

HB

177

4/20/07

4/20/07

AMENDMENT # _____

OFFERED IN THE HOUSE
TO: CSHB 177(O&G)

BY ADMINISTRATION

Page 2, line 9- Insert "(a)" between "project." and "The".

Page 2, line 12-Insert "(b) Nothing in this section precludes a person's pursuing a gas pipeline independently from this chapter."

4/20/07

AMENDMENT # _____

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Page 3, lines 22-24-Delete the rest of the sentence after "chapter"

4/20/07

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Page 4, line 12- Insert "how the applicant will implement practices for controlling carbon emissions from natural gas systems as established by the United States Environmental Protection Agency" between "engineering," and "and"

Page 4, line 12-Delete "complying" and insert "how the applicant will comply"

AMENDMENT # _____

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Page 6, line 20 – page 7 line 8- Delete this section in its entirety and substitute:

“Sec. 43.90.130. (7) commit that the applicant

- A. will propose and support the recovery of mainline capacity expansion costs, including fuel costs, from all mainline system users through rolled-in rates as provided in (B) and (C) of this paragraph or through a combination of incremental and rolled-in rates as provided in (D) of this paragraph;
- B. will propose and support the recovery of mainline capacity expansion costs, including fuel costs, from all mainline system users through rolled-in rates; an applicant is obligated under this subparagraph only if the rolled-in rates would increase the rates
 - i. not described in (ii) of this subparagraph by not more than 15 percent above the initial maximum recourse rates for capacity acquired before commercial operations commence; in this sub-subparagraph, “initial maximum recourse rates” means the highest cost-based rates for any specific transportation service set by the Federal Energy Regulatory Commission, the Regulatory Commission of Alaska, or the National Energy Board of Canada, as appropriate, when the pipeline commences commercial operations;
 - ii. by not more than 15 percent above the negotiated rate for pipeline capacity on the date of commencement of commercial operations where the holder of the capacity is not an affiliate of the owner of the pipeline project; for the purposes of this sub-subparagraph, “negotiated rate” means the rate in a transportation service agreement that provides for a rate that varies from the otherwise applicable cost-based rate, or recourse rate, set out in a gas pipeline’s tariff approved by the Federal Energy Regulatory Commission, the Regulatory Commission of Alaska, or the National Energy Board of Canada, as appropriate; or
 - iii. for capacity acquired in an expansion after commercial operations commence, to a level that is not more than 115 percent of the volume-weighted average of all rates collected

AMENDMENT # _____

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by the project owner for pipeline capacity on the date commercial operations commence;

- C. will, if recovery of mainline capacity expansion costs, including fuel costs, through rolled-in rate treatment would increase the rates for capacity described in (B) of this paragraph, propose and support the partial roll-in of mainline expansion costs, including fuel costs, to the extent that rates acquired before commercial operations commence do not exceed the levels described in (B) of this paragraph;
- D. may, for the recovery of mainline capacity expansion costs, including fuel costs, that, under rolled-in rate treatment, would result in rates that exceed the level in (B) of this paragraph, propose and support the recovery of those costs through any combination of incremental and rolled-in rates;
- E. agrees not to enter into a negotiated rate agreement that would preclude the applicant from collecting from any shipper, including a shipper with a negotiated rate agreement, the rolled-in rates that are required to be proposed and supported by the applicant under (B) of this paragraph or the partial rolled-in rates that are required to be proposed and supported by the applicant under (C) of this paragraph;"

4/20/07

AMENDMENT # _____

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Page 8, line 18-21- Delete section (15) and substitute:

- (15) to the extent permitted by law, commit to
- (A) hire qualified residents from throughout the state for management, engineering, construction, operations, maintenance, and other positions on the proposed project;
 - (B) contract with businesses located in the state;
 - (C) establish hiring facilities or use existing hiring facilities in the state; and
 - (D) use, as far as is practicable, the job centers and associated services operated by the Department of Labor and Workforce Development and an Internet-based labor exchange system operated by the state;

Page 8, line 25-27

Line 25- delete "prior to" and replace with "before"

Line 26- after "agreement" delete "to assure expedited construction and" and replace with "; in this paragraph, "project labor agreement means a comprehensive collective bargaining agreement between the licensee or its agent and the appropriate labor representatives to ensure expedited construction with"

4/20/07

AMENDMENT # _____

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Page 10, line 31- delete "AS 43.90.150"

Page 10, line 31 insert: "AS 43.90.140. consider public comments received under AS 43.90.160(a),"

4/20/07

AMENDMENT # _____

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Page 11, line 10-Delete "wellhead" and insert "net back".

Page 11, line 11-Insert "and treatment" between "transportation" and "costs".

Page 11, lines 15-17

Insert "and" at the end of line 15.

Delete "(5) the amount of the contribution by the state under AS 43.90.110(a)(1)(A) and (B) proposed by the applicant under AS 43.90.130(9); and

4/20/07

AMENDMENT # _____

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Page 12, line 28-29. Delete subsection (d) entirely

4/20/07

AMENDMENT # _____

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Page 14, Lines 6-10- Replace subsections (e) and (f) with the following:

(e) The transfer of any certificate or material as a result of failure to comply with (a) or (b) of this section is at no cost to the state or the state's designee. A transfer under (c) of this section is at the licensee's net cost.

(f) For purposes of this section, the effective date of the certificate of public convenience and necessity issued by the Federal Energy Regulatory Commission or the Regulatory Commission of Alaska is the date when all rights of administrative appeal to the certificate have expired.

4/20/07

AMENDMENT # _____

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Page 14, line 13-Insert "improve the net present value of the project to the state, are necessary because of an order issued by the Alaska Oil and Gas Conservation Commission; or" between "modifications" and "are".

Page 14, line 16-Insert "except for an amendment or modification required because of an order issued by the Alaska Oil and Gas Conservation Commission," between "and" and "may".

Page 14, line 17-Insert "project's" between "the" and "likelihood" and delete "for the project".

4/20/07

AMENDMENT # _____

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Page 16, line 18-23 Delete subsection (f).

Page 16, line 31-Delete "its Commercial Arbitration Rules" and insert "the substantive and procedural laws of this state".

Page 17, line 1- Delete "any court of competent jurisdiction" and insert "in a superior court in the state".

4/20/07

AMENDMENT # _____

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Page 17 line 11- Insert a new subsections (c) and (d) and renumber the following subsections as (e) and (f):

"(c) The arbitration panel in (b) of this section shall make a determination that the project is uneconomic only if the panel finds that the party claiming the project is uneconomic has proven by a preponderance of the evidence that the

- (1) project does not have credit support sufficient to finance construction of the project through firm transportation commitments, government assistance or other sources of financing; and
- (2) predicted costs of transportation at 100 percent load factor, when deducted from predicted gas sales revenue using publicly available predictions of future gas prices, would result in a producer rate of return that is below the rate typically accepted by a prudent oil and gas exploration and production company for incremental upstream investment that is required to produce and deliver gas to the project.

(d) In an appeal of a final determination rendered by the arbitrators under (b) of this section, the person making the appeal has the burden of proof."

4/20/07

AMENDMENT # _____

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Page 18, Line 1-4- Delete sentence beginning "The" and ending with "elected."

Page 18, Line 4- replace "person" with individual serving as the Alaska Gasline Inducement Act coordinator"

Page 18, lines 6-17, delete subsection (c).

4/20/07

AMENDMENT # _____

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Page 19, line 1, insert "(a)" between "inducement." and "notwithstanding".

Page 19, line 8, insert a new subsection (b) that reads:

"(b) A gas producer receiving a voucher under AS 43.90.330 is qualified to receive the resource inducement in AS 43.90.310 and 43.90.320 for the gas shipped in the firm transportation capacity described in the voucher for the period described in AS 43.90.330."

Page 19 line 14, insert before period at the end of the sentence the following:

"or shipped in the firm transportation capacity described in a voucher received by the gas producer under AS 43.90.330."

Page 19, line 15- Delete "(b)".

4/20/07

AMENDMENT # _____

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Page 21, line 30-Insert "or shipped in the firm transportation capacity described in a voucher received by the gas producer under AS 43.90.330" after "season" and before the period.

4/20/07

AMENDMENT # _____

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Page 22, lines 4-5-Delete ihese two lines in their entirety.

4/20/07

AMENDMENT # _____

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BY ADMINISTRATION

Page 22, line 9 -Insert a new section that reads:

"Sec. 43.90.330. Inducement vouchers. (a) A person that acquires firm transportation capacity in the first binding open season of the project, that does not hold an oil and gas lease on the North Slope, and that is not an affiliate of a person that holds an oil and gas lease on the North Slope, may apply to the commissioners for a voucher under this section. A voucher issued by the commissioners must describe the firm transportation capacity in the project to which the voucher is applicable.

(b) A voucher issued by the commissioners under this section entitles the holder of the voucher to the resource inducements in AS 43.90.310 and 43.90.320 for gas shipped in the firm transportation capacity acquired by the person applying for the voucher during the first binding open season of the project and described in the voucher. The voucher may be transferred to a gas producer that has a binding obligation to sell gas to the person transferring the voucher under a gas purchase agreement.

(c) A gas producer holding a voucher may claim the resource inducement for gas shipped through the firm transportation capacity described in the voucher and only on gas that is produced and delivered to the purchaser on the North Slope. A gas producer may claim the resource inducements under this subsection until the earlier of the termination of the binding gas purchase agreement or the expiration of the inducements by operation of law."

4/20/07

AMENDMENT # _____

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BY ADMINISTRATION

Page 22 line 15-16- Delete sentence beginning "Money" and ending "appropriations."

Page 22, line 17-18- Delete sentence beginning "Nothing" and ending "fund."

Page 22, line 21- 22- Delete "Income earned on" and insert "Interest received on money in"

Page 22, line 22- Insert "annually" between "fund" and the period.

4/20/07

AMENDMENT # _____

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Page 23, line 25- Insert new sentence after "person." that reads as follows:

"The payment to the licensee under this subsection is subject to appropriation."

4/20/07

AMENDMENT # _____

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Page 25, line 30-31- revise subsection (b) to read:

(b) In this section,

(1) "competing natural gas pipeline project" means a project designed to accommodate throughput of more than 500,000,000 cubic feet a day of North Slope gas to market;

(2) "preferential royalty or tax treatment" does not include

(A) the state's exercise of its right to modify royalties as authorized by law in effect on the effective date of this section;

(B) the state's exercise of its right to modify royalties as authorized by law in effect on the effective date of this section, or

(C) the benefits of a large project permit coordinator authorized by a law in effect on the effective date of this section.

4/20/07

AMENDMENT # _____

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Page 24, Line 2- Insert after "if," the following:

"after publishing notice of the proposed transfer, providing notice to the presiding officer of each house of the legislature, and providing a period of not less than 30 days for public review and comment,"

4/20/07

AMENDMENT # _____

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Page 24, line 17-Insert a new subsection (d) :“(d)Except for the transfer of a voucher to a producer under AS 43.90.330(b), a person receiving a voucher under AS 43.90.330 based on the person’s acquisition of firm transportation capacity in the first binding open season of the project may transfer the voucher only if the transfer is in connection with the permanent assignment by the person of 100 percent of the firm transportation capacity acquired in the first binding open season of the project.”

4/20/07

AMENDMENT # _____

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Page 26 lines 1-2 delete definition for "North Slope Gas".

Page 26, lines 3-5-Delete the rest of the sentence after "the" and insert "process that complies with 18 C.F.R. Part 157 (Open Seasons for Alaska Natural Gas Transportation Projects) and 18 C.F.R. 157-30 - 157.39;"

4/20/07

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Page 30, line 16- Renumber "Sec. 6" as "Sec. 5"

Page 30, line 22- Insert new Sec. 6 to read as follows:

EXPEDITED CONSIDERATION OF COURT CASES. It is the intent of the legislature that the courts of the state, when considering a case related to the development and construction of a natural gas pipeline under this Act or to the commitment of a shipper to acquire firm transportation capacity during the first binding open season for a project developed under this Act, expedite the resolution of the case by giving the case priority over all other civil cases to the extent permitted under the Alaska Rules of Court.

Page 30, line 27-31- Delete Sec. 8.

Page 31, line 1-3- Delete Sec. 9

Page 31, line 4-5, Renumber "Sec. 10" as "Sec. 8" and Delete beginning with "Except" and ending at "Act,". Change "this" to "This".

AMENDMENT # _____

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Page 13, lines 7-13- Replace (b) with the following:

(b) If a bill approving the issuance of the license passes the legislature within 60 days after the last date a presiding officer receives a determination by the commissioners under AS 43.90.180, the commissioners shall issue the license as soon as practicable after the effective date of the Act approving the issuance of the license.

(c) Notwithstanding the legislative rule that prohibits the carryover of a bill after the end of a special session or after the end of a regular session of the legislature, a bill introduced under (a) of this section that is not passed or not withdrawn, defeated, vetoed or indefinitely postponed, shall be carried over to any subsequent regular or special legislative session convened during the 60-day period described in (b) of this section in the same reading or status it was in at the time of adjournment. However, a bill introduced under (a) of this section may not be carried over to the first regular session of the legislature.

Page 13, line 13- Insert after "commissioners" the following

"(1) may not issue the license that the legislature failed to approve; and
(2)"

The Palin-Parnell Administration presents

AGIA

The Alaska Gasline Inducement Act

House Resources

4/20/07

Rolled in Pricing of Expansion



- 2004 ANGPA mandate to FERC:
 - “promote competition in the exploration, development and production of Alaska natural gas.” (§103(e)(2)(b)).
 - “provide the opportunity for the transportation of natural gas other than from the Prudhoe Bay and Point Thomson units” for any open season for capacity exceeding the initial capacity of the line. (§103(e)(2)(c)).

Rolled in Pricing of Expansion

AGIA

The Alaska Gasline Inducement Act

- FERC Concluded:

“incremental pricing of expansion could put expansion shippers at a significant rate disadvantage compared with initial shippers, and accordingly could discourage exploration, development and production of Alaska natural gas.” (Order 2005 at ¶ 123)

Definition of subsidy in context of rolled-in rates

AGIA

The Alaska Gasline Inducement Act

A rate increase is not necessarily a subsidy. (see, Order 2005-A at ¶ 50).

“An alternative ...definition of subsidization could be whether the expansion rate is no higher than the actual initial rate or of an initial rate without built in subsidies.” (Order 2005-A at ¶ 49)

Definition of subsidy in context of rolled-in rates

AGIA

The Alaska Gasline Inducement Act

“Whether a rolled-in expansion rate that is higher than original rates is a ‘subsidy’ is a question that necessarily would have to be reviewed in the context of a future NGA section 7 filing. At that time, ... [the] argument relating to whether the federal government’s loan guarantees and accelerated depreciation amount to a ‘subsidy’ of initial shippers’ rate may be raised.” (Order 2005 at ¶ 124, emphasis added).

Definition of subsidy in context of rolled-in rates

AGIA

The Alaska Gasline Inducement Act

Government Contributions reduce rates by more than 15%:

- Loan Guarantee up to \$18 billion (5%)
- 7-year accelerated depreciation (4.3%)
- AGIA \$500 million (3%)

Plus:

Owners of GTP receive an additional 15% federal income tax credit.

Definition of subsidy in context of rolled-in rates

AGIA

The Alaska Gasline Inducement Act

THUS:

AGIA caps roll-in filing commitment roughly at level of governmental contributions to the project.

Definition of subsidy in context of rolled-in rates

AGIA

The Alaska Gasline Inducement Act

- AGIA does not intrude on FERC's authority.

Simply requires that the FERC receive a rolled-in pricing proposal to be decided by FERC under their rebuttable presumption and with specific facts before them.

Lower 48 Expansion Pricing

AGIA

The Alaska Gasline Inducement Act

Rolled-in used almost universally when it results in rate decrease to all users even under current incremental pricing policy.

Unaware of any recent instance where FERC allowed or required incremental pricing of a project that would have lowered rates for others under rolled-in pricing.

Lower 48 Expansion Pricing

AGIA

The Alaska Gasline Inducement Act

- The Commission has stated that,
“...rolled-in treatment would be appropriate when rolled-in rates lead to a rate decrease for the pre-expansion customers...” (Policy for Selective Discounting By Natural Gas Pipelines, 113 FERC ¶ 61,173 (2005)).

History & Relevance of Order 636

AGIA

The Alaska Gasline Inducement Act

- Order 636 required all US pipelines to “unbundle” gas sales from gas transportation service and prohibited pipelines from making gas sales at the downstream end of their pipes.

History & Relevance of Order 636



- Grounded on complaints that pipelines had competitive advantage over producers and gas marketers if they sold gas on a bundled (gas-plus-transport) basis whereas other gas sellers could only offer gas sales at the inlet to the pipeline.

History & Relevance of Order 636



- Pipelines were required to offer “open access” transport with FERC setting the rates and terms and conditions of service.
- As a result all interstate gas pipelines are now “open access” transportation-only entities. The Alaskan pipeline will also be an open access pipeline as well. Access terms and rates for service set by FERC.

- “Recourse rates” are cost-based rates set by FERC under conventional public utility rate-making methods.
 - Almost all costs recovered through “reservation charge” regardless of whether gas shipped
 - Some exceptions:
 - Pipe not in service
 - Pipe not capable of providing service (credit for charges during such time)
 - Force Majeure* (partial credit for charges)

- “Negotiated rates” are now allowed by FERC so long as any shipper has the right to receive service at the regulated “recourse rate.”
- AGIA requires rolled-in pricing for recourse rates
- AGIA also requires rolled-in pricing for negotiated rate contracts (and prohibits the licensee from agreeing to negotiated rate contracts that prohibit rate increases up to the 15% level).

AGIA and shipper protest of rolled-in rates

AGIA

The Alaska Gasline Inducement Act

- AGIA conditions upstream inducements on agreement not to protest filing at FERC to roll-in up to the cap. Beyond the 15% cap no limit on right to protest.
- Symmetrical structure—because State of Alaska benefits from rolled-in pricing.
- Best chance of ensuring favorable ruling on rolled-in filing.

“DR&R”

AGIA

The Alaska Gasline Inducement Act

- DR&R (dismantling, removal and restoration):
 - Big issue on TAPS
- “Negative salvage” allowed on gas pipelines through rate cases (not typically in initial certificate proceeding).
- FERC requires special account for \$\$ recovered on gas lines—unlike TAPS.

110 FERC ¶ 61,095
UNITED STATES OF AMERICA
FEDERAL ENERGY REGULATORY COMMISSION

18 CFR Part 157

(Docket No. RM05-1-000)

Order No. 2005

Regulations Governing the Conduct of Open Seasons for Alaska Natural Gas
Transportation Projects

(Issued February 9, 2005)

AGENCY: Federal Energy Regulatory Commission.

ACTION: Final Rule.

SUMMARY: The Federal Energy Regulatory Commission is amending its regulations to establish requirements governing the conduct of open seasons for proposals to construct Alaska natural gas transportation projects. This Final Rule fulfills the Commission's responsibilities to issue open season regulations under section 103 of the Alaska Natural Gas Pipeline Act (the Act), enacted on October 13, 2004. Section 103(e)(1) of the Act directs the Commission, within 120 days from enactment of the Act, to promulgate regulations governing the conduct of open seasons for Alaska natural gas transportation projects, including procedures for allocation of capacity. As required by section 103(e)(2) of the Act, these regulations (1) include the criteria for and timing of any open season, (2) promote competition in the exploration, development, and production of Alaska natural gas, and (3) for any open seasons for capacity exceeding the initial capacity, provide for the opportunity for the transportation of natural gas other than from the Prudhoe Bay and Point Thomson units.

EFFECTIVE DATE: The rule will become effective 90 days after publication in the FEDERAL REGISTER.

FOR FURTHER INFORMATION CONTACT:

Whit Holden, Office of the General Counsel, (202) 502-8089, edwin.holden@ferc.gov
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Federal Energy Regulatory Commission, 888 First Street, N.E., Washington, D.C. 20426

SUPPLEMENTARY INFORMATION:

G. Rate Treatment for Expansions

111. As noted above, one of the issues that received substantial attention in the pre-NOPR comments is whether the Commission should require rolled-in rate treatment for Alaska pipeline expansions. Although the NOPR's proposed regulations are silent on this subject, the NOPR requested comment on whether, in the event the Commission issues regulations with respect to the Commission's authority to require expansion of any Alaska natural gas transportation project, those regulations should address the rate treatment (rolled-in or incremental) of any such expansion.

112. Other than the North Slope Producers and Alliance, there is much support for rolling-in the costs of both voluntary and involuntary expansions, although there is disagreement about when the issue should be resolved. ChevronTexaco states that the subject of appropriate rate treatment for expansions is a subject deserving of substantial, detailed consideration that should be addressed after dealing with the more pressing task of issuing the open season rules. Northwest Industrial Gas Users also believes that the issue can be addressed later. Alaska agrees that expansion pricing is a complex subject that should be examined thoroughly, and asserts that instead of addressing the issue in this rulemaking, the Commission should issue a notice regarding expansion rate treatment for Alaska natural gas transportation projects in early 2005. Alaska observes that the arguments in support of rolled-in pricing are strong, but suggests that rolled-in pricing might not be appropriate in all circumstances. Alliance believes that because the appropriateness of rolled-in or incremental rate treatment for any expansion should be made on a fact-specific basis, and not by rule that predetermines, before the circumstances of a given expansion are even known, how that expansion should be priced.

113. Pacific Star and Alaska Venture Capital state that the Commission should give an early indication that it will support rolled-in rates for expansions of any Alaska natural gas transportation project. Pacific Star states that it agrees with the statement at the technical conference by TransCanada, ANGDA, Anadarko, BLM, and MMS that rate uncertainty will discourage exploration and development and that expansions of the pipeline could present widely varying rate consequences. Pacific Star also states that concerns over existing shippers' subsidizing rolled-in expansions should be weighed against the facts that initial shippers are benefiting from substantial subsidies through the \$18 billion loan guarantee and a 7-year accelerated depreciation. Alaska Venture Capital/Brook Range similarly believes that the Commission should give an early indication that it will support rolled-in pricing under scenarios outside the Commission's existing policy, under which the Commission approves rolled-in rates only where the rolled-in rate is equal to or less than the existing recourse rate. According to Alaska Venture Capital/Brook Range, a policy calling for different rates for similar services

would place explorers and smaller producers at a competitive disadvantage. This would, in turn, discourage exploration and development of Alaska natural gas, contrary to the mandate of the Act.

114. TransCanada, MidAmerican/AGTA, and DOI encourage the Commission to adopt a rebuttable presumption favoring rolled-in rates. TransCanada states that any shippers concerned about the effect of such treatment can seek to avoid it through negotiated rates. MidAmerican/AGTA qualifies its support for this presumption by stating that the presumption should apply only to reasonably-engineered increments of mainline expansions supported by long-term contracts similar to those supporting the initial project. DOI states that rolled-in rate treatment is more equitable to future shippers, and that, because Canada has adopted rolled-in rates for expansions, it would provide rate consistency for the entire system.

115. Alaska Legislators, Anadarko, Shell, Calpine, Arctic Slope, and Doyon all contend that rolled-in pricing should be required for pipeline expansions. Alaska Legislators contend that incremental treatment for expansions would discriminate against expansion shippers who, merely because of the timing of their capacity needs, may pay higher rates than initial shippers. This, according to the Alaska Legislators, ignores the fact that the need for expansion is the consequence of the demands of all shippers. Alaska Legislators state that the Commission must balance the interests of the existing customers against interests of other stakeholders in determining whether or not pre-existing shippers should get the benefit of rate decreases for expansions that lower the average per unit cost of transportation, but face the possibility of rate increases that increase the average per unit cost of transportation. Alaska Legislators also note that the current Commission policy on expansion pricing was developed to address pipeline to pipeline competition, which will not arise in Alaska.

116. In addition to arguing that incremental rates operate to discriminate against expansion shippers, Alaska Legislators argue that the prospect of incremental rates will also act to reduce competition and impede the development of Alaska natural gas. Alaska Legislators state that exploration and development of Alaska reserves requires a long lead-time due to seasonal restrictions and the remoteness of the resource.³⁷ Alaska

³⁷ Alaska Legislators refers to a statement made at the technical conference by Jeff Walker, of DOI's Mineral Management Service that it takes at least nine years for an exploration project to mature into production.

Legislators contend that this long lead time makes it difficult for an explorer to judge when it is feasible to commit to capacity on the pipeline. The result, state Alaska Legislators, is that the explorers and developers may be deterred from investing the large sums required to drill for Alaska natural gas, when they are unsure whether their future capacity needs will be met at a time when inexpensive expansion through increased compression will be available, or whether the expansion they require would involve costly looping. The Alaska Legislators also argue that Canada has a long-standing policy of requiring rolled-in rates for expansions which could make exploration in Canada much more attractive to exploration and production companies.

117. Anadarko, also convinced that expansions under section 103 of the Act must be priced on a rolled-in basis, argues that this is critical to avoid a rate structure or policy that discriminates on the basis of time of entry onto the pipeline. Anadarko maintains that it is important to establish this requirement in the initial open season process in order to inform those prospective shippers that their rates might increase as expansions are rolled-in. Alaska Legislators provide a history of the Commission's expansion rate policy, varying over time in order to address different goals as deemed necessary to address changing market dynamics. In short, Alaska Legislators assert that the current Commission policy favoring incremental expansion rates seeks to address issues of competing pipelines, competitive markets, optimal construction, and protecting captive customers, all valid considerations of the market setting in the lower 48 states, but wholly inapplicable to an Alaska natural gas transportation project or the Alaska market. According to Alaska Legislators, the Act instructs the Commission, through its open season regulations, to focus on reducing barriers, not to competitive markets, but rather, to entry in exploration and development of Alaska natural gas. Alaska Legislators conclude that to achieve this mandated goal, the open season regulations must be revised to include rolled-in pricing as one of the criteria for open seasons for pipeline expansions

118. Shell and Calpine also argue that Commission's 1999 pricing policy for expansions has no application to the circumstances of an Alaska natural gas transportation project where there is no element of pipeline competition or preventing overbuilding. Shell is concerned that companies might not invest hundreds of millions in exploration and development costs if they may have to pay for expansions on an incremental basis, while competitors benefited from earlier, inexpensive expansion. Calpine stresses that since an Alaska natural gas transportation project will be called to transport all Alaska gas, not just gas from Prudhoe Bay and Point Thomson reserves, a larger picture is required in assessing any policy against subsidization. Calpine maintains that an Alaska pipeline should be viewed as a 10 Bcf/d pipeline that will be built, in phases, over time, as opposed to a 4.5 Bcf pipeline that might be expanded from time to time. Under this picture, shippers on the first phase facilities will benefit from lower initial rates due to the Act's loan guarantees, however the Act was not only concerned

with facilitating the development of a project that carries Prudhoe Bay and Point Thomson production to market, but also the development and transportation of Alaska's unproven reserves.

119. Arctic Slope is also concerned that unless rolled-in rates are mandated, there may never be an expansion of the pipeline beyond capacity created through infill compression and added compression horsepower. Arctic Slope estimates that rolled-in rates for expansions would probably be only a little higher than the initial rates since expansion costs would be borne by the entire pipeline throughput. However, the impact of incrementally-priced expansions on the incremental shippers, which would be based entirely on the incremental throughput quantities, would be very severe.

120. Alliance and the North Slope Producers assert that rates for expansion should be determined on a fact-specific, case-by-case basis, not on a pre-determined, rolled-in basis under the open season rules. The North Slope Producers stress that absent information regarding design, timing, and other project attributes, it would be inappropriate either to require or to favor rolled-in rates. In addition, the North Slope Producers point to section 105(b)(1) of the Act wherein, they state, Congress identified either rolled-in or incremental rates as appropriate for mandatory expansions. They add that if rolled-in rates were made applicable to voluntary expansions in the final open season rule, the result would be that such expansions would become involuntary and they would be discouraged.

121. Additionally, the North Slope Producers state that the Commission's existing, fact-specific policy recognizes the risks inherent in major infrastructure projects and seeks to prevent uneconomic pipeline expansions, as well as subsidization by existing customers, and should not be lightly discarded. Responding to the assertion that the NEB requires rolled-in rates for Canadian expansions, the North Slope Producers state that although NEB has adopted rolled-in rates in expansion cases, NEB addresses the issue on a case-by-case basis.

122. Finally, the North Slope Producers claim that explorers do not require absolute rate certainty in order to decide whether to participate in open seasons; an anticipated range that supports future economics is sufficient. On the other hand, the North Slope Producers state that initial shippers who fear that they may be called on to subsidize future shippers may not bid for initial capacity. In this connection, the North Slope

Producers contend that one of the Commission's goals is to protect captive customers from rate increases arising from costs unrelated to their service, resulting in rate uncertainty and increased contractual risk.³⁸

123. In this rule, the Commission does not adopt a firm pricing policy for future expansions of an Alaska natural gas transportation project, but we do take this opportunity to provide guidance on this important issue, as it will assist participants in the initial open season. We conclude that there should be a rebuttable presumption in favor of rolled-in pricing for project expansions. Our existing lower-48 states policy favoring incremental rates for expansions does not apply in the case of an Alaska natural gas transportation project. There is likely to be only one Alaska pipeline, so there will be little or no opportunity for competition between pipelines. Incremental pricing of expansion could put expansion shippers at a significant rate disadvantage compared with initial shippers, and accordingly could discourage exploration, development and production of Alaska natural gas. Having markedly different rates for similar service could be in conflict with one of the chief objectives of the statute, which is to encourage further exploration and development of Alaska natural gas. On the other hand, consistent with the arguments of a number of commenters, a presumption in favor of rolled-in pricing may spur investment in and development of Alaska reserves, and the ultimate delivery of that gas to the lower 48 states.

124. We cannot at this point, without a specific project proposal or the facts surrounding a proposed expansion before us, define exactly what will be required to overcome the presumption. As a general matter, we have historically not favored requiring existing shippers to subsidize the rates of new shippers. We do not intend to discard this principle, but rather to indicate that we will not lightly authorize expansion rates that would have an unduly negative impact on the exploration and development of Alaska reserves. Witnesses at the technical conference acknowledged that defining subsidization is difficult without specific facts to review, and that fact was restated in several of the comments filed. We agree. But a basic observation may be useful here. For example, a rolled-in expansion rate that is less than or equal to the rate paid by the initial shippers would not be considered a subsidy. Whether a rolled-in expansion rate that is higher than original rates is a "subsidy" is a question that necessarily would have to be reviewed in the context of a future NGA section 7 filing. At that time, Pacific

³⁸ See, e.g., *Transcontinental Gas Pipe Line Corp.* 106 FERC ¶ 61,299 (2004).

Star's arguments relating to whether the federal government's loan guarantees and accelerated depreciation amount to a "subsidy" of initial shippers' rates may be raised.

125. In conclusion, to provide guidance to potential shippers in advance of the initial open season that is the subject of this rule, the Commission intends to harmonize both objectives (rate predictability for initial shippers and reduction of barriers to future exploration and production) in designing rates for future expansions of any Alaska natural gas transportation project. It is consistent with our guiding principle that competition favors all of the Commission's customers, as well as with the objectives of the Act, to adopt rolled-in rate treatment up to the point that would cause there to be a subsidy of expansion shippers by initial shippers, if any subsidy were to be found.

126. Anadarko states that the open season regulations must prohibit pipelines from bundling ancillary services with transportation. In particular, Anadarko is concerned that sponsors might include in a tariff and an open season the bundled cost of a gas conditioning plant that would extract CO₂ despite the fact that such extraction would not be required of gas from many new Alaska gas fields which likely will be of pipeline quality. MidAmerican/AGTA and Enbridge agree that the open season process should preclude applicants from tying receipt of capacity to taking ancillary services, such as gas conditioning, treating, or processing. TransCanada simply states that it has no objection to proscription of tying.

127. DOI and MidAmerican/AGTA agree that rates for ancillary services should not be bundled with transportation rates. However, DOI contends that the State of Alaska should address the need for rules concerning non-discriminatory access to gathering and other production related facilities, whereas MidAmerican/AGTA claims that the Commission should assert jurisdiction over gas treatment plants and require separate open seasons and cost-based tariff structures for gas processing. On the other hand, the North Slope Producers contend issues of tying or bundling of services can be dealt with through established Commission processes and policies at the appropriate time, and need not be addressed in the open season. Alliance views the tying issue in the context of requiring designated downstream capacity, and suggests that as a practical matter, that should not be prohibited.

128. The Commission is stating in the final rule at section 157.34(c)(6) that the open season notice must contain an unbundled transportation rate. Moreover, section 157.34(c)(10) prohibits a prospective applicant from requiring prospective shippers to process or treat their gas at any designated facility. The Commission is satisfied that it can address any other discriminatory conduct in connection with gas quality requirements or other ancillary services through the provisions of section 157.35 in conjunction with existing Commission policies and procedures.

111 FERC ¶ 61,332
UNITED STATES OF AMERICA
FEDERAL ENERGY REGULATORY COMMISSION

18 CFR Part 157

(Docket No. RM05-1-001; Order No. 2005-A)

Regulations Governing the Conduct of Open Seasons for Alaska Natural Gas
Transportation Projects

(Issued June 1, 2005)

AGENCY: Federal Energy Regulatory Commission.

ACTION: Final Rule; Order on Rehearing.

SUMMARY: The Federal Energy Regulatory Commission (Commission) generally reaffirms its determinations in Order No. 2005. Order No. 2005 establishes requirements governing the conduct of open seasons for proposals to construct Alaska natural gas transportation projects, including procedures for allocation of capacity. Pursuant to the directive of section 103(e)(2) of the Alaska Natural Gas Pipeline Act, enacted on October 13, 2004, the regulations promulgated in Order No. 2005 (1) include the criteria for and timing of any open season, (2) promote competition in the exploration, development, and production of Alaska natural gas, and (3) for any open seasons for capacity exceeding the initial capacity, provide for the opportunity for the transportation of natural gas other than from the Prudhoe Bay and Point Thomson units.

In this order, the Commission addresses the requests for rehearing and/or clarification of Order No. 2005. Here, we grant rehearing in part, deny rehearing in part, and provide clarification of Order No. 2005. In specific, we: (1) clarify that the

Section 157.36 is intended to provide that the Commission may require design changes necessary to ensure that some portion of a proposed voluntary expansion will be allocated to new shippers or shippers seeking to transport gas from areas other than Prudhoe Bay or Point Thomson, provided such shippers are willing to sign qualifying long-term firm transportation agreements. To ensure clarity, we will revise section 157.36 to read as follows:

“In considering a proposed voluntary expansion of an Alaska natural gas transportation project, the Commission will consider the extent to which the expansion will be utilized by shippers other than those who are the initial shippers on the project and, in order to promote competition and open access to the project, may require design changes to ensure that some portion of the expansion capacity will be allocated to new shippers willing to sign qualifying long-term firm transportation contracts, including shippers seeking to transport natural gas from areas other than Prudhoe Bay or Point Thomson.”

II. Presumption of Rolled-in Rates for Expansions

A. Final Rule - § 157.39

39. Section 157.39 states that “[t]here shall be a rebuttable presumption that rates for any expansion of an Alaska natural gas transportation project shall be determined on a rolled-in basis.” The Commission stated in Order No. 2005 that by providing for this presumption, the Commission is advising potential shippers, in advance of any initial Alaska natural gas transportation project open season, of its intention to harmonize the objective of rate predictability for initial shippers with the objective of reducing barriers to future exploration and production in designing rates for future expansions of any Alaska natural gas transportation project. The Commission concluded in Order No. 2005 that section 157.39 is consistent with “our guiding principle that competition favors all of the Commission’s customers, as well as with the objectives of the Act, to adopt rolled-in rate treatment up to the point that would cause there to be a subsidy of expansion shippers by initial shippers, if any subsidy were to be found.”

B. Rehearing/Clarification Requests

40. The North Slope Producers, Enbridge, and ChevronTexaco assert that the presumption in favor of rolled-in rates for voluntary expansions established in section 157.39 creates uncertainty for shippers and project sponsors, and, therefore, section 157.39 should be eliminated from the regulations or substantially revised. The

North Slope Producers and Enbridge claim that prospective initial shippers, fearing that in the future their rates may be increased to subsidize the cost of expansion facilities, will be less willing to make the long-term commitments necessary to support an Alaska project. This uncertainty, they predict, will discourage rather than advance the development of an Alaska pipeline or any voluntary expansion thereof – a result clearly inconsistent with ANGPA's primary goal. Moreover, the North Slope Producers and Enbridge suggest that mandatory expansions pursuant to ANGPA section 105 will become more attractive than voluntary expansions because of the explicit rate protection for existing shippers in section 105.

41. The North Slope Producers contend that section 157.39 is unjustifiably inconsistent with the Commission's current policy regarding rate treatment of expansions, which is to discourage uneconomic expansions and assure that expansions will not be subsidized by existing shippers. They assert that even if, as claimed by the Commission, only one pipeline will be built in Alaska, that distinction does not justify deviating from the Commission's current policy.

42. The North Slope Producers charge that the Commission acted arbitrarily and capriciously in relying on ANGPA section 103(e) to justify its conclusion to provide for a presumption of rolled-in rates for expansions. Although the North Slope Producers concede that the Commission clearly has the authority under ANGPA and the NGA to approve rates for Alaska natural gas transportation projects, they claim that ANGPA section 103(e) has nothing to do with rate regulation. Furthermore, state the North Slope Producers, even if section 103 could be read to give the Commission authority to include rate regulations in its open season rules, the proper course would be to remove section 157.39 from the open season rules and instead address rate policy issues only after the parties have the opportunity of developing a complete factual record. Failing this, the North Slope Producers state that the Commission should revise section 157.39 to provide that the Commission's current rate policies will apply to Alaska projects.

43. Enbridge also argues that the Commission acted arbitrarily and capriciously by imposing a rebuttable rolled-in presumption, even where rolled-in pricing would increase existing shippers' rates. According to Enbridge, Order No. 2005 identifies two considerations, namely the Commission's disfavor of existing shippers subsidizing the rates of new shippers, and the Commission's reluctance to authorize an expansion rate that would have an unduly negative impact on the exploration and development of Alaska reserves. Enbridge contends that the presumption should be "scaled back" to apply only to cases where expansion rates are no higher than pre-existing rates. Enbridge points to the Commission's acknowledgement in Order No. 2005 that it "cannot at this point, without a specific project proposal or the facts surrounding a proposed expansion before

us, define exactly what will be required to overcome the presumption." Enbridge contends that the Commission's inability to explain how the presumption can be rebutted renders rolled-in pricing mandatory, leaving the question of whether a rolled-in expansion rate that is higher than original rates is a subsidy to be resolved in a future NGA section 7 filing.

44. ChevronTexaco stresses that because the text of Order No. 2005 recognizes that "without a specific project proposal or the facts surrounding a proposed expansion" the Commission cannot determine what is needed to overcome the presumption favoring rolled-in rates, the Commission should defer any determination of rate treatment for expansions until a record can be developed after a specific proposal is made. According to ChevronTexaco, this inability to articulate when the presumption will be applied creates uncertainty that inhibits the development of any Alaska project.

45. ChevronTexaco states that inconsistency between the text of order and the text of the regulations creates further uncertainty. ChevronTexaco states that while the regulations state that the presumption applies to "any expansion," Order No. 2005's text, at paragraphs 124 and 125, suggests that rolled-in rates are appropriate only if there is no increase in rates for existing shippers. ChevronTexaco urges the Commission to clarify section 157.3^o to state that no cross-subsidy is intended. Otherwise, the Commission should consider issuing, in lieu of a regulation, a policy statement which outlines the general direction that the Commission intends to take.

46. The Alaska Legislators and Anadarko contend that rolled-in pricing is essential and justified. Anadarko asserts that the Commission clearly has the statutory authority to establish a presumption of rolled-in pricing for future expansions in the open season regulations. Both Anadarko and the Alaska Legislators contend that the significant differences identified in the record between an Alaskan pipeline project and a pipeline in the lower 48 states provide ample justification for departing from the current pricing policy. The Alaska Legislators contend that even if there were some factual reason for applying the current policy, that policy cannot be reconciled with the policy considerations stated in ANGPA. Both Anadarko and the Alaska Legislators state that incremental pricing of expansions cannot be reconciled with ANGPA's goals of promoting competition in the exploration, development, and production of Alaska natural gas, and providing for the transportation of natural gas other than from the Prudhoe Bay and Point Thomson units in any expansions of the Alaska pipeline facilities. The Alaska Legislators estimate that expanding a pipeline, through looping, to a capacity of 7 billion cubic feet (Bcf), would result in an expansion rate 50 percent higher than existing rates if incrementally priced. Anadarko predicts that incremental pricing of expansions of an Alaskan pipeline beyond 6 Bcf would cause the pipeline to be capped at 6 Bcf.

C. Commission Response

47. ANGPA section 103(i) gives the Commission broad authority to establish "such regulations as are necessary" for the conduct of open seasons. In this regard, the Commission believes that it is appropriate to establish rate criteria that will assist potential shippers to make informed open season bids, and will promote competition, as required by ANGPA. As discussed in detail in Order No. 2005, these criteria include projected rates for in-state deliveries of gas, as well as a presumption for rolled-in rate treatment for future pipeline expansions.

48. In adopting the presumption for rolled-in rate treatment, the Commission balanced rate predictability for initial shippers with the objective of reducing barriers to future exploration, development and production of Alaska natural gas. The Commission was concerned that the prospect of high incremental transportation rates might increase risks to Alaskan producers and serve as a disincentive to future exploration and development of potentially valuable natural gas resources. On the other hand, the Commission does not wish to discourage voluntary capacity expansions.

49. The rolled-in rate presumption was not an abandonment of our current policy of not favoring rate subsidization by existing customers of capacity expansions as suggested in the requests for rehearing. The Commission did, however, suggest that because of the likelihood of a single Alaskan pipeline project, it would consider alternatives to our current policy on how to define or quantify subsidization by current customers. Current policy primarily considers whether the expansion project will result in a rate higher than the existing transportation rate for existing customers. An alternative consideration or definition of subsidization could be whether the expansion rate is no higher than the actual initial rate or of an initial rate without built-in subsidies. The Commission believed and continues to believe that the appropriate place to review this issue is in the context of a future NGA section 7 filing. In such a proceeding, if the pipeline owners can show that the initial pipeline was sized appropriately, *i.e.*, it was uneconomic or inefficient to build a larger capacity pipeline, the Commission would consider this in overcoming the rolled-in rate presumption.

50. The text of Order No. 2005 referred to by ChevronTexaco does not simply state that rolled-in rates are appropriate only if there is no increase in rates for existing shippers; it suggests that a rolled-in expansion rate that is higher than the original rate is not necessarily a subsidy. As noted above, we will determine whether a particular rate amounts to a subsidy when the issue is presented to us.

51. Nothing in the requests for rehearing causes us to question our conclusion that a rebuttal presumption of rolled-in treatment for the expansion of an Alaska Project is a reasonable approach to the difficult issues we, and prospective pipeline proponents and shippers, may face on the future. We think that the signal we are sending is a positive one that will help spur natural gas exploration and development in Alaska. At the same time, we have not prejudged how we will resolve future proceedings, and all parties will have the opportunity to convince us of appropriate rate treatment if and when expansion proposals for an Alaska project are developed. We therefore will not change the rule on this matter.

III. Late Bids

A. The Final Rule - § 157.34(d)(2)

52. Order No. 2005 added a new provision in the Final Rule, section 157.34(d)(2), that a project sponsor must consider any bids tendered after the expiration of the open season by qualified bidders, and may reject them only if they cannot be accommodated due to economic, engineering, or operational constraints, in which case the project sponsor must provide a detailed explanation for the rejection. The Commission explained that this requirement is designed to allow reasonable access to those shippers who may not be ready to participate during the established open season period, and at the same time provide the sponsor with flexibility in the timing of its open season.

B. Rehearing/Clarification Requests

53. The North Slope Producers and Enbridge contend that it is important for the timely development of any project that the project sponsors be able to rely on an open season that has a definite term. They state that the open season results are needed to permit the project sponsor to gauge demand and in turn finalize pipeline design. They assert that the late bid provisions of section 157.34(d)(2) will result in unreasonable risks and costs to the project sponsor by creating a never-ending, open-ended open season in which the project sponsor will be required, for each and every late bid received, to divert resources and incur additional costs to evaluate whether bid can be accommodated. In addition, they state that there is tremendous potential for delay at each step of the development of the project, if the project sponsor must stop and make design changes at every stage to accommodate a late bid. Thus, they state, section 157.34(d)(2) would frustrate the Commission's stated goal of adopting open season regulations that ensure sufficient economic certainty to support the construction of a pipeline.