06-29-16 ALASKA LNG PROJECT UPDATE

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June 23, 2016

The Honorable Bill Walker
Governor of the State of Alaska
Office of the Governor
P.O. Box 110001
Juneau, AK 99811-0001

Re: Ability to surrender the State's taxing power

Dear Governor Walker:

You asked whether the State of Alaska, by legislation or contract, can bind the State to a tax structure for a proposed Alaska North Slope liquefied natural gas project and thereby prevent future legislatures from amending that tax structure. The short answer is that it cannot. Under article IX, section 1 of the Alaska Constitution, the sovereign power of taxation cannot be completely surrendered by an irrevocable legislative tax structure or contract.

ANALYSIS

Whether the State may bind future legislatures to a tax structure and prevent any future changes to that tax structure turns on the interpretation of article IX of the Alaska Constitution. Article IX's provisions must be understood as a response to U.S. Supreme Court decisions holding that a state's surrender of its taxation power is binding and enforceable against future legislatures. Under these decisions, once a state's legislature had granted a tax exemption to a favored industry, the exemption was held contractually binding, severely hampering future legislatures' power to meet their states' changing financial needs. With this danger in mind, the drafters of Alaska's constitution wrote article IX to expressly prohibit the surrender of the State's taxing power and to allow the suspension or contracting away of the power of taxation through tax exemptions granted only by "general law." The text and history of article IX make clear that no legislature or administration can create a permanent tax exemption. Rather, any tax exemption that is granted can always be amended or repealed by a future legislature at any time.

I. State constitutional provisions that prohibit surrender of the taxing power, like Alaska's, were drafted to ensure that states retain the power to change their tax policies without running afoul of the federal constitution's contract clause.

The contract clause of the federal constitution provides that "[n]o state shall . . . pass any . . . law impairing the obligation of contracts."[1] This clause was intended to "remedy a particular social evil—the state legislative practice of enacting laws to relieve individuals of their obligations under certain contracts."[2] Under this clause, states are prohibited from eliminating vested rights arising out of their contracts with private parties.[3] For purposes of the contract clause, "contracts" include statutes "when the language and circumstances evince a legislative intent to create private rights of a contractual nature enforceable against the State."[4] One of the powers a state may contractually limit, if it does so in clear and unequivocal terms, is the power to tax.[5]

The federal constitution's protection of contractually granted tax exemptions—and its resulting limitation on a state's ability to change tax policies—led many states, including Alaska, to adopt constitutional provisions designed to prevent surrender of the state taxing power.[6] These provisions ensure that while states can create tax exemptions, the exemptions can be repealed or amended by future legislatures, thereby protecting

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1 U.S. Const. art. I, § 10.

2 *Allied Structural Steel Co. v. Spannaus,* 438 U.S. 234, 256 (1978).

3 *Trustees of Dartmouth Coll. v. Woodward*, 17 U.S. 518 (1819).

4 *United States Trust Co. v. New Jersey*, 431 U.S. 1, 18 (1977).

5 *See Merrion v. Jicarilla Apache Mountain Tribe*, 455 U.S. 130, 148 (1982) ("[T]he government's power to tax remains unless it has been specifically surrendered in terms which admit of no other reasonable interpretation."); *Jefferson Branch Bank v. Skelly*, 66 U.S. 436, 446 (1861) (stating that sovereign powers, including the right of taxation, can only be surrendered when "surrender has been expressed in terms too plain to be mistaken").

6 *E.g.,* Ariz. Const. art. IX, § 1 ("The power of taxation shall never be surrendered, suspended or contracted away."); Ga. Const. art. VII, § 1(1) ("The state may not suspend or irrevocably give, grant, limit, or restrain the right of taxation and all laws, grants, contracts, and other acts to effect any of these purposes are null and void."); Me. Const. art. 9, § 9 ("The Legislature shall never, in any manner, suspend or surrender the power of taxation."); Mich. Const. art. 9, § 2 ("The power of taxation shall never be surrendered, suspended or contracted away."). Similar provisions can be found in state constitutions for Minnesota, Montana, New Jersey, New York, Idaho, and Texas.

maximum flexibility and authority to revise tax policies to meet changing economic conditions. Courts have routinely held that these constitutional provisions prevent the creation of irrevocable, permanent tax exemptions.[7] As a result, when a state enacts a constitutional prohibition against surrendering the power to tax, it allows successive legislatures to change tax policy without running the risk of violating the federal contract clause.

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[7] *See e.g., Sheehy v. Pub. Emps. Ret. Div.*, 864 P.2d 762, 766 (Mont. 1993) (stating that state constitution "prohibits the state from surrendering or contracting away the power to tax" and "the state cannot promise any group of taxpayers that it will never tax them"); *Parrish v. Emps' Ret. Sys.*, 398 S.E.2d 353, 354 (Ga. 1990) (stating that "since 1877, the Georgia General Assembly has had no power to grant an irrevocable tax exemption" or contract away the right to tax, and all parties are charged with knowledge of these constitutional limitations on the legislature); *Blair v. State Tax Assessor*, 485 A.2d 957, 960 (Me. 1984) (stating that even if a tax exemption was "a contractual right of state employment, the legislative grant of such a right would violate the Maine Constitution, which states: 'The Legislature shall never, in any manner, suspend or surrender the power of taxation.'"); *Roosevelt Raceway, Inc. v. Monaghan*, 174 N.E.2d 71, 77 (N.Y. 1961) (holding that the constitution "prohibits any attempt to contract away the power of taxation unless sanctioned by the people themselves" through constitutional amendment); *Switzer v. Phoenix*, 341 P.2d 427, 431 (Ariz. 1959) (holding that "Art. IX, § 1, was adopted for the purpose of restricting the legislature's right to alienate the power to tax anything and all persons. The prohibition is against the irrepealable grant of immunity from taxation . . . [It] is a prohibition against the surrender or relinquishment of the right to impose a tax.").

II. The Alaska Constitution prohibits surrender of the power of taxation but allows tax incentives that are subject to change by future legislatures.

Article IX of the Alaska Constitution must be interpreted against this backdrop and consistently with similar provisions in other states' constitutions that preclude a legislature from binding the hands of its successors.[8] The Alaska Constitution—in article IX, section 1—specifically provides that "[t]he power of taxation shall never be surrendered," and only allows it to be "suspended or contracted away" as provided in that article.[9] Article IX, section 4 allows tax exemptions to the State and its political subdivisions, and for non-profit religious, charitable, cemetery, and educational purposes as provided by the legislature in state law. In addition, the legislature can grant "[o]ther exemptions of like or different kind . . . by general law."[10] Read together, sections 1 and 4 allow the legislature to suspend or contract away the power of taxation by general law but not to surrender the power to tax. The legislature's suspension or contracting away of the taxing power through tax exemption by general law cannot be permanent or irrevocable by a future legislature. The power to taxis specifically preserved by the state constitution for future legislatures.[11]

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[8] *See* decisions, *supra* note 11.

[9] Alaska Const. art. IX, § 1 ("The power of taxation shall never be surrendered. This power shall not be suspended or contracted away, except as provided in this article.").

[10] Alaska Const. art. IX, § 4. A general law addresses a matter of statewide concern, and would be applicable statewide and for a public purpose, as opposed to a special or local law. *See* Alaska Const. art. II, § 19 (providing that "[t]he legislature shall pass no local or special act if a general act can be made applicable"); Alaska Const. art. IX, § 6 (providing that "[n]o tax shall be levied, or appropriation of public money made, or public property transferred, nor shall the public credit be used, except for a public purpose"); *State v. Lewis*, 559 P.2d 630, 643 (Alaska 1977), *cert. denied*, 432 U.S. 901 (1977) (stating that general law addresses a matter of statewide concern); *Baxley v. State*, 958 P.2d 422, 430-31 (Alaska 1998) (finding that legislation modifying certain oil and gas leases was valid under section 19 because of the leases' unique nature and the substantial relation to legitimate state purposes); *Abrams v. State*, 534 P.2d 91, 94 (Alaska 1975) (stating that the question of whether legislation is general is determined by whether it is reasonably related to a matter of common interest to the whole state).

[11] This reading of article IX is further supported by the Alaska Constitution's prohibition against laws "making any irrevocable grant of special privileges or immunities." Alaska Const. art. I, § 15. In addition, as a general matter, the Alaska Supreme Court has held that a legislature cannot bind future legislatures. *See Ross v. State, Dep't of Revenue*, 292 P.3d 906, 915 (Alaska 2012) (stating that "the passage of a

III. The framers of the Alaska Constitution intended to authorize the legislature to grant tax incentives for economic development, while leaving as much leeway as possible to future legislatures.

The drafters of the State constitution began with the National Municipal League Model State Constitution language for article IX, section 1: "The power of taxation shall never be surrendered, suspended or contracted away."[12] A report provided to the delegates explained that the "important constitutional aspect of state taxation is the question of limiting the legislature's power in this field."[13] The wording of this particular provision in the Model was intended "to prevent the state from exempting, particularly by contract, individuals and corporations from taxation."[14] The report expressed the concern that, without providing some limitations,

> [i]n granting exemptions, one legislature may bind another and thereby lose for the state its power to tax. The exemption may, under certain conditions, result in a contract relationship that legislatures may not abrogate without violating the federal [contract clause]. To avoid such difficulties, a considerable number of states have constitutionally prohibited the surrendering or contracting away of the taxing power.[15]

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statute is not an assertion by one legislature that a subsequent legislature will not later amend the statute"); *see also Weiss v. State*, 939 P.2d 380, 397 (Alaska 1997) (stating that "one legislature cannot abridge the power of a succeeding legislature" and holding that contract could not bind future legislatures); *Mount Juneau Enters., Inc. v. City and Borough of Juneau*, 923 P.2d 768, 776 (Alaska 1996) (holding that a contract requiring future legislation is unenforceable). Therefore, "[a]s a matter of law, [a person] cannot rely on an extant law as a promise that that law will continue to have the same effect in perpetuity." *Ross,* 292 P.3d at 915. Thus, a future legislature has the sovereign power to overrule its predecessors. And this is especially so with respect to taxes given the constitutional convention delegates' "recogni[tion of] the importance of preserving state control over state revenue." *State v. Ketchikan Gateway Borough*, 366 P.3d 86, 92 (Alaska 2016) (discussing the Alaska Constitution's general prohibition of dedicated funds in article IX, section 7 and upholding the authority of the legislature to require local contributions to support public schools). The legislature's ability to revise tax laws is a fundamental component of preserving control over state revenues.

12 Model State Constitution art. VII, sec. 700 (Nat'l Mun. League, 5th ed. 1948).

13 3 Constitutional Studies, PAS Staff Paper IX, Vol. 3, State Finance (1955), at 2.

14 *Id.* at 5.

15 *Id.* at 15-16.

The Alaska delegates heeded the advice to prohibit surrendering the taxing power, but wanted to retain the authority of the legislature to offer tax exemptions to induce economic development.[16] Initially, the Constitutional Convention Finance and Taxation Committee tentatively adopted the phrase, "the power of taxation shall never be surrendered."[17] At subsequent meetings the Committee discussed whether tax exemptions should be permitted and, if so, whether the specific exemptions should be included in article IX.[18] On December 16, 1955, the Committee had agreed on language similar to what we have now:

> **Section 1. The power of taxation shall never be surrendered; and shall never be suspended or contracted away, except as provided herein**. . . . **Section 4.** The real and personal property of the State and of its political subdivisions shall be exempt from taxation under such conditions and with such exceptions as the legislature may direct. All or any portion of property used exclusively for non-profit, charitable, cemetery, or educational purposes as defined by law, is exempt from taxation. **Other exemptions of like or different kind may be granted by general law**; and until otherwise provided by law, all exemptions from taxation validly granted are retained.[19]

The only exceptions to the prohibition against suspending or contracting away the taxing authority referenced in section 1 ("except as provided in this article") are contained in section 4. No other section of article IX speaks to exemptions or other ways in which the State's taxing authority could be suspended or contracted away. Reading section 1 and section 4 together, it is clear that the suspension or contracting away of the taxing power could only be by general law.

A report accompanying the Committee's proposal explained: "The power to tax is never to be surrendered, but under terms that may be established by the legislature, it may be suspended or temporarily contracted away. This could include industrial incentives, for example."[20]

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16 *See* Minutes of Finance & Taxation Committee (Nov. 23, 1955) ("Tax incentives were discussed. It was the consensus of the committee that tax incentives may well be useful in Alaska, that the Constitution should therefore not prohibit them . . . .").

17 Minutes of Finance & Taxation Committee (Nov. 17, 1955).

18 Minutes of Finance & Taxation Committee (Dec. 5, 1955).

19 Committee Proposal No. 9 (Dec. 16, 1955) (emphasis added).

20 Commentary on the Article on Finance & Taxation (Dec. 16, 1955) at 1 and 5.

The Committee explained to the Convention that the language in Proposal No. 9

> is aimed to assure a sound system of finance and taxation and leave as much leeway to the state as possible and the sound practices to be carried out in the future. Section 1 is a rather routine statement that the power of taxation shall never be surrendered or contracted away. The reason for . . . the addition of the words, 'except as provided herein' is to remove doubt as to what we might mean later on down in the article by providing exceptions. . . . [The last paragraph of section 4] would allow for, among other things, a granting of tax incentives to new industries.[21]

It was noted that the Committee did not adopt the Model language or the language used by other state constitutions for section 1; it "felt that definitely the power of taxation should never be surrendered" but also felt "there would possibly be occasion and good justification in the future for such things as allowing an industry-wide exemption to encourage new industry to come in."[22] The allowance in section 4 for exemptions that may be granted by general law is to allow "for some exemption or inducement to industries."[23]

Although a Committee consultant had advised members of the committee to set constitutional time limits for exemptions, the article's plain language and the framers' intent shown in the constitutional minutes render such time limits superfluous.[24] By definition, exemptions "by general law" may be amended or repealed, and the "no surrender" clause of article IX, section 1 makes clear that exemptions may not be treated as an irrevocable contract. Because article IX expressly made exemptions subject to amendment or repeal at any time, the framers had no need to create time limits for these exemptions.

The history of article IX illustrates the framers' intent to prohibit the surrendering of the taxing power but to allow the legislature, by general law, to adopt tax exemptions to encourage economic development in Alaska. The framers also recognized the need to do so in a way that would not result in a binding contractual arrangement that would tie

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21 Constitutional Convention Minutes, Day 42 (Dec. 19, 1955).

22 Constitutional Convention Minutes, Day 55 (Jan. 16, 1956).

23 *Id.*

24 *See* Minutes of Finance & Taxation Committee (Dec. 5, 1955) at 1-3 ("[Consultant Weldon Cooper] also advised setting a time limit [for tax incentives] constitutionally.").

the hands of future legislatures. The language of article IX makes clear that the power of taxation cannot be surrendered, and that a tax incentive or exemption "by general law" may be amended or repealed. Nothing in the legislative history or in the plain language of article IX supports a conclusion that the framers intended to permit tax incentives or exemptions that could not be amended or repealed by a future legislature.

IV. Conclusions by former attorneys general regarding the State's ability to provide fiscal certainty are not supported by article IX's drafting history or plain text.

Opinions by former attorneys general who have examined the legislative history of article IX in an attempt to support the constitutionality of long-term, irrevocable tax exemptions have focused on aspects of the legislative history that, at best, are inconclusive. These analyses are not supported by either the legislative history or the text of article IX.

A 2006 formal Attorney General's Opinion endorsing the Stranded Gas Development Act ("SGDA") contract[25] by then-Attorney General David Márquez concluded that the legislature could contract away its sovereign power of taxation for a period of 30 to 45 years.[26] The opinion first summarily concludes that article IX permits the legislature to bind a future legislature by entering into an irrevocable contract.[27] The opinion then goes on to consider the history of the contract clause, noting that "[s]ome states . . . enacted state constitutional prohibitions against the surrender of the taxation power,"[28] but arguing that the framers of the Alaska Constitution "adopted instead the unique clause in article IX giving the Alaska legislature authority to suspend or contract away existing taxing power by providing tax exemptions by general law."[29] While

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[25] In a 2006 memorandum analyzing the SGDA contract, Senator Hollis French noted that Attorney General Márquez "admitted in his remarks to the group of legislators attending the Administration's gas line contract presentations at Centennial Hall in Juneau that his analysis was not a balanced view of the question of the constitutionality of a long term tax deal, but rather was essentially a defense of the Administration's point of view." Senator Hollis French, *Alaska's 'No Surrender Clause' and the Proposed SGDA Contract*, June 6, 2006, at 12-13.

[26] 2006 Op. Alaska Att'y Gen. (May 10) (addressing the proposed Stranded Gas Development Act contract).

[27] *Id.* at 13.

[28] *Id.* at 13-14.

[29] *Id.* at 14.

acknowledging that the framers were cautioned that tax exemptions could result in a binding contractual relationship and that limiting legislative powers could retard growth, it nevertheless asserts (without citation to any authority) that the delegates rejected this advice.[30] Yet the memo's conclusions ignore both the express prohibition against surrendering the power to tax and the express proviso that any tax exemptions be enacted only through "general law."[31] These two provisions must be read in harmony: exemptions granted under article IX, section 4 cannot eviscerate the complete bar on surrender of the taxing power found in article IX, section 1.[32] Irrevocable incentives of any duration would be inconsistent with the Constitution's prohibition against surrendering the power to tax. And although the opinion cites minutes from the Finance and Taxation Committee, minutes from the Constitutional Convention, and the Commentary on Article IX in an effort to show that the framers chose to allow one legislature to "alienate" the taxing power through binding tax contracts,[33] none of the authority cited actually supports this conclusion.[34]

To be sure, the Márquez opinion quotes constitutional convention minutes that evince the framers' intent to allow the legislature to use tax incentive to encourage investment from new industry.[35] Yet the mere fact that the framers wanted to allow tax

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30 *Id.* at 17-18.

31 Senator Hollis French made this same observation in his 2006 memorandum: "[Attorney General Márquez's] statements ignore the plain meaning of the term 'general law' in article IX, section 4, and the time limits imposed by that term. The memo does not at any place discuss the meaning of the term 'general law,' despite implicitly acknowledging the fact that 'general law' is the operative term." Senator Hollis French, *Alaska's 'No Surrender Clause' and the Proposed SGDA Contract*, June 6, 2006, at 14.

32 *Hiibschman v. City of Valdez*, 821 P.2d 1354, 1363 (Alaska 1991) (requiring that statutes must be harmonized if possible).

33 *See id.* at 18-21 (citing minutes of the Finance & Taxation Committee; Commentary on Article IX; Proceedings of the Alaska Constitutional Convention).

34 In his 2006 memorandum, Senator Hollis French similarly points out that while "[m]uch of the legal analysis in General Márquez'[s] memo consists of a noncontroversial recitation of federal law regarding the Contracts Clause and a summary of how Alaska's constitutional convention drafted and debated the 'no surrender' clause," "General Márquez'[s] memo . . . pushes beyond the historical record . . . ." Senator Hollis French, *Alaska's 'No Surrender Clause' and the Proposed SGDA Contract*, June 6, 2006, at 13-14.

35 *See* 2006 Op. Alaska Att'y Gen. at 18-22 (May 10) (quoting Proceedings of the Alaska Constitutional Convention (Jan. 16-18, 1956)).

exemptions does not mean that the framers wanted these exemptions to be irrevocable. Thus minutes showing a desire to encourage "new industry" or "outside capital" cannot override the plain language of article IX, which prohibits surrender of the taxing power.[36]

Finally, the Márquez opinion notes that the Finance and Taxation Committee was advised to adopt a time limit for tax exemptions[37] but ultimately did not provide a durational limit for exemptions.[38] It concludes that the framers "deliberately rejected putting parameters around what would constitute a temporary tax incentive," and thus a tax contract that binds future legislatures for up to 45 years would be permissible. [39] Again, this conclusion is contrary to the plain text of article IX, which states that the power of taxation shall never be surrendered, and that tax exemptions may be provided "by general law." A better explanation for the absence of a durational limit in article IX is that no such limit was required. The framers had determined that exemptions "may be

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[36] In a 60-page memorandum regarding the State's authority to enter fiscal contracts (an earlier version of which Attorney General Márquez appears to have been familiar with), BP senior counsel and former Alaska Department of Revenue commissioner Tom Williams also draws conclusions that are not supported by the extensive constitutional history he cites. For example, Williams points to a sentence deleted by the framers to support his conclusion that the framers intended to allow binding fiscal contracts. On December 6, 1955, members of the Committee on Finance and Taxation agreed to delete the following sentence from the end of article IX, section 4: "Exemptions from taxation may be allowed, altered or repealed." Memo dated November 22, 1955 from Committee on Finance & Taxation materials. Citing the deletion of that sentence, Williams argues that the framers "affirmatively delet[ed] the very language . . . that would have reserved a power to 'alter[]or repeal[]' any tax exemption even when it was contractually based." *The State of Alaska's Legal Authority to Enter Contracts to Limit or Lock-In Taxes for a Particular Project or Industry*, Tom Williams, April 16, 2015, at 19. A far better explanation for the deletion of the sentence is that it was superfluous. Two sentences before the deleted sentence was the following sentence, which remained: "Exemptions from taxation may be granted only by general laws." This, together with the "no surrender" clause, made clear that exemptions from taxation (whether through suspension or contracting away of the taxing power) may be allowed, altered or repealed.

[37] *See* Minutes of Finance & Taxation Committee (Dec. 5, 1955) at 1-3 ("[Consultant Weldon Cooper] also advised setting a time limit [for tax incentives] constitutionally.").

[38] 2006 Op. Alaska Att'y Gen. at 21 (May 10) ("In spite of Dr. Cooper's urging, the committee chose not to adopt a specific durational limit for tax exemptions for the express purpose of avoiding constitutional questions.").

[39] 2006 Op. Alaska Att'y Gen. at 20-21 (May 10).

granted by general law," and general laws may be repealed at any time.[40] This does not mean that the legislature cannot provide a tax exemption for a specific duration or authorize a tax exemption by contract. But because of the "no surrender" clause, a taxpayer can only rely on such exemptions until they are amended or repealed.

A 2007 letter by then-Attorney General Talis Colberg to Senator Hollis French and Representative Jay Ramras also concluded that the Alaska Gasline Inducement Act ("AGIA"), which offered a ten year production tax exemption to parties that committed gas in the first binding open season, would constitute a constitutionally permissible binding tax contract. The letter begins by rejecting the Márquez opinion's conclusion that the SGDA contract would be constitutional under article IX.[41] But the letter then concludes that AGIA, which was much more "narrowly focused" than SGDA and took "a specific and limited approach to reducing the potential for production tax changes for parties that commit their gas to the pipeline licensed under [AGIA]," was "consistent with the State's past practices and the Alaska Constitution."[42] The letter argues that section 4 provides authority for the legislature to set a tax exemption by contract and that "[w]ithout this authority, the clause 'except as provided in this article' would have no meaning."[43] The letter thus suggests that the legislature can "by general law" create a binding contract. Yet this interpretation, like that of the 2006 Márquez opinion, ignores the "no surrender" clause of section 1.[44] Finally, Attorney General Colberg clarifies the distinction between AGIA, which he believes is a permissible tax contract under article IX, and SGDA, which went too far:

> While I believe that the Alaska Constitution provides some limited mechanism for industrial incentives through binding tax exemptions,

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40 To conclude that the framers intended to allow for tax contracts that could not be amended or repealed yet provided no time limit for such contracts is also contrary to the clear record that the framers were warned about and discussed the dangers of alienation of the taxing power through exemptions and were advised to set a time limit constitutionally. *See* Minutes of Finance & Taxation Committee (Nov. 21, 1955) ("Tax exemptions and the alienation of taxing power were discussed at length.").

41 Letter from T. Colberg to Sen. H. French and Rep. J. Ramaras, at 1 (March 13, 2007).

42 *Id.* at 2.

43 *Id.* at 3.

44 And, as discussed previously, an interpretation that would not render superfluous the "except as provided in this article" as it relates to the "contracted away" portion of section 1 is that the legislature may enter into non-binding contracts.

> in my view former Attorney General Márquez's opinion on this topic, while thorough and well researched, reached too far in its conclusion that the SGDA contract would survive constitutional scrutiny. Rather, the most likely and defensible interpretation of Art. IX is that a legislature may agree to some binding tax treatment such as proposed in the AGIA, which is limited to exemptions, is limited in duration, and demonstrably serves an important public purpose.[45]

Like the Márquez opinion, the Colberg letter fails to address the definition of "general law" and ignores the "no surrender" clause of section 1. In doing so, it incorrectly concludes that the legislature may enter into binding tax contracts by general law. While the letter correctly concludes that SGDA was not supported by the constitution, it offers no support for its conclusion that binding tax treatment would be permissible if it was limited to exemptions, limited in duration, and demonstrably served an important public purpose.

Finally, both the Márquez opinion and the Colberg letter point to industrial incentive acts that were enacted before and after the adoption of article IX to support their conclusions that the framers intended to allow the legislature to provide binding tax incentives "that were contractual in nature."[46] Between 1949 and 1968 there were three industrial incentive acts, each providing for up to ten years of tax incentives.[47] Although some of these acts indicate that they were intended to be contractual in nature,[48] nothing

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[45] Letter from T. Colberg to Sen. H. French and Rep. J. Ramaras, at 4 (March 13, 2007).

[46] 2006 Op. Alaska Att'y Gen. at 16-17 (May 10) ("Indeed, immediately before and after the constitutional convention, both the Alaska territorial and state legislatures adopted industrial incentive acts providing tax exemptions and other incentives to businesses investing in Alaska that were considered contractual in nature. Several delegates to the convention were members of the legislature when these acts were enacted."); 2007 Letter from T. Colberg to Sen. H. French and Rep. J. Ramaras, at 3 (March 13, 2007) ("In fact, the legislature has on several occasions previously provided statutory tax exemptions that were described as having the force of contracts.").

[47] Ch. 10, SLA 1949; AS 43.25.010 and 040; AS 43.26.020 (Repealed § 63 ch. 37 SLA 1986).

[48] The Alaska Property Tax Act of 1949 constituted "a contract between the [local] taxing unit, and the owner of the property." H.B. 43, § 2, approved March 16, 1953. The Alaska Industrial Incentive Act of 1957 provided for a ten-year tax exemption certificate that, if granted, was deemed binding and in full force and effect upon the terms set for the period granted. AS 43.25.010 *et seq*. The Alaska Industrial Incentive Tax Credits Act of

in these acts stated that they were not subject to amendment or repeal. In addition, the only act adopted after the ratification of article IX—the 1968 Alaska Industrial Incentive Tax Credits Act, which allowed for the granting of tax credits that could be used for a period of up to ten years—was never challenged in court. There is therefore no evidence that the Act was constitutional under article IX. That these acts provided for tax exemptions for up to ten years is immaterial. As discussed earlier, the legislature is free to grant a tax exemption by general law for a specified duration, but that exemption will be subject to amendment and repeal.

An apparent flaw in the opinions that suggest a long-term, irrevocable tax exemption would be permissible under article IX is their failure to address the definition of the term "general law" and the significance of that definition when read in concert with the "no surrender" clause. Article IX provides (and the framers intended) that tax exemptions not already provided for in article IX may be granted "by general law." As such, any temporary suspension or contracting away of the taxing power "by general law" would be subject to amendment or repeal by a future legislature. When read in concert with the "no surrender" clause of section 1, it is also clear that a general law authorizing a contract or a general law treated as a contract would also be subject to amendment or repeal.[49] There is nothing in the constitutional history that supports a conclusion that the framers intended to permit one legislature to provide tax exemptions, either through general law or contract, that a future legislature could not amend or repeal.

1968 granted a tax credit "effective for a period . . . not to exceed 10 years from the date of the grant . . . ." AS 43.26.010(a).

[49] This is consistent with the Alaska Supreme Court's interpretation of article IX. In *Atlantic Richfield Co. v. State*, 705 P.2d 418, 438 (Alaska 1985), the court, citing article IX section 1, stated: "In entering into the [oil and gas] leases the state could not, and did not, contract away its power as a sovereign to tax income earned in the state." It is also the opinion provided by Legislative Counsel Don Bullock in a 2006 memorandum to Representative Les Gara, in which Mr. Bullock concluded: "In my opinion, a contract provision limiting the level of a tax is more likely than not contrary to art. IX, sec. 1 and is not within the exceptions in art. IX, sec. 4. . . . Article IX, sec. 4 provides for exemptions from tax provided by law. In other words, exemptions may be enacted by the legislature (and repealed or amended by a subsequent legislature), but there is no authority in the Constitution of the State of Alaska to suspend the power of the state to tax in a contract between the state and a taxpayer. . . . A suspension or exemption may be amended or repealed by a subsequent legislature or an initiative under the power to tax." Memorandum regarding "Contracting away the power of taxation" from D. Bullock to Rep. L. Gara, May 18. 2006, at 1, 4, 6.

V. Past fiscal certainty proposals are inconsistent with the framers' intent and are not permitted by article IX.

The various fiscal proposals made by oil and gas producers ("producers") over the years in an attempt to obtain fiscal certainty from the State of Alaska prior to committing to produce North Slope natural gas have not proposed fiscal certainty through revocable tax exemptions by general law to encourage new industry. Proposals to irrevocably suspend or contract away the state's taxing power to benefit specific companies in an established state industry are neither authorized by the plain language of article IX nor consistent with the delegates' purpose in allowing tax exemptions.

The commentary that accompanied article IX provides the only direct explanation of what the framers intended when drafting article IX:

> The power of taxation is never to be surrendered, but under terms that may be established by the legislature, it may be suspended or temporarily contracted away. This could include industrial incentives, for example. . . . The legislature is authorized to make further tax exemptions to encourage, among other purposes, new industry, and all valid current exemptions are continued.[50]

When Finance and Taxation Committee Secretary Barrie White presented the commentary to the Convention on December 19, 1955, he stated the following regarding Sections 1 and 4:

> Section 1 is a rather routine statement that the power of taxation shall never be surrendered or contracted away. . . . Section 4 deals with exemptions from taxation, most of it is pretty standard . . . . And then in the last paragraph of that section it provides that other exemptions may be provided by general law. This would allow for, among other things, for a granting of tax incentives to new industries.[51]

The plain text of article IX, the accompanying commentary, and the explanation provided by Secretary White at the Convention emphasize three things: that the power of taxation could never be surrendered, that exemptions "of like or different kind" than those

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50 Commentary on the Article on Finance & Taxation (Dec. 16, 1955) at 1 and 5.

51 Constitutional Convention Minutes, Day 42 (Dec. 19, 1955).

enumerated in section 4 could be provided by general law, and that the founders intended for those exemptions to be used as incentives for "new industries."

Previous Attorneys General have concluded that providing tax incentives for a natural gas project would be consistent with what the framers intended because it would encourage resource development,[52] or serve an "important public purpose."[53] For example, Attorney General Márquez cited Article VIII's mandate to develop the state's gas for the maximum benefit of the citizens of Alaska to support his conclusion that the Stranded Gas Development Act contract was constitutionally permissible.[54] But the constitutional history of article IX makes clear that the intent was to provide industry-wide incentives to new industries not yet in Alaska,[55] not tax relief to specific companies within an industry that has been established in the State for decades.[56]

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[52] In his 1998 SGDA bill review, Attorney General Botelho noted that the legislature has passed "comparable measures to encourage industrial development in the past," and suggested that the Kenai LNG plant "might never have been built" without the tax advantages of former AS 43.25. Bill Review of SCS CSHB 393(FIN), at 4 (May 29, 1998). Again, past examples of unchallenged tax incentives do not support a conclusion that such measures are constitutional under article IX.

[53] Letter from T. Colberg to Sen. H. French and Rep. J. Ramaras, at 4 (March 13, 2007).

[54] Attorney General Márquez avoided addressing whether the proposed Stranded Gas Development Act contract was a permissible industrial incentive based on the constitutional history of article IX and instead looked to article VIII: "The proposed [Stranded Gas Development Act] Contract is consistent with article VIII's mandate to develop the state's gas for the maximum benefit of Alaska citizens and fits within the parameters of sections 1 and 4 of article IX. Commentary by the delegates regarding article VIII makes it clear that all saw it as allowing for the development of the state's vast resources to benefit future Alaskans." 2006 Op. Alaska Att'y Gen. at 25 (May 10).

[55] *See, e.g.*, Constitutional Convention Minutes, Day 55 (Jan. 16, 1955)("[W]e did feel that there would possibly be occasion and good justification in the future for such things as allowing an industry-wide exemption to encourage new industry to come in and that is the reason for the particular wording there. . . . [A]nd this . . . is the provision that allows for some exemption or inducement to industries or similar things.").

[56] In his 2006 memo to the legislature, Senator Hollis French provided a quote from Vic Fisher who concluded the same: "Given the constitution's history, it is totally inconceivable that the framers of Alaska's constitution would have meant the ['no surrender' clause] to include surrender of its power of taxation over the petroleum industry that already exists and is so established that it provides 80-90% of general fund revenues. Industrial incentives of that scale and scope just didn't exist and would defy

Moreover, proposals like the SGDA far exceed the tax incentives of general applicability envisioned by the founders. Under SGDA, the State entertained providing tax exemptions through a statute authorizing a fiscal contract that would have been authorized by the legislature and signed by the governor. The SGDA contract would have provided up to 45 years of tax incentives by exempting Exxon, ConocoPhillips, and BP from certain state and municipal taxes. Though authorized by statute that was general on its face, the SGDA contract applied only to three established producers with large oil and gas reserves. The contract, which proposed to fundamentally alter the tax structure of the State of Alaska for up to 45 years for three specific producers, was therefore inconsistent with the proviso that tax exemptions be conferred by "general law," had nothing to do with "new industries," and thus could not be a valid tax exemption under article IX.[57] Even Attorney General Colberg, who defended AGIA as a permissible tax exemption under article IX, concluded that the SDGA was not constitutionally permissible: "I do not believe that a contractual lock-up of the state's fiscal system and other elements of state sovereignty for over three decades is either in the public's interest or supported by Art. IX, Sec. 1 of the Alaska Constitution."[58]

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logic." Senator Hollis French, *Alaska's 'No Surrender Clause' and the Proposed SGDA Contract*, June 6, 2006, at 7 (quoting Vic Fisher Testimony submitted at June 3, 2006 Alaska Gas Pipeline Public Hearing, Anchorage, Alaska, page 4-5).

[57] In a 1998 bill review concerning the SDGA, Attorney General Bruce Botelho noted that the SGDA as drafted did not bind future legislatures and indicated that it would have been unconstitutional had it purported to do so: "The [SGDA] raises the 'surrender of the taxing power' question because it contemplates development of a long-term contract that reflects the fiscal terms applicable to the sponsors of a stranded gas project. The legislation itself, however, is not unconstitutional under art. IX, because it does not purport to bind future legislatures. Instead, it merely authorizes the commissioners of revenue and natural resources to develop appropriate contract terms. . . . Even if [legislative] authorization is given, the legislature may expressly provide that the contract's fiscal terms are binding only so long as no future legislature decides to exercise the taxing power in a different way. In other words, the 'surrender of the taxing power' issue may never arise." Bill Review of SCS CSHB 393(FIN), at 3 (May 29, 1998).

[58] 2007 Letter from T. Colberg to Sen. H. French and Rep. J. Ramaras, at 1 (March 13, 2007). Former Assistant Attorney General Jack Griffin, now counsel at ConocoPhillips, also concluded that such a contract would be unconstitutional in a PowerPoint presentation provided to the legislature in 1998: "A contract that prohibits future legislatures from amending or repealing tax exemptions or from imposing new tax obligations upon an individual or corporation, is a surrender of the taxing power that is

Nor can the "no surrender" and "general law" provisions of article IX be circumvented through alternative fiscal certainty mechanisms.[59] For example, an agreement between producers and the State wherein the State or a political subdivision would agree to reimburse the producers for any increases in taxes that occurred during a specified period would be a clear evasion of the prohibition against the surrender of the power of taxation in article IX. By agreeing to compensate producers for tax increases through a reduction in state revenues, the legislature would, in effect, be agreeing to surrender its power of taxation.[60]

In contrast to the SGDA contract, the AGIA provided a production tax exemption by general law for the first ten years of operation for parties that committed gas to the pipeline in the first binding open season.[61] In his 2007 letter to legislators, Attorney General Colberg incorrectly suggested that the tax incentives under AGIA would be "binding," writing: "a legislature may agree to some binding tax treatment such as proposed in the AGIA, which is limited to exemptions, is limited in duration, and demonstrably serves an important public purpose."[62] But AGIA did not purport to bind future legislatures and would have been subject to amendment and repeal. An industry-wide tax exemption by general law to induce outside investment or new industry that is

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prohibited by Article IX, Section 1 of the Alaska Constitution. To the extent the legislature may 'contract away' the taxing power, it may do so only by general law, which is to say that the 'contract' is subject to repeal or modification by any future legislature." Jack Griffin PowerPoint slides attached to March 27, 1998 letter from Jack Griffin to Representative Terry Martin, at DOL_005967.

[59] Attorney General Márquez suggested that a payment in lieu of taxes would be more defensible than traditional industrial incentive acts, writing: "Moreover, unlike the earlier Incentive Acts, the proposed SGDA contract requires continuous payments in lieu of taxes, not a complete exemption from payment of taxes." 2006 Op. Alaska Att'y Gen. at 24 (May 10). A binding contract authorizing a payment in lieu of tax would still constitute a surrender of the taxing authority and would therefore violation article IX.

[60] In his 2007 letter to members of the Alaska Legislature, Attorney General Colberg wrote that such provisions in the SGDA, including proposed indemnification of tax payments made by North Slope producers and offset of tax payments directly against state royalty revenues, were "antithetical to state sovereignty." 2007 Letter from T. Colberg to Sen. H. French and Rep. J. Ramaras, at 2 (March 13, 2007).

[61] AS 43.90.320.

[62] Letter from T. Colberg to Sen. H. French and Rep. J. Ramaras, at 4 (March 13, 2007).

subject to amendment or repeal is the only form of fiscal certainty currently permitted by article IX.

CONCLUSION

The Alaska Constitution unequivocally prohibits the State from surrendering its power of taxation. However, the State can suspend or contract away the power of taxation as specifically allowed in article IX. Section 4 of that article allows the legislature to enact general laws for tax exemptions. While the Alaska Supreme Court has not yet addressed this question, this limited power to create tax exemptions must be harmonized with the prohibition against surrender of the taxing power. As such, the State cannot under the constitution as now written—by contract or by legislation—create a permanent tax structure. Therefore, any contract or suspension of taxing power through a general law is subject to repeal or amendment by future legislatures, and cannot be binding under the contract clause. A general law or contract that purported to prohibit the legislature from changing tax terms in the future would be unconstitutional.

Sincerely,

Craig W. Richards
Attorney General

THE STATE of ALASKA
GOVERNOR BILL WALKER

Department of Natural Resources
NORTH SLOPE GAS COMMERCIALIZATION OFFICE
AKLNG PROJECT OFFICE
550 W 7th Ave. Suite 1400
Anchorage, AK 99501
Main: 907.269.8431
Fax: 907.269.8918

June 28, 2016

The Honorable Cathy Giessel
Chair of the Senate Resources Committee
Alaska State Capitol
Juneau, Alaska 99801-1182

The Honorable Benjamin Nageak and Dave Talerico
Co-Chairs of the House Resources Committee
Alaska State Capitol
Juneau, Alaska 99801-1182

Dear Senator Giessel and Representatives Nageak and Talerico:

The Department of Natural Resources (DNR) in consultation with the Department of Revenue (DOR) submits the following written report in accordance with Section 77 of Senate Bill 138 (SB138), Chapter 14 SLA 14.

Following the October 2015 Special Session legislative authorization for the State of Alaska to exercise its rights to terminate the Precedent Agreement (PA), DNR executed a Purchase and Sales Agreement (PSA) on November 18, 2015, which terminated the PA effective November 24, 2015, and resulted in the State's acquisition of TransCanada Alaska Midstream Limited Partnership (TAMLP). Under the terms of the PSA, TransCanada (TC) delivered to the State of Alaska (SoA) an *Initial Cost Report* where the aggregate amount payable at closing was to be $64,590,000, which was TC's estimate of the Termination Amount, Post-Termination Costs and Interest Costs as of November 24, 2015.

Under the terms of the Purchase and Sale Agreement, DNR and DOR conducted a review of the *Final Cost Report*. The DNR hired international accounting firm Ernst & Young (EY) to perform the review of the charges, costs and expenses included in the value paid to TC under the terms of the PSA. TC submitted the *Final Cost Report* to the State on January 15, 2016, which provided a summary of the actual costs incurred by TC for the Alaska LNG (AKLNG) Project. Those costs amounted to $64,367,651. The objective of the review was to present any findings as they relate to the makeup of the Final Cost Report value and deviations from the contractual language outlined in the Precedent Agreement.

The review completed satisfactorily by EY confirmed a Contribution Overpayment of $222,349 between the estimated expenditures reported in the *Initial Cost Report* versus the actual expenditures included in the *Final Cost Report* for expenditures from January 1, 2014 through January 15, 2016. Minor audit adjustments were concluded, resulting in an adjusted reimbursement to the SoA for $216,615 (excludes interest).

Total Reviewed and Reimbursed Costs

TransCanada's actual expenditures for January 1, 2014 through January 15, 2016, totaled $64,373,387, and can be broken down as follows:

a. A total of $61,869,579 on a cash basis, which includes cash calls related to the AKLNG Project and development costs associated with development and negotiation of agreements and regulatory activities.
b. A carrying cost[1] of $2,503,808.

Total Audited Reimbursable Costs to TransCanada (in US$)			
	CSA (Jan. 1-Jun 30, 2014)	PRE-FEED (July 1, 2014-January 15, 2016)	TOTAL
AKLNG Cash Calls and TC Development Costs	$9,724,326	$55,918,436	$65,642,762
Less: AGIA Reimbursement	($3,773,183)		($3,773,183)
Carrying Cost			$2,503,808
TOTAL Audited Reimbursable Costs			$64,373,387

TransCanada Reimbursement to the State

TransCanada and the State agreed with EY's findings of the final cost review report submitted to the State. The state over contribution amount confirmed was $216,615.

TransCanada Reimbursement to the State (in US$)	
Closing Estimate Paid to TC – Nov 2015	($64,590,000)
Audited Reimbursable Costs	$64,373,387
Difference (excludes interest)	$216,615[2]

Per the PSA, interest shall be payable and shall accrue daily from the closing date until the date of payment. The total interest amounted to $1,968, for a total reimbursed to the State of $218,583. The TC fund transfer to the SoA took place on April 19, 2016, and the amount was returned to the General Fund.

If we can be of further assistance, please do not hesitate to contact us directly.

Sincerely,

Marty Rutherford
Acting Commissioner, DNR

CC: Randy Hoffbeck, Commissioner, Department of Revenue
Dona Keppers, Deputy Commissioner, Department of Revenue
Keith Meyer, President, Alaska Gasline Development Corporation
Darwin Peterson, Legislative Director, Office of the Governor

[1] Carrying Cost Calculation as defined in the *Alaska Midstream Services Precedent Agreement (Redacted) Schedule A*, means the calculation of interest on a particular cost or expenditure forming part of the Development Costs, calculated at a rate of 7.1% per annum and compounded monthly and accruing daily. Such interest shall accrue, in respect of such costs or expenditures, from the later of (i) FERC Pre-Filing Date, and (ii) the 15th day of the calendar month of the month such cost or expenditures was incurred, until the date of payment.
[2] The $2 dollar difference in calculation is due to rounding.

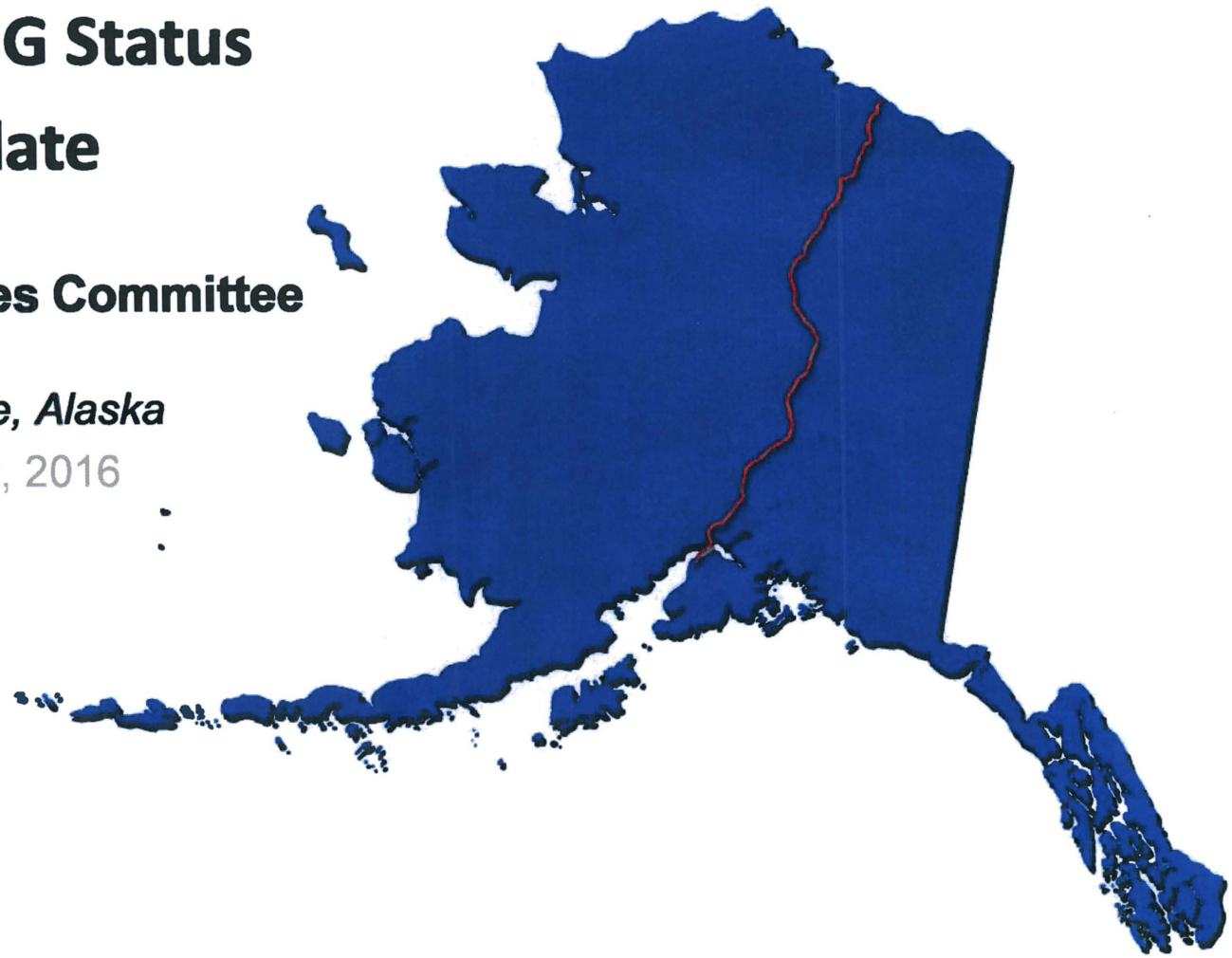
ALASKA GASLINE DEVELOPMENT CORP.
GAS FOR ALASKANS

Alaska LNG Status Update

Joint Resources Committee

Anchorage, Alaska

June 29, 2016



Topics

- AGDC Overview
- Alaska's LNG Project
- LNG Market Assessment
- Alaska's Advantages
- Keeping the project on pace
- State Team Roles
- Schedule & Budget Implications
- Summary/Conclusion

AGDC President Meyer

Keith Meyer receiving the industry's first "LNG Company of the Year Award" in Rome, Italy 2007.

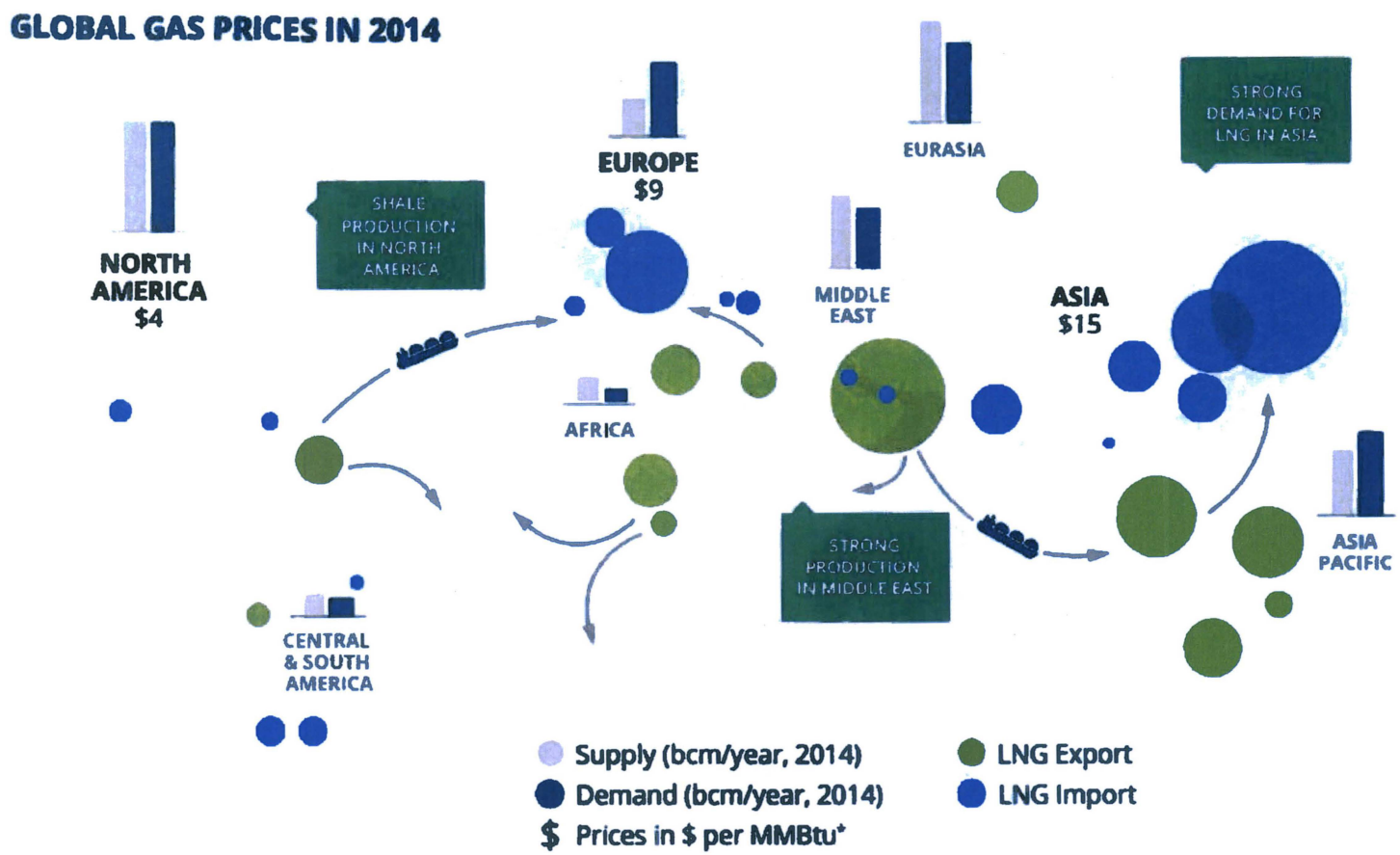
- Keith Meyer – President AGDC
  - Appointed June 9; started June 15, 2016
- 35 years experience in international energy development, including gas pipelines, gas storage, power generation, LNG, petrochemicals, biofuels; international LNG and gas sales.
- Former President Cheniere LNG, developer of North America's largest LNG receiving terminal.
- Originator and co-patent holder of electronic LNG cargo slot bidding system (lnggateway.com).
- CMS Energy - VP Panhandle Pipeline, Trunkline LNG, became largest importer of US spot cargos.
- ANR Pipeline/Coastal Corp – Strategic Planning; VP Marketing Empire State Pipeline
- Advisory Board Member - Houston Technology Center
- Program Instructor – Rice University, Houston TX

Objectives at AGDC

- **Operate as a corporation.**
- Every decision to be based on **sound business principles**.
  - ✓ Defensible,
  - ✓ Stand up to challenge.
- **More transparency** with public, legislature, market.
- **Cooperative relationship with producers.**
- Structure for **third-party finance**.
- Secure **long-term customer commitments**.
- Maintain **2023-2025 project in-service window**.
- Expand **in-state gas availability**.
- **Reestablish Alaska as an LNG leader.**

- **AGDC will <u>not</u>** be responsible for RIK/RIV election, state funding or credit support, or other-agency statutory responsibilities.

Global LNG Trade - 2014



Source: EIA

*Intercontinental Exchange (NBP, Europe), NYMEX (Henry Hub, US) and Platts (JKM, Asia)

Alaska's LNG Project

- Largest integrated energy infrastructure project.
  - ✓ Gas treatment plant,
  - ✓ Pipeline,
  - ✓ LNG production.
- Thousands of workers and skilled trades.
- Reliable gas supply for new and existing industries.
- Lowers the barrier to open up the north for new exploration and production.

A Long History

- Alaskan LNG has a **long history with a typical paradigm**:
  - ✓ Demand heats up,
  - ✓ Project ramps up,
  - ✓ Demand captured by others,
  - ✓ Project ramps down.
- **Need to change the paradigm.**
- Cyclical industry.
- Prepare in the downturn, to capture the upturn.

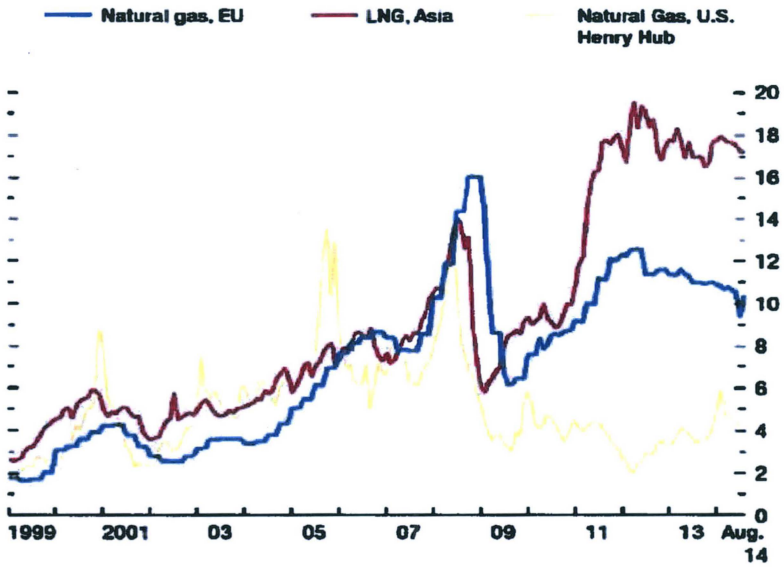
Prepare for the inevitable.

Multibillion dollar project

Hickel pushing plan to tap Prudhoe Bay gas

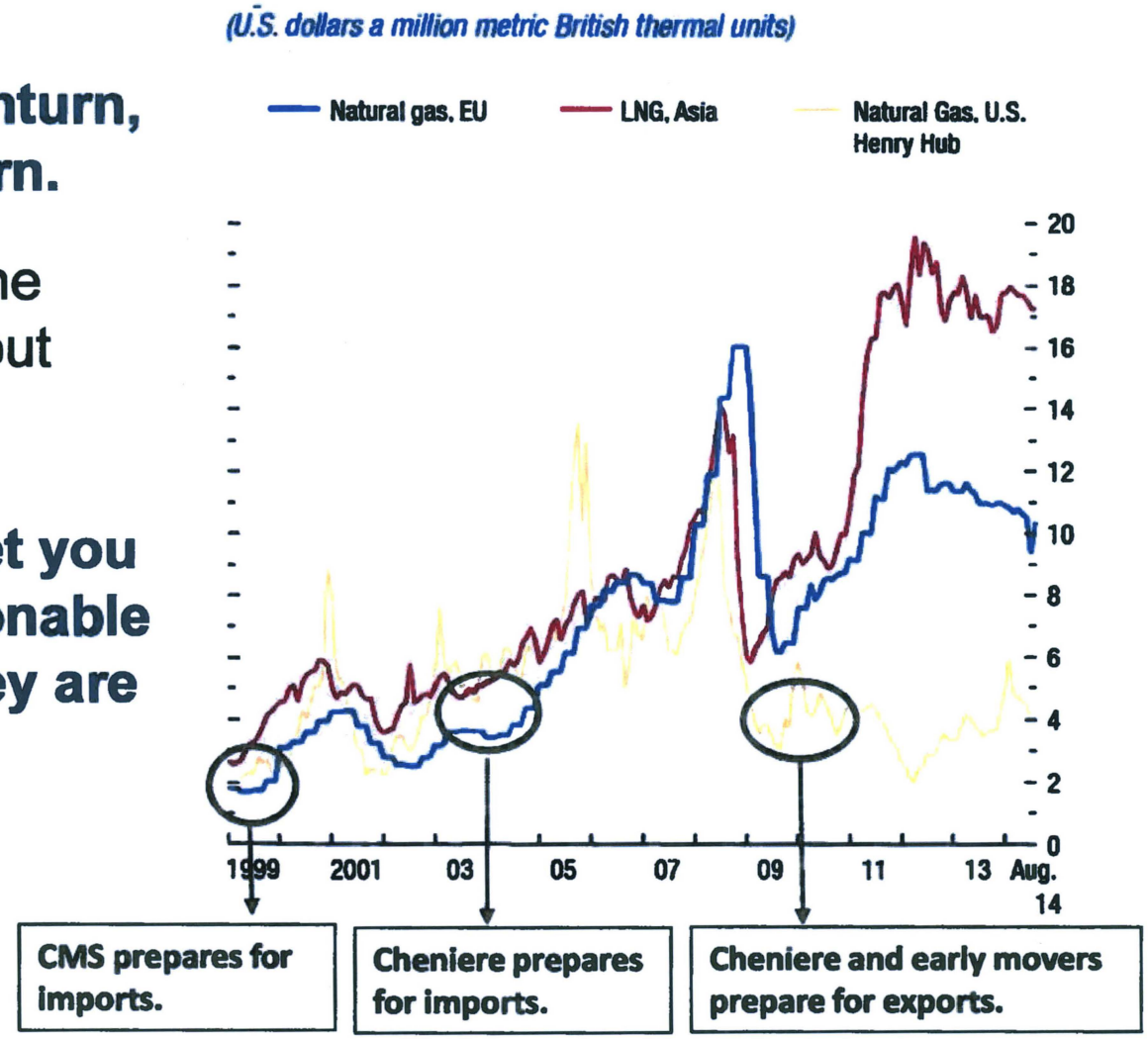
Gas to Asia

(U.S. dollars a million metric British thermal units)



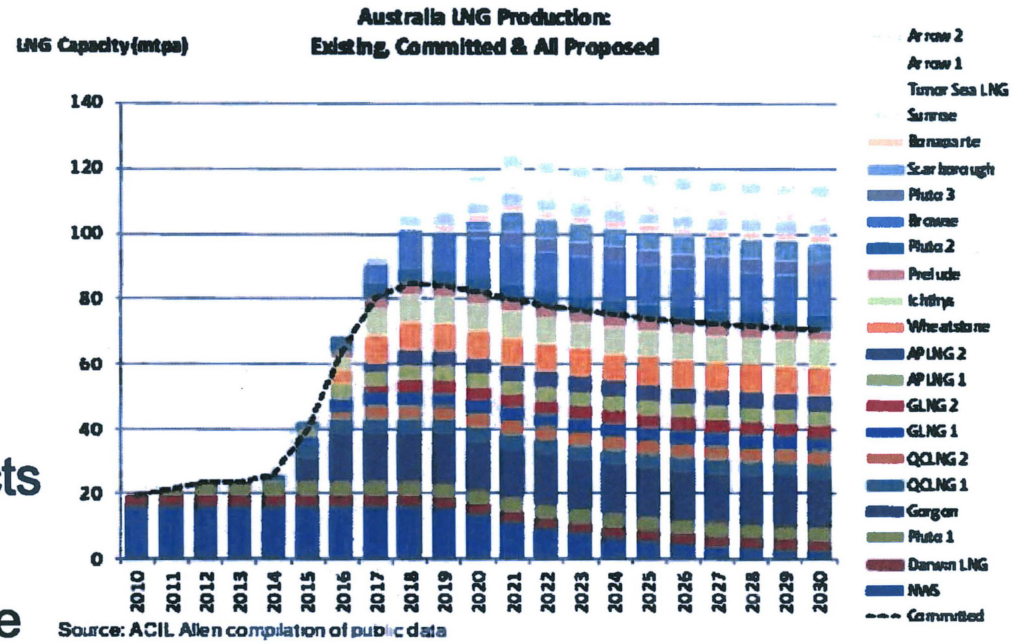
Confidence in Mission

- **Prepare in the downturn, to capture the upturn.**
- No need to build in the absence of market, but **need to reduce execution risk to convince the market you can build in a reasonable timeframe when they are ready to buy.**



Australia as Case Study

- Australia as case study:
  - ✓ Stable sovereign,
  - ✓ History of resource exports,
  - ✓ Long history in LNG exports with one export project,
  - ✓ Small domestic demand.
- During the 2009 downturn, Australia was positioning its LNG and gas resource projects for global competition.
- When the demand cycle came back, Australia was ready to move.
- **Australia will be the world's largest LNG supplier by next year.**

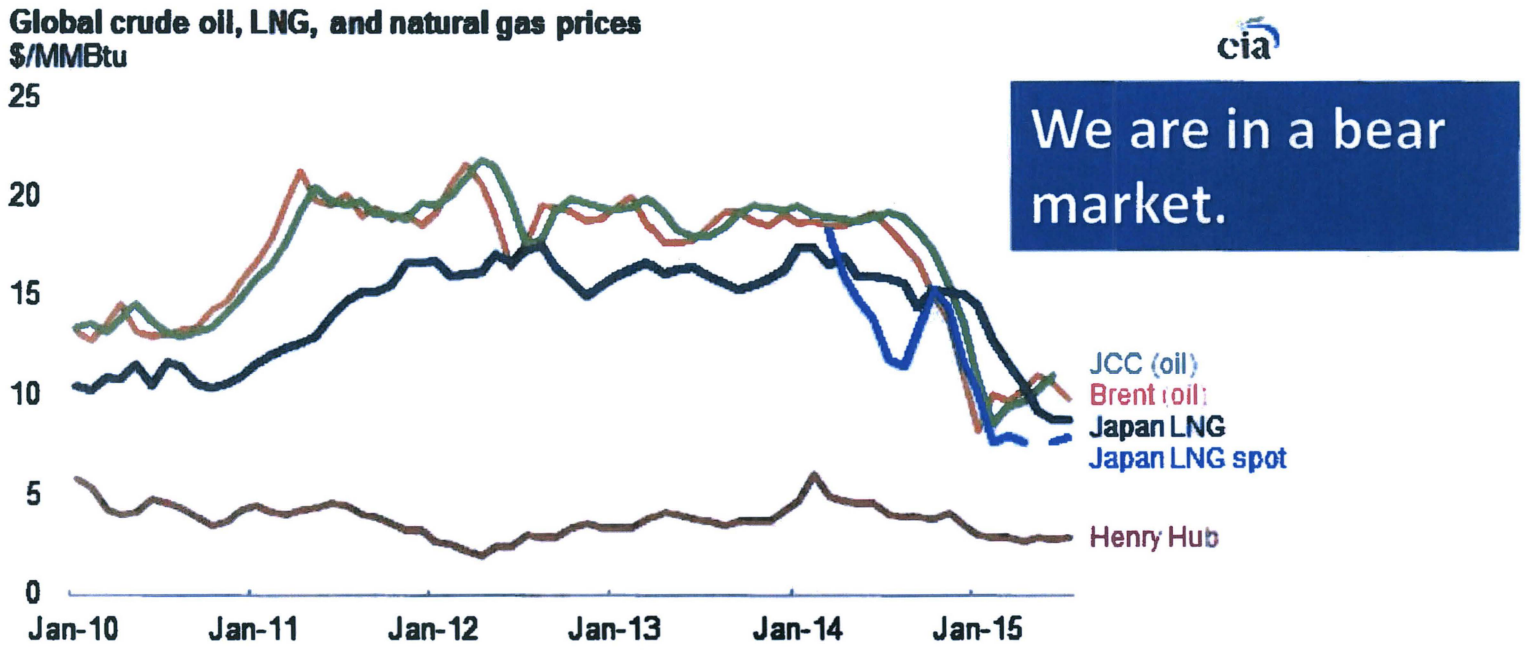


Position in the downturn, capture the upturn.

Mtpa = Million tons per annum = about 50 Bcf/yr.

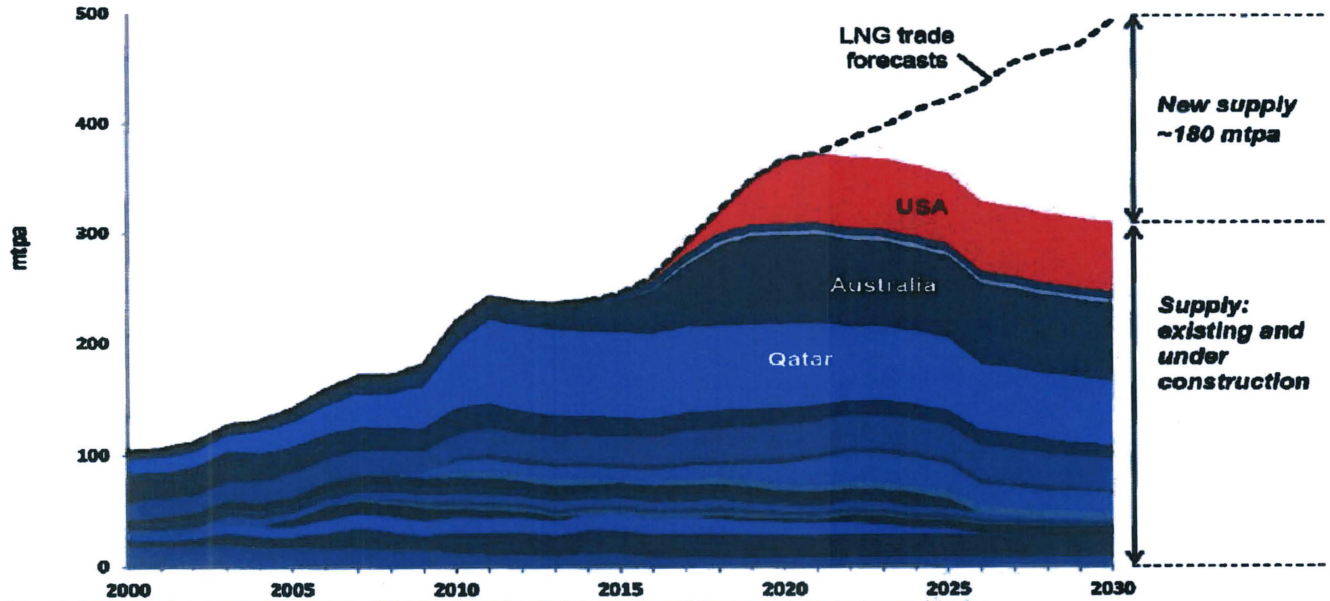
LNG Market Changes

- Excess supply in response to huge demand pull;
  - World liquefaction capacity doubled in last 10 years (to 300 Mtpa).
  - Another 140 Mtpa under construction.
  - Created soft, oversupplied market.
- High-teen LNG pricing has dropped to single digits.



LNG Market Changes

- **Equilibrium expected by early 2020's** - supply needed by 2022;
  - 40-100 Mtpa needed by 2025.
  - Over 800 Mtpa of projects wanting to reach fruition to meet the demand.
- **Sophisticated and demanding buyers** with abundant supply choices.
- **Evolving contract terms**: destination flexibility, reopeners, non-oil linked pricing.
- Multiple projects competing for scarce internal capital.



Alaska needs to fight to be one of the many projects competing for new market.

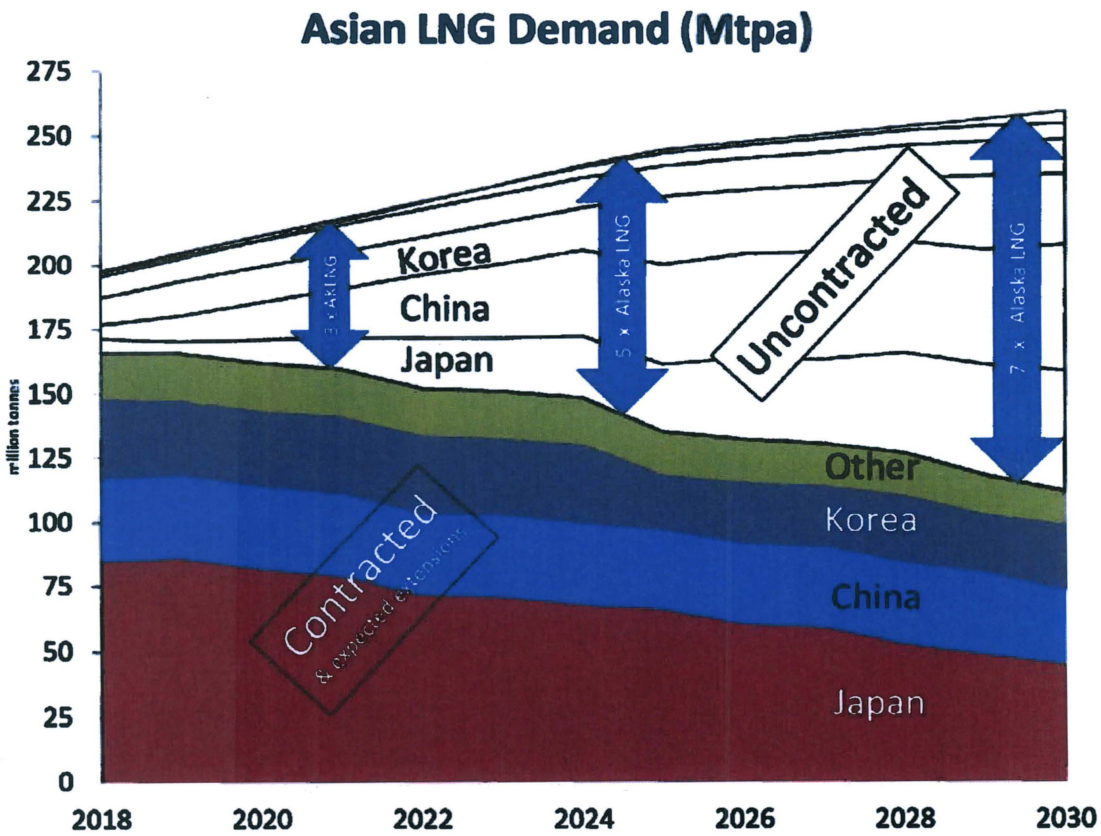
Mtpa = Million tons per annum = about 50 Bcf/yr.

(1) Assuming 85% utilization of nameplate capacity 211 mtpa of new liquefaction capacity would be required 5 mtpa trains = 42 trains.
Sources Cheniere interpretation of Wood Mackenzie data (Q4 2015)

20 CHENIERE

Asia-Pacific LNG Demand

- Asian demand is the major growth driver.
- Opportunity is to serve demand growth as well as replace expiring contracts.
- **Alaska has advantage with proximity and direct route.**



Sources: Wood Mackenzie, OECD/EIA 2014

Mtpa = Million tons per annum = about 50 Bcf/yr.

Alaska Very Well Positioned

Alaska's strengths can help overcome project challenges:

- Massive proven gas resources
- Enormous undeveloped resource potential
- Stable sovereign government
- Installed oil & gas production infrastructure

- Four decades of safe, dependable LNG exports
- Broad local support
- Market proximity
- No technical barriers and low technology risks
- Relatively low domestic demand

Alaska LNG Status

- **Excellent technical progress:**
  - $500 million Pre-FEED reaching conclusion.
  - All deliverables expected in September.
  - Resource Reports being prepared for Draft 2 filing.
  - **FERC application by end of 2016 is a critical path item.**
- **Slow commercial progress:**
  - Low oil prices and soft LNG market create challenges.
  - Seeking alternative means to reduce cost of supply and to conduct FEED activities.
  - **No consensus around starting FEED mid-2017.**

AGDC sees two options:

1. **Take the lead and find ways to reduce cost of delivered supply.**
   - Potential increased state ownership to enable lower tax cost structure.
   - Open up project participation to broader market.
   - Create project momentum in the market to facilitate offtake contracts.
2. **Delay FEED, potentially delay the project.**

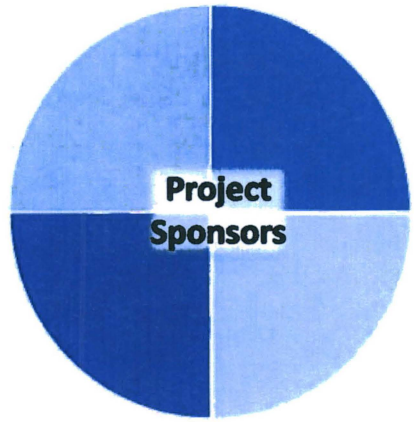
AGDC's Alaska LNG Action Plan

- Project sponsors intend to look at all aspects, with **emphasis on reducing total cost of delivered supply**.
- It is important to the State to **maintain pace in order to have an opportunity to contract for next demand pull**.
- LNG market is global – multiple projects chasing the same buyers.
- All participants want to monetize the resources.
- **Action Plan: Work in a collaborative manner** to explore alternative concepts **intended to enhance the project's global competitiveness**. These concepts include **various ownership and financing structures** and **could include increased ownership of the project by the State - and with third-party financing.**

Equity vs. Project Finance

Equity Structure

- In an equity structure, each party contributes its share of capital requirements.



Project Finance Structure

- The project sponsors put up some capital, especially in early development.
- Majority of funding comes from third-party sources.

Project Finance

Akash Deep
Senior Lecturer in Public Policy; Expertise in infrastructure finance and valuation
Harvard Kennedy School
December 1, 2005

HARVARD Kennedy School
JOHN F. KENNEDY SCHOOL OF GOVERNMENT

- **Project Finance** involves creating a separate legal and economic entity with the primary role of setting up an organizational structure and obtaining the necessary financial resources to develop and manage a project.

- The main, and crucial, distinction from conventional corporate or public financial structures is that repayment to debt and equity providers depends solely on the capacity of the project to generate cash flows, with typically **no recourse to the balance sheets of the sponsors or the resources of the government**.

Project Structure Diagram

Under a Project Finance structure, the Project Company is a special purpose vehicle set up to hold all agreements necessary to build, own, and operate the project.

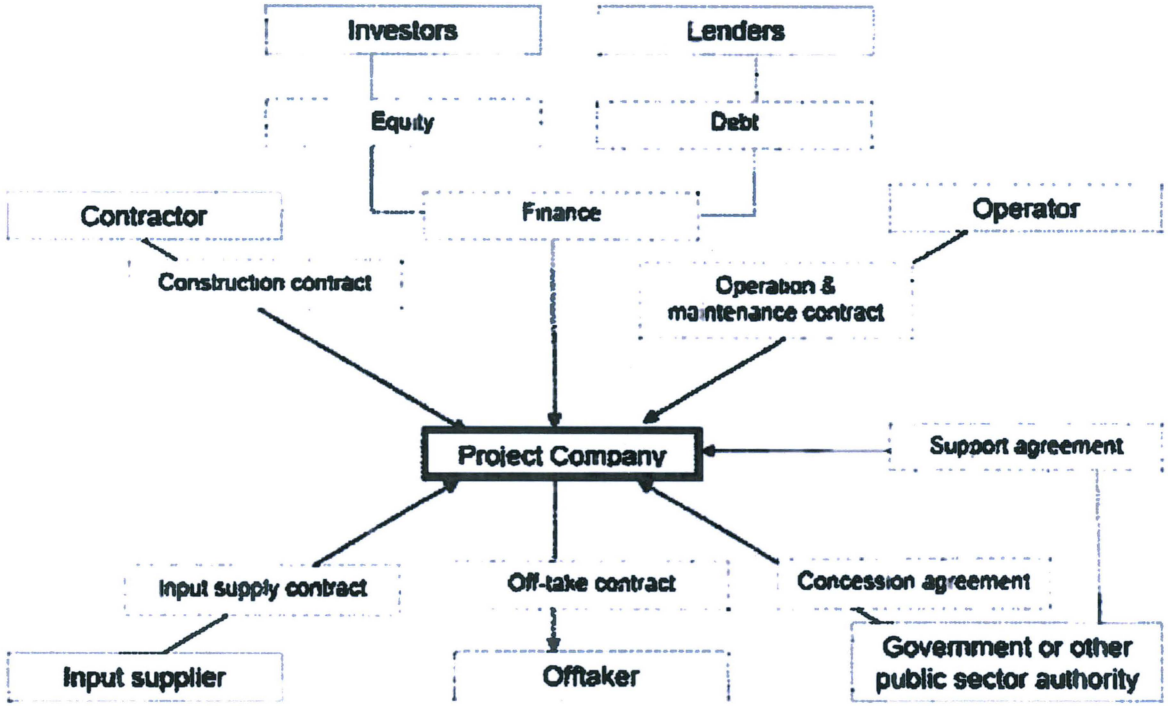


Diagram courtesy of Akash Deep, Harvard Kennedy School of Government

Trends in Infrastructure Finance

- **OECD Survey (2012) – Survey of 28 institutional investors representing $US1.5 Trillion of assets under management.**
  - Infrastructure investment now recognized as a distinct asset class.
  - Infrastructure projects are long-term investments that match the long duration of pension liabilities.
  - Infrastructure assets linked to inflation could hedge pension funds liability sensibility to increasing inflation.
  - Governments have started to recognize that they need to reconsider their approach to financing to secure new sources of capital to invest in infrastructure.
  - Developed and developing countries are in effect competing to attract institutional investors to infrastructure.

OECD = Organization for Economic Cooperation and Development; 34 nations.

Della Croce, R. (2012), "Trends in Large Pension Fund Investment in Infrastructure", *OECD Working Papers on Finance, Insurance and Private Pensions*, No.29, OECD Publishing.

Required State Response

- Alaska is singularly focused on moving the project forward in order to not miss the next demand cycle.
- To help ensure momentum, AGDC will take the lead on project development and project marketing in compliance with SB 138 and in consultation with DNR.
- Alaska LNG must have a higher profile to compete in the global arena:
  - Actively engage buyers.
  - Solicit investors.
  - Outmaneuver the competition.
- New structures are being considered and discussed.

Commercial Framework Concept

- AGDC will form the special purpose entity that will be the Project Company.
- Project Company will have a set of overarching principles designed to keep the project on track with competitive rates.
- Project Company will engage competent technical and commercial advisors.
- Producer parties' roles may change:
  - AGDC aims to keep project participants together, although some may choose not to invest in the next stage.
  - Ability for parties to participate and exit with minimal impact on project pace.
- Project ownership may not equate to gas ownership.

Commercial Framework Concept (Cont.)

- Alaska LNG (Project Company) will be a midstream business:
  - Not an extension of Prudhoe Bay or Point Thomson.
  - Provides unbundled services to producers, AGDC, third parties: GTP, Pipeline, LNG.
  - Levies transparent tolls in line with midstream businesses to clear market and maximize upstream revenues.
- Potential for alternative financing.
  - Federal tax reduction options.
  - Lower-cost third-party equity investors.
  - Non-recourse debt to minimize financial exposure.

Interface with State Agencies and Funding

- AGDC as single point of accountability for the midstream portion.
- AGDC could become a shipper.
  - If DNR elects to take royalty in kind and agrees to sell to AGDC.
  - If other customers desire a bundled service.
- AGDC and others will market the project as a service provider.

Roles of AGDC and Key State Agencies

Roles of AGDC Relative to Midstream Infrastructure				
Critical Activity	State Roles			
	AGDC	DNR	DOL	DOR
Technical	A R	C	I	I
Structure	A	C	R C	C
Midstream Agreements	A R	C	R	C
Regulatory	A R	C I	C	I
Project Marketing	A R	C	C I	C I
Financing				
State Participation	R	I	C I	A
Third-Party Finance	A R	I	C I	C
Construction	A R	I	C	C
Operations	A R	C	I	C
Royalty Gas Sales if Contracted	R	A	C	C
Global Presence	A R	C	C	C

R **Responsible** C **Consulted**

A **Accountable** I **Informed**

AGDC's Alaska LNG Completion Timeline

- Complete pre-FEED and file FERC Application 2016
- Final Investment Decision target 2018
- Target in-service 2023-2025

Budget Implications

ISNGP Fund	AKLNGP Fund		Total
$42,900	**$64,200**	**FY16 Projected Ending Balance** ***(Prior to Legislative Adjustments)***	**$107,100**
	$4,100	Reduce LAW's $10.0 FY16 SpecSess SB3001 approp and approp to AKLNG Fund	
$9,000		Change Fund Source on DNR FY16 NS Gas Commercialization Approp	
($26,000)	$26,000	Transfer from In-State Fund to AKLNG Fund	
$25,900	**$94,300**	**FY16 Projected Ending Balance** ***(After Legislative Budget Adjustments SB138)***	**$120,200**
		FY17 AGDC Projected Expenditures	
($6,200)	($4,200)	FY17 AGDC Corporate Operating Costs	($10,400)
($3,500)	($2,300)	FY17 AGDC Technical & Engineering Contract Labor	($5,800)
	($36,000)	CY16 JVA AKLNG Cash Calls - Meet SoA share of $239mm 2016 WP&B	
	($6,500)	CY17 JVA AKLNG Estimated Cash Calls	
($6,500)		FY17 ASAP SEIS Completion	
($4,900)		FY17 In-State Gas Delivery Work	
	($2,000)	FY17 Initial RSAs for DNR, DOR and LAW for project services provided AGDC	
($21,100)	($51,000)	**FY17 AGDC Total Projected Spending**	
$4,800	**$43,300**	**Projected Balance June 30, 2017**	**$48,100**

Summary/Conclusions

- Market conditions and lack of consensus among participants is leading to a project slow down.
- AGDC can step into the lead in the project to maintain momentum and focus on cost reductions through structure and financing changes.
- Alternative venture structures could keep all participants engaged and create flexibility to allow Alaska LNG to compete in the mid 2020's market window.
- AGDC will ensure Legislature is kept well informed throughout the process.

Questions

Keith Meyer

President

Alaska Gasline Development Corporation (AGDC)

3201 C Street, Suite 200

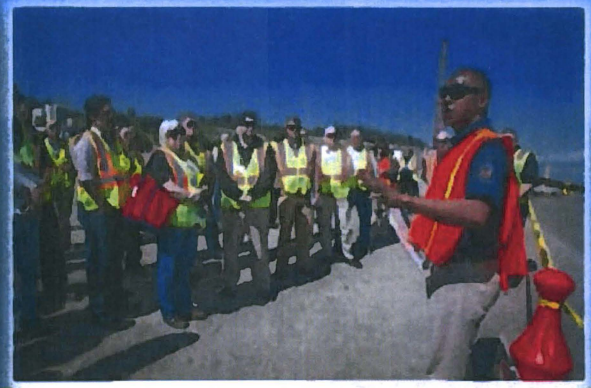
Anchorage, Alaska 99503

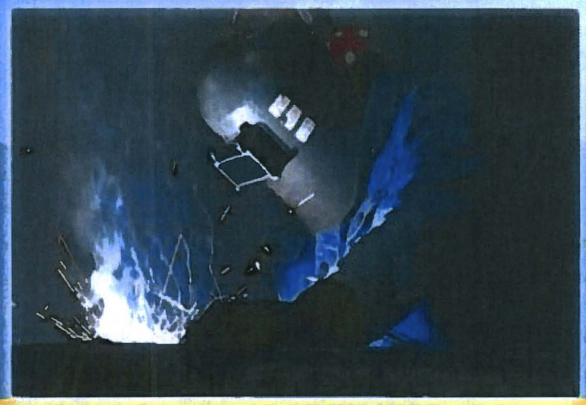
(907) 330-6300

www.agdc.us

Alaska LNG

Fueling Alaska's Future ™





June 2016

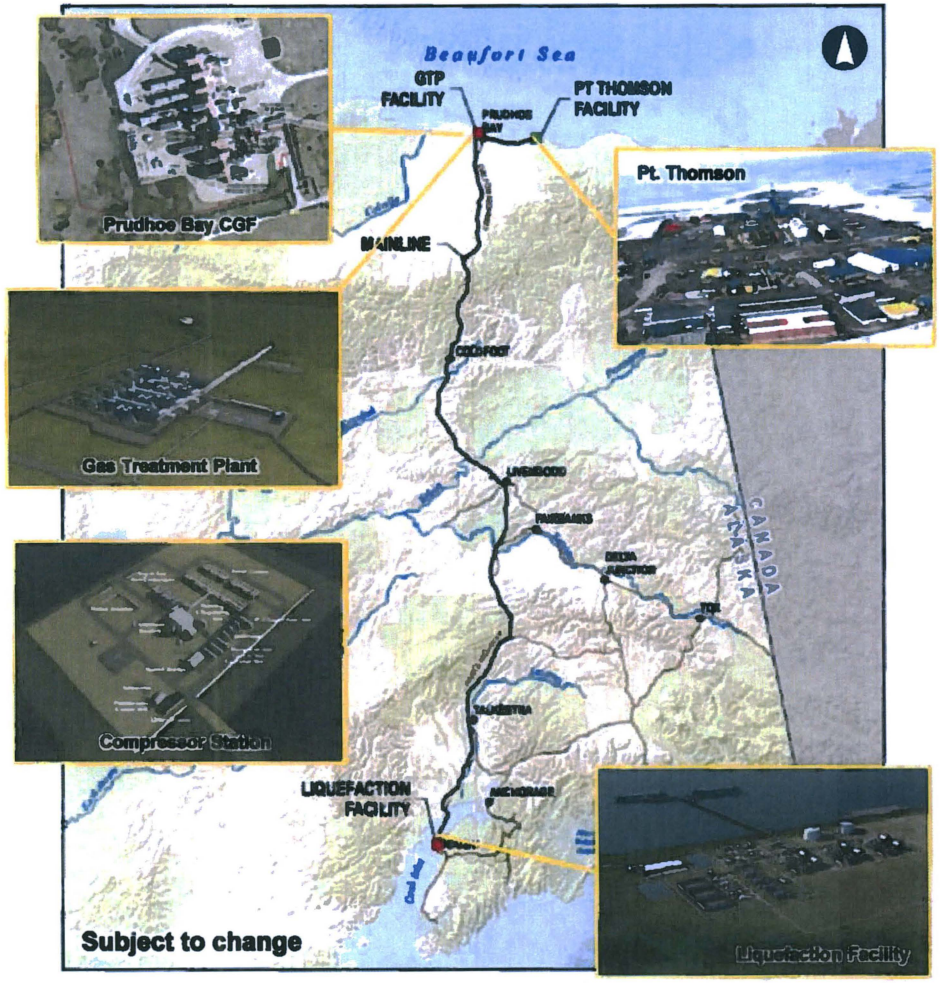
AKLNG – Legislative Update

29Jun2016

Alaska LNG – Project Overview

Alaska LNG™

An integrated liquefied natural gas export project providing access to gas for Alaskans



Source Fields

Point Thomson: Deliver natural gas to GTP

Prudhoe Bay: Deliver natural gas to GTP, receive CO_2 / impurities for further handling

Alaska LNG Project

Gas Treatment Plant (GTP): Clean, dehydrate, chill and compress 3.3 BCFD of natural gas and deliver to pipeline

Gas Pipeline: Transport 3.3 BCFD of natural gas over 800 miles to Nikiski, with ~5 offtake points for in-state gas delivery

Liquefaction Facility: Create, store, and load up to 20 million tons of LNG per year (15-20 LNG cargos per month)

GASLINE bp ConocoPhillips ExxonMobil

Alaska LNG – Status

Alaska LNG™

Safety, Health and Environment Report:

- Strong safety culture and performance – no recordable incidents in 2016

Executive Summary:

- Spent $455M on Pre-FEED through May 2016 ($107M spent on Concept)
- Initial design scope 91% complete, updated to reflect optimization work
- Finalizing integrated project design, confirmed 95% production efficiency
- Completed pipeline design analysis, confirmed 42" design basis

2016 Outlook – Complete Pre-FEED and progress EIS:

- Progressing field work to support Resource Report Draft 2
- Continue optimizing design to reduce project cost of supply
- Complete Joint Venture Agreement (JVA) Deliverables, including cost and schedule estimates

Key Messages:

- Alaska LNG is an integrated LNG project – *plants plus pipeline*
- Focus on lowest cost of supply to compete in a global market
- Alignment, Risk and Cost reduction (ARC) remain key to success

LNG Plant and Marine Terminal Update

Alaska LNG™

Base case design established, progressing Optimization work

Progressing key LNG deliverables

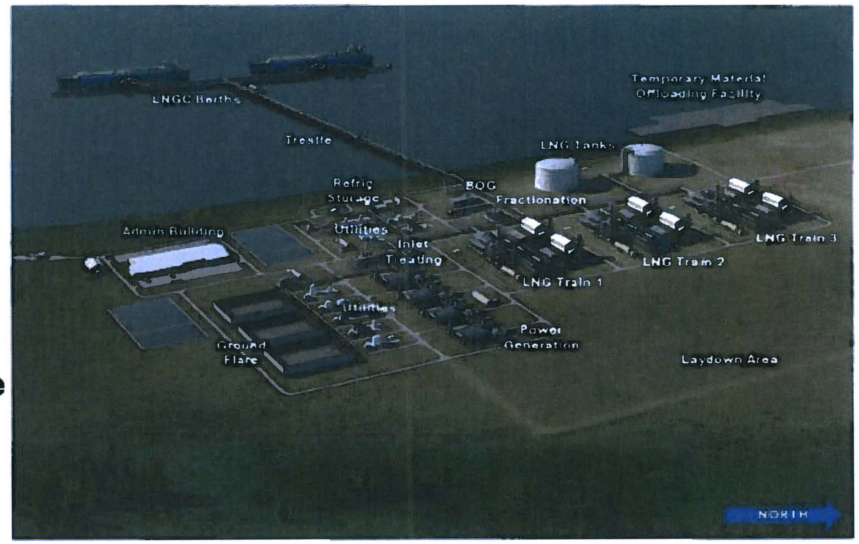
- Completed contractor cost estimate and schedule for review
- Developed updated LNG plot plan reflecting optimization work
- Received tank design deliverables

Continuing to improve marine terminal design / operations

- Finished marine transportation modeling, MOF location study
- Eliminated need for service vessel facility / ice mitigation structure

Focused 2016 activity in support of Resource Reports

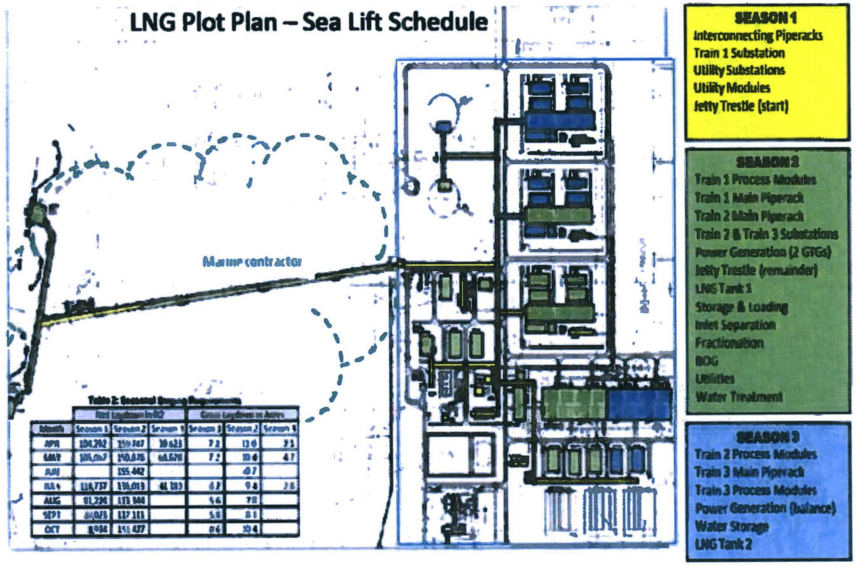
- Soil characterization and measurement for dredging / disposal
- 50 onshore boreholes / 9 km seafloor mapping / 51 offshore vibracores / 62 grab samples



Optimization Savings

- ✓ Technical qualification of gas turbine drivers - reduced kit
- ✓ Use of current limiters to eliminate electrical equipment
- ✓ Modularization improvements – revised layout, density
- ✓ Reduced material offloading facility size
- ✓ Evaluated alternative ice management options
- ✓ Optimized LNG storage capacity / design
- ✓ Evaluated LNG tank technology – reduced cost, schedule
- ✓ Completed layout / equipment improvements

LNG Plot Plan – Sea Lift Schedule



Pipeline Update

Alaska LNG™

Initial design scope complete, advancing Optimization work

Comprehensive pipeline sizing study confirmed 42" system

- Completed cost / schedule impacts of 48" pipeline
- 42" lowers cost of supply / execution risk
- 42" system includes expansion capacity

Pipeline materials design and full scale testing complete

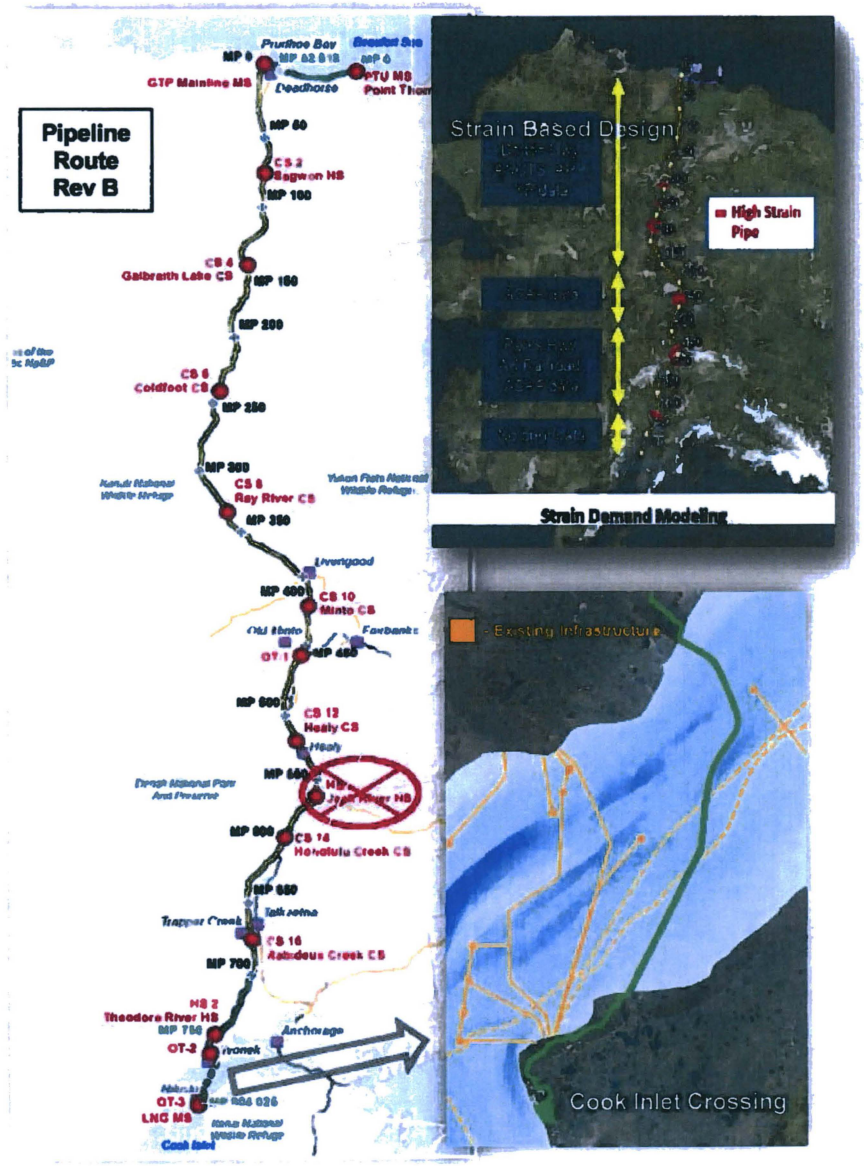
- Issued compressive and tensile strain testing results
- Completed strain based design optimization, ~300 mi reduction

Continued coordination with federal pipeline regulator

- Finalizing pipeline documentation for FERC & PHMSA filings
- Field work on water crossings, compressor stations, FERC visits

Optimization Savings

- ✓ Right-of-way gravel quantity reduced
- ✓ Reworked access road specifications
- ✓ Eliminated heater station, optimized hydraulics
- ✓ Reduced length of sections requiring strain based design
- ✓ Continued routing cooperation / data sharing with ASAP
- o Optimizing construction of pipeline segments
- o Optimizing timing / order of compressor station construction



Gas Treatment Plant Update

Alaska LNG™

Completed base Pre-FEED deliverables

- Confirmed GTP site location / optimized layout

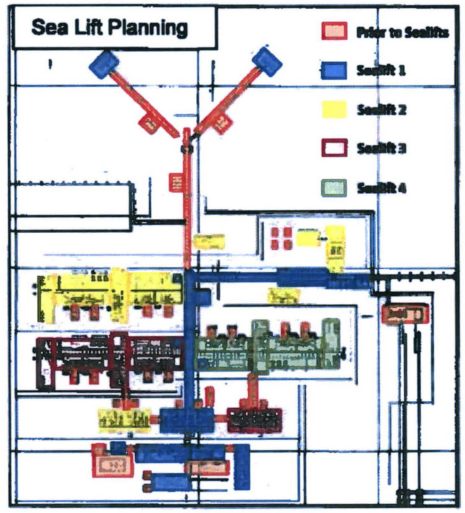
Progressing GTP optimization

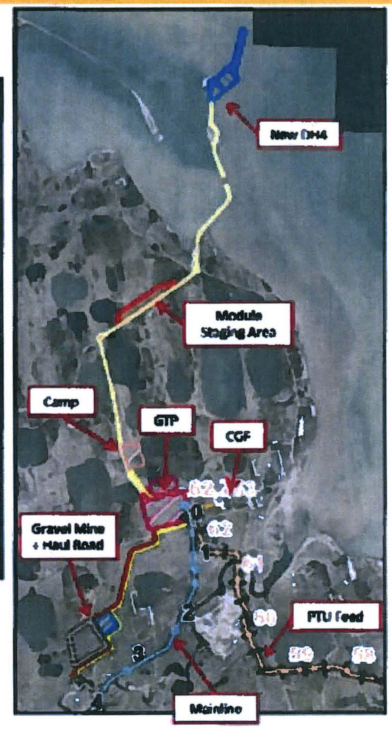
- Evaluating execution plans, sea lift schedules to reduce risk
- Working module weight / design to further reduce cost

Strong coordination with PBU, PTU on key interface activities

Provide support for regulatory submittals / complete field work

- Focused summer field work to support FERC requirements
- Progressing engineering environmental program at West Dock
- Confirm gravel and water requirements / source

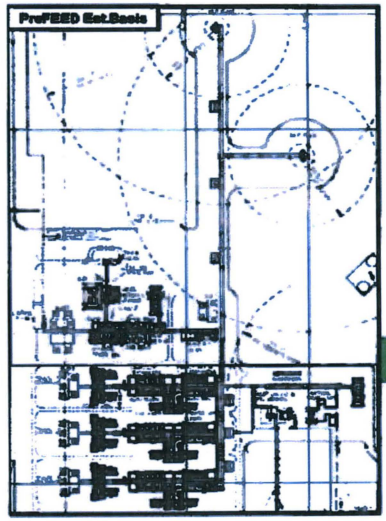


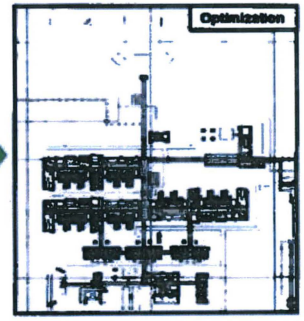


Reduced GTP Footprint
Results of Optimization Activities

Optimization Savings

- ✓ Reduced total module weight / layout optimization
- ✓ Electrical design - met required load with min equipment
- ✓ Machinery selection – highest reliability / lowest cost
- ✓ Reviewed plan utilities for optimization opportunities
- ✓ Optimized field erection scope to reduce cost / risk
- ✓ Streamlined project execution plan to identify lowest cost





Project Execution Status

Alaska LNG TM

Increased execution certainty for labor, logistics and fabrication

- Modeled supply / demand – Identified key risks / strategies
- Provided consistent basis for execution, contracting, cost, schedule

Logistics:

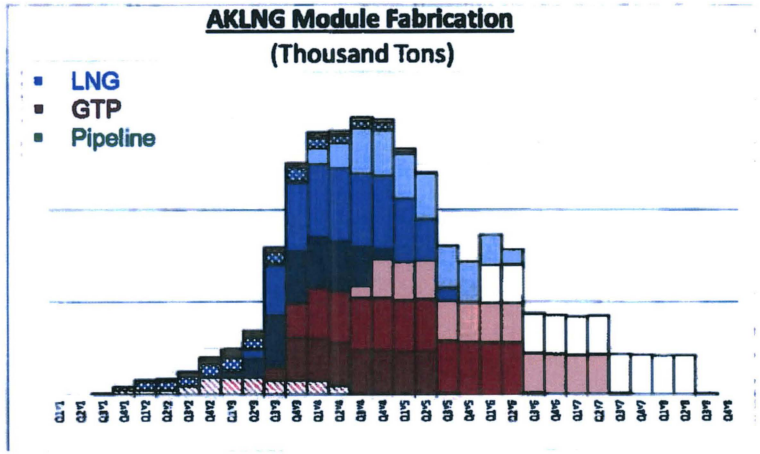
- Estimated volumes for key logistics demand including 225,000 truckloads, 40,000 railcar loads, 3,000,000 MT of ocean containers
- Completed modeling of market capabilities (supply/demand)
- Developed integrated strategies for people and material transport (marine, road, air, rail), fuel (supply, storage, distribution), and common infrastructure (roads, camps, etc).

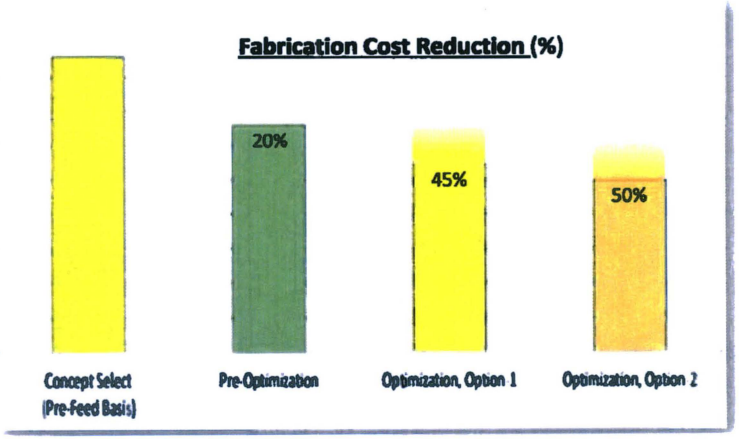
Labor:

- Developed strategies to address key labor study findings on demand and supply / training (peak monthly labor level of 12,000 persons)
- Continuing coordination with AK Dept. of Labor

Fabrication:

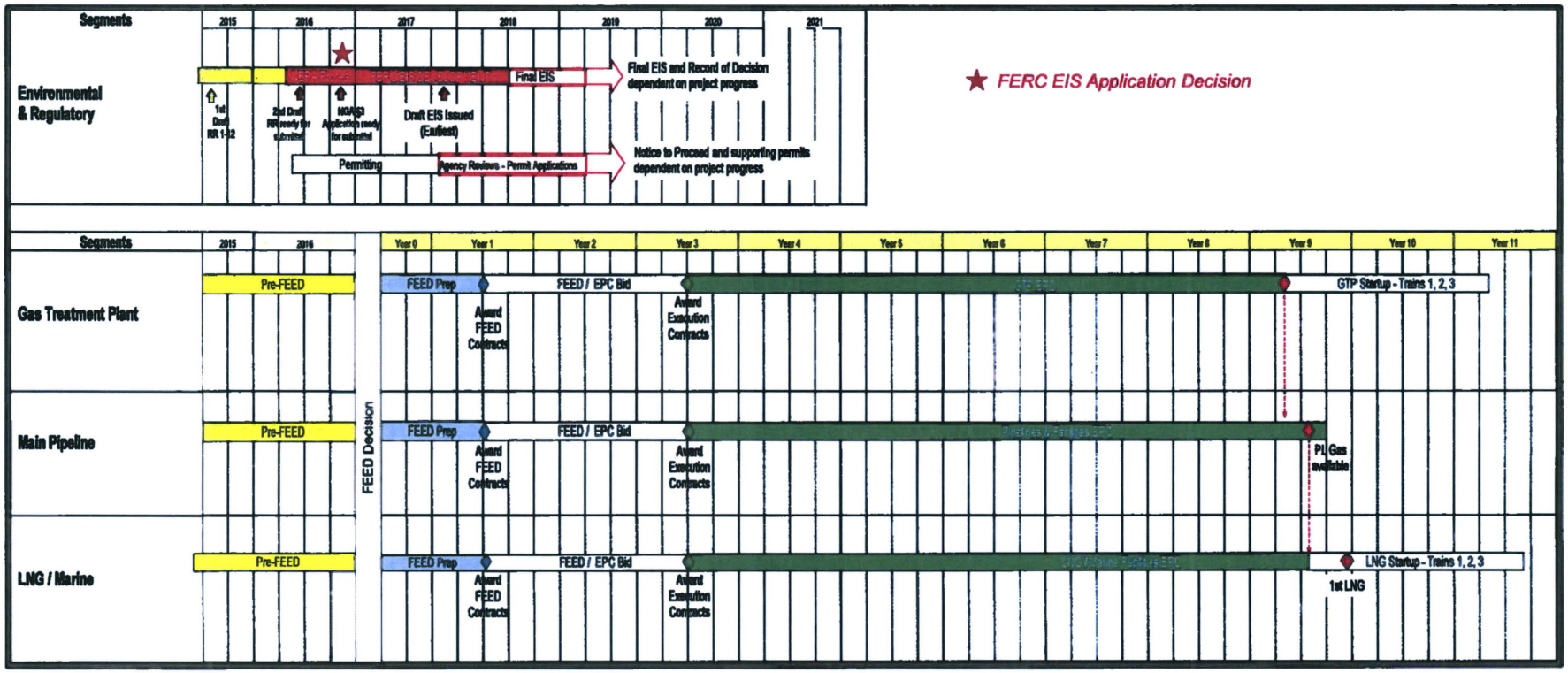
- Modeled supply / demand to test viability of modularization program
- Finalizing strategy to manage 350,000 MT fabrication scope across qualified yards, including AK, as common basis for execution plan





Project Schedule

Alaska LNG™



- Continued focus on optimizing integrated project schedule to reduce cost and execution risk
- Regulatory schedule has decisions points (resource reports, EIS application) requiring applicant support
- Integrated schedule provides estimated durations of key project phases to start-up
- Schedule serves as the basis for final JVA Deliverables

Regulatory / Field Work

Alaska LNG™

2016 Field Work

- Advancing work to de-risk project / meet FERC requirements
- Leveraging key learnings to improve performance / reduce cost
- Confirming pipeline routing and siting of project facilities
- Continued geotechnical / geophysical (G&G) site analysis

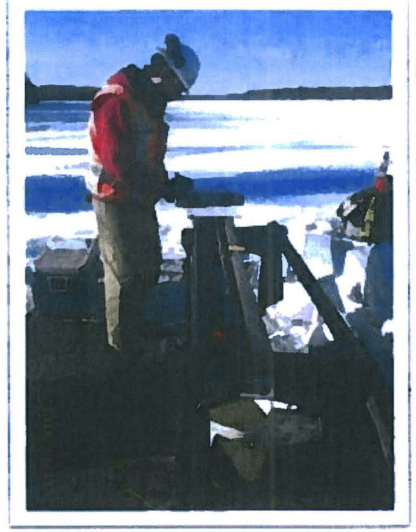
Continued focus on safety – successful contractor onboarding

Federal Environmental Regulatory Agency (FERC) filing

- Completing final reviews of second draft Resource Reports
- Capturing stakeholder input

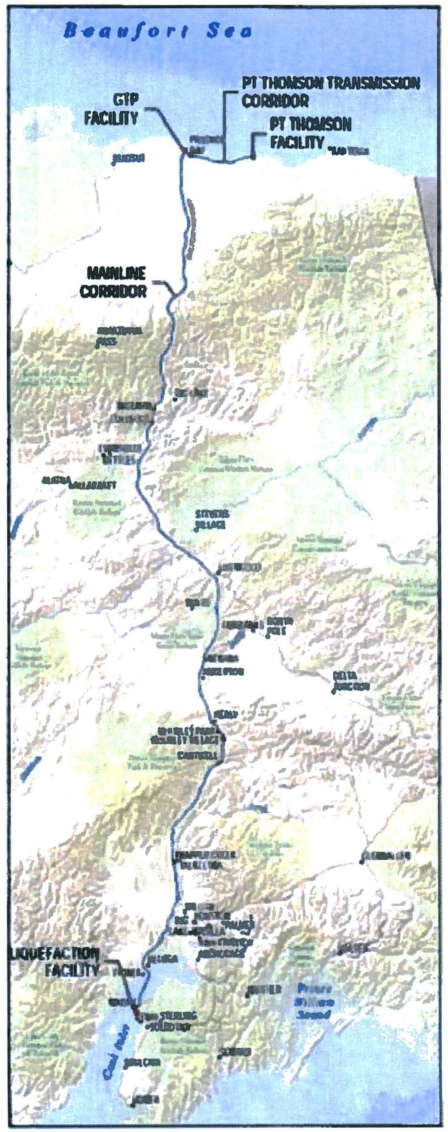
Environmental Field Work Summary

Studies	2012-15	2016 Plan
Cultural Resource Survey (acres)	40,556	9,500
Phase 2 Archeology (sites)	24	59
Stream Fisheries Investigations (#)	176	0
Wetlands Verification (#)	507	107
Paleontology (acres)	556	110
Noise Monitoring (# sources)	19	0
Environmental Due Diligence (acres)	154	0
Stream Hydrology (#)	78	0



Stakeholder Engagement

Alaska LNG™



Key Activities in 2016:

- Village and tribal outreach ongoing
- Alaska Native regional and village corporation interaction / consultation
- Alaska business executive sessions in Fairbanks, Kenai, Juneau and Anchorage
- FERC agency workshop on NEPA process
- Community meetings supporting pipeline routing and field program
- Community meetings and personnel in Nikiski to support lead plant location
- Regulatory engagement meetings
- Traditional Knowledge, community health and subsistence field work nearing completion
- Cultural resource advisors engaged to support environmental studies

Summary

Alaska LNG™

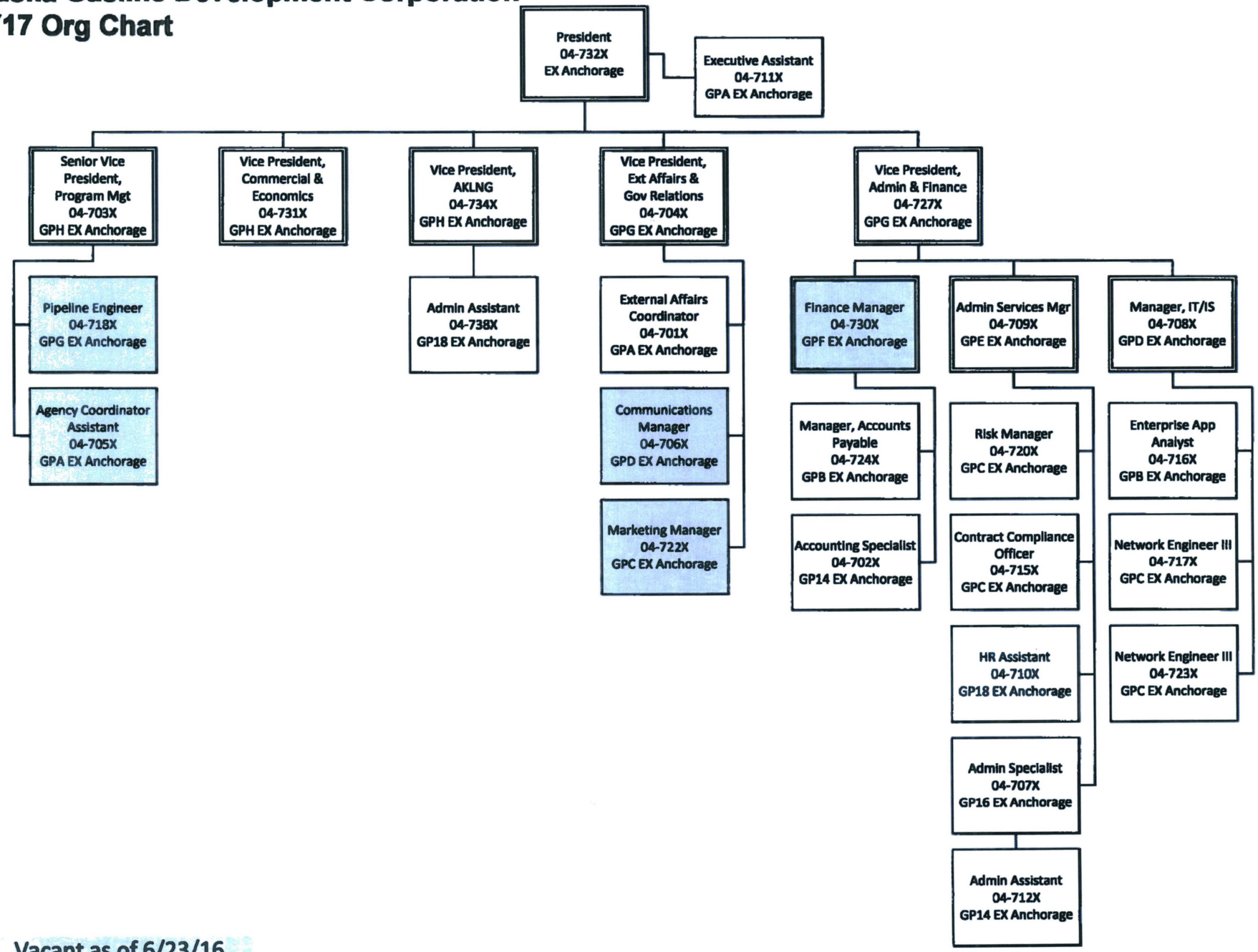
Key Requirements for FEED Decision

- **Viable Technical Option**
- **Key Commercial Agreements**
- **Government support**
- **Permits / Land Use Underway**
- **Potential Commercial Viability**

Summary

- Project work progressing well; system design and execution planning work nearly complete
- Continuing to evaluate opportunities to reduce project cost of supply, increase competitiveness
- Regulatory and field work progressing to support completion of Draft 2 of the NEPA Pre-File Resource Reports
- Expect to complete Pre-FEED deliverables as planned in Pre-FEED Joint Venture Agreement (JVA)
- Alignment, Risk, and Cost (ARC) principles remains critical to AKLNG success

Alaska Gasline Development Corporation
FY17 Org Chart



Vacant as of 6/23/16

6/23/2016

AGDC Employee and Board Member Confidentiality Agreements

Confidentiality Agreements signed by Employees			
AGDC Employee	AGDC Employment CA	AHFC Employment CA (Signed before AGDC established its own CA form, or when AGDC was still AHFC's subsidiary)	Notes
Miles Baker	x	x	
Ravnit Basi-LaChapelle	x		
Melissa Boquet	x	x	
Olena Brusuelas	x	x	
Doreen Calahan	x	x	
David Edwards	x		
Gwenda Graham	x	x	
Callie Hagedorn	x		
Jennifer Howard	x		
Leslie "Fritz" Krusen	x		
Leah Levinton	x	x	
Keith Meyer	x		Keith Meyer's executive employment contract also includes a confidentiality provision
Timothy Montgomery	x		
Patricia Newman	x	x	
Nelly Perez	x		
Frank Richards	x	x	
Valerie Steele	x	x	
Bruce Tangeman	x		
John Wagner	x	x	
Lieza Wilcox	x		

Confidentiality Agreements Signed by Board Members		
AGDC Board Member	Confidentiality Commitment	Notes
Dave Cruz	x	Effective October 29, 2013
Comm. Heidi Drygas		
Comm. Marc Luiken		
Richard Halford		
Joey Merrick		
Hugh S. Short		

CONFIDENTIALITY AGREEMENT

This CONFIDENTIALITY AGREEMENT ("Agreement") is entered into by and between ALASKA GASLINE DEVELOPMENT CORPORATION ("AGDC") and _____("Employee") as specifically authorized and allowed for under AS 31.25.090 (f), (g), and (h) and as otherwise may be allowed by law.

IT IS AGREED between Employee and AGDC that in consideration of employment with AGDC and the provision of personal services by Employee, the parties, intending to be legally bound, agree as follows:

1. Confidentiality. Employee acknowledges that, during the course of Employee's employment, Employee will have access to or obtain proprietary, confidential, sensitive, secret, or trade secret information and material of AGDC or AGDC's current and potential partners, vendors, clients, customers, associates, investors, advisors, consultants, attorneys, managers, and affiliate agencies (collectively "Business Partners"). Employee understands that AGDC is involved in a highly complex business related to planning, financing, development, acquisition, maintenance, construction, or operation of a natural gas pipeline and that the success of its business depends upon the confidentiality of such information and material. Employee understands that AGDC is authorized to enter into confidentiality agreements (AS 31.25.090) and that information that Employee may be made aware of during the course of employment may be protected by the Alaska Uniform Trade Secrets Act (AS 45.50.910 et. seq.).

2. Confidential Information. Employee agrees to keep in strictest confidence, during and subsequent to Employee's employment, all information and material identified as proprietary, confidential, or trade secret, or which, from the circumstances, in good faith, ought to be treated as proprietary, confidential, or trade secret, whether it is in written form or not, including information that, if disclosed, would cause commercial or competitive harm or damage to AGDC or its Business Partners. Confidential Information includes, but is not limited to, the identity and addresses and phone numbers of AGDC's Business Partners; Business Partners' data, methods and processes; pricing and/or volume of purchases made by AGDC or offered by Business Partners; Business Partners' agreements, supplier and subcontractors lists, including customer lists; information about Business Partners, including information related to their financial situation, insurance, business activities, and other information; information about AGDC's or its Business Partners' policies, practices, plans, financial matters, accounts, business activities, business plans, marketing and distribution techniques, negotiation techniques and prices, product specifications, production techniques, computer software, files, data, designs, drawings, specifications, and processes; and any related information. In addition, Confidential Information shall include information identified by one or more Business Partners as "confidential." Confidential Information includes, without limitation, derivative information containing or prepared from, in whole or in part, any Confidential Information. All information and material referred to in this paragraph, whether acquired prior or subsequent to the date hereof, is collectively referred to as "Confidential Information."

3. Publication, Use and Notice. Except as instructed by AGDC or reasonably required in Employee's performance of job duties for AGDC, Employee will not use any Confidential Information and will not, without the prior written consent of AGDC, directly or indirectly publish, communicate, divulge, or describe to any unauthorized person, any such Confidential Information during the period of

Employee's employment and at any time after employment ends. Further, Employee agrees to give notice immediately to AGDC's President of any unauthorized access, use or disclosure of Confidential Information of which Employee becomes aware.

4. Limitations on Confidential Information. The limitations set forth in this Agreement shall not apply to any information disclosed by Employee that would otherwise be within the definition of Confidential Information if such information is generally and readily available to the public without any breach by the Employee of the obligations binding on Employee by this Agreement.

5. Return of Confidential Information and Company Property. Immediately upon notice of termination of Employee's employment with AGDC for any reason, Employee shall preserve and return or cause to be returned to AGDC all documents, records, and Confidential Information pertaining to AGDC or AGDC's Business Partners, including copies or reproductions, whether in the form of paper or electronic media and any and all other property belonging to AGDC. Furthermore, Employee shall not attempt to reproduce such records on paper, electronic media, verbally, by memory or otherwise.

6. Continuation of Duties. Employee's duties of confidentiality shall survive termination of Employee's employment.

7. Remedies and Enforcement. Employee acknowledges that this Agreement serves a valuable purpose, and that any violation of any provision of this Agreement will cause irreparable harm and immeasurable damage to AGDC and AGDC is entitled to seek any and all legal recourses available to it, including, but not limited to, injunctive relief and/or monetary damages.

8. Governing Law. This Agreement shall be governed by, interpreted under, and construed and enforced in accordance with the laws of the State of Alaska.

9. Severability. If any one or more of the provisions or parts of a provision contained in this Agreement shall for any reason be held invalid, illegal or unenforceable in any respect, such invalidity or unenforceability shall not affect any other provision or part of a provision of this Agreement.

After reading and understanding this Agreement, Employee and AGDC have executed this Agreement effective as of the __ day of _____, 2015.

EMPLOYER:	**EMPLOYEE:**
ALASKA GASLINE DEVELOPMENT CORP.	
_____	_____
Human Resources (Print)	Employee Name (Print)
_____	_____
Signature	Signature
Date: _____	Date: _____

AGDC Employee and Embedded Contractors
(as of 6/23/16)

PCN	AGDC Employee Position	Salary	Benefits	Total
701	External Affairs Coordinator	$76.8	$54.5	$131.3
702	Accounting Specialist	$69.8	$52.0	$121.8
703	Senior VP, Program Mgt	$280.0	$118.6	$398.6
704	VP, Ext Affairs & Gov Relations	$204.0	$95.6	$299.6
705	Agency Coordinator Asst	$90.0	$59.3	$149.3
706	Marketing Manager	$120.0	$70.1	$190.1
707	Admin Specialist	$86.9	$58.2	$145.1
708	Manager, IT/IS	$123.0	$71.0	$194.0
709	Admin Services Mgr	$120.0	$70.3	$190.3
710	HR Assistant	$60.0	$48.4	$108.4
711	Executive Assistant	$91.6	$59.9	$151.5
712	Administrative Assistant	$68.4	$51.5	$119.9
715	Contract Compliance Officer	$110.8	$66.9	$177.7
716	Enterprise Application Analyst	$101.0	$63.3	$164.3
717	Network Engineer III	$111.6	$67.2	$178.8
718	Pipeline Engineer	$180.0	$88.3	$268.3
720	Risk Manager	$136.5	$75.1	$211.6
722	Communications Manager	$85.0	$57.5	$142.5
723	Network Engineer III	$85.0	$57.5	$142.5
724	Manager, Accounts Payable	$110.0	$66.6	$176.6
727	VP, Administration and Finance	$233.0	$104.4	$337.4
730	Finance Manager	$120.0	$70.1	$190.1
731	VP, Commercial & Economics	$222.5	$101.2	$323.7
732	President *	$750.0	$245.9	$995.9
734	Vice President, AKLNG	$318.9	$130.4	$449.3
738	Administrative Assistant - PA	$65.9	$50.5	$116.4
	Total for 26 PCNs	**$4,020.7**	**$2,054.6**	**$6,075.3**

* Salary total reflects base of $550.0 + a potential $200.0 bonus

Vacant as of 6/28/16

Embedded Contractors (Admin & Projects)	FY16 Not to Exceed Amt
Senior Financial Accountant	$190.0
Budget & Accounting Manager	$165.0
In-House Counsel	$105.0
General Counsel	$225.0
VP, Project Management	$550.0
Manager, In-State Gas Subsidiar	$452.5
Pipeline Engineer	$454.0
Pipeline Engineering Manager	$101.0
ERL Manager	$340.0
ERL SME & FERC Reviewer	$361.0
ERL Operations	$100.0
FERC Coordination & Review	$213.0
Senior Technical Manager	$89.0
Facilities Manager	$234.0
Document Control Manager	$116.0
Document Control Specialist	$124.0
Project Admin Coordinator	$156.0
GIS Technical Specialist	$215.0
GIS Manager	$124.7
Project Control Specialist	$94.0
Project Support	$80.0
Commercial Analyst	$370.0
Economics/Regulatory	$210.0
Commercial Analyst	$414.0
	$5,483.2

AGDC Board Member Travel, Per Diem and Stipend
January 2015 to June 1, 2016

Board Member	Travel & Per Diem	Stipend Amount
Albert Bolea	$ 1,342.11	$ 400.00
Dave Cruz	$ 2,853.16	$ 1,000.00
Heidi Drygas	$ 1,975.50	$ -
Hugh Short	$ 5,886.69	$ 11,000.00
Joe Paskvan	$ 3,760.60	$ 2,800.00
Joey Merrick	$ -	$ 7,800.00
John Burns	$ 3,982.90	$ 3,200.00
Luke Hopkins	$ 8,445.09	$ 10,800.00
Richard Halford	$ 3,855.20	$ 6,400.00
Richard Rabinow	$ 2,355.31	$ 1,000.00
Total	**$ 34,456.56**	**$ 44,400.00**
Total Board Travel, Per Diem and Stipend		**$ 78,856.56**

AGDC Open Contracts/Task Orders

as of June 23, 2016

CONTRACTOR
Alaska Land Status, Inc.
Arktis LLC
ASRC Energy Services AK, Inc
Axiom Environmental
B+R Partners, Inc.
Birch Horton Bittner & Cherot Inc
Burns & Associates, PC
C-FER Technologies (1999) Inc
CH2M Hill Alaska Inc.
Concentric Energy Advisors Inc
Delta Constructors LLC
EMC Corporation
ERM-Alaska, Inc.
exp Energy Srvices Inc.
Flavin Photography
Fluor Alaska Inc
Golder Associates Inc.
Hawk Consultants LLC
HDR Alaska Inc
HR Solutions LLC
Link Oil & Gas Professional Inc DBA Link Project Services Inc
Lisiecki Consultancy
Michael Baker Jr, Inc
Microalloying International Inc
Owl Ridge Natural Resource Consultants, Inc.
Parker Smith and Feek Inc.
Resource Data Inc.
ScottMadden Inc.
Sedor Wendlandt Evans And Filippi LLC
Sockeye Business Solutions, Inc.
Squire Patton Boggs US LLP
Steve Pratt Enterprises
Stoel Rives LLP
Transalaska Summit Title Ins DBA First American Title Insurance
US Army Corps of Engineers
US Dept of Interior, Bureau of Land Management
Walsh and Sheppard, Inc.
Wild North Resources LLC

ALASKA GASLINE DEVELOPMENT CORP.
GAS FOR ALASKANS

AGDC Responses to Senator Giessel Questions
June 27, 2016

1. ***AGDC Organizational Chart.*** *Please provide an updated organizational chart of AGDC that includes full-time and part-time staff, contract employees, and annualized pay and benefits of both AGDC employees and contractors.*

   Attached, please find two documents related to AGDC employee staffing: An updated AGDC organizational chart and a document illustrating annualized pay and benefits for corporate staff and contract employees.

   The FY17 AGDC corporate organizational chart reflects the proposed reduction from 38 to 26 authorized PCNs as indicated in HB 256. AGDC was previously authorized 38 PCNs, however the corporation has not filled more than 25 positions, so the reduction reflects a more accurate staffing need for FY17. As indicated on the attached employee roster, currently 20 of those positions are filled with full-time employees and 6 positions are vacant. The FY17 budgeted salaries and benefits for AGDC's 26 PCNs are detailed on the PCN attachment excerpted from the Corporation's budget detail that was submitted to the legislature.

   In addition to the 26 PCNs described above, AGDC leverages contractors. The majority of these individuals are provided through broad Master Service Agreements that AGDC has executed with our major engineering and design contractors. AGDC understands that the Legislature did not want to build a large organization of full-time public employees, but instead to use highly qualified contractors and subject matter experts on an as needed basis to advance the state's gasline initiatives forward.

   The corporation contracts with highly qualified oil and gas professionals to advance our statutory objectives. Our goal is to remain flexible, maintaining an ability to quickly scale up or down, to meet the scope, pace and direction of the state's gas line initiatives. Contract labor can be brought on as required, and quickly released when not required or when work tasks are accomplished. This has been our standard approach since inception.

   AGDC's contractors are professionals with expertise in various aspects of the industry, to include design, construction, operation and commercial. AGDC is responsible for conducting a thorough review of pre-FEED deliverables as part of the state's FEED decision support analysis. We use highly qualified and professional contractors with expertise in designing, building and operating pipeline facilities in Alaska's challenging environment. AGDC is paying rates that are typical for professionals in these fields and that comparable to rates our partners pay for similar expertise.

2. ***AGDC Board Per Diem & Travel Expenses.*** *Please provide a report of AGDC Board member per diem and travel expenses from January 2015 to present.*

   Attached is a report listing AGDC board member per diem and travel expenses from January 2015 to present. Board members receive a stipend of $400/day while conducting AGDC business. Board members are also reimbursed for actual travel expenses and receive a per diem rate of $60/day.

3. ***AGDC Contractor Services.*** *Please provide a list of contractors providing services to AGDC.*

   Attached, please find a list of companies that AGDC has contracted with using the corporate Master Service Agreement.

4. ***Confidentiality Agreements.*** *Please provide a list of all companies that AGDC has directly contracted with who have signed a Confidentiality Agreement.*

   Attached, please find two documents related to employee and board member confidentiality agreements. In addition to the list of current AGDC employees and board members who have signed Confidentiality Agreements, a copy of the employee CA is attached for your reference.

   The attached document to answer question number three lists companies that AGDC has contracted with under AGDC's Master Service Agreement (MSA), which includes a standard confidentiality provision. The following two paragraphs are excerpts from the MSA related to AGDC confidentiality:

   12. TERMINATION NOT A RELEASE. Termination of this Agreement by AGDC as permitted by this Agreement does not release the Contractor from any obligations or liability under the Agreement unless AGDC expressly releases the Contractor in writing. Upon termination of the Agreement by AGDC, the Contractor must assist in an orderly transfer of the Contractor's entire work product, including all work product of any subcontractor or vendor of the Contractor, related to this Agreement to the offices of AGDC or to any successor or custodian designated by AGDC in writing. Notwithstanding the termination of this Agreement, the Contractor shall preserve and protect all such files, notes, draft reports, and other work product, including maintaining the confidentiality of the same, and the Contractor's duty to preserve and protect all such material shall survive the termination of this Agreement until such time as the Contractor shall have delivered all such material to AGDC and AGDC shall have acknowledged receipt of same in writing to the Contractor.

   22. CONFIDENTIALITY. The Contractor acknowledges that all information owned by AGDC is to be treated as confidential and proprietary unless AGDC specifically notifies the Contractor otherwise in writing. The Contractor agrees to protect and keep confidential all such information and will undertake to maintain the same standard of care and security to protect the confidentiality of the information as the Contractor uses to protect its own confidential and proprietary information and, in addition, shall take such reasonable steps as AGDC may

> require of the Contractor for that purpose, including, but not limited to, compliance with the requirements of Exhibit F. In no event may the Contractor display any AGDC information on any website that is available to any person other than the Contractor, its subcontractors, and AGDC without prior written permission from AGDC.
>
> The Contractor's confidentiality obligation hereunder shall not extend to information which is a part of the public domain before the disclosure of such information by the Contractor.
>
> The Contractor shall not be restricted in any way from releasing information in response to a subpoena, court order, or other legal process, or as may be legally compelled by any tribunal or governmental or regulatory authority, but, in such event, the Contractor shall immediately notify AGDC of the demand for information before the Contractor responds to such demand.
>
> The Contractor agrees to limit distribution of the information owned by AGDC to those of its employees who are performing work under the Agreement. The Contractor may not distribute information owned by AGDC to other parties without the express written consent of AGDC. The Contractor agrees that, upon completion of this Agreement or at any other time requested by AGDC, it will return the originals and all copies of any information owned by AGDC that is then in the Contractor's possession to AGDC.
>
> For purposes of this MSA "information owned by AGDC" means (a) the Records and (b) all information provided to the Contractor by AGDC or by another person at the request of AGDC.

Exhibit F reiterates that all information created by contractors and subcontractors is to be treated as confidential, then describes how the contractor should label confidential information. Exhibit F is a lengthy appendix and is not substantive in regards to confidentiality.

ALASKA GASLINE DEVELOPMENT CORP.
GAS FOR ALASKANS

AGDC Responses to Senator Giessel's Questions in Preparation for Joint Resources Committee Hearing
June 29, 2016

The Preliminary Front-End Engineering Design Phase (Pre-FEED) has been indicated to be complete by the fall of 2016. Please describe what is envisioned to occur after the completion of Pre-FEED.

The Pre-FEED work program has progressed on schedule and the venture parties have confirmed that all deliverables, including an updated project cost estimate, will be completed and transmitted to each venture party by September 2016. From a project development perspective, the next priority is to complete and file the Natural Gas Act Section 3 application with FERC, and to negotiate an agreement that will allow the project to begin a post pre-FEED level of commercial and technical development. The State's priority in these negotiations is to create a project structure that increases the competitiveness of the project and puts it into service in the 2023-2025 timeframe.

The HOA contemplated a FEED decision from all parties within 36 months of the commencement of pre-FEED, or approximately mid-2017. However, in mid-February, it became clear that the persistent low-oil price environment created a risk that the project might not receive full support for moving into FEED on that timeline. In order for the project to advance into a post pre-FEED phase of development, the parties will need an agreement on governance and participation during the next phase. The State has initiated conversations with the producers on such an agreement to ensure that the current pace of development is maintained and to increase the project's competitiveness in the marketplace. Those conversations are ongoing and the full nature of the structure has not been finalized.

Please describe what is envisioned as to the management structure after the completion of Pre-FEED. If possible, provide an organizational chart with names and job descriptions

Maintaining the project's current pace of development is a priority for the State. However, each participating party will make a decision as to whether to proceed to FEED at their sole discretion. Advancing the project beyond pre-FEED will require an agreement on governance and participation during the next phase, and the state has initiated conversations on such an agreement. Those conversations are ongoing and the full nature of the structure has not been finalized. The state has proposed an option that would put the state in a project leadership role, which could lead to changes in ownership and management of the project, but that may increase the project's competitiveness in the marketplace.

What is the expectation for the role of the Alaska Gasline Development Corporation (AGDC) and the Department of Natural Resources (DNR) after the completion of Pre-FEED

AGDC will lead all aspects of project development on behalf of the state, including engineering, technical, regulatory, commercial, construction and project marketing. The Department of Natural Resources will continue to manage upstream aspects of the project, including management of the state's resource base, efforts to maximize the value of the state's royalty and tax gas, best interest

finding regarding RIK vs RIV determination, lease modifications, and any agreements regarding the disposition of the state's gas.

What is the funding source effort to proceed after the completion of Pre-FEED

AGDC has two funds from which it finances corporate operations and work activities, the In-State Natural Gas Pipeline Fund and the Alaska Liquefied Natural Gas Project Fund. The Alaska Liquefied Natural Gas Project Fund (AS 31.25.110) was established in 2014 to fund expenditures associated with an Alaska liquefied natural gas project. This is the primary funding source for AGDC's project related activities.

How does the State of Alaska (SOA) plan to fund activities after the completion of Pre-FEED

Through prior appropriation, the legislature fully funded AGDC's corporate operating expenses through FY17 and contractual obligations for the state's 25% share of expected pre-FEED expenditures, including the project's anticipated calendar year 2017 Work Program & Budget. As presented during this year's appropriation cycle, AGDC anticipates having a balance in the Alaska Liquefied Natural Gas Project Fund at the end of its FY17 work activities. AGDC currently projects that balance to be approximately $43 million. Depending on the pace of post pre-FEED activities, AGDC may need to seek additional development funds from the legislature. However, AGDC intends to seek non-recourse third-party financing for the construction and execution of the project.

Does the state (SOA) still intend to pursue a liquefied natural gas (LNG) project as prescribed in the AK LNG Heads of Agreement (HOA) and Senate Bill 138?

Yes, the state is actively working to maintain the pace of the project and to advance it as rapidly as possible to completion. The state desires continued involvement of the resource owners. Given the challenging oil price environment, all parties agreed in February 2016 to explore options for continuing the project under a different commercial structure that may reduce overall costs. The commercial framework established in the HOA envisioned a state participating interest in the Alaska LNG project that was equivalent to the state's gas share (royalty plus tax gas). Depending on the outcome of current negotiations, the state's interest in the project could change.

If it does not, is the SOA still pursuing an LNG project that is not prescribed by the AK LNG HOA and Senate Bill 138?

The state is actively working to advance the Alaska LNG project. SB 138 described an Alaska liquefied natural gas project consisting of an LNG plant, gas pipeline, gas treatment plant, and the PBU and PTU gas transmission lines. If the Alaska LNG project as currently structured is unable to proceed, the state will still be looking to develop an LNG project that includes all of those components. The commercial framework established in the HOA envisioned a state participating interest in the Alaska LNG project that was equivalent to the state's gas share (royalty plus tax gas). Depending on the outcome of current negotiations, the state's interest in the project could change.

If so, will the SOA pursue a project pursuant to the authorizations proscribed in Senate Bill 138 or House Bill 4? Does the SOA foresee authorizations that can be interchanged between the enabling legislation?

Yes. The state and AGDC continue to work within the authority originally established in HB 4 and then subsequently modified and expanded in SB 138.

What is the structure of the venture?

A new commercial venture has not been established. All parties are continuing to advance the Alaska LNG project. However, advancing the project beyond pre-FEED will require an agreement on governance and participation during the next phase. The state has initiated preliminary conversations on such an agreement. Those conversations are ongoing and nothing has been finalized. The State's priority is to maintain or increase the current pace of development. One option would be to put AGDC in a project leadership role, which could result in changes in ownership and management of the project, but which could increase the project's cost competitiveness in the marketplace.

Has an analysis from a consultancy been conducted on that new structure that show potential revenues and risks to the SOA, such as the study conducted by Black & Veatch for Senate Bill 138?

The risks and rewards to the state have not yet been quantified. The immediate focus is to determine what is needed to make the AKLNG project cost competitive in the global arena. This analysis will involve looking at multiple aspects of the project and financing alternatives. Once an optimal structure is determined, an analysis of the benefits that will accrue to the state can be performed.

Will the SOA experience any increase in liability under the new venture structure?

AGDC believes a traditional project finance structure will not increase the risk to the state relative to the equity finance structure, and should ideally reduce the risk. Further, an Alaska LNG project will yield significant benefits to the state including commercializing the state's natural gas resources, providing a new source of state revenue, expansion of the oil and gas development opportunities, jobs, economic development and access to a long-term source of energy for Alaskans. However, state participation in this or any project, does not come without risk. The state will not move forward with a project until those risks have been thoroughly analyzed and mitigated to the optimal extent possible. Ownership and investment are not equivalent. The state is evaluating a number of financing options that would reduce the need for the state to make substantial direct investment in the construction of the project, and would place the liabilities of the project on those entities best placed to mitigate the risks to ensure maximum protection for the project owner.

Does the SOA intend to purchase property in the Matanuska-Susitna Borough or the Kenai Peninsula Borough for the new venture structure? If so, who will manage those properties?

The state has no plans at this time to purchase property in the Mat-Su Borough for the purposes of advancing this project. However, the project will need to have full control of the land at Nikiski in order to receive FERC certification.

The 600+ acres of land that has been acquired to date for the Alaska LNG project is in Nikiski on the Kenai Peninsula but is owned by the producer parties under a separate limited liability company called Alaska LNG Project, LLC. The project entity, which would be the applicant at FERC, would have to have either an option to buy the property or an option for full usage rights for the project life. It has been anticipated that a purchase option or usage agreement would be completed prior to the FERC application filing. The land and facility would be managed, like the rest of the project, by an operating company formed by the venture.

Is there a reason the Legislature has yet to be briefed on the details of that structure by the State Gas Team?

Having the state take a leadership role in the project as an alternative to slowing the pace of project development and a means to reduce the overall cost is a recent development. AGDC is organizing itself to step into a leadership role and working with the upstream resource owners to develop a plan that will meet their objectives as well as the state's objectives. The structure for AGDC to take a leadership role is still in the formative stages for this project but is a traditional structure for various pipeline, LNG, and energy infrastructure projects. AGDC hired a new president familiar with energy infrastructure development only two weeks ago. This hearing is the first opportunity AGDC has had to present the concept to the legislature in any meaningful manner.

AGDC looks forward to giving the legislature further updates on the status of the project at the joint Resources Committee hearing scheduled for June 29th.

Has any company, government entity, or investment group, been identified as potential participants in the venture structure?

There are numerous companies that could be potential participants in the venture structure, but no specific entities have yet been approached. These entities could include large infrastructure investment funds, sovereign wealth funds from around the world, national oil companies, and gas and energy industry participants.

If so, has an assessment been conducted as to the cost or charge fees of those participants?

A competitive process would be used to engage investment bankers who would be charging arrangement and other fees along reasonable industry guidelines. The investment bankers would then assist in the attraction and arrangement of debt and equity investors. Debt and equity would be provided upon competitive terms, the pricing of which would vary depending upon where the debt or equity tranche fell in the "capital waterfall" (i.e.: senior debt is lower priced than subordinate debt which is lower priced than equity, and so on).

Has an analysis been done for government take for the SOA under the venture structure?

Not yet, but an analysis will be performed as progress is made in determining what is required to make the project globally competitive.

Has the SOA engaged in any discussion related to pursuing an LNG project with a company or government entity besides the AK LNG project participants?

AGDC has had internal discussions regarding potential contingency plans should the AKLNG project participants be unwilling to move the project forward. As part of those internal discussions, AGDC has discussed potential strategic entities, such as some of those entities mentioned as potential funding sources above, as potential participants. However, AGDC believes it is best to first use all reasonable efforts to proceed with the existing AKLNG project as the vehicle to accomplish its gasline and LNG objectives set forth in SB 138. Consequently, AGDC has not pursued any meaningful discussions with entities besides the AKLNG participants.

If so, has the SOA signed confidentiality agreements with anyone other than the AK LNG project participants? What is the purpose of those agreements?

AGDC uses a number of vendors and service providers that are under confidentiality agreements. Further, in the future, AGDC expects to enter into confidentiality agreements with potential buyers, investment bankers, and other relevant parties, in conformance with standard industry practice.

Has the SOA signed a Memorandum of Understanding (MOU) that have not been publically announced?

AGDC has not signed an MOU and is not aware of any state entity that has signed an MOU.

Does the SOA reaffirm their commitment that any agreement that has a term in excess of two years will come before the Legislature for approval?

Yes. Current law requires that agreements and commercial contracts associated with a North Slope natural gas pipeline project that will have a duration of longer than two years, and to which the State of Alaska is a party through DNR, require legislative authorization. AGDC is not similarly required to obtain legislative authority prior to executing commercial contracts so long as AGDC's cost of the contract can be covered by one of AGDC's funds or another existing appropriation or AGDC's obligations under the contract are made subject to appropriation.

If not, please describe the type of agreements, to the extent possible, that may bypass the Legislature, and the reason that action is necessary.

AGDC may enter into any contract that is consistent with its statutory purposes and powers as set out in AS 31.25. The duration of such a contract is not necessarily limited to two years. For AGDC to expend money from one of its existing funds under such a contract, the contract would have to be in compliance with the statutes describing how these funds can be used, which generally means for the in-state natural gas pipeline or an Alaska liquefied natural gas project. Possible examples could include contracts with engineering firms working on project design, or contracts with advisors working on securing financing for the project, or a contract to lease or purchase property for the project.

Alaska LNG provides more details on project construction

By Larry Persily lpersily@kpb.us
June 28, 2016

(This update, provided by the Kenai Peninsula Borough mayor's office, is part of an ongoing effort to keep the public informed about the Alaska LNG project.)

Alaska LNG would have to move tens of thousands of sheets of paper for permits and tens of billions of dollars to construct a North Slope natural gas project. But all that can be moved electronically. It's the actual heavy moving on the ground, in the air and across the sea that is described in the project's latest filings with federal regulators.

On June 15, the project sponsors filed two of 12 of their second round of draft resource reports with the Federal Energy Regulatory Commission, with more planned for July and August. The General Project Description (Report No. 1) provides the most detailed look yet at how Alaska LNG would move construction material and workers into place and how they would build the most expensive energy project in North American history.

Though more specifics will come in later reports, Report No. 1 said:

- The project's preliminary list includes 30 construction camps, 53 pipeline storage areas, 10 contractor yards and eight short rail spurs to the Alaska Railroad. The camps would range in size from skid-mounted mobile facilities for up to 120 workers, to 1,200-person main camps — with an ever larger camp at Nikiski.
- During construction, the work would affect almost 72,000 acres, but just one-sixth of that area during operations.
- No more than 300 workers would be housed in local accommodations at any time during the **LNG plant** and **marine terminal** construction in Nikiski. A construction camp would be built at the site to accommodate up to 5,000 workers at its peak. The LNG facility is the largest single component of the project.
- Seward, a year-round, ice-free port, would be used primarily as a point of entry for pipe deliveries. The Alaska Railroad can deliver out of Seward to Anchorage, Fairbanks and the pipeline mileage in between. The project would need about 115,000 40-foot-long pipe sections delivered to the right site at the right time, and much of it would move through Seward.
- The steel pipe would come to Alaska with its protective coating already applied. After unloading, the pipe would be trucked or railed to a double-jointing plant near each port of entry and/or near Fairbanks for welding into 80-foot sections, which would be moved by rail or truck. Pipe destined for Beluga on the West Side of Cook Inlet and in Nikiski would be delivered by barge.

- Whittier, on Prince William Sound, would be used primarily for containerized cargo, pipe and fuel, with rail and road access out of town.
- "Anchorage would be the predominant point of entry for most of the project's general freight (non-modularized items). Once received at the port, the materials would be deployed … via rail, truck and barge."

IN-STATE GAS OFF-TAKES

Report No. 1 also identifies three of the five off-takes that would be built into the main pipeline to allow gas withdrawals for in-state consumption: Milepost 441 (measured from Prudhoe Bay) to serve Fairbanks, Milepost 763 to serve Matanuska Valley and Anchorage users, and the end of the line to allow off-take on the Kenai Peninsula. The state is responsible for selecting the off-take points.

"The size and location of the other interconnection points are unknown at this time," the report said. The off-take points would be a valve and T-connection; whatever else is needed to condition and move the gas to customers would be handled by parties other than Alaska LNG.

To build the North Slope gas treatment plant, 62-mile Point Thomson gas line and 804-mile main pipeline, compressor stations along the route and the liquefied natural gas plant in Nikiski and marine terminal, Alaska LNG has calculated it would need (preliminary numbers):

- About 340,000 truckloads of equipment, pipe, supplies, gravel and dirt.
- 15,000 railcar loads of pipe and construction materials.
- 51 barges in four years of sealifts to bring gas treatment plant modules to the North Slope.
- As many as 10 barges shuttling between the ports of Anchorage and Seward to bring material to the LNG plant site in Nikiski on a weekly basis for three years. In addition to barge traffic, the project estimates that 20,000 to 25,000 truckloads would be needed to haul materials from Seward and Anchorage to Nikiski.
- About 70 helicopter landing sites.
- Use of four airports: Anchorage, Fairbanks, Kenai and Deadhorse; and 10 landing strips: Beluga, Cantwell, Chandalar Shelf, Coldfoot, Galbraith Lake, Livengood, Nenana, Prospect Creek, Summit and Talkeetna. Other landing strips are under consideration.

Additional ports such as Homer and industrial docks in the Kenai area "may also be used in a limited capacity" until the project builds its material offloading facility in Nikiski. The project could potentially use Port MacKenzie on Knik Arm as a distribution center for the concrete-coated pipe that would be laid across Cook Inlet, but that would be "dependent upon completion" of the Alaska Railroad spur line to the port, Report No. 1 said.

MORE INFORMATION IN JULY, AUGUST

The construction logistics information in Resource Report No. 1 does not provide a detailed discussion of how the project would and could affect Alaska's transportation system, such as

how the project would manage its truck traffic so as not to overwhelm existing roads. It's a listing, not an impact study. That will come in Report No. 5, Socioeconomics, which Alaska LNG told FERC it plans to submit in July.

That second draft of Report No. 5 will contain some impact and mitigation measures, with the final report, still expected late this year, to provide a more complete description of how the massive construction project will affect communities and what the sponsors propose to reduce those impacts. Alaska LNG's May newsletter said Report No. 5 would weigh in at 3,500 pages.

In addition to the General Project Description, the June 15 filing included Report No. 10, Alternatives, which explains why Alaska LNG picked Nikiski, on the Kenai Peninsula, as the best site for the LNG plant to produce and ship up to 20 million metrics tons of LNG per year, rather than the North Slope, Valdez or elsewhere in the state.

Reports expected in July are Water Use and Wastewater Discharge (No. 2); Fish, Wildlife and Vegetation (No. 3); Cultural Resources (No. 4); Socioeconomics (No. 5); Geological Resources (No. 6); Soils (No. 7); Land Use, Recreation and Aesthetics (No. 8); and Air and Noise Quality (No. 9). Alaska LNG's June 15 letter to FERC did not specify when the reports would be filed in July.

A second draft of Reliability and Safety (No. 11) will be filed in August, along with the project's first draft of Engineering and Design (No. 13) for the LNG plant. Alaska LNG notified FERC in the June 15 letter that it would not file another daft of PCB Contamination (No. 12) because the project footprint has not changed since the first draft, which determined no PCB contamination sites would be affected.

The June 15 filing provides preliminary engineering design and project footprints, and additional details on construction execution and schedule. Included in the more than 500 pages are maps for the entire length of the pipelines, open-cut and directional-drilling drawings for waterbody crossings, pipeline right-of-way and ice road construction sketches, drawings for the trestle to deep-water loading berths in Nikiski and an illustration of the pipe-laying barge that would be used in Cook Inlet.

Report No. 1 also provides Alaska LNG's responses to public and government agency comments that were submitted last year to FERC after the project's first round of draft reports were filed in February 2015.

Alaska LNG's second round of drafts comes a few months later than originally expected, though the project's June 15 report to FERC still shows submittal of final resource reports and a full project application possible in the fourth-quarter 2016. That would trigger FERC preparation of an environmental impact statement, which Alaska LNG expects could take two years.

PARTNERS UNDECIDED ON NEXT STEP

The state's partners in Alaska LNG — North Slope producers ExxonMobil, BP and ConocoPhillips — have indicated they might "not necessarily" move ahead as planned next year

to the full front-end engineering and design (FEED) stage of the project, a commitment to spend almost $2 billion to obtain permits, final designs and prepare for a construction decision by 2019, according to the state. Low oil prices and weak cash flow are among the reasons for the companies' hesitancy, Keith Meyer, newly hired head of the Alaska Gasline Development Corp., told Alaska reporters in June.

In addition, an oversupplied global LNG market and weak prices in Asia — the anticipated destination for Alaska gas — are not encouraging signs for the project's $45 billion to $65 billion investment decision.

The state is exploring its options to keep the project on track to first LNG production mid-2020s, including possibly taking a larger stake in Alaska LNG or even embarking on a state-controlled, state-financed North Slope gas project.

Regardless of any potential change in the project development plan, and in preparation for the final reports and full application to FERC, Alaska LNG crews are out in the field for the fifth summer, surveying and walking about 7,000 acres of the project footprint, focusing on wetlands and cultural sites as they wrap up field work. In the first four seasons, crews covered more than 40,000 acres.

PROJECT SCHEDULE

If Alaska LNG sticks to the preliminary schedule in its latest draft of Resource Report No. 1; if it obtains FERC authorization and all other permits on time; and if the project partners can resolve their differences over commercial agreements, project operations and taxes:

- Site preparation at the LNG plant and initial construction camp development would start in the third and fourth quarters 2019. "A significant number" of the LNG plant facilities would be built as modules offsite and delivered 2021 through 2024.
- Pilings and concrete foundation work at the LNG plant site in Nikiski would start in 2020.
- Site prep and construction start-up at the material offloading facility in Nikiski would start late 2019, with work to begin 2022 on the terminal's 3,300-foot-long trestle to twin loading berths for LNG carriers.
- The first of three liquefaction trains would start operations fourth-quarter 2025. The last of the three trains would start commercial operations in 2027.
- After site preparations are complete, North Slope gas treatment plant construction would start with the first sealift delivery of production modules in 2023, continuing through 2027.
- The 62-mile, 32-inch-diameter Point Thompson-to-Prudhoe gas pipeline would be built 2021-2022.
- Construction of the 804-mile, 42-inch-diameter pipeline from Prudhoe Bay to Nikiski would be split into four "spreads" (manageable lengths), working at the same time from fourth-quarter 2022 to third-quarter 2024, with borrow sites, access roads, work pads and right-of-way preparations starting in 2020.

- The North Slope spread would start at Prudhoe Bay and lay 209.3 miles of pipe to south of the Dietrich River crossing. The Interior spread would work 192 miles, to Livengood on the south side of the Elliott Highway. The 195.6-mile Alaska Range spread would extend to south of Antimony Creek. The Southcentral spread would build the final 177.8 miles to Nikiski. "Clearing activities would typically occur in the winter season, and one to three years prior to each scheduled construction season," the report said.
- The eight compressor stations (at 23 to 29 acres each) would be built 2021-2025 at: Sagwon, Milepost 76; Galbraith Lake, Milepost 147.1; Coldfoot, 240.5; Ray River, 332.9; Minto, 421.7; Healy, 518.2; Honolulu Creek, 596.9; and Rabideux Creek, 674.7. A heater station would be built at Jack River, Milepost 561.6.
- The pipeline work would require about 17 million cubic yards of granular material (gravel, shot and crushed rock, sand). A potential list of existing and new material sites will be included in Report No. 6. In addition, 11.4 million cubic yards would be needed for the North Slope gas treatment plant, with more details to come in Report No. 6.
- The 28.4 miles of pipe along the bottom of Cook Inlet would be set in place 2022-2023, with work during ice-free months only.

LNG PLANT and MARINE TERMINAL

The LNG plant site is 900 acres onshore, with an additional 80 acres for a temporary work camp adjacent to the site. As of June 20, Alaska LNG had purchased about 600 acres at the site, as recorded with the Kenai Peninsula Borough. The project is continuing discussions with property owners to assemble the remaining parcels.

Alaska LNG does not expect any dredging would be required for the **deep-water twin-berth loading facility**. But substantial dredging would be required for the material offloading facility (MOF) along the shore just north (about 1 mile) of the trestle, to provide clearance for barges and ships to deliver pipe, modules and other large components to the plant site. The offloading facility — sheet piles and all — would be dismantled when the job is done.

Approximately 21 LNG carriers a month would load up in Nikiski when all three liquefaction trains are in production. In addition to producing LNG, the plant would remove from the gas stream about 1,100 barrels of condensate a day, which would be piped or trucked to customer(s).

During site preparations, approximately 5 million cubic yards of material would be scraped and dug up at the site, with most of it reused as fill material. In addition, granular material such as gravel needed for the site "would be sourced from local quarries where practical. … there are multiple quarries within a 20-mile radius of the site."

Larger and harder rock to protect the shoreline will be needed too. "Granite (armor rock), if required," would be an exception to the 20-mile radius. "Local quarries do not contain armor rock of sufficient hardness," Report No. 1 said. "Kodiak Island, approximately 300 miles from Nikiski, is the closest known commercial source for granite."

NIKISKI CONSTRUCTION CAMP

A construction work camp would be built adjacent to the northeast corner of the LNG plant site, with capacity for up to 5,000 workers, though that would be the peak census, not the everyday count.

Double-steel-wall storage tanks (five) would be built to hold 50,000 gallons of diesel and gasoline. Freshwater storage tanks (two) would be capable of holding 690,000 gallons each. And two concrete batch plants would be installed at the site, each capable of producing 120 cubic yards of concrete an hour.

Alaska LNG has not decided on its freshwater source for construction or plant operations, but plans to conduct aquifer tests at the site later this summer to help determine if it could draw from underground wells without harming the aquifer and local wells. The project expects 300,000 gallons a day would be its peak need during construction, with about half that flow needed during plant operations.

Results of the project's groundwater studies will be included in the full application to FERC.

KENAI SPUR HIGHWAY RELOCATION

The LNG plant site would require removing 1.33 miles of the Kenai Spur Highway for safety and security, according to the June 15 report from Alaska LNG. The road would end with north and south gates to the plant site, and the highway would be relocated east of the site.

"It is anticipated that the relocation would be completed prior to the start of project construction," Alaska LNG said, particularly important since equipment and materials hauled up from the waterfront dock would have to cross the existing highway.

Though it is discussed in Report 1, the highway move is outside the jurisdiction of FERC and will not be reviewed as part of its environmental impact statement. State and Kenai Peninsula Borough approval would be required.

Alaska LNG proposes a two-lane replacement highway, with alternative routes "being evaluated with a variety of criteria including environmental features, potential impacts to local residents and businesses, right-of-way acquisition, traffic considerations, utilities relocation, geotechnical features, road design and construction timing." Report No 1 includes a map of "preliminary options under consideration," updated from the multiple-options map the project presented to the public last fall.

The map shows eight recommended alternatives, with the designations (ADF, AFH, KJF, etc.) reading north to south. For example, ADF would start near Milepost 26 on the Kenai Spur Highway and generally follow Island Lake Road to Miller Loop Road, before turning west and reconnecting to the highway south of Milepost 19.

Alaska LNG said it would provide additional information on the highway relocation in its application to FERC.

POINTS OF ENTRY

Report No. 1 said "the majority of materials and equipment would come by sea," through the ports of Anchorage, Seward, Whittier and Valdez; by sealifts to Prudhoe Bay; and by direct delivery to the LNG plant site in Nikiski. The Alaska Highway also would be used to bring material into the state, through Canada.

"A detailed discussion on the existing conditions of Alaska's transportation infrastructure and potential impacts" will be covered in Report No. 5 in July. However, even though the mainline would not pass through Fairbanks, Report No. 1 noted, "The Fairbanks area would serve as a logistics hub for the project construction activities given its central location in the state and existing transportation infrastructure (i.e., highway, railroad and air)."

The report acknowledges that additional highway pull-outs, road widening, weigh station expansions, truck staging and waiting areas may be needed, and will be identified at a later time — such as a dock laydown yard and storage area expansion in Seward for parking, turning and accommodating the heavy volume of pipe-hauling trucks. It refers to such work as "project-related third-party activity," without specifying the third-parties that would undertake the highway, rail spur and port improvements.

Report No. 1 said the ports of Seattle and Tacoma would be major hubs for moving materials to Alaska. "Other key ports are anticipated to be Houston, Texas, and Panama City, Florida." Seattle-Tacoma International Airport "would likely be a personnel hub and collection point for other Lower 48 and international labor pools for consolidated transportation to Alaska."

The Kenai airport "would function as the primary point of entry for personnel" at the LNG plant construction job, arriving aboard charter aircraft. "Project personnel from out of state, as well as the local Anchorage-based labor pools," also would use charters to reach "Fairbanks, Deadhorse or local airfields along the mainline corridor," the report said.

PRUDHOE BAY DOCK

Constructing the gas treatment plant at Prudhoe Bay to remove carbon dioxide and other impurities from the gas stream would require large modules brought to the North Slope by sealift. Alaska LNG proposes to build a new dock to accommodate the sealift barges, and a new staging area.

The dock would be built adjacent to the seawater treatment plant at Prudhoe Bay, with about 1,000 feet of dock face, five or more berths and 28 acres dedicated to project activities. Dredging would be required. An onshore staging area of 86 acres also would be built.

POINT THOMSON

Point Thomson, about 60 miles east of Prudhoe Bay, would supply about 25 percent of the initial gas reserves for the Alaska LNG project. But it would take more drilling to put the estimated 8

trillion cubic feet of gas into production.

After years of work, Point Thomson in April started producing 5,000 barrels of condensate a day, sending the flow through a new pipeline toward Prudhoe Bay, where the product is added to the trans-Alaska oil pipeline. It cost operator ExxonMobil and its partners about $4 billion to develop the field, which is currently recycling its gas back into the reservoir.

To turn Point Thomson into a gas production operation to feed Alaska LNG would require seven new production wells from three new pads, according to the June 15 filing with FERC. The report did not provide a cost estimate. The U.S. Army Corps of Engineers would take the lead in the Point Thomson Gas Expansion Project environmental review. The expanded Point Thomson operation would be designed to produce 920 million cubic feet of gas per day and approximately 57,000 barrels a day of condensate, according to Alaska LNG's filing with FERC.

ALTERNATIVES

"Early in the process," the Alternatives Report (No. 10) said, the partners eliminated the North Slope as an option for the LNG plant site for multiple reasons:

- The annual ice-free window for LNG carriers "is only about two to three months," and providing reliable delivery schedules for customers outside that opening would require specialized ice-breaking carriers.
- The Beaufort Sea is very shallow near shore, and a loading facility "would need to be either located tens of miles offshore" or pipelines inside an undersea tunnel would need to reach out to a loading platform 3 to 5 miles offshore.
- Extensive dredging, fill and shore work would impact whales, other marine mammals and fish.
- Building the gas treatment plant and LNG plant at the same location would greatly increase the number of modules that need to delivered by sealifts to the site, extending to eight years or more the time needed for all the sealifts.
- "The impracticalities as well as significantly higher costs eliminated the North Slope from further consideration," Report No. 10 said. A North Slope LNG plant also would eliminate the pipeline that could deliver gas to Fairbanks and Southcentral Alaska, and everywhere in between.

The project also looked at building the LNG plant in Valdez (Anderson Bay), but determined the costs would be prohibitive, along with other challenges:

- The site to the south side of Anderson Bay rises steeply, and terracing (benching) would be required to prepare a level surface for the plant, the report said. "To accomplish this, extensive earthworks including blasting would be required over several years." Alaska LNG estimated it would have to move 39 million cubic yards or rock and overburden.
- Building the facility would require 200 acres of permanent fill in the bay. "In addition, there would be more than 60 acres of wetland lost in the development of the site, and the need to fill in or reroute an anadromous fish stream."

- A Coast Guard-required safety zone around loaded LNG carriers in transit would restrict other vessel traffic through the less-than-mile-wide Valdez Narrows, affecting LNG deliveries if carriers have to wait for the waterway to clear of traffic.
- Federal conservation designations since a 1988 environmental impact statement recommended Valdez for an LNG project now make the option much more difficult (the National Park Service designated the Gulkana and Delta as Wild and Scenic Rivers).
- The trans-Alaska oil pipeline uses the best route through the steep slopes of Thompson Pass into Valdez. "There are many locations where that additional space is unavailable, making this routing technically unfeasible without creating a new right of way down the mountain pass."

And although a pipeline route to Valdez would bring the mainline closer to Fairbanks, it would be much farther from Anchorage and the Matanuska Valley

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W. A. McMahon
Senior Commercial Advisor

ExxonMobil

June 28, 2016

The Honorable Cathy Giessel
Alaska State Legislature
Chair
Senate Resources Committee
State Capitol, Room 427
Juneau, Alaska 99801

Dear Senator Giessel:

Thank you for the invitation to provide an update for the Senate and House Resources Committees on the Alaska LNG Project. The questions provided in advance have helped ExxonMobil prepare.

As requested, attached are written responses to the questions directed to ExxonMobil.

Let me know if you need any additional information.

Regards,

c: Mr. K. M. Meyer, President, Alaska Gasline Development Corporation
Ms. M. K. Rutherford, Acting Commissioner, Alaska Department of Natural Resources
Mr. D. E. Van Tuyl, BP
Mr. L. W. Ehrhard, ConocoPhillips
Mr. S. D. Butt, Project Manager, Alaska LNG Project

Answers to Questions Directed to ExxonMobil

1) **The Pre-FEED phase has been indicated to be completed by fall of 2016.**

   a) **Please describe what is envisioned, from the perspective of each participant, as to what will occur after the completion of Pre-FEED**

   ExxonMobil follows the successful, time proven industry approach of a stage gate process to manage progression of a project through the various phases. This process ensures the project is ready to move forward from technical, fiscal, commercial and economic perspectives. The next stage gate for the Alaska LNG Project is consideration for advancing to FEED.

   The Alaska LNG Project team is near completion of the Pre-FEED technical work; however, group work on the commercial and fiscal agreements necessary for a FEED decision has been suspended. Additionally, the cost of supply for the Alaska LNG Project needs to be lowered further to be competitive in the global marketplace.

   The Administration re-initiated group discussions last week to consider alternative concepts to the current Alaska LNG Project structure. The Alaska LNG Project is the project that was contemplated under both the January 2014 Head of Agreement and SB 138. *The outcome of these discussions will determine what will occur next.*

   b) **Please describe what is envisioned, from the perspective of each participant, as to the management structure after the completion of Pre-FEED. If possible, provide an organizational chart with job descriptions.**

   The Alaska LNG Project has no current agreements for a management structure post pre-FEED. The Pre-FEED agreement is currently set to expire at the end of June, 2017

   Group discussions concerning the development of the governance structure for the Alaska LNG Project have been suspended. These agreements could have provided the venture governance for the FEED phase, Engineering, Procurement and Construction (EPC) phase and the Operations phase. A FEED project team organizational structure would be similar to that of the Pre-FEED phase, but on a much larger scale.

   ExxonMobil has no current agreements or plans for an alternative structure but is certainly prepared to listen to the Administration's and other co-venturers' suggestions and to work cooperatively with all interested parties, including the Legislature.

   d) **What is the funding source effort to proceed after the completion of Pre-FEED**

   Currently there are no authorizations or agreements for the Alaska LNG Project to spend funds post pre-FEED.

   If the State of Alaska, AGDC, BP, ConocoPhillips and ExxonMobil were to enter the FEED phase for the Alaska LNG Project, ExxonMobil would secure the necessary funding for its equity participation through its corporate budgeting process.

   e) **What is the anticipated Work Plan & Budget (WP&B) for the 2017 calendar year**

   With the Pre-FEED work expected to be completed in 2016, the Pre-FEED parties are still considering the scope of work and any necessary corresponding funding for that work in 2017.

3) Do the project participants reaffirm their commitment that any agreement that has a term in excess of two years will come before the Legislature for approval?

While the Administration is in the best position to answer this question, ExxonMobil would expect that any project enabling agreements that the Administration would enter for a project defined under SB 138 would come before the Legislature for approval if that agreement has a term in excess of two years.

ConocoPhillips
Alaska, Inc.

Leo W. Ehrhard
Vice President
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June 29, 2016

The Honorable Cathy Giessel
Alaska State Legislature
Chair, Senate Resources Committee
State Capitol Room 427
Juneau, AK 99801-1182

Dear Senator Giessel,

Enclosed please find ConocoPhillips' response to the questions you provided in advance of the June 29 Senate and House Resource Committee hearing.

Sincerely,

Leo Ehrhard
Vice President – Commercial Assets

Cc: K. Meyer, President Alaska Gasline Development Corporation
M. Rutherford, Commissioner Department of Natural Resources
D. Van Tuyl, BP
W. McMahon, Exxon

1. The Pre-Front End Engineering and Design Phase (Pre-FEED) has been indicated to be completed by the fall of 2016.

a. Please describe what is envisioned, from the perspective of each participant, as to what will occur after the completion of Pre-FEED

b. Please describe what is the envisioned, from the perspective of each participant, as to the management structure after the completion of Pre-FEED. If possible, provide an organizational chart with names and job descriptions

d. What is the funding source effort to proceed after the completion of Pre-FEED

e. What is the anticipated Work Plan & Budget (WP&B) for the 2017 calendar year

ConocoPhillips continues to believe that, after Pre-FEED completion, the following must be in place to enable a project to be ready for FEED:

- *A package of fiscal, commercial and other project enabling agreements agreed among the project participants, with legislative ratifications where necessary pursuant to SB138, and an acceptable regulatory regime as described in the HOA and SB138*
- *A project structure and design with a cost of supply that is competitive in the global market*

ConocoPhillips is open to discussion of new concepts for progressing ANS gas commercialization, including those proposed by the State. ConocoPhillips intends to make its available gas available on mutually agreeable commercially reasonable terms. ConocoPhillips signed the Gas Availability Agreement with the State in December 2015; we have since had preliminary discussions with the State Gas Team to progress terms by which ConocoPhillips would make its gas available.

No management structure for AKLNG Project post-Pre-FEED activities has been agreed.

No agreements for funding AKLNG Project activities post-Pre-FEED have been agreed.

No scope of work or agreement for funding a scope of work in 2017 for the AKLNG Project have been agreed.

3. Do the project participants reaffirm their commitment that any agreement that has a term in excess of two years will come before the Legislature for approval? If not,

a. Please describe the type of agreements, to the extent possible, that may bypass the Legislature, and the reason that action is necessary.

In order to ensure that any relevant agreements it enters into with the State are effective pursuant to AS 38.05.020(b)(11), ConocoPhillips will work with the State parties to those agreements to achieve legislative ratification.

Gas Fiscal Testimony to House and Senate Resource Committees

David Van Tuyl, BP

June 29, 2016

Madam Chair, members of the committee, for the record my name is David Van Tuyl and I am the Regional Manager for BP here in Alaska. I've been working for BP in Alaska for almost 32 years, the last several of which have been dedicated to working to get Alaska's gas to market.

Now I have the privilege of working in my current roles on the joint fiscal team, and on the Management Committee of the Alaska LNG project effort.

I am very pleased to be here along with my colleagues to provide an update on the progress of the Alaska LNG project. The success of Alaska LNG is critical to BP's business here in Alaska, and it's also critical to the future of the State of Alaska and to so many Alaskans who will benefit, both directly and indirectly, from a successful project.

The scale of the Alaska LNG opportunity is unique for BP anywhere on the planet. BP would also very much like to see Alaska LNG move to market in the 2020's.

When I was before you at our last update in January, I commented that, given the economic environment, 2016 looks to be a challenging year for all of us. We are all certainly living that reality.

In the current low energy price environment there are over a trillion dollars of projects worldwide that have been shelved. It's tough out there! The Alaska LNG Project is challenged. It's worth remembering that it is not unusual for LNG projects to go through a period of evolution as they mature. The Alaska LNG project is no different. The good news for Alaska LNG is that it has NOT been shelved. We are continuing to work together.

As I said in January, we at BP, and we as Alaskans, know what it means to face challenges. Challenges are nothing new to us. The best way we have found is to face challenges together. That is the path that was envisioned in the January 2014 Heads of Agreement, it is the path that was forged by this Legislature with the passage of SB-138, and BP remains committed to progressing in an aligned way forward on Alaska LNG.

As we all just heard from Alaska LNG Project Manager, Steve Butt, we are currently completing the pre-FEED phase. We will have spent some $600 million gross to advance Alaska LNG. We estimate that the next phase, FEED, will be over twice that amount, maybe as much as three times. That kind of a commitment deserves a careful evaluation and a thoughtful decision before we commit our company resources, or before the State commits Alaska's resources.

We have found that Cost of Supply is the most meaningful benchmark for measuring how well an LNG project competes relative to other projects. Simply put, it is the cost at which a project can sell product to a buyer, typically quoted on a discounted basis. A lower cost is more attractive to a buyer, so the lowest cost projects are more likely to go ahead, while the higher cost projects will struggle to find willing buyers. In fact, BP has commissioned a study by Wood Mackenzie to evaluate the competitiveness of Alaska LNG, and have invited our co-venturers to participate. We expect to have the results of that study late next month.

At last month's Alaska Oil and Gas Association conference, energy consultant IHS provided their view of the global LNG market. IHS, with vice Chairman Daniel Yergin, is an industry authority on the world energy markets. IHS reminded us that the world LNG market has changed dramatically. IHS sees a tremendous supply of LNG that can now be made available from the Gulf of Mexico. That US lower 48 supply is well more than 10 times the volume of known ANS gas. That is the reality against which Alaska LNG must compete, and we are not there yet.

We understand and appreciate the State's desire to move this project ahead in a timely manner. BP understands the State's fiscal need for a new revenue source in the mid-2020's. The State is a vitally important co-venturer for us, and we would like to see that objective be met. But we don't want to move quickly at all costs. We don't want to rush into the largest energy project in North America that only ends up losing lots of money for all of us.

The Alaska LNG project must successfully compete in the global marketplace. LNG is a commodity. Buyers have many choices as to where they purchase their LNG. Understandably, they want to pay as little as possible to satisfy their needs. We want to attract those buyers, and so we want to be able to make a competitive offer.

Before we make an affirmative decision to enter FEED, BP will want to make sure of a few things.

- We want to make sure the AK LNG cost of supply is competitive, so that we have a commercially viable opportunity
- The Project will need to continue following project management best practices, with the parties being technically and financially capable
- Once we have ensured our project is competitive, we will need to have fiscal and commercial terms sufficiently defined that we feel confident in their endorsement by all parties
- The terms that will govern our FEED activities will need to be finalized, including continuation of FERC Section 3 regulation of the Alaska LNG project, as outlined in the HoA
- Finally, all participating co-venturers will also need to commit to fund their share of FEED costs

BP envisions that any resulting agreements that have a term in excess of two years would be made available to the Legislature for approval as provided in SB-138, recognizing that the nature of certain terms will require confidential treatment.

Once we confirm that Alaska LNG can be delivered at a competitive cost of supply, BP will also want to move forward quickly. We will all be highly motivated to minimize the time we have capital tied up that is not generating cash.

Some genuinely good news is that the Alaska LNG combined venture continues to offer many significant advantages:

- The Prudhoe Bay field is one of the world's most prolific basins. In 37 years Prudhoe Bay has produced over 12 billion barrels of oil. Today we expect we have at least another 2 billion barrels to produce, along with a massive gas resource of over 4 billion barrels of oil equivalent. That's a lot to play for.
- The Point Thomson gas condensate field has been placed in production. It contains a gas resource of another 1 billion barrels of oil equivalent. That's even more to play for.
- The companies sitting before you have world class experience in mega-project development, having overseen the construction of our North Slope facilities and having successfully built mega LNG projects around the globe.
- We also have financial and technical capability, both of which are essential to a successful Alaska LNG project. And we have a host government that is also highly motivated to get our Alaska gas resource to market.

And importantly, we are aligned on our need to continue to look for opportunities to reduce the cost of supply for Alaska LNG.

We are actively discussing alternative ways to continue to advance the project which will allow project development, progressing regulatory efforts and working cooperatively to further reduce the cost of supply.

BP needs the Alaska LNG project to be successful. It defines the future of our company in Alaska.

A successful Alaska LNG project would provide a major step towards commercializing both the known and as yet unknown oil and gas resources on the slope, and around the State.

A successful Alaska LNG project will mean a stable revenue source for BP and for Alaska for decades to come. And it will provide a means to make a long-term, reliable source of gas to Alaskans. That is a lot to play for. That is worth continuing to work hard to achieve. And that is the future for Alaska that BP is committed to working for.

Thank you.

David Van Tuyl
Regional Manager

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June 28, 2016

The Honorable Cathy Giessel
Alaska State Legislature
Chair, Senate Resources Committee
State Capitol Room 427
Juneau, AK 99801-1182

Dear Senator Giessel:

Enclosed is BP's response to the questions you posed in advance of the June 29 Senate and House Resource Committee hearing, scheduled in Anchorage. I look forward to participating in the hearing.

Sincerely,

David Van Tuyl
BP Exploration (Alaska) Inc.

cc: K. Meyer, President, Alaska Gasline Development Corporation
M. Rutherford, Commissioner, Department of Natural Resources
S. Butt, Project Manager, Alaska LNG Project
L. Ehrhard, ConocoPhillips
W. McMahon, ExxonMobil

1. ***The Pre-Front End Engineering and Design Phase (Pre-FEED) has been indicated to be completed by the fall of 2016.***

    a. ***Please describe what is envisioned, from the perspective of each participant, as to what will occur after the completion of Pre-FEED***

    b. ***Please describe what is the envisioned, from the perspective of each participant, as to the management structure after the completion of Pre-FEED. If possible, provide an organizational chart with names and job descriptions***

    d. ***What is the funding source effort to proceed after the completion of Pre-FEED***

    e. ***What is the anticipated Work Plan & Budget (WP&B) for the 2017 calendar year***

Before we make an affirmative decision to enter FEED, BP will want to verify the following:

- **the AK LNG cost of supply must be competitive, so that we have a commercially viable opportunity**
- **the Project will need to continue following project management best practices, with the parties being technically and financially capable**
- **fiscal and commercial terms must be sufficiently defined so that we feel confident in their endorsement by all parties**
- **the terms that will govern our FEED activities will need to be finalized, including continuation of FERC Section 3 regulation of the Alaska LNG project, as outlined in the January, 2014 Heads of Agreement**
- **all participating co-venturers will also need to commit to fund their share of FEED costs**

We are actively discussing alternative ways to continue to advance the project which will allow project development, progressing regulatory efforts and working cooperatively to further reduce the cost of supply. No management structure post pre-FEED has been developed.

The WP&B for the 2017 calendar year has not yet been agreed.

3. ***Do the project participants reaffirm their commitment that any agreement that has a term in excess of two years will come before the Legislature for approval? If not,***

    a. ***Please describe the type of agreements, to the extent possible, that may bypass the Legislature, and the reason that action is necessary.***

BP envisions that any resulting agreements that have a term in excess of two years would be made available to the Legislature for approval as provided in SB-138, recognizing that the nature of certain terms will require confidential treatment.

enalytica

COMMENTARY ON AK LNG JUNE 2016 UPDATE

July 2016

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1 Reasonable response to project's challenges?

2 Facilitate the profitable development of North Slope gas?

3 Reasonable risk-and-reward balance for the state?

4 Conclusion

Author

Nikos Tsafos is President of enalytica.

Point of departure

In the past few weeks, the State of Alaska has articulated a new vision for developing North Slope gas. Many details remain unclear, but the broad outlines have been put forward by the new president of the Alaska Gasline Development Corporation (AGDC) in interviews and in testimony during a joint session of the House and Senate Resources Committees on June 29. These suggest a fundamental change in the state's approach—one that deviates from the principles and assumptions that led to SB 138 and which have guided the state's work since then.

The purpose of this report is to assess whether these changes: (a) are a reasonable response to the project's challenges; (b) will facilitate the profitable development of North Slope gas; and (c) entail a reasonable risk-and-reward balance for the state.

Reasonable response to project's challenges?

The Alaska LNG project reached a roadblock as a co-venturer stated that they are not prepared to proceed to the next phase of development (the Front End Engineering and Design, or FEED, phase). This is not surprising or unprecedented: many companies are re-evaluating their investment plans given the drop in oil and gas prices. Nor is it uncommon for large projects to see changes in ownership and structure as they progress. In response, the state has outlined two possible options: either it can "take the lead and find ways to reduce cost of delivered supply" or "delay FEED, potentially delay [sic] the project."

Yet it is not obvious why those are the only two options, or why the state should "take the lead" rather than let the current lead continue or, even, delay the project. In part, the right course depends on why the project has stumbled. And while it is hard to know why a co-venturer might not want to move ahead, it is still useful to consider the possibilities and their likely motivations.

One possibility is that the project is not commercially viable—that the cost of supply is too high relative to what the market expects or what others can deliver. In that case, it is not clear that the state stepping in will do much good—why take a bigger share in an unviable project? Why not delay until conditions are more favorable? The delay after all need not be long (although, by making a constitutional amendment a prerequisite for any form of fiscal stabilization, a built-in delay has been created since such a vote cannot take place until late 2018).

A second possibility is that the project is not a good fit for a specific company—that it carries too much risk or the company has more attractive investment opportunities elsewhere. In such a case, a change in the ownership of AK LNG might help.

A third possibility is that a sponsor sees a pathway that is preferable to investing in the project—for example, by selling gas at the wellhead. This was a risk enalytica raised in the conversations about negotiating firm withdrawal terms with the producers. If the state were to buy gas at the wellhead, this transaction could be worth tens of billions of dollars over the lifetime of the project—and as such, expose the state to major risks. And, the suppliers would only enter into such a deal if they got superior returns versus investing in the project, meaning the transaction might not make sense from the state's perspective. Finally, LNG projects make money by selling gas, but this plan would focus the state's returns to a regulated-type level—the midstream—rather then where the value truly is: in the gas. In 2015, we summarized these risks thus:

> By signing firm withdrawal provisions, the state offers the producers an easy way out from developing AK LNG—and in doing so, it loses the expertise that the producers bring while being left to monetize gas that the producers think cannot generate sufficient returns in the market.
>
> enalytica, "Negotiating firm withdrawal terms: Key issues," November 2015

Of course, we do not know what drives each party, but the optimal response for the state depends, in part, on these motivations. If the project is not commercially viable, it is not clear that a changed ownership helps. If it is a question of portfolio fit, it could make sense for the remaining partners take on a bigger share and find new partners. And if this is a question of parties looking for a different way to participate in the project, by selling gas at the wellhead for instance, this too needs much analysis to be shown as a prudent course of action for the state.

So far, the (implicit) assumption guiding the state is that AK LNG is commercially viable but just below the hurdle rate that the producers have—and that, because the state (and other investors) would be happy with lower returns, a state-led project can succeed. This, however, is merely an assertion at this point that requires analysis to be substantiated—if it is to provide the basis for moving to a different project structure.

Facilitate the profitable development of North Slope gas?

AK LNG is a complex project—among the most expensive infrastructure projects ever developed. In an industry regularly hit by delays and cost overruns, execution risk is one of the project's biggest challenges. It is no wonder that AK LNG's credibility in the marketplace is tied to the reputation of the state's partners. Moreover, the fact that the state is co-investing with some of the world's most sophisticated companies provides an additional layer of due diligence and can be a source of reassurance—as the project will be subjected to the scrutiny of major players and will only proceed if it satisfies their investment criteria. The state, in this case, can take comfort from the fact that it is investing in a project that top tier companies also think is worth investing in.

By contrast, a state-led project as currently envisioned would have to demonstrate two things to succeed.

First, that the state can execute. This means that the state will have to set up (and pay for) an organization that replaces the current project team—a team that has, at times, employed 135-odd people with hundreds of years of experience and a team in which, so far, the state has seconded zero people. Of course, the state can rely on contractors for support during project development and to build the project. And there are several examples of private firms with no or little liquefaction experience that have developed LNG projects. Yet, the organizational challenges should not be under-estimated. By

way of example, Cheniere Energy had ~200 employees in January 2010, soon before it proposed an LNG export project at Sabine Pass; in January 2016, with two LNG projects under construction and development, it had 888 full-time employees.

Second, the state needs to demonstrate the viability of its proposed project structure. Most LNG projects are driven and majority-owned by the resource owners, with buyers and other investors holding smaller stakes. There are exceptions, of course: there are projects where the resource owners are not involved in the midstream, usually because investing in liquefaction exceeds their risk appetite or falls short of their materiality threshold (i.e. their position is too small). And there are also projects where the midstream owners either buy gas from the resource owners for onward sale or provide transportation (and other) services to enable buyers and sellers to conduct arms-length transactions—similar, for example, to how a pipeline might operate.

But these are usually about connecting buyers to a liquid market, such as the Lower 48, where gas can be purchased easily in the open market. Or, they are projects that have long ago paid back their investment. There is only one project with a structure similar to the one proposed by the state: in Cameroon, a third party is building a 1.2 million ton per annum floating LNG to liquefy gas that has been sold by the resource owner to a buyer (the size is ~7% of AK LNG). Elsewhere in the word, midstream-driven projects have generally failed.

An infrastructure-driven project makes sense when commercial viability exists, when buyers and sellers favor such a structure as a way to avoid committing their own capital, and therefore a third party steps in to facilitate the transaction. It is not clear that this is the case in Alaska—especially, if the gas is made available under a "duty to produce" structure which could involve litigation or protracted negotiations. In fact, given the project's technical challenges and the commercial complexity involved, it is easy to see how buyers and investors might decide that, in the current market, AK LNG is too much hassle when there are so many alternatives from which to buy gas.

Reasonable risk-and-reward balance for the state?

It is not clear, therefore, that the state's approach enhances the chances of success—if anything, it diminishes them. At the same time, the state is proposing to take on more risk. If the state takes full ownership of the project, state spending over the next few years will triple as the state moves from paying 25% of the cost for FEED to 100%. (Those costs have been estimated at $1-$2 billion over the next 2-3 years.) And, of course, in a state-led project, the costs of failure rest with the state rather than with all the co-venturers: the state could conceivably spend $1-$2 billion to pursue a project that, in the end, fails to advance.

The blueprint offered in response—that the state will take on more ownership but that most of the risks will be borne by third parties who will invest while accepting lower returns than the producers—requires considerable evidence in order to be convincing. To begin with, it is important to distinguish between equity investors or third-party finance (loans or bonds).

It is certainly possible for the state to find equity investors—buyers, other producers, and so on. In general, however, buyers buy small shares in LNG projects—often only a few percentage points—and given the size of AK LNG, the state would need several buyers in order to offload a meaningful share of the total equity. In doing so, however, it is not clear that the state would have accomplished much—these are sophisticated

investors who require adequate returns to compensate for the risk they are taking. Would these companies be willing to invest for sub-par returns in a project that the world's largest companies deemed too risky and/or uneconomic?

Nor is it fair to assume that there is a big pool of investors looking for "lower returns." As the state learned in negotiating with TransCanada, even infrastructure providers expect high returns on equity (the baseline for TransCanada was 12%). And those returns were in line with those expected by FERC-regulated pipelines in the United States (see enalytica, "AK LNG Seminar," September 2015, p. 42).

Other investors such as infrastructure or pension funds generally avoid construction risk. In the report by the Organization of Economic Cooperation and Development (OECD) referenced by AGDC, the authors state that "For the majority of funds the infrastructure strategy is to invest, on a global basis, primarily in unlisted equities and mature infrastructure projects (i.e. Brownfield projects, already in operation with no construction risk…)." It is rare for these investors to step in earlier without guarantees or an expectation of superior returns—there are maybe one or two examples where such investors have taken material shares in LNG projects and even then, only alongside major oil companies.

Third-party finance, on the other end of the equation, is only available at later stages of development and will still require equity from the state. It is typical for leveraged LNG projects to have a 70:30 debt-equity ratio, which means that, in a $45 billion project, the state might borrow around $31.5 billion but would still need to make an equity contribution of $13.5 billion. Of course, this equity contribution could itself be borrowed—but with full recourse to the state or for a high price (if the state sold a stake in the vehicle that was developing the project, for example). Moreover, most third-party finance still requires completion guarantees that will expose the state to cost overrun and delay risks.

Finally, none of these options—third-party financing, new investors—require a state-led project or any modification to the current structure. These are all options available to the project as it is structured now. In fact, if there is such a pool of capital ready to invest for lower returns and offer the sponsors a way to monetize their gas without spending much capital, they could take this path themselves. It is unlikely, of course, based on what we know from how LNG projects are developed—and, either way, such a possibility would hardly justify a move to a state-led, state-owned project right now.

Conclusion

AK LNG has hit a roadblock, and the state and its partners have several options: they can keep working to resolve the issues that hold back any of the sponsors; they can alter the ownership of the project so that risk and reward are more properly balanced; or they can wait until market conditions improve. The state seems to have opted for taking the lead and reshaping the project's structure—without much evidence that this is necessary to resolve the underlying problems facing AK LNG. In doing so, the state has made project success less likely, and it has taken on considerably more risk, on the assumption that it will be able to offload that risk to new players who have yet to be either identified or shown to be interested in taking on high risk for low return. Combined, these proposed changes raise many questions—but mostly, they point to less likelihood of success and considerably more risk for the state.