temporary facilities, including access roads, camps, disposal sites, could be included under AS 28.35, I have now determined that leases issued pursuant to AS 28.35 can cover only the permanent pipeline facilities (for example, if permanent access roads can be identified, NWA should submit a list of these to the State for inclusion under AS 28.35) including the pipeline. All remaining facilities (temporary-use areas, including disposal sites) will be processed under AS 28.05, and the possibility of issuing 28.05 permits for period in excess of one year is being explored. However, I have not requested a formal Attorney General's (AG's) opinion on the applicability of AS 28.35 to temporary facilities. Should NWA wish to pursue this topic further (AG's opinion) please inform Commissioner Katz.

Further Processing of the Right-of-Way Lease

Several deficiencies exist at this time in the NWA Right-of-Way Lease application. The details of the deficiencies are dealt with by a separate letter, however, a summary of the deficiencies are as follows:

- 1) No valid application exists for a separate lease for the conditioning plans (previously discussed, page 7);
- 2) When NWA filed its pipeline Right-of-Way Lease with the State it deferred submission of several items pending then ongoing work with State and Federal agencies in the preparation of key "1.6.1 Plans". These plans have still not been completed, and by virtue of NWA's cancellation of its pre-lease, reimbursable services agreement with the State, State participation in the pre Right-of-Way Lease development of the lease application is no longer possible. Thus, the NWA's statements in several locations of its lease application justifying deferral is no longer valid. Prior to further processing of the Lease, now through normal State operations, these items of the application must be properly completed and submitted for review; and
- 3) In NWA's lease application several very subjective statements are made in support of NWA's financial capability to perform the transportation proposed in its application. It is abundantly clear that though the President's Decision and a Federal Right-of-Way Grant (and later, the "waiver package") are necessary to allow NWA to obtain financial capability to perform the actions outlined in the

Right-of-Way Lease application, they do not provide or guarantee such financial capabilities. Also, a definition of all persons owning or planning to own an interest in the project has not been provided in the application, as is required by statute.

Because of the continuing absence of the items mentioned above, as required by AS 38.35.050 and 11 AAC 80.005, it has not been possible for the State to move to the procedures set forth on AS 38.35.080(a), (b), and (c) which must precede a decision on the application as required by AS 38.35.100.

To summarize: a complete lease application must be filed for the Conditioning Plant, and the lease application for the pipeline Right-of-Way must be amended to properly and completely address the information required by AS 38.35 and 11 AAC 80.005. When the existing lease application have been properly amended, the lease application processing will be carried forth through the normal State processing procedures for such applications. The most recently announced project delays of three years should provide adequate time for processing through the normal channels if NWA provides the necessary information to complete its lease application in a timely manner. However, if NWA continues to ignore important aspects of its Right-of-Way lease application, it will create additional delays which, certainly, the State will have no control over. NWA should be advised that the review of the significant amount of still outstanding information for the lease application will require several months prior to proceeding with the requirements of AS 38.35.080 and AS 38.35.100. Public hearings also require lead time. Thus, processing of a properly amended Right-of-Way Lease application will not be an instantaneous matter. It is thus, extremely important that the numerous remaining deficiencies in the lease application, which I have summarized above and itemize by separate letter, be properly addressed according to a realistic time schedule if NWA is not to create additional, future delays in the issuance of the appropriate leases.

Sincerely,



Charles E. Behlke
State Pipeline Coordinator
Office of the Pipeline Coordinator

CEB/de

1

cc: John Katz, Commissioner, Department of Natural Resources, Juneau
Wilson Condon, Attorney General, Department of Law, Juneau
John Rhett, Federal Inspector, Office of the Federal Inspector,
Washington, D. C.
Robert Loeffler, Counselor, Morrison and Foerster, Washington, D. C.

Yukon 17

JAY S. HAMMOND, GOVERNOR

DEPARTMENT OF NATURAL RESOURCES

DIVISION OF PIPELINE SURVEILLANCE

NWA-82-062

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June 21, 1982

Edwin A. Kuhn, Director
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Washington, D. C. 20036

Re: Further Processing of the Right-of-Way Lease(s) Referenced in the Behlke
to Kuhn Letter of June 18, 1982 (NWA-82-038)

Dear Mr. Kuhn:

The following project developments:

- 1) NWA's decision to request a separate right-of-way lease for the conditioning plant;
- 2) Multi-year delay in the project schedule; and
- 3) Cancellation of the reimbursement agreement with the State for pre-right-of-way lease work;

have resulted in substantial changes in the status of the Northwest Alaskan Pipeline Company (NWA) Right-of-Way lease application and of its future processing by the State.

The Department of the Interior (DOI) Right-of-Way Grant as issued to Northwest Alaskan Pipeline Company on December 1, 1980, contained a set of Stipulations that had been developed with significant input from representatives of the State of Alaska. The overall objective, as you are aware, was to have a State Right-of-Way Lease with stipulations similar to the DOI Right-of-Way Grant, an objective the State still maintains. Therefore, in the past several years the majority of NWA project-related documents which received a coordinated State agency review have actually been fulfilling requirements of the DOI Right-of-Way Grant as well as the pending State Lease. For example, when NWA filed its pipeline right-of-way lease with the State, it deferred submission of several items pending ongoing work with State and Federal agencies in the preparation of key "1.6.1 Plans" which it indicated would serve two

purposes; 1) be elements of the right-of-way lease application, and, 2) satisfy subsequent lease stipulations. With an adequate level of State agency review, this was an acceptable process. Indeed completed 1.6.1 Plans would, in general, go farther than required for right-of-way lease applications. However, these plans have not been completed, and, by virtue of NWA's cancellation of its pre-lease, reimbursable services agreement with the State, State participation in further reviews of post-lease related items (i.e., 1.6.1 Plans) is not possible. Those key 1.6.1 Plans which were to have been prepared in conjunction with State and Federal agencies and which were to satisfy both the requirements of the lease application and subsequent lease stipulations include the following 1.6 Plans referenced in the application.

- Blasting
- Camps Plan
- Clearing Plan
- Environmental Briefings Plan
- Fire Control Plan
- Pesticides, Herbicides and Chemicals
- Quality Assurance/Quality Control
- Human-Carnivore Interaction Plan
- Restoration Plan
- Visual Resources Plan
- River Training Structures
- Stream, River and Floodplain Crossings
- Wetland Construction
- Erosion and Sedimentation Control
- Oil and Hazardous Substances Control, Cleanup and Disposal

Additional deficiencies in NWA's Right-of-Way Application are identified, as listed below:

- 1) Schedule - the schedule, as filed, is obviously incorrect in light of recent announcements. NWA should at such time as it is prepared to do so, provide realistic estimates of initiation and completion dates to which it intends to adhere;
- 2) It is not possible to determine from the present application NWA's technical capability to:
 - a) -protect property interests;
 - b) prevent adverse environmental impact;
 - c) undertake necessary restoration and revegetation;
 - d) properly develop material sites or disposal sites; and
 - e) protect the interests of subsistence resource users along the pipeline right-of-way and in the vicinity of related activities.

- 3) The present application does not demonstrate the applicant's financial capability to fulfill the requirements of A.S. 38.35.100. Extensive rhetoric, submitted in support of NWA's financial capability to perform the proposed transportation, related only to government approvals (President's Decision, Federal Right-of-Way Grant, etc.) which do not prove the sponsor's financial capability to perform the proposed transportation of natural gas. Though the items enumerated by NWA, in support of its application, (plus the later waiver package approval) are some of the conditions necessary for the obtaining of financing, events of the past year certainly prove that they do not provide financing. When the NWA financial plan is ready for submission to the FERC, it also should be submitted to the State as part of an extensively amended application for a State Right-of-Way Lease, so that the Commissioner may reasonably determine if NWA is actually financially capable to perform the transportation proposed;
- 4) No agreement has been obtained with Alaska Department of Transportation and Public Facilities (ADOT/PF) covering highway useage, damage, and encroachments (Yukon River Bridge, Atigun Pass, Ice Cut Hill, proximity, thermal workpads, etc.); and
- 5) As indicated before, a conditioning plant lease application should be filed separately.
- 6) AS 38.35.050 also requires that all persons planning to own an interest in a pipeline must join in the application. The application must be amended to reflect changes in interest in ownership.

It appeared last year when NWA filed its lease application that NWA's financial capability would now be established, and, through work and negotiation with the State, NWA would be able, by now, to satisfy the lease application requirements of A.S. 38.35. Unfortunately, those developments, optimistically anticipated by NWA and this office a year ago, have not happened. At this point, the lease application does not meet the requirements of A.S. 38.35.050 to the extent that the analysis required under A.S. 38.35.080 could be properly accomplished and the Commissioner could make the decision required under A.S. 38.35.100.

When the proper amendments have been provided and when the separate conditioning plant lease application has been received by this office, the pipeline lease application and the conditioning plant application processing will again be resumed through the normal State pipeline leasing process. The recently announced delays provide more than adequate time for NWA to provide the State with the amendments for further processing of the lease(s) as well as providing more than adequate time for the State to process the lease prior to the time it will actually be needed. This is, of course, only true if NWA does not allow the preparation of the application amendment and the plant lease application to drag on.

June 21, 1982

Sincerely,



Charles E. Behlke
State Pipeline Coordinator
Office of the Pipeline Coordinator

CEB/de

cc: John Katz, Commissioner, Department of Natural Resources, Juneau
Wilson Condon, Attorney General, Department of Law, Juneau
John Rhett, Federal Inspector, Office of the Federal Inspector,
Washington, D. C.
Robert Loeffler, Counselor, Morrison and Foerster, Washington, D. C.

STATE OF ALASKA

DEPARTMENT OF NATURAL RESOURCES

OFFICE OF THE COMMISSIONER

STEVE COWPER, GOVERNOR

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March 26, 1987

MAR 27 1987

The Honorable Jay Kerttula
Alaska State Legislature
P.O. Box V
Juneau, AK 99811

Dear Senator Kerttula:

The purpose of this letter is to provide an explanation of how the proposed change in the right-of-way leasing statute (SB 108) will affect the processing of oil and gas pipeline applications.

Under the existing statute, before an application is accepted by the department, it must be complete. That is, it must contain any and all data, information, plans, and exhibits deemed necessary by the commissioner to accomplish the pre-public hearing analysis, and the final decision to issue or deny, which follows the public hearing. A major element of the final decision is the commissioner's determination that the applicant is "fit, willing, and able" to perform in a manner consistent with the public interest.

The "fit, willing, and able" determination is an in-depth analysis of the applicant's financial and technical capability to perform as expected. Some considerations addressed under the "fit, willing, and able" standard include:

1. The status of financing arrangements;
2. Whether there will be oil or gas sales contracts dedicated in sufficient quantities to support the project; and
3. Whether the extent of preparation shows that this applicant can build the project as planned.

If the commissioner decides favorably for the applicant with regards to the "fit, willing, and able" determination, a right-of-way lease can then be offered. However, a negative determination results in an outright denial.

The proposed statutory amendment (SB 108) would provide an additional option by allowing the commissioner to issue a conditional right-of-way lease. What follows is the state's understanding of how the adjudication process will work with the passage of SB 108.

Project review, adjudication, and monitoring will take place in five stages. Those stages are:

1. Pre-application, application, and conditional right-of-way issuance.
2. Preconstruction (including field programs).
3. Construction (including rehabilitation).
4. Maintenance and operations monitoring.
5. Abandonment.

Stage 1 is characterized by the identification of issues, scoping, and development of work programs. A great deal of time is devoted to coordination with federal, state, and local government agencies to develop a consistent approach to the development of lease language, the administration of lands within the corridor, and a joint monitoring and surveillance program. Examples of Stage 1 tasks are presented below:

1. Identification of key technical personnel needed to resolve resource related issues. Included is the development of agency budget needs for Stages 2 and 3 of the project.
2. Development of a State Administrative Order to establish the roles of the participating state agencies, and their relationship to each other, and to establish appropriate authority.
3. Expedited resolution of general route issues.
4. Extensive coordination with the appropriate federal agencies to develop the following:
 - (a) Consistent language (terms and conditions) between the state right-of-way lease and the federal right-of-way grant.
 - (b) A joint agreement on the administration of lands along the pipeline corridor; and

- (c) A joint monitoring and surveillance agreement to cover the entire life of the pipeline project.
5. Expedited review and comment on the draft and final environmental impact statements, the Corps of Engineers Section 10/404 permits, and coastal zone consistency determinations on various aspects of the project.
 6. Development of list of issues and concerns that must be resolved prior to issuance of the Authorization to Construct. Included are the procedures necessary to implement the program. This work essentially sets the work plan for Stage 2.
 7. Identification of special technical studies that must be completed prior to final design approval. Such studies include, but are not limited to, stream crossings, cold or hot pipe effects on surface or subsurface waters, air and water quality monitoring, and pipeline integrity.
 8. Review the permitting strategy provided by the applicant. This information is incorporated in the lease terms and conditions and used as milestones to be accomplished prior to issuance of Authorization to Proceed.
 9. Establish a conceptual agreement with the applicant about facilities use, maintenance, and repair. This agreement forms the basis for reimbursement to the state for repair or reconstruction of roads, airports, or other state facilities.
 10. Establish procedures for preventing conflicts between existing and proposed facilities, including but not limited to, ANGTS, TAPS, and state highways.

To protect the various state interests, the lease would be conditioned in such a way that the commissioner's "fit, willing, and able" determination would be made during Stage 2. In any case, the determination will be made prior to the issuance of the Authorization to Construct. A process and schedule will be established through the terms and conditions to establish explicit deadlines for resolving issues and making the necessary determination. The overall intent is to ensure that issues are resolved well in advance of actual construction.

Stage 2 involves a high level of involvement of agency personnel. Depending on the size and scope of the project it is appropriate to consider establishing a State Pipeline

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Office. This office would be staffed by personnel from participating state agencies having the responsibility to collect data (fish and wildlife, habitat, air and water quality, geotechnical, hydrological, etc.) necessary for final design approval, and will authorize the beginning of construction. Baseline studies will be conducted, and review of design concepts, criteria, and specifications will be conducted.

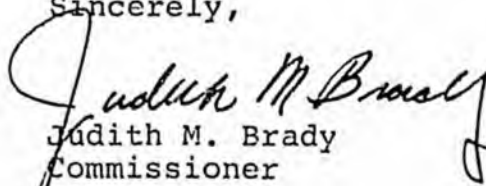
Stage 2 will culminate with the commissioner's "fit, willing, and able" determination, and the issuance of the Authorization to Construct.

Stages 3, 4, and 5 will proceed normally, unaffected by the statutory change represented in SB 108.

Under AS 38.35.140(b) the lessee is obligated to "reimburse the state for all reasonable costs incurred in processing an application filed under AS 38.35.050 and in monitoring the construction of the pipeline on the right-of-way." Accordingly, state agencies such as the Alaska Departments of Law, Natural Resources, Fish and Game, Environmental Conservation, and Transportation and Public Facilities expect to enter into a reimbursement agreement with any applicant. A reimbursable services agreement shall include, but not be limited to, pre and post application stages, pre-construction and construction, and maintenance and operation monitoring. Pre and post application activities include inter-agency negotiations and review of relevant documents. Agencies may require the lessee to provide direct services, such as transportation and lodging, in lieu of reimbursement.

The Department of Natural Resources supports SB 108. Passage of the bill into law will likely result in an increase in applications for pipeline rights-of-way and a corresponding work load. I believe it is in the state's interest to do so as it introduces a higher level of consistency to the department's adjudication process, encourages the participation of smaller companies while not discouraging participation of larger ones, and provides protection against speculation by incorporating terms and conditions requiring performance standards, which if not met, could void the lease.

Sincerely,



Judith M. Brady
Commissioner

cc: Rod Swope, Governor's Office