

HB

142

<TARGET><BILL>HB 142</BILL><SUBJECT>HB
142</SUBJECT><COMM>HFIN27</COMM></TARGET>

Alaska State Legislature

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REPRESENTATIVE MIKE CHENAULT SPEAKER OF THE ALASKA STATE HOUSE

SUMMARY OF CHANGES

Committee Substitute for House Bill 142 (FIN)

"An Act relating to the creation of a rebuttable presumption that the project licensed under the Alaska Gasline Inducement Act is uneconomic because of insufficient commitments to acquire firm transportation capacity during the first open season."

Throughout CSHB 142 (fin), the CS changes the term "firm transportation commitments" to "commitments to acquire firm transportation capacity."

This change is made in the title; on Page 1, line 10; page 1, line 12-13; Page 1, line 14; Page 2, line 10.

The original bill contained a series of deadlines in 2011. The CS modifies those.

Page 11, Line 9: July 15, 2011, is changed to May 15, 2012

Page 1, Line 12: Aug. 1, 2011 is changed to May 30, 2012

Page 1, line 13: July 15, 2011 is changed to May 15, 2012

Page 2, line 3: Aug. 15, 2011, is changed to June 15, 2011

Page 2, line 7: 2013 is changed to 2014

The standard for commitments to acquire firm transportation commitments has been changed to require sufficient commitments to support development of the project licensed by AGIA. The new standard replaces "construction" to "development" of the project.

This change is reflected on Page 1, line 10, where the CS strikes prior language requiring those commitments to be "sufficient to support the construction of the project."

This change is reflected on Page 2, line 9, where the CS changes the requirement of "credit support" to "support" and changes the term "construction" to "development."

House Bill 142 also adds reporting requirements to administration requests for FY2014 AGIA reimbursement appropriations as provided in AS 43.90.110, 'AGIA-Natural gas pipeline project construction inducement'.

*Adopted
2/6/12*

27-LS0451/E
Bullock
2/2/12

CS FOR HOUSE BILL NO. 142(FIN)

IN THE LEGISLATURE OF THE STATE OF ALASKA

TWENTY-SEVENTH LEGISLATURE - SECOND SESSION

BY THE HOUSE FINANCE COMMITTEE

Offered:
Referred:

Sponsor(s): REPRESENTATIVES CHENAULT, Hawker, Johnson, Olson, Feige, Thompson, Millett, Costello, Fairclough

A BILL

FOR AN ACT ENTITLED

1 "An Act relating to the creation of a rebuttable presumption that the project licensed
2 under the Alaska Gasline Inducement Act is uneconomic because of insufficient
3 commitments to acquire firm transportation capacity during the first open season."

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

5 * **Section 1.** The uncodified law of the State of Alaska is amended by adding a new section
6 to read:

7 PRESUMPTION THAT PROJECT IS UNECONOMIC. (a) If TransCanada Alaska
8 Company, LLC, and Foothills Pipe Lines Ltd., jointly as licensee, fail to disclose, before
9 May 15, 2012, that the project licensed under AS 43.90 (Alaska Gasline Inducement Act)
10 received commitments to acquire firm transportation capacity during the open season, it is
11 rebuttably presumed that the project is uneconomic for the purposes of AS 43.90.240. The
12 commissioners shall notify the legislature before May 30, 2012, whether commitments to
13 acquire firm transportation capacity are disclosed to the commissioners before May 15, 2012,
14 and report whether the commitments to acquire firm transportation capacity that are disclosed

1 are sufficient to support development of the project.

2 (b) If the presumption is raised under (a) of this section, the commissioners shall,

3 (1) before June 15, 2012, submit a report to the legislature that rebuts the
4 presumption in (a) of this section by a preponderance of evidence or state that there is
5 insufficient evidence to rebut the presumption; and

6 (2) in conjunction with the request for an appropriation for the reimbursement
7 of qualified expenditures authorized by AS 43.90.110(a)(1) for fiscal year 2014, provide
8 testimony and evidence that the

9 (A) project has support sufficient to finance development of the project
10 through commitments to acquire firm transportation capacity, government assistance,
11 or other external sources of financing; and

12 (B) predicted costs of transportation at a 100 percent load factor, when
13 deducted from predicted gas sales revenue using publicly available predictions of
14 future gas prices, would result in a producer rate of return that is not below the rate
15 typically accepted by a prudent oil and gas exploration and production company for
16 incremental upstream investment that is required to produce and deliver gas to the
17 project.

18 (c) Nothing in this section precludes an agreement between the commissioners and
19 the licensee that the project is uneconomic or a determination by the commissioners or the
20 licensee that the project is uneconomic for the purposes of AS 43.90.240.

21 (d) In this section, "commissioners," "licensee," "open season," and "project" have the
22 meanings given in AS 43.90.900.

FISCAL NOTE

STATE OF ALASKA cost # codes
 2012 LEGISLATIVE SESSION

Bill Version HB 142
 Fiscal Note Number _____
 Publish Date _____

Identifier (file name) HB142-LAW-CIV-12-07-11 Dept. Affected Law
 Title An Act relating to the creation of a rebuttal presumption that Appropriation Civil
the AGIA project is uneconomic Allocation Oil, Gas & Mining
 Sponsor Representative(s) Chenault
 Requester _____ OMB Component Number 2091
(H) Finance

Expenditures/Revenues (Thousands of Dollars)

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

| | FY13 Appropriation Requested | Included in Governor's FY13 Request | Out-Year Cost Estimates | | | | |
|-------------------------------|------------------------------------|--|-------------------------|-------------|-------------|-------------|-------------|
| | | | FY14 | FY15 | FY16 | FY17 | FY18 |
| OPERATING EXPENDITURES | FY13 | FY13 | FY14 | FY15 | FY16 | FY17 | FY18 |
| Personal Services | | | | | | | |
| Travel | | | | | | | |
| Services | | | | | | | |
| Commodities | | | | | | | |
| Capital Outlay | | | | | | | |
| Grants, Benefits | | | | | | | |
| Miscellaneous | | | | | | | |
| TOTAL OPERATING | *** | *** | *** | *** | *** | *** | *** |

| FUND SOURCE | | (Thousands of Dollars) | | | | | |
|--------------|------------------|------------------------|------------|------------|------------|------------|------------|
| 1002 | Federal Receipts | | | | | | |
| 1003 | GF Match | | | | | | |
| 1004 | GF | | | | | | |
| 1005 | GF/Prgm (DGF) | | | | | | |
| 1037 | GF/MH (UGF) | | | | | | |
| 1178 | temp code (UGF) | | | | | | |
| TOTAL | | *** | *** | *** | *** | *** | *** |

| POSITIONS | | | | | | | |
|-----------|--|--|--|--|--|--|--|
| Full-time | | | | | | | |
| Part-time | | | | | | | |
| Temporary | | | | | | | |

| CHANGE IN REVENUES | | | | | | | |
|--------------------|--|--|--|--|--|--|--|
| | | | | | | | |

Estimated SUPPLEMENTAL (FY12) operating costs _____ (separate supplemental appropriation required)
 (discuss reasons and fund source(s) in analysis section)

Estimated CAPITAL (FY13) costs _____ (separate capital appropriation required)
 (discuss reasons and fund source(s) in analysis section)

Why this fiscal note differs from previous version (if initial version, please note as such)

Updated for new fiscal year form.

Prepared by Eileen Donahue, Division Operations Manager
 Division Administrative Services
 Approved by John J. Burns, Attorney General
Department of Law

Phone 465-5427
 Date/Time 12/07/11 2:45PM
 Date 12/7/2011

FISCAL NOTE

**STATE OF ALASKA
2012 LEGISLATIVE SESSION**

BILL NO. HB 142 _____

Analysis

HB 142 would create a rebuttable presumption that the Alaska Gasline Inducement Act (AGIA) project is uneconomic and subject to abandonment because of "insufficient firm transportation commitments during the first open season." If the bill is enacted and the project is found economic, the current AGIA related legal expenditures would continue. If the bill is enacted and the project is found uneconomic, there would be indeterminate legal costs in the implementation of the finding under the bill and related AGIA provisions. The Department's FY12 budget includes costs associated with this project. If the project is found uneconomic, those funds would cover the Department's anticipated FY12 costs associated with the implementation of the bill.

FISCAL NOTE

STATE OF ALASKA cost # codes
 2012 LEGISLATIVE SESSION

Bill Version HB 142
 Fiscal Note Number _____
 Publish Date _____

Identifier (file name) HB142-DNR-CO-12-23-2011 Dept. Affected Natural Resources
 Title PRESUMPTION AGIA PROJECT IS UNECONOMICAL Appropriation Administration & Support
 Allocation Commissioners Office
 Sponsor Rep. Chenault
 Requester House Finance OMB Component Number 423

Expenditures/Revenues (Thousands of Dollars)

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

| | FY13 Appropriation Requested | Included in Governor's FY13 Request | Out-Year Cost Estimates | | | | |
|-------------------------------|------------------------------------|--|-------------------------|-------------|-------------|-------------|-------------|
| | | | FY14 | FY15 | FY16 | FY17 | FY18 |
| OPERATING EXPENDITURES | FY13 | FY13 | FY14 | FY15 | FY16 | FY17 | FY18 |
| Personal Services | | | | | | | |
| Travel | | | | | | | |
| Services | | | | | | | |
| Commodities | | | | | | | |
| Capital Outlay | | | | | | | |
| Grants, Benefits | | | | | | | |
| Miscellaneous | | | | | | | |
| TOTAL OPERATING | 0.0 | 0.0 | 0.0 | 0.0 | 0.0 | 0.0 | 0.0 |

| FUND SOURCE | | (Thousands of Dollars) | | | | | |
|--------------------|------------------|------------------------|------------|------------|------------|------------|------------|
| 1002 | Federal Receipts | | | | | | |
| 1003 | GF Match | | | | | | |
| 1004 | GF | | | | | | |
| 1005 | GF/Prgm (DGF) | | | | | | |
| 1037 | GF/MH (UGF) | | | | | | |
| 1178 | temp code (UGF) | | | | | | |
| TOTAL | | 0.0 | 0.0 | 0.0 | 0.0 | 0.0 | 0.0 |

| POSITIONS | | | | | | | |
|------------------|--|--|--|--|--|--|--|
| Full-time | | | | | | | |
| Part-time | | | | | | | |
| Temporary | | | | | | | |

| CHANGE IN REVENUES | | | | | | | |
|---------------------------|--|--|--|--|--|--|--|
| | | | | | | | |

Estimated SUPPLEMENTAL (FY12) operating costs 0.0 (separate supplemental appropriation required)
 (discuss reasons and fund source(s) in analysis section)

Estimated CAPITAL (FY13) costs 0.0 (separate capital appropriation required)
 (discuss reasons and fund source(s) in analysis section)

Why this fiscal note differs from previous version (if initial version, please note as such)

Updated to the SLA 2012 form, and revised appropriation and allocation to reflect the revised DNR structure.

Prepared by Joe Balash
 Division DNR Commissioners Office
 Approved by Danial S. Sullivan
Department of Natural Resources

Phone 269-8431
 Date/Time 12/23/2011 12:00AM
 Date 12/23/2011

FISCAL NOTE

**STATE OF ALASKA
2012 LEGISLATIVE SESSION**

BILL NO. HB 142

Analysis

There is no anticipated fiscal impact to the Department of Natural Resources.

Alaska State Legislature

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REPRESENTATIVE MIKE CHENAULT SPEAKER OF THE ALASKA STATE HOUSE

SPONSOR STATEMENT

Committee Substitute for House Bill 142 (FIN)

"An Act relating to the creation of a rebuttable presumption that the project licensed under the Alaska Gasline Inducement Act is uneconomic because of insufficient commitments to acquire firm transportation capacity during the first open season."

House Bill 142 creates a rebuttable presumption that the project licensed under the Alaska Gasline Inducement Act (AGIA) is uneconomic because of insufficient commitments to acquire firm transportation capacity during the first open season. The open season ran from April 30 to July 30, 2010.

The bill creates a benchmark at which the Legislature expects evidence of progress under the state's \$500 million financial commitment under AGIA.

AGIA licensee TransCanada has until May 15, 2012, to disclose to the commissioners of the state Department of Revenue and Department of Natural Resources whether commitments to acquire firm transportation capacity were made sufficient to support construction of the project licensed under AGIA. If not, the presumption takes effect.

The commissioners have until May 30, 2012, to notify the Legislature whether the results of the first open season were disclosed by May 15th and whether those commitments are sufficient to support development of the project licensed under AGIA.

If the presumption is raised, the commissioners have until June 15, 2012, to rebut it to the legislature with a preponderance of evidence. The commissioners are not required to rebut the presumption if they believe the evidence is lacking.

If the presumption is not rebutted, the project is considered uneconomic for purposes of AS 43.90.240, 'AGIA-Abandonment of Project'. That existing part of AGIA includes provisions for dissolving the relationship between TransCanada and the state if the project becomes uneconomic at any point.

If the state determines the project is uneconomic, TransCanada can agree, and both parties' obligations and responsibilities under AGIA are ended, without penalty. If one party does not agree, an arbitration process as specified in 43.90.240 begins. If arbitrators deem the project uneconomic, the AGIA relationship dissolves. If arbitrators find that the project is not uneconomic, the state and TransCanada continue under the terms of AGIA.

House Bill 142 also adds reporting requirements to administration requests for FY2014 AGIA reimbursement appropriations as provided in AS 43.90.110, 'AGIA-Natural gas pipeline project construction inducement'.

Alaska State Legislature
HOUSE FINANCE COMMITTEE

Agenda

1:30 PM

Monday, April 4, 2011

HB 121 LOAN FUNDS:CHARTERS/MARICULTURE/
MICROLOAN

NEW FISCAL NOTE CED \$ NEW

NEW FISCAL NOTE CED Shellfish Mariculture \$ replaces #5

NEW FISCAL NOTE CED Comm. Charter \$ replaces #4

NEW FISCAL NOTE CED Micro-Loan \$ replaces #3

New CS HB 121 27-GH1728\X

Bills Previously Heard or Scheduled

HB 142-PRESUMPTION AGIA PROJECT IS UNECONOMICAL

New Fiscal Note DNR *

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

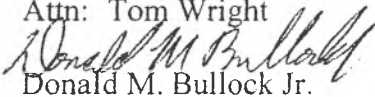
State Capitol
Juneau, Alaska 99801-1182
Deliveries to: 129 6th St., Rm. 329

MEMORANDUM

April 6, 2011

SUBJECT: HB 142 and the terms of the Alaska Gasline Inducement Act
(HB 142; Work Order No. 27-LS0451B)

TO: Representative Mike Chenault
Speaker of the House of Representatives
Attn: Tom Wright

FROM: 
Donald M. Bullock Jr.
Legislative Counsel

You asked whether HB 142 constitutes a breach of contract between the state and TransCanada Alaska, LLC and Foothills Pipe Lines Ltd. (licensee).

In my opinion, HB 142 does not constitute a breach of the license terms that form the contract under the Alaska Gasline Inducement Act (AGIA). HB 142 questions whether the project licensed under AGIA has become uneconomic because of the failure to publish "the names of prospective shippers, amounts of capacity awarded, and the terms of the agreements" that were expected to be published on a date stated by the licensee in its Open Season Notice.

The issue of whether commitments to acquire firm transportation capacity were received during the open season that ended on July 30, 2010, is relevant both to the appropriation of money for the ongoing 90 percent reimbursement for qualified expenditures and to the economic viability of the licensed project. HB 142 does not amend AGIA and does not terminate the AGIA license. HB 142 does raise the presumption that if no commitments or insufficient commitments to acquire firm transportation were received during the 90-day open season, the project is uneconomic. HB 142 invites the commissioners to rebut the presumption.

AGIA clearly states that the reimbursement of qualified expenditures to the licensee is subject to annual appropriation.¹ During the consideration of a request for appropriation,

¹ AS 43.90.110(a)(1):

(1) subject to appropriation, state matching contributions in the form of reimbursements in a total amount not to exceed \$500,000,000, paid to the licensee during the seven-year period immediately following the date the license is awarded; the payment period may be extended by the commissioners under an amendment or modification of the project

legislators may ask questions regarding the amount of the appropriation, what the appropriation will be used for, and the benefit to the state. The licensee could expect that the legislature would review the appropriation request under the Executive Budget Act (AS 37.07), specifically, under the statement of policy in AS 37.07.010 and within the responsibilities of the legislature in AS 37.07.014.

Because the reimbursement of qualified expenditures is subject to appropriation, within the budget process the licensee should expect that the AGIA project would be scrutinized in a manner similar to that in HB 142.

HB 142 creates a presumption based on the failure to disclose firm transportation commitments before July 15, 2011. Whether firm transportation commitments were entered into during or after the open season is a subject addressed by provisions within AGIA and under the federal regulations providing for the conduct of the open season.

Firm transportation commitments are referred to and the effect of making those commitments are addressed throughout AGIA, including, AS 43.90.110(a), 43.90.200, 43.90.240, 43.90.300, 43.90.310, 43.90.320, 43.90.330, and 43.90.450. In particular, firm transportation commitments are a factor to be considered by an arbitration panel

plan under AS 43.90.210; a payment under this paragraph shall be made according to the following:

(A) on or before the close of the first binding open season, the state shall reimburse the licensee's qualified expenditures at the level specified in the license; however, the state's reimbursements may not exceed 50 percent of the qualified expenditures incurred before the close of the first binding open season;

(B) after the close of the first binding open season, the state shall reimburse the licensee's qualified expenditures at the level specified in the license; however, the state's reimbursements may not exceed 90 percent of the qualified expenditures incurred after the close of the first binding open season;

(C) a qualified expenditure is a cost that is incurred after the license is issued under this chapter by the licensee or the licensee's designated affiliate, and is directly and reasonably related to pursuing firm transportation commitments in a binding open season, to securing financing for the project, or to obtaining a certificate of public convenience and necessity from the Federal Energy Regulatory Commission or the Regulatory Commission of Alaska, as appropriate, or satisfying a requirement of an agency with jurisdiction over the project; in this subparagraph, "qualified expenditures" does not include overhead costs, lobbying costs, litigation costs, the cost of an asset or work product acquired or developed by the licensee before the license is issued, or civil or criminal penalties or fines; . . .

under AS 43.90.240(c) if the commissioners and the licensee do not agree that the project is uneconomic. AS 43.90.240 provides for the abandonment of an uneconomic project.

HB 142 was introduced on February 4, 2011; the open season for the project ended more than six months earlier. According to the "Open Season Notice" issued by the Alaska Pipeline Project (APP),² the open season was to begin at "8:00 a.m. CDT on Friday, April 30, 2010 and [end] on Friday, July 30, 2010 at 5:00 p.m. CDT."³ "Open season" is defined in AS 43.90.900(17) as follows:

(17) "open season" means the process that complies with 18 C.F.R. Part 157, Subpart B (Open Seasons for Alaska Natural Gas Transportation Projects) or a similar process for soliciting commitments for pipeline capacity under the regulations, policies, rules, or precedent of the Regulatory Commission of Alaska;

The licensee stated in the Open Season Notice:⁴

This Open Season is being conducted in accordance with the Federal Energy Regulatory Commission ("FERC") Regulations governing Open Seasons for Alaska Natural Gas Transportation Projects, 18 C.F.R. §157.30 - §157.38, and will provide a non-discriminatory means of awarding capacity to bidders, provided APP receives bids that conform to its requirements and APP decides to proceed with the Project, pursuant to the terms of this Open Season.

The Open Season Notice was published after TransCanada Alaska Company, LLC filed the "Request for Commission Approval of a Detailed Plan for Conducting an Open Season" (Request) with FERC in Docket No. PF 09-11-001, dated January 20, 2010, and FERC issuing the "Order Approving Plan for Conducting an Open Season" (Approval), issued March 31, 2010, in Docket No. PF09-11-001. The Request, Approval, and Open Season Notice are significant because each stated the specific dates for making certain information public that related to commitments and precedent agreements. I have not found an amendment to the dates for certain relevant actions to occur that are stated in the

² APP is the combined effort of the licensee and Exxon Mobil.

³ Open Season Notice, at p. 1. The Open Season Notice (Notice) is included in volume I of the "Notice of Commencement of Alaska Pipeline Project Open Season under PF09-11," filed with FERC April 29, 2010, p. 6. The notice is published on the Internet at http://elibrary-backup.ferc.gov/idmws/File_list.asp?document_id=13813012 (accessed April 5, 2011).

⁴ Notice, p. 1.

Request, Approval, and Open Season Notice. Accordingly for the purposes of this memo, I presume the dates have not changed.

The specific requirements for the contents of the notice of the open season are in 18 C.F.R. 157.34. Of particular relevance to HB 142 and the conduct of the open season by the licensee is 18 C.F.R. 147.34(c)(13), which reads as follows:

(c) Contents of notice. Notice of the open season required in paragraph (a) of this section, shall contain at least the following information; however, 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 such 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:

...
(13) The date, if any, by which potential shippers and the prospective applicant must execute precedent agreements;

(Emphasis added.)

Given the significance of the commitments made during the open season that are formalized in precedent agreements, and the relevance of firm transportation commitments in the determination as to whether the project is uneconomic under AS 43.90.240(c)(1), the timely execution of precedent agreements is critical.

APP of which the licensee is a part, along with Exxon Mobil, stated in its Open Season Notice that it "will notify each bidder whether they have submitted a conforming bid and will provide a written explanation to those bidders whose bids have been rejected as non-conforming."⁵ Provisions relating to final notification and the execution and approval of precedent agreements are included in the Open Season Notice, as follows:⁶

Final Notification

On or before November 30, 2010, APP will provide conforming bidders with the final version of the Precedent Agreement.

Execution and Approval of Precedent Agreement

⁵ Notice, p. 6.

⁶ Notice, pp. 7 - 8.

Following the final notification and following APP Parties approval of each successful bidder's written evidence of creditworthiness, as stipulated in Exhibit B to the Precedent Agreement, *each bidder shall execute the final version of the binding Precedent Agreement and secure all board approvals and internal authorizations necessary to undertake the obligations required by the Precedent Agreement by no later than December 31, 2010.*

Within 30 days of receiving notification of the last of the board approvals and other necessary internal authorizations, and confirmation of execution of the final version of the Precedent Agreement, from all successful bidders, the APP Parties shall secure all board approvals and internal authorizations necessary to undertake the obligations required by the Precedent Agreements and will execute Precedent Agreements. Precedent Agreements shall not become binding until after the bidder, TC Alaska, and the APP Parties have secured all board approvals and internal authorizations necessary to undertake the obligations required by the Precedent Agreement, and the bidder and TC Alaska have executed the Precedent Agreement.

The Precedent Agreement will bind the bidder to execute a firm transportation service agreement ("FTSA") before Project construction commences, and will condition the provision of service on satisfaction or express waiver of the transporter conditions precedent stipulated in the Precedent Agreement.

Within ten days after all Precedent Agreements have become binding, APP will make public the names of the prospective shippers, amounts of capacity awarded, and the terms of the agreements. Within twenty days after all Precedent Agreements become binding, APP will submit copies of all such Precedent Agreements to the FERC, together with copies of any relevant correspondence with bidders who were not allocated capacity explaining why such bids were not accepted. APP reserves the right to submit such information to the FERC in confidence.

(Emphasis added.)

According to the excerpt above, bidders were required to execute the final versions of the precedent agreements and secure necessary board approval no later than December 31, 2010. I am unable to determine if a bidder executed a precedent agreement by the date specified in the Open Season Notice. There is no expectation of publication of that information in the Open Season Notice.

APP also stated in the Open Season Notice that it would take the necessary steps to execute its commitment in the precedent agreements within 30 days after receiving the

bidders' executed and board approved precedent agreements. At the latest, assuming the bidders waited until December 31, 2010, to execute the precedent agreements, APP was to execute the precedent agreements within the first 30 days of January 2011. Furthermore, under the schedule in the Open Season Notice, APP was "to make public the names of the prospective shippers, amounts of capacity awarded, and the terms of the agreements" within 10 days after the precedent agreements become binding. APP was to also submit copies of the precedent agreement to FERC within 20 days after the precedent agreements become binding.

I am not aware of any publication by APP of the "names of the prospective shippers, amounts of capacity awarded, and the terms of the agreements." At the latest, that publication was expected approximately February 9, 2011 (thirty days after December 31, 2010 plus an additional 10 days).

Returning to HB 142, the bill does not amend AGIA. HB 142 does not require the licensee to do anything that it has not already done. The licensee has already conducted its first open season, apparently in compliance with the requirements in AGIA and 18 C.F.R. Subpart B. In compliance with federal requirements, the Open Season Notice set the date for executing precedent agreements. No names of prospective shippers have been published as anticipated in the Open Season Notice. Are there precedent agreements? Has the Open Season Notice been amended to set a new date for executing precedent agreements? Were commitments made during the open season to acquire firm transportation capacity? This information was expected to be published under the Open Season Notice as approved by FERC. It apparently has not been published.

HB 142 does not change the requirements in AGIA. HB 142 raises the question as to whether the project has become uneconomic because there were no commitments or insufficient commitments to acquire firm transportation capacity during the open season that ended on July 30, 2010. HB 142 does not constitute a breach of contract; HB 142 does raise the issue of whether a lack of commitments to acquire firm transportation capacity during the open season have made the project uneconomic under the criteria in AS 43.90.240.

DMB:ljw:med

11-223.ljw

ALASKA PipelineProject



Presentation to Alaska State Legislature
House Finance Committee

April 4, 2011

Discussion Items

Alaska Gasline Inducement Act

AGIA Commitments

H.B. 142

Path to Success

Progress to Date

Next Steps



ALASKA
PipelineProject

Alaska Gasline Inducement Act

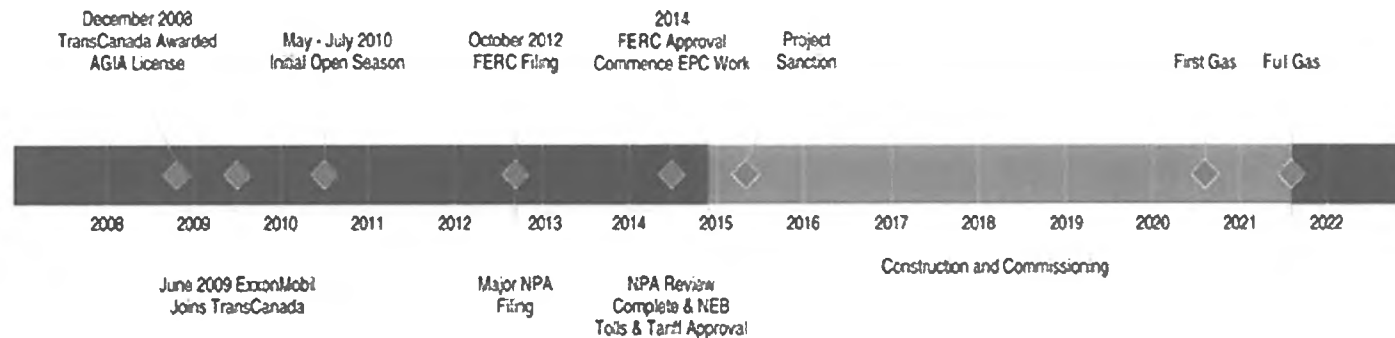
Alaska Statute 43.90.010: The purpose of this chapter is to encourage expedited construction of a natural gas pipeline that:

- **Facilitates commercialization of North Slope gas resources in the state**
- **Promotes exploration and development of oil and gas resources on the North Slope in the state**
- **Maximizes benefits to the people of the state from the development of oil and gas resources in the state**
- **Encourages oil and gas lessees and other persons to commit to ship natural gas from the North Slope to a gas pipeline system for transportation to markets in this state or elsewhere**

Alaska Gasline Inducement Act

Under AGIA, pre-construction work proceeds while commercial agreements are being negotiated

- Alternative is to pace pre-construction work commensurate with commercial progress
- Result would be a potential delay of construction of up to several years



ALASKA
PipelineProject

AGIA Commitments

APP has consistently met AGIA objectives and commitments:

- Effective lines of communication with state AGIA team
- Opportunities for in-state gas access
- First open season in history of North Slope with multiple bids received
- Improved commercial terms for customers by \$500 million per year in initial open season offering
- Permitting process progressing toward Oct. 2012 filing
- Advancing initiatives to maximize the use of Alaskan businesses and workers



State of Alaska has equally met its commitments to date

Because of AGIA, an Alaska natural gas pipeline project has advanced further than ever before technically and under the regulatory process--and is effectively positioned for ongoing progress

ALASKA
PipelineProject

AGIA Commitments

TC's AGIA license application identified 2014 as end of Development Phase

- Provided up to 6 years for acquisition of “firm transportation commitments”
- Decision to proceed / final investment decision expected to be made at that time

TC's schedule reflected challenges of developing the project

- Scope, magnitude and financial risk of the project requires intense multi-year effort to complete all work necessary for Shippers to make final irrevocable decision to commit \$100+ billion to the project

Legislature's approval of AGIA license to TC ratified this schedule

HB 142 Appears to Violate AGIA License Agreement

APP is opposed to HB 142:

- Effectively amends key provisions of AGIA License Agreement
- Raises uncertainty of the State's support for AGIA at a critical time
- Undercuts efforts to achieve alignment of all parties necessary for successful project

HB 142 unilaterally would change the contract between the State and the AGIA Licensee:

- AGIA presumes that the Project is economic unless the Licensee agrees or arbitrators rule that it is not
 - HB 142 reverses that key presumption
- AGIA mandates a viable work plan and timeline for developing the Project, but does not mandate a specific deadline for securing firm transportation commitments
 - HB 142 imposes an arbitrary and non-viable work plan and timeline by establishing a specific deadline for firm transportation commitments
- AGIA contains a defined process for joint State/Licensee determination of whether the Project is economic
 - HB 142 alters that process by directing Commissioners to take action that is reserved to their discretion under AGIA

AGIA Reimbursement Process

AGIA reimbursement process working as intended and funding qualified activities

Qualified activities:

- Pursuing firm transportation commitments
- Securing financing
- Obtaining a Certificate of Public Convenience and Necessity from FERC
- Satisfying a requirement of an agency with jurisdiction over the project

All expenditures submitted for reimbursement subject to a due diligence review and audit

State reimbursement:

- As of 3Q of 2010: \$50M reimbursed (additional assessments pending)
- Forecasted reimbursement FY 2011: \$125M
- Governor's proposed budget FY 2012: \$160M

AGIA funding supporting real work to advance an Alaska natural gas pipeline; TC and EM committing their own funds in combination with the state

ALASKA
PipelineProject

Path to Success

Project exceptionally large, complex and important

2010 very productive for APP:

- **Conducted first open season in North Slope history**
- **Making good progress on multiple fronts**
- **Diligently conducting the work needed to advance the project**
- **AGIA working as intended and commitments being met**

To succeed we must:

- **Attract customers**
- **Obtain regulatory approvals**
- **Achieve project financing**
- **Secure and maintain the support and active engagement of all key parties**



ALASKA
PipelineProject

Progress: Use of Alaska Resources

Activities across all APP teams:

- Over 1,000,000 work hours
- 115 TC and EM employees--Anchorage / Calgary / Houston / Whitehorse
- Peak work levels: Over 400 workers in the field

As of 1Q2011: 40 Alaskan companies / 470 Alaskans have worked on the project

AECOM
Aero-Metric
Arctic Hydrologic Consultants
Air Logistics
ASRC (AES)
Baseline GeoConsulting
Carns General Contractors
Central Environmental
Clarus Technologies LLC
Discovery Drilling
Doyon (Universal Services)
Dryden & Larue Inc.
Dwayne Miller & Associates
ERA Helicoptors
ERM
Guardian Security
GCI Telecommunications
GeoNorth Inc.
Golder & Associates
HDR

Immersive Media
ISER
Jade North
Lounsbury & Associates
Michael Baker Jr. Inc.
Mullikin
Nana Management Services
Nanuq Inc.
NHG Alaska LLC
Northern Economics
Northern Engineering & Scientific
Oasis Environmental Inc.
Peach Investments LLC
Red Bear
R & M Consultants
Safety Resourcing
Tanana Chiefs
TCC-Mullikin
URS
Nana WorleyParson



Accomplishment: Utilizing skills of Alaska businesses and workers to advance all aspects of the project's development

**ALASKA
PipelineProject**

Progress: Training Alaskan Workers

Working with the State of Alaska Dept. of Labor and Workforce Development in their efforts to develop and implement training programs for Alaskan workers:

- APP is active member of the Alaska Gas Pipeline Training Plan Committee
 - Participating with state, contractors, labor organizations, University of Alaska and others
 - Implementing Alaska Gasline Strategic Training Plan
- Initial focus: Identifying future APP workforce needs and skills requirements
- Leading to development and implementation of training plans
- APP donated large diameter pipe to Fairbanks pipeline training school to aid in pipe handling and welding training

Accomplishment: Taking the necessary steps to prepare the Alaskan workforce for pipeline construction and operations jobs



ALASKA
PipelineProject

Progress: Attracting Customers

APP's open season concluded on July 30, 2010

- Received conditional bids from major industry players and other parties
- Conditions included proposed changes to APP's commercial terms, as well as issues requiring resolution between Shippers/Producers and the State

APP has progressed negotiations with potential Shippers following the close of the Open Season

- Good progress in addressing proposed amendments to commercial terms
- APP continuing engagement with potential shippers



Open Season Starts Today

The first North Slope natural gas open season in the history of Alaska is now underway. Over the next three months, Alaska gas shippers can evaluate detailed plans for the Alaska Pipeline Project and reserve capacity in the pipeline.

The Alaska Pipeline Project offers a choice of two pipeline routes: one from the North Slope to Alberta, Canada, and one to Valdez, Alaska. Both options would provide opportunities for distributors to deliver gas from the pipeline to Alaskan communities.

The Alaska Pipeline Project open season will be conducted from April 30 through July 30, 2010. For more information about this historic step, visit the open season section of our website.

www.TheAlaskaPipelineProject.com/open_season

**ALASKA
PipelineProject**

TransCanada | ExxonMobil

**ALASKA
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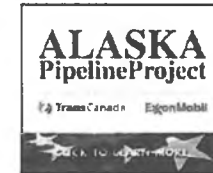
Progress: Attracting Customers

The resolution of State and Shipper/Producer issues is fundamental to progress APP and to underpin the shippers' substantial investment

- Would be the largest privately financed construction project in the history of North America
- Issues will need to be concurrently advanced in order to secure signed precedent agreements

Accomplishment: APP continuing to progress the commercial process, but:

- Success will require all parties--including Shippers/Producers, State, and APP--to actively engage to realize a mutually beneficial outcome



ALASKA
PipelineProject

Progress: Obtaining Regulatory Approvals

Advancing essential regulatory work for securing permits:

- **Aligning with regulators on path forward**
- **Completed extensive environmental field studies in 2010 and initiating major program for 2011**
 - **Archeology and cultural resources; wetlands delineation; fish habitat surveys**
- **Actively engaging public along pipeline route:**
 - **Met with 32 Alaska communities in 2010--project updates and listening for their issues; similar program in 2011**
 - **Continuing communications with First Nations in Yukon and British Columbia**
- **Progressing socioeconomic assessment**
 - **Interviews with Alaskan community leaders on potential impacts of large-diameter gas pipeline**
- **Secured land access for field studies on public land; progressing for private lands in 2011**

Accomplishment: On schedule to complete the work needed to submit FERC certificate application and commence NPA compliance filings by Oct. 2012



ALASKA
PipelineProject

Progress: Financing the Project

Conducting the range of work needed to secure project financing:

- Largest private investment in history of North America with unprecedented financing needs
- Developed preliminary finance plan, with input from leading financial institutions, for open season rate design
- On-going discussions with U.S. Dept of Energy on use of Federal Loan Guarantees (FLGs)
 - Successful use of FLGs means lower financing cost for the project
 - Reduces rates to shippers; enhances economic value to all stakeholders
- Collaborating with Senate Committee on Energy and Natural Resources on amendments to 2004 statute authorizing FLGs for AK gas pipeline project
 - If passed by Congress, will increase FLGs from \$18B to \$30B, and allow access to Federal Financing Bank

Accomplishments: Developed preliminary finance plan that supports open season negotiations through reduced rates and enhanced value to all stakeholders; positioned for further financing enhancements



ALASKA
PipelineProject

Progress: Pipeline Engineering & Technology

Progressing pipeline engineering and technology work in the lab and in the field:

- Advancing the project design
 - Geotechnical design; hydraulic and geothermal modeling; geo-hazard assessment; materials engineering; pipeline design; facilities engineering; construction and logistics planning
- Conducting engineering field work in Alaska, Yukon and British Columbia
 - LiDAR and aerial photo; routing; fault delineation; watercourse crossing reconnaissance; borehole and bulk soil sampling; borrow site reconnaissance
- Permafrost studies--includes research program with University of Alaska



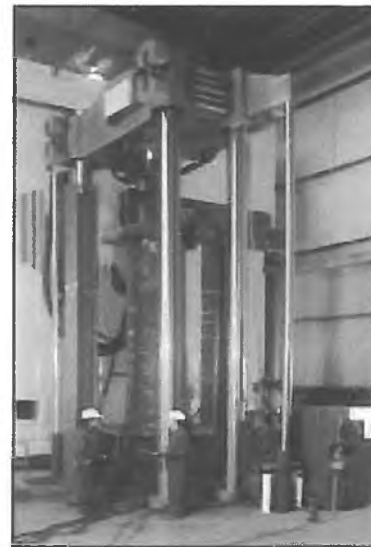
ALASKA
PipelineProject

Progress: Pipeline Engineering & Technology

Conducting full-scale testing of project pipe (48" / X80)

- Objective is to validate models used to predict pipe tensile and compressive strain capacity
- Test program is designed to simulate strains caused by frost heave and thaw settlement
- Testing facility will be fully operational by May 2011
- Several mills providing pipe to be tested

Accomplishment: Conducting ongoing series of studies and planning to advance design of pipeline facilities--in alignment with commercial and regulatory schedules



ALASKA
PipelineProject

Progress: Gas Treatment Plant

Progressing gas treatment plant (GTP) engineering and technology work in the lab and in the field:

- Optimization and development studies underway in all areas of work
 - Process planning; engineering; regulatory requirements; project execution
 - Studies have identified cost savings and improvements in plant lay-out
- Conducting on-site evaluations of major North American and Asian fabrication facilities to review capabilities and further refine construction planning

Accomplishment: Completed latest phase of studies and planning to advance design of GTP facilities—in alignment with commercial and regulatory schedules



ALASKA
PipelineProject

Next Steps

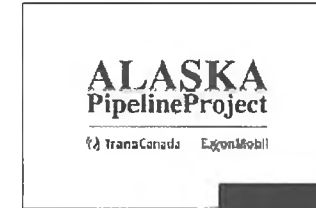
All APP teams conducting the work needed to:

- **Attract customers**
 - APP working diligently to resolve remaining issues
 - Essential that issues outside of APP's control also be resolved
- **Obtain regulatory approvals**
 - APP will submit FERC and major NPA filings in 2012
- **Achieve project financing**

Project can only advance with support and active engagement of all key parties

- **Shippers / Producers**
- **State of Alaska**
- **U.S. and Canadian governments**
- **Communities along the pipeline route**

Each party has a vital role in ensuring the effective commercialization of Alaska's natural gas resources



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Thank You

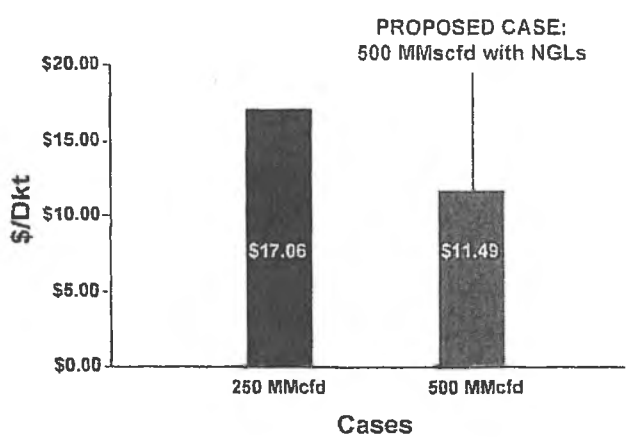
4/4/11

3/22/2011

Preliminary Capital Cost Estimates for Pipeline and Facilities


| Flow Rate (MMscfd) | Spiked with NGL (\$ Billion) |
|--------------------|------------------------------|
| 250 | \$6.9 |
| 500 | \$8.4 |

Transportation Tariff Comparison (July 2010)



NOTE: All cases include assumed gas supply cost of \$2 (negotiable)

Distributed by Rep. Gara 4/4/11



Alaska Stand Alone Gas Pipeline/*ASAP*
March 23, 2011

Tel. 907-277-4488 | Fax. 907-277-4484 | www.gasline.us.com

House Bill 369: Project Plan

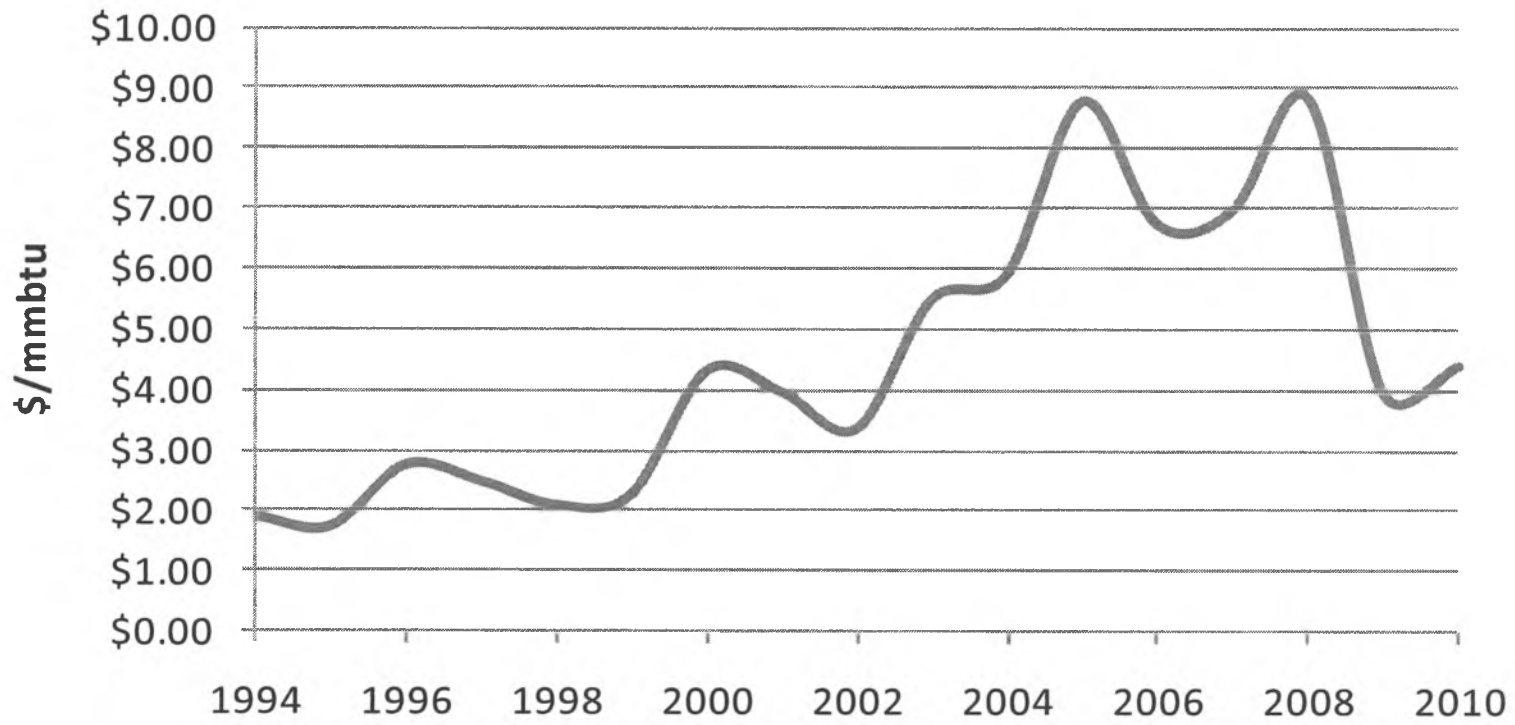
- Establishes AGDC mission
- Requires project plan for in-state natural gas pipeline
- Project plan for:
 - Design
 - Financing
 - Construction
 - Operation by December 31, 2016
- July 1, 2011 deadline

4/4/11

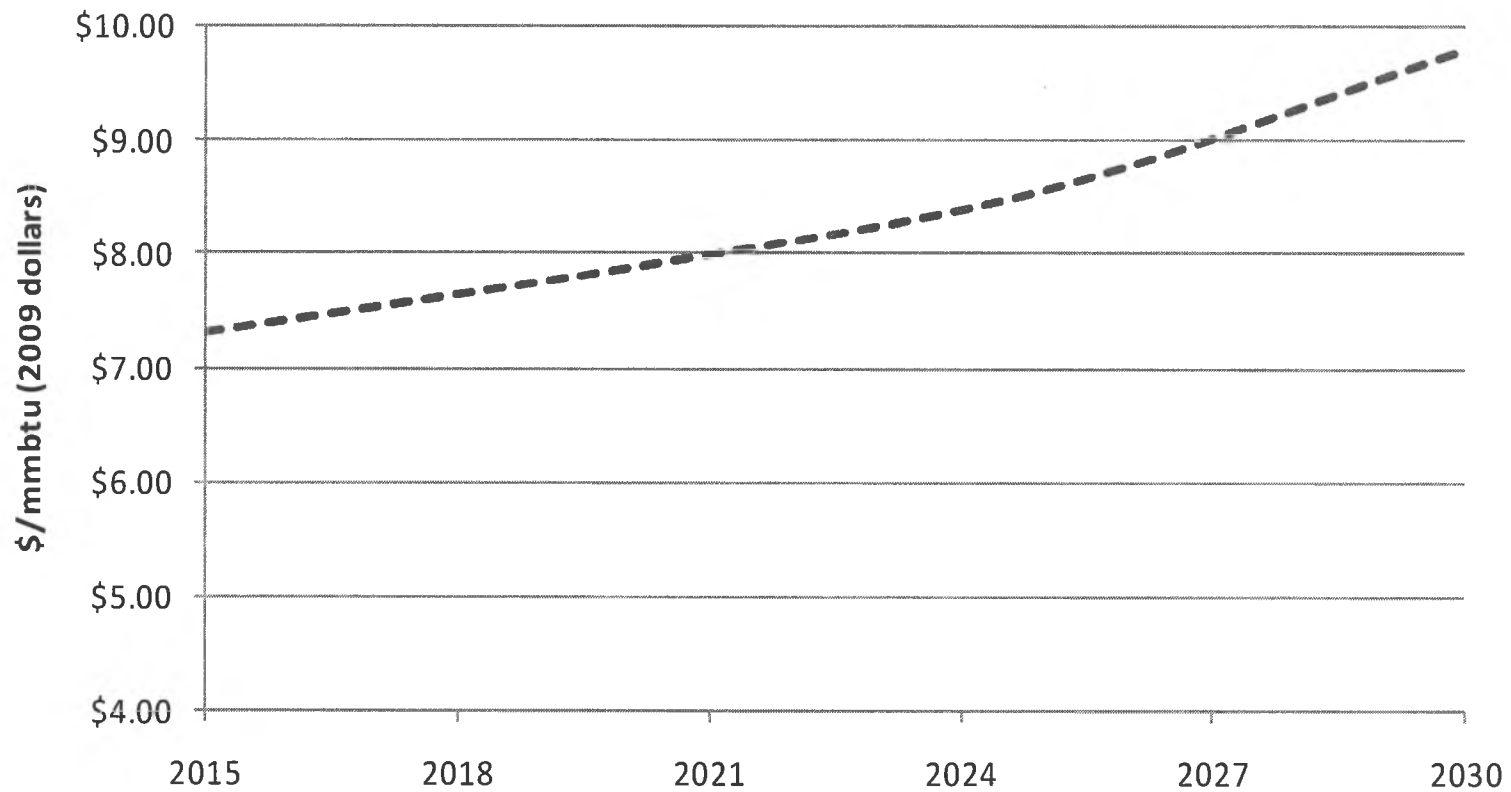
Changes in North America Natural Gas Market Outlook Between 2008 & 2011

Roger Marks
Logsdon & Associates
HB 142
House Finance
April 4, 2011

Henry Hub Spot Prices

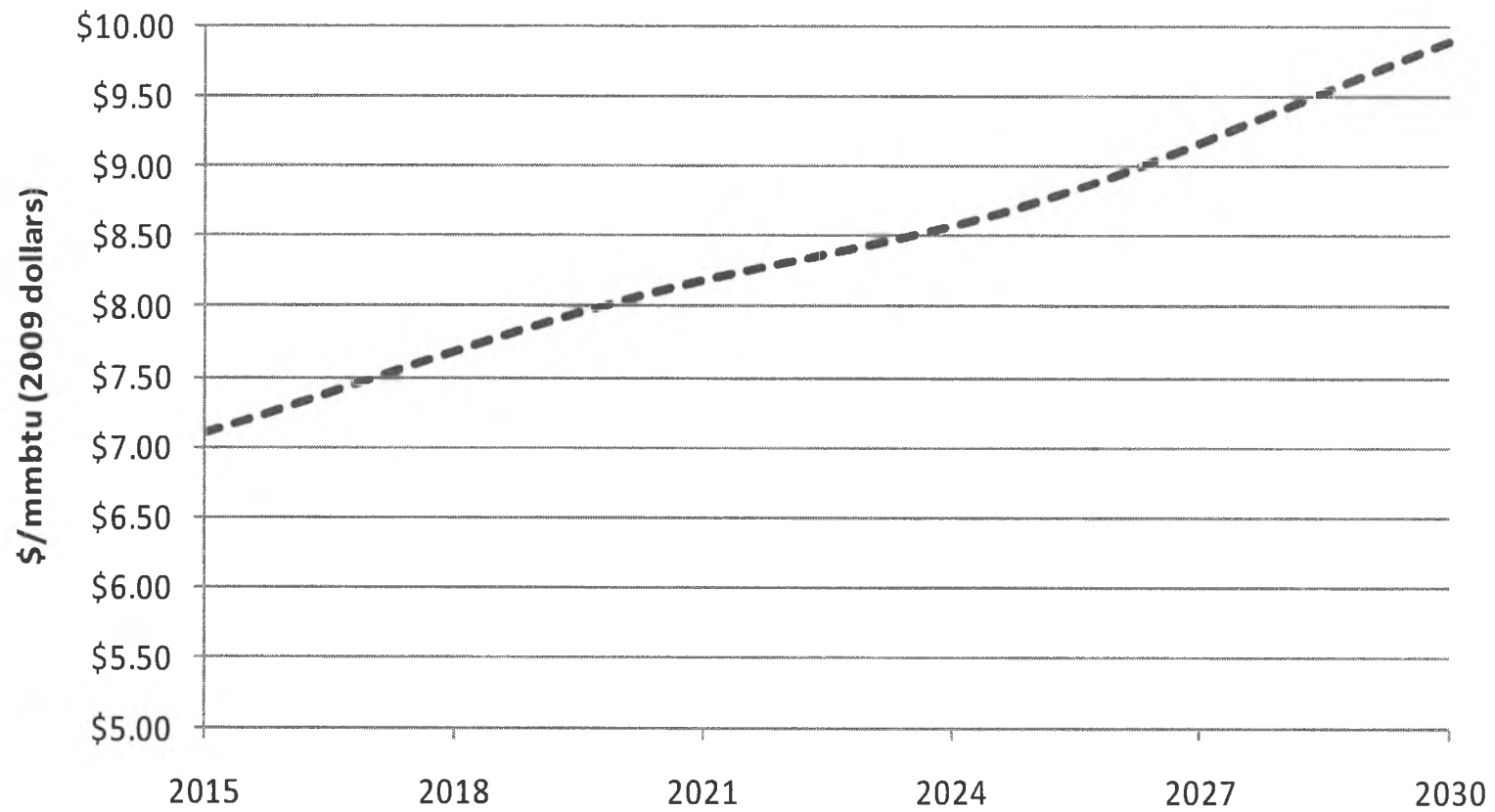


2008 DOE/EIA Henry Hub Forecast (\$/mmbtu) (2009 dollars)

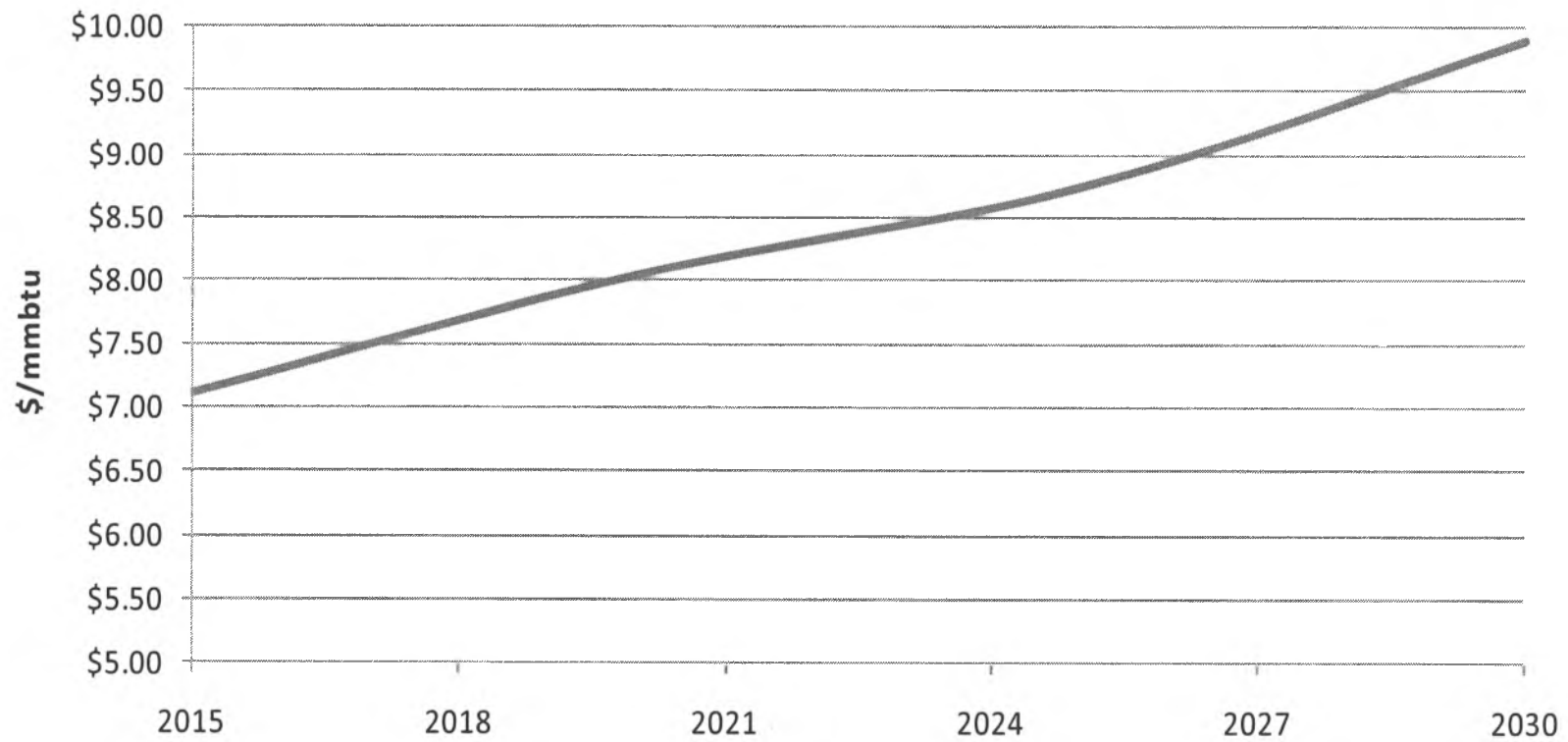


DOE/EIA is the Department of Energy / Energy Information Administration

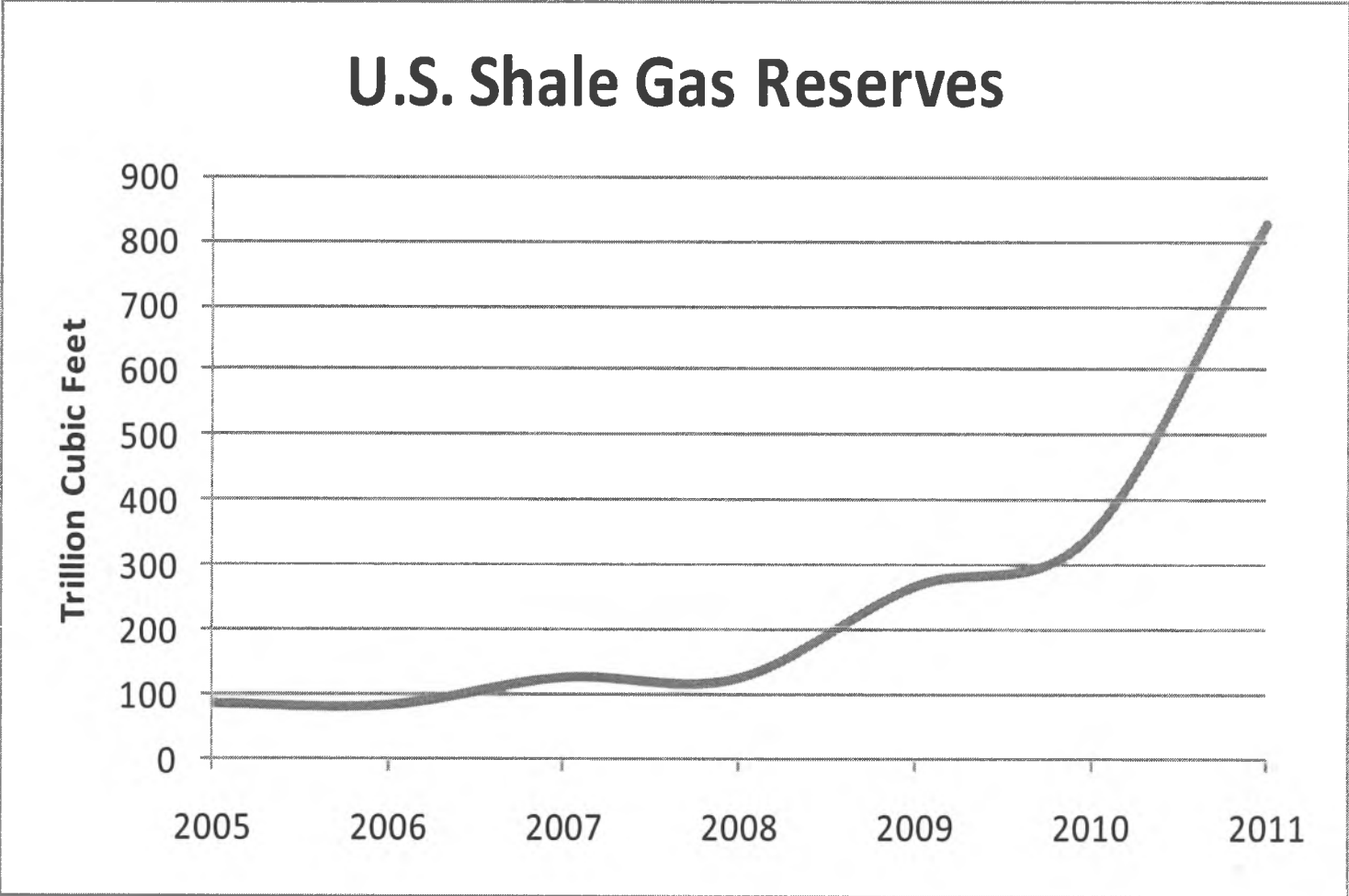
2008 Wood Mackenzie Henry Hub Forecast (\$/mmbtu) (2009 dollars)



2008 Black & Veatch Henry Hub Forecast (\$/mmbtu) (2009 dollars)

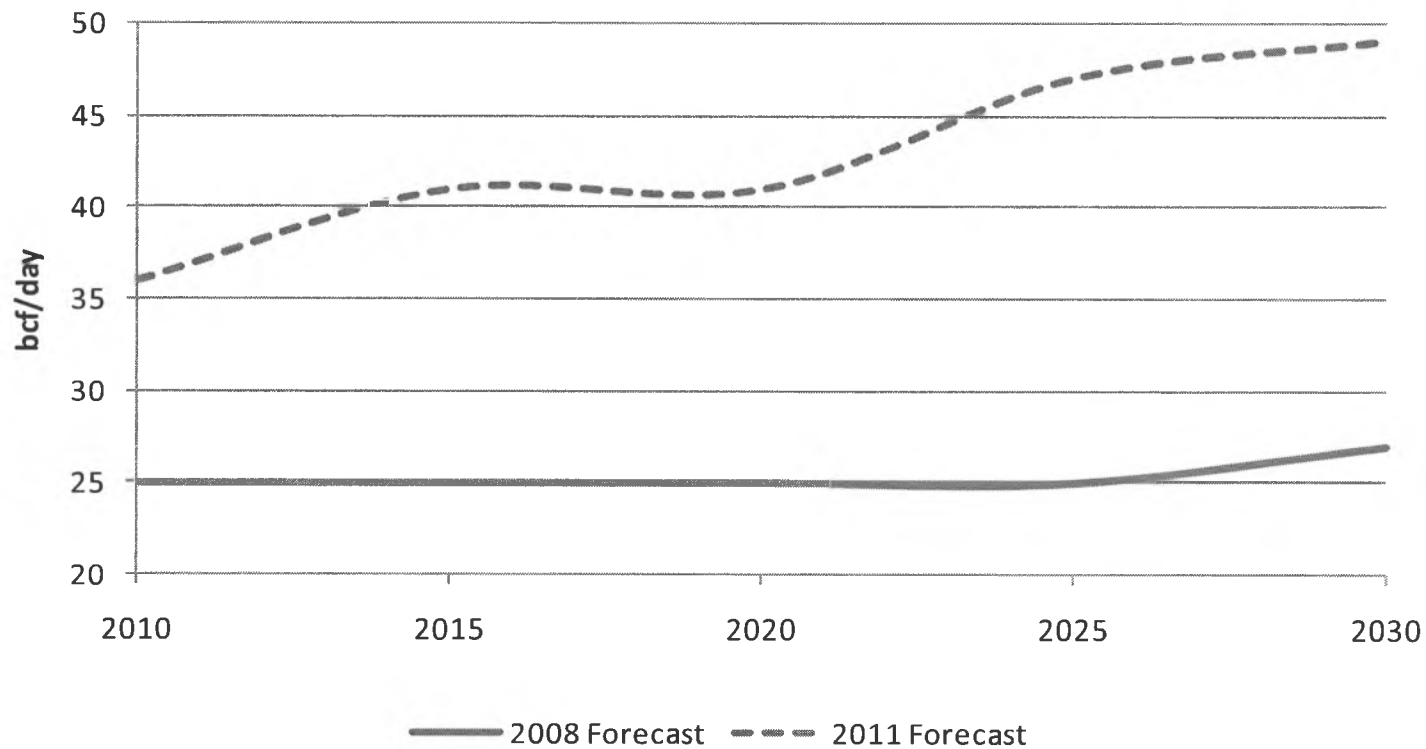


U.S. Shale Gas Reserves



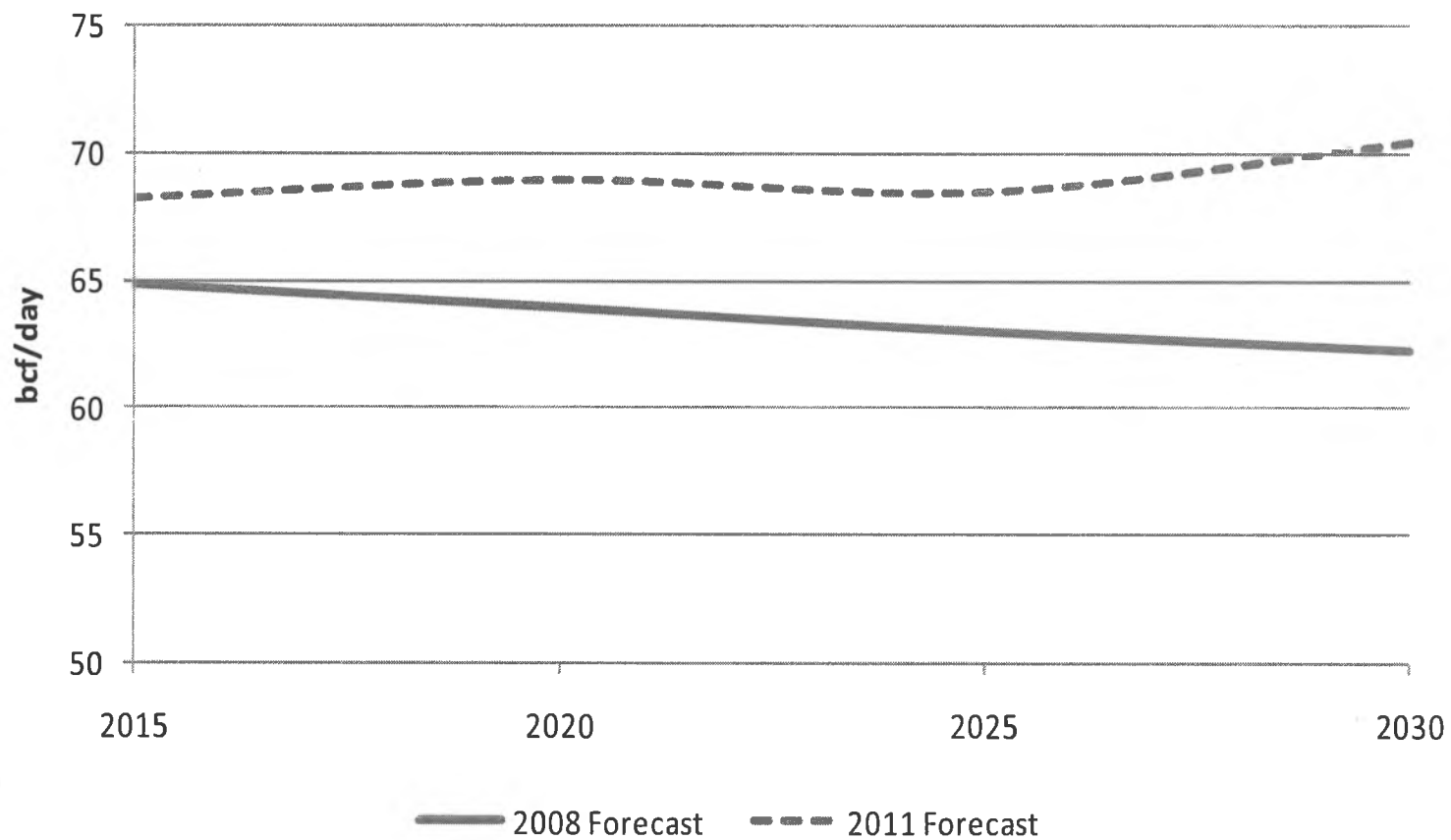
Source: DOE/EIA, 2011

2008 vs. 2011 DOE/EIA Unconventional Gas* Production Outlook (bcf/day)

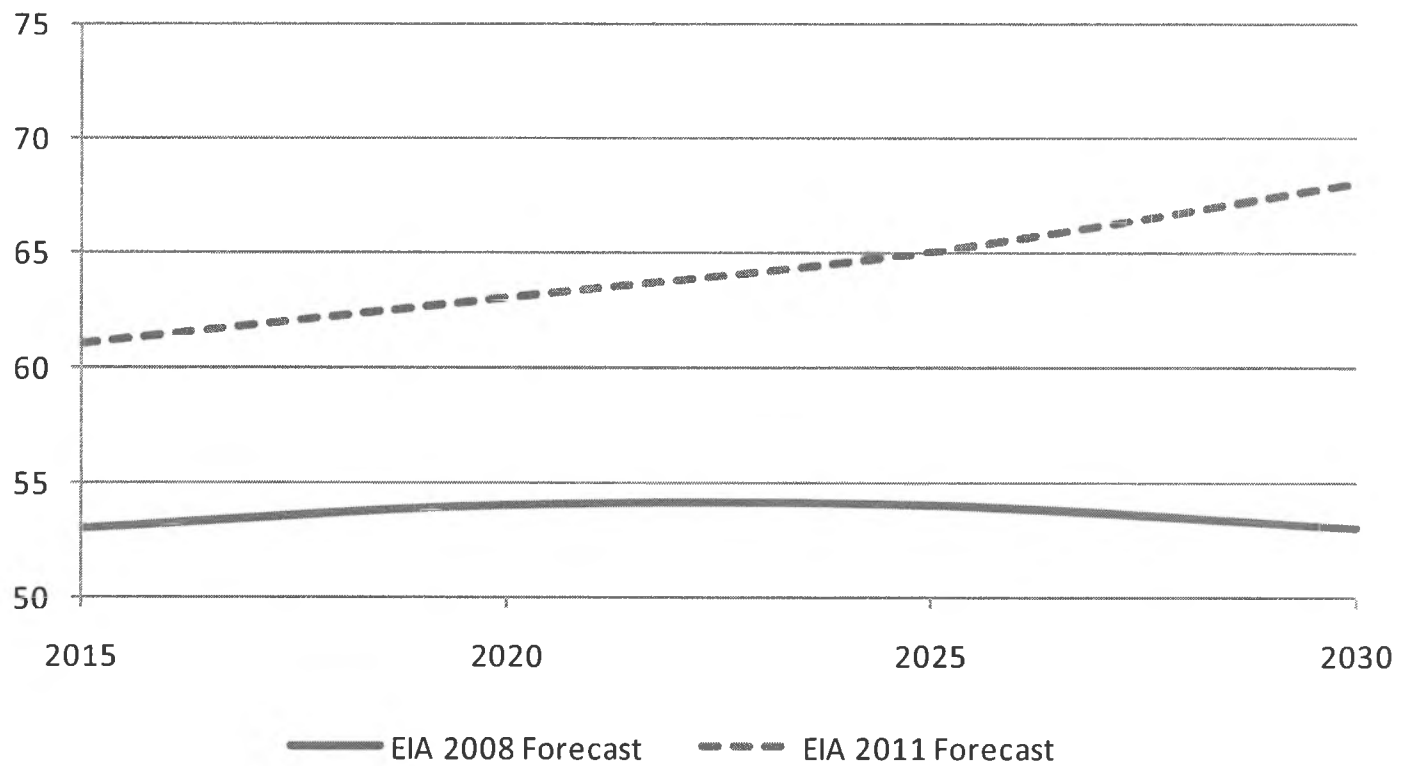


* Shale, tight gas, coal bed methane

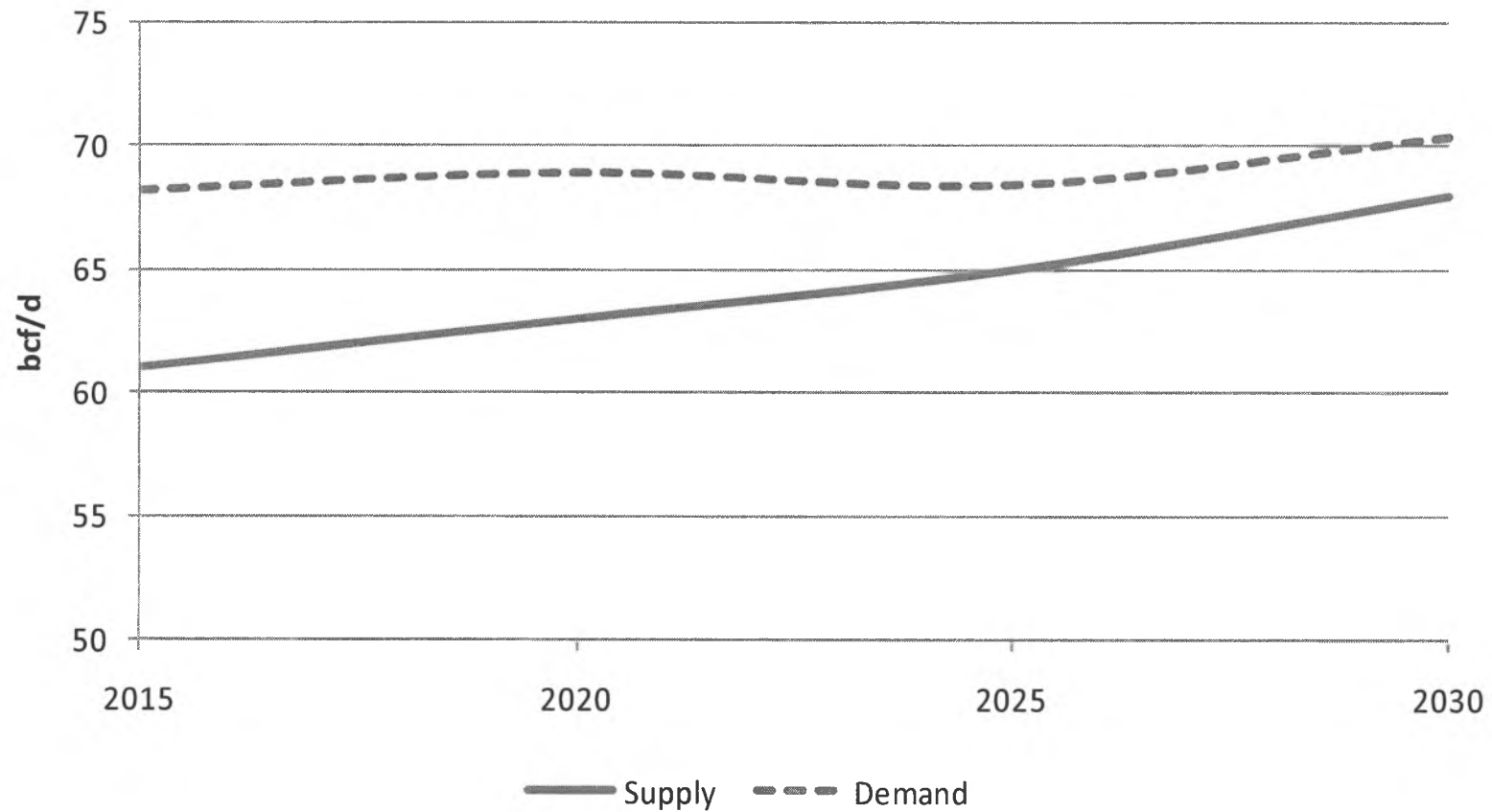
DOE/EIA Forecasted U.S. Natural Gas Demand (bcf/day)



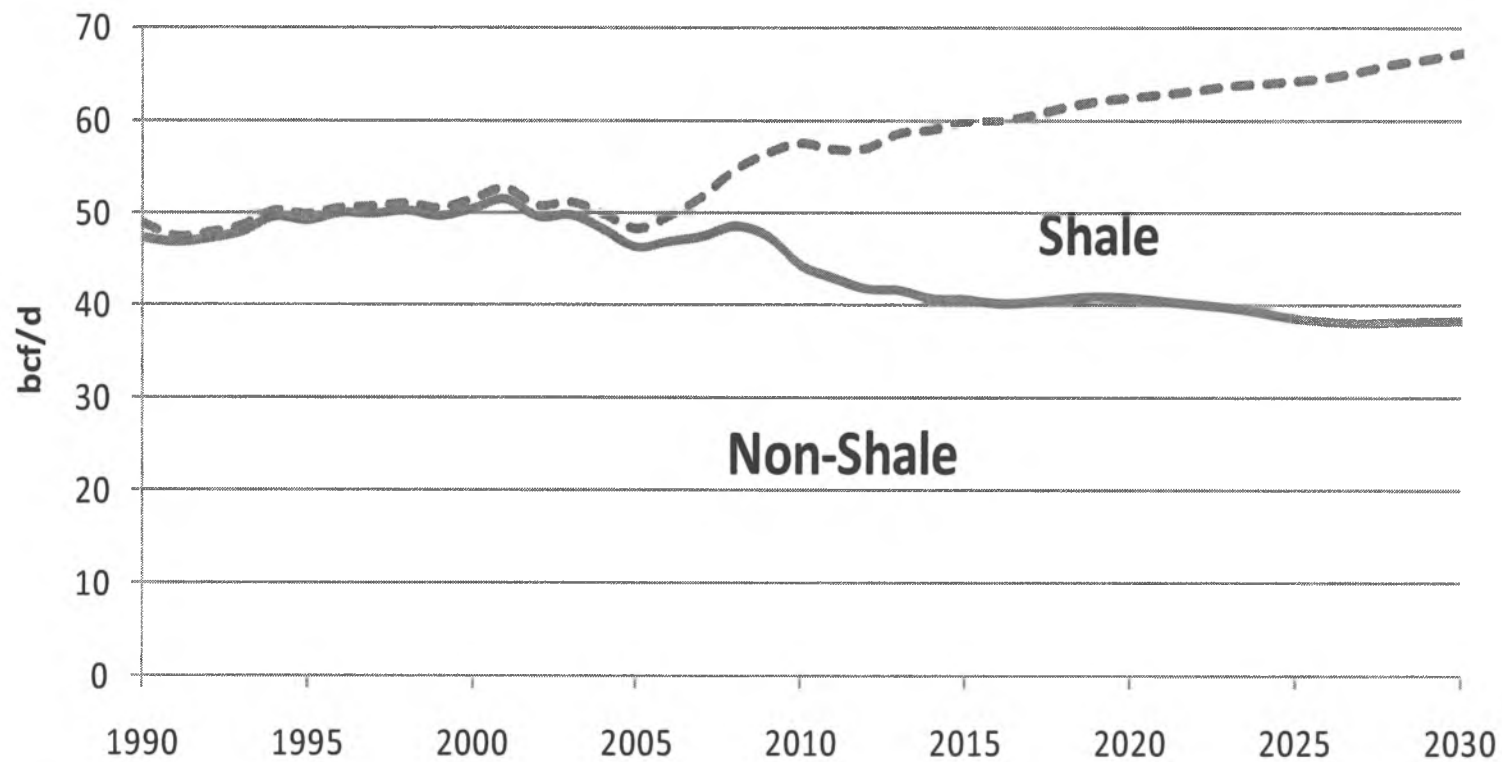
DOE/EIA Forecasted U.S. Natural Gas Supply 2008 vs. 2011 (bcf/day)



DOE/EIA 2011 Forecast of U.S. Supply & Demand (bcf/day)

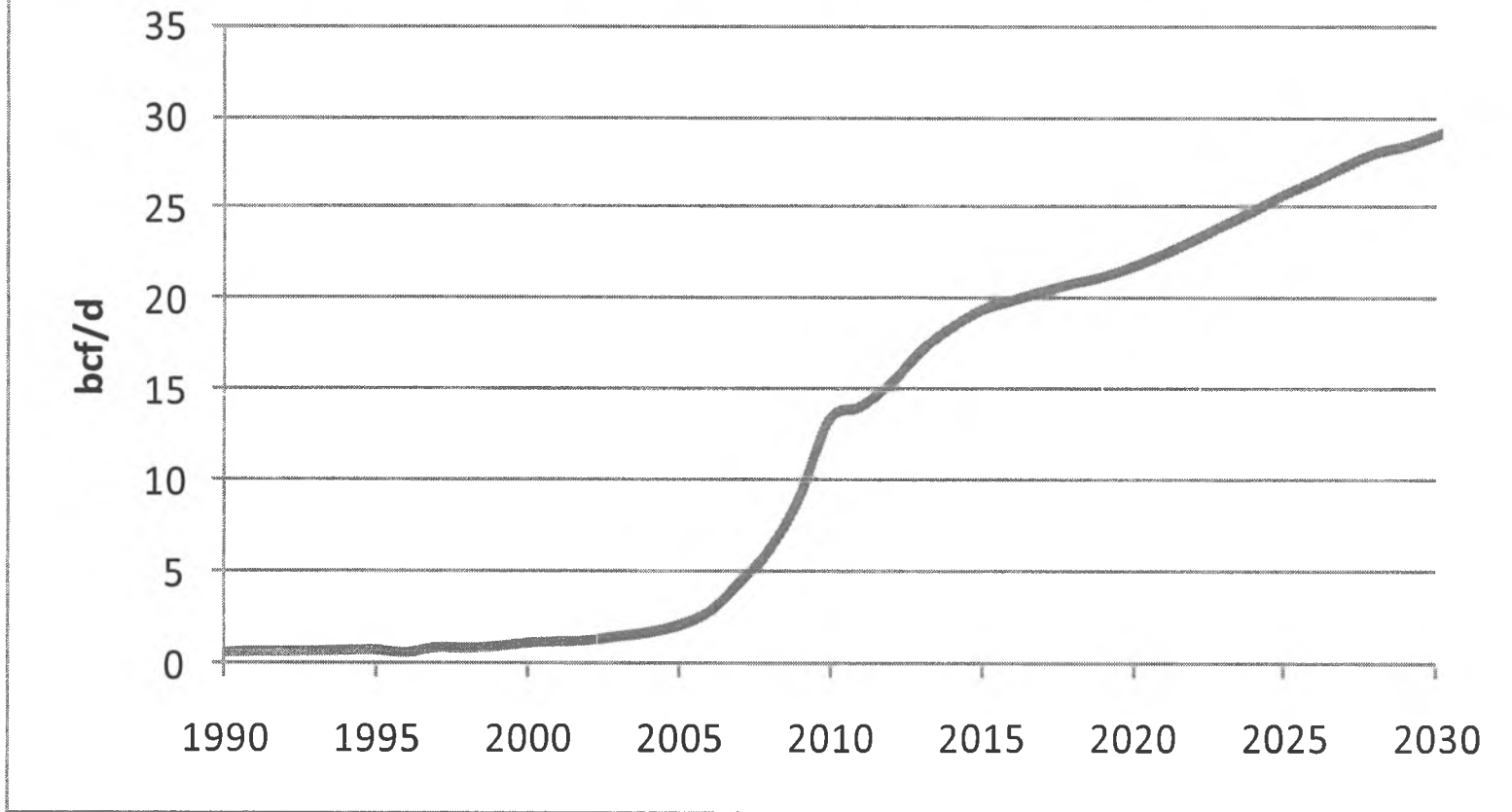


U.S. Natural Gas Supplies (bcf/d)



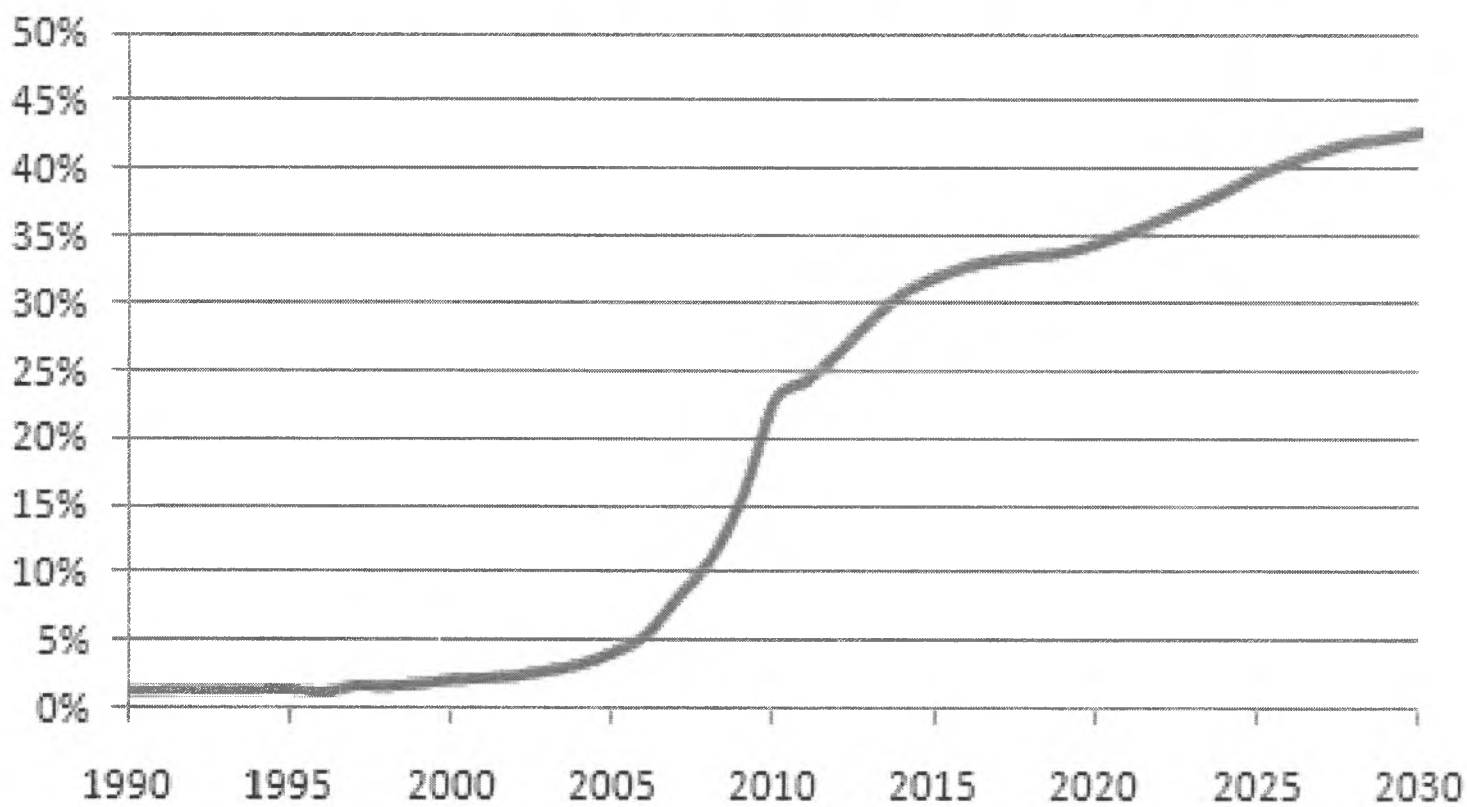
Source: DOE/EIA, 2011

U.S. Shale Gas Supply (bcf/d)



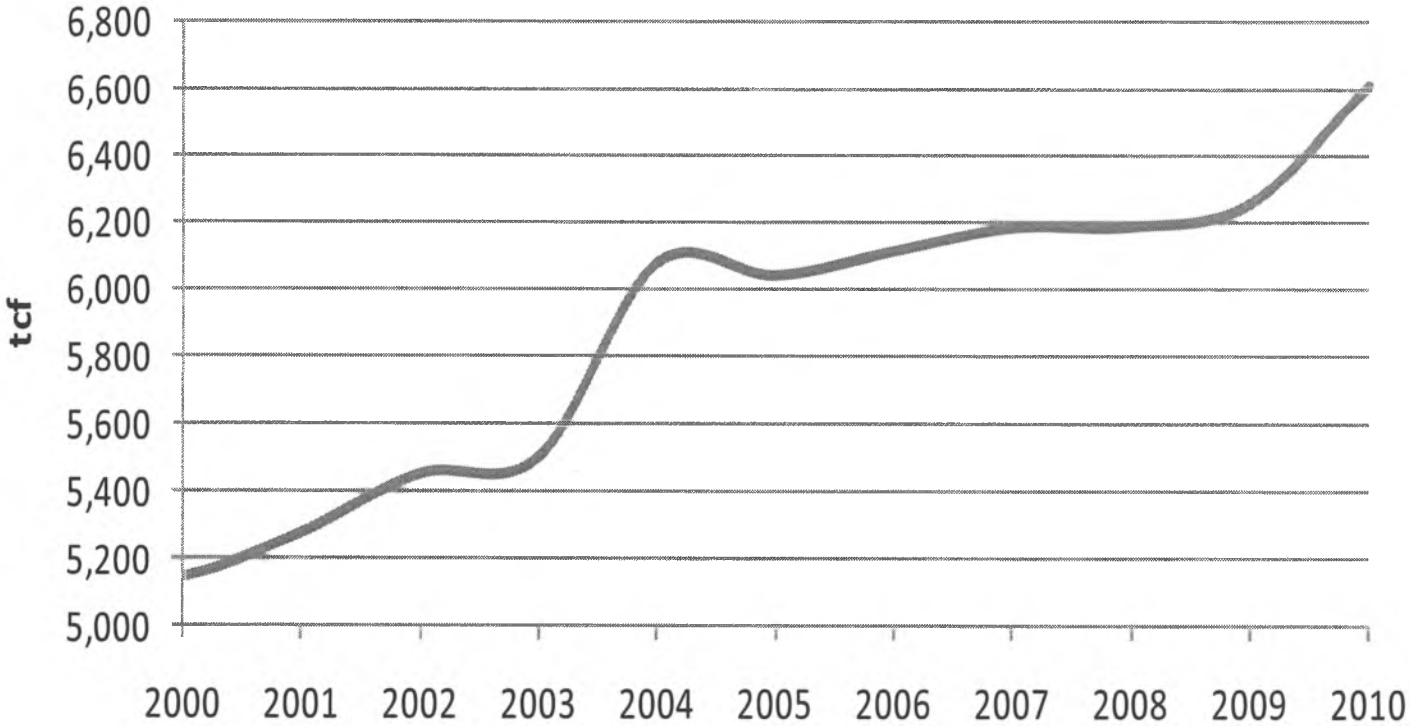
Source: DOE/EIA, 2011

U.S. Shale Gas as % of Total Supply



Source: DOE/EIA, 2011

Growth in World Natural Gas Reserves (excl. new shale) (tcf)



New/Sanctioned LNG Plants

- Sakhalin, Russia; opened 2009; Shell/Mitsui/Mitsubishi; 1.5 bcf/d
- Tangguh, Indonesia; 2009; BP/Mitsubishi/Nippon Oil/LNG Japan/CNOOC/Korea Gas; 1 bcf/d (short subsea pipes to shore)
- Yemen LNG, Yemen; 2009-2010; Total/Hunt Oil/Korea Gas/Hyundai/Yemen government; 900 mmcf/d (tidewater)
- Qatargas II, Qatar; 2009; Exxon/Total/Qatar Petroleum; 2 bcf/d (tidewater)
- Ras Laffan III, Qatar; 2009 and 2010; Exxon/Qatar Petroleum; 2 bcf/d (tidewater)
- Qatargas III, Qatar; 2010; ConocoPhillips/Mitsui/Qatar Petroleum; 1 bcf/d (tidewater)
- Melchorita LNG, Peru; 2010; Hunt Oil/Marubeni/Repsol; 600 mmcf/d (260 miles of overland pipe)
- Pluto LNG, Australia; under construction, 2011; Woodside/Tokyo Gas/Kansai Electric; 1.7 bcf/d by 2014 (includes planned expansions) (17 miles of subsea pipe)
- Soyo LNG, Angola; under construction, 2012; Chevron/Eni/Total/BP/national oil company; 700 mmcf/d
- Qatargas IV, Qatar; 2011; Shell/Qatar Petroleum; 1 bcf/d (tidewater)
- Gorgon LNG, Australia; under construction, 2014; Chevron/Shell/Exxon/ Tokyo Gas/Osaka Gas/Chubu Electric; 2 bcf/d (expansion contemplated) (subsea pipe, measured in the dozens of miles)
- Port Moresby, Papua New Guinea; under construction, 2014; Exxon/Nippon Oil/several other partners; 850 mmcf/d (450 miles of pipe, mostly subsea)
- Queensland Curtis, Australia; under construction, 2014; BG/Tokyo Gas/CNOOC (China); 1.1 bcf/d
- Gladstone, Australia; under construction, 2015; Santos/Petronas/Total; 1 bcf/d (260 miles of overland pipe)

Source: Office of Federal Coordinator Alaska Natural Gas Transportation Projects

Key Price Variables

- How much of shale reserves are economic
- Environmental fracking issues
- Controls on greenhouse gas and air emissions
 - Affects coal demand, which competes with natural gas

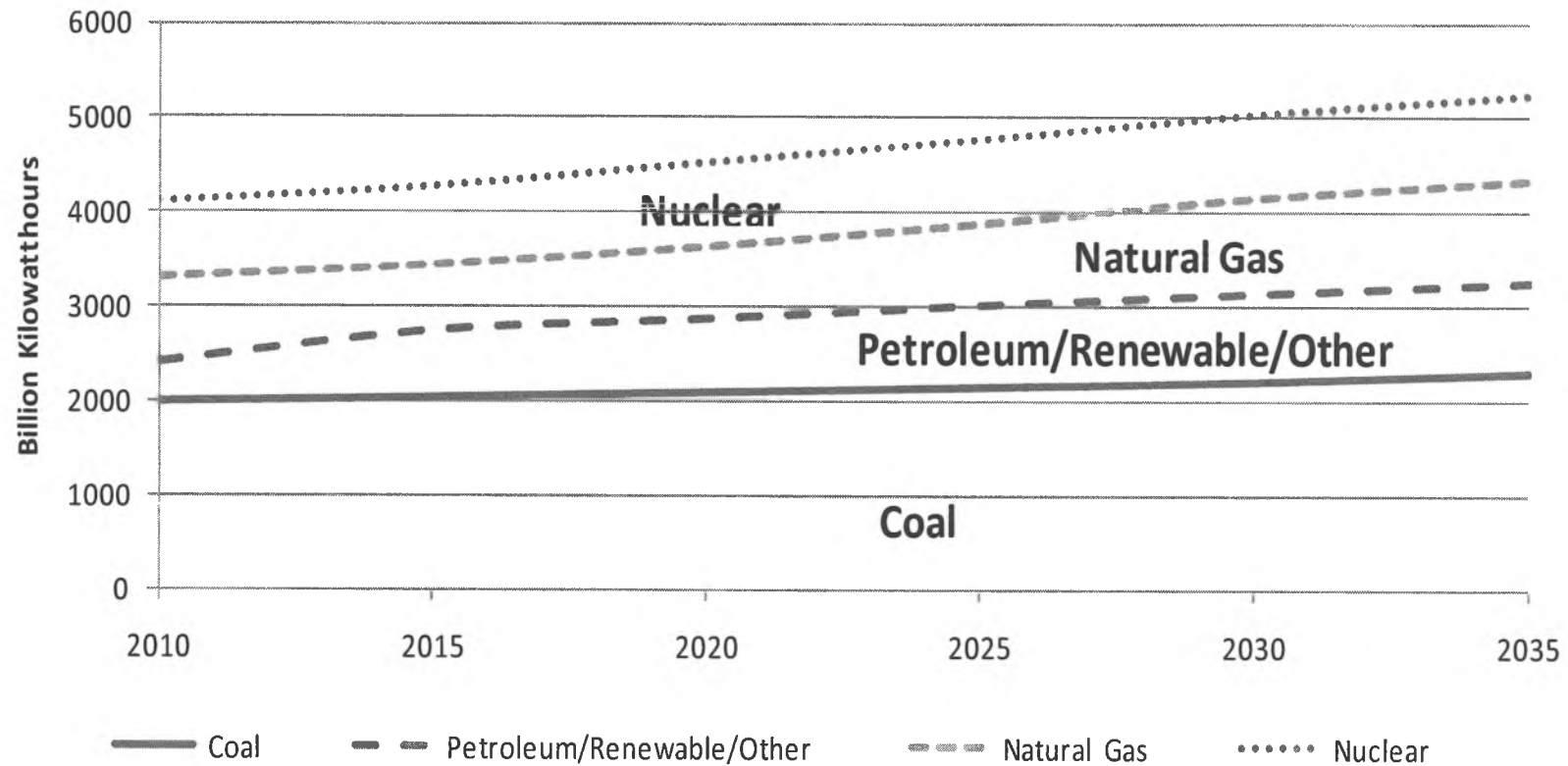
Cost to Produce Shale Reserves?

- Still too new to tell. Unknowns :
 - How do shale wells perform long term?
 - Ultimate recoveries and production potential for wells?
- Costs will go up?
 - Production tends to drop off quickly
 - More rigs will be needed: cost pressure
 - Land access
 - Water availability
- Costs will go down?
 - Exploration continues
 - Cost cutting technologies possible
 - Reserves and production of new energy resources tend to increase over time

Hydraulic Fracturing Issues

- Can fracking fluid migrate from deep underground to contaminate shallow aquifers?
- Sloppy drilling practices have occurred
- Currently under state oversight
 - Updated standards for well design, drilling, waste disposal
 - Federal possible
- Compliance and environmental costs will increase
 - Not overwhelming (5%-20% per well?)
- New technologies for water treatment are emerging

U.S. Electricity Generation by Fuel (billion kilowatthours)



Source: DOE/EIA

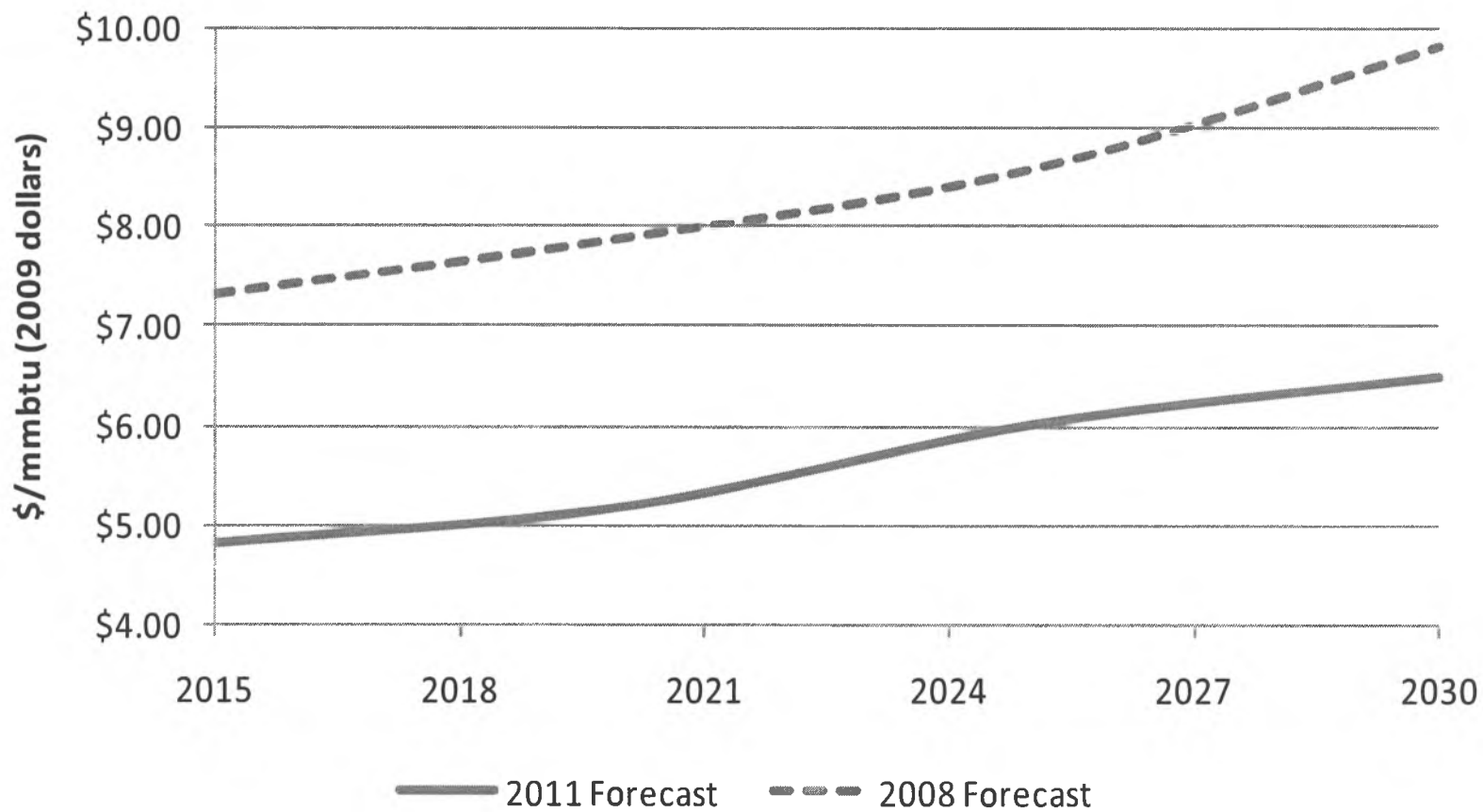
Regulation of Greenhouse Gas

- Near term – insufficient support for comprehensive climate change legislation coming out of Congress
- 2009 – EPA begins regulating GHG under the Clean Air Act
- Subject to judicial challenge
- Congress may try to limit regulatory action under CAA

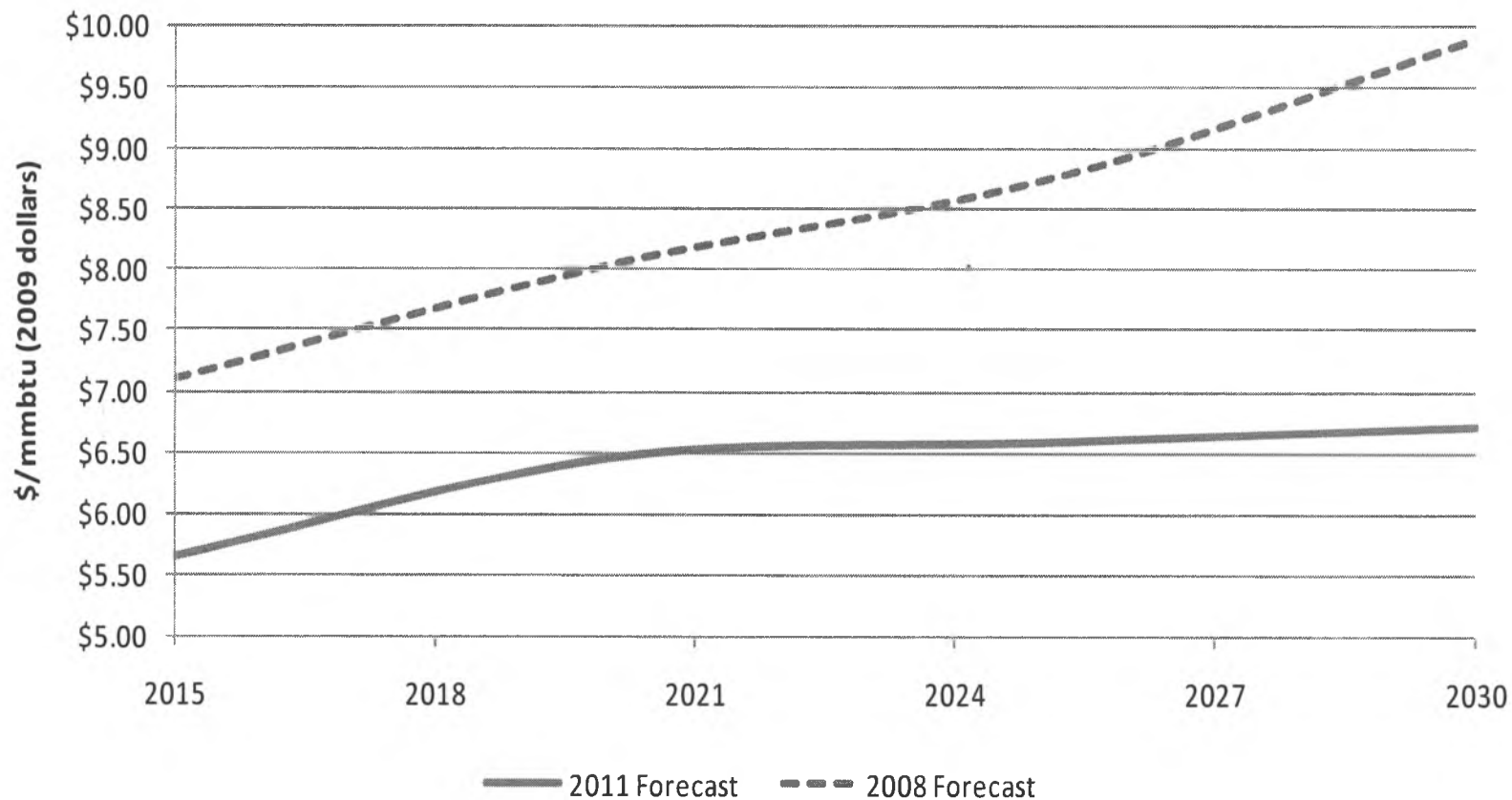
Regulation of Air Emissions

- EPA will soon issue tougher air emission standards for nitrogen dioxide, sulfur dioxide, mercury
- Large compliance costs for old coal plants:
 - Upgrading plant vs.
 - New natural gas plant
- Decision depends on severity of regs and coal/gas price spread
 - At low gas prices coal plants will be shut down
- Do not underestimate coal and railroad lobby

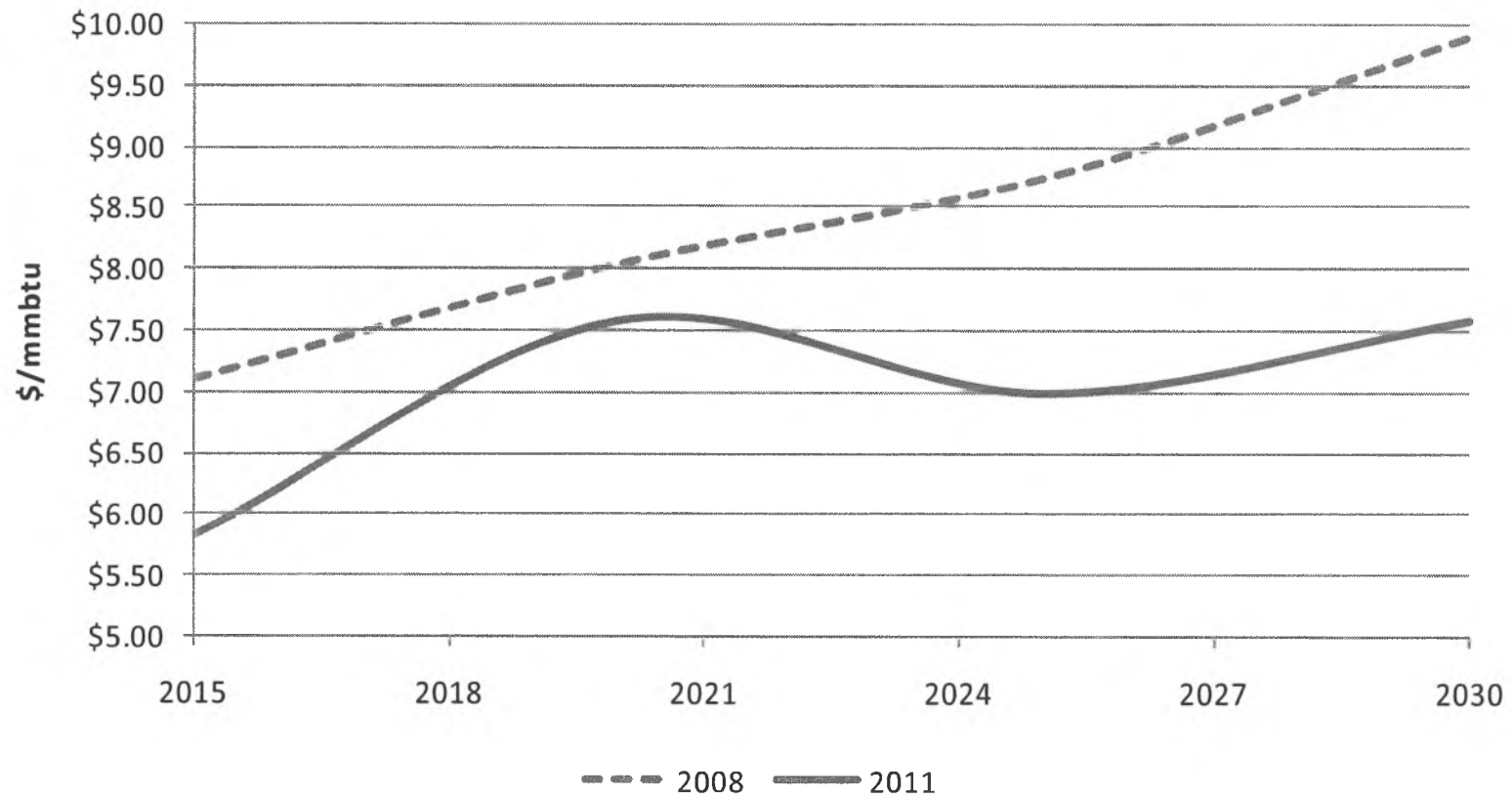
2008 vs. 2011 DOE/EIA Henry Hub Forecast (\$/mmbtu) (2009 dollars)



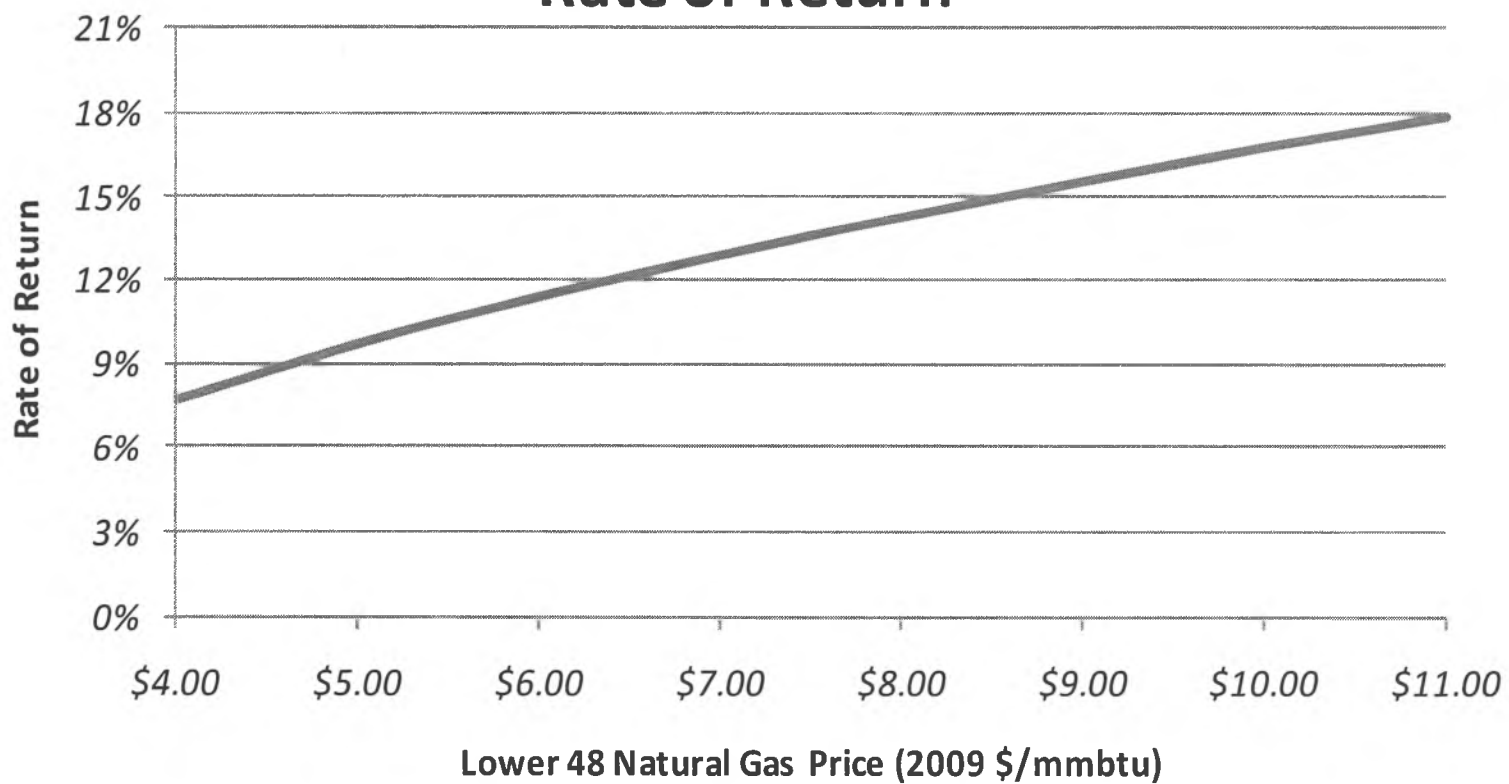
2008 vs. 2011 Wood Mackenzie Henry Hub Forecast (\$/mmbtu) (2009 dollars)



2008 vs. 2011 Black & Veatch Henry Hub Forecast (\$/mmbtu) (2009 dollars)



Alaska North Slope Gas Pipeline Rate of Return



Conclusion: What has Changed between 2008 and Now?

- Short-medium term:
 - Grim market outlook
 - Imprudent for investors to proceed while uncertainties playing themselves out
 - Outlook for North Slope gas commercialization has been deferred
- Longer-term
 - Depending on how certainties play out
 - Possible alternative opportunities

4) 4/11

TransCanada AGIA Reimbursements AS 43.90.110 (FU11188 - AS 43.90.400)

Dona Keppers, Audit Master in Tax Division, is the AGIA License Administrator. She reviews reimbursement requests and prepares payment documents that are then submitted to fiscal for input and certification.

Payment documents include:

- Approval memo signed by Dona and approved by DOR commissioner or designee.
- Reimbursement request summary report prepared by Tax Division.
- Invoices from TransCanada.

*Payments over \$5 million need okay from Bronze Ickes in Cash Management.

Input Payment into AKSAS:

- Print AKSAS management report to show available balance.
AR 15971 (does not lapse)
- Confidential warrant, trans code 310-16
- EDI payment to TransCanada PVN TRC09353

Submitted by the Office of Speaker Chenault

4/4/11

AGIA Reimbursements

CY 2009 Audit

- First annual audit of AGIA Licensee
- RFP issued June 2009; awarded to Martindale
- Audit fieldwork conducted May – Nov. 2010
- No funding was budgeted for audit
- Paid for w/ \$50K RSA from DNR plus \$8700 from DOR = **Total Audit Fee \$58,700**
- Smallest transaction volume of any anticipated audit
- Audit Findings: Immaterial financial impact, primarily on internal controls
- TC implemented changes and corrections immediately

CY2010 Audit

- Substantially greater transaction volume than previous CY
- Estimated cost of audit = **\$150,000**
- Only **\$50,000** funding provided for audit in special gasoline appropriation
- CY2010 Contract funding sources include:
 - \$50,000 - Department of Natural Resources, RSA
 - \$50,000 - AR 15340, Natural Gas Commercialization
 - \$50,000 - DOR Commissioner's Office Operating Budget

CY2011 Audit

- **\$125,000** has ben requested in FY2012 budget for CY2011 audit

Reimbursements Issued to date

- DOR received first filing for complete filing in **October 2009**
- First reimbursement issued **December 2009** (\$1.1 million)
- To date, total reimbursements issued = **\$36.7 million**
- Additional reimbursements estimated for remainder of FY2011 = **\$73 million**
- Included in the \$73M, next reimbursement payment is on **3/31/11 for \$12.6M**
- Followed by estimate of
 - \$20M by 4/30/11 for 4Q 2010
 - \$ 7M in 2010 Exceptions/Adjustments
 - \$32M for 1Q 2011 Activity by 6/30/11

Forecast Reimbursements

- Estimated Payout during FY2012 up to **\$170 million**
 - May range from \$125 – \$170 million
 - Rate of spend may be impacted by project developments, particularly outcome of current commercial negotiations.

| | |
|---|----------------------|
| Fund Balance 6/30/10 | \$148,265,463 |
| FY 2011 Actual Pay Out 7/10 to 10/10 | (\$32,375,550) |
| FY 2011 Forecasted Payout (Remaining) | (\$73,000,000) |
| Estimated Fund Balance @ 6/30/11 | \$42,889,913 |
| | |
| FY 2012 Forecasted Payout | (\$170,000,000) |
| | (\$127,110,087) |
| | |
| FY2012 Request | \$160,000,000 |
| Projected Balance @ 6/30/12 | \$32,889,913 |

Alaska State Legislature

4/4/11

State Capitol, Room 208
Juneau, Alaska 99801-1182
Phone: 907-465-3779
Fax: 907-465-2833
Toll Free: 800-469-3779



145 Main St. Loop
Second Floor
Kenai, Alaska 99611
Phone: 907-283-7223
Fax: 907-283-7184

REPRESENTATIVE MIKE CHENAULT

SPEAKER OF THE HOUSE

SPONSOR STATEMENT

House Bill 142: "An Act relating to the creation of a rebuttable presumption that the project licensed under the Alaska Gasline Inducement Act is uneconomic because of insufficient firm transportation commitments during the first open season."

House Bill 142 creates a rebuttable presumption that the project licensed under the Alaska Gasline Inducement Act (AGIA) is uneconomic because of insufficient firm transportation commitments during the first open season. The open season ran from April 30 to July 30, 2010.

The bill creates a benchmark at which the Legislature expects evidence of progress under the state's \$500 million financial commitment under AGIA.

AGIA licensee TransCanada has until July 15, 2011, to disclose to the commissioners of the state Department of Revenue and Department of Natural Resources whether firm transportation commitments were made sufficient to support construction of the project licensed under AGIA.

If not, the presumption takes effect.

The commissioners have until Aug. 1 to notify the Legislature whether the results of the first open season were disclosed by July 15, and whether those commitments are sufficient to support construction of the project licensed under AGIA.

If the presumption is raised, the commissioners have until Aug. 15 to rebut it to the legislature with a preponderance of evidence. The commissioners are not required to rebut the presumption if they believe the evidence is lacking.

If the presumption is not rebutted, the project is considered uneconomic for purposes of AS 43.90.240, 'AGIA-Abandonment of Project'. That existing part of AGIA includes provisions for dissolving the relationship between TransCanada and the state if the project becomes uneconomic at any point.

If the state determines the project is uneconomic, TransCanada can agree, and both parties' obligations and responsibilities under AGIA are ended, without penalty. If one party does not agree, an arbitration process as specified in 43.90.240 begins. If arbitrators deem the project

uneconomic, the AGIA relationship dissolves. If arbitrators find that the project is not uneconomic, the state and TransCanada continue under the terms of AGIA.

House Bill 142 also adds reporting requirements to administration requests for FY2013 AGIA reimbursement appropriations as provided in AS 43.90.110, 'AGIA-Natural gas pipeline project construction inducement'.

4/4/11

Alaska State Legislature

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Kenai, Alaska 99611
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Fax: 907-283-7184



REPRESENTATIVE MIKE CHENAULT SPEAKER OF THE HOUSE

Fact Sheet

House Bill 142: Presumption AGIA project is Uneconomical

House Bill 142 creates a new statute that makes the presumption that a gas pipeline project licensed under the Alaska Gasline Inducement Act^[1] is uneconomic absent firm transportation commitments during the first open season^[2].

The bill requires proof to the Legislature that the first open season for the AGIA project generated sufficient firm transportation commitments to build the gasline. If those contracts exist between shippers and the AGIA licensee, TransCanada, the project continues. If not, the bill says that the AGIA project is rebuttably presumed uneconomic and should be abandoned. The existing AGIA statute provides a roadmap for abandoning the project if it becomes uneconomic, without financial penalties to either the state or TransCanada.

Under House Bill 142, TransCanada, has until July 15, 2011, to inform the commissioners of the Alaska Departments of Revenue (DOR) and of Natural Resources (DNR) whether firm transportation commitments sufficient to support the project were made in the first open season. The commissioners have until Aug. 1, 2011, to notify the Legislature whether that disclosure was made.

Without firm transportation commitments, the presumption is raised that the project is uneconomic for purposes of AS 43.90.240 (AGIA Abandonment of Project). The presumption can be rebutted with a preponderance of evidence. The presumption may also be allowed to stand for purposes of AS 43.90.240 (AGIA Abandonment of Project).

^[1] TransCanada Alaska Company, LLC, and Foothills Pipe Lines Ltd. were issued a license under AGIA on December 5, 2008.

^[2] TransCanada held its first open season starting at 8 a.m. April 30, 2010, and ending at 5 p.m. July 30, 2010.

If the presumption is raised, the commissioners of DOR and DNR have until Aug. 15, 2011, to submit a report to the Legislature. The report either rebuts the presumption with evidence, or states that there is not sufficient evidence to rebut the presumption.

House Bill 142 builds on an existing AGIA provision – Abandonment of Project, AS 43.90.240, that describes how the project can be abandoned if it is deemed uneconomical.

Additionally, if the presumption is raised, the commissioners must provide evidence the project has sufficient credit for construction and that the project's rate of return meets benchmarks when requesting FY2013 appropriations for reimbursements to the licensee under AGIA.

The bill does not prevent an agreement between the state and the licensee that the project is uneconomic for purposes of AS 43.90.240 (AGIA Abandonment of Project).

AS 43.90.240, Abandonment of project

The Alaska Gasline Inducement Act includes a section, 43.90.240, called "Abandonment of project," essentially a road map to follow if one or both parties – the state and TransCanada – decide the project is uneconomic.

If both parties agree the project is uneconomic, all deals are off and everyone walks away. The state doesn't have the obligation to pay more of the \$500 million reimbursement, and TransCanada is no longer bound to pursue the project to FERC certification. The state does have the option of paying TransCanada for all qualified expenditures eligible for reimbursement, and in return, taking the project work product.

(ACTUAL STATUTE: (e) If the commissioners and the licensee agree that the project is uneconomic or an arbitration panel makes a final determination that the project is uneconomic, the licensee shall, upon the state's request, transfer to the state or the state's designee all engineering designs, contracts, permits, and other data related to the project that are acquired by the licensee during the term of the license upon reimbursement by the state of the net amount of expenditures incurred and paid by the licensee that are qualified expenditures for the purposes of AS 43.90.110 .)

If only one party decides the project is uneconomic, a panel of three American Arbitration Association members are brought in – one picked by the state, one by TransCanada, and the third by the first two panelists.

In arbitration, the party that decided the project is uneconomic has to present evidence proving two benchmarks, laid out in statute.

The first is that the project lacks the credit support through firm transportation commitments, government assistance or other financing, to sufficiently support construction.

The second is more complex. The party must show that the expected rate of return is less than an oil and gas company committing production to the line would typically expect in similar projects.

If the arbitrators decide the project is uneconomic, all deals are off.

If the arbitrators decide the project is not uneconomic, both parties must continue to meet their obligations under AGIA.

The abandonment of project section of AGIA does not trigger punitive damages, such as the treble damages in another section of the statute. Under that section, AS 43.90.440, the state could be liable for three times the amount TransCanada has spent on work under AGIA if the state takes certain actions giving preferential treatment or grants to another person with a gasline project of a certain size.

What HB142 does and does not do

House Bill 142 does:

- House Bill 142 does allow the parties to walk away from the project if the project is deemed uneconomic.
- House Bill 142 does call on the DOR and DNR commissioners to serve as the conduit for project status information between TransCanada and the Legislature.
- House Bill 142 does create a new section of law outside of AGIA.

House Bill 142 does not:

- House Bill 142 does not change or repeal the AGIA statute or the contract with TransCanada.
- House Bill 142 does not allow the state to walk away from a signed contract.
- House Bill 142 does not trigger treble damages or other punitive damages.

House Bill 142 does not force the commissioners or TransCanada to divulge confidential information. Firm transportation commitments, and their precursors, precedent agreements, are required by the Federal Energy Regulatory Commission to be made public (in a limited degree) within days.



LAWS OF ALASKA

2007

Source
SCS CSHB 177(FIN)

Chapter No.

AN ACT

Relating to the Alaska Gasline Inducement Act; providing inducements for the construction of a natural gas pipeline and shippers that commit to use that pipeline; establishing the Alaska Gasline Inducement Act reimbursement fund; providing for an Alaska Gasline Inducement Act coordinator; making conforming amendments; and providing for an effective date.

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

THE ACT FOLLOWS ON PAGE 1

Enrolled HB 177

AN ACT

1 Relating to the Alaska Gasline Inducement Act; providing inducements for the construction of
2 a natural gas pipeline and shippers that commit to use that pipeline; establishing the Alaska
3 Gasline Inducement Act reimbursement fund; providing for an Alaska Gasline Inducement
4 Act coordinator; making conforming amendments; and providing for an effective date.

5

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 expedited construction of a natural gas pipeline that

10

11

(1) facilitates commercialization of North Slope gas resources in the

12

state;

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

3 (3) maximizes benefits to the people of the state from the development
4 of oil and gas resources in the state; and

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

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

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

12 (b) Nothing in this chapter precludes a person from pursuing a gas pipeline
13 independently from this chapter.

14 **Sec. 43.90.110. Natural gas pipeline project construction inducement.** (a)
15 Subject to the limitations of this chapter, a license issued under this chapter entitles the
16 licensee or its designated affiliate to receive

17 (1) subject to appropriation, state matching contributions in the form of
18 reimbursements in a total amount not to exceed \$500,000,000, paid to the licensee
19 during the seven-year period immediately following the date the license is awarded;
20 the payment period may be extended by the commissioners under an amendment or
21 modification of the project plan under AS 43.90.210; a payment under this paragraph
22 shall be made according to the following:

23 (A) on or before the close of the first binding open season, the
24 state shall reimburse the licensee's qualified expenditures at the level specified
25 in the license; however, the state's reimbursements may not exceed 50 percent
26 of the qualified expenditures incurred before the close of the first binding open
27 season;

28 (B) after the close of the first binding open season, the state
29 shall reimburse the licensee's qualified expenditures at the level specified in
30 the license; however, the state's reimbursements may not exceed 90 percent of
31 the qualified expenditures incurred after the close of the first binding open

1 season;

2 (C) a qualified expenditure is a cost that is incurred after the
3 license is issued under this chapter by the licensee or the licensee's designated
4 affiliate, and is directly and reasonably related to pursuing firm transportation
5 commitments in a binding open season, to securing financing for the project, or
6 to obtaining a certificate of public convenience and necessity from the Federal
7 Energy Regulatory Commission or the Regulatory Commission of Alaska, as
8 appropriate, or satisfying a requirement of an agency with jurisdiction over the
9 project; in this subparagraph, "qualified expenditures" does not include
10 overhead costs, lobbying costs, litigation costs, the cost of an asset or work
11 product acquired or developed by the licensee before the license is issued, or
12 civil or criminal penalties or fines; and

13 (2) the benefit of an Alaska Gasline Inducement Act coordinator who
14 has the authority prescribed in AS 43.90.250.

15 (b) The commissioner of revenue in consultation with the commissioner of
16 natural resources shall adopt regulations for determining whether an expenditure is a
17 qualified expenditure for the purposes of (a) of this section.

18 **Sec. 43.90.120. Request for applications for the license.** (a) The
19 commissioners shall commence a public process to request applications for a license
20 under this chapter as soon as practicable after the effective date of this chapter.

21 (b) The commissioners may use independent contractors to assist them in
22 developing the request for applications and in evaluating applications received under
23 this chapter.

24 (c) The provisions of AS 36.30 do not apply to requests for applications under
25 this chapter.

26 **Sec. 43.90.130. Application requirements.** An application for a license must
27 be consistent with the terms of the request for applications under AS 43.90.120 and
28 must

29 (1) be filed by the deadline established by the commissioners in the
30 request for applications;

31 (2) provide a thorough description of a proposed natural gas pipeline

1 project for transporting natural gas from the North Slope to market, which description
2 may include multiple design proposals, including different design proposals for pipe
3 diameter, wall thickness, and transportation capacity, and which description must
4 include

5 (A) the route proposed for the natural gas pipeline, which may
6 not be the route described in AS 38.35.017(b);

7 (B) the location of receipt and delivery points and the size and
8 design capacity of the proposed natural gas pipeline at the proposed receipt and
9 delivery points, except that this information is not required for in-state delivery
10 points unless the application proposes specific in-state delivery points;

11 (C) an analysis of the project's economic and technical
12 viability, including a description of all pipeline access and tariff terms the
13 applicant plans to offer;

14 (D) an economically and technically viable work plan, timeline,
15 and associated budget for developing and performing the proposed project,
16 including field work, environmental studies, design, and engineering,
17 implementing practices for controlling carbon emissions from natural gas
18 systems as established by the United States Environmental Protection Agency,
19 and complying with all applicable state, federal, and international regulatory
20 requirements that affect the proposed project; the applicant shall address the
21 following:

22 (i) if the proposed project involves a pipeline into or
23 through Canada, a thorough description of the applicant's plan to obtain
24 necessary rights-of-way and authorizations in Canada, a description of
25 the transportation services to be provided and a description of rate-
26 making methodologies the applicant will propose to the regulatory
27 agencies, and an estimate of rates and charges for all services;

28 (ii) if the proposed project involves marine
29 transportation of liquefied natural gas, a description of the marine
30 transportation services to be provided and a description of proposed
31 rate-making methodologies; an estimate of rates and charges for all

1 services by third parties; a detailed description of all proposed access
2 and tariff terms for liquefaction services or, if third parties would
3 perform liquefaction services, identification of the third parties and the
4 terms applicable to the liquefaction services; a complete description of
5 the marine segment of the project, including the proposed ownership,
6 control, and cost of liquefied natural gas tankers, the management of
7 shipping services, liquefied natural gas export, destination,
8 regasification facilities, and pipeline facilities needed for transport to
9 market destinations, and the entity or entities that would be required to
10 obtain necessary export permits and licenses or a certificate of public
11 convenience and necessity from the Federal Energy Regulatory
12 Commission for the transportation of liquefied natural gas in interstate
13 commerce if United States markets are proposed; and all rights-of-way
14 or authorizations required from a foreign country;

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

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

21 (B) apply for Federal Energy Regulatory Commission approval
22 to use the prefiling procedures set out in 18 C.F.R. 157.21 by a date certain,
23 and use those procedures before filing an application for a certificate of public
24 convenience and necessity, except where the procedures are not required as a
25 result of sec. 5 of the President's Decision issued under 15 U.S.C. 719 et seq.
26 (Alaska Natural Gas Transportation Act of 1976); 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) if the proposed project is within the jurisdiction of the Regulatory

1 Commission of Alaska, commit to

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 nonbinding 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) of this section, revenue from transportation contracts covers
16 the cost of the expansion, including increased fuel costs and a reasonable
17 return on capital as authorized by the Federal Energy Regulatory Commission
18 or the Regulatory Commission of Alaska, as applicable, and there is no
19 impairment of the proposed project's ability to recover the costs of existing
20 facilities;

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

25 (7) commit that the applicant

26 (A) will propose and support the recovery of mainline capacity
27 expansion costs, including fuel costs, from all mainline system users through
28 rolled-in rates as provided in (B) and (C) of this paragraph or through a
29 combination of incremental and rolled-in rates as provided in (D) of this
30 paragraph;

31 (B) will propose and support the recovery of mainline capacity

1 expansion costs, including fuel costs, from all mainline system users through
2 rolled-in rates; an applicant is obligated under this subparagraph only if the
3 rolled-in rates would increase the rates

4 (i) not described in (ii) of this subparagraph by not more
5 than 15 percent above the initial maximum recourse rates for capacity
6 acquired before commercial operations commence; in this sub-
7 subparagraph, "initial maximum recourse rates" means the highest cost-
8 based rates for any specific transportation service set by the Federal
9 Energy Regulatory Commission, the Regulatory Commission of
10 Alaska, or the National Energy Board of Canada, as appropriate, when
11 the pipeline commences commercial operations;

12 (ii) by not more than 15 percent above the negotiated
13 rate for pipeline capacity on the date of commencement of commercial
14 operations where the holder of the capacity is not an affiliate of the
15 owner of the pipeline project; for the purposes of this sub-
16 subparagraph, "negotiated rate" means the rate in a transportation
17 service agreement that provides for a rate that varies from the otherwise
18 applicable cost-based rate, or recourse rate, set out in a gas pipeline's
19 tariff approved by the Federal Energy Regulatory Commission, the
20 Regulatory Commission of Alaska, or the National Energy Board of
21 Canada, as appropriate; or

22 (iii) for capacity acquired in an expansion after
23 commercial operations commence, to a level that is not more than 115
24 percent of the volume-weighted average of all rates collected by the
25 project owner for pipeline capacity on the date commercial operations
26 commence;

27 (C) will, if recovery of mainline capacity expansion costs,
28 including fuel costs, through rolled-in rate treatment would increase the rates
29 for capacity described in (B) of this paragraph, propose and support the partial
30 roll-in of mainline expansion costs, including fuel costs, to the extent that rates
31 acquired before commercial operations commence do not exceed the levels

1 described in (B) of this paragraph;

2 (D) may, for the recovery of mainline capacity expansion costs,
3 including fuel costs, that, under rolled-in rate treatment, would result in rates
4 that exceed the level in (B) of this paragraph, propose and support the recovery
5 of those costs through any combination of incremental and rolled-in rates;

6 (E) will not enter into a negotiated rate agreement that would
7 preclude the applicant from collecting from any shipper, including a shipper
8 with a negotiated rate agreement, the rolled-in rates that are required to be
9 proposed and supported by the applicant under (B) of this paragraph or the
10 partial rolled-in rates that are required to be proposed and supported by the
11 applicant under (C) of this paragraph;

12 (8) state how the applicant proposes to deal with a North Slope gas
13 treatment plant, regardless of whether that plant is part of the applicant's proposal, and,
14 to the extent that the plant will be owned entirely or in part by the applicant, commit to
15 seek certificate authority from the Federal Energy Regulatory Commission if the
16 proposed project is engaged in interstate commerce, or from the Regulatory
17 Commission of Alaska if the project is not engaged in interstate commerce; for a
18 North Slope gas treatment plant that will be owned entirely or in part by the applicant,
19 for rate-making purposes, commit to value previously used assets that are part of the
20 gas treatment plant at net book value; describe the gas treatment plant, including its
21 design, engineering, construction, ownership, and plan of operation; the identity of any
22 third party that will participate in the ownership or operation of the gas treatment
23 plant; and the means by which the applicant will work to minimize the effect of the
24 costs of the facility on the tariff;

25 (9) propose a percentage and total dollar amount for the state's
26 reimbursement under AS 43.90.110(a)(1)(A) and (B) to be specified in the license;

27 (10) commit to propose and support rates for the proposed project and
28 for any North Slope gas treatment plant that the applicant may own, in whole or in
29 part, that are based on a capital structure for rate-making that consists of not less than
30 70 percent debt;

31 (11) describe the means for preventing and managing overruns in costs

1 of the proposed project, and the measures for minimizing the effects on tariffs from
2 any overruns;

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

5 (13) commit to

6 (A) offer firm transportation service to delivery points in this
7 state as part of the tariff regardless of whether any shippers bid successfully in
8 a binding open season for firm transportation service to delivery points in this
9 state; and

10 (B) offer distance-sensitive rates to delivery points in the state
11 consistent with 18 C.F.R. 157.34(c)(8);

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

14 (15) to the maximum extent permitted by law, commit to

15 (A) hire qualified residents from throughout the state for
16 management, engineering, construction, operations, maintenance, and other
17 positions on the proposed project;

18 (B) contract with businesses located in the state;

19 (C) establish hiring facilities or use existing hiring facilities in
20 the state; and

21 (D) use, as far as is practicable, the job centers and associated
22 services operated by the Department of Labor and Workforce Development
23 and an Internet-based labor exchange system operated by the state;

24 (16) waive the right to appeal the rejection of the application as
25 incomplete, the issuance of a license to another applicant, or the determination under
26 AS 43.90.180(b) that no application merits the issuance of a license;

27 (17) commit to negotiate, before construction, a project labor
28 agreement to the maximum extent permitted by law; in this paragraph, "project labor
29 agreement" means a comprehensive collective bargaining agreement between the
30 licensee or its agent and the appropriate labor representatives to ensure expedited
31 construction with labor stability for the project by qualified residents of the state;

1 (18) commit that the state reimbursement received by a licensee may
2 not be included in the applicant's rate base, and shall be used as a credit against the
3 licensee's cost of service;

4 (19) provide a detailed description of the applicant, all entities
5 participating with the applicant in the application and the project proposed by the
6 applicant, and persons the applicant intends to involve in the construction and
7 operation of the proposed project; the description must include the nature of the
8 affiliation for each person, the commitments by the person to the applicant, and other
9 information relevant to the commissioners' evaluation of the readiness and ability of
10 the applicant to complete the project presented in the application;

11 (20) demonstrate the readiness, financial resources, and technical
12 ability to perform the activities specified in the application by describing the
13 applicant's history of compliance with safety, health, and environmental requirements,
14 the ability to follow a detailed work plan and timeline, and the ability to operate within
15 an associated budget.

16 **Sec. 43.90.140. Initial application review; additional information requests;**
17 **complete applications.** (a) After the deadline established by the commissioners for
18 filing an application has passed, the commissioners shall open and review each
19 application to determine whether it is consistent with the terms of the request for
20 applications and meets the requirements of AS 43.90.130. The commissioners shall
21 reject as incomplete an application that does not meet the requirements of
22 AS 43.90.130.

23 (b) To evaluate whether an application should be rejected under (a) of this
24 section, the commissioners may request additional information relating to the
25 application.

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

29 (d) For an application not rejected under this section, the commissioners shall
30 make a determination that the application, including any requested additional
31 information, is complete.

1 (e) Except as provided under AS 43.90.150, and after determining which
2 applications are complete, the commissioners shall make all applications available to
3 the legislature.

4 **Sec. 43.90.150. Proprietary information and trade secrets.** (a) At the
5 request of the applicant, information submitted under this chapter that the applicant
6 identifies and demonstrates is proprietary or is a trade secret is confidential and not
7 subject to public disclosure under AS 40.25. After a license is awarded, all
8 information submitted by the licensee, retained under this chapter, and not determined
9 by the commissioners to be a proprietary or trade secret shall be made public.

10 (b) If the commissioners determine that the information submitted by the
11 applicant is not proprietary or is not a trade secret, the commissioners shall notify the
12 applicant and return the information at the request of the applicant.

13 **Sec. 43.90.160. Notice, review, and comment.** (a) The commissioners shall
14 publish notice and provide a 60-day period for public review and comment on all
15 applications determined complete under AS 43.90.140. Except as provided under
16 AS 43.90.150, all applications filed under this chapter shall be made public, including
17 applications rejected as incomplete under AS 43.90.140.

18 (b) Applications received under this chapter are not subject to public
19 disclosure under AS 40.25 until the commissioners publish notice under this section.
20 However, information that the commissioners have determined is proprietary or a
21 trade secret under AS 43.90.150 may not be made public even after the notice is
22 published under (a) of this section, except as otherwise provided in AS 43.90.150. If
23 information is proprietary or a trade secret and is held confidential under
24 AS 43.90.150, the applicant shall provide a summary of the confidential information
25 that is satisfactory to the commissioners, and the commissioners shall make the
26 summary of the information available to the public.

27 (c) After the commissioners determine that the applications are complete
28 under AS 43.90.140, information provided by an applicant to the commissioners under
29 this chapter, including information determined by the commissioners to be
30 confidential under AS 43.90.150, shall be disclosed to the legislative auditor, the fiscal
31 analyst who serves as head of the legislative finance division, members of the

1 legislature, and their respective agents and contractors, on request and after the
2 individual making the request signs a confidentiality agreement prepared by the
3 commissioners.

4 **Sec. 43.90.170. Application evaluation and ranking.** (a) The commissioners
5 shall evaluate all applications determined to be complete under AS 43.90.140,
6 consider public comments received under AS 43.90.160(a), and rank each application
7 according to the net present value of the anticipated cash flow to the state from the
8 applicant's project proposal using the factors in (b) of this section and weighted by the
9 project's likelihood of success based on the commissioners' assessment of the factors
10 listed in (c) of this section.

11 (b) When evaluating the net present value of anticipated cash flow to the state
12 from the applicant's project proposal, the commissioners shall use an undiscounted
13 value and, at a minimum, discount rates of two, five, six, and eight percent, and
14 consider

15 (1) how quickly the applicant proposes to begin construction of the
16 proposed project and how quickly the project will commence commercial operation;

17 (2) the net back value of the gas determined by the destination market
18 value of the gas and estimated transportation and treatment costs;

19 (3) the ability of the applicant to prevent or reduce project cost
20 overruns that would increase the tariff;

21 (4) the initial design capacity of the applicant's project and the extent
22 to which the design can accommodate low-cost expansion;

23 (5) the amount of the reimbursement by the state under
24 AS 43.90.110(a)(1)(A) and (B) proposed by the applicant under AS 43.90.130(9);

25 (6) economic value resulting from payments required to be made to the
26 state under the terms of the proposal; and

27 (7) other factors found by the commissioners to be relevant to the
28 evaluation of the net present value of the anticipated cash flow to the state.

29 (c) When evaluating the project's likelihood of success, the commissioners
30 shall consider

31 (1) the reasonableness, specificity, and feasibility of the applicant's

1 work plan, timeline, and budget required to be submitted under AS 43.90.130,
2 including the applicant's plan to manage cost overruns, insulate shippers from the
3 effect of cost overruns, and encourage shippers to participate in the first binding open
4 season;

5 (2) the financial resources of the applicant;

6 (3) the ability of the applicant to comply with the proposed
7 performance schedule;

8 (4) the applicant's organization, experience, accounting and operational
9 controls, technical skills or the ability to obtain them, and necessary equipment or the
10 ability to obtain the necessary equipment;

11 (5) the applicant's record of

12 (A) performance on projects not licensed under this chapter;

13 (B) integrity and good business ethics; and

14 (6) other evidence and factors found by the commissioners to be
15 relevant to the evaluation of the project's likelihood of success.

16 **Sec. 43.90.180. Notice to the legislature of intent to issue license; denial of**
17 **license.** (a) If, after consideration of public comments received under AS 43.90.160(a)
18 and evaluation of complete applications under AS 43.90.170, the commissioners
19 determine that an application proposes a project that will sufficiently maximize the
20 benefits to the people of this state and merits issuance of a license under this chapter,
21 the commissioners shall

22 (1) issue a determination, with written findings addressing the basis for
23 the determination; the determination becomes a final agency action on the effective
24 date of a bill approving the issuance of the license under AS 43.90.190;

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

27 (3) forward the notice under (2) of this subsection, along with the
28 findings, supporting documentation, and determination under (1) of this subsection, to
29 the presiding officer of each house of the legislature for action as provided in
30 AS 43.90.190.

31 (b) If, after evaluation of complete applications under AS 43.90.170, the

1 commissioners determine that no application sufficiently maximizes the benefits to the
2 people of this state and merits issuance of a license under this chapter, the
3 commissioners shall issue a written finding that addresses the basis for that
4 determination.

5 (c) The commissioners' determination under (b) of this section is a final
6 agency action.

7 **Sec. 43.90.190. Legislative approval; issuance of license.** (a) After the
8 presiding officer of each house of the legislature receives a determination from the
9 commissioners under AS 43.90.180, the rules committee of each house of the
10 legislature shall introduce a bill in the committee's respective chamber that provides
11 for the approval of the license proposed to be issued by the commissioners.

12 (b) If a bill approving the issuance of the license passes the legislature within
13 60 days after the last date a presiding officer receives a determination by the
14 commissioners under AS 43.90.180, the commissioners shall issue the license as soon
15 as practicable after the effective date of the Act approving the issuance of the license.

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

24 (d) If the legislature fails to approve the issuance of the license, the
25 commissioners

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

27 (2) may request new applications for a license under AS 43.90.120.

28 **Sec. 43.90.200. Certification by regulatory authority and project sanction.**

29 (a) A licensee that is awarded a certificate of public convenience and necessity from a
30 regulatory agency with jurisdiction over the project shall accept the certificate on or
31 before the date the order granting the certificate is no longer subject to judicial review.

1 (b) If the licensee has credit support sufficient to finance construction of the
2 project through ownership of rights to produce and market gas resources, firm
3 transportation commitments, or government financing, the licensee shall sanction the
4 project within one year after the effective date of the certificate of public convenience
5 and necessity issued by the regulatory agency with jurisdiction over the project.

6 (c) If the licensee does not have credit support sufficient to finance
7 construction of the project through ownership of rights to produce and market gas
8 resources, firm transportation commitments, or government financing, the licensee
9 shall sanction the project before the later of

10 (1) two years after the effective date of the certificate of public
11 convenience and necessity issued by the regulatory agency with jurisdiction over the
12 project; or

13 (2) five years after the close of the first binding open season of the
14 project.

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

17 (1) seek approval from the Federal Energy Regulatory Commission or
18 the Regulatory Commission of Alaska, as applicable, to abandon and transfer the
19 certificate to the state or the state's designee; and

20 (2) assign to the state or the state's designee all engineering designs,
21 contracts, permits, and other data related to the project that are acquired by the
22 licensee during the term of the license before the date of the abandonment or transfer.

23 (e) The transfer and assignments under (d) of this section as a result of failure
24 to comply with (a) or (b) of this section are at no cost to the state or the state's
25 designee. A transfer under (c) of this section shall be subject to the state's payment to
26 the licensee of the net amount of expenditures incurred and paid by the licensee that
27 are qualified expenditures for the purposes of AS 43.90.110.

28 (f) In this section, "effective date of the certificate of public convenience and
29 necessity" means the earlier of the date the order granting the certificate is no longer
30 subject to judicial review, or the date the licensee accepts the certificate.

31 **Sec. 43.90.210. Amendment of or modification to the project plan.** Subject

1 to the approval of the commissioners, a licensee may amend or modify its project plan
2 if the amendment or modification improves the net present value of the project to the
3 state, is necessary because of an order or requirement by a regulatory agency with
4 jurisdiction over the project or by the Alaska Oil and Gas Conservation Commission,
5 or is necessary because of changed circumstances outside the licensee's control and
6 not reasonably foreseeable before the license was issued. An amendment or
7 modification approved under this section must be consistent with the requirements of
8 AS 43.90.130 and, except for an amendment or modification required because of an
9 order or requirement of a regulatory agency with jurisdiction over the project or by the
10 Alaska Oil and Gas Conservation Commission, may not substantially diminish the
11 value of the project to the state or the project's likelihood of success.

12 **Sec. 43.90.220. Records, reports, conditions, and audit requirements.** (a) A
13 licensee shall maintain complete and accurate records of all expenditures and
14 commitments of state money received under this chapter, including receipts and
15 records showing the payment or cost of purchased items and services, the names and
16 addresses of the sellers and service providers, and the dates of service or delivery.

17 (b) Upon reasonable notice, the commissioners may audit the records, books,
18 and files of the entity receiving the state money or making the expenditures and
19 commitments of money received from the state under this chapter.

20 (c) The commissioners may do the following with respect to information
21 relating to the project: conduct hearings or other investigative inquiries; compel the
22 attendance of witnesses and production of documents; and require the licensee to
23 furnish information in paper copy or electronic format.

24 (d) After a license has been issued and until commencement of commercial
25 operations of a natural gas pipeline, the licensee shall allow the commissioners to

26 (1) have a representative present at all meetings of the licensee's
27 governing body or bodies and equity holders that relate to the project;

28 (2) receive all relevant notices and information when and as sent to the
29 governing body or bodies and equity holders;

30 (3) enjoy the same access to information about the licensee as the
31 governing body members and equity owners receive; and

1 (4) receive relevant reports or information from the licensee that the
2 commissioners reasonably request.

3 (e) All proprietary information, privileged information, and trade secrets
4 received by the commissioners or their representative under (d) of this section are not
5 subject to public disclosure under AS 40.25.

6 (f) A licensee shall maintain the records and reports required under this
7 section for seven years from the date the licensee receives state money under this
8 chapter.

9 **Sec. 43.90.230. License violations; damages.** (a) A licensee is in violation of
10 the license if the commissioners determine that the licensee has

11 (1) requested and received money from the state under this chapter for
12 an expenditure that is not a qualified expenditure under AS 43.90.110;

13 (2) except as required to conform with a requirement of a regulatory
14 agency with jurisdiction over the project, substantially departed from the
15 specifications set out in the application without state approval of a project plan
16 amendment or modification under AS 43.90.210;

17 (3) violated any provision of this chapter or any other provision of
18 state or federal law material to the license;

19 (4) failed to accept a certificate as required under AS 43.90.200(a) or
20 failed to sanction the project as required under AS 43.90.200(b); or

21 (5) otherwise violated a material term of the license.

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

25 (c) The commissioners may suspend disbursement of state reimbursements to
26 the licensee beginning on the date that the notice of violation issued under (b) of this
27 section is sent to the licensee. The commissioners may resume disbursement on the
28 date that the commissioners determine that the violation is cured.

29 (d) If the commissioners and the licensee are unable to resolve the violation
30 within the period described in (b) of this section, the commissioners shall notify the
31 licensee that the violation has not been cured and provide the licensee with an

1 opportunity to be heard. If, after notice and hearing, the commissioners determine that
2 the violation has not been cured, the commissioners shall issue a written decision that
3 is a final administrative action for purposes of appeal to the superior court in the state.

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

6 (1) discontinuation of state reimbursements under this chapter;

7 (2) recoupment of state money that the licensee has received under this
8 chapter to date, with interest, regardless of whether the licensee has expended or
9 committed that money;

10 (3) license revocation;

11 (4) assignment to the state or the state's designee of all engineering
12 designs, contracts, permits, and other data related to the project that are acquired by
13 the licensee during the term of the license; and

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

15 **Sec. 43.90.240. Abandonment of project.** (a) If the commissioners and the
16 licensee agree that the project is uneconomic, the project shall be abandoned, the
17 inducement provided for in AS 43.90.110 shall be terminated, and, except for
18 requirements imposed on the licensee under (e) of this section and AS 43.90.220, the
19 state and the licensee no longer have an obligation under this chapter with respect to
20 the license.

21 (b) If the commissioners or the licensee determines that the project is
22 uneconomic and the other party disagrees, the disagreement shall be settled by
23 arbitration administered by the American Arbitration Association under the
24 substantive and procedural laws of this state, and judgment on the award rendered by
25 the arbitrators may be entered in superior court in the state. In the event of arbitration,
26 each party shall select an arbitrator from the American Arbitration Association's
27 National Roster, and the two arbitrators shall appoint a third arbitrator from the
28 American Arbitration Association's National Roster who shall serve as the chair of the
29 three-member arbitration panel. If the arbitration panel determines that the project is

30 (1) uneconomic, the state and the licensee no longer have an obligation
31 under this chapter with respect to the license, except for requirements imposed on the

1 licensee under (e) of this section and AS 43.90.220; or

2 (2) not uneconomic, the obligations of the licensee and the state
3 continue as provided under this chapter and the license.

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

7 (1) project does not have credit support sufficient to finance
8 construction of the project through firm transportation commitments, government
9 assistance, or other external sources of financing; and

10 (2) predicted costs of transportation at a 100 percent load factor, when
11 deducted from predicted gas sales revenue using publicly available predictions of
12 future gas prices, would result in a producer rate of return that is below the rate
13 typically accepted by a prudent oil and gas exploration and production company for
14 incremental upstream investment that is required to produce and deliver gas to the
15 project.

16 (d) If the state makes a payment to the licensee under AS 43.90.440, the
17 license is considered abandoned, and the state and the licensee no longer have any
18 obligations under this chapter with respect to the license, except that the licensee must
19 comply with the

20 (1) requirements imposed on the licensee under AS 43.90.220
21 regarding state money received by the licensee before the license was considered
22 abandoned; and

23 (2) requirements of AS 43.90.440.

24 (e) If the commissioners and the licensee agree that the project is uneconomic
25 or an arbitration panel makes a final determination that the project is uneconomic, the
26 licensee shall, upon the state's request, transfer to the state or the state's designee all
27 engineering designs, contracts, permits, and other data related to the project that are
28 acquired by the licensee during the term of the license upon reimbursement by the
29 state of the net amount of expenditures incurred and paid by the licensee that are
30 qualified expenditures for the purposes of AS 43.90.110.

31 **Sec. 43.90.250. Alaska Gasline Inducement Act coordinator.** (a) There is

1 created in the Office of the Governor the position of Alaska Gasline Inducement Act
2 coordinator. Administrative support for the position shall be provided by the Office of
3 the Governor. The position shall continue until one year after commencement of
4 commercial operations of the project.

5 (b) The governor shall appoint a person to the position of Alaska Gasline
6 Inducement Act coordinator. The individual serving as the Alaska Gasline Inducement
7 Act coordinator may be removed from the position at the discretion of the governor.

8 **Sec. 43.90.260. Expedited review and action by state agencies.** (a) A review
9 conducted and action taken by a state agency relating to the project shall be expedited
10 in a manner consistent with the completion of the necessary approvals in accordance
11 with this chapter.

12 (b) Notwithstanding any contrary provision of law, a state agency may not
13 include in any project certificate, right-of-way, permit, or other authorization issued to
14 the licensee a term or condition that is not required by law if the coordinator
15 determines that the term or condition would prevent or impair in any significant
16 respect the expeditious construction and operation or expansion of the project.

17 (c) Unless required by law, a state agency may not add to, amend, or abrogate
18 any certificate, right-of-way, permit, or other authorization issued to a licensee if the
19 coordinator determines that the action would prevent or impair in any significant
20 respect the expeditious construction, operation, or expansion of the project.

21 **Article 3. Resource Inducements.**

22 **Sec. 43.90.300. Qualification for resource inducements.** (a) Notwithstanding
23 any contrary provision of law, a lessee or other person that demonstrates to the
24 satisfaction of the commissioners that the person has committed to acquire firm
25 transportation capacity in the first binding open season of the project is qualified to
26 receive the resource inducement set out in AS 43.90.310 and 43.90.320 for gas
27 produced on the North Slope and shipped in firm transportation capacity acquired in
28 the first binding open season of the project. The inducement in AS 43.90.310 is
29 contractual.

30 (b) A gas producer receiving a voucher under AS 43.90.330 is qualified to
31 receive the resource inducement in AS 43.90.310 and 43.90.320 for the gas shipped in

1 the firm transportation capacity described in the voucher for the period described in
2 AS 43.90.330.

3 **Sec. 43.90.310. Royalty inducement.** (a) Before the start of the first binding
4 open season to be conducted by the licensee, the commissioner of natural resources
5 shall adopt regulations that establish a method to determine the monthly value of the
6 state's royalty share of gas production and establish terms under which the state will
7 exercise its right to switch between taking its royalty in value or in kind for gas
8 committed for firm transportation in the first binding open season of the project or
9 shipped in the firm transportation capacity described in a voucher received by the gas
10 producer under AS 43.90.330. The regulations must

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

13 (2) provide a method for establishing a fair market value for each
14 component of the state's royalty gas that is based on pricing data from reliable and
15 widely available industry trade publications and that uses appropriate adjustments to
16 reflect

17 (A) deductions for actual and reasonable transportation costs
18 for the state's royalty gas, including a reasonable share of the costs associated
19 with unused capacity commitments on gas pipelines from the North Slope to
20 the first destination market with reasonable market liquidity;

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

23 (C) reasonable and actual costs for gas processing; in this
24 subparagraph, "gas processing" means post-production treatment of gas to
25 extract natural gas liquids; and

26 (D) deductions permitted under the 1980 Royalty Settlement
27 Agreement for Prudhoe Bay gas; and

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

31 (A) cause the lessee or other person to bear disproportionate

1 transportation costs with respect to the state's royalty gas;

2 (B) interfere with the lessee's or other person's long-term
3 marketing of its production.

4 (b) If a lessee or other person qualified for a resource inducement under
5 AS 43.90.300 agrees under (c) of this section, the lessee or other person is entitled to
6 elect

7 (1) to calculate its gas royalty obligation under the regulations adopted
8 under (a) of this section for natural gas transported on a firm contract executed during
9 the project's first binding open season or under the methodology set out in the existing
10 leases from which the gas is produced, and

11 (A) upon the request of the lessee, the commissioner of natural
12 resources shall contractually amend the existing lease to effect the election
13 under this paragraph and incorporate as fixed contract terms the relevant
14 regulatory provisions; and

15 (B) the election under this paragraph remains in effect until
16 new regulations are adopted as a result of a review under (d) of this section, at
17 which time, a lessee or other person qualified under AS 43.90.300 may change
18 its election under this paragraph; upon the request of the lessee, the
19 commissioner of natural resources shall contractually amend the lease to
20 incorporate as fixed contract terms the relevant revised regulatory provisions;

21 (2) to enter into a contract with the state that amends the existing lease
22 terms by providing a mechanism that ensures that, when the state exercises its right to
23 switch between taking its royalty in value or in kind for gas committed for firm
24 transportation in the first binding open season of the project, the lessee or other person
25 does not bear disproportionate transportation costs with respect to the state's royalty
26 gas; and by modifying the required period of notice that the state must provide before
27 exercising the state's right to switch between taking its royalty in value or in kind for
28 gas committed for firm transportation in the first binding open season of the project.

29 (c) To claim the inducement under (b) of this section, a lessee or other person
30 qualified under AS 43.90.300 shall agree, on an application form provided by the
31 Department of Natural Resources, that the lessee or other person, and the lessee's or

1 other person's affiliates, successors, assigns, and agents, will not protest or appeal a
2 filing by the licensee to roll in expansion costs of the mainline up to a level that is
3 required in AS 43.90.130(7) if the Federal Energy Regulatory Commission does not
4 have a rebuttable presumption in effect that rolled-in treatment applies to the cost of
5 the expansion of the project. The agreement not to protest may not preclude the lessee
6 or other person, or the lessee's or other person's affiliates, successors, assigns, and
7 agents, from protesting a filing to roll in mainline expansion costs that the licensee is
8 not required to propose and support under AS 43.90.130(7).

9 (d) The commissioner of natural resources shall provide for review of the
10 regulations adopted under (a) of this section at least every two years after the
11 commencement of commercial operations to determine whether the regulations
12 continue to meet the requirements of (a) of this section under current conditions, and
13 shall amend the regulations when the requirements are not being met.

14 (e) No provision of this chapter precludes the election set out in (b) of this
15 section, nor may the commissioner of natural resources assert any provision of any
16 existing lease or unit agreement as precluding the elections set out in (b) of this
17 section.

18 **Sec. 43.90.320. Gas production tax exemption.** (a) If a person qualified for a
19 resource inducement under AS 43.90.300 agrees under (c) of this section, the person is
20 entitled to an annual exemption from the state's gas production tax in an amount equal
21 to the difference between the amount of the person's gas production tax obligation
22 calculated under the gas production tax in effect during that tax year and the amount of
23 the person's gas production tax obligation calculated under the gas production tax in
24 effect at the start of the first binding open season held under this chapter. If the
25 difference is less than zero, the gas production tax exemption is zero.

26 (b) The exemption under this section may be applied within 10 years
27 immediately following commencement of commercial operations and only applied to
28 production taxes that are levied on North Slope gas shipped through firm
29 transportation capacity the person acquired during the first binding open season or
30 shipped in the firm transportation capacity described in a voucher received by the gas
31 producer under AS 43.90.330.

1 (c) The person claiming the exemption under this section shall agree that the
2 person, and the person's affiliates, successors, assigns, and agents, will not protest or
3 appeal a filing by the licensee to roll in mainline expansion costs up to the level that
4 the licensee is required to propose and support under AS 43.90.130(7) if the Federal
5 Energy Regulatory Commission does not have a rebuttable presumption in effect that
6 rolled-in treatment applies to the cost of the expansion of the project. The agreement
7 required under this subsection may not preclude the person, or the person's affiliates,
8 successors, assigns, and agents, from protesting a filing to roll in mainline expansion
9 costs that the licensee is not required to propose and support under AS 43.90.130(7).

10 (d) In this section, "gas production tax" means the tax levied on the production
11 of gas under AS 43.55.

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

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

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

31 (d) A person that receives a voucher under this section and a gas producer that

1 receives resource inducements under a voucher shall agree that the person and the gas
2 producer and their respective affiliates, successors, assigns, or agents will not protest
3 or appeal a filing by the licensee to roll in mainline expansion costs up to the level that
4 the licensee is required to propose and support under AS 43.90.130(7) if the Federal
5 Energy Regulatory Commission does not have a rebuttable presumption in effect that
6 rolled-in treatment applies to the cost of the expansion of the project. The agreement
7 required under this subsection may not preclude the person or gas producer or their
8 respective affiliates, successors, assigns, or agents from protesting a filing to roll in
9 mainline expansion costs that the licensee is not required to propose and support under
10 AS 43.90.130(7).

11 **Article 4. Miscellaneous Provisions.**

12 **Sec. 43.90.400. Alaska Gasline Inducement Act reimbursement fund;**
13 **disbursements; audits.** (a) There is established in the general fund an Alaska Gasline
14 Inducement Act reimbursement fund. The fund consists of money appropriated to it by
15 the legislature for disbursement to pay the state's reimbursements under AS 43.90.110.
16 Money appropriated to the fund may be spent for the purposes of the fund without
17 further appropriation. Appropriations to the fund do not lapse under AS 37.25.010, but
18 remain in the fund for future disbursements. Nothing in this subsection creates a
19 dedicated fund.

20 (b) The Department of Revenue shall manage the fund, and may invest money
21 in the fund so as to yield competitive market rates as provided in AS 37.10.071.
22 Income earned on the fund shall be accounted for separately and may be appropriated
23 annually to the fund.

24 (c) The commissioners shall adopt regulations that provide for application to
25 receive reimbursements for qualified expenditures as provided under AS 43.90.110,
26 and that provide for periodic audits of the use of money disbursed as reimbursements
27 under this chapter.

28 (d) Within 10 days after the convening of each regular session of the
29 legislature, the commissioners shall submit to the legislature a report that lists all the
30 disbursements from the fund during the preceding fiscal year with a written
31 justification for each disbursement and the projected amount of money that will be

1 required for reimbursements in each of the next three fiscal years.

2 **Sec. 43.90.410. Regulations.** The commissioners may jointly adopt or amend
3 regulations for the purpose of implementing the provisions of this chapter. The
4 commissioner of revenue and the commissioner of natural resources may adopt or
5 amend regulations adopted under authority outside of this chapter as necessary to
6 implement the provisions of this chapter.

7 **Sec. 43.90.420. Statute of limitations.** A person may not bring a judicial
8 action challenging the constitutionality of this chapter or the constitutionality of a
9 license issued under this chapter unless the action is commenced in a court of the state
10 of competent jurisdiction within 90 days after the date that a license is issued.

11 **Sec. 43.90.430. Interest.** When a payment due to the state under this chapter
12 becomes delinquent, the payment bears interest at the rate applicable to a delinquent
13 tax under AS 43.05.225.

14 **Sec. 43.90.440. Licensed project assurances.** (a) Except as otherwise
15 provided in this chapter, the state grants a licensee assurances that the licensee has
16 exclusive enjoyment of the inducements provided under this chapter before the
17 commencement of commercial operations. If, before the commencement of
18 commercial operations, the state extends to another person preferential royalty or tax
19 treatment or grant of state money for the purpose of facilitating the construction of a
20 competing natural gas pipeline project in this state, and if the licensee is in compliance
21 with the requirements of the license and with the requirements of state and federal
22 statutes and regulations relevant to the project, the licensee is entitled to payment from
23 the state of an amount equal to three times the total amount of the expenditures
24 incurred and paid by the licensee that are qualified expenditures for the purposes of
25 AS 43.90.110 that the licensee incurred in developing the licensee's project before the
26 date that the state first extended preferential treatment to another person. The payment
27 under this subsection is subject to appropriation. Upon payment by the state of the
28 amount owed under this section, the licensee shall, at no additional cost to the state,
29 assign to the state or the state's designee all engineering designs, contracts, permits,
30 and other data related to the project that were acquired by the licensee during the term
31 of the license. The payment under this subsection is in full satisfaction of all claims

1 the licensee may bring in contract, tort, or other law related to the events that gave rise
2 to the payment.

3 (b) The review, processing, or facilitation of a permit, right-of-way, or
4 authorization by a state agency in connection with a competing natural gas pipeline
5 project does not create an obligation on the part of the state under this section.

6 (c) In this section,

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

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

11 (A) the state's exercise of its right to resolve disputes involving
12 royalties and taxes; or

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

15 **Sec. 43.90.450. Assignments.** (a) A licensee may transfer all or part of the
16 license, including the rights and obligations arising under the license, if, after
17 publishing notice of the proposed transfer, providing notice to the presiding officer of
18 each house of the legislature, and providing a period of not less than 30 days for public
19 review and comment,

20 (1) the transfer is approved in writing in advance by the
21 commissioners; and

22 (2) the transfer does not increase or diminish the obligations created by
23 the license or diminish the likelihood of success of the project or the net present value
24 of the license to the state.

25 (b) Notwithstanding the commissioners' approval of a transfer of all or part of
26 a license under (a) of this section, the transferor of the license remains subject to the
27 requirements of AS 43.90.220 regarding all state money received by the licensee
28 before the effective date of the transfer.

29 (c) A person may transfer that person's rights to the royalty inducement under
30 AS 43.90.310 and the gas production tax exemption under AS 43.90.320 only in
31 connection with a sale or merger that results in transfer of all the person's assets in the

1 North Slope along with the person's firm transportation capacity contracts in the
2 project.

3 (d) Except for the transfer of a voucher to a producer under AS 43.90.330(b),
4 a person receiving a voucher under AS 43.90.330 based on the person's acquisition of
5 firm transportation capacity in the first binding open season of the project may transfer
6 the voucher only if the transfer is in connection with the permanent assignment by the
7 person of 100 percent of the firm transportation capacity acquired in the first binding
8 open season of the project.

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

12 **Sec. 43.90.470. State pipeline employment development.** The commissioner
13 of labor and workforce development shall develop a job training program that will
14 provide training for Alaskans in gas pipeline project management, construction,
15 operations, maintenance, and other gas pipeline-related positions.

16 **Article 5. General Provisions.**

17 **Sec. 43.90.900. Definitions.** In this chapter, unless the context otherwise
18 requires,

19 (1) "affiliate" means another person that controls, is controlled by, or is
20 under common control with a person, and includes a division that operates as a
21 functional unit;

22 (2) "Alaska Gasline Inducement Act coordinator" or "coordinator"
23 means the person appointed under AS 43.90.250;

24 (3) "applicant" means a person or group of persons that files an
25 application for a license;

26 (4) "certificate of public convenience and necessity" and "certificate"
27 mean a certificate of public convenience and necessity issued by the Federal Energy
28 Regulatory Commission or the Regulatory Commission of Alaska and an amendment
29 to a certificate of public convenience and necessity issued by the Federal Energy
30 Regulatory Commission under 15 U.S.C. 719 et seq. (Alaska Natural Gas
31 Transportation Act of 1976);

1 (5) "commencement of commercial operations" means the first flow of
2 gas in the project that generates revenue to the owners;

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

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

9 (8) "equity holder" means the

10 (A) stockholders 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 (9) "gas treatment plant" means a facility downstream of the point of
18 production that conditions gas and removes nonhydrocarbon substances from the gas
19 for the purpose of rendering the gas acceptable for tender and acceptance into a gas
20 pipeline system;

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

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

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

28 (13) "license" means a license issued under this chapter;

29 (14) "licensee" means the holder of a license issued under this chapter
30 and all affiliates, successors, assigns, and agents of the holder;

31 (15) "net present value" means the discounted value of a future stream

1 of cash flow;

2 (16) "North Slope" means that part of the state that lies north of 68
3 degrees North latitude;

4 (17) "open season" means the process that complies with 18 C.F.R.
5 Part 157, Subpart B (Open Seasons for Alaska Natural Gas Transportation Projects) or
6 a similar process for soliciting commitments for pipeline capacity under the
7 regulations, policies, rules, or precedent of the Regulatory Commission of Alaska;

8 (18) "point of production" has the meaning given in AS 43.55.900;

9 (19) "project" means a natural gas pipeline project authorized under a
10 license issued under this chapter;

11 (20) "proprietary," when used to describe information, means that the
12 information is treated by an applicant as confidential and the public disclosure of that
13 information would adversely affect the competitive position of the applicant or
14 materially diminish the commercial value of the information to the applicant;

15 (21) "recourse rates" means cost-based rates with a minimum and
16 maximum range that are approved by the Federal Energy Regulatory Commission, the
17 Regulatory Commission of Alaska, or the National Energy Board of Canada, as
18 appropriate, and set out in the pipeline's tariff; "recourse rates" includes only those
19 rates that the pipeline must make available to all shippers;

20 (22) "sanction" means to make financial commitments to go forward
21 with the project as evidenced by entering into financial commitments of at least
22 \$1,000,000,000 with third parties;

23 (23) "trade secret" has the meaning given in AS 45.50.940;

24 (24) "under common control with" has the meaning given "control" in
25 this section;

26 (25) "unit agreement" means an agreement executed by the working
27 interest owners and royalty owners creating the unit.

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

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

31 (45) contracts for an arbitration panel to determine whether a project is

1 uneconomic under AS 43.90.240, and contracts for the development of application
2 provisions for licensure and for the evaluation of those applications under AS 43.90.

3 * Sec. 3. AS 38.05.020(b) is amended to read:

4 (b) The commissioner may

5 (1) establish reasonable procedures and adopt reasonable regulations
6 necessary to carry out this chapter and, whenever necessary, issue directives or orders
7 to the director to carry out specific functions and duties; regulations adopted by the
8 commissioner shall be adopted under AS 44.62 (Administrative Procedure Act);
9 orders by the commissioner classifying land, issued after January 3, 1959, are not
10 required to be adopted under AS 44.62 (Administrative Procedure Act);

11 (2) enter into agreements considered necessary to carry out the
12 purposes of this chapter, including agreements with federal and state agencies;

13 (3) review any order or action of the director;

14 (4) exercise the powers and do the acts necessary to carry out the
15 provisions and objectives of this chapter;

16 (5) notwithstanding the provisions of any other section of this chapter,
17 grant an extension of the time within which payments due on any exploration license,
18 lease, or sale of state land, minerals, or materials may be made, including payment of
19 rental and royalties, on a finding that compliance with the requirements is or was
20 prevented by reason of war, riots, or acts of God;

21 (6) classify tracts for agricultural uses;

22 (7) after consulting with the Board of Agriculture and Conservation
23 (AS 03.09.010), waive, postpone, or otherwise modify the development requirements
24 of a contract for the sale of agricultural land if

25 (A) the land is inaccessible by road; or

26 (B) transportation, marketing, and development costs render
27 the required development uneconomic;

28 (8) reconvey or relinquish land or an interest in land to the federal
29 government if

30 (A) the land is described in an amended application for an
31 allotment under 43 U.S.C. 1617; and

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(B) the reconveyance or relinquishment is

(i) for the purposes provided in 43 U.S.C. 1617; and

(ii) in the best interests of the state;

(9) lead and coordinate all matters relating to the state's review and authorization of resource development projects;

(10) exercise the powers and do the acts necessary to carry out the provisions and objectives of AS 43.90 that relate to this chapter.

* Sec. 4. AS 39.25.110 is amended by adding a new paragraph to read:

(41) the Alaska Gasline Inducement Act coordinator appointed under AS 43.90.250.

* Sec. 5. AS 40.25.120(a) is amended to read:

(a) Every person has a right to inspect a public record in the state, including public records in recorders' offices, except

(1) records of vital statistics and adoption proceedings, which shall be treated in the manner required by AS 18.50;

(2) records pertaining to juveniles unless disclosure is authorized by law;

(3) medical and related public health records;

(4) records required to be kept confidential by a federal law or regulation or by state law;

(5) to the extent the records are required to be kept confidential under 20 U.S.C. 1232g and the regulations adopted under 20 U.S.C. 1232g in order to secure or retain federal assistance;

(6) records or information compiled for law enforcement purposes, but only to the extent that the production of the law enforcement records or information

(A) could reasonably be expected to interfere with enforcement proceedings;

(B) would deprive a person of a right to a fair trial or an impartial adjudication;

(C) could reasonably be expected to constitute an unwarranted invasion of the personal privacy of a suspect, defendant, victim, or witness;

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(D) could reasonably be expected to disclose the identity of a confidential source;

(E) would disclose confidential techniques and procedures for law enforcement investigations or prosecutions;

(F) would disclose guidelines for law enforcement investigations or prosecutions if the disclosure could reasonably be expected to risk circumvention of the law; or

(G) could reasonably be expected to endanger the life or physical safety of an individual;

(7) names, addresses, and other information identifying a person as a participant in the Alaska Higher Education Savings Trust under AS 14.40.802 or the advance college tuition savings program under AS 14.40.803 - 14.40.817;

(8) public records containing information that would disclose or might lead to the disclosure of a component in the process used to execute or adopt an electronic signature if the disclosure would or might cause the electronic signature to cease being under the sole control of the person using it;

(9) reports submitted under AS 05.25.030 concerning certain collisions, accidents, or other casualties involving boats;

(10) records or information pertaining to a plan, program, or procedures for establishing, maintaining, or restoring security in the state, or to a detailed description or evaluation of systems, facilities, or infrastructure in the state, but only to the extent that the production of the records or information

(A) could reasonably be expected to interfere with the implementation or enforcement of the security plan, program, or procedures;

(B) would disclose confidential guidelines for investigations or enforcement and the disclosure could reasonably be expected to risk circumvention of the law; or

(C) could reasonably be expected to endanger the life or physical safety of an individual or to present a real and substantial risk to the public health and welfare;

(11) the written notification regarding a proposed regulation provided

1 under AS 24.20.105 to the Department of Law and the affected state agency and
2 communications between the Legislative Affairs Agency, the Department of Law, and
3 the affected state agency under AS 24.20.105;

4 **(12) records that are**

5 **(A) proprietary, privileged, or a trade secret in accordance**
6 **with AS 43.90.150 or 43.90.220(e);**

7 **(B) applications that are received under AS 43.90 until**
8 **notice is published under AS 43.90.160.**

9 * **Sec. 6.** The uncoded law of the State of Alaska is amended by adding a new section to
10 read:

11 **FIRST REQUEST FOR APPLICATIONS FOR THE LICENSE.** It is the intent of the
12 legislature that the first request for applications for the license by the commissioners under
13 AS 43.90.120, as enacted in sec. 1 of this Act, be issued within 90 days after the effective date
14 of this Act.

15 * **Sec. 7.** The uncoded law of the State of Alaska is amended by adding a new section to
16 read:

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

23 * **Sec. 8.** The uncoded law of the State of Alaska is amended by adding a new section to
24 read:

25 **SEVERABILITY.** Under AS 01.10.030, if any provision of this Act, or the application
26 of it to any person or circumstance, is held invalid, the remainder of this Act and the
27 application to other persons or circumstances are not affected.

28 * **Sec. 9.** This Act takes effect immediately under AS 01.10.070(c).

Submitted by the Office of Speaker Mike Chenault

Sec. 43.90.110. Natural gas pipeline project construction inducement.

(a) Subject to the limitations of this chapter, a license issued under this chapter entitles the licensee or its designated affiliate to receive

(1) subject to appropriation, state matching contributions in the form of reimbursements in a total amount not to exceed \$500,000,000, paid to the licensee during the seven-year period immediately following the date the license is awarded; the payment period may be extended by the commissioners under an amendment or modification of the project plan under AS 43.90.210; a payment under this paragraph shall be made according to the following:

(A) on or before the close of the first binding open season, the state shall reimburse the licensee's qualified expenditures at the level specified in the license; however, the state's reimbursements may not exceed 50 percent of the qualified expenditures incurred before the close of the first binding open season;

(B) after the close of the first binding open season, the state shall reimburse the licensee's qualified expenditures at the level specified in the license; however, the state's reimbursements may not exceed 90 percent of the qualified expenditures incurred after the close of the first binding open season;

(C) a qualified expenditure is a cost that is incurred after the license is issued under this chapter by the licensee or the licensee's designated affiliate, and is directly and reasonably related to pursuing firm transportation commitments in a binding open season, to securing financing for the project, or to obtaining a certificate of public convenience and necessity from the Federal Energy Regulatory Commission or the Regulatory Commission of Alaska, as appropriate, or satisfying a requirement of an agency with jurisdiction over the project; in this subparagraph, "qualified expenditures" does not include overhead costs, lobbying costs, litigation costs, the cost of an asset or work product acquired or developed by the licensee before the license is issued, or civil or criminal penalties or fines; and

(2) the benefit of an Alaska Gasline Inducement Act coordinator who has the authority prescribed in AS 43.90.250.

(b) The commissioner of revenue in consultation with the commissioner of natural resources shall adopt regulations for determining whether an expenditure is a qualified expenditure for the purposes of (a) of this section.

History -

(Sec. 1 ch 22 SLA 2007)

Submitted by the Office of Speaker Mike Chenault

Sec. 43.90.240. Abandonment of project.

(a) If the commissioners and the licensee agree that the project is uneconomic, the project shall be abandoned, the inducement provided for in AS 43.90.110 shall be terminated, and, except for requirements imposed on the licensee under (e) of this section and AS 43.90.220, the state and the licensee no longer have an obligation under this chapter with respect to the license.

(b) If the commissioners or the licensee determines that the project is uneconomic and the other party disagrees, the disagreement shall be settled by arbitration administered by the American Arbitration Association under the substantive and procedural laws of this state, and judgment on the award rendered by the arbitrators may be entered in superior court in the state. In the event of arbitration, each party shall select an arbitrator from the American Arbitration Association's National Roster, and the two arbitrators shall appoint a third arbitrator from the American Arbitration Association's National Roster who shall serve as the chair of the three-member arbitration panel. If the arbitration panel determines that the project is

(1) uneconomic, the state and the licensee no longer have an obligation under this chapter with respect to the license, except for requirements imposed on the licensee under (e) of this section and AS 43.90.220; or

(2) not uneconomic, the obligations of the licensee and the state continue as provided under this chapter and the license.

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

(1) project does not have credit support sufficient to finance construction of the project through firm transportation commitments, government assistance, or other external sources of financing; and

(2) predicted costs of transportation at a 100 percent load factor, when deducted from predicted gas sales revenue using publicly available predictions of future gas prices, would result in a producer rate of return that is below the rate typically accepted by a prudent oil and gas exploration and production company for incremental upstream investment that is required to produce and deliver gas to the project.

(d) If the state makes a payment to the licensee under AS 43.90.440, the license is considered abandoned, and the state and the licensee no longer have any obligations under this chapter with respect to the license, except that the licensee must comply with the

(1) requirements imposed on the licensee under AS 43.90.220 regarding state money received by the licensee before the license was considered abandoned; and

(2) requirements of AS 43.90.440.

(e) If the commissioners and the licensee agree that the project is uneconomic or an arbitration panel makes a final determination that the project is uneconomic, the licensee shall, upon the state's request, transfer to the state or the state's designee all engineering designs, contracts, permits, and other data related to the project that are acquired by the licensee during the term of the license upon reimbursement by the state of the net amount of expenditures incurred and paid by the licensee that are qualified expenditures for the purposes of AS 43.90.110.

Submitted by the Office of Speaker Mike Chenault

Sec. 43.90.900. Definitions.

In this chapter, unless the context otherwise requires,

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

(2) "Alaska Gasline Inducement Act coordinator" or "coordinator" means the person appointed under AS 43.90.250;

(3) "applicant" means a person or group of persons that files an application for a license;

(4) "certificate of public convenience and necessity" and "certificate" mean a certificate of public convenience and necessity issued by the Federal Energy Regulatory Commission or the Regulatory Commission of Alaska and an amendment to a certificate of public convenience and necessity issued by the Federal Energy Regulatory Commission under 15 U.S.C. 719 et seq. (Alaska Natural Gas Transportation Act of 1976);

(5) "commencement of commercial operations" means the first flow of gas in the project that generates revenue to the owners;

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

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

(8) "equity holder" means the

(A) stockholders of a corporation;

(B) members of a limited liability company;

(C) partners of a partnership;

(D) joint venturers of a joint venture;

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

(F) holders of any other entity or person;

(9) "gas treatment plant" means a facility downstream of the point of production that conditions gas and removes nonhydrocarbon substances from the gas for the purpose of rendering the gas acceptable for tender and acceptance into a gas pipeline system;

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

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

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

(13) "license" means a license issued under this chapter;

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

(15) "net present value" means the discounted value of a future stream of cash flow;

(16) "North Slope" means that part of the state that lies north of 68 degrees North latitude;

(17) "open season" means the process that complies with 18 C.F.R. Part 157, Subpart B (Open Seasons for Alaska Natural Gas Transportation Projects) or a similar process for soliciting commitments for pipeline capacity under the regulations, policies, rules, or precedent of the Regulatory Commission of Alaska;

(18) "point of production" has the meaning given in AS 43.55.900;

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

(20) "proprietary," when used to describe information, means that the information is treated by an applicant as confidential and the public disclosure of that information would adversely affect the competitive position of the applicant or materially diminish the commercial value of the information to the applicant;

(21) "recourse rates" means cost-based rates with a minimum and maximum range that are approved by the Federal Energy Regulatory Commission, the Regulatory Commission of Alaska, or the National Energy Board of Canada, as appropriate, and set out in the pipeline's tariff; "recourse rates" includes only those rates that the pipeline must make available to all shippers;

(22) "sanction" means to make financial commitments to go forward with the project as evidenced by entering into financial commitments of at least \$1,000,000,000 with third parties;

(23) "trade secret" has the meaning given in AS 45.50.940;

(24) "under common control with" has the meaning given "control" in this section;

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