

LEG. FINANCE - BILLS 1977 - 1978 774

CSHB 647 cont., thru HB 648 774

FY 78 SUPPLEMENTAL REQUEST ANALYSIS

	FY 76 ACTUAL	FY 77 FINAL AUTH.	FY 77 ACTUAL	FY 78 GOV. BUDGET	FY 78 INITIAL AUTH.	FY 78 CURRENT AUTH.	EXPENDITURES + ENCUMBRANCES 7/1 - 10/31	OTHER OBLIGATIONS 7/1 - 10/31	PROJECTED EXPENDITURES + ENCUMBRANCES 11/1 - 6/30	FY 78 (DEFICIT) OR EXCESS	FY 79 MAINTENANCE REQUEST
PERSONAL SERVICES	444.6	490.7	475.8	593.3	579.3	605.6	159.1		446.5	-0-	671.6
TRAVEL	11.8	41.4	43.7	22.8	32.4	32.4	8.5		23.9	-0-	24.2
CONTRACTUAL SERVICES	417.4	636.0	507.6	451.9	805.2	805.2	121.8		683.4	-0-	512.2
COMMODITIES	4.5	4.7	6.1	4.9	5.5	5.5	.6		4.9	-0-	5.1
EQUIPMENT	2.9	3.4	3.3	6.0	5.4	5.4	2.3		3.1	-0-	7.5
LANDS, BLDGS, ...		46.1	46.1	46.1	46.1	46.1	46.1		-0-		46.1
GRANTS, CLAIMS, ...											
MISCELLANEOUS	.7	1.4	1.4								
TOTAL	881.9	1,223.7	1,084.0	1,125.0	1,473.9	1,500.2	338.5		1,161.7	-0-	1,266.7
FEDERAL RECEIPTS											
REQUIRED GF MATCHING											
OTHER GENERAL FUND	626.7	889.9	750.2	710.2	1,058.7	1,085.0	243.7		841.3		766.3
INTER-AGENCY RECEIPTS											
Public Employees and Teacher's Retirement Fund	225.2	333.8	333.8	414.8	415.2	415.2	94.8		320.4		500.4

AGENCY Revenue

BRU Treasury Management

COMPONENT

REVISED

FY 78 SUPPLEMENTAL REQUEST ANALYSIS

	FY 76 ACTUAL	FY 77 FINAL AUTH.	FY 77 ACTUAL	FY 78 GOV. BUDGET	FY 78 INITIAL AUTH.	FY 78 CURRENT AUTH.	EXPENDITURES + ENCUMBRANCES 7/1 - 10/31	OTHER OBLIGATIONS 7/1 - 10/31	PROJECTED EXPENDITURES + ENCUMBRANCES 11/1 - 6/30	FY 78 (DEFICIT) OR EXCESS	FY 79 MAINTENANCE REQUEST
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ALASKA STATE LEGISLATURE

TENTH Legislature SECOND Session

HOUSE BILL NO. 547
By THE RULES COMMITTEE BY REQUEST OF THE GOVERNOR

"An Act making FY 78 appropriation adjustments for analysis of royalty oil purchase proposals; and providing for an effective date."

analysis oil purchase proposals.

Introduced in the House 1-17-1978

HISTORY IN THE HOUSE

19 78		Read first time and referred to Committee on Special Royalty Oil & Gas and Finance																				
Jan. 17																						
May 17		Reported back with recommendation that <i>Royalty Oil & Gas do pass to Finance</i>																				
June 3		Read second time and <i>CS adopted today</i>																				
June 3		Read third time and																				
June 3		<table border="0"> <tr> <td>PASS 2d</td> <td>Effective Date</td> </tr> <tr> <td>Yeas 32</td> <td>Yeas</td> </tr> <tr> <td>Nays 0</td> <td>Nays <i>Some</i></td> </tr> <tr> <td>Absent</td> <td>Absent</td> </tr> <tr> <td>Excused 8</td> <td>Excused</td> </tr> </table> <p>Reconsideration</p> <table border="0"> <tr> <td>PASS</td> <td>Effective Date</td> </tr> <tr> <td>Yeas</td> <td>Yeas</td> </tr> <tr> <td>Nays</td> <td>Nays</td> </tr> <tr> <td>Absent</td> <td>Absent</td> </tr> <tr> <td>Excused</td> <td>Excused</td> </tr> </table> <p>Reported correctly engrossed Signed by Speaker Sent to Senate</p> <p><i>Harold Casper</i> CHIEF CLERK OF THE HOUSE</p>	PASS 2d	Effective Date	Yeas 32	Yeas	Nays 0	Nays <i>Some</i>	Absent	Absent	Excused 8	Excused	PASS	Effective Date	Yeas	Yeas	Nays	Nays	Absent	Absent	Excused	Excused
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Excused	Excused																					

HISTORY IN THE SENATE

19 78		Read first time and referred to Committee on																				
6 5		<i>Res. Sur</i>																				
6 13		Reported back with recommendation that <i>Res. Sur</i> <i>Rec. to Fin</i>																				
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HISTORY IN THE HOUSE

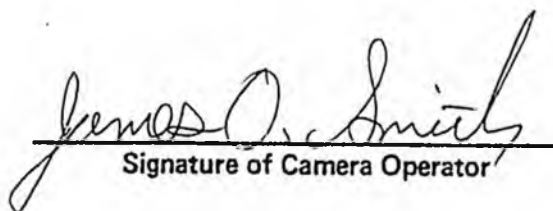
19		Received from Senate
		Concurred in Senate amendment thus adopting:
		Failed to concur in Senate amendment; asked Sen. to recede
		Senate receded from amendment
		Senate failed to recede from amendment
		FCC appointed by House
		FCC appointed by Senate
		FCC adopted
		To enrolling
		Reported correctly enrolled
		Sent to Governor
	 by Governor
		Filed with Lt. Governor
		Chapter No.

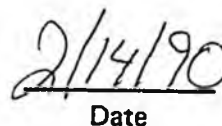


RECORDS CERTIFICATION



I, the undersigned, an employee of the State of Alaska, do hereby certify that the microfilm images on this microform are accurate reproductions of the original records of the State of Alaska as accumulated during the regular course of business, and that it is the established policy and practice of this State to microfilm its records and to dispose of the original records after microfilm reproductions have been made.


Signature of Camera Operator


Date

COMMITTEE REPORT

HOUSE

1/17/78

FURTHER: _____

Date: 1/20/78

Mr. Speaker:

The Committee on FINANCE has had HB 648
"An Act making a special appropriation to the Department of Law; eff. date."

under consideration and (a majority of the committee) (the committee reports it back as follows)

recommends it do pass () recommends it do not pass

() recommends it do pass with attached amendment(s)

() recommends it be replaced with CS for _____

and _____ () new title () same title

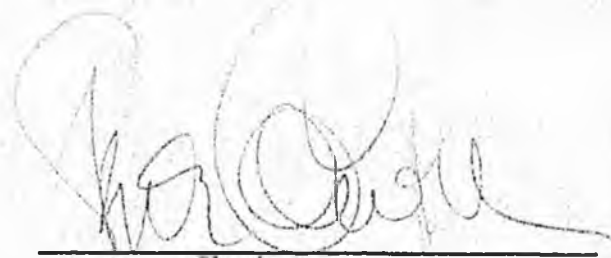
() AND attaches a Letter of Intent () New Fiscal Note

() reports it back without recommendation

() and recommends it be referred to the _____ Committee

MEMBERS SIGNING DO PASS:

OTHER RECOMMENDATIONS:



Chairman

Introduced: 1/17/78
Referred: Finance

1 IN THE HOUSE

BY THE RULES COMMITTEE BY
REQUEST OF THE GOVERNOR

2

HOUSE BILL NO. 648

3

IN THE LEGISLATURE OF THE STATE OF ALASKA

4

TENTH LEGISLATURE - SECOND SESSION

5

A BILL

6

For an Act entitled: "An Act making a special appropriation to the Department of Law; and providing for an effective date."

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

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* Section 1. The sum of \$958,300 is appropriated from the general fund to the Department of Law for presentation of the state's position at ICC tariff hearings.

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* Sec. 2. The unexpended and unobligated portion of this appropriation lapses into the general fund June 30, 1979.

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* Sec. 3. This Act takes effect immediately in accordance with AS 01.-10.070(c).

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HB 648

January 17, 1978

The Honorable Hugh Malone
Speaker of the House
Alaska State Legislature
Juneau, Alaska 99811

Dear Mr. Speaker:

Under the authority of art. III, sec. 18 of the Alaska Constitution, and in accordance with AS 24.30.060(b) and the Uniform Rules of the Alaska State Legislature, I am transmitting a bill making a special appropriation to the Department of Law.

This appropriation is for costs incurred during presentation of the state's case before the Interstate Commerce Commission Trans-Alaska Pipeline Tariff hearings. It has a lapse date of June 30, 1979 to permit the required flexibility in contract negotiations and expenditures.

Fiscal information is enclosed.

Sincerely,

S/ JSH

Jay S. Hammond
Governor

Ron Lehr, Deputy Director
Division of Budget and Management

August 30, 1977

HB 648

Janet Green, Budget Analyst
Division of Budget and Management
Office of the Governor

Supplemental Appropriation Request,
Department of Law

<u>Agency Request</u>	<u>Analyst Recommendation</u>	<u>B&M Recommendation</u>
\$400.0 to \$800.0	\$400.0 to \$800.0	

Appropriation: Legal Services

Agency Position: The agency is presently expending a great deal of effort and resources preparing and presenting testimony in the ICC pipeline tariff proceedings. To date, the Department has had approximately \$385.0 appropriated for this purpose. These efforts have been eminently successful so far; however, proceedings of this type may continue for years. Strategy meetings with ICC commissioners, scheduled to take place this week, will help to clarify the amount required for this fiscal year. Preliminary estimates submitted by the two Washington, D. C. law firms indicate in excess of \$1 million will be needed to complete the presentation of the case. All this information has been provided to Senator Sackett and Representative Cowper by the Attorney General.

Basis for Analyst's Recommendation: Considering the amount of additional revenue at stake, it would be imprudent to not appropriate whatever is necessary.

STATE OF ALASKA

DEPARTMENT OF LAW

OFFICE OF THE ATTORNEY GENERAL

POUCH K - STATE CAPITOL
JUNEAU 99811

RECEIVED

NOV 15 1977

JAY ROUSEHEAD MANAGEMENT

October 24, 1977

The Honorable J.S. Hammond
Governor
State of Alaska
Pouch A
Juneau, Alaska 99811

Dear Governor Hammond:

The beginning of the hearings on the Trans-Alaska Pipeline System (TAPS) tariffs is fast approaching with the carriers required to file their testimony on November 30, 1977 and hearings for the cross-examination of carrier witnesses to begin on January 10, 1978. Many of the uncertainties which previously existed have been eliminated and we feel we are now in a position to present to you a reasonably accurate estimate of the cost of presenting the State's case.

Our best estimate is that the total cost of presenting the remainder of the State's case will be \$2.3 million. A breakdown of expenses is contained in the attached schedule. Those funds should be appropriated as continuing fund special appropriations in the amounts of \$953,234 for FY 78, \$1,047,000 for FY 79 and \$271,600 for FY 80.

We are well aware that the estimated cost is very substantial. But, as noted in my letter to you of August 19, 1977, the stakes in the TAPS case are enormous. The difference between our previous cost estimate and the \$2.3 million figure is mostly attributable to two factors. First, we did not initially plan to engage the services of a second Washington D.C. law firm (Wald, Harkrader & Ross). Our need for a law firm with extensive resources and expertise in managing cases of the magnitude of TAPS, however, made the hiring of a second law firm necessary. Because Terry Lenzner of Wald, Harkrader & Ross conducted the investigation of TAPS cost overruns for the Alaska Pipeline Commission, that firm was the logical choice.

The Honorable J.S. Hammond
Governor
October 24, 1977
Page 2

A second factor which has increased our estimate is the extensive amount of litigation which the TAPS case has engendered to date. Simultaneously with the proceeding before the Interstate Commerce Commission, and now before the Federal Energy Regulatory Commission, we have had to respond to suits by the carriers in three different Courts of Appeals and in the United States Supreme Court. The Supreme Court's recent grant of a stay of the ICC's suspension order pending a decision by the Court as to whether it will hear the merits of the carriers' appeals indicates litigation will continue to constitute a substantial portion of the costs of the TAPS case.

I think it is fair to say that given the billions of dollars involved in the TAPS case, the carriers have decided that it is worth it for them to litigate to the fullest every issue on which there is any doubt. Unless the State is willing to meet them with a similar attitude, the carriers may ultimately prevail on an issue worth multi-billions of dollars simply because we don't make an adequate effort. We have prevailed on nearly every issue to date against the biggest oil companies and law firms in the world, and I don't want to see us lose in the end through lack of commitment.

Sincerely,

Avrum H. Gross
Attorney General

RMB:syh

cc: Ron Lind
Kent Dawson

SUMMARY OF PROJECTION OF COSTS TO STATE
OF TAPS INTERSTATE TARIFF PROCEEDINGS

TOTALS

Legal fees		\$1,901,300
Expert consultants		. 685,000
Expenses		68,000
Transcript of proceedings		<u>21,400</u>
	Sub-Total:	\$2,675,700
Less funds available for TAPS case		<u>-368,616</u>
	TOTAL:	<u><u>\$2,307,084</u></u>

PROJECTION OF COST TO STATE
OF TAPS INTERSTATE TARIFF PROCEEDINGS

Fiscal Year 1978

I. Phase I.

A. Issues

1. Rate base
2. Rate of return
3. Treatment of taxes
4. Method of calculating total revenue

B. Cost Projection (assumes Phase I will be completed during FY '78)

Expert Consultants		\$225,000
Wald, Harkrader & Ross		\$338,500
Lawyers - 3500 hours at an average of \$85 per hour	297,500	
Legal assistants - 1200 hours at \$30 per hour	36,000	
Expenses	5,000	
Donelan, Cleary, Wood & Maser		\$284,200
Lawyers - 3400 hours at an average of \$68 per hour	231,200	
Legal assistants - 1200 hours at \$25 per hour	30,000	
Expenses	15,000	
Transcript of proceed- ings	8,000	

TOTAL:

\$847,700

II. Phase II.

A. Issues

1. Cost of construction
2. Depreciation
3. Cost of removal
4. Any other issues which may arise

B. Cost Projection (assumes this phase moves into discovery and substantial pre-hearing analysis during FY '78)

Expert Consultants		\$100,000
Wald, Harkrader & Ross		\$302,000
Lawyers - 2800 at an average of \$85 per hour	238,000	
Legal assistants - 1800 hours at \$30 per hour	54,000	
Expenses	10,000	
Donelan, Cleary, Wood & Maser		\$ 77,200
Lawyers - 900 hours at an average of \$68 per hour	61,200	
Legal assistants - 500 hours at \$25 per hour	12,500	
Expenses	3,500	

TOTAL: \$479,200

Fiscal Year 1979

Phase II.

Expert Consultants		\$300,000
Wald, Harkrader & Ross		\$439,000
Lawyers - 4400 hours at an average of \$85 per hour	374,000	
Legal assistants - 2000 at \$30 per hour	60,000	
Expenses	5,000	
Donelan, Cleary, Wood & Maser		\$308,200
Lawyers - 3600 hours at an average of \$68 per hour	244,800	
Legal assistants - 1200 hours at \$25 per hour	30,000	
Expenses	20,000	
Transcript of proceed- ing	13,400	
TOTAL:		\$1,047,200

Fiscal Year 1980

Phase II.

Expert Consultants		\$ 30,000
Wald, Harkrader & Ross		\$152,500
Lawyers - 1700 hours at an average of \$85 per hour	144,500	
Legal assistants - 200 hours at \$30 per hour	6,000	
Expenses	2,000	
Donelan, Cleary, Wood & Maser		\$ 89,100
Lawyers - 1200 hours at an average of \$68 per hour	81,600	
Expenses	7,500	
TOTAL:		\$271,600

Assumptions:

1. Consultants' expenses payable out of consultants' budget.
2. Expenses do not reflect costs of computer retrieval system which may be used in Phase II.
3. Hours projected assume only one level of briefing before the Federal Energy Regulatory Commission and do not cover any court proceedings.

MEMORANDUM

RECEIVED

AUG 10 1977

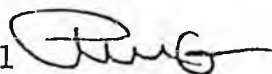
BUDGET & MANAGEMENT

to |

Ron Lind
Director
Budget and Management

DATE : August 8, 1977

FROM: Avrum M. Gross
Attorney General



SUBJECT: ICC Proceedings

Appended hereto is a copy of a letter I sent to Steve Cowper, Chairman of the House Finance Committee. I have sent an identical letter to John Sackett, head of Finance. The letters outline the fact that we will need a great deal more additional money to complete the ICC proceedings involving the Alyeska tariffs and, equally important, that I need their assurance that our request for a supplemental appropriation will be taken up immediately after the legislature convenes. Last session Sackett kept our supplemental appropriation in his committee until the last two or three days, partially because he wanted some hold on the administration and partially because they were considering adding Kay Hogan's "damages" to the appropriation bill.

I assume Wil has already brought this matter to your attention, but if he has not I wanted you to be aware of it as soon as possible. There is simply no option here-- if we want to participate in the proceedings we are going to have to spend a great deal of money. The results already testify to the effectiveness of that expenditure, but nonetheless it is one on which we have to achieve a legislative decision as soon as possible.

We can furnish you with any of the backup data you may need in analyzing our request. It would probably be helpful if we got together at some time on this specific budgetary item, because we are getting a much clearer picture now of how much will be required.

AMG:as
Enclosure

STATE OF ALASKA

JAY S. HAMMOND, GOVERNOR

DEPARTMENT OF LAW

OFFICE OF THE ATTORNEY GENERAL

POUCH K - STATE CAPITOL
JUNEAU 99811

August 5, 1977

The Honorable Steve Cowper
Alaska Representative
210 Nerland Building
Fairbanks, Alaska 99701

Dear Steve:

At the beginning of the next legislative session, I will bring to the legislature a request for a supplemental appropriation to this department to fund continued legal efforts before the ICC on pipeline tariffs. Because I can see this coming now and because the request will be substantial, I want to let you know about it as quickly as possible.

Thus far, adding up regular appropriations and supplemental appropriations, the department has received approximately \$385,000 to retain attorneys for the ICC proceedings. A substantial additional sum has been appropriated to the Alaska Pipeline Commission for investigation of costs incurred in pipeline construction. The funds for the Department of Law have been spent retaining a Washington, D. C. law firm, Donelan and Cleary. That firm has handled nearly all of the litigation to date, with the assistance of people in this office. As you know, the proceeding has been operating at two levels, the first being the investigation before the Alaska Pipeline Commission and the second being the presentation of the case before the ICC using information derived from the Alaska investigation. We have had at one time or another three attorneys assigned to the Pipeline Commission, since we have been constantly in court with Alyeska fighting over documents. To date, we have been very successful in combatting the efforts of the oil companies to withhold information from the investigation. We have also participated directly in the Washington proceedings and in related judicial proceedings which stem from the ICC decisions. For instance, Wil Condon and Rich Burnham of this office have been working constantly with Cleary's office preparing briefs, and I argued the appeal from the ICC decision to the 5th Circuit, which, as you probably know, resulted in a decision favorable to the state.

As we have gone along, it has become increasingly clear that we are in a mammoth proceeding, one that will take literally years and a great deal of money to complete. The oil companies are represented by more than eight law firms, all of which are going to make presentations before the ICC. The firms the companies have retained are some of the largest and the most prestigious in the country. To counter that effort, we have had to spend an increasing amount of time, and now it appears that we are going to require substantial additional funds. We originally thought that this hearing might take up to a year to complete. Now it is clear that only the first phase of the hearing may be done within a year and that we are going to be involved in a battle every inch of the way throughout that year and for the two or three years that follow, including numerous appeals to the courts. I estimate now that it is going to cost us an additional one to two million dollars in legal fees and fees for expert witnesses to adequately meet the arguments advanced by the oil companies.

The stakes, as you know, are enormous. We just were successful in having the ICC suspend tariffs originally filed by the companies for a period of seven months, the limit of the suspension power of the agency. That decision alone will result in perhaps 100 million dollars extra for the state treasury and it is only the tip of the iceberg. If we were to simply sustain the level of tariffs we have already achieved before the Commission, we would receive in excess of 120 million dollars per year additional over the entire length of the field, a total reaching into the billions of dollars. Unfortunately I was unable to take this case on a contingent fee basis. Be that as it may, the point I am trying to make here is that an expenditure of one million or two million extra dollars in legal costs is inconsequential in light of the money we will ultimately gain from the proceeding. The results to date should be evidence enough of that. Moreover, the money we spend, I venture to guess, will be but a minor share of that spent by our opponents in the proceeding.

Since the last legislative session, it has become clear that the one Washington firm we had retained is simply not sufficient to handle the tremendous volume of work generated by this case. I have made tentative arrangements to add a second firm--Wald, Harkrader and Ross--to the effort. Terry Lenzner of that firm has already been involved in the pipeline investigation, and their work is of top quality. We have received a preliminary budget from that firm and from John Cleary's firm which indicate that the

August 5, 1977

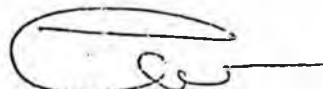
ultimate legal costs will be in excess of one million dollars for the two firms and for expert witnesses necessary to the presentation of the case. I have told both firms of the limits of our present legislative appropriation and I have cautioned them that until the legislature acts there is no way I can guarantee to them that there will be additional funds available to pay the legal costs. At the same time, I have assured them that I would take steps to see that at the commencement of the legislative session, the Governor would introduce a supplemental appropriation so that the legislature could make its decision as to whether it wanted to fund the effort further before we ran up substantial additional costs beyond the present appropriation.

I will have more complete information for you, including the estimates of the various firms, when you convene in January, or sooner if you desire. What I would like to ask you to do at this time is to give me an assurance that you will take up our request for an appropriation at the earliest possible time after the legislature convenes. If you do not want to fund the effort, so be it, but the one thing that we cannot afford is a state of uncertainty for four or five (or six or seven?) months. I can ask the firms to ride with us until January, but I cannot in good conscience ask them to sit out the entire legislative session for a decision on whether or not they will get paid. I frankly cannot conceive that you would not want to fund the effort, considering the results to date, but it is nonetheless your decision. I only would like to be able to assure the law firms that you will make that decision quickly in January.

I will be happy to send you any further information you desire prior to the session so that you can be fully briefed on this issue when the session opens. I really feel it is imperative that I be able to make a commitment of prompt action to the law firms involved, because I could not in good faith ask them to work without any guarantee of repayment beyond January. Last session the supplemental appropriation for the legal work did not clear the legislature until the closing days, and I simply wanted to try to avoid that if at all possible next session.

Thanks for your consideration.

Yours very truly,



Avrum M. Gross
Attorney General

STATE OF ALASKA

JAY S. HAMMOND, GOVERNOR

DEPARTMENT OF LAW

OFFICE OF THE ATTORNEY GENERAL

POUCH K - STATE CAPITOL
JUNEAU 99811

August 19, 1977

*Jan
file
future use*

The Honorable Jay S. Hammond
Governor
State of Alaska
Pouch A
Juneau, Alaska 99811

Re: Trans-Alaska Pipeline - Interstate
Commerce Commission Proceedings

Dear Governor Hammond:

As you know, on June 28, 1977, the Interstate Commerce Commission entered an order suspending the initial tariff filed by seven of the eight Trans-Alaska Pipeline System (TAPS) owners (Phillips Alaska Pipeline Corporation filed a tariff with a different effective date than that of the other seven owner companies and its tariff was therefore suspended by a subsequent order of the Commission separate from that which addressed the tariffs of the other seven owner companies.)

In addition to suspending the initial tariffs, the Commission's June 28 order stated the maximum tariffs based on the evidence submitted by the owners, that it would permit to go into effect pending final resolution of the tariff proceedings. The effect of the Commission's order was to reduce the initial TAPS tariffs by an overall average of \$1.35.

The owners subsequently appealed the Commission's order to the United States Court of Appeals in Houston, Texas. The issues raised by the appeal were (1) whether the Commission has the statutory authority to suspend the first tariffs filed by a carrier; and (2) whether the Commission has the statutory authority to indicate, without a full evidentiary proceeding, the maximum tariffs it will permit to go into effect prior to completion of the tariff case. Involved in the appeal were the eight owners and, on the other side, the State of Alaska, the Department of Justice, the Bureau of Investigations and Enforcement of the Interstate Commerce Commission and the Arctic Slope Regional

August 19, 1977

Corporation. I argued the State's case to the Court of Appeals and I was therefore very pleased when that court ruled in our favor on both issues, finding that the Commission has the authority to suspend first filed tariffs and the authority to indicate the maximum tariffs it will accept pending a full evidentiary proceeding.

The Commission's power to suspend initial tariffs is limited to seven months. At issue before the Commission at the moment is whether that seven month period begins to run from the effective date of the tariffs or from the date oil was first transported through TAPS. It is our position that the seven month period begins running on the latter date. If the Commission agrees, suspension of the TAPS tariffs will terminate in late February, 1978. Should the Commission rule in favor of using the effective date, the suspension period will end in late January.

Under the Interstate Commerce Commission Act, if the evidentiary proceedings with respect to the suspended tariffs are not completed by the end of the seven month suspension period, the tariffs now under suspension automatically, would go into effect pending the completion of the tariff proceedings and the issuance of a final order by the Commission setting permanent tariffs. Given the fact that completion of these proceedings is probably two years or more down the road, the possibility exists that the presently suspended tariffs will be in effect for much of the next two years.

In order to overcome that possibility, the State and the Department of Justice jointly proposed to the Commission that the TAPS tariff proceedings be conducted in two phases, a proposal which the administrative law judge responsible for the case has accepted. Phase I will address the issues which we believe can be resolved relatively quickly. Those issues include:

- (1) Whether the rate base will be a valuation rate base or an original cost less depreciation rate base;
- (2) the rate of return the owners are to be allowed;
- (3) treatment of taxes;
- (4) method of calculation of total revenue needed by the owners to meet their annual expenses.

August 19, 1977

At the conclusion of hearings on the issues to be addressed in Phase I, we will ask the Commission to set an interim tariff based on the results of Phase I.

Following the setting of an interim tariff, the legality of which we expect the carriers to challenge in court, the hearings will begin on Phase II. The issues to be addressed in Phase II will include:

- (1) Cost overruns, using the Lenzner report as the basis;
- (2) Depreciation (This issue will necessarily include a determination of the amount of recoverable reserves on the North Slope and in surrounding areas. The larger these reserves, the longer the depreciation of TAPS, and the lower the tariff.).

At the conclusion of the Phase II proceedings, the Commission will set the permanent tariff.

Under the hearing schedule for Phase I, established by order of the judge, the owners will present their case first, beginning October 12, 1977. The State and all others who protested the initial tariffs will be required to present their evidence beginning sometime in early December, 1977. According to the schedule, the submission of the evidence on the issues addressed in Phase I would be completed and those issues ready for a decision by the Commission sometime in March, 1978. I expect the owners will appeal this schedule to the full Commission any day and I would guess that we will get a decision of that appeal sometime prior to Labor Day.

One of a number of unknowns in the proceedings at this time is what effect President Carter's Department of Energy legislation, signed by the President on August 4, 1977, will have on these proceedings. This legislation provides that within 120 days from the effective date of the bill, all ICC oil pipeline jurisdiction is to be transferred to the newly-created Federal Energy Regulatory Commission, which is basically the old Federal Power Commission transferred to the Department of Energy. At this point, we really don't know what the effect of the transfer to the Department of Energy will be, nor are we sure at this point exactly when the transfer will take place, though an assistant to Secretary Schlesinger, at the American Bar Association convention last month, stated that he expected the transfer to be completed by October 1, 1977.

August 19, 1977

At the outset of the TAPS case, the State was represented by this office and by John Cleary of the Washington, D.C. law firm of Donelan, Cleary, Wood & Maser. Mr. Cleary has had extensive experience practicing before the ICC and I think our success to date confirms his ability. Recently I hired William Ross of the Washington, D.C. law firm of Wald, Harkrader and Ross to assist ourselves and Mr. Cleary. There are two reasons I did so. First, Mr. Ross's firm, of which Terry Lenzner is also a partner, is a larger firm than Mr. Cleary's and has the greater resources which will be necessary to present the TAPS case. Second, Mr. Ross has had extensive experience practicing before the Federal Power Commission. Given the impending transfer of the TAPS case to the Federal Energy Regulatory Commission of the Department of Energy and the fact that that Commission is essentially the old Federal Power Commission, I believe Mr. Ross's participation as co-counsel with Mr. Cleary will be extremely advantageous.

I expect at this time that the development and presentation of the State's TAPS case will cost a total of \$1.5 million to \$2 million, substantially higher than initially planned. The reason for the increase centers on the State's greatly increased chances of success. Initially, we were very pessimistic about the possibility of the ICC substantially reducing the owners' tariffs. The Commission's record has been one of almost rubber stamping carrier tariffs and therefore, though we did expect to have the tariffs reduced by some amount, we did not expect the reduction to be by more than a few cents, notwithstanding a major effort on behalf of the State.

Since proceedings before the Commission began, however, it has become evident that the Commission intends to use the TAPS case as the vehicle to completely rethink the issues relating to pipeline regulation. Our great success to date indicates that the Commission intends to decide the issues in this case far differently from in the past.

With the transfer of the case to the Department of Energy, we will be working with a clean slate. It will therefore be even more important for the State to acquire the services of the finest attorneys, economists and financial experts possible in order to assure that what is subsequently written on the slate is as favorable to Alaska as possible.

August 19, 1977

I realize that a figure of \$1.5 to \$2 million sounds like a tremendous amount for the presentation of a case, and in fact it is. Yet, that figure must be placed in perspective by comparing it to the amount of money Alaska may gain through the TAPS case. As you know, each penny the tariffs are reduced increases the State's revenue by about \$1 million a year. In other words, the \$1.35 reduction of the tariffs to date, if carried over one year, will mean an increase in revenues for Alaska of about \$135 million a year. If that reduction were to hold for the 25 years the owners say TAPS will be in operation, the ultimate gain to Alaska would be around \$3,375,000,000. Obviously, it is worth investing at least a couple of million dollars when we have a reasonable chance to gain so much.

Yours very truly,



Avrum M. Gross
Attorney General

AMG:RFB:jec

STATE OF ALASKA

DEPARTMENT OF LAW

OFFICE OF THE ATTORNEY GENERAL

POUCH K - STATE CAPITOL
JUNEAU 99811

RECEIVED

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JAY BUDGEN & MANAGEMENT

October 24, 1977

The Honorable J.S. Hammond
Governor
State of Alaska
Pouch A
Juneau, Alaska 99811

Dear Governor Hammond:

The beginning of the hearings on the Trans-Alaska Pipeline System (TAPS) tariffs is fast approaching with the carriers required to file their testimony on November 30, 1977 and hearings for the cross-examination of carrier witnesses to begin on January 10, 1978. Many of the uncertainties which previously existed have been eliminated and we feel we are now in a position to present to you a reasonably accurate estimate of the cost of presenting the State's case.

Our best estimate is that the total cost of presenting the remainder of the State's case will be \$2.3 million. A breakdown of expenses is contained in the attached schedule. Those funds should be appropriated as continuing fund special appropriations in the amounts of \$953,284 for FY 78, \$1,047,000 for FY 79 and \$271,600 for FY 80.

We are well aware that the estimated cost is very substantial. But, as noted in my letter to you of August 19, 1977, the stakes in the TAPS case are enormous. The difference between our previous cost estimate and the \$2.3 million figure is mostly attributable to two factors. First, we did not initially plan to engage the services of a second Washington D.C. law firm (Wald, Harkrader & Ross). Our need for a law firm with extensive resources and expertise in managing cases of the magnitude of TAPS, however, made the hiring of a second law firm necessary. Because Terry Lenzner of Wald, Harkrader & Ross conducted the investigation of TAPS cost overruns for the Alaska Pipeline Commission, that firm was the logical choice.

The Honorable J.S. Hammond
Governor
October 24, 1977
Page 2

A second factor which has increased our estimate is the extensive amount of litigation which the TAPS case has engendered to date. Simultaneously with the proceeding before the Interstate Commerce Commission, and now before the Federal Energy Regulatory Commission, we have had to respond to suits by the carriers in three different Courts of Appeals and in the United States Supreme Court. The Supreme Court's recent grant of a stay of the ICC's suspension order pending a decision by the Court as to whether it will hear the merits of the carriers' appeals indicates litigation will continue to constitute a substantial portion of the costs of the TAPS case.

I think it is fair to say that given the billions of dollars involved in the TAPS case, the carriers have decided that it is worth it for them to litigate to the fullest every issue on which there is any doubt. Unless the State is willing to meet them with a similar attitude, the carriers may ultimately prevail on an issue worth multi-billions of dollars simply because we don't make an adequate effort. We have prevailed on nearly every issue to date against the biggest oil companies and law firms in the world, and I don't want to see us lose in the end through lack of commitment.

Sincerely,

Avrum H. Gross
Attorney General

RMB:syh

cc: Ron Lind
Kent Dawson

SUMMARY OF PROJECTION OF COSTS TO STATE
OF TAPS INTERSTATE TARIFF PROCEEDINGS

TOTALS

Legal fees		\$1,901,300
Expert consultants		.685,000
Expenses		68,000
Transcript of proceedings		<u>21,400</u>
	Sub-Total:	\$2,675,700
Less funds available for TAPS case		<u>-368,616</u>
	TOTAL:	<u><u>\$2,307,084</u></u>

PROJECTION OF COST TO STATE
OF TAPS INTERSTATE TARIFF PROCEEDINGS

Fiscal Year 1978

I. Phase I.

A. Issues

1. Rate base
2. Rate of return
3. Treatment of taxes
4. Method of calculating total revenue

B. Cost Projection (assumes Phase I will be completed during FY '78)

Expert Consultants		\$225,000
Wald, Harkrader & Ross		\$338,500
Lawyers - 3500 hours at an average of \$85 per hour	297,500	
Legal assistants - 1200 hours at \$30 per hour	36,000	
Expenses	5,000	
Donelan, Cleary, Wood & Maser		\$284,200
Lawyers - 3400 hours at an average of \$68 per hour	231,200	
Legal assistants - 1200 hours at \$25 per hour	30,000	
Expenses	15,000	
Transcript of proceed- ings	8,000	

TOTAL:

\$847,700

II. Phase II.

A. Issues

1. Cost of construction
2. Depreciation
3. Cost of removal
4. Any other issues which may arise

B. Cost Projection (assumes this phase moves into discovery and substantial pre-hearing analysis during FY '78)

Expert Consultants		\$100,000
Wald, Harkrader & Ross		\$302,000
Lawyers - 2800 at an average of \$85 per hour	238,000	
Legal assistants - 1800 hours at \$30 per hour	54,000	
Expenses	10,000	
Donelan, Cleary, Wood & Maser		\$ 77,200
Lawyers - 900 hours at an average of \$68 per hour	61,200	
Legal assistants - 500 hours at \$25 per hour	12,500	
Expenses	3,500	
TOTAL:		\$479,200

Fiscal Year 1979

Phase II.

Expert Consultants		\$300,000
Wald, Harkrader & Ross		\$439,000
Lawyers - 4400 hours at an average of \$85 per hour	374,000	
Legal assistants - 2000 at \$30 per hour	60,000	
Expenses	5,000	
Donelan, Cleary, Wood & Maser		\$308,200
Lawyers - 3600 hours at an average of \$68 per hour	244,800	
Legal assistants - 1200 hours at \$25 per hour	30,000	
Expenses	20,000	
Transcript of proceed- ing	13,400	
TOTAL:		\$1,047,200

Fiscal Year 1980

Phase II.

Expert Consultants		\$ 30,000
Wald, Harkrader & Ross		\$152,500
Lawyers - 1700 hours at an average of \$85 per hour	144,500	
Legal assistants - 200 hours at \$30 per hour	6,000	
Expenses	2,000	
Donelan, Cleary, Wood & Maser		\$ 89,100
Lawyers - 1200 hours at an average of \$68 per hour	81,600	
Expenses	7,500	
TOTAL:		\$271,600

Assumptions:

1. Consultants' expenses payable out of consultants' budget.
2. Expenses do not reflect costs of computer retrieval system which may be used in Phase II.
3. Hours projected assume only one level of briefing before the Federal Energy Regulatory Commission and do not cover any court proceedings.

STATE
of ALASKA

MEMORANDUM


HB 648

TO: [The Honorable Steve Cowper
Chairman
House Finance Committee
and
The Honorable John Sackett.
Chairman
Senate Finance Committee

DATE: January 19, 1978

FILE NO:

TELEPHONE NO:

FROM: Avrum M. Gross 
Attorney General

SUBJECT: TAPS Interstate
Tariff Proceedings

Attached is a summary of our activities to date on the TAPS interstate tariff proceedings, including a breakdown of the funds needed to complete the effort. The special appropriation in excess of \$900,000 presently before the House Finance Committee is derived by taking the estimated legal expenses for FY 78 (\$1,352,500) and subtracting from it the monies already appropriated to this department (\$368,616) for use.

I will be available at the House Finance Committee to answer any questions the committee may have tomorrow, but I wanted you to have as complete a background as possible.

AMG:as
Attachment

PROPOSED BUDGET FOR TAPS
INTERSTATE TARIFF PROCEEDINGS

In July, 1977, North Slope oil began to flow into the Trans Alaska Pipeline System ("TAPS"). The State's tax and royalty payment receipts from North Slope oil production vary inversely with the tariffs charged by the TAPS owners^{1/} to transport the oil to Valdez. In other words, the higher the tariff, the lower the receipts to the State. After review of the tariffs filed by the TAPS owners, and consultation with regulatory counsel and technical experts, the Department of Law concluded that the tariffs are excessive and will unreasonably deprive the State of funds which it vitally needs. Tariffs from the interstate pipeline transportation of oil -- which constitutes most of the TAPS transportation -- are subject

1/ The present percentage ownership interests are as follows:

<u>Party</u>	<u>Percentage of Ownership</u>	<u>Design Capacity (Bbls./Day)</u>
ARCO	21.00%	252,000
Sohio	33.34	400,080
Exxon	20.00	240,000
Amerada Hess	1.50	18,000
Mobil	5.00	60,000
Phillips	1.66	19,920
Union	1.66	19,920
BP	<u>15.84</u>	<u>190,080</u>
TOTAL	100.00%	1,200,000

to exclusive federal regulatory jurisdiction.^{2/} The Department has therefore been participating in several federal court and administrative proceedings in an effort to secure a reduction of the filed TAPS tariffs.

The Department's efforts to reduce the interstate TAPS tariffs have proceeded on two principal fronts. First, the Department has filed and pursued protests and related court proceedings seeking, in effect, to have the filed rates suspended and reduced as clearly excessive on their face. Second, the Department has become a party to federal administrative proceedings established to investigate the reasonableness of the filed tariffs. A summary of the Department's activities on the State's behalf on these two fronts reflects the magnitude of the effort that has been expended to date and the extent to which resources must be committed in order to continue to pursue the State's best interests in these matters.

A. Activities to Date

Between May 31, 1977 and June 20, 1977 the eight TAPS owners filed initial tariffs for the transportation of crude oil through TAPS. On June 15, 1977, the State of Alaska, as well as the Department of Justice, the Bureau of Investigations

^{2/} Intrastate tariffs are subject to the jurisdiction of the Alaska Pipeline Commission. Proceedings are currently underway in that forum with regard to the intrastate tariffs filed by the TAPS carriers.

and Enforcement of the ICC, and the Arctic Slope Regional Corporation filed protests seeking the suspension of the initially filed tariff rates and an investigation of their lawfulness.^{3/}

On June 28, 1977, following a full day of oral argument in which the State's counsel participated, the ICC suspended the proposed rates for the seven month statutory period, without prejudice to the filing of interim rates upon not less than one day's notice, and set forth maximum interim rate levels which would meet the Commission's standard of reasonableness.^{4/} The Commission placed both the proposed tariffs and any subsequent tariffs filed during the seven month period under investigation. Any interim tariffs filed were required to contain a refund provision. Thus, if such interim rates subsequently were found to be excessive, the carriers would be required to refund the excess plus interest. A similar refund provision was made applicable to the original proposed rates.

^{3/} Protest And Petitions for Suspension by the United States Department of Justice, June 15, 1977; Protest/Complaint of The State of Alaska Seeking the Suspension and Investigation of Initial Rates and Tariff Provisions, June 15, 1977; Protest and Petition of The Bureau of Investigations and Enforcement for Suspension and Investigation, June 15, 1977; Protest and Petition for Suspension of Initial Rates and Tariffs, by the Arctic Slope Regional Corporation, June 13, 1977.

^{4/} Order of the Interstate Commerce Commission in Investigation and Suspension Docket No. 9164, Trans Alaska Pipeline System (Rate Filings) and No. 36611, Trans Alaska Pipeline System (Rules and Regulations), June 28, 1977.

Some of the carriers sought judicial review of the Commission's decision in the U.S. Court of Appeals for the Fifth Circuit.^{5/} Following oral argument, in which Attorney General Gross participated, the Court dismissed the appeal.^{6/} It held that the ICC had the authority to suspend an initial rate, that the Commission's suggestion of maximum interim rate levels was permissible, and that a refund provision was permissible. It concluded, therefore, that the Commission had acted lawfully.

Several carriers then filed motions in the Supreme Court for a stay of the Fifth Circuit decision.^{7/} Four of

^{5/} Mobil Alaska Pipeline Co. v. United States, No. 77-2392, (July 6, 1977); BP Pipelines, Inc. v. United States, No. 77-2412 (July 8, 1977); Exxon Pipeline Co. v. United States, No. 77-2421 (July 11, 1977); ARCO Pipe Line Co. v. United States, No. 77-2437 (July 14, 1977). In No. 77-2392, Sohio Pipe Line Company, Amerada Hess Pipeline Corporation, and Union Alaska Pipeline Company were intervening petitioners while the State of Alaska and the Arctic Slope Regional Corporation were intervening respondents. In No. 77-2421, Union Alaska was an intervening petitioner. In No. 77-2437, the State of Alaska was an intervening respondent. Phillips Alaska Pipeline Corporation sought judicial review in the District of Columbia Circuit.

^{6/} Mobil Alaska Pipeline Co. v. United States, 557 F.2d 775 (1977).

^{7/} Mobil Alaska Pipeline Co. v. United States, No. 77-452 (Sept. 21, 1977); Exxon Pipeline Co. v. United States, No. 77-457 (Sept. 22, 1977); BP Pipelines, Inc. v. United States, No. 77-551 (Oct. 12, 1977).

the carriers also filed petitions for writs of certiorari.^{8/}
On October 20, 1977, the Court granted a stay^{9/} and further
explained the stay in an Order dated November 14, 1977.^{10/}

The stay was conditioned upon petitioner's agreement to keep account of the amounts collected under the proposed rates and to refund, with interest, any portion of the amounts collected if it were to be ultimately determined that the carriers were not lawfully entitled to collect those amounts. On November 28, 1977, the Supreme Court granted the certiorari petitions and consolidated the cases. The State will participate actively in the briefing and argument of these cases.

The Court is expected to hear and resolve the cases by July, 1978. If the State's position is sustained, the tariffs will be reduced retroactively by an average of \$1.35 per barrel over a period of about four months. This would result

^{8/} Id.; see also ARCO Pipe Line Co. v. United States, No. 77-602 (Oct. 25, 1977).

^{9/} Order of October 20, 1977 in Mobil Alaska Pipeline Co. v. United States, No. 77-452; Exxon Pipeline Co. v. United States, No. 77-457; BP Pipelines, Inc. v. United States, No. 77-551, 46 U.S.L.W. 3289 (U.S. Nov. 1, 1977). ARCO filed its Motion for Stay on October 21, 1977. See Application for Stay of Order, ARCO Pipe Line Co. v. United States, No. 77-602 (Oct. 21, 1977).

^{10/} Order of November 14, 1977 in Mobil Alaska Pipeline Co. v. United States, No. 77-452; Exxon Pipeline Co. v. United States, No. 77-457; BP Pipelines, Inc. v. United States, No. 77-551; ARCO Pipe Line Co. v. United States, No. 77-602, 46 U.S.L.W. 3321 (U.S. Nov. 15, 1977).

in increased revenues to the State of about \$25 million for that period. However, even if the State does not prevail in the Supreme Court case, the rates may be retroactively reduced as a result of the administrative investigation which the Interstate Commerce Commission initiated on July 7, 1977. If found unreasonable, the tariffs would be reduced to a reasonable level and refunds made for the excess amounts charged to date since TAPS oil began to flow. For example, a finding by FERC that rates in excess of \$4.00 per barrel are unreasonable would produce additional State revenues of about \$200 million per year.

The Commission initially assigned the TAPS tariff investigation to Administrative Law Judge Robert Glennon. After the first prehearing conference, Judge Glennon requested that all parties submit memoranda on the issues to be heard and procedures to be followed. On August 8, 1977 the State of Alaska and the Department of Justice submitted a joint memorandum asserting that a complete record on the proper method for determining a rate base must be developed in this proceeding.^{11/} The State and the Justice Department also proposed that the proceeding be phased because of its expected

^{11/} Joint Memorandum of the State of Alaska and the United States Department of Justice On The Issues And Procedures, Trans Alaska Pipeline System (Rate Filing): Investigation and Suspension Docket No. 9164, Trans Alaska Pipeline System (Rules and Regulations), Dkt. No. 36611, submitted August 8, 1972.

length and complexity, and requested that the carriers be required to go forward with their evidence in the first phase of the case. The TAPS carriers opposed these proposals.

After another prehearing conference, Judge Glennon issued his rulings on August 16, 1977.^{12/} He accepted the State's argument that the protesting parties should not be precluded from presenting facts or arguments intended to establish the validity of a rate base other than one proposed by the carriers. As the Judge concluded, "to allow these proceedings to be 'open' on the issue of rate of return, while 'closed' on rate base, would be an irrational, impermissible inconsistency." (Prehearing Order at 7).

Judge Glennon also adopted the phasing proposal of the State of Alaska and Department of Justice and ruled that the Commission has the authority to issue an interim rate order before concluding its full hearing on every issue presented in the case. He concluded that "the issues [are] sufficiently distinct and separable that a separate trial may be held without injustice." (Prehearing Order at 12). He therefore ruled that the proceedings would be phased as follows (Prehearing Order at 16):

^{12/} Report and Order on Prehearing Conference, Investigation and Suspension, Dkt. No. 9164, et al., Trans Alaska Pipeline System, August 16, 1977 [hereinafter cited as "Prehearing Order"].

a. Phase I. The issues of rate base, rate of return, treatment of taxes, and method of calculating total revenue will be adjudicated in Phase I. For the purposes of Phase I, protestants will not challenge the amounts claimed by respondents for construction or operating costs, depreciation charges, and removal costs.

b. Phase II. Questions concerning the allowable nature of TAPS expenditures as prudent investment, depreciation charges, removal costs, and all other issues not adjudicated in Phase I will be decided in Phase II.

On October 1, 1977, pursuant to the provisions of the Department of Energy Organization Act, Pub. Law 95-91, 91 Stat. 565, and Executive Order No. 12009, 42 Fed. Reg. 46267 (September 15, 1977), the functions and regulatory responsibilities of the Interstate Commerce Commission with respect to the establishment of rates and valuations for oil pipelines were transferred to the Federal Energy Regulatory Commission ("FERC"). Under the savings provision in Section 705(a) of the Act, the TAPS tariff proceeding will continue to be governed by the Interstate Commerce Commission's Rules and Regulations as promulgated in Title 49, Code of Federal Regulations, unless and until new regulations are promulgated. Thus, the issues in the TAPS proceeding were not substantively or procedurally affected by the transfer. However, the transfer did result in assignment of a new Administrative Law Judge, Max L. Kane, to preside at the proceeding. Judge Kane was one of the senior administrative law judges at the Federal Power Commission prior to the transfer of that Commission's duties to FERC.

B. The State's Future Role in the
TAPS Proceedings

The Department believes that the State of Alaska should continue to vigorously pursue the issues it has raised before the Supreme Court and the Federal Energy Regulatory Commission. The State has a very large stake in the outcome of these proceedings. A reduction of one cent in the tariff filed by the carriers (which varied between \$6.04 and \$6.44 per barrel) means additional revenue of \$876,000 each year to the State because, as noted above, the State's tax and royalty interest receipts from TAPS production vary inversely with the size of the tariffs. As previously noted, the Interstate Commerce Commission has already indicated that the tariffs are excessive by at least \$1.35 per barrel.

Furthermore, in our judgment, it would be highly imprudent for the State to rely on the FERC staff or the Department of Justice to protect its interests, given the amounts at stake. While the FERC staff has not thus far taken issue with the State's position, its own case is at an early stage of development, and it is by no means certain that it will ultimately support the State on critical issues involving fair rate of return or cost disallowance. The interests of the Department of Justice in the proceeding are quite different from the State, involving rate setting principles and their views on competition, generally. Thus, the Justice Department cannot be relied upon to protect the State's financial interest in its taxes and royalties.

Although the legal issues currently before the Supreme Court are likely to be resolved within the next six months, the FERC proceeding promises to be much more complex and time-consuming. For example, the Department has concluded that the State should pursue the following factual and legal issues in Phase I of the FERC proceeding:

a. Whether TAPS should be regulated separately from other pipeline interests of the Owners.

b. Whether the use of a valuation rate base including reproduction costs new in determining pipeline rates is legally or economically justified:

1. whether the Congressional intent underlying inclusion of reproduction cost in the Section 19(a) valuation supports its continued use;

2. whether including reproduction cost as an element of the rate base is judicially favored;

3. whether most state and federal regulatory agencies have rejected the use of any element of reproduction cost in the rate base and have adopted an original cost less depreciation or similar standard;

4. whether the use of reproduction cost in the rate base produces arbitrary and unreasonable results and permits pipelines to recover almost two-fold for inflation;

5. whether the results of the use of condition percent are an additional reason for rejecting the Section 19(a) valuation as a rate base;

6. whether the use of a percentage additive for "going concern" value in the single sum valuation is an additional reason for rejecting the Section 19(a) valuation as a rate base; and

7. whether an original cost less depreciation rate base should be adopted.

c. Whether the TAPS rates should be determined in accordance with proper ratemaking principles:

1. whether the TAPS carriers are entitled to only a reasonable rate of return on an original cost rate base commensurate with the real risks of the enterprise;

2. whether for purposes of determining the appropriate rate of return, the Commission should employ either the actual capital structure of the carriers, or a hypothetical capitalization which reflects the financial and business risks of TAPS; and

3. whether if a valuation rate base is adopted, the rate of return should be adjusted accordingly.

d. Whether the TAPS tariffs properly reflect the treatment of taxes and the financial consequences of tax related investment incentives.

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expenditures in constructing the project. However, a report to the Alaska Pipeline Commission by its Special Counsel, Terry F. Lenzner, concluded that TAPS construction costs were excessive by at least \$1.5 billion (out of a total of \$8 billion).

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As the foregoing makes clear, the State has a very large stake in the outcome of very complex and time-consuming proceedings. The issues raised -- particularly in the FERC proceeding -- are numerous, highly specialized, novel, and require broad legal and economic expertise for adequate treatment. The Department recognizes that the State cannot hope to match the seemingly unlimited legal and consulting resources that the TAPS carriers have devoted to the proceeding. By the same token, however, merely sending observers to the proceeding or filing occasional pleadings is unlikely to have any impact at all on the outcome of the case.

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The law firms appearing on the State's behalf are Donelan & Cleary and Wald, Harkrader & Ross. These firms have extensive experience in regulatory matters and have worked closely in representing the State in the administrative and judicial proceedings involving TAPS. The lead counsel in

these matters have been John M. Cleary, William Warfield Ross and Terry F. Lenzner. A brief description of their background and experience follows.

a. John M. Cleary. Mr. Cleary is a partner in Donelan, Cleary, Wood & Maser, a law firm of seven attorneys. He was born in Evanston, Illinois, in 1931 and received his law degree from Georgetown University in 1957, where he was a member of the law journal. Following graduation, he joined the firm of Pope, Ballard & Loos and became a partner of that firm in 1962. In 1966, he became a founding member of his present firm. During his 20 years of practice, Mr. Cleary has participated in numerous proceedings before the Interstate Commerce Commission as counsel to shipper-prottestants. Among the proceedings have been the ICC's oil pipeline tariff rule-making proceeding (Ex Parte No. 308) and the Williams Brothers case, the first ICC case involving an oil pipeline to be litigated before the Commission since the 1940's. See Petroleum Products, Williams Bros. Pipeline Co., 355 I.C.C. 479 (1976) (appeal pending, D.C. Cir.).

Mr. Cleary is the past president of the Association of Interstate Commerce Commission Practitioners and is a member of the District of Columbia Bar.

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law and procedure legislation. He is currently serving as Chairman-Elect of the Administrative Law Section of the American Bar Association.

c. Terry F. Lenzner. Mr. Lenzner is a partner in Wald, Harkrader & Ross where his practice principally involves matters before the federal courts, administrative agencies and the U.S. Congress. After receiving his undergraduate and law degrees from Harvard University, he served for the next ten years in a number of important government positions. He initially served in the U.S. Department of Justice as a trial attorney and three years later he became Assistant United States Attorney in the organized crime unit of the southern New York district office. In 1969, he became director of the Legal Services Office of the Office of Economic Opportunity and, in that capacity, was responsible for supervision of all federally-funded legal service programs. After a short stint in private practice, he was appointed Assistant Chief Counsel of the Senate Select Committee on Presidential Campaign activities, popularly known as the "Watergate Committee."

Mr. Lenzner returned to private practice in 1974. His practice includes representation of the Cook Inlet Region, Inc. and the Alaska Pipeline Commission (APC), which he served as Special Counsel until August, 1977. As Special Counsel to the APC, Mr. Lenzner conducted an extensive investigation into

the excessive cost overruns in constructing the TAPS project. The results of that investigation were compiled in an 800-page report submitted to the APC last August.

In addition to legal expertise, it has been necessary to retain the services of a number of accounting, financial and engineering consultants to appear on the State's behalf in the FERC proceedings. These consultants include the following:

a. Technical Associates, Inc. This is an economics research and consulting firm with offices in Richmond, Virginia and Washington, D.C. The Department has retained its President, Dr. Michael J. Ileo, and other members of his firm who have extensive experience in public utility transportation and monetary economics and have frequently appeared as witnesses in federal and state rate regulatory proceedings. Dr. Ileo holds a PhD. in economics from Virginia Polytechnic Institute and has published several articles on utility and banking regulation.

b. VHS Associates, Inc. This is a California firm which provides construction management and engineering consulting services. The projects with which they have been associated include pipelines, marine terminals and harbors and oil processing facilities. The principal participant in the TAPS proceeding is VHS Vice President Egon K. Ellgaard, who has 20 years

construction management and staff experience. Mr. Ellgaard is a civil engineer and professional estimator, having received a MSCE degree from Stanford University in 1961. Recently, he has served as project manager for a federally-funded evaluation of alternative routes for transporting Prudhoe Bay natural gas to the lower forty-eight and served as a consultant to the Special Counsel of the Alaska Pipeline Commission in the TAPS construction overrun investigation.

c. Charles F. Phillips, Jr. Dr. Phillips is a professor of economics at Washington and Lee University and is an expert in the regulation of transportation and public utility industries. Among Dr. Phillips' many publications is The Economics of Regulation, recognized as a leading treatise in the area. He received his PhD. in economics from Harvard University in 1960 and during the last twenty years has frequently appeared as an expert witness before federal and state regulatory commissions.

d. Financial Management Associates. This consulting firm, located in Overton Park, Kansas, specializes in financial requirements of public utilities, particularly revenue requirements, rate design and rate of return issues. Members of the firm have been involved in numerous regulatory proceedings, including those before the Federal Power Commission and the Interstate Commerce Commission. The member of the firm primarily assigned to the TAPS case is John C. Dunn,

an economist who served as the Chief of the Department of Economic Research of the Missouri Public Service Commission prior to becoming an independent consultant.

e. Larkin, Chapski & Co. This is a certified public accounting firm registered to practice in Michigan, which has a combined practice of public accounting and utility regulation and consulting. In the area of utility regulation and consulting, the firm has participated in numerous rate cases before the Michigan Public Service Commission and in other jurisdictions. In addition, from April 1975 to March 1976, the firm contracted with the Michigan House of Representatives as Technical Staff Director of a Special House Committee to study and evaluate the effectiveness of the Michigan Public Service Commission and the rates and services of public utilities. Its reports to that Committee were adopted by the Committee in virtually all material reports in its final report and recommendation, and served as a basis of numerous bills introduced in 1976 and 1977 sessions of the Legislature. Messrs. Larkin and Chapski are providing assistance to the State primarily in the area of tax accounting.

D. Budget Requirements

To effectively participate in complex federal proceedings, and to retain the requisite expert assistance, is not inexpensive. The Department has developed and attached

hereto as Appendix A what it believes to be a minimum budget for effective participation by the State in the FERC proceedings. The budget contemplates total legal and consultant fees of \$2,662,900 spread over three fiscal years.^{13/} For each fiscal year, the expenses are divided by consultants and the two law firms. The contemplated fees and expenses of the law firms are further subdivided by the nature of the expenditure.

While an expenditure of \$2.6 million seems high, it will be dwarfed by the amounts spent by the eight TAPS owners in defense of their filed rates. It is also small in comparison with the billions of dollars which are at stake to the State in the proceeding. Viewed another way, the State will recoup its expenses in one year if FERC lowers the filed tariffs by only three cents per barrel from the proposed tariffs in excess of \$6.00. In this regard, it should be noted that the law firms and the consultants will be compensated in accordance with hourly fees which the Department negotiates with them, not on a contingent fee basis. Therefore, our expenses will not be subject to upward revision in the event that the State's challenges to the TAPS tariff are sustained.

In sum, the Department recommends that the State continue to participate in the FERC proceedings to investigate

^{13/} This budget was prepared using 1977 dollars so that projected expenditures for the second and third fiscal years would have to be adjusted upward to account for inflation.

the TAPS tariffs and believes that its proposed budget represents the minimum expenditure necessary for effective participation on the State's behalf.

APPENDIX A

TOTAL OVER 3 FISCAL YEARS \$2,662,900

1. Fiscal Year ending 6/30/78

Total: First Fiscal Year \$1,352,500

Phase I (assumes this phase continues through briefing stage in this fiscal year)

Engineering Consultant \$ 25,000

Other Consultants 230,000

Wald, Harkrader & Ross ("WH&R"):

Lawyers 297,500

Legal Assistants 36,000

Expenses 5,000

Donelan, Cleary, Wood & Maser ("DCW&M"):

Lawyers 221,000

Legal Assistants 36,000

Other Expenses 15,000

Transcript 8,000

Phase II (assumes this phase moves forward actively into discovery and substantial prehearing analysis this fiscal year)

Consultants \$ 100,000

WH&R:

Lawyers 238,000

Legal Assistants 54,000

Expenses 10,000

Donelan & Cleary:

Lawyers	\$ 58,500
Legal Assistants.	15,000
Expenses.	3,500

2. Fiscal Year ending 6/30/79

Total: Second Fiscal Year. \$1,042,400

Phase II

Consultants \$ 300,000

WH&R:

Lawyers	374,000
Legal Assistants.	60,000
Expenses.	5,000

DCW&M:

Lawyers	234,000
Legal Assistants.	36,000
Other Expenses.	20,000
Transcripts	13,400

3. Fiscal Year ending 6/30/80

Total: Third Fiscal Year \$ 268,000

Phase II

Consultants \$ 30,000

WH&R:

Lawyers	\$ 144,500
Legal Assistants.	6,000
Expenses.	2,000

DCW&M:

Lawyers	78,000
Expenses.	7,500

Assumptions:

- (1) Transcript costs and major document duplicating and printing costs payable out of Donelan & Cleary budget.
- (2) Consultants' expenses payable out of consultants' budget.
- (3) Expenses do not reflect use of computer systems.
- (4) The hours projected in both phases assume only one level of briefing before FERC, and do not cover court proceedings.
- (5) Second and third fiscal year budgets are estimates, in 1977 dollars, and are not adjusted for inflationary cost increases.

PROPOSED BUDGET FOR TAPS
INTERSTATE TARIFF PROCEEDINGS

In July, 1977, North Slope oil began to flow into the Trans Alaska Pipeline System ("TAPS"). The State's tax and royalty payment receipts from North Slope oil production vary inversely with the tariffs charged by the TAPS owners^{1/} to transport the oil to Valdez. In other words, the higher the tariff, the lower the receipts to the State. After review of the tariffs filed by the TAPS owners, and consultation with regulatory counsel and technical experts, the Department of Law concluded that the tariffs are excessive and will unreasonably deprive the State of funds which it vitally needs. Tariffs from the interstate pipeline transportation of oil -- which constitutes most of the TAPS transportation -- are subject

1/ The present percentage ownership interests are as follows:

<u>Party</u>	<u>Percentage of Ownership</u>	<u>Design Capacity (Bbls./Day)</u>
ARCO	21.00%	252,000
Sohio	33.34	400,080
Exxon	20.00	240,000
Amerada Hess	1.50	18,000
Mobil	5.00	60,000
Phillips	1.66	19,920
Union	1.66	19,920
BP	<u>15.84</u>	<u>190,080</u>
TOTAL	100.00%	1,200,000

to exclusive federal regulatory jurisdiction.^{2/} The Department has therefore been participating in several federal court and administrative proceedings in an effort to secure a reduction of the filed TAPS tariffs.

The Department's efforts to reduce the interstate TAPS tariffs have proceeded on two principal fronts. First, the Department has filed and pursued protests and related court proceedings seeking, in effect, to have the filed rates suspended and reduced as clearly excessive on their face. Second, the Department has become a party to federal administrative proceedings established to investigate the reasonableness of the filed tariffs. A summary of the Department's activities on the State's behalf on these two fronts reflects the magnitude of the effort that has been expended to date and the extent to which resources must be committed in order to continue to pursue the State's best interests in these matters.

A. Activities to Date

Between May 31, 1977 and June 20, 1977 the eight TAPS owners filed initial tariffs for the transportation of crude oil through TAPS. On June 15, 1977, the State of Alaska, as well as the Department of Justice, the Bureau of Investigations

^{2/} Intrastate tariffs are subject to the jurisdiction of the Alaska Pipeline Commission. Proceedings are currently underway in that forum with regard to the intrastate tariffs filed by the TAPS carriers.

and Enforcement of the ICC, and the Arctic Slope Regional Corporation filed protests seeking the suspension of the initially filed tariff rates and an investigation of their lawfulness.^{3/}

On June 28, 1977, following a full day of oral argument in which the State's counsel participated, the ICC suspended the proposed rates for the seven month statutory period, without prejudice to the filing of interim rates upon not less than one day's notice, and set forth maximum interim rate levels which would meet the Commission's standard of reasonableness.^{4/} The Commission placed both the proposed tariffs and any subsequent tariffs filed during the seven month period under investigation. Any interim tariffs filed were required to contain a refund provision. Thus, if such interim rates subsequently were found to be excessive, the carriers would be required to refund the excess plus interest. A similar refund provision was made applicable to the original proposed rates.

^{3/} Protest And Petitions for Suspension by the United States Department of Justice, June 15, 1977; Protest/Complaint of The State of Alaska Seeking the Suspension and Investigation of Initial Rates and Tariff Provisions, June 15, 1977; Protest and Petition of The Bureau of Investigations and Enforcement for Suspension and Investigation, June 15, 1977; Protest and Petition for Suspension of Initial Rates and Tariffs, by the Arctic Slope Regional Corporation, June 13, 1977.

^{4/} Order of the Interstate Commerce Commission in Investigation and Suspension Docket No. 9164, Trans Alaska Pipeline System (Rate Filings) and No. 36611, Trans Alaska Pipeline System (Rules and Regulations), June 28, 1977.

Some of the carriers sought judicial review of the Commission's decision in the U.S. Court of Appeals for the Fifth Circuit.^{5/} Following oral argument, in which Attorney General Gross participated, the Court dismissed the appeal.^{6/} It held that the ICC had the authority to suspend an initial rate, that the Commission's suggestion of maximum interim rate levels was permissible, and that a refund provision was permissible. It concluded, therefore, that the Commission had acted lawfully.

Several carriers then filed motions in the Supreme Court for a stay of the Fifth Circuit decision.^{7/} Four of

^{5/} Mobil Alaska Pipeline Co. v. United States, No. 77-2392, (July 6, 1977); BP Pipelines, Inc. v. United States, No. 77-2412 (July 8, 1977); Exxon Pipeline Co. v. United States, No. 77-2421 (July 11, 1977); ARCO Pipe Line Co. v. United States, No. 77-2437 (July 14, 1977). In No. 77-2392, Sohio Pipe Line Company, Amerada Hess Pipeline Corporation, and Union Alaska Pipeline Company were intervening petitioners while the State of Alaska and the Arctic Slope Regional Corporation were intervening respondents. In No. 77-2421, Union Alaska was an intervening petitioner. In No. 77-2437, the State of Alaska was an intervening respondent. Phillips Alaska Pipeline Corporation sought judicial review in the District of Columbia Circuit.

^{6/} Mobil Alaska Pipeline Co. v. United States, 557 F.2d 775 (1977).

^{7/} Mobil Alaska Pipeline Co. v. United States, No. 77-452 (Sept. 21, 1977); Exxon Pipeline Co. v. United States, No. 77-457 (Sept. 22, 1977); BP Pipelines, Inc. v. United States, No. 77-551 (Oct. 12, 1977).

the carriers also filed petitions for writs of certiorari.^{8/}
On October 20, 1977, the Court granted a stay^{9/} and further
explained the stay in an Order dated November 14, 1977.^{10/}

The stay was conditioned upon petitioner's agreement to keep account of the amounts collected under the proposed rates and to refund, with interest, any portion of the amounts collected if it were to be ultimately determined that the carriers were not lawfully entitled to collect those amounts. On November 28, 1977, the Supreme Court granted the certiorari petitions and consolidated the cases. The State will participate actively in the briefing and argument of these cases.

The Court is expected to hear and resolve the cases by July, 1978. If the State's position is sustained, the tariffs will be reduced retroactively by an average of \$1.35 per barrel over a period of about four months. This would result

^{8/} Id.; see also ARCO Pipe Line Co. v. United States, No. 77-602 (Oct. 25, 1977).

^{9/} Order of October 20, 1977 in Mobil Alaska Pipeline Co. v. United States, No. 77-452; Exxon Pipeline Co. v. United States, No. 77-457; BP Pipelines, Inc. v. United States, No. 77-551, 46 U.S.L.W. 3289 (U.S. Nov. 1, 1977). ARCO filed its Motion for Stay on October 21, 1977. See Application for Stay of Order, ARCO Pipe Line Co. v. United States, No. 77-602 (Oct. 21, 1977).

^{10/} Order of November 14, 1977 in Mobil Alaska Pipeline Co. v. United States, No. 77-452; Exxon Pipeline Co. v. United States, No. 77-457; BP Pipelines, Inc. v. United States, No. 77-551; ARCO Pipe Line Co. v. United States, No. 77-602, 46 U.S.L.W. 3321 (U.S. Nov. 15, 1977).

in increased revenues to the State of about \$25 million for that period. However, even if the State does not prevail in the Supreme Court case, the rates may be retroactively reduced as a result of the administrative investigation which the Interstate Commerce Commission initiated on July 7, 1977. If found unreasonable, the tariffs would be reduced to a reasonable level and refunds made for the excess amounts charged to date since TAPS oil began to flow. For example, a finding by FERC that rates in excess of \$4.00 per barrel are unreasonable would produce additional State revenues of about \$200 million per year.

The Commission initially assigned the TAPS tariff investigation to Administrative Law Judge Robert Glennon. After the first prehearing conference, Judge Glennon requested that all parties submit memoranda on the issues to be heard and procedures to be followed. On August 8, 1977 the State of Alaska and the Department of Justice submitted a joint memorandum asserting that a complete record on the proper method for determining a rate base must be developed in this proceeding.^{11/} The State and the Justice Department also proposed that the proceeding be phased because of its expected

^{11/} Joint Memorandum of the State of Alaska and the United States Department of Justice On The Issues And Procedures, Trans Alaska Pipeline System (Rate Filing): Investigation and Suspension Docket No. 9164, Trans Alaska Pipeline System (Rules and Regulations), Dkt. No. 36611, submitted August 8, 1972.

length and complexity, and requested that the carriers be required to go forward with their evidence in the first phase of the case. The TAPS carriers opposed these proposals.

After another prehearing conference, Judge Glennon issued his rulings on August 16, 1977.^{12/} He accepted the State's argument that the protesting parties should not be precluded from presenting facts or arguments intended to establish the validity of a rate base other than one proposed by the carriers. As the Judge concluded, "to allow these proceedings to be 'open' on the issue of rate of return, while 'closed' on rate base, would be an irrational, impermissible inconsistency." (Prehearing Order at 7).

Judge Glennon also adopted the phasing proposal of the State of Alaska and Department of Justice and ruled that the Commission has the authority to issue an interim rate order before concluding its full hearing on every issue presented in the case. He concluded that "the issues [are] sufficiently distinct and separable that a separate trial may be held without injustice." (Prehearing Order at 12). He therefore ruled that the proceedings would be phased as follows (Prehearing Order at 16):

^{12/} Report and Order on Prehearing Conference, Investigation and Suspension, Dkt. No. 9164, et al., Trans Alaska Pipeline System, August 16, 1977 [hereinafter cited as "Prehearing Order"].

a. Phase I. The issues of rate base, rate of return, treatment of taxes, and method of calculating total revenue will be adjudicated in Phase I. For the purposes of Phase I, protestants will not challenge the amounts claimed by respondents for construction or operating costs, depreciation charges, and removal costs.

b. Phase II. Questions concerning the allowable nature of TAPS expenditures as prudent investment, depreciation charges, removal costs, and all other issues not adjudicated in Phase I will be decided in Phase II.

On October 1, 1977, pursuant to the provisions of the Department of Energy Organization Act, Pub. Law 95-91, 91 Stat. 565, and Executive Order No. 12009, 42 Fed. Reg. 46267 (September 15, 1977), the functions and regulatory responsibilities of the Interstate Commerce Commission with respect to the establishment of rates and valuations for oil pipelines were transferred to the Federal Energy Regulatory Commission ("FERC"). Under the savings provision in Section 705(a) of the Act, the TAPS tariff proceeding will continue to be governed by the Interstate Commerce Commission's Rules and Regulations as promulgated in Title 49, Code of Federal Regulations, unless and until new regulations are promulgated. Thus, the issues in the TAPS proceeding were not substantively or procedurally affected by the transfer. However, the transfer did result in assignment of a new Administrative Law Judge, Max L. Kane, to preside at the proceeding. Judge Kane was one of the senior administrative law judges at the Federal Power Commission prior to the transfer of that Commission's duties to FERC.

B. The State's Future Role in the
TAPS Proceedings

The Department believes that the State of Alaska should continue to vigorously pursue the issues it has raised before the Supreme Court and the Federal Energy Regulatory Commission. The State has a very large stake in the outcome of these proceedings. A reduction of one cent in the tariff filed by the carriers (which varied between \$6.04 and \$6.44 per barrel) means additional revenue of \$876,000 each year to the State because, as noted above, the State's tax and royalty interest receipts from TAPS production vary inversely with the size of the tariffs. As previously noted, the Interstate Commerce Commission has already indicated that the tariffs are excessive by at least \$1.35 per barrel.

Furthermore, in our judgment, it would be highly imprudent for the State to rely on the FERC staff or the Department of Justice to protect its interests, given the amounts at stake. While the FERC staff has not thus far taken issue with the State's position, its own case is at an early stage of development, and it is by no means certain that it will ultimately support the State on critical issues involving fair rate of return or cost disallowance. The interests of the Department of Justice in the proceeding are quite different from the State, involving rate setting principles and their views on competition, generally. Thus, the Justice Department cannot be relied upon to protect the State's financial interest in its taxes and royalties.

Although the legal issues currently before the Supreme Court are likely to be resolved within the next six months, the FERC proceeding promises to be much more complex and time-consuming. For example, the Department has concluded that the State should pursue the following factual and legal issues in Phase I of the FERC proceeding:

a. Whether TAPS should be regulated separately from other pipeline interests of the Owners.

b. Whether the use of a valuation rate base including reproduction costs new in determining pipeline rates is legally or economically justified:

1. whether the Congressional intent underlying inclusion of reproduction cost in the Section 19(a) valuation supports its continued use;

2. whether including reproduction cost as an element of the rate base is judicially favored;

3. whether most state and federal regulatory agencies have rejected the use of any element of reproduction cost in the rate base and have adopted an original cost less depreciation or similar standard;

4. whether the use of reproduction cost in the rate base produces arbitrary and unreasonable results and permits pipelines to recover almost two-fold for inflation;

5. whether the results of the use of condition percent are an additional reason for rejecting the Section 19(a) valuation as a rate base;

6. whether the use of a percentage additive for "going concern" value in the single sum valuation is an additional reason for rejecting the Section 19(a) valuation as a rate base; and

7. whether an original cost less depreciation rate base should be adopted.

c. Whether the TAPS rates should be determined in accordance with proper ratemaking principles:

1. whether the TAPS carriers are entitled to only a reasonable rate of return on an original cost rate base commensurate with the real risks of the enterprise;

2. whether for purposes of determining the appropriate rate of return, the Commission should employ either the actual capital structure of the carriers, or a hypothetical capitalization which reflects the financial and business risks of TAPS; and

3. whether if a valuation rate base is adopted, the rate of return should be adjusted accordingly.

d. Whether the TAPS tariffs properly reflect the treatment of taxes and the financial consequences of tax related investment incentives.

The issues to be litigated in Phase II of the proceedings have yet to be formulated in such detail and will, at least to some extent, be affected by the resolution of Phase I issues. It is already clear, however, that one of the principal Phase II issues will be whether all of the construction costs expended by the TAPS companies were prudently incurred. The companies insist that there were no imprudent

expenditures in constructing the project. However, a report to the Alaska Pipeline Commission by its Special Counsel, Terry F. Lenzner, concluded that TAPS construction costs were excessive by at least \$1.5 billion (out of a total of \$8 billion).

In Phase II of the FERC proceeding the State will pursue this question and present evidence showing massive excessive expenditures. If the Commission adopts the State's position, it will disallow such excessive costs in the rate base of the TAPS tariffs and reduce the tariffs accordingly -- both retroactively and prospectively.

The TAPS carriers have already presented their direct testimony on Phase I issues and Judge Kane has ordered cross-examination of their 31 witnesses to begin in early February. To protect the State's interests effectively, it will be necessary to cross-examine the testimony of the carriers' witnesses, then to prepare the rebuttal testimony and exhibits of those witnesses which the State will sponsor, and finally to submit briefs and proposed findings to the administrative law judge and the full Commission. Phase I should be completed by mid-1978 and shortly thereafter Phase II proceedings should begin. At the end of the FERC proceeding a record consisting of 100,000 transcript pages and 25,000 exhibits could easily be amassed.

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the State's Interests

As the foregoing makes clear, the State has a very large stake in the outcome of very complex and time-consuming proceedings. The issues raised -- particularly in the FERC proceeding -- are numerous, highly specialized, novel, and require broad legal and economic expertise for adequate treatment. The Department recognizes that the State cannot hope to match the seemingly unlimited legal and consulting resources that the TAPS carriers have devoted to the proceeding. By the same token, however, merely sending observers to the proceeding or filing occasional pleadings is unlikely to have any impact at all on the outcome of the case.

The Department's in-house resources and expertise in these matters are, of course, quite limited. The Department has therefore retained the services of two Washington, D.C. law firms and several technical consultants. Their activities have been closely supervised by the Department and the Attorney General has assigned Assistant Attorney General Richard Burnham to maintain day-to-day liaison with the attorneys and consultants which we have retained.

The law firms appearing on the State's behalf are Donelan & Cleary and Wald, Harkrader & Ross. These firms have extensive experience in regulatory matters and have worked closely in representing the State in the administrative and judicial proceedings involving TAPS. The lead counsel in

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Mr. Ross has written widely on administrative law and energy matters, and is considered an expert on administrative procedure and practice. He has taught administrative law at Cornell University, and for many years has represented the American Bar Association before Congress on administrative

law and procedure legislation. He is currently serving as Chairman-Elect of the Administrative Law Section of the American Bar Association.

c. Terry F. Lenzner. Mr. Lenzner is a partner in Wald, Harkrader & Ross where his practice principally involves matters before the federal courts, administrative agencies and the U.S. Congress. After receiving his undergraduate and law degrees from Harvard University, he served for the next ten years in a number of important government positions. He initially served in the U.S. Department of Justice as a trial attorney and three years later he became Assistant United States Attorney in the organized crime unit of the southern New York district office. In 1969, he became director of the Legal Services Office of the Office of Economic Opportunity and, in that capacity, was responsible for supervision of all federally-funded legal service programs. After a short stint in private practice, he was appointed Assistant Chief Counsel of the Senate Select Committee on Presidential Campaign activities, popularly known as the "Watergate Committee."

Mr. Lenzner returned to private practice in 1974. His practice includes representation of the Cook Inlet Region, Inc. and the Alaska Pipeline Commission (APC), which he served as Special Counsel until August, 1977. As Special Counsel to the APC, Mr. Lenzner conducted an extensive investigation into

the excessive cost overruns in constructing the TAPS project. The results of that investigation were compiled in an 800-page report submitted to the APC last August.

In addition to legal expertise, it has been necessary to retain the services of a number of accounting, financial and engineering consultants to appear on the State's behalf in the FERC proceedings. These consultants include the following:

a. Technical Associates, Inc. This is an economics research and consulting firm with offices in Richmond, Virginia and Washington, D.C. The Department has retained its President, Dr. Michael J. Ileo, and other members of his firm who have extensive experience in public utility transportation and monetary economics and have frequently appeared as witnesses in federal and state rate regulatory proceedings. Dr. Ileo holds a PhD. in economics from Virginia Polytechnial Institute and has published several articles on utility and banking regulation.

b. VHS Associates, Inc. This is a California firm which provides construction management and engineering consulting services. The projects with which they have been associated include pipelines, marine terminals and harbors and oil processing facilities. The principal participant in the TAPS proceeding is VHS Vice President Egon K. Ellgaard, who has 20 years

construction management and staff experience. Mr. Ellgaard is a civil engineer and professional estimator, having received a MSCE degree from Stanford University in 1961. Recently, he has served as project manager for a federally-funded evaluation of alternative routes for transporting Prudhoe Bay natural gas to the lower forty-eight and served as a consultant to the Special Counsel of the Alaska Pipeline Commission in the TAPS construction overrun investigation.

c. Charles F. Phillips, Jr. Dr. Phillips is a professor of economics at Washington and Lee University and is an expert in the regulation of transportation and public utility industries. Among Dr. Phillips' many publications is The Economics of Regulation, recognized as a leading treatise in the area. He received his Ph.D. in economics from Harvard University in 1960 and during the last twenty years has frequently appeared as an expert witness before federal and state regulatory commissions.

d. Financial Management Associates. This consulting firm, located in Overton Park, Kansas, specializes in financial requirements of public utilities, particularly revenue requirements, rate design and rate of return issues. Members of the firm have been involved in numerous regulatory proceedings, including those before the Federal Power Commission and the Interstate Commerce Commission. The member of the firm primarily assigned to the TAPS case is John C. Dunn,

an economist who served as the Chief of the Department of Economic Research of the Missouri Public Service Commission prior to becoming an independent consultant.

e. Larkin, Chapski & Co. This is a certified public accounting firm registered to practice in Michigan, which has a combined practice of public accounting and utility regulation and consulting. In the area of utility regulation and consulting, the firm has participated in numerous rate cases before the Michigan Public Service Commission and in other jurisdictions. In addition, from April 1975 to March 1976, the firm contracted with the Michigan House of Representatives as Technical Staff Director of a Special House Committee to study and evaluate the effectiveness of the Michigan Public Service Commission and the rates and services of public utilities. Its reports to that Committee were adopted by the Committee in virtually all material reports in its final report and recommendation, and served as a basis of numerous bills introduced in 1976 and 1977 sessions of the Legislature. Messrs. Larkin and Chapski are providing assistance to the State primarily in the area of tax accounting.

D. Budget Requirements

To effectively participate in complex federal proceedings, and to retain the requisite expert assistance, is not inexpensive. The Department has developed and attached

hereto as Appendix A what it believes to be a minimum budget for effective participation by the State in the FERC proceedings. The budget contemplates total legal and consultant fees of \$2,662,900 spread over three fiscal years.^{13/} For each fiscal year, the expenses are divided by consultants and the two law firms. The contemplated fees and expenses of the law firms are further subdivided by the nature of the expenditure.

While an expenditure of \$2.6 million seems high, it will be dwarfed by the amounts spent by the eight TAPS owners in defense of their filed rates. It is also small in comparison with the billions of dollars which are at stake to the State in the proceeding. Viewed another way, the State will recoup its expenses in one year if FERC lowers the filed tariffs by only three cents per barrel from the proposed tariffs in excess of \$6.00. In this regard, it should be noted that the law firms and the consultants will be compensated in accordance with hourly fees which the Department negotiates with them, not on a contingent fee basis. Therefore, our expenses will not be subject to upward revision in the event that the State's challenges to the TAPS tariff are sustained.

In sum, the Department recommends that the State continue to participate in the FERC proceedings to investigate

^{13/} This budget was prepared using 1977 dollars so that projected expenditures for the second and third fiscal years would have to be adjusted upward to account for inflation.

the TAPS tariffs and believes that its proposed budget represents the minimum expenditure necessary for effective participation on the State's behalf.

APPENDIX A

TOTAL OVER 3 FISCAL YEARS \$2,662,900

1. Fiscal Year ending 6/30/78

Total: First Fiscal Year \$1,352,500

Phase I (assumes this phase continues through briefing stage in this fiscal year)

Engineering Consultant \$ 25,000

Other Consultants 230,000

Wald, Harkrader & Ross ("WH&R"):

Lawyers 297,500

Legal Assistants 36,000

Expenses 5,000

Donelan, Cleary, Wood & Maser ("DCW&M"):

Lawyers 221,000

Legal Assistants 36,000

Other Expenses 15,000

Transcript 8,000

Phase II (assumes this phase moves forward actively into discovery and substantial prehearing analysis this fiscal year)

Consultants \$ 100,000

WH&R:

Lawyers 238,000

Legal Assistants 54,000

Expenses 10,000

Donelan & Cleary:

Lawyers	\$ 58,500
Legal Assistants.	15,000
Expenses.	3,500

2. Fiscal Year ending 6/30/79

Total: Second Fiscal Year. \$1,042,400

Phase II

Consultants \$ 300,000

WH&R:

Lawyers	374,000
Legal Assistants.	60,000
Expenses.	5,000

DCW&M:

Lawyers	234,000
Legal Assistants.	36,000
Other Expenses.	20,000
Transcripts	13,400

3. Fiscal Year ending 6/30/80

Total: Third Fiscal Year \$ 268,000

Phase II

Consultants \$ 30,000

WH&R:

Lawyers	\$ 144,500
Legal Assistants.	6,000
Expenses.	2,000

DCW&M:

Lawyers	78,000
Expenses.	7,500

Assumptions:

- (1) Transcript costs and major document duplicating and printing costs payable out of Donelan & Cleary budget.
- (2) Consultants' expenses payable out of consultants' budget.
- (3) Expenses do not reflect use of computer systems.
- (4) The hours projected in both phases assume only one level of briefing before FERC, and do not cover court proceedings.
- (5) Second and third fiscal year budgets are estimates, in 1977 dollars, and are not adjusted for inflationary cost increases.