

SB

104

(FILE 1)

ALASKA STATE LEGISLATURE

Sen. Charlie Huggins, Chair
Sen. Bert Stadman, Vice Chair
Sen. Lyda Green
Sen. Gary Stevens
Sen. Lesil McGuire
Sen. Bill Wielechowski
Sen. Thomas Wagoner



State Capitol, Room 119
Juneau AK 99801-1182
907-465-3878
Fax: 907-465-3265
800-862-3878

Senate Resources Committee

March 5, 2007

Mr. John Bitney, Legislative Director
Office of the Governor
State Capitol
Juneau, Alaska 99811-0001

Dear Mr. Bitney,

This is in response to your letter of February 27, inquiring about the committee's hearing schedule. It is my intention to begin hearings on the Alaska Gas Inducement Act (AGIA) mid-month.

We look forward to receiving the back-up materials attendant to this legislation and eagerly anticipate a fulsome discussion in the legislature leading to timely passage of a vehicle that expeditiously moves us forward toward construction of a natural gas pipeline.

Sincerely,

A handwritten signature in cursive script, appearing to read "Charlie Huggins".

for Charlie Huggins, Chair
Senate Resources Committee

SARAH PALIN
GOVERNOR

GOVERNOR@GOV.STATE.AK.US



STATE OF ALASKA
OFFICE OF THE GOVERNOR
JUNEAU

P.O. Box 110001
JUNEAU, ALASKA 99811-0001
(907) 465-3800
FAX (907) 465-3832
WWW.GOV.STATE.AK.US

February 27, 2007

Request

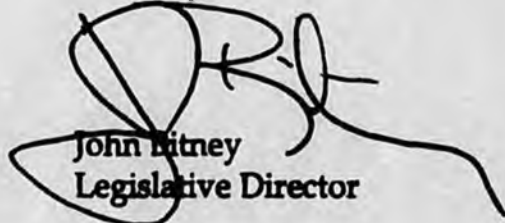
The Honorable Charlie Huggins, Chair
Senate Resources Committee
Alaska State Legislature
State Capitol, Room 119
Juneau, Alaska 99801-1182

Dear Senator Huggins:

Governor Palin plans to introduce a bill on Friday to help spur development of an Alaska natural gas pipeline entitled, "An Act relating to the Alaska Gasline Inducements Act; establishing the Alaska Gasline Inducements Act matching contribution fund; providing for a state gas pipeline coordinator; relating to payment of certain rentals and costs under the Right-of-Way Leasing Act; making conforming amendments; and providing for an effective date."

We shall provide you a copy of the Governor's transmittal, fiscal notes, and other back-up materials on Friday, but, as you prepare next week's committee schedule, we respectfully request that you schedule this measure at the earlier possible opportunity.

Sincerely,



John Bitney
Legislative Director

ALASKA STATE LEGISLATURE

Sen. Charlie Huggins, Chair
Sen. Bert Stedman, Vice Chair
Sen. Lyda Green
Sen. Gary Stevens
Sen. Lesil McGuire
Sen. Bill Wielechowski
Sen. Thomas Wagoner



State Capitol, Room 119
Juneau AK 99801-1182
907-465-3678
Fax: 907-465-3265
800-862-3678

Senate Resources Committee

March 8, 2007

Mr. John Bitney, Legislative Director
Office of the Governor
State Capitol
Juneau, Alaska 99811

Dear Mr. Bitney,

Further to your inquiry about our schedule for hearing AGIA: our current plan is to dispense with the remainder of Governor Palin's appointments to boards and commissions, which have thus far been referred to this committee, on Monday March 12th. The remainder of the week's schedule has been cleared and reserved for AGIA.

We're looking forward to the two part explication of the legislation by the Administration and will of course calendar additional sessions to accommodate your team if needed. Please let us know if this schedule meets your needs, or if you have any special requests for space or audio visual support. Although your presentation hearings will be scheduled as "listen only" we'll be requesting LIO's, state-wide, be teleconferenced into the meeting in order to make the information available to the broadest possible audience.

Sincerely,

Charlie Huggins, Chair
Senate Resources Committee

SARAH PALIN
GOVERNOR
GOVERNOR@GOV.STATE.AK.US



P.O. BOX 110001
JUNEAU, ALASKA 99811-0001
(907) 465-3600
FAX (907) 465-3622
WWW.GOV.STATE.AK.US

STATE OF ALASKA
OFFICE OF THE GOVERNOR
JUNEAU

March 2, 2007

The Honorable Lyda Green
President of the Senate
Alaska State Legislature
State Capitol, Room 111
Juneau, AK 99801-1182

Sponsor
Smt

Dear President Green:

Under the authority of Article III, Section 18, of the Alaska Constitution, I am transmitting a bill that facilitates commercialization of Alaska's North Slope natural gas resources and promotes continued exploration and development of those resources. The bill will induce expeditious construction of a natural gas pipeline to transport Alaska's North Slope natural gas to market using a process that is fair, transparent, and competitive. Our nation's energy markets are hungry for Alaska's gas resources, and Alaskans have waited for decades to see these resources developed.

Earlier this week I had several successful meetings with federal officials in Washington, D.C., including the distinguished members of Alaska's Congressional delegation. These meetings affirmed for me that it is time for Alaska's natural gas resources to be developed in order to meet the energy demands of our nation. The Chairman of the Federal Energy Regulatory Commission, Joseph Kelliher, made the statement that my plan does "represent the best hope for building a pipeline to bring Alaska's vast natural gas resources to the energy consuming lower 48 states."

This bill sets forth the following: (a) midstream inducements to encourage companies to identify development benchmarks and build the gas pipeline; (b) upstream inducements that will encourage the holders of North Slope gas reserves to commit their gas to the project; (c) terms that an application must contain to qualify to compete for an exclusive license to the midstream inducements; (d) evaluative criteria by which competing applications will be measured; (e) a public process for reviewing the applications; (f) a procedure by which the applications will be reviewed and a notice of intent to issue a license that will be transmitted to the legislature; and (g) auditing and enforcement tools to protect state contributions and interests.

The Honorable Lyda Green

March 2, 2007

Page 2

The midstream inducements will include a matching contribution of up to \$500 million paid out during the highest risk phase of the project, which is the period the licensee is completing the work necessary to obtain a certificate from either the Federal Energy Regulatory Commission (FERC) or the Regulatory Commission of Alaska (RCA). The licensed project will also benefit from a state program that provides training to Alaskans for gas pipeline jobs.

The bill offers explicit requirements that state permits and authorizations relating to the pipeline be expedited and coordinated in order to avoid complicated, time-consuming and conflicting state and federal permitting processes. In order to facilitate a successful project and an expedient process, the bill will empower the governor to appoint a gas pipeline coordinator to oversee the state permitting process and work with the federal pipeline coordinator to integrate the state and federal permitting processes.

The upstream inducements will encourage those who hold gas reserves under lease to commit that gas to the pipeline licensed under the bill. Under the "royalty inducements," the state will develop regulations to provide predictability in the determination of royalty value and the exercise of its right to take its royalty share in kind (as gas) or in value (as money). A "gas production tax exemption" will give shippers of gas an exemption from production tax equal to the difference between the tax obligation based upon the tax rate in affect at Open Season, and any higher rate that becomes effective in the ten years following commencement of the gas pipeline commercial operations. These provisions address leaseholders' concerns that they need to know how their royalty and tax obligations will be measured for a reasonable period into the future before they irrevocably commit to ship their gas at an Open Season. The benefits will be available to all leaseholders who commit gas to the licensed gas pipeline project during the initial Open Season.

The bill will accomplish six primary goals: (1) initiate an application process open to any project sponsor; (2) take clear steps to promote the construction of a gas pipeline as quickly as possible, (3) ensure the North Slope basin is open to long-term gas exploration and development, (4) ensure reasonable tariff rates are available to transport Alaska's natural gas to market, (5) ensure North Slope natural gas is available to Alaskans, and (6) ensure Alaskans are trained and ready for the natural gas pipeline jobs and those jobs are made available to Alaskans.

To accomplish the first goal, applications will be welcomed from any entity or a coalition of entities interested in constructing the gas pipeline. However, only those

The Honorable Lyda Green

March 2, 2007

Page 3

applications that fulfill the "qualifying application requirements" will be considered for the license to the midstream inducement package.

To accomplish the second goal, the bill will require that applications provide a detailed description of the applicant's proposed project, including route, size, design capacity, timeline and budget. Applicants must agree to hold an Open Season (to solicit firm commitments to ship gas on the pipeline) within three years of getting the license, and will detail steps toward obtaining a Certificate of Public Convenience and Necessity from FERC or the RCA. The state gas pipeline coordinator will also ensure an expeditious regulatory process.

To accomplish the third goal, applicants must commit to expanding the pipeline project when new gas is available. There is currently more than 35 trillion cubic feet (Tcf) of proven reserves of natural gas on Alaska's North Slope. However, most geologists agree that there is many times that amount of North Slope gas awaiting discovery. By ensuring that the pipeline will be expanded when more gas is discovered and ready to be shipped, the bill assures that Alaska's gas will serve the nation's energy needs for decades. Therefore, applicants must commit to evaluate the demand for pipeline expansion at least every two years, and to expand when there is sufficient quantities of gas to ensure an economic expansion. The costs of any expansions will then be collected through "rolled-in" rates that pass those expansion costs on to all shippers in the gas pipeline. The AGIA will cap the cost of rolled-in price increases at no more than 15 percent of initial rates, in response to concerns regarding the predictability of tariff rates.

To accomplish the fourth goal, applicants will have to commit to propose and support tariff rates that would produce the lowest reasonable transportation costs in order to produce the highest price at the wellhead. Minimizing transportation costs result in the state maximizing its royalty revenue stream as well as that of the producers.

To accomplish the fifth goal, applicants must provide for a minimum of five off-take points in Alaska. This, in conjunction with the "distance sensitive tariff rates", will allow gas to be withdrawn from the pipeline at reasonable transportation costs in order to serve residential and business needs across the state.

To accomplish the sixth goal, applicants must commit to establishing a gas pipeline project headquarters in Alaska, establishing hiring offices in Alaska, and hiring qualified Alaskans, thus giving Alaskans access to the thousands of new pipeline jobs.

The Honorable Lyda Green

March 2, 2007

Page 4

The bill requires the application process to commence no more than three months after the bill passes, when the commissioners of Natural Resources and Revenue issue a request for applications (RFA). Applications will be due under a deadline established by the commissioners; however, our intention is to allow applicants three (3) months to respond to the RFA.

Applicants will be deemed "qualified" by having fulfilled the bill's requirements. Qualified applications will then be evaluated by the commissioners of Natural Resources and Revenue to determine which application best meets the stated goals. Before issuing a written determination, the commissioners will publicly release complete applications and take comments for 60 days. Applicants could apply to keep confidential the proprietary information or trade secrets included in their applications.

The bill sets forth "evaluative criteria" to facilitate the selection process. The evaluative criteria are: the proposed project timeline, the proposed method to manage cost overruns, the proposed tariff rates, the ability of the project design to accommodate expansion, the percentage of the state matching fund that will be used, whether the project is feasible, and the applicant's ability to perform. The commissioners will publish a notice of intent to issue a natural gas pipeline project license with written findings, and forward the notice of intent, with findings and supporting documentation, to the legislature. The legislature will have 30 days to disapprove the commissioners' proposed action.

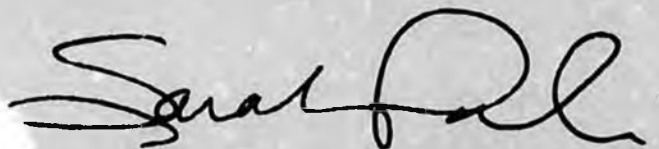
The bill also provides that the licensee must commit to spend the money necessary to build the pipeline within one year of receiving a certificate from the FERC or the RCA if the project has credit support adequate to finance construction of the project. If necessary, the licensee would have an additional four years to obtain financing, or transfer the certificate and all associated work product to another licensee designated by the state. If the project becomes uneconomic after the license is awarded, the bill provides a process for relinquishing the license that will enable the state to recover the benefit of its investment in the project and issue another license. To encourage the licensee to spend its money working toward Open Season, and certification, and building the gas pipeline project, the state will agree that if it provides financial benefits to another company to encourage the construction of a competing pipeline project after the license is issued, the licensee will be entitled to recover from the state three times the amount it spent on the project.

The bill identifies quantifiable values the state is willing to commit to encourage early and appropriate development of an Alaska Gas Pipeline project. It also identifies the elements necessary to protect the state, and the nation's, long-term interests in

The Honorable Lyda Green
March 2, 2007
Page 5

development of additional gas reserves. The bill protects the state from untenable risks and will induce expedited construction of a gas pipeline that powers the state and the nation. I urge your prompt and favorable action on the bill.

Sincerely,

A handwritten signature in black ink, appearing to read "Sarah Palin", with a stylized flourish at the end.

Sarah Palin
Governor

FISCAL NOTE

**STATE OF ALASKA
2007 LEGISLATIVE SESSION**

Fiscal Note Number: LL07-0080-DNR-O&G-03-01-C

Bill Version: LL07-0080

() Publish Date: _____

Revision Date/Time (Note if correction): _____

Dept. Affected: Natural Resources

Title: Alaska Gasline Inducements Act

RDU: Resource Development

Component: Oil & Gas Development

Sponsor: Rules Committee

Requester: Governor

Component No.: 439

Expenditures/Revenues (Thousands of Dollars)

Note: Amounts do not include inflation unless otherwise noted below.

OPERATING EXPENDITURES	FY 2006	FY 2009	FY 2010	FY 2011	FY 2012	FY 2013
Personal Services						
Travel						
Contractual						
Supplies						
Equipment						
Land & Structures						
Grants & Claims						
Miscellaneous						
TOTAL OPERATING	0.0	0.0	0.0	0.0	0.0	0.0

CAPITAL EXPENDITURES						
-----------------------------	--	--	--	--	--	--

CHANGE IN REVENUES ()						
-------------------------------	--	--	--	--	--	--

FUND SOURCE (Thousands of Dollars)

1002 Federal Receipts						
1003 GF Match						
1004 GF						
1005 GF/Program Receipts						
1037 GF/Mental Health						
Other (Specify Type-Do not abbreviate)						
TOTAL	0.0	0.0	0.0	0.0	0.0	0.0

Estimate of any current year (FY2007) cost: 6,550.0 ** Requested as a capital project

Mark this box (X) if funding for this bill is included in the Governor's FY 2008 budget proposal:

POSITIONS

Full-time						
Part-time						
Temporary						

ANALYSIS: (Attach a separate page if necessary)

**This fiscal note represents the gasline-related supplemental requested in HB138/SB82, Section 2 (a). This was requested as a capital project with an effective date of February 1, 2007.

Section 2(a) - \$6,550,000 general fund for gas pipeline analysis projects. This funding will be used to pay for consultants to advise the state on the structure of an RFP for gasline proposals; and to cover the cost of outside experts and legal counsel on federal pipeline law and the FERC process. DNR estimates that \$4,135,000 will be expended in FY07, and \$2,415,000 in FY08.

Prepared by: Kevin Banks, Acting Director
 Division: Oil & Gas
 Approved by: Tom Irwin, Commissioner
 Agency: Natural Resources

Phone: 907-269-8800
 Date/Time: 3/1/2007
 Date: 3/1/2007

FISCAL NOTE

STATE OF ALASKA
2007 LEGISLATIVE SESSION

Fiscal Note Number: _____
 Bill Version: LL 07-0080
 () Publish Date: _____

Revision Date/Time (Note if correction): _____
 Title Alaska Gasline Inducementz Act
 Dept. Affected: Natural Resources
 RDU Resource Development
 Component Alaska Gasline Inducementz Act
 Sponsor Rules Committee
 Requester Governor
 Component No. new

Expenditures/Revenues (Thousands of Dollars)

Note: Amounts do not include inflation unless otherwise noted below.

OPERATING EXPENDITURES	FY 2008	FY 2009	FY 2010	FY 2011	FY 2012	FY 2013
Personal Services	261.3	612.2	612.2	612.2	612.2	612.2
Travel	20.0	20.0	20.0	20.0	20.0	20.0
Contractual	10.8	27.0	27.0	27.0	27.0	27.0
Supplies	10.0	19.0	10.0	10.0	10.0	10.0
Equipment						
Land & Structures						
Grants & Claims						
Miscellaneous						
TOTAL OPERATING	302.1	678.2	669.2	669.2	669.2	669.2

CAPITAL EXPENDITURES	600,000.0*					
-----------------------------	-------------------	--	--	--	--	--

CHANGE IN REVENUES ()						
-------------------------------	--	--	--	--	--	--

FUND SOURCE (Thousands of Dollars)

1002 Federal Receipts						
1003 GF Match						
1004 GF	302.1	678.2	669.2	669.2	669.2	669.2
1005 GF/Program Receipts						
1037 GF/Mental Health						
Other (Specify Type—Do not abbreviate)						
TOTAL	302.1	678.2	669.2	669.2	669.2	669.2

Estimate of any current year (FY2007) cost: 0.0
 Check this box (X) if funding for this bill is included in the Governor's FY 2008 budget proposal:

POSITIONS

Full-time	2	5	5	5	5	5
Part-time						
Temporary						

ANALYSIS: (Attach a separate page if necessary)

This bill authorizes the Alaska Gasline Inducement Act (AGIA) which would create a competitive public process for inviting applications for a license under this Act. The application process would include certain application requirements before an application can be considered as well as criteria by which the Commissioners of Natural Resources and Revenue will evaluate all qualifying applications.

The Act would also create inducements including: state matching contributions for pipeline construction in an amount not to exceed \$500 million and the benefit of a state gas pipeline coordinator.

Under the AGIA, the licensee or its designated affiliate would be entitled to state matching contributions for qualified expenditures (post license costs incurred by the licensee that are directly and reasonably related to obtaining a certificate of public necessity and convenience from the FERC or RCA for development of the project).

(Continued on next page).

Prepared by: Kevin Banks, Acting Director Phone 269-8800
 Division Oil and Gas Date/Time 2/28/2007
 Approved by: Tom Irwin, Commissioner Date 2/28/2007
 Agency Natural Resources

ANALYSIS CONTINUATION

Until the close of the first binding season, the state will match equally the licensee's qualified expenditures. After the close of the first binding open season, the state shall match the qualified expenditures at a level specified in the license but the amount may be no greater than 80 percent. Over a five year period, these contributions may not exceed \$500 million. The present value of the state's total \$500 million contribution would be roughly \$415 million, because state spending will be spread over several years.

AGIA will generate a number of project benefits that could more than offset its costs. The size of these benefits will depend on ultimate project scope and market prices, which AGIA leaves to the competitive process. Actual benefits will vary depending upon project terminus (Alberta, Chicago), size (1.2 Bcf/day, 4.5 Bcf/day), mode of transport (pipeline only, pipeline plus LNG facilities), among other things. Illustrative benefits shown here assume a 4.3 Bcf/day project to Alberta, Canada with a construction cost that is 50% greater than assumed in 2001. Results are presented in present value dollars, assuming a discount rate of 5%, to recognize that a dollar of state benefit received in the future will be worth less than a dollar spent today.

First, AGIA is likely to result in a project sooner than if no pipeline legislation is passed. By having the state agree to shoulder a large share of the up-front capital that is particularly risky, AGIA ensures that in exchange project proponents commit to move the project forward past clearly defined benchmarks. Because AGIA results in a project sooner, the current value of project revenues to the state is enhanced. Assuming a gas price of \$5.50, if AGIA accelerates project startup by one year, from 2017 to 2016, state benefits will exceed \$1.6 billion; a two-year acceleration in the project returns \$3.2 billion; a three-year acceleration generates \$4.9 billion.

Second, AGIA's requirement of a minimum 70 percent share of debt in the determination of tariffs ensures that the state will not pay unnecessarily high transportation costs. Without this protection, project tariffs could be calculated on the basis of 60 or even 50 percent debt and still pass regulatory scrutiny. The tariff benefits of a 70 percent debt structure, rather than 60 percent or 50 percent, are 26 cents and 55 cents per MMBtu, respectively. The savings to the state are \$1.25 billion and \$2.63 billion, respectively. Meanwhile, lower tariffs improve project economics for holders of both existing and yet to be discovered gas reserves, thereby increasing the likelihood that the project will commence sooner. The degree to which such savings are realized depends on how, absent AGIA's requirements, project tariffs would otherwise have been determined.

Third, AGIA's pipeline access provisions promise to increase competition for exploration and development of Alaska's gas resources, leading to earlier and more significant pipeline expansions. The value to the state of such expansions is scenario specific, and cannot be accurately predicted. That said, if AGIA's expansion provisions caused the pipeline to expand by 10% in year 3 of its operations, whereas without AGIA such an expansion would not occur, the increase in state royalty and taxes would be roughly \$3 billion in today's dollars. Even if the chances that such an expansion would otherwise not occur were only one in five the AGIA investment of \$500 million would more than pay for itself in this provision alone.

Finally, AGIA will directly ensure lower tariffs. The state's direct investment in up-front development costs would reduce the cost of moving gas to Alberta by roughly 4 cents. The present value royalty and tax benefits of this 4 cent tariff reduction come to \$183 million. Put differently, assuming \$5.50 gas prices, during pipeline operation the state will receive roughly 45% of the value of its contribution in increased royalty and production tax benefits. And at gas prices of \$7.50 or higher the state's up-front contribution actually generates more in royalty and tax benefits than it costs.

The state gas pipeline coordinator will help expedite the review and coordination of all state and federal permits and processes, ensure that all state and federal environmental requirements have been completed, and coordinate with the federal coordinator for natural gas transportation projects in Alaska. It is this position's responsibility to ensure that no steps have been missed that may slow down the construction of the pipeline and that the state's involvement in the Federal EIS process facilitates expeditious permitting.

The state gas pipeline coordinator is an exempt position (Range 26M \$209.0). To assist the state coordinator, four additional positions would be needed: a Pipeline Engineer (Range 26D \$150.9), a Natural Resource Specialist IV with knowledge of state and federal environmental regulations and administrative procedure (Range 21C \$108.9), a Natural Resource Specialist III to assist with title work (Range 18C \$91.1), and an Administrative Clerk II (Range 8 \$52.3). It is anticipated that the state coordinator and clerk would begin in FY 08. There will be travel associated with the functions of at least two of these positions. All of the positions will sunset one year after commencement of the gas pipeline commercial operations.

This fiscal note assumes that the FY07 Supplemental Appropriation for Gasline requested in HB138/SB62-Sec2(a&b) will be fully funded.

* \$300,000,000 was appropriated last year (SLA2006/Ch13/Sec14) from the general fund to Alaska Housing Finance Corporation for the purpose of funding capital projects including financing expenses and may be available to partially fund the matching grant.

FISCAL NOTE

STATE OF ALASKA
2007 LEGISLATIVE SESSION

Fiscal Note Number: LL-07-0060-DOR-NGC-2-28-07

Bill Version: LL-07-0060

() Publish Date: _____

Revision Date/Time (Note if correction): _____

Title AGIA

Dept. Affected: Revenue

RDU Administration & Support

Component Natural Gas Commercialization

Sponsor Governor

Requester Rules Committee

Component No. 2859

Expenditures/Revenues

(Thousands of Dollars)

Note: Amounts do not include inflation unless otherwise noted below.

OPERATING EXPENDITURES	FY 2008	FY 2009	FY 2010	FY 2011	FY 2012	FY 2013
Personal Services	294.0	294.0	294.0	294.0	294.0	294.0
Travel	25.0	25.0	25.0	25.0	25.0	25.0
Contractual	1,897.0	900.0	450.0	10.0	10.0	10.0
Supplies	10.0	2.0	2.0	2.0	2.0	2.0
Equipment						
Land & Structures						
Grants & Claims						
Miscellaneous						
TOTAL OPERATING	2,226.0	1,221.0	771.0	331.0	331.0	331.0

CAPITAL EXPENDITURES						
-----------------------------	--	--	--	--	--	--

CHANGE IN REVENUES ()						
-------------------------------	--	--	--	--	--	--

FUND SOURCE

(Thousands of Dollars)

1002 Federal Receipts						
1003 GF Match						
1004 GF	2,226.0	1,221.0	771.0	331.0	331.0	331.0
1005 GF/Program Receipts						
1037 GF/Mental Health						
Other (Specify Type—Do not abbreviate)						
TOTAL	2,226.0	1,221.0	771.0	331.0	331.0	331.0

Estimate of any current year (FY2007) cost: 784.0

Check this box (X) if funding for this bill is included in the Governor's FY 2008 budget proposal:

POSITIONS

Full-time	2	2	2	2	2	2
Part-time						
Temporary						

ANALYSIS: (Attach a separate page if necessary)

Operating expenditures include costs for 2 additional economists/commercial analysts in exempt positions. These positions would be used to draft the tax related provisions of the request for application, assess economic viability of projects contained in applications, including economic impacts on future state revenues and value of inducements, and develop the Department's recommendations for changes to the existing gas production tax statutes and regulations that will need to be in place as inducement for producer's gas commitments under the Alaska Gasline Inducements Act. In addition, property tax impacts of pipeline construction to state and municipal revenues will need to be understood and forecasted.

Prepared by: Roger Marks

Division: Tax Division

Approved by: Jerry Burnett

Agency: Department of Revenue

Phone 289-0062

Date/Time 2/28/07 12:00 AM

Date 2/28/2007

FISCAL NOTE

**STATE OF ALASKA
2007 LEGISLATIVE SESSION**

BILL NO. LL-07-0060

ANALYSIS CONTINUATION

Contractual expenditures include assistance in formulating revisions to the tax structure, studying comparative international fiscal systems for gas to ensure changes to state's gas production taxes leave Alaska in a globally competitive position, and writing regulations.

Other contractual costs are for legal support for attorneys/law firms with appropriate specialties outside of AG's office to advise us on tax structures and creation of new tax structure; assessment of legal issues and impediments to marketing options now being considered to assist in evaluation of projects; and legal assessment of financial covenants impacting state and its project selection in standard commercial financing arrangements and governmentally guaranteed financing scenarios.

The FY 2008 costs are also in the Oil & Gas Supplemental Bill (SB 82). In addition, that Bill contains FY 2007 costs of \$123,000 personal services, \$425,000 contractual, \$10,000 travel, and \$365,000 legal support.

FISCAL NOTE

STATE OF ALASKA
2007 LEGISLATIVE SESSION

Fiscal Note Number: LL 07-60-DOA-AOGCC-03-02-07

Bill Version: LL 07-60

() Publish Date: _____

Revision Date/Time (Note if correction): _____

Dept. Affected: Administration

Title: Alaska Gasline Inducement Act

RDU: AOGCC

Component: AOGCC

Sponsor: Rules Committee

Requester: Governor

Component No.: 2010

Expenditures/Revenues

(Thousands of Dollars)

Note: Amounts do not include inflation unless otherwise noted below.

OPERATING EXPENDITURES	FY 2006	FY 2009	FY 2010	FY 2011	FY 2012	FY 2013
Personal Services	0.0	0.0	0.0	0.0	0.0	0.0
Travel	0.0	0.0	0.0	0.0	0.0	0.0
Contractual	0.0	0.0	0.0	0.0	0.0	0.0
Supplies	0.0	0.0	0.0	0.0	0.0	0.0
Equipment	0.0	0.0	0.0	0.0	0.0	0.0
Land & Structures	0.0	0.0	0.0	0.0	0.0	0.0
Grants & Claims	0.0	0.0	0.0	0.0	0.0	0.0
Miscellaneous	0.0	0.0	0.0	0.0	0.0	0.0
TOTAL OPERATING	0.0	0.0	0.0	0.0	0.0	0.0

CAPITAL EXPENDITURES	0.0	0.0	0.0	0.0	0.0	0.0
-----------------------------	-----	-----	-----	-----	-----	-----

CHANGE IN REVENUES ()	0.0	0.0	0.0	0.0	0.0	0.0
-------------------------------	-----	-----	-----	-----	-----	-----

FUND SOURCE

(Thousands of Dollars)

1002 Federal Receipts	0.0	0.0	0.0	0.0	0.0	0.0
1003 GF Match	0.0	0.0	0.0	0.0	0.0	0.0
1004 GF	0.0	0.0	0.0	0.0	0.0	0.0
1005 GF/Program Receipts	0.0	0.0	0.0	0.0	0.0	0.0
1037 GF/Mental Health	0.0	0.0	0.0	0.0	0.0	0.0
1162 AOGCC Receipts	0.0	0.0	0.0	0.0	0.0	0.0
TOTAL	0.0	0.0	0.0	0.0	0.0	0.0

Estimate of any current year (FY2007) cost: 0.0

Mark this box (X) if funding for this bill is included in the Governor's FY 2008 budget proposal:

POSITIONS

Full-time						
Part-time						
Temporary						

ANALYSIS: (Attach a separate page if necessary)

This legislation will not have a fiscal impact upon the Alaska Oil and Gas Conservation Commission.

Prepared by: Jody J. Colombia, Special Assistant I
 Division: Alaska Oil and Gas Conservation Commission

Phone: 793-1221
 Date/Time: 3/2/07 3:19 PM

Approved by: Rachael Petro, Deputy Commissioner
 Agency: Department of Administration

Date: 3/2/2007 1:00pm

ALASKA STATE LEGISLATURE

Sen. Charlie Huggins, Chair
Sen. Bert Stedman, Vice Chair
Sen. Lyda Green
Sen. Gary Stevens
Sen. Lesil McGuire
Sen. Bill Wielechowski
Sen. Thomas Wagoner



State Capitol, Room 119
Juneau AK 99801-1182
907-465-3878
Fax: 907-465-3265
800-862-3878

Senate Resources Committee

Wednesday March 14, 2007
3:30 p.m. - 5:30 p.m.

AGENDA

- **SB 104 - Natural Gas Pipeline Project**
"An Act relating to the Alaska Gasline Inducement Act; establishing the Alaska Gasline Inducement Act matching contribution fund; providing for an Alaska Gasline Inducement Act coordinator; making conforming amendments; and providing for an effective date."

Presentation by Administration:

Pat Galvin, Commissioner, DOR

Kevin Banks, Acting Director, Division of Oil & Gas, DNR

Kurt Gibson, Acting Deputy Director, Division of Oil & Gas, DNR

Bonnie Harris, Senior Asst. AG; Oil, Gas & Mining Section, DOL (available for questions)

Antony Scott, Division of Oil & Gas, Commercial Section, DNR

Don Schepler, Greenberg Taurig Consultants (available for questions)

By Teleconference:

Larry Ostrovski, Chief Asst. AG; Oil, Gas & Mining Section, DOL

Marcia Davis, Deputy Commissioner, DOR

Michael Williams, Chief Economist, Tax Division, DOR

SB 104

VS B

transmitted w/ Gov's
letter of transmittal

25-GS1060B

SENATE BILL NO.

IN THE LEGISLATURE OF THE STATE OF ALASKA

TWENTY-FIFTH LEGISLATURE - FIRST SESSION

BY THE SENATE RULES COMMITTEE BY REQUEST OF THE GOVERNOR

Introduced:

Referred:

A BILL

FOR AN ACT ENTITLED

1 "An Act relating to the Alaska Gasline Inducement Act; establishing the Alaska Gasline
2 Inducement Act matching contribution fund; providing for an Alaska Gasline
3 Inducement Act coordinator; making conforming amendments; and providing for an
4 effective date."

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

6 * **Section 1.** AS 43 is amended by adding a new chapter to read:

7 **Chapter 90. Alaska Gasline Inducement Act.**

8 **Article 1. Inducement to Construction of a Natural Gas Pipeline in this State.**

9 **Sec. 43.90.010. Purpose.** The purpose of this chapter is to encourage
10 expedited construction of a natural gas pipeline that

11 (1) facilitates commercialization of North Slope gas resources in this
12 state;

13 (2) promotes exploration and development of oil and gas resources on
14 the North Slope in this state;

1 (3) maximizes benefits to the people of this state of development of oil
2 and gas resources in this state; and

3 (4) encourages state oil and gas lessees and other persons to commit
4 natural gas from the North Slope of this state to a gas pipeline system for
5 transportation to markets in this state or elsewhere.

6 **Article 2. Alaska Gasline Inducement Act License.**

7 **Sec. 43.90.100. Gas project.** The commissioners may award an Alaska
8 Gasline Inducement Act license as provided in this chapter. The person awarded a
9 license under this chapter is entitled to the inducement set out in AS 43.90.110.

10 **Sec 43.90.110. Natural gas pipeline project construction inducement.**
11 Subject to the limitations of this chapter, a license issued under this chapter entitles the
12 licensee or its designated affiliate to receive

13 (1) state matching contributions in an amount not to exceed
14 \$500,000,000, paid in total to the licensee over a five-year period; the payment period
15 may be extended by the commissioners under an amendment or modification of the
16 project plan under AS 43.90.220; the payment period commences on the date of the
17 issuance of the license; payments under this paragraph shall be made according to the
18 following:

19 (A) on or before the close of the first binding open season, the
20 state shall match equally the licensee's qualified expenditures;

21 (B) after the close of the first binding open season, the state
22 shall match the licensee's qualified expenditures at a level specified in the
23 license; however, the state's matching contribution may not be greater than 80
24 percent of the qualified expenditures incurred after the close of the first
25 binding open season;

26 (C) qualified expenditures are costs that occurred after the
27 license was issued under this chapter, were incurred by the licensee or the
28 licensee's designated affiliate, and are directly and reasonably related to
29 obtaining a certificate of public necessity and convenience from the Federal
30 Energy Regulatory Commission or the Regulatory Commission of Alaska, as
31 appropriate, for development of the project; in this subparagraph, "qualified

1 expenditures" do not include overhead costs, litigation costs, assets or work
2 product predating the issuance of the license, or civil or criminal penalties or
3 fines;

4 (2) the benefit of an Alaska Gasline Inducement Act coordinator who
5 has the authority prescribed in AS 43.90.330; and

6 (3) the benefits of a state program that provides training for
7 employment in gas pipeline project management, construction, operations,
8 maintenance, and other gas pipeline-related positions.

9 **Sec. 43.90.120. Abandonment of project.** (a) If the commissioners and the
10 licensee agree that the project is uneconomic and should be abandoned, inducement
11 provided for in AS 43.90.110 terminates and, except for requirements imposed on the
12 licensee under AS 43.90.230, the state and the licensee no longer have any obligations
13 under this chapter with respect to the license.

14 (b) If the commissioners or the licensee independently determine that the
15 project is uneconomic and should be abandoned, but the other party does not agree,
16 the commissioners or the licensee may request that an impartial third party take
17 evidence and hear arguments of the commissioners and the licensee and make a final
18 determination of the matter. The commissioners and the licensee shall select the
19 impartial third party by mutual agreement. If the impartial third party determines that
20 the project is uneconomic and should be abandoned, the state and the licensee no
21 longer have any obligations under this chapter with respect to the license, except for
22 requirements imposed on the licensee under AS 43.90.230.

23 (c) If the state makes a payment to the licensee under AS 43.90.440, the
24 license is deemed abandoned and the state and the licensee no longer have any
25 obligations under this chapter with respect to the license except that the licensee must
26 comply with the

27 (1) requirements imposed on the licensee under AS 43.90.230
28 regarding state money received by the licensee before the license was deemed
29 abandoned; and

30 (2) requirements of AS 43.90.440.

31 (d) The commissioners shall establish by regulation the procedures governing

1 the impartial third-party process authorized under this section.

2 **Sec. 43.90.130. Request for applications for the license.** (a) The
3 commissioners shall commence a public process to request applications for a license
4 under this chapter within three months of the effective date of this chapter.

5 (b) The commissioners may use independent contractors to assist in
6 developing the provisions for the application for a license and in evaluating
7 applications received under this chapter.

8 (c) Requests for applications under this chapter are not subject to AS 36.30
9 (State Procurement Code).

10 **Sec 43.90.140. Application requirements.** An application for a license must
11 be consistent with the terms of the request for applications under AS 43.90.130 and
12 must

13 (1) be filed by the deadline established by the commissioners in the
14 request for applications;

15 (2) provide a detailed description of a proposed natural gas pipeline
16 project for transporting natural gas from the North Slope of this state to market,
17 including

18 (A) the route proposed for the natural gas pipeline;

19 (B) receipt and delivery points and the size and design capacity
20 of the proposed natural gas pipeline at the proposed receipt and delivery
21 points;

22 (C) an analysis demonstrating the project's economic and
23 technical viability as required in the request for applications;

24 (D) an economically and technically viable work plan, timeline,
25 and associated budget for developing the proposed project, including how the
26 applicant will perform field work, environmental studies, design, and
27 engineering, and how the applicant will comply with all applicable state,
28 federal, and international regulatory requirements that affect the proposed
29 project; the work plan must address the following:

30 (i) if the proposed project involves a pipeline into or
31 through Canada, a description in detail of the applicant's proposal to

1 obtain necessary rights-of-way and authorizations in Canada;

2 (ii) if the proposed project involves marine
3 transportation of liquefied natural gas, a description of the pipeline
4 route, system, and capacity proposed to bring North Slope gas to
5 tidewater, including a description of proposed transportation services to
6 be provided by third parties and an estimate of rates and charges for all
7 services; a detailed description of all access and tariff terms the
8 applicant would propose for liquefaction services or, if third parties
9 would perform liquefaction services, identify the third parties and the
10 terms they would offer; and a complete description of the proposed
11 ownership and control of liquefied natural gas tankers, the management
12 of shipping services, and the entity or entities that would be required to
13 obtain necessary export permits or a certificate of public convenience
14 and necessity from the Federal Energy Regulatory Commission for the
15 transportation of liquefied natural gas in interstate commerce if United
16 States markets are proposed;

17 (3) commit that if the proposed project is within the jurisdiction of the
18 Federal Energy Regulatory Commission, the applicant will

19 (A) conclude, by a date certain that is not later than 36 months
20 after the date the license is issued, a binding open season that is consistent with
21 the requirements of Subpart B of 18 C.F.R. Part 157 (Open Seasons for Alaska
22 Natural Gas Transportation Projects) and 18 C.F.R. 157.30 - 157.39;

23 (B) apply for Federal Energy Regulatory Commission approval
24 to use the pre-filing procedures set out in 18 C.F.R. 157.21 by a date certain,
25 and use those procedures before filing an application for a certificate of public
26 convenience and necessity; and

27 (C) apply for a Federal Energy Regulatory Commission
28 certificate of public convenience and necessity to authorize the construction
29 and operation of the proposed project described in this section by a date
30 certain;

31 (4) commit that if the proposed project is within the jurisdiction of the

1 **Regulatory Commission of Alaska, the applicant will**

2 (A) conclude, by a date certain that is not later than 36 months
3 after the date the license is issued, a binding open season that is consistent with
4 the requirements of AS 42.06; and

5 (B) apply for a certificate of public convenience and necessity
6 to authorize the construction and operation of the proposed project by a date
7 certain;

8 (5) commit that after the first binding open season, the applicant will
9 assess the market demand for additional pipeline capacity at least every two years
10 through public non-binding solicitations or similar means;

11 (6) commit to expand the proposed project in reasonable engineering
12 increments and on commercially reasonable terms that encourage exploration and
13 development of gas resources in this state; in this paragraph

14 (A) "commercially reasonable terms" means that, subject to the
15 provisions of (7)(A) of this section, revenue from expansion contracts covers
16 the cost of the expansion and there is no impairment of the proposed project's
17 ability to recover the costs of existing facilities;

18 (B) "reasonable engineering increments" means the amount of
19 additional capacity that could be added by a pipe addition or compression
20 using a pipe size or compressor size, as applicable, that is substantially similar
21 to the original pipe size and compressor size;

22 (7) commit that the applicant

23 (A) will propose and support recovery of mainline capacity
24 expansion costs from all mainline system users through rolled-in rates if the
25 recovery of all expansion costs through rolled-in rates would increase existing
26 shippers' rates by no more than 15 percent of the initial maximum recourse
27 rates from the North Slope to the proposed project's downstream terminus; if
28 rolled-in expansion costs would increase existing shippers' rates from the
29 North Slope to the project's downstream terminus by more than 15 percent, the
30 applicant will propose and support the partial roll-in of mainline expansion
31 costs from all mainline system users to the extent that existing shippers' rates

1 would not be increased by more than 15 percent of the initial maximum
2 recourse rates from the North Slope to the proposed project's downstream
3 terminus; in this subparagraph, "initial maximum recourse rates" means
4 highest cost-based rates for any specific transportation service set by the
5 Federal Energy Regulatory Commission, the Regulatory Commission of
6 Alaska, or the National Energy Board of Canada, as appropriate, at the time of
7 the initial regulatory approval of the proposed project;

8 (B) may propose any combination of incremental or rolled-in
9 rates for recovery of costs of mainline capacity expansion that exceeds the 15
10 percent level described in (A) of this paragraph;

11 (C) agrees not to enter into negotiated rate agreements that
12 would preclude the applicant from collecting from any shipper, including
13 shippers with negotiated rate agreements, the roll-in rates that are required to
14 be proposed and supported by the applicant under (A) of this paragraph; in this
15 subparagraph, "negotiated rate agreements" means transportation service
16 agreements that are subject to rates that vary from the otherwise applicable
17 cost-based rates, or recourse rates, set out in a gas pipeline's tariff approved by
18 the Federal Energy Regulatory Commission, the Regulatory Commission of
19 Alaska, or the National Energy Board of Canada, as appropriate;

20 (8) commit to seek certificate authority from the Federal Energy
21 Regulatory Commission if the proposed project is engaged in interstate commerce, or
22 from the Regulatory Commission of Alaska if the project is not engaged in interstate
23 commerce, for any North Slope gas treatment plant that will be owned entirely or in
24 part by the applicant and, for rate-making purposes, commit to value previously used
25 assets that are part of the gas treatment plant at net book value;

26 (9) propose a percentage, to be specified in the license, that will define
27 the level of the state's matching contribution under AS 43.90.110(1)(B);

28 (10) commit that the applicant will propose and support rates for the
29 proposed project and for any North Slope gas treatment plant that the applicant may
30 own, in whole or in part, that are based on a capital structure for rate-making that
31 consists of no less than 70 percent debt;

1 (11) describe the means by which the applicant plans to manage
2 overruns in costs of the proposed project, if any, and the measures that the applicant
3 proposes to mitigate the impacts of any overruns;

4 (12) commit to provide for a minimum of five delivery points of
5 natural gas in this state;

6 (13) commit to offer firm transportation service to delivery points in
7 this state as part of the tariff regardless of whether any shippers bid successfully in a
8 binding open season for firm transportation service to delivery points in this state, and
9 commit to offer distance sensitive rates to delivery points in this state consistent with
10 18 C.F.R. 157.34(c)(8);

11 (14) commit to establish a local headquarters in this state for the
12 proposed project;

13 (15) commit to hire qualified residents from throughout this state for
14 management, engineering, construction, operations, maintenance, and other positions
15 on the proposed project and contract with businesses located in this state to the extent
16 permitted by law; and

17 (16) otherwise demonstrate that the applicant is ready and able to
18 perform the activities specified in the application, including the detailed work plan,
19 timeline, and associated budget.

20 **Sec. 43.90.150. Initial application review; additional information requests;**
21 **complete applications.** (a) The commissioners shall review each application
22 submitted under AS 43.90.130 to determine whether it is consistent with the terms of
23 the request for applications and meets the requirements of AS 43.90.140. The
24 commissioners shall reject any application that does not meet those terms and
25 requirements.

26 (b) To evaluate an application not rejected under (a) of this section, the
27 commissioners may request from an applicant additional information.

28 (c) If, within the time specified by the commissioners, an applicant fails to
29 provide the additional information requested under (b) of this section, or submits
30 additional information that is not responsive, the application will be rejected.

31 (d) For an application not rejected under (a) or (c) of this section, the

1 commissioners shall make a determination that the application, including any
2 requested additional information, is complete.

3 **Sec. 43.90.160. Proprietary information and trade secrets.** At the request of
4 the applicant, information submitted under this chapter that the applicant identifies and
5 demonstrates is proprietary or is a trade secret is confidential and not subject to public
6 disclosure under AS 40.25.

7 **Sec. 43.90.170. Application evaluation criteria.** The commissioners shall
8 evaluate all applications determined complete under AS 43.90.150 based upon

9 (1) the timing of the applicant's proposed actions specified in the
10 application;

11 (2) how the applicant plans to manage overruns in costs of the
12 proposed project;

13 (3) the extent to which the applicant will provide low transportation
14 rates, including the applicant's ability to prevent or reduce overruns in costs of the
15 proposed project and will offer tariff provisions that minimize the rate impact of
16 overruns in costs that may occur;

17 (4) the initial design capacity of the proposed project and the extent to
18 which the design can accommodate low cost expansion;

19 (5) the percentage of the state's matching contribution proposed under
20 AS 43.90.140(9);

21 (6) the reasonableness, specificity, and feasibility of the work plan,
22 timeline, and budget required by AS 43.90.140; and

23 (7) the applicant's financial resources; ability to comply with the
24 proposed performance schedule; record of performance on other projects not licensed
25 under this chapter; record of integrity and business ethics; organization; experience;
26 accounting and operational controls and technical skills, or ability to obtain them; and
27 possession of necessary equipment or ability to obtain it.

28 **Sec. 43.90.180. Notice, review, and comment.** (a) The commissioners shall
29 publish notice and provide a 60-day period for public review and comment on all
30 applications determined complete under AS 43.90.150.

31 (b) Applications received under this chapter are not public records and are not

1 subject to public disclosure under AS 40.25 until the commissioners publish notice
2 under this section. However, information that the commissioners have determined is
3 confidential under AS 43.90.160 may not be made public even after the notice is
4 published under (a) of this section. If information is held confidential under this
5 subsection, the commissioners shall make available to the public a summary of the
6 information.

7 **Sec. 43.90.190. Notice to the legislature of intent to issue license; denial of**
8 **license.** (a) If, after evaluation of complete applications under AS 43.90.170 and
9 consideration of public comments received under AS 43.90.180, the commissioners
10 determine that an application would sufficiently maximize the benefits to the people of
11 this state and merits issuance of a license under this chapter, the commissioners shall

12 (1) issue a determination, with written findings addressing the basis for
13 the determination; the determination becomes a final agency action in accordance with
14 AS 43.90.200;

15 (2) publish notice of intent to issue a license under this chapter with
16 written findings addressing the basis for the determination; and

17 (3) forward the notice under (2) of this subsection, along with the
18 findings, supporting documentation, and the determination under (1) of this
19 subsection, to the legislature for action as provided in AS 43.90.200.

20 (b) If, after evaluation of complete applications under AS 43.90.170, the
21 commissioners determine that no application sufficiently maximizes the benefits to the
22 people of this state and merits issuance of a license under this chapter, the
23 commissioners shall issue a written finding that addresses the basis for that
24 determination.

25 (c) The commissioners' determination under this (b) of this section is a final
26 agency action for purposes of appeal to the court under the Alaska Rules of Appellate
27 Procedure.

28 **Sec. 43.90.200. Legislative action; issuance of license.** (a) A determination
29 and notice of intent to issue a license under AS 43.90.190 is a final agency action,
30 effective under this chapter on the 30th legislative day after the date of referral to the
31 legislature, unless the notice of intent is disapproved by joint resolution of the

1 legislature. After the determination and notice of intent are effective under this
2 subsection, the commissioners may issue the license under this chapter.

3 (b) If the legislature disapproves the notice of intent to issue a license before
4 the 30th legislative day after referral, the commissioners may commence another
5 public process under AS 43.90.130 to request applications.

6 (c) Upon becoming effective under (a) of this section, the commissioners'
7 notice of intent is appealable to the court under the Alaska Rules of Appellate
8 Procedure.

9 **Sec. 43.90.210. Certification by regulatory authority and project sanction.**

10 (a) A licensee that is awarded a certificate of public convenience and necessity for the
11 project shall accept a certificate issued by the Federal Energy Regulatory Commission
12 if the project is engaged in interstate commerce, or the Regulatory Commission of
13 Alaska if the project is not engaged in interstate commerce.

14 (b) If the licensee has credit support sufficient to finance construction of the
15 project through ownership of rights to produce and market gas resources, firm
16 transportation commitments, or government financing, the licensee shall sanction the
17 project within one year after the effective date of the certificate of public convenience
18 and necessity issued by the Federal Energy Regulatory Commission, or the Regulatory
19 Commission of Alaska, as applicable.

20 (c) If the licensee does not have credit support sufficient to finance
21 construction of the project through ownership of rights to produce and market gas
22 resources, firm transportation commitments, or government financing, the licensee
23 shall sanction the project within five years after the effective date of the certificate of
24 public convenience and necessity issued by the Federal Energy Regulatory
25 Commission, or the Regulatory Commission of Alaska, as applicable.

26 (d) If the licensee fails to sanction the project timely as required under this
27 section, the licensee shall, upon request by the state,

28 (1) seek approval from the Federal Energy Regulatory Commission or
29 Regulatory Commission of Alaska, as appropriate, to abandon and transfer the
30 certificate to the state or the state's designee; and

31 (2) assign to the state's designee all project data, engineering designs,

1 contracts, and permits owned or acquired by the licensee as of the date of the
2 abandonment or transfer.

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

6 **Sec. 43.90.220. Amendment of or modification to the project plan.** Subject
7 to the approval of the commissioners, a licensee may amend or modify its project plan
8 if the amendments or modifications are necessary as a result of changed circumstances
9 outside the licensee's control and not reasonably foreseeable before the license was
10 issued. An amendment or modification approved under this section must be consistent
11 with the requirements of AS 43.90.140 and may not diminish the value to the state of
12 the project.

13 **Sec. 43.90.230. Records, reports, conditions, and audit requirements.** (a) A
14 licensee shall maintain complete and accurate records of all expenditures and
15 commitments of state money received under this chapter, including receipts and
16 records showing the payment or cost of purchased items and services, the names and
17 addresses of the sellers and service providers, and dates of service or delivery.

18 (b) Upon reasonable notice, the commissioners may audit the records of a
19 licensee relating to the licensee's expenditures and commitments of money received
20 from the state under this chapter, and may

21 (1) examine all books, records, and files of the licensee;

22 (2) conduct hearings or other investigative inquiries, and complete the
23 attendance of witnesses and documents; and

24 (3) require the licensee to furnish information in paper copy or
25 electronic format.

26 (c) After a license has been issued, and until commencement of commercial
27 operations of a natural gas pipeline, the licensee shall allow the commissioners to have
28 a representative present at all meetings of the licensee's governing body and equity
29 holders that relate to the project, to receive all relevant notices and information sent to
30 the governing body and equity holders, to receive the same access to information
31 about the licensee as the governing body members and equity owners receive, and to

1 receive additional relevant reports or information from the licensee that the
2 commissioners reasonably request.

3 (d) A licensee shall maintain the records and reports required under this
4 section for seven years from the date the licensee received state money under this
5 chapter.

6 **Sec. 43.90.240. License violations; damages.** (a) A licensee is in violation of
7 the license if the commissioners determine that the licensee

8 (1) has committed state money received under this chapter for
9 purposes other than those set out in AS 43.90.110(1);

10 (2) has substantially departed from the specifications set out in the
11 application without state approval of a project plan amendment or modification under
12 AS 43.90.220;

13 (3) has violated any provision of this chapter or any other provision of
14 state or federal law material to the license; or

15 (4) has otherwise violated a material term of the license.

16 (b) The commissioners shall provide written notice to the licensee identifying
17 a license violation. The commissioners and the licensee have 90 days after the date the
18 notice is issued to informally resolve the violation.

19 (c) The commissioners may suspend disbursement of state matching
20 contributions to the licensee beginning on the date that the notice of violation issued
21 under (b) of this section is sent to the licensee. The commissioners may resume
22 disbursement on the date that the commissioners determine that the violation is cured.

23 (d) If the commissioners and the licensee are unable to resolve the violation
24 within the time specified in (b) of this section, the commissioners shall, after providing
25 the licensee with notice and opportunity to be heard, make a written determination
26 regarding the violation. The written determination made under this subsection is the
27 final agency action for purposes of appeal to the court under the Alaska Rules of
28 Appellate Procedure.

29 (e) If the determination issued under (d) of the section finds an unresolved
30 violation, the commissioners may impose one or more of the following remedies:

31 (1) discontinuation of state matching contributions under this chapter;

1 (2) recoupmnt of state money that the licensee has received under this
2 chapter to date, with interest, regardless of whether the licensee has expended or
3 committed that money;

4 (3) license revocation;

5 (4) any other remedies provided by law or in equity.

6 **Article 3. Resource Inducement; Alaska Gasline Inducement Act Coordinator.**

7 **Sec. 43.90.300. Qualification for resource inducement.** Notwithstanding any
8 contrary provision of law, a person that demonstrates to the commissioners'
9 satisfaction that the person has committed to acquire firm transportation capacity in
10 the first binding open season of the project is qualified to receive the resource
11 inducement set out in AS 43.90.310 and 43.90.320 for the gas shipped in firm
12 transportation capacity acquired in the first binding open season of the project.

13 **Sec. 43.90.310. Royalty inducement.** (a) Before the beginning of the first
14 binding open season to be conducted by the licensee, the commissioner of natural
15 resources shall adopt regulations to establish a method to determine the monthly value
16 of the state's royalty share of gas production and establish terms under which the state
17 will exercise its right to switch between taking its royalty in value or in kind for gas
18 committed for firm transportation in the first binding open season of the project.

19 (b) The regulations must

20 (1) minimize retroactive adjustments to the monthly value of the state's
21 royalty share of gas production;

22 (2) contain provisions to establish a fair market value for each
23 component of the state's royalty gas that are based on pricing data from reliable and
24 widely available industry trade publications and use appropriate adjustments to reflect

25 (A) deductions for actual and reasonable transportation costs
26 for the state's royalty gas, including a fair share of the costs associated with
27 unused capacity commitments on pipelines from the North Slope of this state
28 to the first destination market with reasonable market liquidity;

29 (B) location differentials between the destination markets
30 where North Slope gas could be sold;

31 (C) reasonable and actual costs for gas processing; and

1 (D) deductions permitted under the 1980 Royalty Settlement
2 Agreement for Prudhoc Bay gas;

3 (3) establish terms under which the state will exercise its authority to
4 switch between taking its royalty gas in value and in kind to ensure that the state's
5 actions do not unreasonably

6 (A) cause the lessee to bear disproportionate transportation
7 costs with respect to the state's royalty gas;

8 (B) interfere with the lessee's long-term marketing of its
9 production; and

10 (4) require that in order to exercise an election under this section, a
11 person shall agree, on an application form provided by the Department of Revenue,
12 that the person, and the person's affiliates, successors, assigns, and agents, will not
13 protest or appeal a filing by the licensee to roll in expansion costs of the mainline up to
14 a level that is required in AS 43.90.140(7); the agreement not to protest may not
15 preclude the person, or the person's affiliates, from protesting a filing to roll in
16 mainline expansion costs that licensee is not required to propose and support under
17 AS 43.90.140(7).

18 (c) The commissioner of natural resources shall provide for review of the
19 regulations adopted under this section at least every two years after the
20 commencement of commercial operations of the project to determine whether the
21 regulations continue to meet the requirements of this section under current conditions;
22 the commissioner shall amend the regulations as necessary.

23 (d) If new regulations are adopted as a result of the review required under (c)
24 of this section, a state oil and gas lessee qualified under AS 43.90.300 may change its
25 election to calculate its gas royalty obligation, as provided by regulation, for natural
26 gas transported on a firm contract negotiated during the project's first binding open
27 season or the methodology set out in the lessee's existing leases or unit agreements.
28 The election remains in effect until the regulations are amended.

29 (e) No provision of this chapter precludes the election set out in (d) of this
30 section, nor may the commissioner of natural resources assert any provision of any
31 existing lease or unit agreement as precluding that election.

1 **Sec. 43.90.320. Gas production tax exemption.** (a) If a person qualified for
2 resource inducement under AS 43.90.300 agrees under (c) of this section, the person is
3 entitled to an annual exemption from the state's gas production tax in an amount equal
4 to the difference between the amount of the person's gas production tax obligation
5 calculated under the gas production tax in effect during that tax year and the amount of
6 the person's gas production tax obligation calculated under the gas production tax in
7 effect at the conclusion of the first binding open season held under this chapter. If the
8 difference is less than zero, the gas production tax exemption is zero.

9 (b) The exemption under this section may be applied within 10 years
10 immediately following commencement of commercial operations of the project only
11 to production taxes that are levied on North Slope gas shipped through firm
12 transportation capacity the person acquired during the first binding open season.

13 (c) To claim the exemption under this section, a person shall agree, on an
14 application form provided by the Department of Revenue, that the person, and the
15 person's affiliates, successors, assigns, and agents, will not protest or appeal a filing by
16 the licensee to roll in mainline expansion costs up to the level that the licensee is
17 required to propose and support under AS 43.90.140(7); the agreement under this
18 subsection may not preclude the person, or the person's affiliates, successors, assigns,
19 and agents, from protesting a filing to roll in mainline expansion costs that the licensee
20 is not required to propose and support under AS 43.90.140(7).

21 **Sec. 43.90.330. Alaska Gasline Inducement Act coordinator.** (a) The
22 governor shall appoint, subject to legislative confirmation, an Alaska Gasline
23 Inducement Act coordinator. The person appointed as the Alaska Gasline Inducement
24 Act coordinator shall serve in that position until one year after commencement of
25 commercial operations of the project.

26 (b) The Alaska Gasline Inducement Act coordinator shall

27 (1) coordinate expeditious performance of all activities by state
28 agencies with respect to the project;

29 (2) ensure compliance by state agencies with the provisions of this
30 chapter; and

31 (3) coordinate with the federal coordinator for natural gas

1 transportation projects in this state.

2 **Sec. 43.90.340. Expedited review and action by state agencies.** (a) All
3 reviews conducted and actions taken by a state agency relating to a project shall be
4 expedited in a manner consistent with the completion of the necessary approvals in
5 accordance with this chapter.

6 (b) Notwithstanding any contrary provision of law, a state agency may not
7 include in any project certificate, right-of-way, permit, or other authorization issued to
8 the licensee any term or condition that is not required by law if the Alaska Gasline
9 Inducement Act coordinator determines that the term or condition would prevent or
10 impair in any significant respect the expeditious construction and operation or
11 expansion of the project.

12 (c) Unless required by law, a state agency may not add to, amend, or abrogate
13 any certificate, right-of-way, permit, or other authorization issued to a licensee if the
14 Alaska Gasline Inducement Act coordinator determines that the action would prevent
15 or impair in any significant respect the expeditious construction, operation, or
16 expansion of the project.

17 **Article 4. Miscellaneous Provisions.**

18 **Sec. 43.90.400. Alaska Gasline Inducement Act matching contribution**
19 **fund; disbursements; audits.** (a) There is established in the general fund an Alaska
20 Gasline Inducement Act matching contribution fund. The fund consists of money
21 appropriated to it by the legislature for disbursement to pay the state's matching
22 contributions under AS 43.90.110. Appropriations to the fund do not lapse under
23 AS 37.25.010, but remain in the fund for future disbursements.

24 (b) The Department of Revenue shall manage the fund, and may invest money
25 in the fund so as to yield competitive market rates as provided in AS 37.10.071.
26 Interest received on money in the fund shall be accounted for separately and may be
27 appropriated to the fund annually.

28 (c) The commissioners shall adopt regulations that provide for application to
29 receive matching contributions for qualified expenditures as provided under
30 AS 43.90.110, and that provide for periodic audits of the use of money disbursed as
31 matching contributions under this chapter.

1 (d) Within 10 days after the convening of each regular session of the
2 legislature, the commissioners shall submit to the legislature a report that lists all the
3 disbursements from the fund in the preceding year with a written justification of each
4 disbursement and the projected amount of money that will be needed for matching
5 contributions in each of the next three fiscal years.

6 **Sec. 43.90.410. Regulations.** The commissioners may jointly adopt
7 regulations for the purpose of implementing the provisions of this chapter. The
8 commissioner of revenue may change regulations adopted under existing authority in
9 this title as necessary to implement the provisions of this chapter. The commissioner
10 of natural resources may change regulations adopted under existing authority in AS 38
11 as necessary to implement the provisions of this chapter.

12 **Sec. 43.90.420. Statute of limitations.** A person may not bring a judicial
13 action challenging the constitutionality of this chapter or a license unless the action is
14 commenced in a court of proper jurisdiction in this state within 90 days from the date
15 that a license was issued.

16 **Sec. 43.90.430. Interest.** When a payment due to the state under this chapter
17 becomes delinquent, the payment bears interest in a calendar quarter at the annual rate
18 of five percentage points above the annual rate charged member banks for advances by
19 the 12th Federal Reserve District as of the first day of that calendar quarter, or at the
20 annual rate of 11 percent, whichever is greater, compounded quarterly as of the last
21 day of that quarter.

22 **Sec. 43.90.440. Licensed project assurances.** Except as otherwise provided in
23 this chapter, the state grants a licensee assurances that the licensee has exclusive
24 enjoyment of the inducement provided under this chapter. If the state extends to
25 another person preferential royalty, tax, or monetary treatment for the purpose of
26 facilitating the construction of a competing natural gas pipeline project in this state,
27 and if the licensee is in compliance with the requirements of the license and with the
28 requirements of state and federal statutes and regulations relevant to the project, the
29 licensee is entitled to payment from the state of an amount equal to three times the
30 total of the reasonable costs that the licensee has incurred in developing the licensee's
31 project as of the date that the state first extended preferential treatment to another

1 person. Upon payment by the state of the amount owed under this section, the licensee
2 shall, at no cost to the state, assign to the state all project data, engineering designs,
3 contracts, and permits related to the project that are owned or were acquired by the
4 licensee.

5 **Sec. 43.90.450. Assignments.** (a) A licensee may transfer all or part of the
6 license, including the rights and obligations arising under the license, if

7 (1) the transfer is approved in writing in advance by the
8 commissioners; and

9 (2) the transfer does not increase or diminish the obligations created by
10 the license or diminish the value of the license to the state.

11 (b) Notwithstanding the commissioners' approval of a transfer of all or part of
12 a license under (a) of this section, the transferor of the license remains subject to the
13 requirements of AS 43.90.230 regarding all state money received by the licensee
14 before the effective date of the transfer.

15 (c) A person may transfer that person's rights to the royalty inducement under
16 AS 43.90.310 and the gas production tax exemption under AS 43.90.320 only in
17 connection with a sale or merger that results in transfer of all the person's assets in the
18 North Slope of this state, include the firm transportation capacity contracts in the
19 project.

20 **Sec. 43.90.460. Conflicting laws.** Nothing in this chapter shall be construed to
21 repeal or abrogate the administrative, regulatory, or statutory procedures and functions
22 of state and federal law governing the development and oversight of a project.

23 **Article 5. General Provisions.**

24 **Sec. 43.90.900. Definitions.** In this chapter, unless the context otherwise
25 requires,

26 (1) "affiliate" means another person that controls, is controlled by, or is
27 under common control with, a person; "affiliate" includes a division that operates as a
28 functional unit;

29 (2) "Alaska Gasline Inducement Act coordinator" means the person
30 appointed under AS 43.90.330;

31 (3) "commencement of commercial operations" means the first flow of

1 gas in the project that generates revenue to the owners;

2 (4) "commissioners" means the commissioner of revenue and the
3 commissioner of natural resources, acting jointly;

4 (5) "control" and "controlling" means the possession of ownership
5 interest or authority sufficient to, directly or indirectly, and whether acting alone or in
6 conjunction with others, direct or cause the direction of the management or policies of
7 a company, and is rebuttably presumed if the voting interest held is 10 percent or
8 more;

9 (6) "equity holder" means the

10 (A) stock holders of a corporation;

11 (B) members of a limited liability company;

12 (C) partners of a partnership;

13 (D) joint venturers of a joint venture;

14 (E) members of a governmental authority and similar persons;

15 or

16 (F) holders of any other entity or person;

17 (7) "gas processing" means post-production treatment of gas to extract
18 natural gas liquids;

19 (8) "governing body" means a corporation's board of directors, a
20 limited liability company's managing members, a partnership's general partners, a joint
21 venturer's joint venturers, a governmental authority's board or council members, and
22 similar entities;

23 (9) "lease" means an oil and gas, or gas, lease issued by this state;

24 (10) "lessee" means a person that holds a working interest in an oil and
25 gas, or gas, lease issued by this state;

26 (11) "license" means a license issued under this chapter;

27 (12) "licensee" means the holder of a license issued under this chapter
28 and all affiliates, successors, assigns, and agents of the holder;

29 (13) "project" means a natural gas pipeline project authorized under a
30 license issued under this chapter;

31 (14) "recourse rates" means cost-based rates with a minimum and

1 maximum range that are approved by the Federal Energy Regulatory Commission, the
 2 Regulatory Commission of Alaska, or the National Energy Board of Canada, as
 3 appropriate, and set out in the pipeline's tariff; "recourse rates" includes only those
 4 rates that the pipeline must make available to all shippers;

5 (15) "sanction" means procurement commitments to go forward with
 6 the project as evidenced by entering into procurement commitments of at least
 7 \$1,000,000,000 with third parties;

8 (16) "under common control with" has the meaning given "control" in
 9 this section;

10 (17) "unit agreement" means an agreement executed by the working
 11 interest owners and royalty owners creating the unit.

12 **Sec. 43.90.990. Short title.** This chapter may be cited as the Alaska Gasline
 13 Inducement Act.

14 * **Sec. 2.** AS 36.30.850(b) is amended by adding a new paragraph to read:

15 (45) contracts for an impartial third party to determine abandonment of
 16 a project under AS 43.90.120, and contracts for the development of application
 17 provisions for licensure under AS 43.90 and for the evaluation of those applications.

18 * **Sec. 3.** AS 39.25.110 is amended by adding a new paragraph to read:

19 (41) the Alaska Gasline Inducement Act coordinator appointed under
 20 AS 43.90.330.

21 * **Sec. 4.** AS 40.25.120(a) is amended by adding a new paragraph to read

22 (12) records that are

23 (A) proprietary or a trade secret in accordance with
 24 AS 43.90.160;

25 (B) applications that are received under AS 43.90 until
 26 AS 43.90.180.

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

*APK
Admin presentation*

The Palin-Parnell Administration presents

AGIA

The Alaska Gasline Inducement Act

Last Updated: March 12th, 2008

AGIA

The Alaska Gasline Inducement Act

Introduction

Presentation 1

**Need for the AGIA approach
State value for the \$500M (Part I)**

Presentation 2

**State value for the \$500M (Part II)
Increasing Resource Owner Predictability**



AGIA

The Alaska Gasline Inducement Act

Need for the AGIA Approach

AGIA

The Alaska Gasline Inducement Act

- **Get project built, quickly**
- **Open the North Slope gas basin**
- **Open and competitive process**
- **Low tariffs**
- **Gas for Alaska**
- **Jobs for Alaska**
- **Reduce uncertainties for the Producers**

AGIA

The Alaska Gasline Inducement Act

State Value for \$500 million

- Project moves forward
- Lower tariffs
- Expansion Commitments
- Rolled-in rates



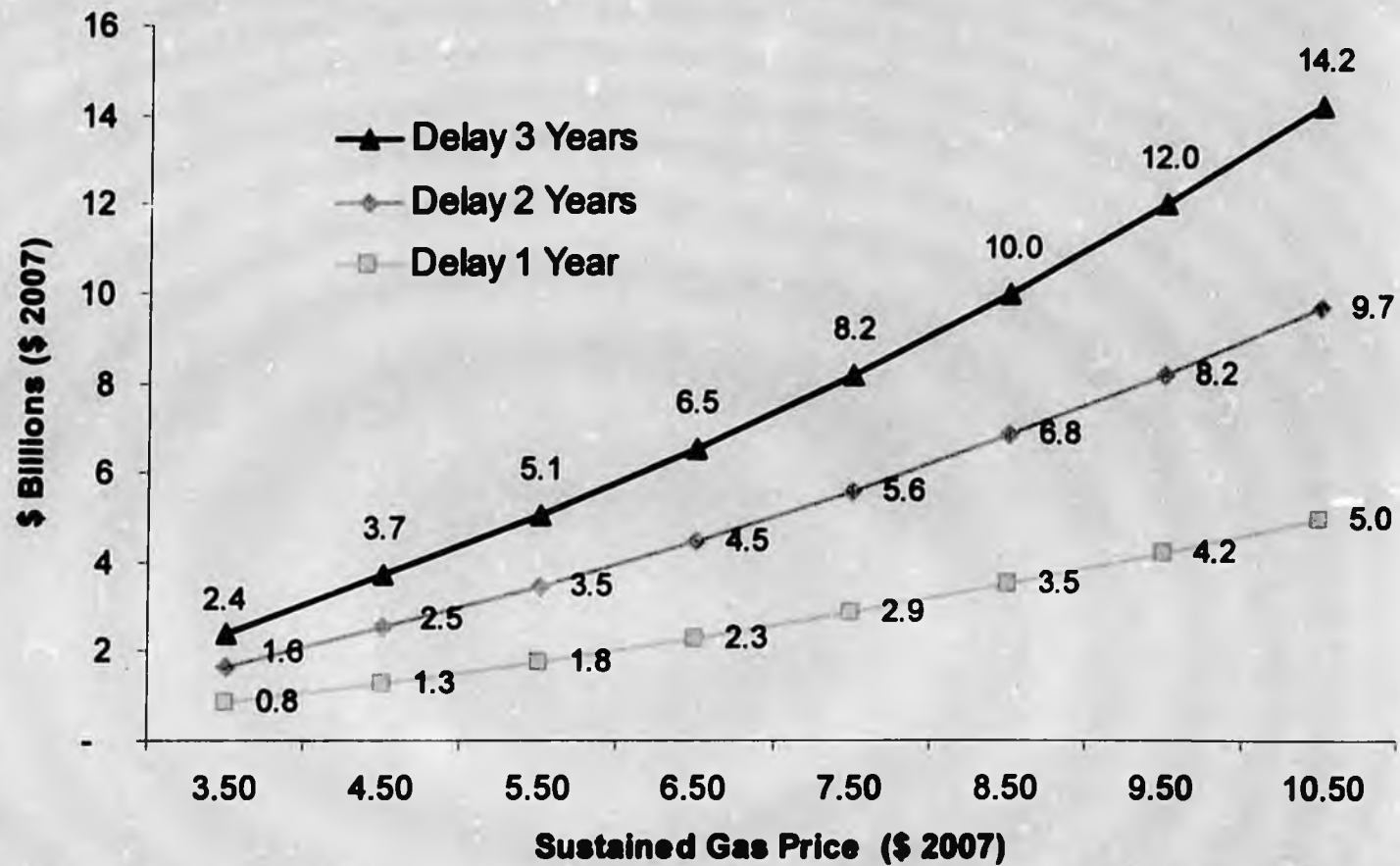
AGIA

The Alaska Gasline Inducement Act

1. Project moves forward

AGIA

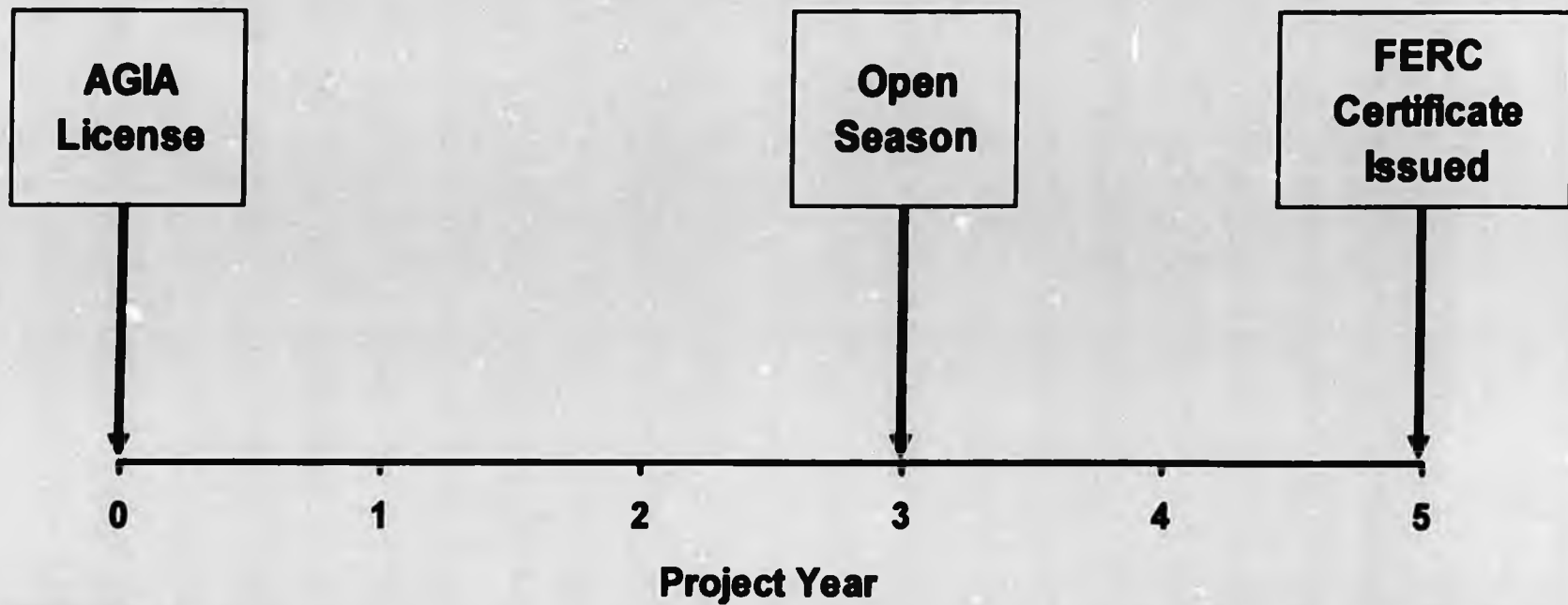
The Alaska Gasline Inducement Act



AGIA

The Alaska Gasline Inducement Act

AGIA Timeline

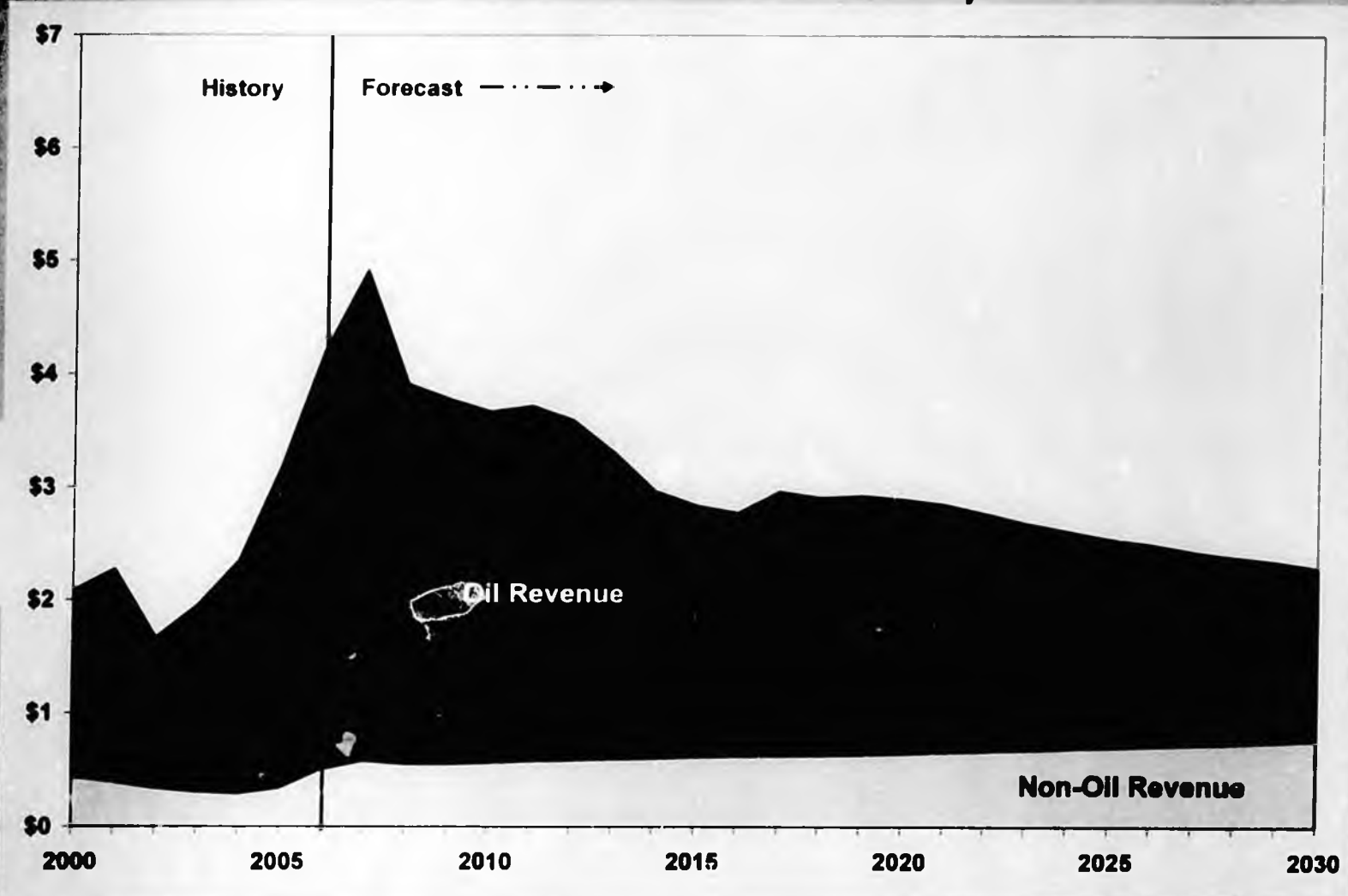


Oil Revenue

AGIA

The Alaska Gasline Inducement Act

General Fund Unrestricted Revenue, Billions of Dollars



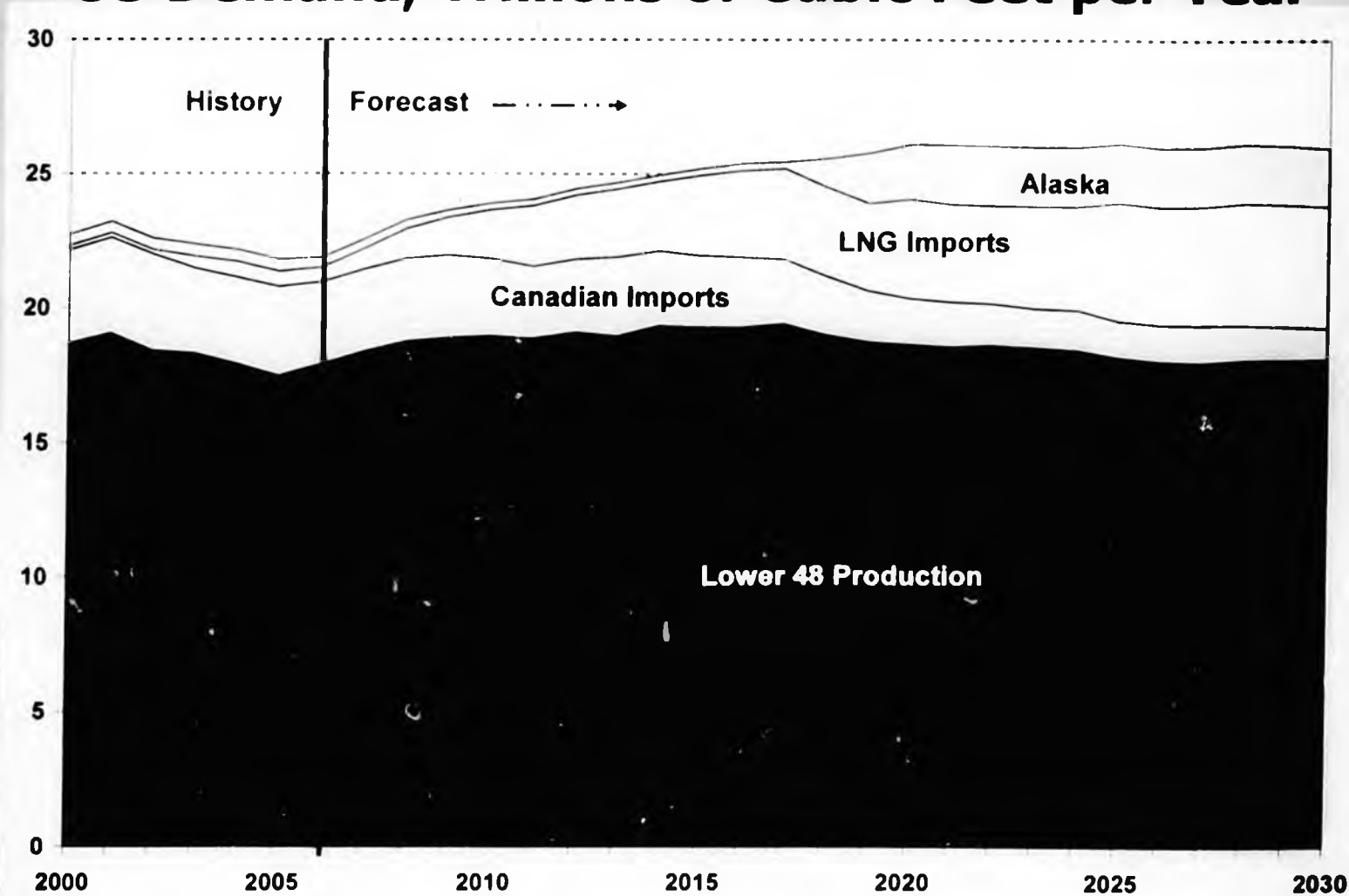
Source: Fall 2006 Revenue Sources Book, includes Cook Inlet

Need for Alaska Gas

AGIA

The Alaska Gasline Inducement Act

US Demand, Trillions of Cubic Feet per Year



Source: US Department of Energy, Energy Information Administration, *Annual Energy Outlook 2007*, February 2007.

AGIA

The Alaska Gasline Inducement Act

2. Lower tariffs

AGIA

The Alaska Gasline Inducement Act

How Transportation Charges Affect State Royalty and Production Tax - Illustration

Destination Price		\$6.25
Transportation Charges		
Gas Treatment Plant	\$0.44	
Pipeline Alaska-Canada	<u>\$2.14</u>	
Subtotal	\$2.58	
Netback Value of Gas		\$3.69

AGIA

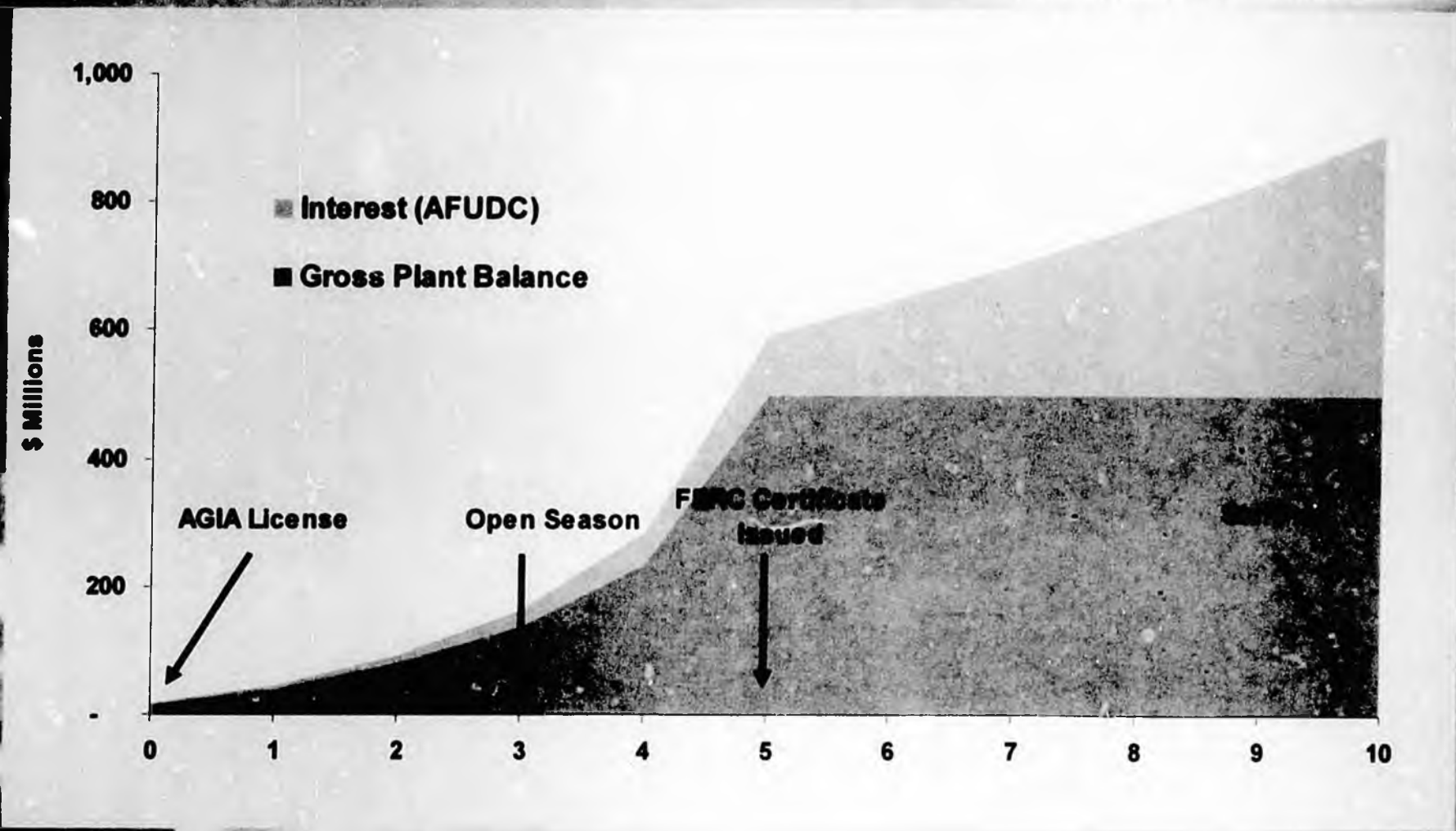
The Alaska Gasline Inducement Act

- Reduces pipeline tariff by 4-6¢ for next 30 years
- A 1¢ change in the tariff is worth \$45M in royalty and production tax to the state over project life
- At 5% discount rate, state receives 70% back

in \$300 mm

AGIA

The Alaska Gasline Inducement Act



AGIA

The Alaska Gasline Inducement Act

FERC has approved 70/30 capital structure for eight of fifteen recent major new-build or expansion projects

Three projects had 75/25 capital structures

- **Three had 50 percent equity or more, with one having 65 percent equity.**

AGIA

The Alaska Gasline Inducement Act

Debt%	Equity%	Tariff	Present Value State Revenue \$ Billions
█	█	█	█
65%	35%	\$2.73	35.8
60%	40%	\$2.89	35.1
55%	45%	\$3.06	34.5
█	█	█	█
45%	55%	\$3.43	33.1

AGIA protects the state's interest in low tariffs. It ensures that no less than 70/30 debt/equity structure will be used. Compared with 50/50, the associated tariff benefits of 66 cents and state revenue benefits of \$2.5 billion (5% discount rate).

AGIA

The Alaska Gasline Inducement Act

3. Expansion commitments

AGIA

The Alaska Gasline Inducement Act

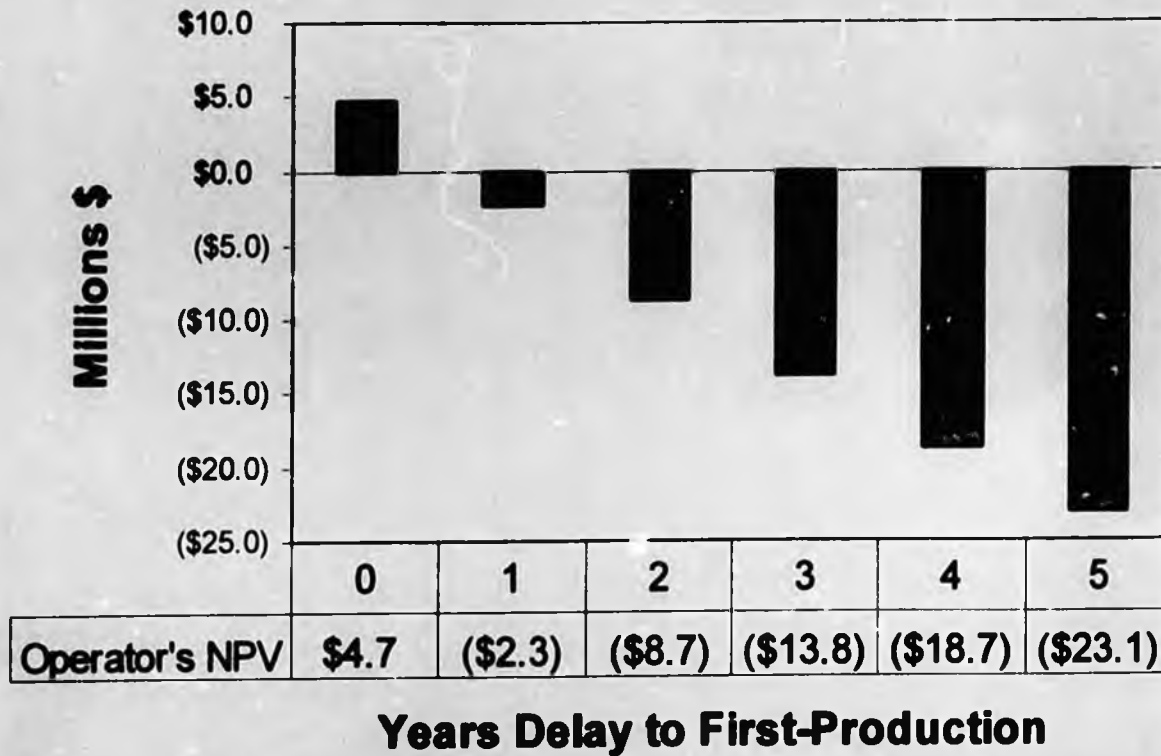
FERC mandatory expansion process requires shippers to make capacity commitment

- **Capacity commitment requires gas**
 - **Gas requires up-front investment in seismic, exploration drilling, and delineation drilling**
 - **Each year of delay in pipeline access after exploration investment reduces the expected net present value of a prospect by millions \$**
- Threat of delay is therefore enough to destroy exploration economics**

AGIA

The Alaska Gasline Inducement Act

Expected Net Present Value (NPV 12) Generic North Slope Prospect



AGIA

The Alaska Gasline Inducement Act

4. Rolled-in Rates

AGIA

The Alaska Gasline Inducement Act

Foster exploration and development

- Expansion shippers pay lower rates, increasing likelihood of exploration
- All shippers pay the same rate
- Incremental rates result in some shippers paying more than other shippers

AGIA

The Alaska Gasline Inducement Act

Initial Cost

\$100

Throughput

100

Initial Toll

\$100/100

= \$1.00/unit

Expansion Cost

\$30

Exp. Throughput

18

Rolled in Toll

$\$(100+30)/(100+18)$

= \$1.10/unit

Expansion Cost

\$30

Exp. Throughput

18

Increment. Toll

\$30/18 unit

= \$1.67/unit

AGIA

The Alaska Gasline Inducement Act

Rolled-in rates make exploration prospects economic, which would not be economic under incremental rate treatment

- The expected value of an exploration project is greater with rolled-in rates
- This is true for both explorers and producer

AGIA

The Alaska Gasline Inducement Act

Scenario 1: Add 1 Bcf/day with compression (from 4.5 to 5.5 Bcf/day)

Rolled-in

\$6.0 million

Incremental

\$6.5 million

Scenario 2: Add 1 Bcf/day with compression (from 5.5 to 6.5 Bcf/day)

Rolled-in

\$4.3 million

Incremental

-\$5.4 million

Scenario 3: Add 700 MMcf/day with looping (from 6.8 to 7.5 Bcf/day)

Rolled-in

\$.9 million

Incremental

-\$25.5 million

AGIA

The Alaska Gasline Inducement Act

Scenario 1

Add 1 Bcf/day with compression (from 4.5 to 5.5 Bcf/day)

	<i>Incremental</i>	<i>Rolled-in</i>
<i>Existing Shippers</i>		
Rate/Fuel Use	\$1.62 / 2.7%	\$1.47/4.3%
<i>Expansion Shippers</i>		
Rate/Fuel Use	\$1.07 / 11.6%	\$1.47/4.3%

Scenario 2

Add 1 Bcf/day with compression (from 5.5 to 6.5 Bcf/day)

	<i>Incremental</i>	<i>Rolled-in</i>
<i>Existing Shippers</i>		
Rate/Fuel Use	\$1.47 / 4.3%	\$1.51 / 5.6%
<i>Expansion Shippers</i>		
Rate/Fuel Use	\$1.73 / 13.3%	\$1.51 / 5.6%

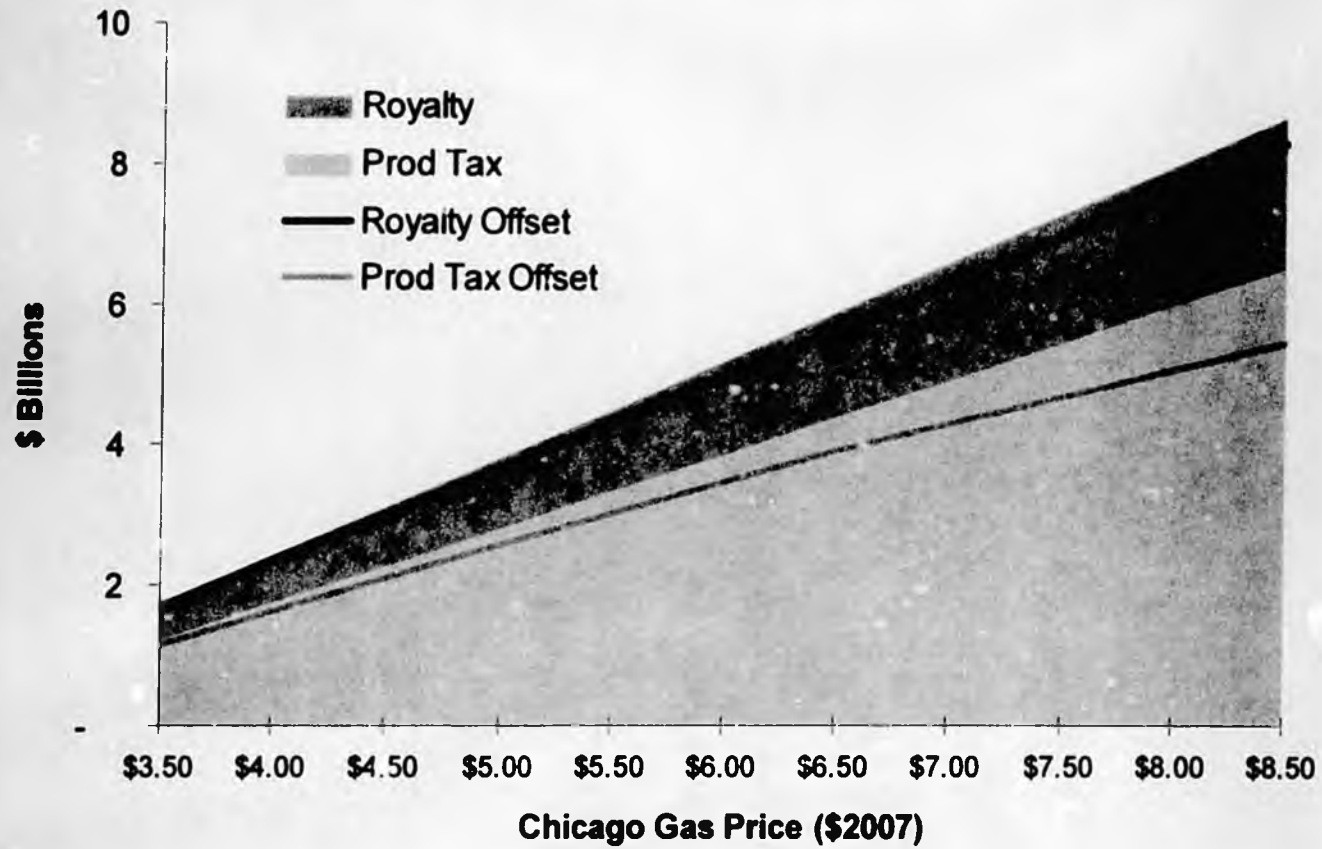
Scenario 3

Add 700 MMcf/day with looping (from 6.8 to 7.5 Bcf/day)

	<i>Incremental</i>	<i>Rolled-in</i>
<i>Existing Shippers</i>		
Rate/Fuel Use	\$1.57 / 6.1%	\$1.71 / 5.5%
<i>Expansion Shippers</i>		
Rate/Fuel Use	\$3.25 / 5.5%	\$1.71 / 5.5%

AGIA

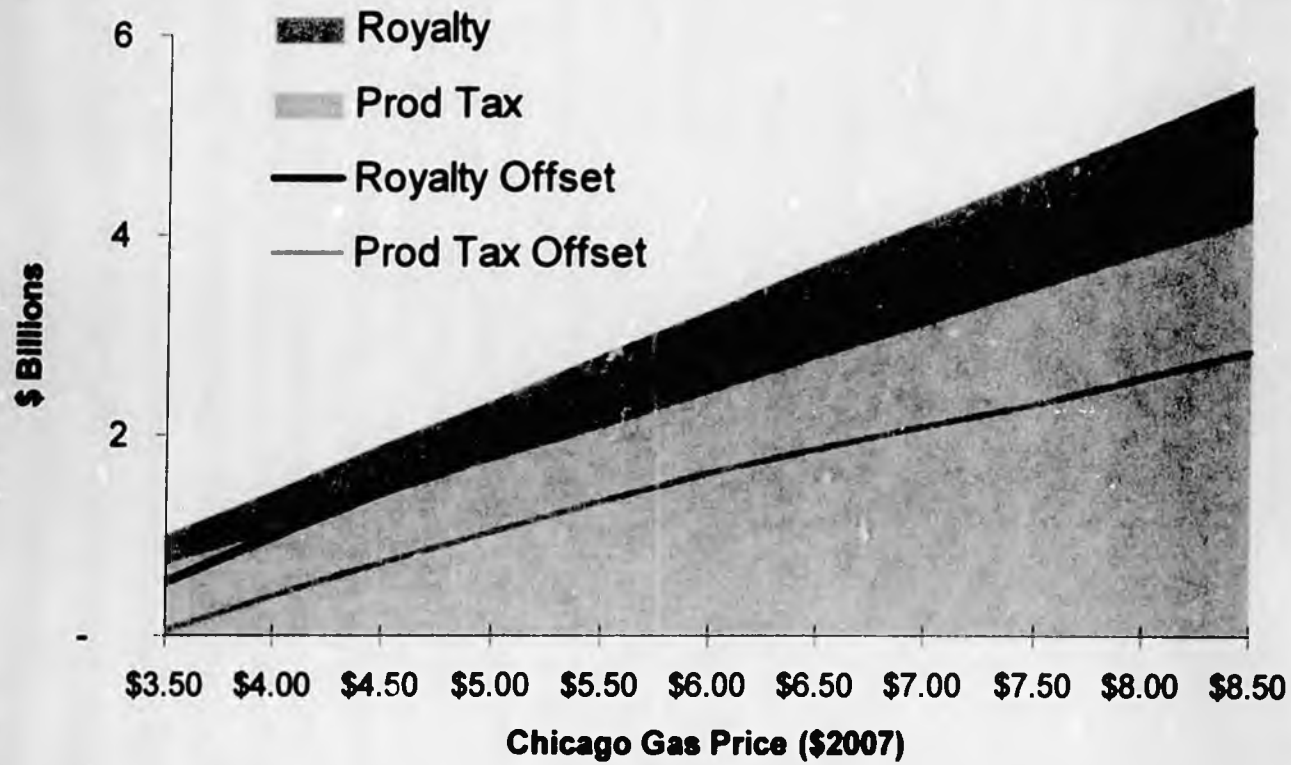
The Alaska Gasline Inducement Act



¹ Expansion through in-fill compression.

AGIA

The Alaska Gasline Inducement Act





MEMORANDUM
Department of Natural Resources

STATE OF ALASKA
Division of Oil and Gas

36104 vs B
analysis

TO: Representative Vic Kohring, Chair
House Oil and Gas Committee

DATE: March 2, 2007

FILE NO:

TELEPHONE: 269-8800

FAX NO: 269-8938

FROM: Kevin Banks, Acting Director

ATK/B

SUBJECT: Analysis of Alaska
Gasline
Inducements Act,
HB ___

Article 1 of the bill, if enacted, would add a new chapter to the state's Revenue and Taxation Code that induces the construction of a Natural Gas Pipeline in Alaska.

Section 010 describes the bill's purpose as facilitating commercialization and promoting exploration of Alaska's North Slope gas resources; maximizing the benefits of development to Alaskans and encouraging lessees to commit gas to a gas pipeline.

Article 2 of the bill describes the AGIA license.

Section 100 authorizes the Commissioners of Natural Resources and Revenue, acting jointly, to award an AGIA license.

Section 110 describes the inducements for construction of a pipeline. The state offers to contribute up to \$500 million to match reasonable costs the licensee incurs over five years toward obtaining a certificate of public convenience and necessity for a gas pipeline project in Alaska from the Federal Energy Regulatory Commission (FERC) or the Regulatory Commission of Alaska (RCA). The state will equally match costs incurred to get to the end of the first binding open season, and up to 80 percent of the costs incurred after the close of the first binding open season. The matching costs do not include the costs of overhead, litigation, existing assets, or fines and penalties. The state also offers the benefit of an AGIA coordinator and a state program to train employees for the gas pipeline project. Section 120 provides that the license may be abandoned by the mutual agreement of the state and licensee, or if one party seeks to abandon the license on grounds that the project has become uneconomic, an impartial third party will determine if the project has become uneconomic. If the license is abandoned, the licensee's receipt of funds to date from the state is still subject to audit, and the licensee must relinquish its project plans, data, contracts and permits to the state or its designee.

Section 130 requires the Commissioners issue a request for applications within 3 months of AGIA's effective date, and authorizes the Commissioners to hire independent contractors to develop the license provisions and evaluate the applications.

Section 140 lists the license requirements. All applications must: 1) be filed by the date set by the Commissioners; 2) include a detailed description of the project that includes its route, receipt and delivery points, economic analysis of its feasibility, timeline for completion, 3) if the application proposes an interstate pipeline, commit to hold an open season within 3 years after the license is issued, use the FERC's pre-filing procedures and apply for a FERC certificate, 4) if the application proposes an intrastate pipeline, hold an open season and apply for an RCA certificate, 5) commit to evaluate market demand for pipeline expansion every two years after the first open season, 6) commit to expand the pipeline in reasonable engineering increments and on commercially reasonable terms, 7) commit to fund the cost of expansions with rolled-in rates capped at 15 percent above the initial rates, 8) commit to apply to FERC or the RCA, 9) propose the percentage of the state's matching contribution, if any, after the first open season, 10) commit to offer rates that are based on a capital structure that includes at least 70 percent debt, 11) describe how the applicant will manage cost overruns, 12) commit to at least five offtake points in Alaska, 13) commit to offer distance sensitive rates to offtake points within Alaska, 14) commit to establish a local project headquarters, 15) commit to hire qualified Alaskans from all over the state, and 16) demonstrate licensee's ability to perform commitments.

Section 150 requires the Commissioners to review the applications based on the criteria in section 140 to determine if they are complete, and also to request additional information if necessary.

Section 160 allows applicants to request confidentiality for the portions of their applications that include proprietary information or trade secrets.

Section 170 states the criteria by which the Commissioner will evaluate the applications: 1) the proposed timeline for holding an open season, obtaining the certificate of public convenience and necessity, progressing the pipeline project, 2) the proposal for cost overrun management, 3) whether the proposal insures low tariff rates, 4) the design and whether it can accommodate expansion, 5) the percentage of state matching funds proposed after the first open season, 6) the feasibility of the work plan and budget, and 7) the applicant's financial ability.

Section 180 requires the Commissioners to publish notice of the applications and seek public comment for 60 days.

Section 190 requires the Commissioners to issue a written determination and notice of intent to award a license if an application merits issuance of a license after their review is complete.

Section 200 gives the legislature thirty days after the notice of intent to award a license is issued to disapprove the proposed award of the license by joint resolution. If the legislature disapproves the Commissioners' decision, they may begin the public process again.

Section 210 requires licensees to accept certification by the FERC or RCA, as appropriate. Licensees must sanction the project within one year of FERC or RCA certification if they have credit support sufficient to finance the project. If they lack credit support sufficient to finance the project, they have five years from certification to sanction the project or transfer the license to another entity designated by the state.

Section 220 allows amendments to the project proposal necessitated by unforeseeable changes, provided the proposal remains consistent with the Section 140 requirements and does not diminish the value of the project to the state.

Section 230 requires the licensee to maintain records for seven years of all expenditures that the state will be asked to match, and makes those records auditable.

Section 240 describes the circumstances that would violate the license and allows the state to halt its matching contributions and recover all matching funds distributed to date. If the licensee does not agree that a violation has occurred, it allows for an expedited hearing.

Article 3 of the bill describes the inducements and the AGIA coordinator's duties.

Section 300 states that any person that commits gas during the first open season is qualified for royalty and tax inducements.

Section 310 requires the state to adopt regulations defining the method of valuing its royalty share. The regulations must describe a methodology to value royalty that minimizes retroactive adjustments and is based on reliable industry sources. The regulations must also establish the methodology that the state will use to exercise its rights to alternate between taking its royalty in kind and in value in a way that will not cause the lessee to bear disproportionate transportation costs or interfere with the lessee's long term marketing plans. A person that commits gas in the first binding open season may elect to calculate the royalty on gas shipped in the project under the person's existing lease and unit agreements or under the regulations. The Commissioner of Natural Resources must review the regulations every two years after commercial production begins to make sure that they are accomplishing the statutory goals. A person may change its election when new regulations are adopted.

Section 320 entitles persons who made firm transportation commitments during the first open season to an exemption from the state's production tax on gas shipped in the project equal to the difference between the production tax rate in effect at the end of the first open season and the production tax rate in effect when taxes are due in each of the ten years after commercial production begins; provided they agree not to protest any rolled-in rate treatment of expansion costs subject to the limit in section 140(7).

Section 330 allows the Governor to appoint, subject to legislative confirmation, an AGIA coordinator who is empowered to coordinate among the state agencies that have regulatory authority and with the federal pipeline coordinator to insure that the pipeline project moves forward.

Section 340 requires all state agencies to conduct their reviews expeditiously and prevents them from imposing any unessential requirements that will result in delay.

Article 4 of the bill includes miscellaneous provisions.

Section 400 establishes a fund for appropriated matching funds.

Section 410 enables the Commissioners of Natural Resources and Revenue to implement regulations.

Section 420 requires legal actions challenging a license to be filed within 90 days of the license award.

Section 430 describes the applicable rate of interest.

Section 440 provides that if the state offers preferential tax or royalty treatment to facilitate construction of a competing pipeline project after a license has been awarded, the state must pay damages equal to three times the costs that the licensee has reasonably expended.

Section 450 allows licensee to transfer the license with the commissioners' approval and allows the licensee to transfer its rights to the royalty and tax inducements described in sections 310 and 320.

Section 460 resolves conflicting law disputes.

Article 5 of the bill is General Provisions.

Section 900 includes definitions.

Section 990 names the chapter the Alaska Gasline Inducements Act.

Other provisions make conforming amendments to other statutes and make the act effective upon passage.

LEGAL SERVICES

DIVISION OF LEGAL AND RESEARCH SERVICES
LEGISLATIVE AFFAIRS AGENCY
STATE OF ALASKA

(907) 465-3867 or 465-2450
FAX (907) 465-2029
Mail Stop 3101

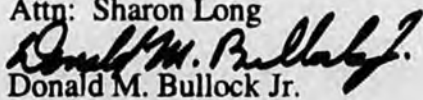
State Capitol
Juneau, Alaska 99801-1182
Deliveries to: 129 6th St., Rm. 329

MEMORANDUM

March 14, 2007

SUBJECT: SB 104 drafting issues and concerns
(Work Order No. 25-GS1060\B)

TO: Senator Charlie Huggins
Chair of the Senate Resources Committee
Attn: Sharon Long

FROM: 
Donald M. Bullock Jr.
Legislative Counsel

I write to you in your capacity as the chair of the first committee for referral for SB 104, the governor's proposed Alaska Gasline Inducement Act.¹ This memorandum is a supplement to the sectional summary of the bill I have already provided to you.

As a general observation, the bill as drafted should be edited to conform to the 2007 edition of the Manual of Legislative Drafting. The use of the Manual of Legislative Drafting makes the form of the Alaska Statutes internally consistent and facilitates the interpretation of Alaska law by those responsible for the administration of the law and the courts. Nonsubstantive edits may be made by the attorneys and editor in the course of preparing amendments and new versions of the bill unless we are specifically directed not to. Should these edits not be included as this bill and the House companion bill proceed through the legislature, corrections may be required in a future Revisor's bill.

Although there is only a single tax provision relating to tax in the bill -- the gas production tax exemption in AS 43.90.320 on page 16 -- the bill places the Act in Title 43, relating to revenue and taxation. Based on the bill's purpose as an inducement for the construction of a natural gas pipeline, the substance of the bill may be more consistent with Title 31, relating to oil and gas, or Title 42, relating to public utilities and carriers.

What follows are specific revisions, comments, and questions arising from my review of the bill as introduced, Senate Bill 104, Version 25-GS1060\B. Suggested language is subject to review and revision as required by our review process and should not be accepted as final.

Sec. 43.90.010. Edits: change "this state" to "the state". "This state" is used when

¹ The bill proposes a new word for the Alaska Statutes. Although "gas pipeline" and "gas line" are present in existing law, "gasline" is a term not used in the current statutes.

referring to Alaska as opposed to another state; when only Alaska is addressed in a provision, "the state" is appropriate. "This state" should be changed to "the state" throughout the bill except where Alaska is to be distinguished from another state.

Sec. 43.90.100. This section could be expanded to include generally applicable provisions from sec. 43.90.130 on page 4 of the bill as follows:

Sec. 43.90.100. Gas project. (a) The commissioners may award an Alaska Gasline Inducement Act license as provided in this chapter.

(b) The commissioners may enter into contracts with independent contractors for the purpose of developing provisions for the application for a license under this chapter and for evaluating applications submitted to obtain a license.

(c) A person awarded a license under this chapter is entitled to the inducement set out in AS 43.90.110.

Sec. 43.90.110. I recommend restructuring of the section for clarity:

Sec. 43.90.110. Natural gas pipeline project construction inducement.

(a) A license issued under this chapter entitles the licensee or its designated affiliate to receive the benefits in this section as inducement to proceed with the development of the project.

(b) Subject to appropriation, the state shall provide a total of not more than \$500,000,000 in matching funds for qualified expenditures. Of this amount, the state shall contribute:

(1) 50 percent of the qualified expenditures incurred before the close of the first binding open season; and

(2) subject to an amount remaining after all payments have been made under (1) of this subsection, the lesser of 80 percent or the percentage proposed by the licensee under AS 43.90.140(9) of the qualified expenditures incurred after the close of the first binding open season and before the licensee receives a certificate of public convenience and necessity for the Federal Energy Regulatory Commission or the Regulatory Commission of Alaska, as appropriate.

(c) The Alaska Gasline Inducement Act coordinator appointed under AS 43.90.330(a) shall work with the licensee and assist with the development of the project as required under AS 43.90.330(b).

(d) The licensee may benefit from a state program that provides training for employment in gas pipeline project management, construction, operation, maintenance, and other positions related to the development and operation of the project.

(e) In (b) of this section, "qualified expenditures" means costs incurred by a licensee after receiving a license under this chapter that are directly and reasonably related to receiving a certificate of public necessity and convenience from the Federal Regulatory Agency or the Regulatory Commission of Alaska, as appropriate, for the development of the project; "qualified expenditures" do not

include overhead costs, litigation costs, the cost of assets or work product incurred or paid before receiving the license, and civil or criminal penalties.

The commitment of \$500,000,000 to the project involves subsidizing the application process over two time intervals. The first interval starts when the license is issued and continues through the end of the first binding open season. The second interval starts when the first interval ends and continues until the certificate of public convenience and necessity is issued. You may wish to limit the amount dedicated for each interval because of the factor in AS 43.90.140(9) that makes the percentage of match during the second interval a factor for evaluating the application. Perhaps testimony during your hearings will provide insight into the reasons for the two intervals, the fixed 50 percent match in the first, and the flexible match in the second.

This section also refers to a state training program for gas pipeline-related jobs. Is there another bill coming that will create this program? If there is an existing program, reference to that program could be added here.

Sec. 43.90.120. This section seems out of place chronologically. I would expect that it should be inserted after AS 43.90.220, after the provisions that establish the project. Regardless of where the section ultimately falls, I recommend revising the section as follows:

Sec. 43.90.120. Abandonment of project. (a) The project shall be abandoned upon a determination that the project is uneconomic and should be abandoned or if the state extends to a person other than the licensee preferential royalty, tax, or monetary treatment for the purpose of facilitating the construction of a competing natural gas pipeline project in the state.

(b) If the project is abandoned under this section,

(1) the inducement under AS 43.90.110 terminates; and

(2) the licensee continues to be subject to the requirements imposed on the licensee under AS 43.90.230 for state money received by the licensee before the abandonment of the project.

(c) A determination that the project is uneconomic and should be abandoned may be made

(1) jointly by a written agreement between the licensee and the commissioners; or

(2) if the commissioners and the licensee are in disagreement as to whether the project should be abandoned, by an impartial third party selected and agreed upon by the commissioners and the licensee that makes the determination after taking evidence and receiving arguments on the economic viability of the project.

(d) The commissioners shall establish by regulation the procedures for the selection of and determination by the third-party in (c) of this section.

Sec. 43.90.130. Several comments:

Subsection (a) could be added as uncodified law at the end of the bill through a statement such as, "The legislature intends that the commissioners commence the public process to solicit applications for a license under this Act within three months of the effective date of this Act."

An uncodified provision expresses the same intent for acting quickly, but avoids the question that a provision like this raises, "what happens if the commissioners do not act timely"? What if the commissioners do not commence the public process within three months? If you want the provision in statutory form, you might direct the commissioners to begin the process "as soon as practicable," or similar language sufficient to get things moving in a timely manner.

The speed at which applications may be solicited may also be affected by the timeliness of the adoption of regulations that may be required to implement the Act.

The substance of subsections (b) and (c) could be moved to AS 43.90.100, which authorizes the commissioners to award the license.

Sec 43.90.140. A few comments:

For your information, the requirements for the application in the bill are similar to provisions that are required in a notice of open season under 18 C.F.R. 157.134(c). One difference is that the bill requires analyses and commitments that are impliedly firm and final in the application while the FERC regulation states, "[H]owever, to the extent that any item of such information is not known or determined at the time the notice is issued, the prospective applicant shall make a good faith estimate based on the best information available of all unknown or undetermined items of required information and further, must identify the source of information relied on, explain why such information is not presently known, and update the information when and if it is later determined during the open season period[.]"

On page 4, line 11, I suggest deleting the words "consistent with" and inserting "responsive to." The request for applications under AS 43.90.130 will include requirements that an applicant must meet to be considered; an application will be responsive if it meets the requirements in the application.

Some of the items listed in this section could be moved, and might be better placed in AS 43.90.130, if they are requirements that an applicant must meet in order to qualify for consideration. The deadline in AS 43.90.140(1) is a good example.

Some of the requirements of the application are very complex, particularly those in AS 43.90.140(2), and may affect the speed with which a potential applicant can respond.

The alternative routes, overland through Canada or the intrastate-LNG option,² are quite different and may be difficult to compare. There may be differences in economic life, the length of time before gas can be shipped, the economic life of the project, and netbacks that affect the wellhead value on which the state's royalties and production taxes are based. Does AS 43.90.170, in sec. 9 of the bill, provide the commissioners the criteria they need to consider to decide whether a viable overland route is better than the

² This is shorthand for a project that ships the gas via pipeline to tidewater, liquefies the gas, then uses marine transportation for the next leg of delivery.

intrastate LNG option or vice versa? For example, is the risk of cost overruns greater for one route over another? AS 43.90.140(12) provides for a minimum of five delivery points in the state; will the location of those points be different for the overland route compared with the intrastate LNG route?

Structurally, it may make the requirements more clear if one statutory section covers requirements applicable to all project proposals, and subsequent sections address issues that are specific to projects requiring FERC approval and those requiring RCA approval.

Sec. 43.90.140(9): With regard to my comments above concerning how much of the \$500,000,000 may be available during each of the two increments, you may wish to consider changing paragraph (9) to request an estimate of the amount of state money that would be required through the end of the first binding open season and then a percentage to be applied during the subsequent interval leading up to the certificate of public convenience and necessity.

Sec. 43.90.140(12): Do you want to specify where the five delivery points should be? You might use a standard such as how far apart they should be, or within certain mileage of, for example, Fairbanks, Tok, or Anchorage.

Sec. 43.90.140(13): What does firm transportation service to delivery points in the state mean? Does it only mean that there will be a filed tariff for delivery to those points or does this provision also require the applicant to solicit shippers that were not successful during the first open season to ship gas to the in-state delivery points?

Sec. 43.90.150. This section uses the phrase, at page 8, lines 22-23, "consistent with the terms of the request for applications" that could be replaced with language that addresses whether the application is "responsive." Although this solicitation is not subject to the State Procurement Code, AS 36.30, the request for applications is similar to a request for proposals and the standard for accepting an application is similar to determining whether an application is responsive to the solicitation.

Sec. 43.90.170. This section is important to the state's defense if an unsuccessful applicant challenges the award of the license by the commissioners.

I suggest inserting a reference to the criterion of maximizing the benefits to the state to tie into the determination reference in AS 43.90.190 on page 10, lines 9 - 11. On page 9, line 8, following "upon," you could add language such as, "whether the application sufficiently maximizes the benefits to the people of the state and merits issuance of a license, taking into consideration."

You may want to strengthen the language. For example, on page 9, line 11, you could replace "how the applicant plans to manage overruns in costs" with "how the applicant plans to minimize cost overruns." This criteria seems to overlap with the third criteria regarding cost overruns and the effect on the tariff.

Sec. 43.90.170(4). "Low cost" may be too vague to be a helpful standard for the commissioners to apply. Low relative to what?

Sec. 43.90.170(5). This paragraph requires speculation on the amount of the \$500,000,000 that may be available after the end of the first binding open season. As I suggested above, you may wish to expand this criteria to include the amount that is

expected to be used during the first interval and then the percentage or amount to be provided by the state during the second interval, up to the time when the certificate of public convenience and necessity is obtained.

Sec. 43.90.180. When would this notice, review, and comment period occur? Is it after the commissioners have applied their criteria, in which case a favored applicant may already be identified? Or is it earlier, after the commissioners have made a determination that an application is complete under AS 43.90.150?

If the notice, review, and comment follow the determination under AS 43.90.150(d), the public may help evaluate the applications using the same criteria the commissioners apply under AS 43.90.170. If the public review is after the commissioners have applied the criteria, the public notice and review could focus on the application(s) the commissioners find to be the most satisfactory under the criteria.

Sec. 43.90.190. This section includes two appealable determinations by the commissioners. Under AS 43.90.190(a)(1), the commissioners' determination that an application would sufficiently maximize the benefits to the people of the state and merits issuance of a license is a final agency action and is therefore subject to appeal.³ Note, however, that the date the decision is final is determined under AS 43.90.200(a). Under AS 43.90.190(b) and (c), a finding by the commissioners that no application satisfies the requirement of maximization of benefits is also a final action for appeal purposes.

Sec. 43.90.200. Subsection (a) makes the commissioners' determination in AS 43.90.190(a) "final agency action[] effective under this chapter on the 30th legislative day after the date of referral to the legislature[.]" The "30th legislative day" language may need to be refined. If the commissioners make the determination with less than 30 days left in the first regular legislative session, say 20 days before, would the determination not be final until 10 days into the next regular session? What if there is an intervening special session with limited subject matter? Thirty days coincides with the length of a special session, which may be contemplated by the drafter of the bill, but the circumstances of a regular session should also be addressed.

Sec. 43.90.200(c): The words "Alaska Rules of Appellate Procedure" are unnecessary; when the right to appeal vests, the court rules establish the procedure to be followed without this language.

Sec. 43.90.210. In subsection (a), you might want to check with the tariff experts in the Department of Law concerning whether the RCA would regulate tariffs to the in-state delivery points even though the interstate part of the pipeline is regulated by FERC. If RCA and FERC both may be involved, subsection (a) should be reworded to allow for the acceptance of a certificate from each regulatory agency. The subsection could simply read as follows:

³ *Bethel Utilities Corp. v. City of Bethel*, 780 P.2d 1018, 1022 (Alaska 1989) ("Unless the legislature provides otherwise, administrative decisions are presumed to be judicially reviewable.")

(a) A licensee that is awarded a certificate of public convenience and necessity for the project shall accept the certificate.

Subsections (b) and (c) read like additional grounds for abandonment to those listed in AS 43.90.120. It seems to me that a finding that the project is "uneconomic" for the purpose of AS 43.90.120 may at least be intertwined with the licensee who may fail to secure financing and sanction the project as required in AS 43.90.210(c). I suggested above that the abandonment provision be moved later in the chapter; perhaps the remedies for failure to sanction and abandonment could either be combined or placed together because both address the failure of a project and the ensuing consequences.

Sec. 43.90.220. Page 12, line 11: I suggest also inserting AS 43.90.130 in addition to AS 43.90.140, so that the project plan is consistent with the original solicitation.

Sec. 43.90.230. Look at AS 43.99.010 that (since 1949) requires a person subject to tax to keep tax records in the state. You may wish to require that the records subject to audit be available in the state. Although this may seem to be redundant to the requirement in AS 43.90.140(14) to "commit to establish a local headquarters in [the] state," you may wish to clearly require in-state recordkeeping so that an affiliate developing the project makes the records available here rather than at its parents' headquarters.

Sec. 43.90.240. In the situation of an unresolved violation that results in the revocation of the license, the follow-up for revocation could follow a similar course to that for abandonment under AS 43.90.120, and the failure to sanction in AS 43.90.210.

Sec. 43.90.240(e). Page 13, lines 27 - 28: The words, "under the Alaska Rules of Appellate Procedure," are unnecessary.

Sec. 43.90.330 and Sec. 43.90.340. It seems that AS 43.90.330 (Alaska Gasline Inducement Act coordinator) and AS 43.90.340 (Expedited review and action by state agencies) should either be placed here at the end of art. 1 or in among the miscellaneous provisions in art. 4. The reason for this suggestion is that these two sections primarily are directed at facilitating the gasline, not the shippers whose inducement is offered in art. 3. If the two sections are also intended to facilitate the inducements in art. 3 as well as art. 2, they may be better placed in art. 4, among the miscellaneous provisions.

Sec. 43.90.310. This section offers a shipper an election to change the calculation of its royalty obligation from that set out in an existing lease or unit agreement to the calculation provided in new regulations to be adopted by the commissioner of natural resources. Every two years the regulations are to be reviewed, and if amended, the producer may elect to return to the obligation under the lease or unit agreement or to be subject to the amended regulations. This approach seems to avoid an issue under the contracts clause in art. I, sec. 15 of the state constitution because it does not actually and unilaterally change the contractual obligations of a producer under the lease or unit agreement, and thus there is no impairment. The producer is given the opportunity to

compare royalty obligations under the regulations with those in the contractual agreements and elect to choose the most favorable.

I am not sure how this section is intended to work. Under AS 43.90.310(a), the regulations to be adopted must "establish terms under which the state will exercise its right to switch between taking its royalty in-value or in-kind." Is this a separate issue from the determination of the value of the state's royalty share or are they somehow intertwined? Paragraphs (b)(1) and (2) seem to be related to the value determination part of the mandated regulations and (b)(3) seems to be related to the switching terms. Is this correct? My impression is that how the state intends to exercise its switching rights will be a factor in a shipper's evaluation of how much of its production the state will take in-value rather than in-kind so that the shipper knows how much capacity to commit during the first open season. For example, if a shipper commits all of its own production to its share of pipeline capacity acquired during the first open season, to what extent could the shipper also commit a portion of the state's royalty production for which the shipper expects the state to take in-value? Would you want to include in the bill a limitation on how often the state may switch between taking royalty in kind or in value to give stability to a shipper? Is this even a factor?

Sec. 43.90.310(b)(2)(D) requires that regulations adopted under the section reflect the 1980 Royalty Settlement Agreement for Prudhoe Bay gas for the purpose of determining a fair market value. Is this agreement public? If the agreement is not already public, it may be helpful to have that agreement entered into the legislative record so that an interested person could evaluate whether the regulations are consistent with that agreement and consistent with the statutory directive.

Sec. 43.90.310(b)(4). You may wish to make this a subsection within this section rather than merely requiring the condition to be adopted as part of the regulations. As a separate subsection, (4) would become (c), and delete "require that in" and insert "In". This makes the requirement in this new subsection similar to the requirement for the tax exemption in AS 43.90.320(c). The following subsections would be relettered to reflect the addition of an additional subsection.

Sec. 43.90.310(e). If there are no new leases contemplated by DNR between now and the end of the first binding open season, then the only leases that may be in conflict with making the election are leases entered into before the effective date of the Act. However, do you want a new lease to disallow the election in (d)?

Sec. 43.90.320. Although written in terms of an exemption, this section actually provides a credit, a dollar for dollar reduction in tax obligation based on an increase in tax following a change in the production tax. While a credit reduces the amount of tax for which a person would otherwise be liable, an exemption removes a subject from the imposition of the tax. The use of the term "exemption" to describe the credit is probably intended to coincide with the exception in art. IX, sec. 4 to art. IX, sec. 1 of the state constitution.

Art. IX, sec. 4 reads as follows:

Exemptions. The real and personal property of the State or its political subdivisions shall be exempt from taxation under conditions and

exceptions which may be provided by law. All, or any portion of, property used exclusively for non-profit religious, charitable, cemetery, or educational purposes, as defined by law, shall be exempt from taxation. Other exemptions of like or different kind may be granted by general law. All valid existing exemptions shall be retained until otherwise provided by law.

Sec. 43.90.320 could be rewritten to make the inducement an exemption rather than a tax credit by exempting from tax a percentage of the gas production committed to the pipeline during the first binding open season. An exemption like this would be more aligned with the examples of exemptions in art. IX, sec. 4, that exempt all or part of certain property from a tax.⁴

Whether AS 43.90.320 is amended or not, the section should clarify whether the tax obligation is the nominal obligation determined by the nominal or minimum tax determined under AS 43.55.011, or its successor, or after applying the credits authorized in AS 43.55.023, 43.55.024, and 43.55.025. If the section is amended to exempt part of the production committed to the pipeline from tax, you should address whether credits and allowable lease expenditures used to determine the taxable value of the gas should be allocated between taxable and non-taxable gas, or may be fully applied to the taxable portion of the gas.

Sec. 43.90.330. As noted above, I suggest moving this section into art. 2, the article that provides inducement for a pipeline project, or art. 4, if the coordinator is to benefit both shippers and the project licensee.

I suggest adding provisions for the coordinator to hire staff and to designate where the coordinator will be situated within state government for administrative purposes. Will the position be in the governor's office, the Department of Revenue, the Department of Natural Resources, or some other department? You may wish to authorize the coordinator to hire exempt or partially exempt staff or specify that administrative support will be provided by the department in which the position is placed.

Do you want to add minimum qualifications for this position? Besides coordinating state agency activity to expedite the project, the position must also be capable of gauging Alaska law against agency action for the purpose of determining whether the agency action is contrary to the prohibitions in AS 43.90.340(b) and (c).

Sec. 43.90.340. As noted earlier, this section could be moved to art. 2, if it is intended to relate to the pipeline project, or art. 4, if it is intended to relate to both the pipeline project and to shippers.

AS 43.90.340(b). The drafter used the phrase, "notwithstanding any contrary provision of law." If the drafter had particular provisions in mind that may interfere with the intent of this section, those provisions could be addressed directly.

⁴ It may be possible to include a tax increase as a basis for calculating an exemption. For example, if the tax increased four percent, then four percent of the production committed to the pipeline would be exempt from tax.

Senator Charlie Huggins

March 14, 2007

Page 10

Sec. 43.90.400. This provision establishes the fund in the general fund that holds the \$500,000,000 that will be appropriated for the gasline inducement.

I suggest adding additional language to state that the fund is not a dedicated fund and that money may be expended without further appropriation. See for example AS 26.05.265(d) and (e) (fund for service members group life insurance premiums).

Sec. 43.90.410. I suggest deleting "jointly" on page 18, line 6. Each commissioner could be authorized to adopt regulations necessary to implement the chapter. I expect that there will also be a need for regulations that relate to the Alaska Gasline Inducement Act coordinator and the operation of that office.

Sec. 43.90.430. An alternative to this interest provision would be to incorporate the interest due on delinquent taxes under AS 43.05.225.

Sec. 43.90.440. Although the section makes the licensee entitled to "an amount equal to three times the total of the reasonable costs that the licensee has incurred" the payment would be subject to appropriation. Note that the breach of the assurance by the state constitutes project abandonment under AS 43.90.120.

Sec. 43.90.450(c). As drafted, this subsection does not make sense. How does the phrase "include the firm transportation capacity contracts in the project" fit with the first part of the subsection? I think the intent was to require transfer of the capacity acquired during the first binding open season when the gas (and oil?) interests in the North Slope are transferred.

Sec. 43.90.900. A definition for "North Slope" should be added. For example, AS 43.55.011(f) uses the description "oil and gas produced north of 68 degrees North latitude" to refer to North Slope production.

On page 20, line 4, delete "and 'controlling'" as "controlling" is not used in the bill.

"Gas processing" is defined in AS 43.55.900 and that definition could be incorporated by reference.

"Lease" could be defined to mean "state lease" as that term is defined in AS 38.06.080.

I am not sure "under common control with" needs to be defined in this bill. The phrase is only used in the definition of "affiliate." If necessary, limit the term to "common control."

If I may be of further assistance, please advise.

DMB:med
07-168.med

LEGAL SERVICES

DIVISION OF LEGAL AND RESEARCH SERVICES
LEGISLATIVE AFFAIRS AGENCY
STATE OF ALASKA

(907) 485-3867 or 485-2450
FAX (907) 485-2029
Mail Stop 3101

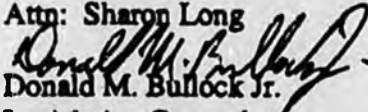
State Capitol
Juneau, Alaska 99801-1182
Deliveries to: 129 6th St., Rm. 329

MEMORANDUM

March 7, 2007

SUBJECT: Analysis of SB 104 (SB 104; Work Order No. 25-GS1060B)

TO: Senator Charlie Huggins
Attn: Sharon Long

FROM: 
Donald M. Bullock Jr.
Legislative Counsel

You have requested a sectional analysis of the above-described bill.

As a preliminary matter, note that a sectional summary or analysis of a bill should not be considered an authoritative interpretation of the bill and the bill itself is the best statement of its contents. If you would like an interpretation of the bill as it may apply to a particular set of circumstances, please advise.

The following is a summary of the governor's Alaska Gasline Inducement Act. At your request, this analysis is more detailed than the usual sectional summaries we provide to you. However, the cautionary note in the paragraph above continues to apply, the bill itself is the best statement of its contents.

Section 1. Adds a new chapter, AS 43.90, to Title 43 that contains the following:

Article 1. Inducement to Construction of a Natural Gas Pipeline in this State.

Sec. 43.90.010. Purpose. Explains that the purpose of the chapter is to encourage expedited construction of the gasline and sets four goals for the pipeline.

Article 2. Alaska Gasline Inducement Act License.

Sec. 43.90.100. Gas project. Authorizes the commissioner of the Department of Natural Resources and the commissioner of the Department of Revenue, acting jointly, to award an Alaska Gasline Inducement Act license that entitles the licensee to the inducement in AS 43.90.110.

Sec. 43.90.110. Natural gas pipeline project construction inducement. Lists the inducement a licensee is entitled to receive. Provides for

payments totalling up to a total of \$500,000,000 over 5 years as matching contributions for the licensee's qualified expenditures. Provides for the state to match the licensee's dollar-for-dollar cost through the close of the first binding open season, and provide up to 80 percent of the qualified expenditures after the close of the first binding open season. Defines qualified expenditures as costs that occur after the license is issued and that are related to obtaining a certificate of public convenience and necessity from the Federal Regulatory Commission or the Regulatory Commission of Alaska, as appropriate. Qualified expenditures may not include overhead costs, litigation costs, assets or work product predating the issuance of the license, or civil or criminal penalties or fines.¹ Other incentives include the benefit of an Alaska Gasline Inducement Act coordinator and a state program that provides training for employment in gas pipeline project management, construction, operations, maintenance, and other gas pipeline-related positions.

Sec. 43.90.120. Abandonment of project. Provides for the abandonment of a project if the commissioners and the licensee agree that the project is uneconomic and should be abandoned. If the licensee and the commissioners do not agree, provides for an impartial third party to take evidence and make a determination of whether the project is uneconomic and should be abandoned. Requires the commissioners to adopt regulations establishing the procedures for the third-party selection and review process. Also, provides for the abandonment of the project if the state violates the exclusivity enjoyed by the licensee by extending to another person preferential royalty, tax, or monetary treatment for purposes of facilitating the construction of a competing gasline. (See AS 43.90.440.)

Sec. 43.90.130. Request for applications for the license. Requires commissioners to commence public process to request applications for the license. Authorizes use of independent contractors to develop provisions in the application for a license and to evaluate applications received. States that the requests for applications are not subject to the procurement code (AS 36.30).

Sec 43.90.140. Application requirements. Lists requirements for the application and requires the application to be consistent with the terms established under AS 43.90.130. The application must:

- (1) be filed by the deadline established by the commissioners;

¹ I think the drafter of the governor's bill may have intended to include the *costs* of assets or work product in this list of exclusions because this is a list of expenditures, i.e. money paid out.

(2) provide a detailed description for the proposed gasline project from the North Slope to market, including route, receipt and delivery points; size and design capacity; an analysis of the project's economic and technical viability; viable work plan, timeline, and budget; explain how applicable state, federal, and international requirements will be met; for a route through Canada, provide a description for obtaining rights-of-way; for a project using marine transportation, provide a description of transportation services to be provided by third parties, proposed access and tariff terms, a description of proposed schemes for liquefaction and marine transportation, and explain how the Federal Energy Regulatory Commission (FERC) and/or export requirements will be satisfied;

(3) for a project subject to FERC, commit to conclude an open season within 36 months after obtaining the license; commit to apply for FERC approval to use pre-filing procedures and to use the procedures before filing for a certificate of public convenience and necessity; commit to apply for a certificate of public convenience and necessity;

(4) for a project subject to the Regulatory Commission of Alaska (RCA), commit to conclude a binding open season within 36 months after receiving the license, and to apply for a certificate of public convenience and necessity to authorize construction;

(5) after first binding open season, provide for the assessment of market demand for additional gasline capacity every two years;

(6) commit to expand the proposed project in "reasonable engineering increments" and "commercially reasonable terms" that encourage exploration and development of gas resources;

(7) with regard to expansion, commit to recover costs through rolled-in or partially rolled-in rates that would increase shippers' rates by no more than 15 percent of the "initial maximum recourse rates" from the North Slope to the downstream terminus; the application may include a proposal for any combination of incremental or rolled-in rates for cost recovery that exceed the 15 percent level; agree not to enter into any negotiated rate agreement that would preclude the applicant from collecting the roll-in rates from any shipper;

(8) commit to seek certificate authority from FERC or RCA for a North Slope gas treatment plant owned all or in part by the applicant, and to use net book value for rate-making purposes;

(9) propose a percentage of state contribution for qualified expenditures (up to 80 percent) after the close of the first binding open season;

(10) commit to no less than 70 percent debt as a basis for rate setting for any North Slope gas treatment plant owned all or in part by the applicant;

(11) describe plans to manage and mitigate cost overruns, if any;

(12) commit to at least five in-state delivery points;

(13) commit to offer firm transportation service to in-state delivery points without regard to whether producers bid successfully for firm transportation service to in-state delivery points; commit to offer distance sensitive rates for in-state delivery points;

(14) commit to establish project headquarters in the state;

(15) commit to hire qualified state residents to the extent permitted by law; and

(16) demonstrate ability to perform the work described in the plan, within the plan's timeline and budget.

Sec. 43.90.150. Initial application review; additional information requests; complete applications. Requires commissioners to review a plan submitted for consistency with requirements in the request for applications as well as the specific requirements in AS 43.90.140. Authorizes commissioners to request additional information for a plan that is not rejected, and provides that a plan will be rejected if required additional information is not submitted. Requires commissioners to determine that an application is complete.

Sec. 43.90.160. Proprietary information and trade secrets. Allows proprietary and trade secret information to be confidential and not subject to disclosure as public records. Requires an applicant to identify and demonstrate information that is confidential under this section.

Sec. 43.90.170. Application evaluation criteria. Requires the commissioners to evaluate each application based upon the following criteria: the timing of proposed actions; the plan to manage cost overruns; transportation rates and minimization of the effect of cost overruns; initial design capacity and expandability; percentage of state's contribution after the first binding open season; reasonableness, specificity, and feasibility of work plan, timeline, and budget; applicant's financial resources, project history, ethics and integrity, business operation, and access to equipment for carrying out the project.

Sec. 43.90.180. Notice, review, and comment. Requires notice, public review, and comment on all complete applications. Classifies applications to not be public records until notice for public review is published. Requires commissioners to summarize proprietary and trade secret information that is not subject to public disclosure.

Sec. 43.90.190. Notice to the legislature of intent to issue license; denial of license. After commissioners determine an application will "sufficiently maximize the benefits to the people of the state and merits issuance of a license," requires commissioners to issue the determination with written findings, publish a notice of intent to issue a license, and

forward the intent to issue notice and supporting materials to the legislature. Requires the commissioners to make a written finding if no application "sufficiently maximizes the benefits to the people of the state and merits issuance of a license" and makes that finding a final determination for purposes of appealing the determination to the court.

Sec. 43.90.200. Legislative action; issuance of license. Makes the intent to issue a license a final agency determination, effective, and subject to court appeal "on the 30th legislative day" after the referral to the legislature, unless the notice of intent is disapproved by a joint resolution.² Authorizes the commissioners to proceed with a new request for application process if the legislature disapproves the intent to issue.

Sec. 43.90.210. Certification by regulatory authority and project sanction. Requires the licensee to accept a certificate of public convenience and necessity issued by FERC or RCA, as applicable. Requires the licensee to sanction the project within one year after the effective date of the certificate of public convenience and necessity if the licensee has credit support to finance construction, or within five years if the licensee does not have credit support on the effective date of the certificate. Sufficient credit support is to be determined by considering ownership of rights to produce and market gas resources, firm transportation commitments, or government financing. If the project is not timely sanctioned, requires the licensee to abandon and transfer the certificate to the state or state's designee, and assign to the state's designee all project data, engineering designs, and permits. Provides that the transfer is without cost to the state or the state's designee if the licensee fails to accept the certificate of public convenience and necessity or, having credit support on the effective date of the certificate, fails to sanction the project within one year. A transfer required if the licensee did not have sufficient credit support on the effective date of the certificate and fails to sanction the project within five years is at the licensee's "net cost." Sanction is defined in AS 43.90.900, to mean "procurement commitments to go forward with the project as evidenced by entering into procurement commitments of at least \$1,000,000,000 with third parties."

Sec. 43.90.220. Amendment of or modification to the project plan. Authorizes the commissioners to approve modifications or amendments to the project plan if consistent with the requirements of AS 43.90.140, were required by factors outside of the licensee's control, and were not reasonably foreseeable before the license was issued.

² I do not know how this works if the legislature is not in session or if there are fewer than 30 days remaining in a regular or special session.

Sec. 43.90.230. Records, reports, conditions, and audit requirements. Requires the licensee to maintain records of all expenditures and commitments of state money received, and authorizes the commissioners to audit the records. Requires the licensee to retain all required records and reports for seven years. Requires the licensee to allow the commissioners to have the same access to information, receive all relevant reports, notices, and information sent to the governing body and equity holders of the licensee, and to allow the commissioners to have a representative at all meetings of the licensee's governing body and equity holders that relate to the project.

Sec. 43.90.240. License violations; damages. Identifies four acts that constitute a violation of the license: committing state money received under AS 43.90 for an unauthorized purpose, departing from the specifications in the application without state approval of an amendment or modification; violating a state or federal law material to the license; or violating a material term in the license. Provides for notice of violation and a period for informal resolution of the violation. Authorizes the commissioners to suspend disbursement of state matching contributions effective on the date of the notice of violation and to resume disbursement when the violation is cured. If the violation is not resolved within 90 days or after notice and hearing, requires the commissioners to make a final written determination of the violation that may be appealed to the court. Provides as remedies for an unresolved violation the discontinuance of state matching contributions, recoupment of state money received by the licensee plus interest, revocation of the license, and any other remedy provided in law or equity.

Article 3. Resource Inducement; Alaska Gasline Inducement Act Coordinator.

Sec. 43.90.300. Qualification for resource inducement. Qualifies a person that has committed to acquire firm transportation capacity in the first binding open season of the project to receive a royalty inducement and a gas production tax exemption for gas shipped in the firm transportation capacity acquired in that first binding open season.

Sec. 43.90.310. Royalty inducement. Requires the commissioner of natural resources to adopt regulations establishing a method to determine the monthly value of the state's royalty share of gas production, and establish terms under which the state will exercise its right to switch between taking its royalty share in-kind or in-value. Requires the regulations to minimize retroactive adjustments, provide a means for establishing a fair market value for each component of the royalty gas

(taking into consideration reliable and available industry data), and for making appropriate adjustments based on transportation costs, location differentials, costs of gas processing, and deductions allowable under the 1980 Royalty Settlement Agreement for Prudhoe Bay gas. Requires the regulations to establish terms for the state to exercise its authority to switch between in-kind and in-value royalty without unreasonable impact on a lessee. Requires the regulations to require a person making an election under this section (including affiliates and subsequent interest holders) to agree not to protest or appeal a filing by the licensee to roll-in or partially roll-in expansion costs up to the level that is required in AS 43.90.140(7).³ The regulations may not preclude the person or the person's affiliates from protesting a filing to roll in mainline expansion costs that the licensee is not required to propose and support under AS 43.90.140(7). Requires the commissioner of natural resources to review the regulations at least every two years and amend the regulations as necessary. If new regulations are adopted, authorizes a lessee qualified for the royalty inducement to elect to calculate its gas royalty obligation under the new regulations or use the methodology set out in the existing leases or unit agreements; the election continues until the regulations are subsequently amended. Prohibits the commissioner of natural resources or the interpretation of any provision in AS 43.90 from prohibiting the exercise of the election between the royalty inducement under new regulations adopted after review and the method in existing leases or unit agreements.

Sec. 43.90.320. Gas production tax exemption. Entitles a person that has committed to acquire firm transportation capacity in the first binding open season of the project to an annual exemption from the production tax on gas equal to the difference between the amount of the person's production tax obligation under the law in effect during that tax year and the tax obligation under the production tax in effect at the conclusion of the first binding open season. Provides that the exemption may not be less than zero. Limits the exemption to the 10 years immediately following the first commercial operation of the gasline and to production taxes that are

³ Although this agreement not to protest is included within the requirements for the regulations, I think the intent may have been to make it a condition precedent for receiving the inducement similar to the requirements for a tax exemption in AS 43.90.320. AS 43.90.320(c) requires the agreement before claiming the tax exemption. The roll-in level in AS 43.90.140(7) is 15 percent of the initial maximum recourse rates from the North Slope to the proposed projects downstream terminus. AS 43.90.140(7) requires an applicant for the license to propose and support mainline capacity expansion costs from all mainline system users through rolled-in or partially rolled-in rates that do not exceed the 15 percent level.

levied on North Slope gas shipped through firm transportation capacity the person qualifying for the exemption acquired during the first binding open season. Requires, as a condition of claiming the exemption, a person making an election under this section (including affiliates subsequent interest holders) to agree not to protest or appeal a filing by the licensee to roll-in or partially roll-in expansion costs up to the level that is required in AS 43.90.140(7).⁴

Sec. 43.90.330. Alaska Gasline Inducement Act coordinator. Establishes the position of Alaska Gasline Inducement Act coordinator, to be filled by a person appointed by the governor and approved by the legislature. Provides that the coordinator shall serve until one year after the commencement of commercial operations of the gasline. Requires the Alaska Gasline Inducement Act coordinator to coordinate action by all state agencies with respect to the project, ensure that state agencies comply with AS 43.90, and coordinate with the federal coordinator for natural gas transportation projects in the state.

Sec. 43.90.340. Expedited review and action by state agencies. Requires expedited review by state agencies relating to the project. Prohibits a state agency from including, in any certificate, right-of-way, permit, or other authorization, a term or condition, or an amendment to a condition or term that is not required by law if the Alaska Gasline Inducement Act coordinator determines the term or condition would prevent or significantly impair the "expeditious construction and operation or expansion of the project."

Article 4. Miscellaneous Provisions.

Sec. 43.90.400. Alaska Gasline Inducement Act matching contribution fund; disbursements; audits. Creates the Gasline Inducement Act matching contribution fund in the general fund and provides that appropriations to the fund do not lapse. Requires the Department of Revenue to manage the fund and authorizes investment of the fund. Requires the commissioners to adopt regulations for applying to

⁴ The level in AS 43.90.140(7) is 15 percent of the initial maximum recourse rates from the North Slope to the proposed projects downstream terminus. AS 43.90.140(7) requires an applicant for the license to propose and support mainline capacity expansion costs from all mainline system users through rolled-in or partially rolled-in rates that do not exceed the 15 percent level.

Although the tax break in this section is referred to as an "exemption," it operates more like a credit because it reduces the tax but does not exempt gas from taxation.

receive matching contributions for expenditures related to obtaining a certificate of public convenience and necessity, and regulations for the audit of the use of contributed funds. Requires the commissioners to report disbursements, justification for each disbursement, and projected amount of money needed for disbursements during the following three fiscal years.

Sec. 43.90.410. Regulations. Provides general authority for the commissioner of revenue and the commissioner of natural resources to adopt regulations for implementing AS 43.90.

Sec. 43.90.420. Statute of limitations. Limits to 90 days after the date a license is issued for a person to bring a judicial action challenging the constitutionality of the chapter or a license issued under the chapter.

Sec. 43.90.430. Interest. Provides an interest rate to be applied to a payment to the state when the payment is delinquent.

Sec. 43.90.440. Licensed project assurances. Provides the assurance by the state that the licensee "has exclusive enjoyment of the inducement provided under [AS 43.90]." Entitles a licensee that is in compliance with the requirements of the license and applicable law to a payment from the state equal to three times the licensee's reasonable costs in developing the project as of the date the state first extends preferential treatment to another person for facilitating the construction of a competing gasline. Requires the licensee receiving payment under the entitlement to assign to the state data, designs, contracts, and permits related to the project.

Sec. 43.90.450. Assignments. Allows the assignment of the license by the licensee if the transfer is approved by the commissioners and does not increase or diminish the obligations created by the license or diminish the value of the license to the state. Subjects the transferor to continued recordkeeping, reporting, conditions, and audit requirements for all state money received by the licensee/transferor before the effective date of the transfer. Limits the transfer of a persons' right to the royalty inducement to be done only in connection with a sale or merger that results in the transfer of all of the transferor's assets in the North Slope of the state. As written in the bill as introduced, AS 43.90.450(c) is unclear regarding the connection between the firm transportation capacity contract in the gasline and the transfer of the royalty inducement.⁵

⁵ It would make sense that the transfer of the firm transportation commitment would transfer with the royalty inducement and the assets capable of producing gas to take advantage of the capacity.

Sec. 43.90.460. Conflicting laws. States that nothing in the chapter shall be construed to repeal or abrogate procedures and functions under state or federal law governing the development and oversight of the gasline.

Article 5. General Provisions.

Sec. 43.90.900. Definitions. provides definitions of "affiliate," "Alaska Gasline Inducement coordinator," "commencement of commercial operations," "commissioners," "control" and "controlling," "equity holder," "gas processing," "governing body," "lease," "lessee," "license," "licensee," "project," "recourse rates," "sanction," "under common control with," and "unit agreement."

Sec. 43.90.990. Short title. The short title for the Act is the Alaska Gasline Inducement Act.

Section 2. AS 36.30.850(b) is amended to exclude certain contracts issued in conjunction with the Act from the state's procurement code.

Section 3. AS 39.25.110 is amended to make the Alaska Gasline Inducement Act coordinator an exempt position.

Section 4. AS 40.25.120(a) is amended to exclude records that are proprietary or are a trade secret under the Act, and applications submitted under the Act before a notice is published for soliciting public comment from public disclosure.

Section 5. Makes the Act effective immediately and will require a 2/3 majority vote in each house.

DMB:med
07-156.med

Greenberg Traurig

Memorandum

TO: Antony Scott
FROM: Donald C. Shepler
DATE: March 10, 2007
RE: Open Season postings in trade press for last 12 months

As we have discussed, in my experience interstate gas pipelines are constantly searching for new business opportunities and expansions. Under FERC policy any expansion must be preceded by an open season to ensure that capacity is made available to all parties and potential shippers on a non-discriminatory basis.

As confirmation of this proposition I recently did a *Lexis* search of articles in *Gas Daily* (a widely-read industry trade publication) that turned up over 70 articles in the last year regarding open seasons by various interstate pipelines. The results are attached. Some of the articles relate to binding open seasons and some relate to non-binding open seasons. I believe this confirms the fact that pipelines are actively testing the markets for new capacity and confirms the appropriateness of the provisions in AGIA relating to solicitations of interest in new capacity every two years.

1. Gas Daily, February 16, 2007, Pg. 4, 97 words, Lodi Gas Storage seeks bids for future expansion capacity
... a non-binding open season Friday for firm ...
... May. Questions regarding the open season, which ends at 3 ...
2. Gas Daily, February 16, 2007, Pg. 4, 136 words, Enterprise launches open season for 10-Bcf Texas storage project, SGS
... announced a binding open season for shipper support of ...
... US, the company said. The open season will begin at ...
3. Gas Daily, February 14, 2007, Pg. 6, 146 words, Sempra takes bids for expansion capacity at Liberty Gas Storage, SGS
... Storage have launched an open season to assess market interest ...
... Bcf of capacity. During the open season that ends March 2, the ...
4. Gas Daily, February 5, 2007, Pg. 3, 261 words, LNG-linked pipeline in Oregon solicits shippers, SGS
An open season for the \$850 ...
... More information on the open season can be obtained from Hank ...
5. Gas Daily, February 2, 2007, Pg. 3, 157 words, Enstor launches open season for storage services at three sites, SGS
... Thursday launched an open season for binding firm ...
... conduct a separate open season for its Waha Storage ...
6. Gas Daily, January 22, 2007, Pg. 6, 202 words, Black Bayou seeks bids for service at planned Louisiana storage facility
... in a binding open season for service at its ...
... Sabine Lake. In the open season, customers will be offered ...
7. Gas Daily, January 18, 2007, Pg. 4, 172 words, Northern Natural solicits bids for pipeline capacity in Iowa
... bids in two open seasons that run through 4 ...
In the first open season, Northern Natural is soliciting ...
... 2008. In the second open season, Northern Natural is accepting ...
... amount of capacity available. The open seasons also include solicitations to turn ...
8. Gas Daily, January 4, 2007, Pg. 3, 307 words, Texas Gas solicits shippers, considers expansion, JB
... launched a binding open season through January 24 ...
... More information on the open season is available at www. ...
9. Gas Daily, January 3, 2007. 341 words, Alabama storage project approved; open season planned for February, JK
... a non-binding open season in February for ...

10. Gas Daily, December 20, 2006, Pg. 4, 249 words, Shippers snag 1.6 Bcf/d of capacity on two planned Boardwalk pipelines, BH

... said it was extending its open season on Gulf Crossing to ...

... 85. "The Gulf Crossing open season has generated significant interest from ...

... on the ultimate results of the open season, we may expand the design ...

11. Gas Daily, December 18, 2006, RETAIL REPORT ... a weekly supplement to Gas Daily; Pg. 8, 571 words, PUC approves firm access rights for Sempra pipelines, SGS

... Access to be granted through open season process Access rights ...

... a three-step open season process that would be held every ...

12. Gas Daily, December 15, 2006, Pg. 6, 205 words, Arcadia launches open season for Louisiana storage capacity, VJ

... a non-binding open season today for salt- ...

In the open season, which is set to close at ...

13. Gas Daily, December 14, 2006, Pg. 1, 371 words, With ETP aboard, Midcontinent pipe may expand, BH

... outcome of a second open season launched Wednesday.

... result of an initial open season held by Kinder ...

... conducting a binding open season until 3 pm ...

... information on the project and open season materials are available from David ...

14. Gas Daily, December 7, 2006, Pg. 1, 342 words, Duke plans multi-pronged storage expansion, SGS

... Market Hub Partners open season earlier this year (GD ...

15. Gas Daily, November 20, 2006, Pg. 6, 180 words, Boardwalk launches open season for Gulf Crossing pipeline capacity, SGS

... it has begun an open season for some 650,000 ...

... Choctaw County, Alabama. The open season runs through December ...

16. Gas Daily, November 17, 2006, Pg. 1, 700 words, FERC backs flexible rates for storage projects, CN

... capacity in an open season and its capacity was fully subscribed ...

17. Gas Daily, November 17, 2006, Pg. 4, 387 words, FERC approves Big Sandy pipeline to move gas from eastern Kentucky, CN

... million. During two open seasons conducted earlier this year, ...

18. Gas Daily, November 16, 2006, Pg. 7, 169 words, EPP to conduct open season for Texas gas storage capacity

... a non-binding open season on November 20 to ...

... Belvieu, Texas, facility. The open season will run through ...

19. Gas Daily, November 10, 2006, 178 words, Algonquin pipeline system expansion draws 'exceptional' shipper interest, RAW
 - ... during a recent open season, parent company Duke ...
 - ... completed the non-binding open season on October 27. ...

20. Gas Daily, November 9, 2006, Pg. 5, 169 words, Texas Gas plans third expansion of market-area storage capacity
 - ... area and has launched an open season for firm service.
 - ... conducted two successful open seasons that will boost the pipeline's ...
 - ... November 1, 2008. The open season ends at 5 ...

21. Gas Daily, November 2, 2006, Pg. 5, 254 words, NGS launches open season for Texas gas storage facility
 - ... Wednesday launched an open season for capacity at ...
 - ... Morgan County, Colorado. The open season for Tres Palacios ...

22. Gas Daily, October 31, 2006, Pg. 3, 227 words, Enterprise plans open season for up to 4 Bcf of storage capacity
 - ... hold a binding open season to gauge shipper interest ...
 - ... Pipeline. The company said the open season will begin at ...

23. Gas Daily, October 23, 2006, Pg. 1, 341 words, Two Mississippi gas storage projects advance
 - ... Friday launched an open season for storage services ...
 - ... Hub held an open season for the storage facility ...

24. Gas Daily, October 6, 2006, Pg. 1, 536 words, El Paso scraps its Continental Connector pipeline, JK
 - ... a non-binding open season attracted shipper requests ...
 - ... holding a binding open season and starting the prefiling process ...

25. Gas Daily, October 6, 2006, Pg. 3, 246 words, Bay Gas holds open season for Alabama storage capacity, MT
 - ... a non-binding open season for 10 Bcf of ...
 - The open season is linked to the planned development of ...
 - ... 5 Bcf of capacity. The open season began Thursday and will ...

26. Gas Daily, October 2, 2006, Pg. 1, 355 words, Algonquin eyes LNG-linked mainline expansion, SGS
 - ... Friday launched an open season to gauge shipper interest ...
 - Depending on the response to the open season, which ends October 27, ...
 - ... so we will see what the open season brings," he said, adding that ...

27. Gas Daily, September 27, 2006, Pg. 3, 275 words, Southern Natural soliciting bids for Mississippi storage project, SGS
 - ... subsidiary launched an open season Tuesday for non- ...
 - ... will depend upon the open season results and initial engineering ...

28. Gas Daily, September 27, 2006, Pg. 4, 265 words, NW Natural, TransCanada ponder joint gas pipeline project in Oregon, RAW
... pipeline are conducting an open season to determine customer interest ...
29. Gas Daily, September 15, 2006, Pg. 3, 196 words, Sabine Pipe Line plans to boost delivery capacity to Henry Hub
In an open season announcement, the pipeline said the ...
... acceptable bid in the open season is 50,000 Dt/d. ...
30. Gas Daily, September 14, 2006, Pg. 4, 124 words, Iroquois launches open season for 2008-2009 expansion project
... launch-ed an open season for its 2008-2009 Expansion Project. The open season, which runs to October 6, is ...
31. Gas Daily, September 7, 2006, Pg. 6, 203 words, Sempra finalizing plans for Mexican LNG terminal expansion, CEO says, MT
... strong response to an open season it held earlier this ...
32. Gas Daily, August 24, 2006, Pg. 5, 112 words, DTE offers firm gas storage services at Michigan facility
... it has launched an open season for firm storage ...
... term, the company said. The open season ends at 3 ...
... hubs. To obtain an open season package, or for more ...
33. Gas Daily, August 24, 2006, Pg. 7, 311 words, Florida P&L to take 500,000 Mcf/d on planned Southeast Supply pipeline, JB
... shippers that responded to an open season earlier this year. The 270- ...
34. Gas Daily, August 18, 2006, Pg. 1, 346 words, Northwest gets FERC nod for Piceance lateral ... ago. After an open season that ended last November, ...
... Lateral. A subsequent open season in December did not ...
35. Gas Daily, July 27, 2006, Pg. 4, 268 words, Firms propose new pipeline from eastern Canada to Ohio, SGS
... determined by an open season for the project scheduled ...
... More information on the open season can be obtained from Tony ...
36. Gas Daily, July 21, 2006, Pg. 7, 116 words, Northwest holds open season for capacity on Colorado lateral
... subsidiary is conducting an open season for long-term ...
... commitment received during the open season, which ends at 5 ...
37. Gas Daily, July 20, 2006, Pg. 6, 240 words, Rockies Express garners interest in 1 Bcf/d of expansion capacity, MT
A recent open season for the Oakford extension of the ...

- ... binding commitments during the open season, which ended July 14, " ...
38. Gas Daily, July 19, 2006, Pg. 1, 391 words, Transco files D.C.-area pipeline expansion plan, SGS
... agreed after an open season last year to sign ...
39. Gas Daily, July 18, 2006, Pg. 6, 82 words, CIG pipeline seeks interest in North System capacity
... Company is conducting an open season to solicit shipper interest ...
... starting October 1. The open season runs until 3 ...
40. Gas Daily, July 17, 2006, Pg. 1, 624 words, Ethanol boom expected to increase gas demand, JMM
... a non-binding open season to expand the Kinder Morgan ...
41. Gas Daily, July 7, 2006, Pg. 3, 223 words, Kinder Morgan eyes expansion of interstate line to Nebraska, BH
... a non-binding open season Wednesday to determine shipper ...
... Kansas, Missouri and Nebraska. The open season lasts through 5 ...
42. Gas Daily, July 6, 2006, Pg. 4, 365 words, TransColorado files 250,000 Dt/d expansion project with FERC, JK
... pipeline stems from an open season held earlier this year ...
43. Gas Daily, June 28, 2006, Pg. 7, 272 words, AES announces open season for LNG-linked pipeline system, MT
... Tuesday began an open season for firm transportation ...
... depending on the results of the open season. Open season participants will be responsible ...
... no later than 2010. The open season ends at 5 ...
44. Gas Daily, June 27, 2006, Pg. 6, 273 words, Texas Eastern holds open season for West-to-Northeast gas pipeline
... Monday launched an open season to gauge interest in ...
The non-binding open season for the proposed Texas ...
45. Gas Daily, June 26, 2006, Pg. 7, 119 words, Heartland Gas solicits interest in capacity on Indiana pipeline
... launched a binding open season Friday to gauge shipper ...
... date of October 1. The open season is slated to close at ...
46. Gas Daily, June 23, 2006, Pg. 3, 263 words, MoBay files FERC application for proposed Gulf storage facility
... a non-binding open season held in March, ...
47. Gas Daily, June 23, 2006, Pg. 6, 240 words, Tennessee seeks interest in proposed expansion from Ohio to New York City

- ... a non-binding open season to gauge interest in ...
 ... years," Tennessee said. The open season, scheduled to close at ...
 ... a subsequent binding open season is necessary. If the project moves ...
48. Gas Daily, June 21, 2006, Pg. 6, 276 words, Rockies Express holds open season for Ohio-to-Pennsylvania extension, SGS
 ... launched a binding open season to solicit interest in their ...
 ... eastward from Ohio to Pennsylvania. The open season ends at 5 ...
 ... Additional information related to the open season is available at www. ...
49. Gas Daily, June 8, 2006, Pg. 3, 588 words, Official: New England no longer constricted market, CC
 ... week launched an open season for Mid-Continent ...
50. Gas Daily, June 2, 2006, Pg. 1, 640 words, CenterPoint, Duke plan 1,600-mile pipeline, RAW
 ... a non-binding open season closes July 31. ...
 ... said an initial open season for an 800- ...
 ... jointly held an open season on a proposed ...
 ... new 60-day open season to solicit interest from producers ...
 ... Regulatory Commission after the open season closes. The non-binding open season began June 1.
 ...
51. Gas Daily, June 2, 2006, Pg. 3, 746 words, Rockies Express files FERC application for first leg, JK
 ... plans to begin an open season in about a ...
52. Gas Daily, May 24, 2006, Pg. 6, 121 words, El Paso extends its open season on Continental Connector project
 ... June 8 the binding open season for a project ...
 ... Connector Pipeline subsidiary. The open season originally was slated to end ...
 ... information on the binding open season package and related items ...
53. Gas Daily, May 23, 2006, Pg. 4, 228 words, New Dominion 'hub' would serve fast-growing gas demand in East, MD
 ... a non-binding open season beginning today and ending ...
 ... More information on the open season can be obtained from Josh ...
54. Gas Daily, May 16, 2006, Pg. 6, 201 words, Sempra says it received strong interest in Mexico LNG expansion
 ... launched the non-binding open season last month (GD 3/14). "This successful open season demonstrates the strategic significance" of the ...
55. Gas Daily, May 12, 2006, Pg. 6, 60 words, Transwestern holds open season for capacity at several locations
56. Gas Daily, May 9, 2006, Pg. 3, 744 words, Mackenzie gas pipeline dispute headed to NEB, GP

- ... MEG. A 2003 open season offering rights to book ...
57. Gas Daily, May 9, 2006, Pg. 3, 744 words, Mackenzie gas pipeline dispute headed to NEB, GP
... MEG. A 2003 open season offering rights to book ...
58. Gas Daily, May 8, 2006, Pg. 5, 108 words, Mississippi Hub to hold storage open season beginning May 15
... a non-binding open season for a proposed ...
59. Gas Daily, May 8, 2006, Pg. 1, 906 words, Kinder Morgan expands Express project eastward, BH
... company received to its binding open season on Rockies Express where ...
... a non-binding open season completed last week ...
60. Gas Daily, May 5, 2006, CORRECTION; Pg. 3, 41 words, Correction
... on a binding open season El Paso is conducting ...
61. Gas Daily, May 4, 2006, Pg. 3, 115 words, Bobcat receives strong interest in proposed La. storage facility
... recent non-binding open season for firm gas ...
62. Gas Daily, May 3, 2006, Pg. 4, 422 words, Marketing segment drives Sempra's earnings higher, MT
... said. In addition, the open season for a possible ...
63. Gas Daily, May 2, 2006 Correction Appended, Pg. 4, 315 words, El Paso holds binding open season for Continental Connector pipeline, MT
... begun a binding open season for its proposed Continental ...
The open season, which began at 10 ...
... a non-binding open season held late last ...
... 713-823-4338. Open season documents can also be downloaded ...
... on a binding open season El Paso is conducting ...
64. Gas Daily, May 1, 2006, Pg. 3, 329 words, Duke eyes storage capacity additions at three sites, RAW
... a non-binding open season that begins today. The others ...
... Interest expressed during the open season, which runs through May ...
... more information about the open season should contact Janice Devers ...
65. Gas Daily, April 27, 2006, Pg. 7, 185 words, CenterPoint launches open season for next phase of Gulf Coast pipeline
... binding, 30-day open season to gauge interest in ...
66. Gas Daily, April 25, 2006, Pg. 4, 728 words, Report: Alaska pipeline more cost-effective than LNG, MT
... plans to participate in the open season being held by ...

67. Gas Daily, April 21, 2006, Pg. 3, 189 words, Caledonia begins open season for 1.7 Bcf of Mississippi storage, SGS
... it has launched an open season for 1.7 Bcf of ...
... Caledonia will administer the open season as well as manage nominations, ...
... four cycles/year. The open season concludes at 5 ...
68. Gas Daily, April 17, 2006, Pg. 1, 455 words, Kinder Morgan proposes another major pipeline, BH
... a non-binding open season Thursday for the MidContinent ...
... GD 2/22). The open season for MidContinent Express ...
69. Gas Daily, April 12, 2006, Pg. 4, 213 words, KM holds binding open season for proposed expansion of NGPL
... launched a binding open season to gauge interest in ...
... Henry Hub. The binding open season concludes at 3 ...
70. Gas Daily, March 28, 2006, Pg. 1, 593 words, TransCanada expansion to serve US Northeast, MT
... it held an open season last spring to gauge ...
71. Gas Daily, March 28, 2006, Pg. 3, 245 words, Bobcat launches open season for proposed Louisiana facility
... a month-long open season offering service at its ...
... Investments LLC, is conducting the open season for only the initial ...
... Dt/d, respectively. The open season, which started Monday, will ...
72. Gas Daily, March 23, 2006, Pg. 1, 672 words, Storage increasingly seen as insurance policy, SGS
... just conducted an open season for Mobile Bay- ...
73. Gas Daily, March 17, 2006, Pg. 1, 441 words, CenterPoint plans 1.25 Bcf/d Midwest pipeline, MT
... Thursday launched an open season to gauge interest in ...
... after the non-binding open season, CEGT said a ...
... jointly held an open season on a proposed ...
... 17). In the latest open season, which runs through 3 ...
... in participating in the open season should contact Haynes at ...
74. Gas Daily, March 15, 2006, Pg. 3, 472 words, Charge causes Southern Union to report \$111.1 million Q4 loss, MT
... Bond also noted that an open season held for Panhandle ...
75. Gas Daily, March 14, 2006, Pg. 5, 210 words, Sempra plans open season for Mexican LNG terminal, MT
... a non-binding open season to seek shipper interest ...

... response received" during the open season. The open season is set to begin at ...
... Commission. "The proposed expansion and open-season process represent a ...

76. Gas Daily, March 10, 2006, Pg. 1, 374 words, Merrill Lynch, Sempra sign LNG capacity deal,
MT

... preparations for an open season related to a possible ...

77. Gas Daily, March 9, 2006, Pg. 4, 145 words, Equitrans holds open season for firm capacity in
Kentucky

... a non-binding open season to solicit interest in ...

ALASKA STATE LEGISLATURE

Sen. Charlie Huggins, Chair
Sen. Bert Stedman, Vice Chair
Sen. Lyda Green
Sen. Gary Stevens
Sen. Lesil McGuire
Sen. Bill Wielechowski
Sen. Thomas Wagoner



State Capitol, Room 119
Juneau AK 99801-1182
907-465-3878
Fax: 907-465-3265
800-462-3878

Senate Resources Committee

Friday, March 16, 2007
3:30 p.m. - 5:30 p.m.

AGENDA

- **SB 104 - Natural Gas Pipeline Project**
"An Act relating to the Alaska Gasline Inducement Act; establishing the Alaska Gasline Inducement Act matching contribution fund; providing for an Alaska Gasline Inducement Act coordinator; making conforming amendments; and providing for an effective date."

Presentation by Administration:

Pat Galvin, Commissioner, DOR

Kevin Banks, Acting Director, Division of Oil & Gas, DNR

Marcia Davis, Deputy Commissioner, DOR

Bonnie Harris, Senior Asst. AG; Oil, Gas & Mining Section, DOL (available for questions)

Don Schepler, Greenberg Taurig Consultants (available for questions)

By Teleconference:

Larry Ostrovski, Chief Asst. AG; Oil, Gas & Mining Section, DOL

Michael Williams, Chief Economist, Tax Division, DOR

Antony Scott, Division of Oil & Gas, Commercial Section, DNR

The Palin-Parnell Administration presents

AGIA

The Alaska Gasline Inducement Act

Part two

Last Updated: March 13th

Introduction

State value for the \$500M (Part 2)
Evaluation Criteria and Process
Increasing Predictability for Producers
Getting Gas for the Pipeline

AGIA

The Alaska Gasline Inducement Act

State Value for \$500 million

Part 1:

- Project moves forward faster**
- Lower tariffs**
- Expansion Commitments**
- Rolled-in rates**

Part 2:

- In-State Use**

Value for \$500 million

AGIA

The Alaska Gasline Inducement Act

In-State Use

- **5 off-take points**
- **Distance sensitive rates**
- **Expansion provisions**

Hypothetical: Gas Off-take in Fairbanks

- Off-take volume to meet heating needs only
 - Main pipeline sized at 4.3 BCF/D delivered to Alberta
 - Main pipeline cost \$20.5B
 - Main Pipeline has 70% debt financing at 14% ROE
-

Full Tariff from NS to AK/Canada border = 72¢

Mileage-based rate from NS to Fairbanks = 46¢

Distance sensitive rates

AGIA

The Alaska Gasline Inducement Act

Fairbanks Gas Prices if capacity acquired at initial or subsequent Open Season

With distance sensitive rates:

\$5.50 Alberta Gas price
minus \$2.14 pipeline (Alaskan + Canadian) and GTP costs
= \$3.36 North Slope netback value
+ 49¢ GTP fee
+ 47¢ tariff to Fairbanks
= **\$4.32 Fairbanks price**

Without distance sensitive rates:

\$3.35 North Slope netback value
+ 49¢ GTP fee
+ 72¢ tariff to Fairbanks
= **\$4.62 Fairbanks price**

Fairbanks Gas Prices if no capacity available through expansion

If in-state entities are not ready to subscribe for capacity in the initial open season, and if there are no expansions, then benefits of distance sensitive rates are not enjoyed.

Illustration:

\$5.50 Alberta Gas price
- \$2.14 pipeline and GTP costs
= \$3.36 North Slope netback value
+ \$2.14 pipeline and GTP costs
= \$5.50 Fairbanks gas price

Value to State:

- **Timing**
- **Cost overrun mitigation**
- **Favorable tariffs**
- **Initial capacity and expansion**
- **State match after open season**

Likelihood of Success:

- **Feasibility of work plan and budget**
- **Financial strength**
- **Technical expertise**
- **Track Record**

1) Applications made public

2) Public review and comment - 60 days

3) Commissioners select licensee and make findings.

4) Legislative review, opportunity to disapprove

- **Review of published applications**
- **Review of Commissioners' finding- 30 days,**

Increasing Predictability for Producers

1. Royalty predictability

- **“Higher-of” Provision**
- **RIV vs. RIK**

2. Production tax exemption

- **Description of tax exemption structure**
- **Constitutionality**

Royalty Predictability

- **Minimize retroactive adjustments**
- **Use public price indices**
- **RIK/RIV switching**

Production tax exemption

- **Tax Exemption = gas production tax obligation (current year) minus gas production tax obligation (open season year)**
- **Available only on gas shipped in capacity acquired in first binding open season**
- **Available first ten years of gas flow**

AGIA

The Alaska Gasline Inducement Act

Production tax exemption

Constitutionality

Constitution of Alaska

Article 9 - Finance and Taxation

§ 1. Taxing Power

The power of taxation shall never be surrendered. This power shall not be suspended or contracted away, except as provided in this article.

Constitution of Alaska

Article 9 - § 4. Exemptions

The real and personal property of the State or its political subdivisions shall be exempt from taxation [P]roperty used exclusively for non-profit religious, charitable, cemetery, or educational purposes, ... shall be exempt from taxation. Other exemptions of like or different kind may be granted by general law. All valid existing exemptions shall be retained until otherwise provided by law.

Getting Gas for the Pipeline

- **How Much is Needed?**
- **Prudhoe Bay**
 - **AOGCC off-take study**
- **Point Thomson**
- **New exploration**

Summary

AGIA

The Alaska Gasline Inducement Act

- **Get project built, quickly**
 - **Significant cost of delay**
 - **Need timelines, benchmarks**
- **Open the North Slope gas basin**
 - **Mandatory Expansion**
 - **Rolled in Tariffs**
- **Open and competitive process**
 - **Evaluation Criteria**
- **Low tariffs**
 - **State Contribution**
 - **Debt to Equity Ratio**
- **Gas for Alaska**
 - **Distance Sensitive Rates**
- **Jobs for Alaska**
 - **Training Program**
- **Increase Predictability for Producers**

Greenberg Traurig

Memorandum

TO: Antony Scott

FROM: Kenneth M. Mincinger **cc:** Donald C. Shepler

DATE: March 14, 2007

RE: Examples of Approved Capital Structure and Return on Equity ("ROE") for Major New/Expansion Projects (Initial Rates)

The attached table -- which, as requested, contains more detail than the one we sent you on March 10 -- lists several major new pipelines and expansion projects, and the capital structure and return on equity ("ROE") approved by the Federal Energy Regulatory Commission ("FERC") for each project as part of the initial rates approved in the pipeline's certificate proceeding. The table reflects an average capital structure for these projects of approximately 66 percent debt and 34 percent equity. The table also indicates that a 70/30 debt/equity ratio, with a ROE of 13-14 percent, is fairly common for new/expansion projects. There are some notable exceptions, however, such as Rockies Express, which has a capital structure of 45 percent debt and 55 percent equity.

In addition, this table provides: (1) a short description of each project; (2) the project's length, diameter, and capacity; and (3) the project's cost. Of course, none of the listed projects is as large as the anticipated size of an Alaska natural gas pipeline project, either in terms of capacity or cost. Nevertheless, the table provides a reasonable sample of recent major new or expansion projects in the Lower 48 states, including some that have a capacity greater than 1 billion cubic feet per day ("Bcf/day"), along with several projects with a capacity significantly less than 1 Bcf/day.

FERC Certificate Orders

Examples of Approved Capital Structure and Return on Equity ("ROE") for Major New/Expansion Projects (Initial Rates)

Pipeline	Project Description ¹	Capital Structure (Debt/Equity)	ROE	Length, Diameter and Capacity ²	Project Cost (estimate from application; older projects not in 2007 dollars)
Millennium Pipeline Co., LLC, 117 FERC ¶ 61,319 (2006)	Proposal to construct new pipeline in New York state to serve increased demand in the New York City area	70/30	14.00%	181.7 miles of 30-inch pipeline Approx. 525,400 Dth/d	\$664 million
North Baja Pipeline, LLC, 117 FERC ¶ 61,022 (2006)	Expansion of existing natural gas pipeline running from the Arizona/California border into Southern California, and then into Mexico, to accommodate anticipated LNG supplies; also modification of the pipeline to accommodate bi-directional gas flow	70/30	14.00%	New loop of 68.1 miles of 48-inch pipeline and 11.2 miles of 42-inch pipeline, and smaller lateral facilities Expansion from approx. 512,500 Dth/d to 2.7 Bcf/d	\$291 million
Entrega Gas Pipeline, Inc., 112 FERC ¶ 61,177 (2005)	New pipeline for Rockies gas extending from the Piceance Basin in Colorado to the Cheyenne, Wyoming Hub (Note: this pipeline has since been consolidated into Rockies Express -- see next entry)	35/65	12.00%	136 miles of 36-inch pipeline and 191 miles of 42-inch pipeline Approx. 1.5 Bcf/d	\$664 million
Rockies Express Pipeline, LLC, 116 FERC ¶ 61,272 (2006)	An extension of the former Entrega pipeline, which ultimately will ship Rockies gas to Ohio; this is the "REX-West" portion, which primarily involves new pipeline facilities extending from the Cheyenne Hub to an interconnection with Panhandle Eastern Pipe Line Company located in Missouri	45/55	13.00%	Primarily 713 miles of 42-inch pipeline Approx. 1.5 Bcf/d	\$1.6 billion

¹ All of the information contained in this chart was derived from the orders cited in the "Pipeline" column.

² Compression associated with these facilities has not been specifically discussed on this chart, although it is reflected in the capacity figures that are listed.

Colorado Interstate Gas Co. and Cheyenne Plains Gas Pipeline Co., 105 FERC ¶ 61,095 (2003)	A new interstate natural gas pipeline receiving Rockies supplies at the Cheyenne Hub and extending southeastward across Colorado and Kansas to a terminus in southwestern Kansas	69/31	14.00%	380 miles of 30-inch diameter pipeline \$60,000 Dth/d	\$332 million
Islander East Pipeline Co., LLC, 97 FERC ¶ 61,363 (2001)	A proposed new pipeline extending from an interconnection with Algonquin near North Haven, Connecticut, across Long Island Sound and terminating on Long Island	70/30	14.00%	Approximately 50 miles of 24-inch pipeline 285,000 Dth/d	\$149.6 million
Iroquois Gas Transmission System, LP, 100 FERC ¶ 61,275 (2002)	Named the Eastern Long Island Expansion Project (ELI Project), this project was designed to provide service to eastern Long Island, New York	75/25	12.38%	29.1 miles of 20-inch pipeline 175,000 Dth/d	\$105 million
Guardian Pipeline, LLC, 91 FERC ¶ 61,285 (2000)	A new natural gas pipeline serving Wisconsin, extending from the Chicago Hub to a terminus in Wisconsin, together with a lateral off of its mainline to another point in Wisconsin	70/30	14.00%	140.3 miles of new 36-inch pipeline 750,000 Dth/d	\$224.3 million
Gulfstream Natural Gas System, LLC, 91 FERC ¶ 61,119 (2000)	New natural gas transmission facility designed to transport up to 1.13 Bcf per day from supply areas in Alabama and Mississippi across the Gulf of Mexico to load centers in central and eastern Florida	70/30	14.00%	744 miles of pipeline of diameters ranging from 36-inch to 24-inch 1.13 Bcf/d	\$1.654 billion
Vector Pipeline LP, 85 FERC ¶ 61,083 (1998)	New pipeline extending from near Chicago through Indiana and Michigan to the U.S.-Canada border near St. Clair, Michigan	70/30	14.00%	270 miles of 42-inch pipeline 1 MMDth/d	\$447 million
Alliance Pipeline LP, 80 FERC ¶ 61,149 (1997)	New pipeline from British Columbia to the U.S./Canada border near Sherwood, North Dakota, to an interconnection with Peoples Gas Light and Coke Company near Chicago (figures are for U.S. portion only)	70/30	14.00%	887 miles of 36-inch pipeline 1.325 Bcf/d	\$1.34 billion
Nautilus Pipeline Co., LLC, 78 FERC ¶ 61,325 (1997)	Facilities that transport natural gas from offshore Louisiana onshore Louisiana	50/50	13.25%	101 miles of 30-inch diameter pipeline 600 MMc/d	\$121 million

<i>Maritime & Northeast Pipeline, LLC, 76 FERC ¶ 61,124 (1996)</i>	New pipeline extending from a point of interconnection with Tennessee Gas Pipeline in Massachusetts to a point of interconnection with Granite State Gas Transmission in Maine	75/25	14.00%	64 miles of 24-inch pipeline 60,000 MMBtu/d	\$82 million
<i>Portland Natural Gas Transmission System, 76 FERC ¶ 61,123 (1996)</i>	New pipeline extending from an interconnection with TransCanada at the Canadian border near North Troy, Vermont to points in Maine, New Hampshire, and Massachusetts	75/25	14.00%	242 miles of 20-inch pipeline 178 MMcf/d	\$271 million
<i>Kern River Gas Transmission Co., 98 FERC ¶ 61,205 (2002)</i>	2003 Expansion of Kern River's system, which ships Rockies gas from points in Wyoming to delivery points located primarily in California	70/30	13.25%	634.3 miles of 36-inch pipeline and 82.4 miles of 42-inch pipeline 885.6 MMcf/d	\$1.27 billion

Average Debt = 66 percent; High = 75 percent; Low = 35 percent

ALASKA STATE LEGISLATURE

Sen. Charlie Huggins, Chair
Sen. Bert Steedman, Vice Chair
Sen. Lyda Green
Sen. Gary Stevens
Sen. Lesil McGuire
Sen. Bill Wielechowski
Sen. Thomas Wagoner



State Capitol, Room 119
Juneau AK 99801-1182
907-465-3878
Fax: 907-465-3265
800-862-3878

Senate Resources Committee

Monday, March 19, 2007
3:30 p.m. - 7:30 p.m.

AGENDA

- **SB 104 - Natural Gas Pipeline Project**
An Act relating to the Alaska Gasline Inducement Act; establishing the Alaska Gasline Inducement Act matching contribution fund; providing for an Alaska Gasline Inducement Act coordinator; making conforming amendments; and providing for an effective date."

- **Governor's Gas Team**

Walk through with question & answer session:

Tom Irwin, Commissioner, Dept. of Natural Resources

Pat Galvin, Commissioner, Dept. of Revenue

Marcia Davis, Deputy Commissioner, Dept. of Revenue

Kevin Banks, Acting Director, Division of Oil & Gas, DNR

Antony Scott, Div. Oil and Gas, Commercial Section, DNR

By Teleconference from the O & G Conference Rm. in Anchorage:

Bonnie Harris, Sr. Asst. AG; Oil, Gas & Mining Sect., DOL (available for questions)

Don Schepler, Greenberg Taurig Consultants (available for questions)

ALASKA STATE LEGISLATURE

Sen. Charlie Huggins, Chair
Sen. Bert Stedman, Vice Chair
Sen. Lyda Green
Sen. Gary Stevens
Sen. Lesil McGuire
Sen. Bill Wielechowski
Sen. Thomas Wagoner



State Capitol, Room 119
Juneau AK 99801-1182
907-465-3878
Fax: 907-465-3265
800-862-3878

Senate Resources Committee

March 19, 2007

Mr. Patrick Galvin, Commissioner
Alaska Department of Revenue
P.O. Box 110400
Juneau, Alaska 99811-0400

Dear Commissioner Galvin,

The governor's Alaska Gasline Inducement Act proposal contemplates providing for "an annual exemption from the state's gas production tax in an amount equal to the difference between the amount of the person's gas production tax obligation calculated under the gas production tax in effect during that tax year and the amount of the person's gas production tax obligation calculated under the gas production tax in effect at the conclusion of the first binding open season held under this chapter."

In discussion with the governor's gasline team they acknowledged that the gas tax was probably too high and should be changed. Implied in the above provision is the governor's intent that the legislature take that task on and change the tax prior to the open season. This would provide certainty for the producers and explorers; and if the tax was lower, comparable to gas tax rates in other regions, it would provide an incentive for explorers to look for new gas reserves in Alaska.

Prior to the passage of the PPT legislation, oil and gas were taxed differently, recognizing the difference in economics in marketing oil and gas. Currently the PPT taxes oil and gas at the same level. We are trying to determine, were we to change the tax to be more competitive with North America and/or International markets, what that tax might look like.

If we changed the tax on gas from 22 ½% to some lesser amount, what percent would make us competitive in the North American markets? In the international markets?

What would a progressivity factor look like to be consistent with the intent of the progressivity factor for oil?

Last year during the PPT discussions an exclusion of a certain percentage of gas was considered as an alternative to changing the gas tax. What percent of capacity would we need to exempt from our 22.5% tax in order to bring the tax, averaged over total capacity, into alignment with North American markets, and with international markets?

If we change the tax on gas or exclude a portion of the gas from tax, are there other things we need to consider as we approach this issue, e.g., auditing facilities that are partially used for oil production and for gas production?

Please feel free to contact me if you have questions regarding this request.

Sincerely,

Charlie Huggins, Chair

Cc: DNR Commissioner
Chief of Staff
Governor's legislative liaison

ALASKA STATE LEGISLATURE

Sen. Charlie Huggins, Chair
Sen. Bert Stedman, Vice Chair
Sen. Lyda Green
Sen. Gary Stevens
Sen. Lesil McGuire
Sen. Bill Wielechowski
Sen. Thomas Wagoner



State Capitol, Room 119
Juneau AK 99801-1182
907-465-3878
Fax: 907-465-3265
800-862-3878

Senate Resources Committee

Senate finance Room 532

Wednesday, March 21, 2007

AGENDA

- **SB 104 – Natural Gas Pipeline Project**
"An Act relating to the Alaska Gasline Inducement Act; establishing the Alaska Gasline Inducement Act matching contribution fund; providing for an Alaska Gasline Inducement Act coordinator; making conforming amendments; and providing for an effective date."

3:30 p.m. – 5:00 p.m.

Presentation & Dialog with Producers

BG

David N. Keane, Vice President Policy and Corporate Affairs

Chevron

Vince LeMieux, New Ventures Alaska, Manager
Kevin Tabler, Land Manager & Government Affairs
Tim Houston, Commercial Manager Alaska

Testimony By Invitation

5:30 pm – 7:30 pm

Joint Senate Resources and House Special Committee on Oil & Gas

Public Testimony

Time Limit May Be Set

Sharon Long

From: Sharon Long

Sent: Wednesday, March 21, 2007 8:53 PM

To: Ann Krekelberg; Barry, Timothy M (DFG); Cheryl Sutton; Clark, Christopher G (GOV); Darwin Peterson; Deborah Grundmann; George Ascott; Hay, Linda J (DEC); Ian Laing; Jane Kasberg; Jerry McCune UFA; Jody Simpson; Lesh, Melanie G (DNR); Marit Carlson Van Dort; Mary Jackson; Michelle Sydeman; Peg Warren; Portia Babcock; Sen. Bill Wielechowski; Sen. Charlie Huggins; Sen. Gary Stevens; Sen. Lesli McGuire; Sen. Lyda Green; Sen. Stedman; Sen. Tom Wagoner; Sharon Long; Steve Porter; Sue Gullufsen; Cheryl Sutton; Rep. Vic Kohring; Rep. Kurt Olson; Rep. Nancy Dahlstrom; Rep. Jay Ramras; Rep. Ralph Samuels; Rep. Mike Doogan; Rep. Scott Kawasaki; Jim Pound; Judith Erickson; Jeff Turner; Konrad Jackson; Kelly Huber; Barbara Cotting; Ken Alper; Graham Siebe; Brodie Anderson; Deborah Grundmann; Jody Simpson; Karen Sawyer; Melanie Lesh; Burnett, Jerry D (DOR); Gary Stambaugh; Kirsten Waid; Martha Hopson

Subject: AGIA SRES Meeting carryover to 3/22/07

Greetings all,
Lucky! The Fahrenkamp room is booked tomorrow afternoon for **Senate Resources Cmte.** Our captivating discussion with the Producers was cut short this afternoon before we concluded our colloquy. **Senator Huggins recessed the meeting, to be continued tomorrow (Thursday, March 22) @ 4 PM.** The Chevron USA representatives, Vincent LeMieux and Tim Houston (pronounced how.stun) will return to the meeting via teleconference at that time.

The House Special Committee on Oil & Gas is again, most welcome. Please bring your questions and join us in this compelling and frank discussion.

I would appreciate knowing ahead of time who will be attending.
Thank you very much,

Sharon J. Long, Staff
Senate Resources Committee
(907) 465-4907

BG Group

89



Senate Resources Committee

David Keane • Juneau • March 21

Legal Notice

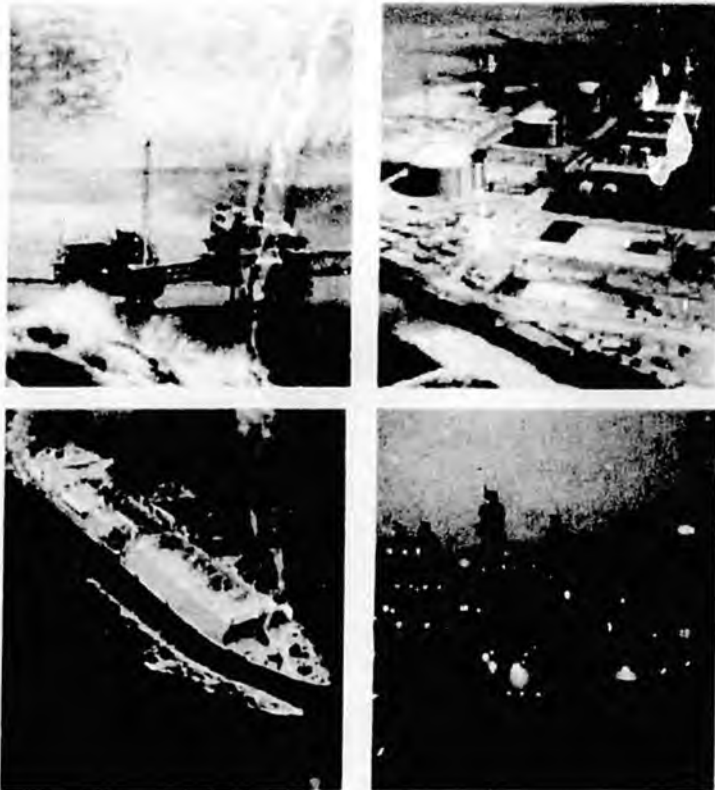


The following presentation contains forward-looking statements concerning BG Group's operations, financial performance, strategy, outlook and growth opportunities. Words such as "believes", "expects", "anticipates", "intends" or similar expressions are intended to identify such forward-looking statements.

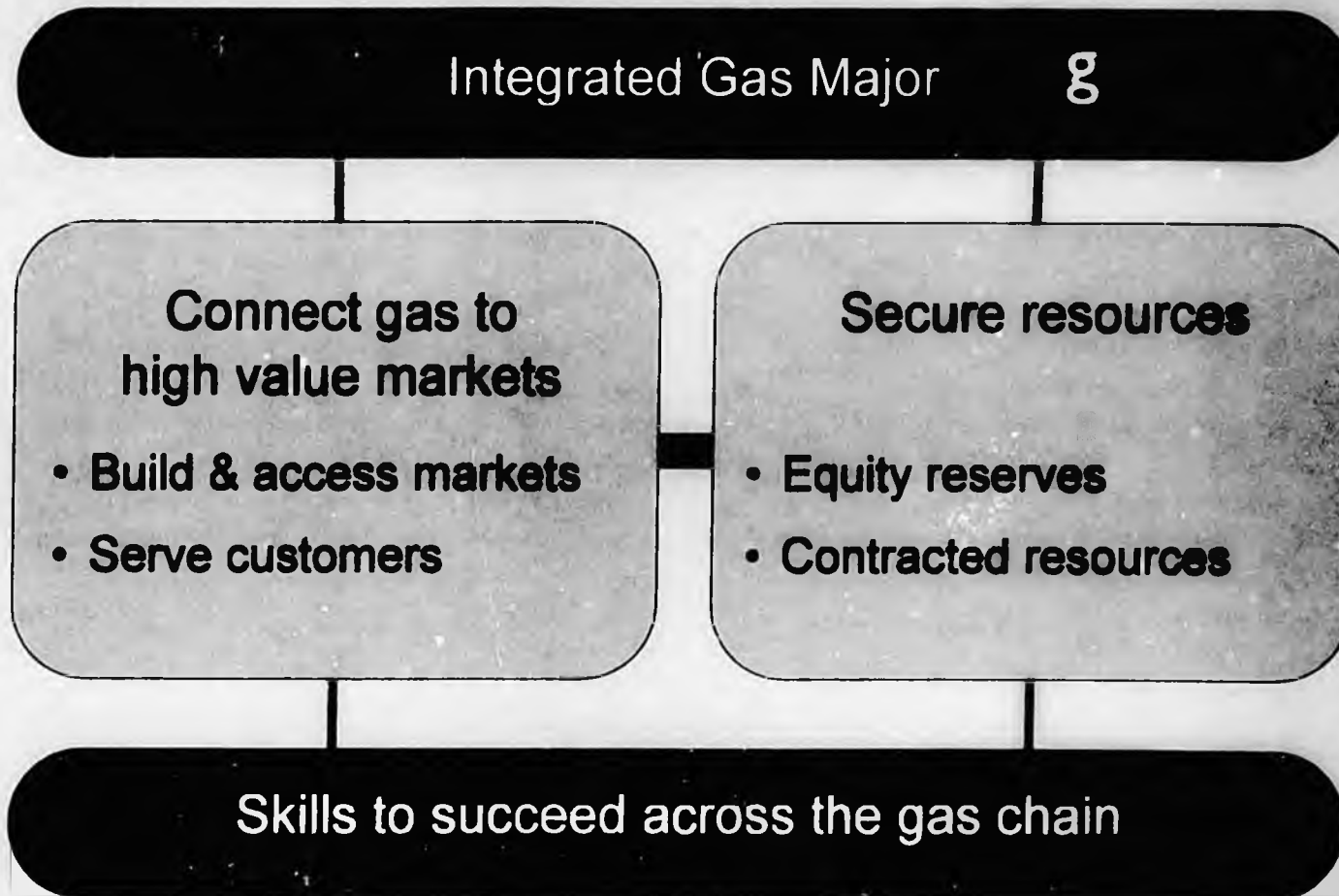
By their nature, forward-looking statements involve uncertainty because they depend on, and relate to, future circumstances and events not all of which are within our control. Although BG Group believes that the expectations reflected in such forward-looking statements are reasonable, no assurance can be given that such expectations will prove to have been correct. Accordingly, results could differ materially from those set out in such forward-looking statements for a number of reasons, including but not limited to, changes in economic, market and competitive conditions; regulatory changes; governmental actions; fluctuations in commodity prices and exchange rates; supply and demand for oil and gas; the risks inherent in project implementation and delivery, and exploration and production activities; the inability or failure of co-venturers to meet contractual and/or funding obligations; natural disasters and adverse weather conditions; and war, sabotage and acts of terrorism. For a more detailed analysis of the factors that may affect our business, the results of our operations and our financial performance, we urge you to look at certain 'Risk Factors' included in BG Group's Annual Report and Accounts 2006. BG Group undertakes no obligation to update any forward-looking statements.

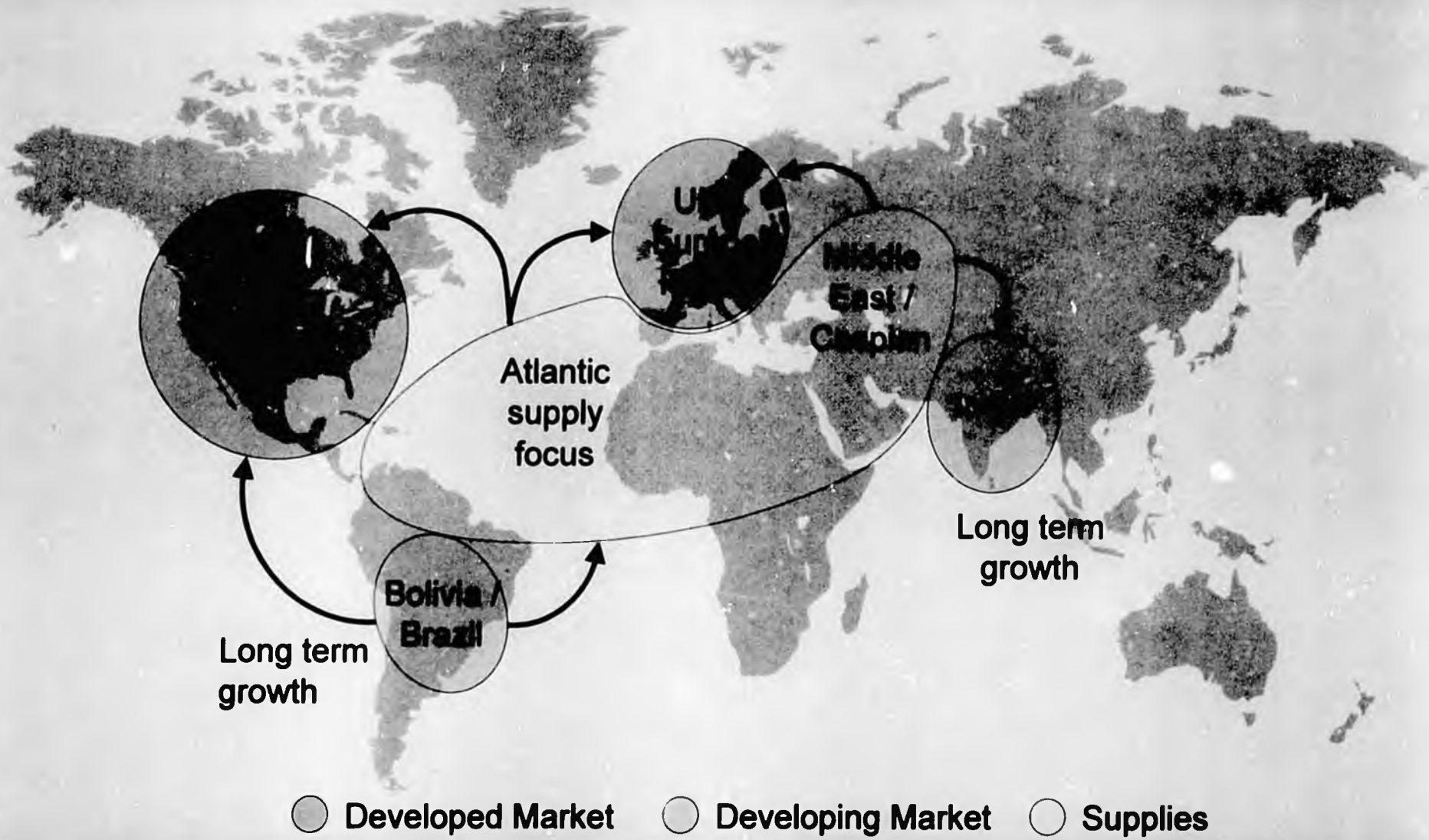
No part of this presentation constitutes or shall be taken to constitute an invitation or inducement to underwrite, subscribe for or otherwise acquire, or dispose of any ordinary shares, ADRs or other investment in BG Group plc or any other entity, nor does it advise any person to do any of the foregoing and this presentation must not be relied upon in any way in connection with any investment decision.

Natural gas. It's our business



- **Integrated gas major**
 - Long heritage in natural gas
- **Activities span the natural gas chain**
 - Exploration & Production
 - LNG
 - Transmission & Distribution
 - Gas Fired Power Generation
- **A top 20 UK company**
- **Market capitalisation**
 - Over \$45 billion
- **A global player**
 - Active in 25 countries



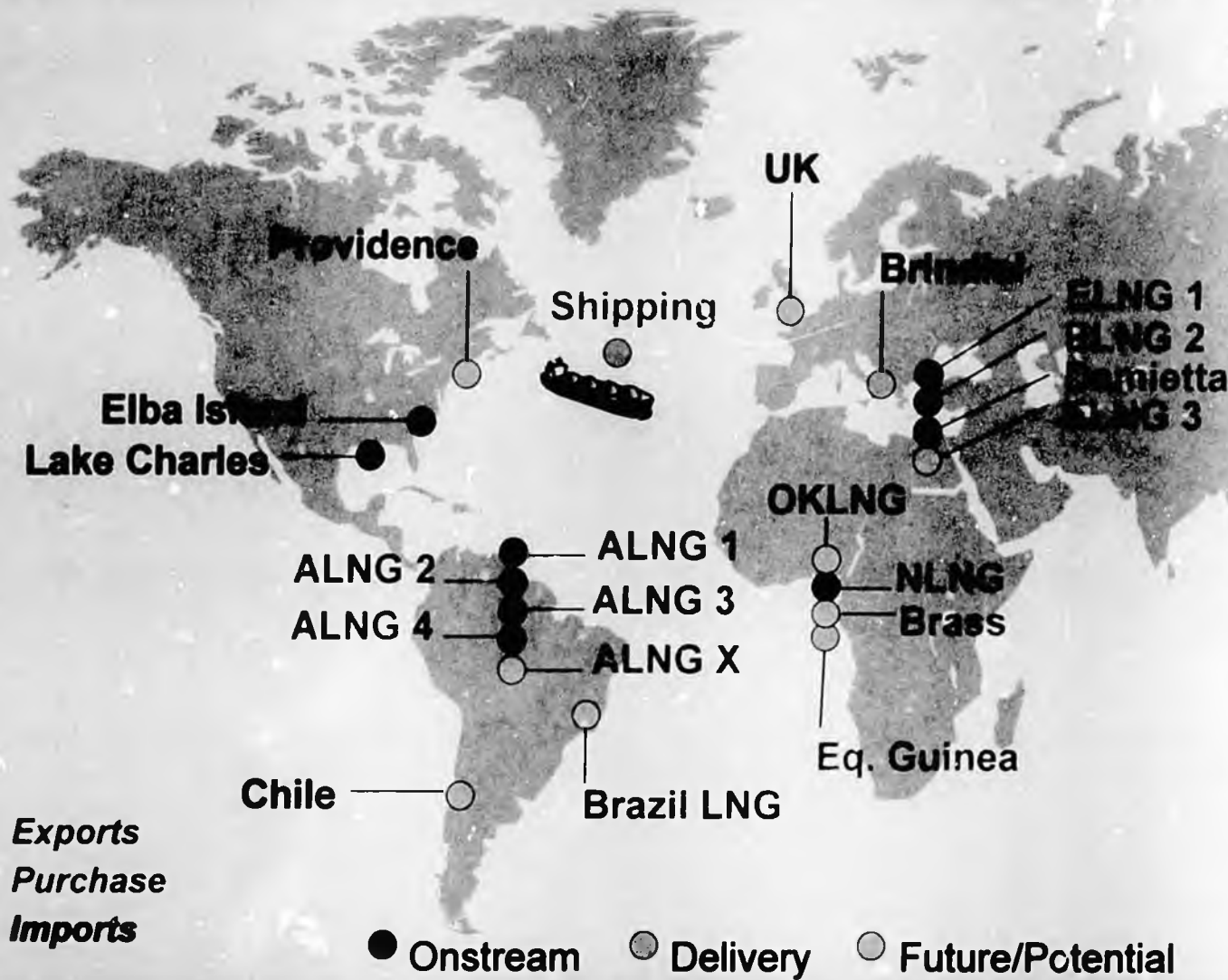


Strategy

Countries of current operation



BG Group's LNG portfolio

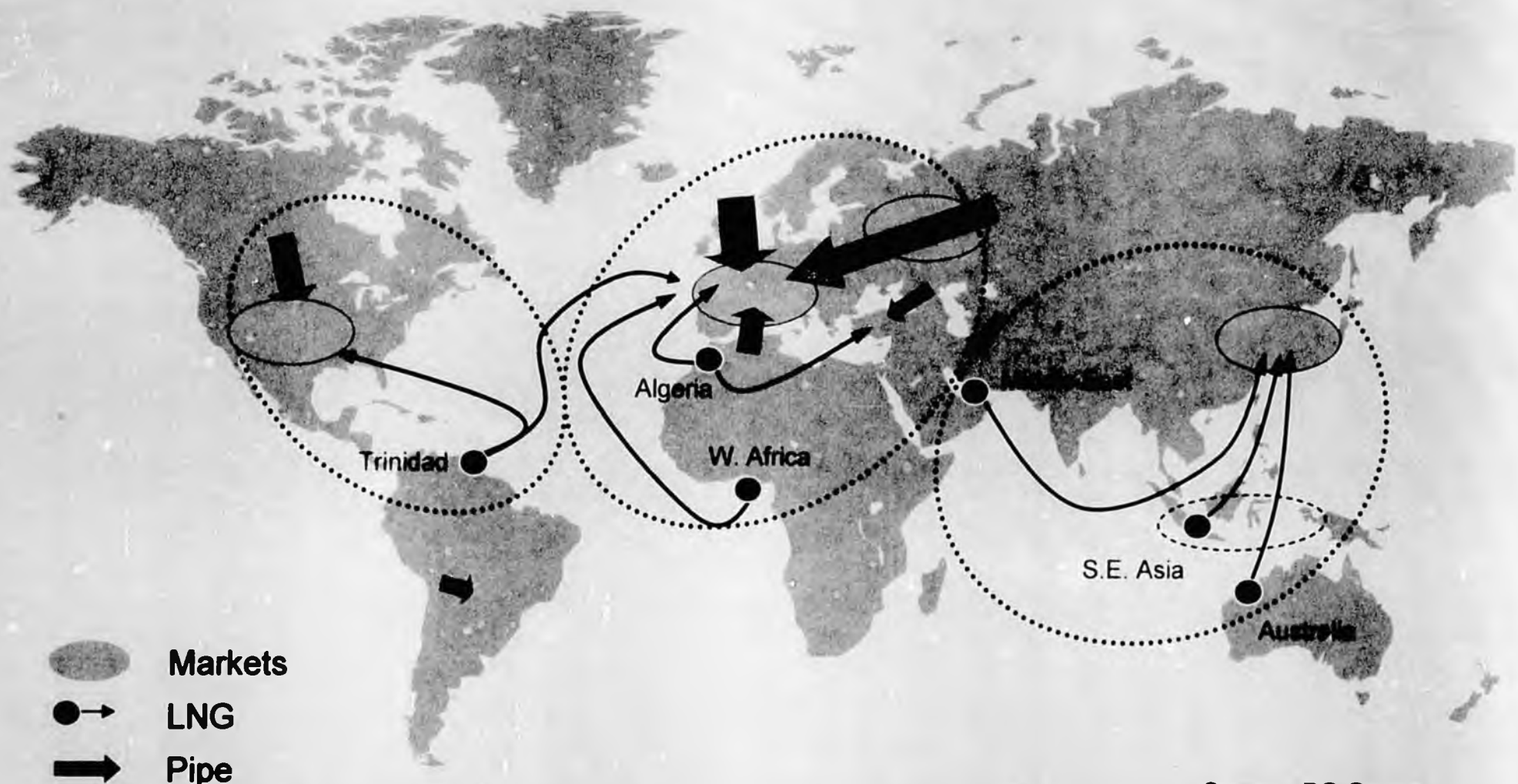


Atlantic LNG



Lake Charles

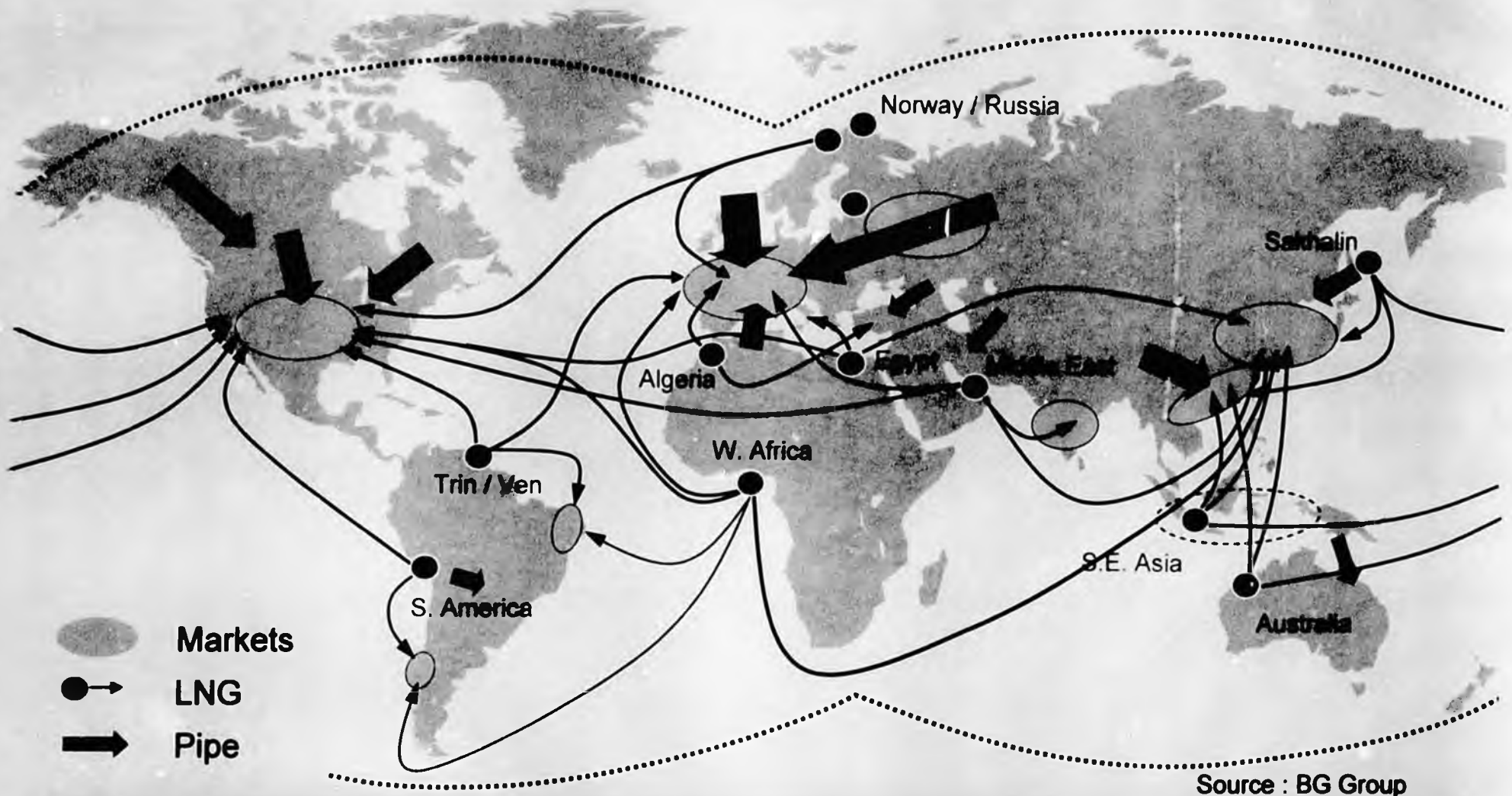
Balancing growth of markets and supplies 7



- Markets
- LNG
- Pipe

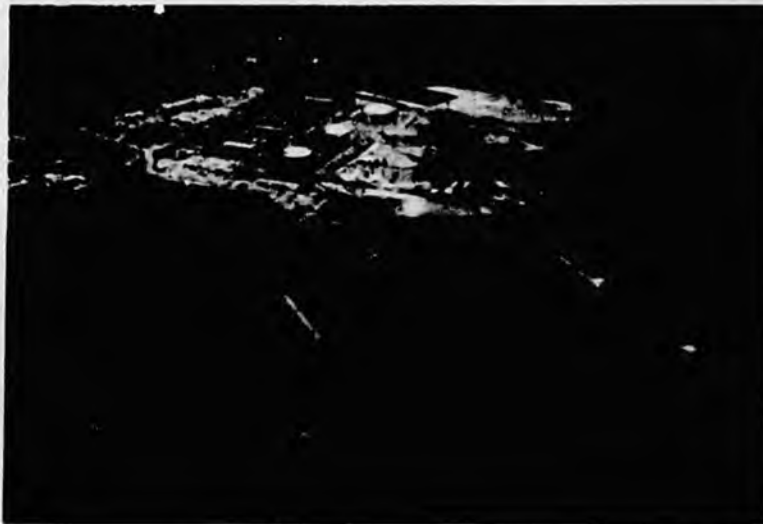
Source : BG Group

Global gas trade – gradually evolving

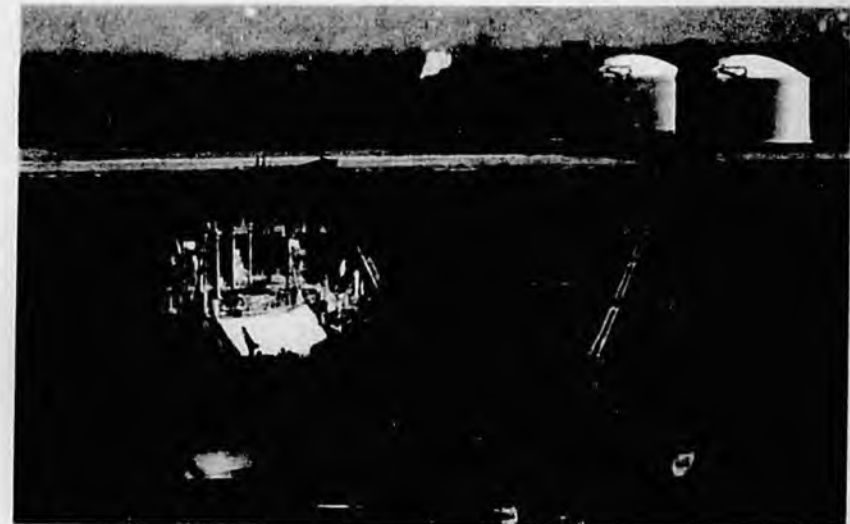


to a globalising gas industry 9

BG LNG Supply projects



- Train 1: 3.1 mtpa – 1999 (BG 26.0%)
- Train 2/3: 6.6 mtpa – 2002 (BG 32.5%)
- Train 4: 5.2 mtpa – 2005 (BG 28.9%)
- BG initiated project and was instrumental in Phillips design
- Single train start-up



- Train 1: 3.6 mtpa – 2005 (BG 35.5%)
- Train 2: 3.6 mtpa – 2005 (BG 38.0%)
- Egypt's largest project financing to date
- Unique project commercial structure
- Utilized lessons learnt from ALNG

Atlantic LNG – total export capacity of 15 mtpa in just 7 years

Market summary

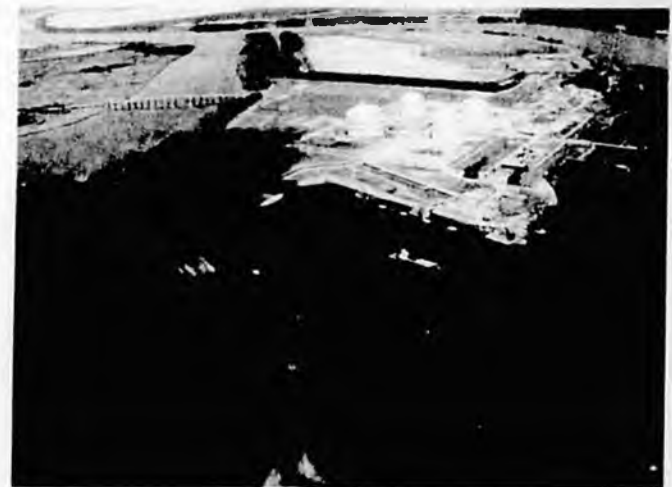
US



- **Lake Charles import terminal**
- **Phase I expansion Q4 2005**
 - 1.2 bcf/d sustainable send out
 - 1.5 bcf/d peak send out
 - 9.1 bcf total storage
- **Phase II expansion Q2 2006**
 - 1.8 bcf/d sustainable send out
 - 2.1 bcf/d peak send out
- **Elba Island import terminal**
 - 0.45 bcf/d sustainable send out
 - 0.67 bcf/d peak send out
 - 4.0 bcf storage capacity
 - 1.17 bcf/d firm send out & 8.2 bcf storage after second expansion



Lake Charles

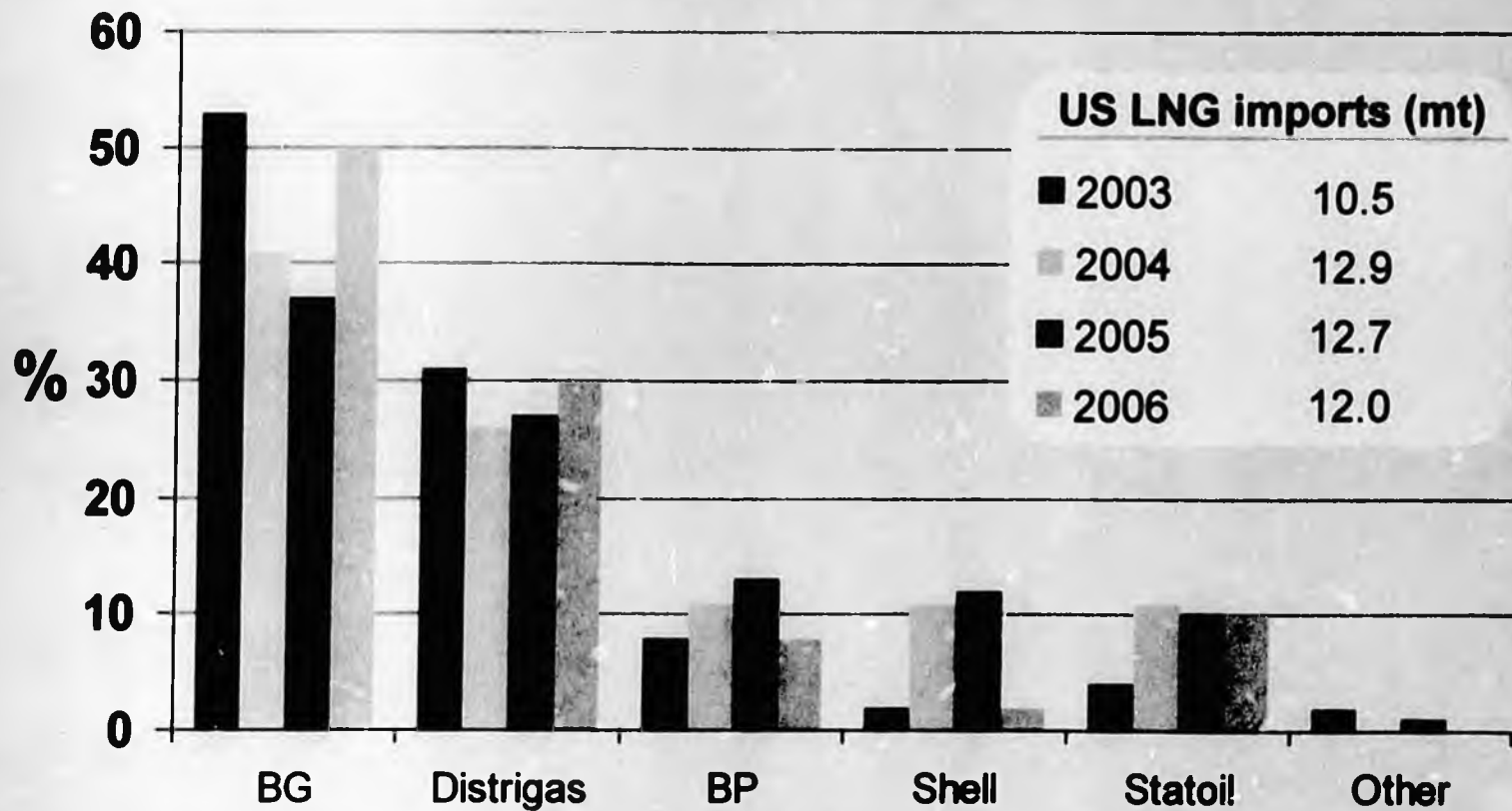


Elba Island

US LNG imports 2003 to present



Share of US LNG imports



Source : DOE

BG - the largest US LNG importer in 2003, 2004, 2005 and 2006

BG LNG Shipping

BG shipping capacity



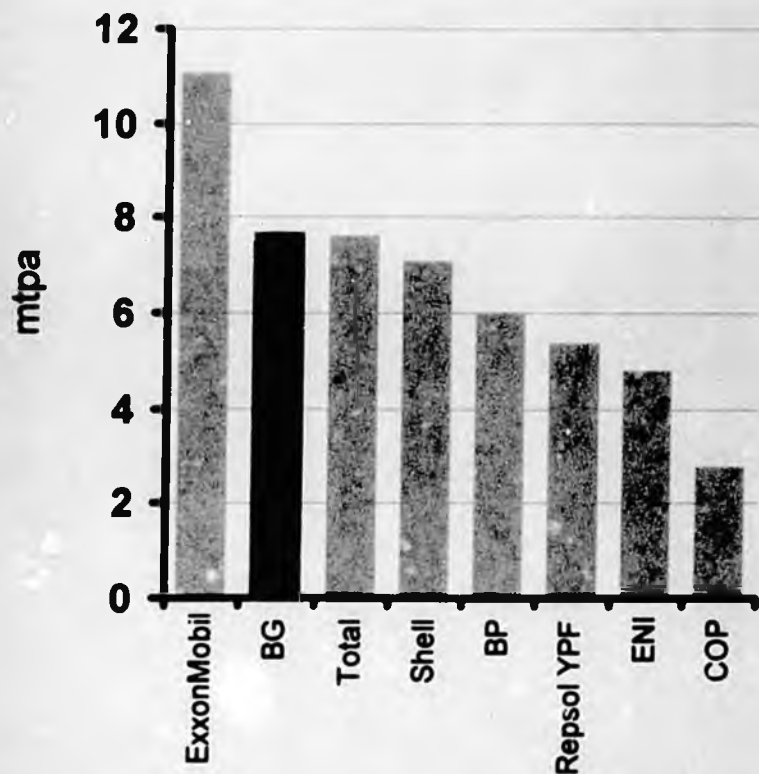
- 4 Golar ships (chartered)
- Methane Princess (20-year charter)
 - Golar new-build delivered early 2004
- Methane Kari Elin (long-term lease)
 - Samsung new-build delivered mid 2004
- Methane Rita Andrea, Methane Jane Elizabeth & Methane Lydon Volney
 - Samsung new-build delivered April, June and August 2006
- 3 new ships scheduled for delivery
 - Samsung new-builds delivery 2007
- 2 new ships scheduled for delivery
 - Samsung 170,000 m³
 - Delivery 2010



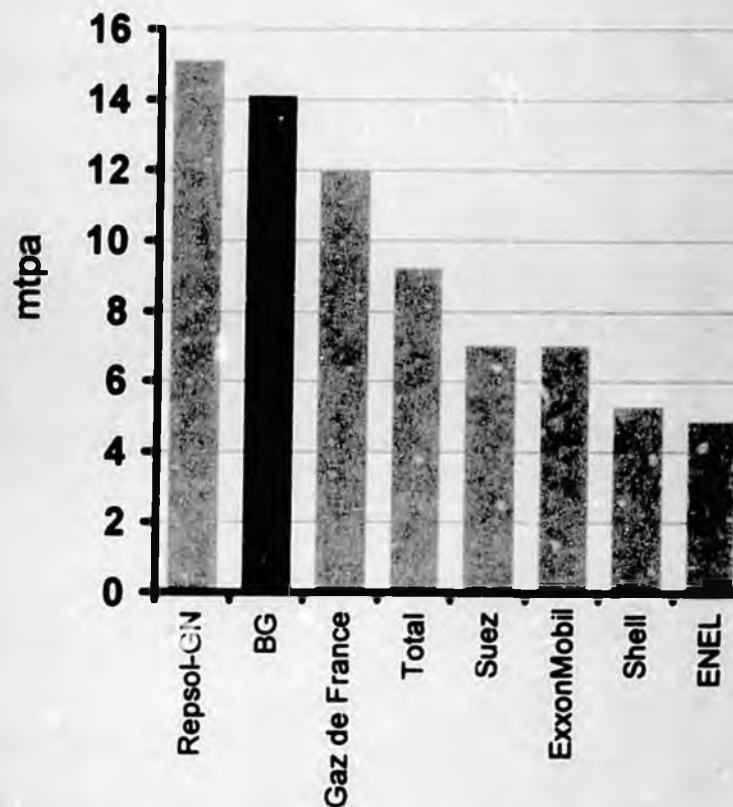
Methane Rita Andrea



Liquefaction capacity 2010



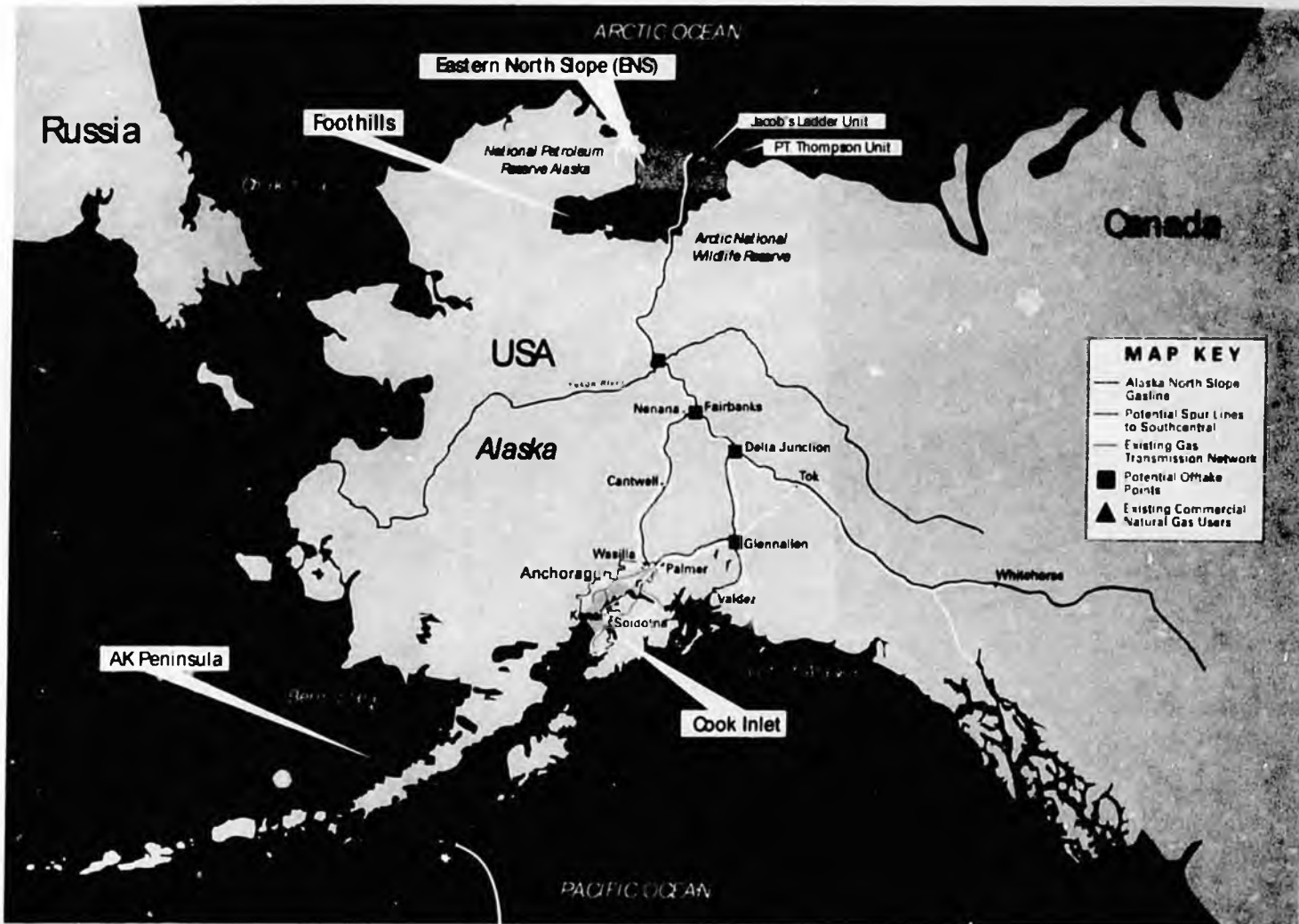
LNG contracted for purchase – 2010



Source: BG based on WoodMcKenzie data – June 2006

BG has the largest combined liquefaction and purchase position

Alaska Overview



2.1 million acres in the Foothills of ANS



- **BG is investing in Alaska**
 - Signed agreements to explore along North Slope and ENS
- **BG is a leading player throughout the natural gas value chain**
 - Leading player in LNG - BG is interested in exploring the LNG option
- **BG supports a pipeline contract, but:**
 - Had serious concerns about the previous draft contract
 - Contract must provide a level playing field for all participants
 - Contract must provide reasonable certainty that when we discover gas, we will have access to pipeline capacity
 - BG encourages the State to enter into discussions with independent pipeline companies

ALASKA STATE LEGISLATURE

Sen. Charlie Huggins, Chair
Sen. Bert Stedman, Vice Chair
Sen. Lyda Green
Sen. Gary Stevens
Sen. Lesil McGuire
Sen. Bill Wielechowski
Sen. Thomas Wagoner



State Capitol, Room 119
Juneau AK 99801-1182
907-465-3878
Fax: 907-465-3265
800-862-3878

Senate Resources Committee

Senate finance Room 532

Thursday, March 22, 2007

AGENDA

- **SB 104 – Natural Gas Pipeline Project**
“An Act relating to the Alaska Gasline Inducement Act; establishing the Alaska Gasline Inducement Act matching contribution fund; providing for an Alaska Gasline Inducement Act coordinator; making conforming amendments; and providing for an effective date.”

4:15-6:15

Continuation of 3/21/07 Meeting

Chevron

By Teleconference

Vince LeMieux, New Ventures Alaska, Manager

Tim Houston, Commercial Manager Alaska

Testimony By Invitation

Greenberg Traurig

Memorandum

TO: Commissioner Pat Galvin (Department of Revenue) and Commissioner Tom Irwin (Department of Natural Resources)

FROM: Donald C. Shepler

DATE: March 21, 2007

RE: Lower-48 examples of pipeline companies taking risk for cost overruns

The attached memo and accompanying chart shows that in *today's* world, pipeline companies in the Lower-48 and their shippers are working out mutually agreeable terms for *sharing* the risks of cost overruns associated with major expansions and new pipeline projects.

Rockies Express ("REX") is the most recent example. REX is estimated to cost \$4 billion and carry 2 Bcf/day 1,600 miles from the Rockies to pipeline interconnections in the East. The first leg of the pipeline went into service in February, and the final environmental impact statement for the second leg was issued by FEC on March 16.

REX offered shippers three rate options in its open season:

- 1) Regulated, cost-based recourse rates;
- 2) Fixed negotiated rates; or
- 3) Negotiated rates that are adjustable between a floor and a ceiling depending on the cost of steel.

By selecting one of the negotiated rate options shippers are insulated from the effect of cost overruns on the project whereas the regulated, recourse rate shippers may be exposed to higher rates if the project costs are higher than planned.

As shown on the chart attached to the memo, all three North-slope producers have some fixed rate contracts for transportation on Lower-48 pipelines. This is further confirmation of the point that shippers can insulate themselves from cost overruns as well as future rate increases due to other factors.

Greenberg Traurig

Memorandum

TO: Antony Scott
FROM: Kenneth M. Minesinger
DATE: March 20, 2007
RE: Examples of New Pipeline Projects That Have Used Negotiated Rates To Allocate the Risk of Potential Cost Overruns

cc: Donald C. Shepler

Introduction and Summary of Conclusions

This memorandum provides a summary of how a number of pipelines and their shippers have agreed contractually to share or otherwise allocate the risk of cost overruns for new pipeline projects and expansions. Reported decisions of the Federal Energy Regulatory Commission ("FERC" or "Commission") contain several examples of risk-sharing agreements, although relatively few that expressly address the risk of increases in the price of steel and other specific factors that can affect the cost of constructing a new pipeline. Thus, in addition to reviewing relevant FERC orders, we also reviewed open season notices, precedent agreements, and other publicly available materials. Our review disclosed a number of examples of pipeline/shipper risk sharing agreements, enabling us to reach the following conclusions:

- The recent Rockies Express project gave shippers several contracting options, including the option of negotiating a contract that required the pipeline and shipper to share the risk of cost overruns with a certain range, or a contract that required either the pipeline or the shipper to bear the risk of overruns above or below a fixed rate level.

- The Alliance project also negotiated a cost sharing arrangement with its shippers, with the pipeline agreeing to bear the risk of cost overruns that would have reduced its return on equity to 10 percent if fully realized.
- In the early 1990s, the Mojave Pipeline project, constructed contemporaneously with Kern River to serve customers in south-central California, negotiated contracts with its shippers that, prior to the in-service date, were linked to the price of steel, and capped shippers' exposure to cost overruns above a fixed rate ceiling.
- As discussed in our prior memorandum dated March 12, 2007, FERC strongly encourages pipelines to negotiate agreements with their shippers allocating the risk of cost overruns for major construction projects. There are a number of examples where pipelines and shippers have negotiated *fixed rate contracts*, which allocate the risk of cost overruns above a rate cap to the pipeline, thereby insulating the shippers from the risk of cost overruns above the agreed-upon rate cap. The prevalence of situations where shippers bear the risk of cost overruns, by agreeing to pay whatever FERC ultimately approves based on the final costs of a particular project, has significantly diminished in recent years.

Discussion

1. Rockies Express

The recent Rockies Express ("REX") project provides an interesting, timely insight into how pipelines and shippers can choose to allocate the risk of cost overruns on a major new pipeline

project. REX is a "Greenfield" project that will ship growing supplies of Rockies gas to markets in the Eastern U.S., from receipt locations in Wyoming and other Rockies supply areas to the terminus of the pipeline in Ohio, where it will interconnect with downstream interstate pipelines. Upon completion of the western and eastern segments of the pipeline, REX will have a capacity of approximately 2 Bcf/day, and more than 1,600 miles of pipeline facilities. It is estimated that REX will cost approximately \$4 billion.¹ In terms of capacity, length, and cost, REX is probably the single largest new long-haul, natural gas pipeline project constructed in the U.S. since the Alliance project. Thus, while it is not nearly the size of an Alaska natural gas pipeline to Canada or Chicago, the REX project offers some interesting points of comparison.

In its open season posting, REX offered all open season bidders the opportunity to elect from three rate options, which would apply for the entire term of the service agreement, with a minimum term of ten years. First, shippers could elect to pay the maximum recourse rate determined by FERC, under which the shippers would essentially bear the risk of any prudently incurred cost increases. Under this first option, and unlike the other two rate options, REX would have the discretion to propose changes in this rate at FERC during the term of a shipper's contract, based on the actual cost of the project. In its open season materials, REX estimated that the initial recourse rate to go to the furthest downstream delivery points on REX would be \$1.427 Dth/day.

¹ Information available on Kinder Morgan's website at: http://www.kindermorgan.com/business/gas_pipelines/rockies_express/; see also February 28, 2006 Press Release of Kinder Morgan available at http://www.kindermorgan.com/business/gas_pipelines/rockies_express/NewsRelease_0228_REX_Commitments.pdf.

② Second, for this same end-to-end service, REX offered Anchor shippers a fixed negotiated rate of \$1.074 Dth/day.² This is significantly less than the estimated recourse rate of \$1.427, indicating REX was willing to take a lower return on equity than that approved by FERC in order to attract sufficient load for its project, and that REX's estimated recourse rate may, from REX's standpoint, have been conservative by building in some projected increases in the cost of construction. REX also may be gambling that in future years its recourse rate will decline below the level of its negotiated rates, providing it with the opportunity to earn a higher effective rate of return on its negotiated rate service in future years.

③ Third, for end-to-end service REX also offered Anchor shippers an adjustable negotiated rate. While the starting rate under this option was \$1.074 Dth/day, it was subject to a floor rate of \$1.024 and a ceiling rate of \$1.124. Adjustments were tied to fluctuations in the price of steel. In an appendix to the draft precedent agreement included in its open season posting, REX described this option as follows:

The Adjustable Negotiated Rate Option recognizes that the steel costs of the Project could change substantially between the time of execution of this Precedent Agreement and the time when the Project is placed in-service. The following rate adjustment mechanism ("Steel Price Adjustment") shall apply to Shippers electing the Adjustable Negotiated Reservation Rate Option. Any adjustment that results from this formula shall be communicated to Shipper by Transporter when all steel related Project costs have been determined.

Shipper's Adjustable Negotiated Reservation Rate will be adjusted to reflect actual total steel related project costs by using the Steel Price Adjustment and is subject to the rate floors and rate caps set forth in the tables below. The negotiated rates for

² For each of the three options, "Anchor" shippers – shippers who agreed to firm contracts for 200-500 MMcf/day, and "Foundation" shippers – shippers who agreed to firm contracts of more than 500 MMcf/day – received slightly lower rates than non-Anchor shippers, and somewhat more favorable contract rights (such as contractual right-of-first-refusal and rollover rights).

Certificate Segments, 1, 2, and 3, including Interim Service rates, may be increased or decreased from the Starting Rate as described in the formula below:

Steel Price Adjustment =

$(\text{actual realized steel cost per ton} - \$ 1,275 \text{ per ton}) * (\text{actual tons of steel}) / \$ 1,000,000 * \$ 0.0002$
/Dth

The Steel Price Adjustment will be added to or subtracted from the Starting Rate(s), however the final adjusted rate will be neither higher than the Ceiling Rate nor lower than the Floor Rate

Thus, REX's adjustable rate option offered some protection to shippers if the price of steel went below \$1,275/ton, and also gave some protection to REX if the price went above \$1,275/ton. The adjustable rate option also required REX to assume the risk of steel price increases in excess of the ceiling rate, and shippers to assume the risk of steel price decreases below the floor rate. Between those levels, however, the adjustable rate option effectively results in a sharing of the risk between the pipeline and the shipper. The open season materials do not explicitly address whether either REX or its customers could void the precedent agreement if steel prices either increased above or decreased below the ceiling and floor rates, respectively. However, it appears that the parties agreed to assume the risk of changes in steel prices above and below the ceiling and floor rates.

The REX project also provides an example of how the three major producers in Alaska -- BP, Conoco, and Exxon ("Producers") -- have been able to insulate themselves, in whole or in part, from the risk of construction cost overruns on other pipeline projects. Both BP and Conoco have entered into long-term, negotiated rate precedent agreements with Rockies Express. While the agreements themselves are not publicly available, some of the key terms of the agreements are reflected in the Statement of Negotiated Rates contained in the tariff filed with the initial

application for the REX-West part of the project.³ The BP and Conoco contracts both provide for a reservation rate of \$23.5425/Dth/month, for the duration of their respective agreements. Although the tariff sheets are silent on whether BP and Conoco elected a fixed or adjustable negotiated rate (the second and third options discussed above), it would appear that they choose the fixed rate option. In either case, this rate helps to protect BP and Conoco from cost overruns above the fixed rate, which also represents a significant discount from the otherwise applicable maximum recourse reservation rate of \$27.4297/Dth/month. A chart reflecting the BP and Conoco fixed rate contracts with REX, and examples of other fixed rate contracts held by the Producers, is attached to this memorandum at Appendix A.⁴

2. Alliance

The Alliance pipeline project was built in the late 1990s with a capacity of approximately 1.5 Bcf/day from supply areas in British Columbia to delivery points near Chicago, Illinois. Although the subject of steel prices was not explicitly discussed either by Alliance in its certificate application or by FERC in its orders authorizing construction of the project, a risk sharing arrangement tied to Alliance's construction costs is described in the certificate application. The Alliance case thus provides another example of how a major pipeline project and its shippers have allocated the risk of cost overruns.

³ See Rockies Express Pipeline LLC, FERC Gas Tariff, Pro Forma Second Revised Volume No. 1, Original Sheet Nos. 8-9A.

⁴ We forwarded this same chart to you yesterday along with a separate cover memo, but are including it here as well because it lists various fixed rate contracts held by the Producers on the REX and Alliance projects discussed herein.

By way of background, Alliance was one of the first pipelines constructed after the implementation of the Commission's negotiated rate policy in 1996. We will provide a detailed explanation of the origin of and rationale for negotiated rates in a subsequent memorandum. Importantly, negotiated rates, as authorized by FERC, permit pipelines and shippers to agree to rates that, either now or in future years, may exceed the maximum rate approved by FERC, or differ from the rate design approved by FERC.⁵ Negotiated rates gave pipelines and shippers the ability to craft creative rate agreements that, among other things, allocated the risk of cost overruns in a way that would not be possible if they were required simply to pay the maximum FERC-approved recourse rate.

Alliance and its shippers contractually agreed to negotiated rates that were predicated on a 12 percent return on equity ("ROE") for the life of the shippers' contracts. The core of the risk sharing agreement was that the 12 percent ROE was subject to adjustment for changes in construction costs. The base ROE of 12 percent was subject to an incentive mechanism under which each 10 percent deviation from the estimated capital costs to construct the pipeline would result in a 0.5 percent inverse adjustment to the base ROE. The incentive adjustment was limited to a plus or minus 2.0 percent (200 basis points) adjustment in the 12.0 percent base ROE.⁶ In

⁵ *Alternatives to Traditional Cost-of-Service Ratemaking for Natural Gas Pipelines: Regulation of Negotiated Transportation Services of Natural Gas Pipelines*, 74 FERC ¶ 61,076, *order on clarification*, 74 FERC ¶ 61,194, *reh'g denied*, 75 FERC ¶ 61,024 (1996) ("1996 Negotiated Rate Policy Statement").

⁶ See Alliance certificate application, FERC Docket No. CP97-168, at p. 20 (filed December 24, 1996); *Alliance Pipeline L.P.*, 80 FERC ¶ 61,149, at 61,592 (1997).

essence, therefore, Alliance assumed the risk of a two percent reduction in its ROE due to steel price increases, from the base ROE of 12 percent to a floor ROE of 10 percent.⁷

3. Mojave

Not surprisingly, efforts by pipelines and shippers to allocate the risk of constructing new projects predated the advent of negotiated rates at the Commission in 1996. Perhaps the best reported example involves the construction of the Mojave Pipeline Company facilities in the early 1990s. Mojave was constructed at the same time as Kern River Gas Transmission Company. Both Kern River and Mojave were built largely to serve enhanced oil recovery loads located near Bakersfield, California. Mojave constructed a 400 MMcf/day pipeline originating at the Arizona/California border at interconnections with two upstream pipelines, where Mojave receives gas produced in the southwestern U.S. Kern River's original facilities had a capacity of 700 MMcf/day, and originate in Rocky Mountains production areas. The facilities of Kern River and Mojave, which each commenced service in early 1992, merge at a point near Daggett, California to form a common, "undivided interest" pipeline which ships a commingled stream of gas to each pipeline's customers near Bakersfield. Although they share the same, common pipeline facilities downstream of Daggett, both pipelines compete for customers just as if they operated physically separate pipeline facilities.

FERC's orders certifying the Mojave project discuss how Mojave and its shippers contractually allocated the risk of cost overruns, including potential increases in the price of steel,

⁷ It also should be noted that Alliance agreed to calculate the negotiated rates based on a 70/30 debt/equity ratio, regardless of the actual capitalization of the project or the capital structure approved by FERC for purposes of calculating recourse rates. See Alliance certificate application, FERC Docket No. CP97-168, at p. 20; *Alliance Pipeline L.P.*, 80 FERC ¶ 61,149, at 61,592 (1997).

providing an example of how a pipeline and its shippers addressed this issue in the pre-negotiated rate era. Although not required to do so, Mojave submitted its executed firm transportation service agreements ("TSAs") to the Commission for approval. In order to secure financing, Mojave had to know whether the Commission would approve or object to the agreements. *Mojave Pipeline Co.*, 56 FERC ¶ 61,282, at 62,097 (1991).

Mojave had six firm shippers, including Texaco (now part of ChevronTexaco), Meridian Oil (which became Burlington Oil, which was recently acquired by Conoco), and Mobil Natural Gas Inc. (now part of ExxonMobil). To allocate the risk of cost overruns, Mojave and its shippers agreed to discounted rates that were linked to the price of steel. As summarized by the Commission:

Mojave negotiated a cap on its transportation charge with each customer in order to allocate the risk of construction cost overruns. In general, Mojave negotiated a cap with each customer that then would escalate pursuant to an index intended to reflect increases in the price of steel, which is expected to be the chief variable in the cost of construction of the pipeline. The exact cap and escalation factor that Mojave negotiated with each customer varies somewhat, but all are expressly subject to the maximum rate levels prescribed by the Commission.

Id. at 62,100.

Later in the order, the Commission describes Mojave's firm TSAs in more detail. For example, Meridian Oil's rate was subject to a monthly adjustment based on the applicable increase, if any, in the Pipe and Oil Country Tubular Goods, Carbon Index of the Producer Price Index, calculated from the March 1, 1990 through the date Mojave's facilities were placed in service. Texaco's rate cap could be adjusted by between 3 and 5 percent annually but no less than 3 percent

based on the applicable increase in the Steel Pipe and Tubes, Line Pipe sub-index of the Producer Price Index. Mobil's rate cap appears to have been subject to similar adjustment. *Id.* at 62,102.

In sum, while the Mojave contracts varied somewhat according to each individual shipper, the Mojave case provides another example how a pipeline and its shippers allocated the risk of cost overruns, with the parties sharing the risk within the range of certain floor and ceiling rates. *See also Mojave Pipeline Co.*, 57 FERC ¶ 61,300, at 61,958-59 (1991).

4. Other Pipelines

Our prior memorandum dated March 12, 2007 (a copy of which is attached hereto as Appendix B), discussed several pipelines that have agreed to negotiated rates pursuant to the Commission's policy which strongly encourages pipelines and shippers to negotiate cost-sharing agreements that allocate the risk of cost overruns. As discussed in our March 12 memo, pipelines which have agreed to bear the risk of cost overruns above a negotiated rate cap, with the shipper bearing overruns below the cap, include: (1) Millennium; (2) Iroquois; (3) Chevenne Plains; (4) Rockies Express (also discussed above); (5) Gulfstream; and (6) Guardian. Several other pipelines have also negotiated cost sharing arrangements, including North Baja, which also entered into negotiated rates with its shippers.⁸ We also found two instances -- the Empire and Islander East pipelines -- which had not negotiated cost sharing agreements at the time of the Commission's

⁸ *North Baja Pipeline, LLC*, 95 FERC ¶ 61,259, 61,916 (2001) ("North Baja entered into long-term precedent agreements with its six shippers. All of the shippers have elected to pay negotiated rates. North Baja has filed copies of the agreements but redacted the rate information as commercially sensitive. North Baja states that it will disclose these terms through posting on its Internet web site on the first day of service, in keeping with section 284.13 of the Commission's regulations. To comply with the Alternative Pricing Policy Statement, North Baja is being required, as discussed below, to file additional information on its negotiated rates when it begins providing such service."). (Internal citations omitted).

certificate order.⁹ Clearly, however, the trend is for pipelines and shippers to negotiate how to allocate the risk of cost of overruns as part of the process of entering into a firm transportation agreement.

⁹ See *Empire State Pipeline*, 116 FERC ¶ 61,074, P 116 (2006) (“The Certificate Policy Statement found that the responsibility for cost overruns should be apportioned between the pipeline and the new customers that have subscribed for the new capacity, so that the overruns will not become the responsibility of the existing shippers. EPI admits that its agreement with KeySpan does not contain this risk-sharing provision. In the application, however, EPI reserves the right to revise its initial rates prior to the commencement of service to reflect the changes in construction costs, unless the parties agree otherwise.”) (Internal citations omitted); *Islander East Pipeline Co.*, 97 FERC ¶ 61,363, P 105 (2001) (“The Policy Statement asserts that the risks of construction cost overruns should be apportioned between the pipeline and the new customers in their service contracts. Thus, in pipeline contracts for service on newly constructed facilities, pipelines should not rely on standard “Memphis clauses,” but should reach agreement with new shippers concerning who will bear the risks of underutilization of capacity and cost overruns associated with the new construction. *Islander East’s* precedent agreements do not contain any risk-sharing language on construction costs. If the parties agree to risk sharing agreements, *Islander East* must file those agreements with the Commission as non-conforming service agreements with negotiated terms and conditions. The Commission will review those agreements to ensure that they are not unduly discriminatory or preferential.”). (Internal citations omitted).

Appendix A

**Examples of Fixed Rate Firm Capacity Agreements
Held by BP, Conoco, and Exxon¹**

Producer	Pipeline/Project	Term²	Negotiated Rate	Capacity
BP				
BP Energy Company	Cheyenne Plains Gas Pipeline Co. ³ Contract No. 21002000 Rate Sched: FT (New Pipeline)	12-1-04 to 1-31-15	\$10.3417/Dth/month	40,000 Dth/d
BP Energy Company	Rockies Express Pipeline ⁴ Contract No. Unknown Rate Sched: FT (New Pipeline - "REX-West")	1-1-08 to 12-31-17	\$23.5425/Dth/Month	100,000 Dth/d ⁵
BP Energy Company	Tennessee Gas Pipeline Company ⁶ Contract No. 40102 Rate Sched: FT-A	7-1-02 to 6-30-07	\$3.07/Dth/month	4,700 Dth/d
BP Energy Company	Transwestern Pipeline ⁷ Contract No. 100050 Rate Sched: FTS-1	6-15-02 to 6-14-17	\$0.3800/MMBtu/d	15,000 MMBtu/d
BP Energy Company	Transwestern Pipeline ⁸ Contract No. 100926 Rate Sched: FTS-4 (San Juan Lateral 2005 Expansion)	5-1-05 to 4-30-15	Yrs 1-3 \$0.2620 MMBtu/d Remainder of term: Max rate capped at \$0.2370 MMBtu	100,000 MMBtu/d

BP Energy Company	Transwestern Pipeline ⁹ Contract No. 101079 Rate Sched: FTS-4	6-1-05 to 5-31-08	\$0.2620/MMBtu/d	8,000 MMBtu/d
ConocoPhillips				
ConocoPhillips Company	Alliance Pipeline ¹⁰ Contract No. US5024P-01 Rate Sched: FT1	11-1-06 to 11-30-16	15.4864/Dth/month	75 MMcf/d
ConocoPhillips Company	Alliance Pipeline ¹¹ Contract No. US5010P-01 Rate Sched: FT1	11-1-06 to 11-30-16	15.4864/Dth/month	51.1 MMcf/d
ConocoPhillips Company	Alliance Pipeline ¹² Contract No. US5014 Rate Sched: FT1	12-1-00 to 11-30-15	15.4864/Dth/month	50 MMcf/d
ConocoPhillips Company	Questar Pipeline Co. ¹³ Contract #2419 Rate Sched: T-1	8-1-00 to 7-31-15	\$2.96045/Dth/month	5,000 Dth/d
ConocoPhillips Company	Rockies Express Pipeline ¹⁴ Contract No. Unknown Rate Sched: FT (New Pipeline)	1-1-08 to 12-31-17	\$23.5425/Dth/month	400,000 Dth/d
ConocoPhillips Company	Transwestern Pipeline ¹⁵ Contract No. 100922 Rate Sched: FTS-4 (San Juan Lateral 2005 Expansion)	5-1-05 to 4-30-15	Yrs 1-3: \$0.2620 MMBtu/d Remainder of term: Max rate capped at \$0.2370	100,000 MMBtu/d

ConocoPhillips Company	Transwestern Pipeline¹⁶ Contract No. 100925 Rate Sched: FTS-4	6-1-05 to 5-31-09	\$0.2620 MMBtu/d through 5-1-08	8,000 MMBtu/d
ExxonMobil				
ExxonMobil Gas & Power Marketing Company	Alliance Pipeline¹⁷ Contract No. US5011 Rate Sched: FT1	12-1-00 to 11-30-15	\$15.4864/Dth/m	30 MMcf/d
Mobil Natural Gas, Inc.	Mojave Pipeline Co. Rate Sched: FT-1	12-19-90 to 12-19-05	\$0.3075/MMBtu¹⁸	20,000 MMBtu/d

1 The information contained in this chart was compiled from a variety of publicly available sources. The principal sources of information were each listed pipeline's most recent Index of Customers Report filed with the Federal Energy Regulatory Commission (report information current as of the last quarter of 2006) and the relevant pipeline's currently effective FERC Gas Tariff. Additional information was obtained from the listed pipelines' certificate applications, FERC certificate or rate orders and other pipeline rate or tariff filings. A more detailed description of the source for the information contained in each chart entry is included in the endnotes that follow. The information in the chart reflects a review of material concerning about 20 of more than 150 FERC-regulated natural gas pipelines. It is also important to note that the producers considered here have entered into fixed discount rate agreements with various pipelines that are not contained in this chart, except when specifically noted.

2 Information concerning Contract Term was taken from the pipeline's Index of Customers Report or as it is currently listed in the pipeline's FERC Gas Tariff. The contracts described herein may have been terminated or the Contract Term altered from as it is listed in the original contract or precedent agreement. Review of the actual contracts or precedent agreements between the producer and pipeline was limited, as they are typically treated as confidential and not made available to the public. See, e.g., 18 C.F.R. § 388.112.

3 Transportation Service Agreement, Rate Schedule FT, between Cheyenne Plains Gas Pipeline Co. and BP Energy Co., as contained in Cheyenne Plains Gas Pipeline Company's Implementation of Tariff filing, FERC Docket No. CP03-302-004 (filed Sept. 23, 2004). Much of this information is also included in Cheyenne Plains' most recent Index of Customers Report form January 2007.

4 Information derived from the Original FERC Gas Tariff included with the Rockies Express Pipeline certificate application filed on May 31, 2006, in FERC Docket CP06-354-000. Rockies Express Pipeline, FERC Gas Tariff, Pro Forma Second Revised Volume No. 1, Original Sheet Nos. 8-9A. As noted in the chart, the contract does not become effective until January 2008.

5 BP Energy Company's commitment on the Rockies Express Pipeline will increase to 300,000 Dth/day as of the in-service date of the REX-East portion of the pipeline. This agreement to ramp up its capacity resulted in BP being classified as an Anchor Shipper on the Rockies Express system. See Rockies Express Pipeline LLC, Certificate Application, Vol. 1, Docket No. CP06-354-000, page 51 (filed May 31, 2006).

6 Gas Transportation Agreement between Tennessee Gas Pipeline Company and BP Energy Company, included in Negotiated Rate Tariff filing, FERC Docket No. RP96-312-072 (filed May 30, 2002). Information also contained in TGP's 1/1/07 Index of Customers.

7 Transwestern Pipeline Company, FERC Gas Tariff, Third Revised Volume No. 1, First Revised Sheet Nos. 6-7, Second Revised Sheet Nos. 8-13.

8 Transwestern Pipeline Company, FERC Gas Tariff, Third Revised Volume No. 1, First Revised Sheet Nos. 6-7, Second Revised Sheet Nos. 8-13.

9 Transwestern Pipeline Company, FERC Gas Tariff, Third Revised Volume No. 1, First Revised Sheet Nos. 6-7, Second Revised Sheet Nos. 8-13.

10 Alliance Pipeline L.P., FERC Gas Tariff, Original Volume No. 1, Twelfth Revised Sheet No. 11, Sixth Revised Sheet No. 12-14.

11 Alliance Pipeline L.P., FERC Gas Tariff, Original Volume No. 1, Twelfth Revised Sheet No. 11, Sixth Revised Sheet Nos. 12-14.

12 Alliance Pipeline L.P., FERC Gas Tariff, Original Volume No. 1, Twelfth Revised Sheet No. 11, Sixth Revised Sheet Nos. 12-14.

-
- ¹³ Questar Pipeline Company, FERC Gas Tariff, First Revised Volume No. 1, Fortieth Revised Sheet No. 7, Twelfth Revised Sheet No. 7A.
- ¹⁴ Information derived from the Original FERC Gas Tariff included with the Rockies Express Pipeline certificate application filed on May 31, 2006, in FERC Docket CP06-354-000. Rockies Express Pipeline, FERC Gas Tariff, Pro Forma Second Revised Volume No. 1, Original Sheet Nos. 8-9A. As noted in the chart, this contract does not become effective until January of 2008.
- ¹⁵ Transwestern Pipeline Company, FERC Gas Tariff, Third Revised Volume No. 1, First Revised Sheet Nos. 6-7, Second Revised Sheet Nos. 8-13.
- ¹⁶ Transwestern Pipeline Company, FERC Gas Tariff, Third Revised Volume No. 1, First Revised Sheet Nos. 6-7, Second Revised Sheet Nos. 8-13.
- ¹⁷ Alliance Pipeline L.P., FERC Gas Tariff, Original Volume No. 1, Twelfth Revised Sheet No. 11, Sixth Revised Sheet Nos. 12-14.
- ¹⁸ Because Mobil's contract on Mojave predated the advent of FERC's "negotiated rate" policy, the rate for Mobil on Mojave was more accurately described as a discounted rate and was subject to escalation up to the maximum recourse rate (with special "banking provisions"). Mobil's rate cap was approximately \$0.30 prior to full in-service, but increased to \$0.35/MMBtu (subject to the pipeline's maximum recourse rate) once the pipeline was fully in-service. Historical contract information derived from Mojave Pipeline Company Index of Customers Report for the quarter ending April 1, 1996. Other information obtained from *Mojave Pipeline Co.*, 56 FERC ¶ 61,282, at 61,099 and 61,102 (1990). See also *Kern River Gas Transmission Co.*, 50 FERC ¶ 61,069, at 61,152 (1990).

Appendix B

Memorandum

TO: Donald C. Shepler
FROM: Kenneth M. Minesinger
DATE: March 12, 2007
RE: Cost Overruns

Introduction and Summary of Conclusions

This memorandum responds to a question posed yesterday by the State about responsibility for cost overruns on major pipeline construction projects. The question is whether, as suggested by the three major producers (Exxon, BP and Conoco, hereinafter the "Producers"), shippers would be expected to bear the risk of any cost overruns that occur in constructing an Alaska natural gas pipeline, if the project were constructed by an independent pipeline company instead of by the Producers. Specifically, the Producers have suggested that the initial shippers will bear all of the project risk, including the risk of cost overruns, and that an independent pipeline company is 100 percent indifferent regarding project cost. In other words, cost overruns mean nothing to the pipeline because they are passed through completely to the shipper.

As discussed below, the short answer is that, while we of course cannot predict with certainty the precise terms of the contracts that ultimately will be agreed to between an Alaska pipeline and its shippers, it is clear that the Producers' assertion regarding pipeline indifference to cost overruns does not reflect Federal Energy Regulatory Commission ("FERC") policy. FERC strongly encourages pipelines to negotiate agreements with their shippers allocating the risk of cost overruns for major construction projects. There are a number of examples where pipelines and

To: Donald C. Shepler
From: Kenneth M. Minesinger
Date: March 12, 2007
Re: Cost Overruns

Page 2

shippers have negotiated fixed rate contracts, which allocate the risk of cost overruns above a rate cap to the pipeline, thereby insulating the shippers from the risk of cost overruns above the agreed-upon rate cap. Several of those examples are discussed below.

Introduction and Summary of Conclusions

In the Commission's 1999 *Policy Statement Concerning Certification of New Interstate Natural Gas Pipeline Facilities*, 88 FERC ¶ 61,227 (1999), *order on clarification*, 90 FERC ¶ 61,128 (2000), *order granting further clarification*, 92 FERC ¶ 61,094 (2000), the Commission encouraged pipelines to negotiate risk sharing agreements with shippers participating in a new project regarding the rate impact of cost overruns (and underutilized capacity). The Commission stated:

[T]he risks of construction cost overruns should not be the responsibility of the pipeline's existing customers but should be apportioned between the pipeline and the new customers in their service contracts. Thus, in pipeline contracts for service on newly constructed facilities, pipelines should not rely on standard "Memphis clauses", but should reach agreement with new shippers concerning who will bear the risks of underutilization of capacity and cost overruns and the rate treatment for "cheap expansibility."¹

Although this statement was made in the context of an expansion of an existing pipeline in connection with FERC's policy of protecting existing shippers from cost overruns, subsequent cases have cited the same principle in the context of new, "greenfield" pipelines.

Consistent with the 1999 Certificate Policy Statement, the clear trend in recent years has been for pipelines and shippers to enter into negotiated rate agreements that allocate the risk of cost overruns for major construction projects, including new pipelines and pipeline expansions. Very

¹ 88 FERC ¶ 61,128, at 61,747 (emphasis added). A "Memphis clause" refers to contractual provision that permits the pipeline to change the rate during the term of the contract by making rate filings under Section 4 of the Natural Gas Act.

To: Donald C. Shepler
From: Kenneth M. Minesinger
Date: March 12, 2007
Re: Cost Overruns

Page 3

recently, in its December 2006 order certifying the Millennium pipeline project, a new pipeline project serving the Northeast U.S., FERC addressed this precise issue. *Millennium Pipeline Co., LLC*, 117 FERC ¶ 61,319 (2006). There, FERC approved an agreement between Millennium and its shippers that allocated the risk of cost overruns above an agreed-upon rate cap to Millennium -- not to the shippers. FERC stated:

In the Certificate Policy Statement, we urged pipelines and project customers to use their business expertise and negotiating skills to apportion the risks of construction cost overruns in their service contracts, noting that the parties are in the best position to allocate such risks at the time of contracting, rather than leaving such issues for litigation at the Commission.

Millennium has addressed the issue of cost overruns with Millennium and its shippers agreeing to rate caps over a ten-year term as set forth in an amendment to section 3 of the pro forma firm transportation service agreements. To the extent the negotiated rate methodology would yield a rate above the cap due to project cost overruns, Millennium will bear the cost of such overruns. When Millennium files its statement on construction costs within six months after the facilities are constructed in compliance with section 157.20(c)(3) of the regulations, Millennium will be required to compare the projected construction costs to the actual costs and explain any significant differences. Thus, we find that Millennium has adequately addressed the issue of cost overruns.²

Later, in the same order, FERC found that a second pipeline (Iroquois), which was also constructing new facilities in association with Millennium's project, had also agreed to bear the risk of cost overruns:

We find that Iroquois' and Consolidated Edison have addressed the issue of cost overruns in their negotiated rate agreement, since the agreement provides for a rate cap for the firm transportation service tied to the cost of the new facilities, which protects Iroquois' other customers from cost overruns. Further, if the facilities exceed a given cost, the rate charged to Consolidated Edison will not go

² *Id.* at PP 110, 111 (footnotes omitted).

To: Donald C. Shepler
From: Kenneth M. Minesinger
Date: March 12, 2007
Re: Cost Overruns

Page 4

above the cost specified in the negotiated rate agreement and Iroquois will bear the cost of the overruns.³

The Millennium and Iroquois projects are by no means the only examples where the risk of cost overruns on a major pipeline construction project has been allocated to the pipeline. The issue of cost overruns is not an issue which FERC has been required to address in a large number of orders regarding new construction projects. We have, however, researched the negotiated rate filings for several major new construction projects, and have found several instances where pipelines have agreed to negotiated, fixed rates that effectively allocate the risk of cost overruns above a rate cap to the pipeline. Examples include: (1) Cheyenne Plains, which involved the construction of a major new pipeline connecting Rockies gas supplies with Mid-Continent pipelines; (2) Rockies Express, a major new pipeline which will connect Rockies gas supplies to pipelines in the Mideast U.S.; (3) Gulfstream, a major pipeline serving Florida, constructed in the

³ *Id.* at P 112 (footnotes omitted). See also *Empire State Pipeline*, 116 FERC ¶ 61,074, at P 116 (2006) ("We believe that the potential exists for cost overruns here because the pipeline facilities are to be constructed more than two years after the filing date. We addressed this issue in the Certificate Policy Statement, finding that pipelines should reach an agreement with their new shippers concerning who will bear the risk of cost overruns. The Certificate Policy Statement found that the responsibility for cost overruns should be apportioned between the pipeline and the new customers that have subscribed for the new capacity, so that the overruns will not become the responsibility of the existing shippers. EPI admits that its agreement with KeySpan does not contain this risk-sharing provision. In the application, however, EPI reserves the right to revise its initial rates prior to the commencement of service to reflect the changes in construction costs, unless the parties agree otherwise. If EPI seeks to change the proposed rates prior to placing the facilities into service, it must file a section 7(c) amendment to this filing. If EPI seeks a change after the facilities are placed into service, we will require EPI to make a section 4 rate filing.") (footnotes omitted); *Iroquois Gas Transmission System, L.P.*, 100 FERC ¶ 61,275, P 35 (2002) ("Under the Policy Statement, the Commission urges pipelines and project customers to apportion the risks of construction cost overruns in their service contracts. While the contracts between Iroquois and each ELI Project shipper do not currently contain the cost sharing language encouraged by the Policy Statement, Iroquois indicates that it intends to finalize its contracts with the ELI Project shippers on either January 1, 2003 or March 1, 2003, depending on the shipper. It states that at that time it will enter into a mutually agreeable cost sharing structure with the shippers that will be in a manner consistent with the Policy Statement. The Commission strongly urges Iroquois and the ELI Project shippers to enter into a cost sharing agreement on cost overruns.") (citations omitted).

To: Donald C. Shepler
From: Kenneth M. Minesinger
Date: March 12, 2007
Re: Cost Overruns

Page 5

1990s; and (4) Guardian, a significant pipeline serving Wisconsin, also constructed in the 1990s.⁴ We expect this list will grow after further research (which will also include an analysis of negotiated, fixed rate contracts held by the Producers themselves on Lower 48 pipelines).

Even before FERC's 1999 Certificate Policy Statement, and well before the advent of negotiated rates, pipelines sometimes agreed to bear the risk of cost overruns. For example, in the early 1990s, Mojave Pipeline Company and its shippers entered into firm contracts with fixed rate caps that allocated the risk of cost overruns to Mojave. *See Center Point Energy Gas Transmission Co.*, 112 FERC ¶ 61,223 (2005) (discussing how Mojave entered into risk sharing agreements with its initial shippers which " provided the shippers rate certainty by capping their rates at levels which could be less than Mojave's maximum rates, depending upon its actual cost of constructing the pipeline and its cost of operating the pipeline."); *see Mojave Pipeline Co.*, 57 FERC ¶ 61,300, at 61,958 (1991) ("Mojave states that these contract rate caps provide rate certainty and protect Mojave's customers from overruns in the cost of the construction of Mojave's pipeline. as well as excesses in the cost of operation, resulting in increases beyond negotiated levels.") (emphasis added).⁵

⁴ See, e.g., *Cheyenne Plains Gas Pipeline Company, LLC*, FERC Gas Tariff, Original Volume No. 1, Effective Sheet Nos. 22 - 28A; *Rockies Express Pipeline, LLC*, FERC Gas Tariff, Original Volume No. 1, Effective Sheet Nos. 22 - 24; *Gulfstream Natural Gas System, LLC*, FERC Gas Tariff, Original Volume No. 1, Effective Sheet Nos. 8 - 8Z; *Guardian Pipeline, LLC*, FERC Gas Tariff, Original Volume No. 1, Seventh Revised Sheet No. 6.

⁵ Although beyond the scope of this memorandum, it should be noted that, in addition to FERC's statements about allocating the risk of cost overruns, there may be other reasons why a pipeline would not be indifferent to the cost of constructing an Alaska pipeline. For example, even though it can be expected that only one pipeline will be built from Alaska to destination markets in Canada or the Lower 48 States, that pipeline will still be required to compete to some degree with other existing pipelines serving those same markets. While the level of pipeline competition in such markets may not be as robust as what one would see in a highly competitive market (thus, the continued need for regulation of natural gas pipelines), nevertheless the level of competition between pipelines has increased as a result of FERC regulatory initiatives over the past two decades. This would likely provide an independently-owned Alaska pipeline at

To: Donald C. Shepler
From: Kenneth M. Minesinger
Date: March 12, 2007
Re: Cost Overruns

Page 6

Conclusion

FERC has encouraged pipelines and shippers to allocate contractually the risk of cost overruns for new construction projects. The clear trend has been for pipelines to agree to negotiated, fixed rate contracts that allocate the risk of cost overruns above a rate cap to the pipeline. Assuming this form of contractual arrangement is used in Alaska, the suggestion by the Producers that an independently-owned Alaska pipeline would be indifferent to cost overruns is incorrect.

least some incentive to control costs, even in the absence of negotiated fixed rate contracts. This may be an issue which the State may wish to ask one of its economic consultants to analyze further, although based on our experience in the natural gas industry the development of increased competition among natural gas pipelines generally over the past twenty years cannot be disputed, particularly in certain parts of the U.S. A related issue is whether an independent pipeline, experienced in building pipeline projects, is better equipped than the Producers to construct an Alaska pipeline in a cost-efficient manner. That issue also is beyond the scope of this memorandum.