

LEG. FINANCE - BILLS 1977 - 1978 1003

SCR 1 cont., thru SCR 4

Table 4 (Continued)
If You Are Not Using ZBB, Have You
Considered It or Explored the Possibility of Using It?*

State	Responses
Wisconsin	It has been talked about. We do use "targeting" below the base year level of funding, which might be considered a form of modified ZBB, although I do not think it is. The Legislative Audit Bureau will be recommending that we go to ZBB on a staged basis (3- to 5-year cycle) in the future.
Wyoming	Yes, we have explored the idea. We operate with three budgets which are called "standard," "exception," and "expanded." The standard budget is reviewed in depth to justify its future existence or level of existence.
Dist. of Col.	Over the years, we have used a modified ZBB approach in selected expense categories such as equipment, motor vehicle purchases, ADI systems, etc. The largest agency of the District Government is implementing, on a test basis, ZBB that closely parallels the "decision package" approach. (Expansion of test to the whole government depends on results of the project.)

Table 1 (Continued)
ZBB Systems in the States*

State	State has this or alternative ZBB system	Comments
Montana	Yes	Pilot testing ZBB in eight programs, as part of new Priority Budgeting System.
Nebraska	No	Budget forms distinguish between funds to continue programs, workload changes, and new or expanded programs.
Nevada	No	
New Jersey	Yes	Comprehensive ZBB system since August 1974 for priority ranking at various incremental levels, with extensive performance data supplied for each priority level.
New Mexico	No	Legislative Finance Committee applied ZBB in 1971-73, but it has not been used since then.
North Carolina	No	Planning-budgeting system focuses on program data and requires agencies to make separate submissions for the current program level and changes.
North Dakota	No	Legislative budget committee considered and rejected ZBB.
Ohio	No	ZBB explored, but its use is not contemplated in the near future.
Oklahoma	No	
Pennsylvania	No	Has a comprehensive program budgeting system with zero-base analysis of selected programs.
Rhode Island	Yes	Zero-base justification and priority rankings supplement the State's evolving program budgeting system.
South Carolina	No	Exploring some form of ZBB for 1978-79 fiscal year.
South Dakota	No	State performance budgeting system provides for specific performance criteria and measurements at all levels of management responsibility.
Tennessee	Yes	New program budget system with priority ranking of requests and performance data.
Texas	Yes	Comprehensive ZBB with activity priorities ranked by program managers and program priorities ranked by agency administrators. Activity and agency requests are presented at various levels.
Vermont	No	
Virginia	No	New law requires program and evaluation data and separate identification of costs for current level, workload increases, and new services.
Washington	No	In May 1976 the Governor directed state agencies to review existing programs as thoroughly as new ones and to priority rank their budget proposals. Formal instructions have not yet been issued.
Wisconsin	No	Legislative Audit Bureau will recommend 3 to 5 year cycle for zero-base review on a staggered basis.
Wyoming	No	New method for consideration of standard, exception, and expansion levels.
Dist. of Col.	No	ZBB is being pilot tested in the largest agency.

Table 2
ZBB Practices in Selected States*

State	Use of ZBB system			Components of ZBB system			
	Main system for budget requests	Additional source of data	Main format for budget presentation	Portion of programs ZBB reviewed(a)	Decision packages	Incremental percentages or amounts of expenditure	Distinctions: continuing/spending/new
Arkansas	X	X	X	Most	X	X	X
California	...	X	...	Some	...	X	...
Georgia	X	...	...	All	X	X	X
Idaho	...	X	...	Some	X	...	X
Illinois	X	...	...	...	Similar	X	X
Missouri	X	...	...	All	X	X	X
Montana	Pilot Group	...	Pilot Group	Pilot Group	X	X	X
New Jersey	X	X	...	All	X	X	X
Rhode Island	...	...	...	All	(b)	...	...
Tennessee	X	...	...	All	...	X	X
Texas	X	...	X	All	X	X	...

* This table includes only those States which currently employ a ZBB system consistent with the definition provided by this study and is based upon both questionnaire responses and a survey of documents.

(a) Possible responses include: a, I, most, some, pilot group, and none

Illinois did not answer this question.

(b) In Rhode Island, decision packages on requests for expanding programs or developing new programs are prepared by central budget staff for consideration and determination by the Governor.

Table 4
If You Are Not Using ZBB, Have You Considered It or Explored the Possibility of Using It?*

State	Responses
Alaska	In approximately 1972 we used the ZBB techniques on three state programs. Our experience at that time indicated there were other fields and methods we could explore with more return for the effort.
Arizona	Yes—first we must "program" our agencies and develop evaluation methods. This will be a several year project.
Hawaii	Since 1971 the State of Hawaii has been totally committed to the establishment and implementation of a PPB system, a system mandated by Act 184, SLH 1970, the Executive Budget Act.
Indiana	Considered it and rejected it.
Iowa	We are considering a zero-plus base for 1977-79.
Louisiana	The Legislature is asking us to consider it.
Maine	Yes—a modified system will be used in the next budget cycle.
Minnesota	Mere discussion in informal meetings.
New Mexico	The Legislative Finance Committee of the New Mexico Legislature also produces an annual budget in contrast to the Governor's budget. During the period 1971-73, the committee produced a zero-base budget. However, the zero-base concept has not been employed since that time, primarily because the executive and the Legislature prefer a more traditional approach.
North Carolina	A number of the components of ZBB were incorporated into a "home-grown" budget reform which we've had under way since 1973. These include: (1) Combining current services with new program requests for each program in state government. (2) Merging and reformulating the planning function—program planning has been shifted to agencies; policy planning has been merged into budget preparation. (3) Conducting program evaluations of ongoing services to determine whether or not they are accomplishing their objectives and whether the objectives still need to be met.
North Dakota	A legislative committee on the budget considered it and rejected it.
Ohio	ZBB budgeting explored but its use not contemplated within near future.
Pennsylvania	Has not considered using ZBB as defined above. The ZBB concept is subsumed under the Pennsylvania program budgeting system.
South Carolina	Exploring the possibility of using some form of ZBB for fiscal year 1978-79.
Virginia	A legislative commission studied the State's budget process and issued recommendations in December 1974. The recommendations, enacted into law to be effective not later than for the 1978-80 biennium, provide for: program definitions (and appropriations); "workload indices and other criteria to be used in both budget evaluation and post audit evaluation"; separate identification of costs for current activity levels, increased workload, and changed new services; policy issue analysis. The report does not state what consideration was given to ZBB as a "system."
Washington	The operating budget instruction for the 1977-79 biennium transmitted by the Governor requests all state agencies to provide a ranking of priorities for all essential agency programs. The program proposals are to be provided in terms of their relative importance to successful accomplishment of each agency's goals and statutory requirements.

* This table excludes those States which indicated they have not considered zero-base budgeting. The response of North Carolina was abbreviated.

4. Experiences and Intentions in Non-ZBB States

Although significant ZBB activity is under way in only 11 States, other States have or are considering its application to their budget processes. Question 5 in the survey asked States not using ZBB whether they have considered or explored the possibility of using it. The state-by-state responses are provided in Table 4. Five States indicate that they have considered but rejected ZBB. These are Alaska, Indiana, New Mexico, North Dakota, and Ohio. Of these, the New Mexico decision is the most significant since a zero-base budget was introduced for the 1971-73 biennium, but was subsequently abandoned. In New Mexico, ZBB was used by the Legislative Finance Committee while the executive budget continued to be prepared in a traditional format. In an appraisal of the New Mexico experience, John D. LaFaver identified many problems resulting from the way ZBB was implemented and he concluded that the improvements were "neither as great as originally anticipated nor as minimal as detractors would claim."⁴

At least three States (Hawaii, North Carolina, and Pennsylvania) decided not to introduce ZBB because they had only recently established program budget systems. These States appear to feel that they can achieve the benefits attributed to ZBB through their own budget innovations, though several States (such as New Jersey and Illinois) have attempted to meld ZBB with their new program budget systems.

Nine States and the District of Columbia either have decided to implement aspects of ZBB in the near future or are considering it. In a few States (such as Louisiana and Wisconsin) the initiative is coming from the State Legislature. Several States (Maine, Virginia, and Washington) appear on the threshold of ZBB activities while other States are exploring the possibility for future implementation.

Despite the turnaround in New Mexico, state interest in ZBB probably has not yet reached its peak. It is possible that as many as one half of the States will be involved in some zero-base budget activities before the end of this decade.

3. Experiences in the ZBB States

As part of the survey, the States were asked to evaluate their experiences with ZBB and to describe any changes made in the original design. The responses of a number of States are recorded in Table 3.

Most of the ZBB States express satisfaction with their systems, though a few note some problems. California reports favorable experience (after earlier negative reactions) "with an increasing understanding of this technique as an analytical tool." Georgia retains its enthusiasm for ZBB, noting that "a search for a better way has not provided a system we could change to." Rhode Island discerns concrete impacts of ZBB on budget decisions, priorities, and program efficiency, while Tennessee notes success in developing alternatives to the traditional incremental approach. New Jersey presents a balanced evaluation with a number of pluses and problems. While ZBB has aided decisionmakers in evaluating and comparing competing demands, it also has encountered staff resistance, lack of understanding, and poor-quality information. Idaho's experience was possibly the least favorable, with three fourths of the initial ZBB submissions judged unsatisfactory.

Aside from adjustments in their formats and technical details, the ZBB States do not seem to be making substantial modifications in their ZBB designs. The main changes are aimed at reducing paperwork and improving the performance measures submitted by agencies.

Table 3
Evaluation of Experiences with ZBB*

<i>State</i>	<i>Responses</i>
California	(A) In the earlier phases, the departments reacted to the negative connotations of zero-base budgeting. The tool is now being used to restructure and redirect program efforts and in some instances to increase fiscal support. Generally, our experience has been favorable, with an increasing understanding of this technique as an analytical tool.
Connecticut(a)	(A) Zero review has resulted in budget elimination of small programs which end up being retained because of "public appeal." Direct savings have been minimal but the process has "shaken up" agencies and reduced overall requests.
Georgia	(A) Georgia is beginning its 6th year of ZBB. We find that no other system provides us with the (1) detailed priorities of the entire operations of an agency, (2) visibility of day-to-day operations, (3) goal congruence, (4) interest in budget development, or (5) vehicle for clear expression of performance data that ZBB does. Our experience is such that a search for a better way has not provided a system we could change to. (B) The original system required alternative ways to perform a function as well as incremental levels. Our current system does not require alternative ways but does still require incremental levels from zero to total request.
Idaho	(A) For approximately 75% of the budgets zero-based during the last fiscal year, the results were unsatisfactory. State agencies had an inadequate understanding of the process and did not competently comply with our zero-base requirements. This was probably due to the lack of sufficient time for training and technical assistance on the part of the central budget staff. In 15% the results were useful primarily because of the internal priority setting required at the program level, even though there was no substantial difference in the resultant budget amount for the program. In 10% of the cases, the zero-base review resulted in a substantial and significantly different approach to the operation of the program and reduced the required budget. (B) None have been defined yet; however, we are considering ways of improving the distinction between alternative <i>approaches</i> to carrying out a particular program and alternative <i>levels of effectiveness</i> in carrying that program out on any given approach.
Montana	(A) System being implemented this year.
Nebraska(a)	(A) The detailed program budgeting system has been quite successful. The detailed information provided by the system allows decisions at the lowest level—some subprograms have one person only for example. All entities must be examined and approved before they are added to the program totals for inclusion in the recommended budget. Legislature and Governor use same documents. (B) With very minor changes, the basic format has stood unchanged for nearly 10 years.
New Jersey	(A) Our experience with zero-base budgeting, like any other technique, has been mixed. When you apply it across the board to all budgeting functions, anomalies are produced. Problems have been encountered in the following areas: agency and staff resistance to the system, lack of understanding of the basic concepts, and quality of some of the information submitted. On the positive side, the process has aided decisionmakers in evaluating and comparing competing demands and thus helps to make choices. ZBB provided the information necessary to make a determination as to whether funding at a current, increased, or a lower level is justified by the benefits to be realized or lost by a particular funding level. We are beginning the third year of ZBB. Steps have been taken to overcome the problems noted.

*Symbols:

(A) Evaluate your past experience with zero-base budgeting.

(B) Describe changes made in the original design.

(a) These States have related procedures not classified as ZBB in Table 1 but are included here.

Table 3 (Continued)
Evaluation of Experiences with ZBB*

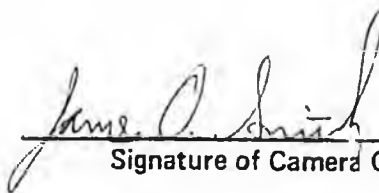
<i>State</i>	<i>Responses</i>
Pennsylvania(a)	(A) The Pennsylvania program budgeting system has been successful in shifting the focus of budget decision-making from program inputs, i.e., personnel and other objects of expenditure, to program accomplishments, i.e., effects on people or the environment. It is proving itself to be a useful decision-making tool. (B) The original design included the presentation of the Governor's budget on a cross agency program basis. In order to hold agencies more responsible for their programs and to provide the legislature with document more easily compared to prior years, the Governor's budget is now presented in detail on an agency program basis as are the agency requests to the budget office along with a Commonwealth cross agency program summary.
Rhode Island	(A) While we have yet to reach the point where we would like to be, the experience to date must be rated as favorable. This approach has been at least partially responsible for (a) the elimination of 1300 positions from the state roster; (b) maintaining the reduced employment level during the past 18 months; and (c) allowing for the reallocation of funds from institutional to community programs (the shifting of priorities within the existing resources). (B) We are now in the process of changing the format, but the concept remains unchanged.
South Dakota(a)	(A) In implementing our performance budgeting system we were as concerned with the effects on total management process as much as the impact in terms of appropriations—so far the experience has been good—we are achieving some of the MBO type effects we desired.
Tennessee	(A) Tennessee applied the principles of ZBB to its budget system the past fiscal year. Our system, although implemented in a short period of time, was fairly successful in developing alternatives to the traditional incremental approach. Better understanding of the system is needed. (B) Tennessee maintained control of the package decisions at the program level. There was considerable concern with the volume of work which would be generated at lower levels. (Staff size is a consideration.) Our system dealt with percentages of the current level (80-90%, etc.).



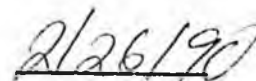
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Signature of Camera Operator



Date

COMMITTEE REPORT

HOUSE

_____ Date

Mr. Speaker:

The Committee on _____ has had _____ under consideration. A majority of the members of the Committee

- 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 that CS for _____ do pass
- (and) recommends it be referred to the _____ committee
- reports it back without recommendation
- AND attaches a report of its intent
- (other) _____

MEMBERS SIGNING THE MAJORITY REPORT:

_____	_____	_____
_____	_____	_____
_____	_____	_____
_____	_____	_____

MEMBERS NOT CONCURRING IN THE MAJORITY REPORT:

_____	recommends: _____
_____	recommends: _____
_____	recommends: _____

_____ Chairman

1 IN THE SENATE

BY ORSINI

2 SENATE CONCURRENT RESOLUTION NO. 1

3 IN THE LEGISLATURE OF THE STATE OF ALASKA

4 TENTH LEGISLATURE - FIRST SESSION

5 Relating to the development and presenta-
6 tion of a proposal for "zero-based"
7 budgeting.

8 BE IT RESOLVED BY THE LEGISLATURE OF THE STATE OF ALASKA:

9 WHEREAS the United States Congress and several state legislatures have
10 under consideration proposals for reform of government operations and activi-
11 ties seeking to evaluate programs to eliminate or change those which are
12 inactive or ineffective; and

13 WHEREAS a common feature of these proposals is the modification of
14 budget acts to require systematic evaluation of total appropriation requests
15 based upon a justification of an appropriation request in its entirety from
16 a zero base to determine whether the proposed activities of the program
17 warrant its continuation; and

18 WHEREAS the adoption and implementation of a zero-based budgeting system
19 would well serve the legislature, the governor and the people of Alaska in
20 development of more effective review of the performance and accomplishments
21 of state programs by providing a means to evaluate program benefits versus
22 costs, a method to redirect program efforts and funds into more effective
23 programs, and a way to control budget growth;

24 BE IT RESOLVED by the Alaska State Legislature that it respectfully
25 requests the governor to direct the division of budget and management to
26 prepare a proposal for implementation of a zero-based budgeting system for
27 state government operations and present the proposal to the members of the
28 legislature not later than January 1, 1978.

29

#

Introduced: 1/11/77
Referred: Finance

1 IN THE SENATE

BY ORSINI

2 SENATE CONCURRENT RESOLUTION NO. 1 am
3 IN THE LEGISLATURE OF THE STATE OF ALASKA
4 TENTH LEGISLATURE - FIRST SESSION

5 Relating to the development and presenta-
6 tion of proposals for "zero-based"
7 budgeting.

8 BE IT RESOLVED BY THE LEGISLATURE OF THE STATE OF ALASKA:

9 WHEREAS the United States Congress and several state legislatures have
10 under consideration proposals for reform of government operations and activi-
11 ties seeking to evaluate programs to eliminate or change those which are
12 inactive or ineffective; and

13 WHEREAS a common feature of these proposals is the modification of
14 budget acts to require systematic evaluation of total appropriation requests
15 based upon a justification of an appropriation request in its entirety from
16 a zero base to determine whether the proposed activities of the program
17 warrant its continuation; and

18 WHEREAS the adoption and implementation of a zero-based budgeting system
19 would well serve the legislature, the governor and the people of Alaska in
20 development of more effective review of the performance and accomplishments
21 of state programs by providing a means to evaluate program benefits versus
22 costs, a method to redirect program efforts and funds into more effective
23 programs, and a way to control budget growth;

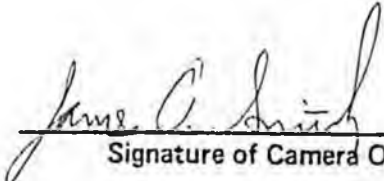
24 BE IT RESOLVED by the Alaska State Legislature that it respectfully
25 requests the governor to direct the division of budget and management to
26 prepare and requests the legislative budget and audit committee to prepare
27 proposals for implementation of a zero-based budgeting system for state
28 government operations and present the proposals to the members of the legis-
29 lature not later than January 1, 1978.



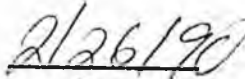
RECORDS CERTIFICATION



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Signature of Camera Operator



Date

COMMITTEE REPORT

SENATE

_____ Date

Mr. President:

The Committee on FINANCE has had 578 under consideration. A majority of the members of the Committee

- 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 that CS for _____ do pass
- (and) recommends it be referred to the _____ committee
- reports it back without recommendation
- AND attaches a report of its intent
- (other) _____

MEMBERS SIGNING THE MAJORITY REPORT:

MEMBERS NOT CONCURRING IN THE MAJORITY REPORT:

_____ recommends: _____

_____ recommends: _____

_____ recommends: _____

_____ Chairman

A M E N D M E N T

Offered in the SENATE

By _____

To: _____ SENATE BILL NO. _____

_____ HOUSE BILL NO. _____

AMENDMENT: Page _____ Line _____

Introduced: 1/11/77
Referred: Special Committee to
Consider The Sale of
Royalty Gas

1 IN THE SENATE

BY THE RULES COMMITTEE BY
REQUEST OF THE GOVERNOR

2 SENATE CONCURRENT RESOLUTION NO. 3

3 IN THE LEGISLATURE OF THE STATE OF ALASKA

4 TENTH LEGISLATURE - FIRST SESSION

5 Approving the disposal to Tenneco
6 Alaska, Inc., of royalty natural
7 gas taken in-kind

8 BE IT RESOLVED BY THE LEGISLATURE OF THE STATE OF ALASKA:

9 WHEREAS, under AS 38.06.055(a), each house of the legislature must
10 approve by concurrent resolution all sales of state-owned royalty oil or
11 gas before the sale may be consummated; and

12 WHEREAS, the State of Alaska has the right under AS 38.05.180 and its
13 oil and gas leases to receive royalty oil and gas either in-kind or in-
14 value from the Prudhoe Bay Field; and

15 WHEREAS, the commissioner of natural resources has entered into a
16 contract for the sale of 50 per cent of state-owned royalty gas from the
17 Prudhoe Bay Field to Tenneco Alaska, Inc.; and

18 WHEREAS, the Alaska Royalty Oil and Gas Development Advisory Board
19 approved the contract for the sale of 50 per cent of the state-owned royalty
20 gas from the Prudhoe Bay Field to Tenneco Alaska, Inc.; and

21 WHEREAS, the legislature has reviewed this contract in detail and con-
22 ducted hearings and otherwise received public input on this contract; and

23 WHEREAS, the legislature finds this contract to be in the public
24 interest of Alaska and its citizens, and further finds that this contract
25 is in compliance with all requirements of law;

26 BE IT RESOLVED by the Alaska State Legislature that Alaska royalty gas
27 sale No. 76-2 and the contract providing for the sale of royalty gas from
28 the Prudhoe Bay gas field pertaining to it, between the state and Tenneco
29 Alaska, Inc., is hereby approved.

SUMMARY OF TESTIMONY AND DISCUSSION
ROYALTY GAS SALE CONTRACTS

FOR

SENATE NATURAL RESOURCES COMMITTEE

HOUSE NATURAL RESOURCES COMMITTEE

By
George C. Silides, P. E.
February 18, 1977

Revised
February 21, 1977

I. I N T R O D U C T I O N

The following pages are an attempt to summarize an approximately ten inch high stack of written material, and eight days of oral testimony, concerning the advisability of the State of Alaska of now entering into a contract with Tenneco, Southern, and El Paso for the sale of a portion of Alaska's royalty share of the natural gas to be produced from Prulhoe Bay.

Of necessity, this summary appears to be almost in an outline form only. However, it is felt that the summary does cover the entire spectrum of pertinent testimony. We have added discussion as seems necessary.

Introduced during the hearings was a great deal of testimony on subjects which, while major issues on their own account, bear only indirectly upon the immediate issue before the Legislature. These items included the various feasible or non-feasible aspects of the alternative routes, industrial uses of gas and gas liquids, allowable maximum rate of production, etc. That testimony is not summarized herein, but is included in the general discussion where needed.

The immediate basic question before the Legislature regarding the approval of these contracts is :

1. Should the State of Alaska enter into a gas sale contract, at this time, in an attempt to influence the routing decision, and;
2. Are the contracts before you the best way to do the task?

II. CONSENSUS OF STATE'S CONSULTANTS

Three consultants have been retained to minutely examine the contracts and all proffered testimony. They are:

1. Mr. Rush Moody, Attorney, former FPC Commissioner and now with the law firm of Vinson and Elkins.
2. Carl Swanson, Economist, with the firm of Jensen Associates, Incorporated.
3. Mr. Richard Kilgore, Economist, with the firm of Walter J. Levy Associates.

With the stated realization that a perfect contract cannot be written, especially with the unknown factors of continued Federal regulation, their combined opinion appears to be as follows:

1. That the in-state use of the gas and/or gas liquids is well protected.
2. That the price being received for the gas is probably the best that can be gotten in a sale to gas pipeline companies, and that it is unlikely that a better price could have been received from sale to industrial users now or later. Mr. Moody also speculated that we might not be able to do as well at a later date.

3. That the approval of the contracts would have a continuing beneficial effect on the deliberations of the FPC in their preparation of their recommendations to President Carter.

III. CONSENSUS OF CONGRESSIONAL DELEGATION

Senator Stevens, Senator Gravel, and Congressman Young were unanimous in their assertion that approval of the contracts was essential to their efforts to influence the Congress in approving an all-Alaska - all-American gas transmission line.

IV. DISCUSSION

A. Amount Of Gas To Be Sold

The amount of royalty gas being sold to the companies named, is all of the gas produced during the first 20 years of Prudhoe Bay production, minus the following:

1. The liquid fractions, which are reserved to the State without qualification. The liquids may be sold or used as the State chooses.

2. Any gas that may be required for the domestic or industrial use within the State. Under present law, the export of such needed royalty oil or gas is prohibited.

Under present production plans and statutory limitations, the State is not selling all of the gas that will be available to it from Prudhoe Bay production, as there will be about a third of the gas remaining at the end of the contract period. We must comment, however, that following additional research into the question of physical waste versus economic waste, the State may decide to accelerate production. Stated plainly, the State may decide that it could make more by producing all of the oil and gas quickly, and investing the money at a good rate of interest. This is a disquieting feature to some. Testimony has been presented urging amendment of the contracts to show an initial retainage of 15% to substantiate State's intention of intrastate use. The contention is that such showing would aid in the retention of Section 13B, Alaska Gas Act of 1976.

Under the "take back" and replacement provisions of the contract, the State is, in effect, selling surplus gas from fields that may be discovered in the future. To that extent, the three contracting companies become preferential, but not exclusive, customers for future finds. The buyer's need for this is discussed in a following section. The price to be paid is negotiated separately for each field and can never be less than the prevailing rate.

B. Why Sell The Gas

Perhaps Rush Moody said it the clearest in his statement, "The State of Alaska must be able to participate in the FIC proceedings, and to show the other states, in writing, that we are willing to share our gas with them."

1. The standing of the State before the FPC as an owner is further enhanced, as a seller who brings a price before the FPC for approval.

2. Southern and Tenneco gain participatory admission to the FPC hearings as buyers and transporters of the royalty gas. They do not have any standing before the FPC at this time.

The above two items in the State's attempt to secure a careful hearing in the Nation's decision-making process are factual. Tenneco, Southern, and El Paso claim that they can create a "National Constituency" through vigorous representation to their customers in 42 of the 48 contiguous states and, through the "National Constituency", to influence the FPC, the President, and the Congress to approve the El Paso Route.

This latter item is not qualitative nor quantifiable. However, the Administration, as represented by the Commissioner of Natural Resources, asserts that of the companies wishing to purchase royalty natural gas, Tenneco, Southern, and El Paso are the companies most capable of performing that service. Since the producers are not entering into sales agreements at this time, it is theorized that the Arctic Gas companies are denied the impetus afforded by approval of the contracts.

C. Price

Under terms of the contract, the price to be paid for any gas received

by Tenneco, Southern, and El Paso will be the highest price available at the time of production. If full deregulation were to take place between now and the time of delivery, or at any time thereafter, the price received would vary with the market conditions, but could not be lower than the preceding period. Everyone seems to agree that the price of gas will continue to rise.

Unfortunately, there is an obvious movement toward treating Prudhoe Bay Oil and Gas in a discriminatory manner, by disallowing full deregulation or treatment of Prudhoe production as truly "new" oil and gas. Realistically, we can expect to be locked into an artificially set, lower, price through Federal intervention in pricing Alaska gas as non-associated gas instead of associated gas, which it really is, with all of the attendant extra costs of drilling, exploration, and development. Therefore, if the producers cannot get a free-market price, neither will the State of Alaska. This is what is meant when we are told that the distance transported and the delivery price will not materially affect the well-head price. The FCC will set the price of Alaska Gas, exclusive from the calculation of a National rate.

Fortunately, though we might not get more than a regulated well-head price, neither can we receive less. So, on balance, the State is well protected in that regard.

The State could, conceivably, get a higher price by selling to a non-regulated industrial consumer. Even if there were some takers,

it is almost certain that the sale and delivery would not be allowed. We note that Congress has given the FPC authority to allocate new natural gas among regions, and to reallocate flowing gas among interstate pipelines. It is probably only a matter of time before they receive authority to reach into intrastate markets, and even ask authority to regulate maximum rates of production.

Nor could those who object to any pipeline at all block such construction by refusing to approve the contracts. The gas is needed in the contiguous states, and the FPC will order a line built. (Frankly, we feel there is no better way to insure construction of the Arctic Gas line than to adopt this tack.)

Nor will the FPC allow the reinjection of the royalty gas, even if such an operation were economically sound, which it is not. Reserving the right to take our royalty share until a later time would require a complex, risky, underlift negotiation.

One pricing risk of entering into a contract at this time has not been 100% explained away. That risk is the danger of "vintaging", or the FPC setting the price as of the date of contract signing rather than date of production. The testimony is that such a limitation has not been imposed anywhere since 1969, and that the risk of such limitation is less than 10% or, practically, theoretical.

The State is reimbursed for expenses which may be incurred by taking the gas in kind, unless such reimbursement cannot be included

in the buyers rate base at the burner tip.

NOTE: Mr. Rush Moody feels that Section 6.1 of the contract is unclear and should be modified by letter prior to contract approval. The letter should state that the Section 6.1 limitation becomes inoperative if an appropriate deregulation bill is passed (See page 147 of February 4, 1977 transcript of oral testimony.)

NOTE: We are advised that this letter is being prepared (February 21, 1977).

D. Take Back Provision

To be accurate about this provision, it is not a concession by the buyers but, rather, acceptance of a statutory requirement. Under the statute passed in 1974, no royalty oil or gas may be exported from the State unless it has first been declared surplus to the intrastate domestic and industrial uses of the State. Within the limits allowed to us for the management of our internal affairs, this is the law - not a negotiable item.

It is generally agreed that control of the gas is more important than the price received. Though arguments can be made that these contracts could, conceivably, result in an unquantifiable loss of gas use flexibility, the contracts do guard the State's interests very well. The things that can and cannot be done under the take back provision are as follows.

The State Can:

1. Reserve all of the liquid fractions of the gas for its own use without qualification or interference. An important fact about the gas liquids, besides reservation from sale, is that they are not now subject to regulation by the FPC.

Upon reasonable notice,

2. Remove part or all of its royalty gas from the pipeline, to consume within the State as fuel or convert it into a product. The product may be used within the State or exported.

Upon reasonable notice,

3. Remove part or all of its royalty gas from the pipeline and supply it to a third party for liquification, provided the liquified gas is consumed within the State.

The State cannot remove gas and furnish it to a third party for liquification and export. This provision is not significant if the El Paso line prevails, since El Paso will be liquifying the gas and generating jobs. It does become significant if the State and buyers switch to the Alcan Route, since an activity such as liquification for export creates jobs and is widely regarded as an industrial activity. This possible conflict can be dealt with at this time by approving the contract contingent on the El Paso line only (eliminate the switching

clause), or test the legality of the clause at a future date, if necessary. In any event, the essence of the contracts is protected from the invalidity of any particular clause.

The State cannot trade any of the Methane fraction of its royalty gas with an operator-producer for additional gas liquids, if the traded Methane is exported from the State. If we ever need more gas liquids during the life of the contract, the gas liquids must be purchased. Such need is not expected.

The State cannot sell or give any of its royalty gas to a third party to export for a limited period as an inducement to construct a gas-to-product conversion facility within the State. Neither Tenneco nor Southern intend to construct any kind of a facility within the State. In reviewing Royalty Oil and Gas Advisory Board minutes it appears that at least one offer was made for the purchase and export of gas for a limited time contingent on plant construction following economic feasibility studies. The offer was judged by the Administration as not being as valuable to the State for the purposes intended as is the approval of the proposed contracts. This type of offer is now foreclosed as an option.

B. Gas Replacement Provision

If the State chooses to withdraw gas from the pipeline for intrastate use, it must sell to the buyer an equivalent amount of surplus royalty gas

from fields found in the future, and give the buyer first option to an additional one half the equivalent amount withdrawn, should it be available and surplus. As stated earlier, the price paid shall always be the highest price available for gas from that area.

We can understand such a replenishment provision as a protection to the buyer's total expected volume, and as a quid pro quo for acceptance of our gas reservation statute.

We also note, however, that the buyer exacts a penalty upon withdrawal of reserved gas by requiring the State to proportionately reimburse the buyer for the undepreciated investment of the buyer in any facility upstream of the pipeline. This section (3.11) should be clarified, and possibly modified, before approval. It probably refers to the gas separation facility. If that is so, then the requirement is a reasonable one. The reimbursement can be included in the State's price to others.

F. Termination

The State may terminate the agreement if the El Paso Route is not chosen.

Either the State or the purchasing companies may terminate the agreement if all regulatory approvals are not granted by 31, December, 1978. Legal opinion is that Section 13B of the Alaska Natural Gas Act of 1976 is not part of the regulatory mechanism. Since repeal of 13B would frustrate the take back provision, the Legislature should consider amending the approving resolutions to render the contracts terminated if 13B of the Congressional Act is repealed.

G. Switching

Prior to the final granting of route approval, the Governor may give notice that he wishes to support a route other than the El Paso Route. If the buyers agree to switch their support accordingly, their rights under the proposed contracts continue.

This provision has caused more disquiet than any other. State's consultants have shied away from a stand on this issue. There have been strong expressions in legislative circles that the purchaser companies and the Administration would act more forcefully and purposefully if not allowed this caveat.

V. CONCLUSIONS

The State is giving up an unquantifiable possible loss of flexibility in marketing and price negotiation, plus an unquantifiable possible loss of flexibility of in-State use.

The State is getting purported effective assistance in the political arena. The assistance cannot now be accurately quantified or assessed in value. That value appears weakened by the switching provision.

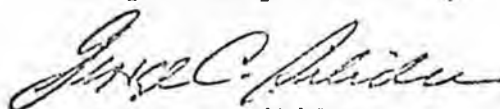
If the Arctic Gas Route prevails, nothing will have been lost by approving the contracts at this time.

If El Paso prevails, you will never truly know if approval of the contracts was of materially significant assistance.

You therefore find yourselves in a position of either approving the contracts as an indication of trust or disapproving the contracts because you feel they are not in the State's best interest.

In my opinion, with proper safeguards against repeal of Section 13B, the arguments for approval of the contracts outweigh the arguments for disapproval. There are strong reservations as to the switching provision (Section 11.4), which I would prefer to see removed unless the Governor will make a personal, public, statement that he does not intend to switch positions, and that presentation before the FPC will be in support of the El Paso route only.

Respectfully submitted,



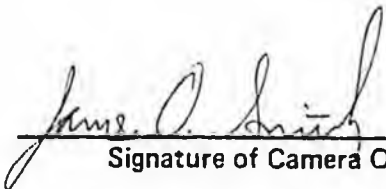
George C. Silides
Resource Consultant



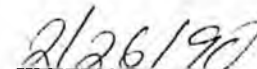
RECORDS CERTIFICATION



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

2-28-77

HOUSE

Feb. 28, 1977 Date

Mr. Speaker:

The Committee on FINANCE has had SCR 3

under consideration. A majority of the members of the Committee

- 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 that CS for _____ do pass
- (and) recommends it be referred to the _____ committee
- reports it back without ~~recommendation~~
- AND attaches a report of its intent
- (other) _____

MEMBERS SIGNING THE MAJORITY REPORT:

<u>Fredman</u>	<u>No Pass</u>	_____
<u>Rhode</u>	<u>Do Pass</u>	_____
<u>Hauger</u>	<u>No Pass</u>	_____

MEMBERS NOT CONCURRING IN THE MAJORITY REPORT:

<u>W. J. ...</u>	recommends:	<u>No Rec</u>
<u>Ed ...</u>	recommends:	<u>Do not Pass</u>
<u>Alkins</u>	recommends:	<u>Do not Pass</u>
<u>Swanson</u>		<u>Do not Pass</u>
<u>...</u>		<u>Do not Pass</u>

Chairman

COMMITTEE REPORT

2-28-77

HOUSE

Feb. 28, 1977 Date

Mr. Speaker:

The Committee on FINANCE has had SCR 3

under consideration. A majority of the members of the Committee

- 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 that
CS for _____ do pass
- (and) recommends it be referred to the _____
committee
- reports it back without recommendation
- AND attaches a report of its intent
- (other) _____

MEMBERS SIGNING THE MAJORITY REPORT:

_____	_____	_____
_____	_____	_____
_____	_____	_____
_____	_____	_____

MEMBERS NOT CONCURRING IN THE MAJORITY REPORT:

_____	recommends: _____
_____	recommends: _____
_____	recommends: _____

Chairman

Introduced: 1/11/77
Referred: Special Committee to
Consider The Sale of
Royalty Gas

BY THE RULES COMMITTEE BY
REQUEST OF THE GOVERNOR

1 IN THE SENATE

2 SENATE CONCURRENT RESOLUTION NO. 3

3 IN THE LEGISLATURE OF THE STATE OF ALASKA

4 TENTH LEGISLATURE - FIRST SESSION

5 Approving the disposal to Tenneco
6 Alaska, Inc., of royalty natural
7 gas taken in-kind

8 BE IT RESOLVED BY THE LEGISLATURE OF THE STATE OF ALASKA:

9 WHEREAS, under AS 38.06.055(a), each house of the legislature must
10 approve by concurrent resolution all sales of state-owned royalty oil or
11 gas before the sale may be consummated; and

12 WHEREAS, the State of Alaska has the right under AS 38.05.180 and its
13 oil and gas leases to receive royalty oil and gas either in-kind or in-
14 value from the Prudhoe Bay Field; and

15 WHEREAS, the commissioner of natural resources has entered into a
16 contract for the sale of 50 per cent of state-owned royalty gas from the
17 Prudhoe Bay Field to Tenneco Alaska, Inc.; and

18 WHEREAS, the Alaska Royalty Oil and Gas Development Advisory Board
19 approved the contract for the sale of 50 per cent of the state-owned royalty
20 gas from the Prudhoe Bay Field to Tenneco Alaska, Inc.; and

21 WHEREAS, the legislature has reviewed this contract in detail and con-
22 ducted hearings and otherwise received public input on this contract; and

23 WHEREAS, the legislature finds this contract to be in the public
24 interest of Alaska and its citizens, and further finds that this contract
25 is in compliance with all requirements of law;

26 BE IT RESOLVED by the Alaska State Legislature that Alaska royalty gas
27 sale No. 76-2 and the contract providing for the sale of royalty gas from
28 the Prudhoe Bay gas field pertaining to it, between the state and Tenneco
29 Alaska, Inc., is hereby approved.

SCR 3, 4, 5

JAY S. HAMMOND
GOVERNOR



STATE OF ALASKA
OFFICE OF THE GOVERNOR
JUNEAU

January 10, 1977

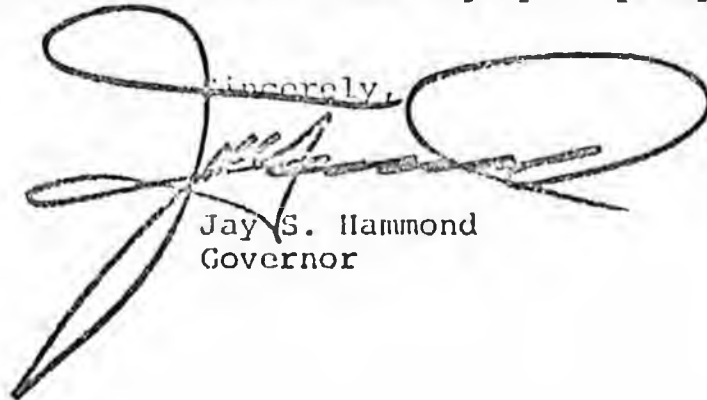
President of the Senate
Alaska State Legislature
Juneau, Alaska 99811

Dear Mr. President:

Under the authority of art. III, sec. 18 of the Alaska Constitution, I am transmitting three resolutions giving legislative approval to three royalty natural gas sales.

AS 38.06.055(a) requires that every disposition of state-owned royalty oil or natural gas be approved by concurrent resolution of the legislature before the sale may be consummated. On November 12, 1976, I announced that the state had entered into contracts for the sale of Prudhoe Bay royalty natural gas with Tenneco Alaska, Inc., El Paso Natural Gas Company, and Southern Natural Gas Company, respectively. Those contracts along with supporting information are being transmitted to each legislator during the first week this session.

I hope that you agree that these sales are in the best interest of all Alaskans and I urge your prompt approval.

Sincerely,

Jay S. Hammond
Governor



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.

James A. Smith
Signature of Camera Operator

2/26/90
Date

COMMITTEE REPORT

SENATE

_____ Date

Mr. President:

The Committee on FINANCE has had SSA 3
under consideration. A majority of the members of the Committee

- 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 that
CS for _____ do pass
- (and) recommends it be referred to the _____
committee
- reports it back without recommendation
- AND attaches a report of its intent
- (other) _____

MEMBERS SIGNING THE MAJORITY REPORT:

MEMBERS NOT CONCURRING IN THE MAJORITY REPORT:

_____ recommends: _____
_____ recommends: _____
_____ recommends: _____

_____ Chairman

A M E N D M E N T

Offered in the SENATE

By _____

To: _____ SENATE BILL NO. _____

_____ HOUSE BILL NO. _____

AMENDMENT: Page _____ Line _____

Introduced: 1/11/77
Referral: Special Committee to
Consider The Sale of
Royalty Gas

BY THE RULES COMMITTEE BY
REQUEST OF THE GOVERNOR

1 IN THE SENATE

2 SENATE CONCURRENT RESOLUTION NO. 4

3 IN THE LEGISLATURE OF THE STATE OF ALASKA

4 TENTH LEGISLATURE - FIRST SESSION

5 Approving the disposal to El Paso
6 Natural Gas Company of royalty
7 natural gas taken in-kind

8 BE IT RESOLVED BY THE LEGISLATURE OF THE STATE OF ALASKA:

9 WHEREAS, under AS 38.06.055(a), each house of the legislature must
10 approve by concurrent resolution all sales of state-owned royalty oil or
11 gas before the sale may be consummated; and

12 WHEREAS, the State of Alaska has the right under AS 38.05.180 and its
13 oil and gas leases to receive royalty oil and gas either in-kind or in-
14 value from the Prudhoe Bay Field; and

15 WHEREAS, the commissioner of natural resources has entered into a
16 contract for the sale of 25 per cent of state-owned royalty gas from the
17 Prudhoe Bay Field to El Paso Natural Gas Company; and

18 WHEREAS, the Alaska Royalty Oil and Gas Development Advisory Board
19 approved the contract for the sale of 25 per cent of the state-owned royalty
20 gas from the Prudhoe Bay Field to El Paso Natural Gas Company; and

21 WHEREAS, the legislature has reviewed this contract in detail and con-
22 ducted hearings and otherwise received public input on this contract; and

23 WHEREAS, the legislature finds this contract to be in the public
24 interest of Alaska and its citizens, and further finds that this contract
25 is in compliance with all requirements of law;

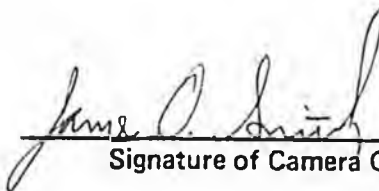
26 BE IT RESOLVED by the Alaska State Legislature that Alaska royalty gas
27 sale No. 76-3 and the contract providing for the sale of royalty gas from
28 the Prudhoe Bay gas field pertaining to it, between the state and El Paso
29 Natural Gas Company, is hereby approved.



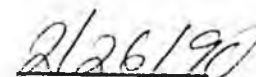
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Signature of Camera Operator



Date

2-28-77

COMMITTEE REPORT

HOUSE

Feb. 28, 1977 Date

Mr. Speaker:

The Committee on Finance has had CS 4
under consideration. A majority of the members of the Committee

- 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 that
CS for _____ do pass
- (and) recommends it be referred to the _____
committee
- reports it back without recommendation
- AND attaches a report of its intent
- (other) _____

MEMBERS SIGNING THE MAJORITY REPORT:

MEMBERS NOT CONCURRING IN THE MAJORITY REPORT:

_____ recommends: _____

_____ recommends: _____

_____ recommends: _____

Chairman

Introduced: 1/11/77
Referral: Special Committee to
Consider The Sale of
Royalty Gas

BY THE RULES COMMITTEE BY
REQUEST OF THE GOVERNOR

1 IN THE SENATE

2 SENATE CONCURRENT RESOLUTION NO. 4

3 IN THE LEGISLATURE OF THE STATE OF ALASKA

4 TENTH LEGISLATURE - FIRST SESSION

5 Approving the disposal to El Paso
6 Natural Gas Company of royalty
7 natural gas taken in-kind

8 BE IT RESOLVED BY THE LEGISLATURE OF THE STATE OF ALASKA:

9 WHEREAS, under AS 38.06.055(a), each house of the legislature must
10 approve by concurrent resolution all sales of state-owned royalty oil or
11 gas before the sale may be consummated; and

12 WHEREAS, the State of Alaska has the right under AS 38.05.130 and its
13 oil and gas leases to receive royalty oil and gas either in-kind or in-
14 value from the Prudhoe Bay Field; and

15 WHEREAS, the commissioner of natural resources has entered into a
16 contract for the sale of 25 per cent of state-owned royalty gas from the
17 Prudhoe Bay Field to El Paso Natural Gas Company; and

18 WHEREAS, the Alaska Royalty Oil and Gas Development Advisory Board
19 approved the contract for the sale of 25 per cent of the state-owned royalty
20 gas from the Prudhoe Bay Field to El Paso Natural Gas Company; and

21 WHEREAS, the legislature has reviewed this contract in detail and con-
22 ducted hearings and otherwise received public input on this contract; and

23 WHEREAS, the legislature finds this contract to be in the public
24 interest of Alaska and its citizens, and further finds that this contract
25 is in compliance with all requirements of law;

26 BE IT RESOLVED by the Alaska State Legislature that Alaska royalty gas
27 sale No. 76-3 and the contract providing for the sale of royalty gas from
28 the Prudhoe Bay gas field pertaining to it, between the state and El Paso
29 Natural Gas Company, is hereby approved.

El Paso ALASKA
COMPANY

POUCH 7009
ANCHORAGE, ALASKA 99510

PHONE: 907-279-6591

February 27, 1977

The Honorable Joseph H. McKinnon
Alaska State House of Representatives
Pouch V - State Capitol Building
Juneau, Alaska 99811

Dear Representative McKinnon,

During our conversation in your office last week, you asked for additional information respecting the value of a commitment of the state's surplus royalty gas to El Paso Natural Gas Company in eliciting support for a trans-Alaska gas pipeline route.

We note that the report published by the House Special Committee on the Sale of Royalty Gas states that El Paso needs no additional incentive to work in behalf of its own proposal, and suggests that the value of committing 25% of the state's surplus gas to El Paso is questionable. While we are certainly dedicated to doing everything within our ability to secure approval of the trans-Alaska route, the persuasive force of additional gas supplies for the eight-state El Paso market area is of no less significance than that for Tenneco and Southern. In fact, many knowledgeable experts involved in the gas line issue have singled out California as the state most critical to the success of the trans-Alaska route (next to Alaska, of course!)

As you can see from the attached description of the states served by El Paso, over 55% of the total volume of gas consumed in California is supplied by that company. Moreover, in recent years, El Paso has, through its natural gas deliveries, provided more energy to California than any other company involved in supplying energy of any kind. Nonetheless, it is well known that the State of California does not support our project. The reasons for this fact are complex, but the simple problem we have experienced in persuading California to back the trans-Alaska route is that we have nothing tangible to offer them. For over four years, we have attempted to elicit support on the basis of our friendship and goodwill with our California customers. At the same time, sponsors of the trans-Canadian route have argued successfully that approval of their project with its "western leg" could mean that additional gas supplies from some unnamed source (presumably Mackenzie Delta) would be available to California markets. We know that such argument has no

factual basis, since testimony before the NEB has been that Mackenzie Delta gas will not be exported to U.S. markets. However, Arctic Gas has very effectively used the suggestion of additional Canadian gas via its project to gain California's endorsement.

With the commitment of Alaska's surplus royalty gas to El Paso, we will have at least three means of turning California around on this issue.

- 1) Senators Stevens and Gravel and Congressman Young can write "Dear Colleague" letters to California's U.S. Congressional Delegation, asking for their support on the basis of Alaska's surplus gas offsetting part of the severe curtailments facing California markets.
- 2) The State of Alaska will be able to send representatives to California with the message, "Fellow Americans, we understand your critical needs for natural gas. We will have some royalty gas which will be surplus to our own needs in Alaska, and we are willing to make this excess gas available to your markets provided the trans-Alaska route for the North Slope gas pipeline is approved."
- 3) El Paso itself will be provided with a tool for use in mounting an extensive state-wide public campaign in California. Given this tool (additional natural gas) and sufficient time, we believe that we can generate sufficient public support for our project to reverse the stand of the California administration. We have hired the necessary public relations expertise but it is now up to the Alaska House of Representatives to provide us with the tool to work with. We have encountered several congressional representatives who, after hearing our presentation on the trans-Alaska route, have said, in essence, "Gentlemen, I can see that your project will provide some real benefits for the American gas consumer and the U.S. economy, but until 51% of my constituents tell me to do so, I can not support you." Obviously, our mission in California is to persuade 51% of the population to support the trans-Alaska route. And, as I have said, we have not been able to do it with friendship and goodwill.

The foregoing plans have been described on the basis of their application in California alone. We would, of course, work throughout our 8-state market area.

The Honorable Joseph H. McKinnon
February 27, 1977
Page 3

I don't want to leave you with the impression that we intend to claim that El Paso's share of Alaska's surplus royalty gas would solve all of our customers' gas problems. However, you can see from the attached document that we estimate 15% curtailment in Priority 1 (household) uses in 1981. Alaska's surplus royalty gas could offset a major portion of that curtailment, to the tune of supplying over 190,000 homes which would otherwise be without gas.

Alaska has an opportunity to present itself as a concerned, generous member of the U.S. energy community by offering to share its surplus resources. While we do not wish to suggest anything that is more properly the right of those with the constitutional authority to establish state policy, such as yourself, it would certainly seem that the "generous" approach would be a far more effective means of generating support for Alaska's programs than the "dog in the manger" attitude which some elements in the lower 48 perceive on the part of a few Alaskans.

One final point. The debate in the Senate last week was centered around an amendment which would have compelled El Paso, Tenneco and Southern to support the retention of section 13B of the Alaska Natural Gas Transportation Act of 1976. As you know, section 13B gives Alaska the right to recall its gas from interstate pipelines as Alaska's own needs develop. There are some who fear that the Act may be amended and section 13B repealed. For the record, El Paso supported section 13B when it was first proposed, and we intend to continue to support its retention in the Act. No action by the Alaska Legislature is necessary to force us to do so.

I have attempted to be as brief as possible and still be responsive to your request. If you should want any additional information on this matter, please let me know.

Best regards.

Sincerely,

EL PASO ALASKA COMPANY



Michael C. Holland
Assistant to the Vice President

Attachment

cc: Speaker Malone
Representative Cowper
Representative Gruening

Representative Parr
Representative Hayes
Representative Chatterton

EL PASO NATURAL GAS COMPANY
 NATURAL GAS CONSUMPTION FOR THOSE
 STATES SERVED WHOLLY OR IN PART
 Calendar Year 1975

<u>STATE</u>	<u>EPNG SALES</u>	<u>TOTAL CONSUMPTION</u>	<u>EPNG PERCENT OF TOTAL CONSUMPTION</u>
Arizona	164,704 MMCF ¹	164,704 MMCF	100.0%
California	1,008,158 MMCF	1,807,604 MMCF	55.8%
Colorado	120 MMCF	290,798 MMCF	<1%
Nevada	28,590 MMCF	60,446 MMCF	47.3%
New Mexico	43,336 MMCF	167,220 MMCF	25.9%
Oklahoma	11 MMCF	639,575 MMCF	<1%
Texas	34,627 MMCF	3,911,026 MMCF	<1%
Utah	19 MMCF	123,098 MMCF	<1%

¹MMCF = millions of cubic feet

NATURAL GAS CURTAILMENT IN 1976
 AND ESTIMATED CURTAILMENT IN 1981
1976

	<u>VOLUME</u>	<u>% OF REQUIREMENT</u>
P 1	0	0
P 2	1,731 MMCF	1%
P 3	35,666 MMCF	16%
P 4	2,862 MMCF	21%
P 5	219,809 MMCF	65%
TOTAL	<u>260,068 MMCF</u>	<u>19%</u>

1981

	<u>VOLUME</u>	<u>% OF REQUIREMENT</u>
P 1	83,071 MMCF	15%
P 2	143,261 MMCF	52%
P 3	254,693 MMCF	100%
P 4	11,440 MMCF	100%
P 5	348,723 MMCF	100%
TOTAL	<u>841,188 MMCF</u>	<u>58%</u>

HR 11
" 12
" 13

January 24, 1977

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, I am transmitting three resolutions giving legislative approval to three royalty natural gas sales.

AS 38.06.055(a) requires that every disposition of state-owned royalty oil or natural gas be approved by concurrent resolution of the legislature before the sale may be consummated. On November 12, 1976, I announced that the state had entered into contracts for the sale of Prudhoe Bay royalty natural gas with Tenneco Alaska, Inc., El Paso Natural Gas Company, and Southern Natural Gas Company, respectively. Those contracts along with supporting information were transmitted to each legislator during the first week this session.

The identical resolutions were submitted to the Senate. We are introducing the resolutions in the House today in order to expedite consideration.

I hope that you agree that these sales are in the best interest of all Alaskans, and I urge your prompt approval.

Sincerely,

Jay S. Hammond
Governor



Alaska State Legislature
Senate

JUNEAU, ALASKA

March 1, 1977

Representative Steve Cowper
Pouch V
Juneau, Alaska 99811

Dear Representative Cowper:

The facts surrounding the affects of the powers of the Federal Energy Administration on Alaska's ability to withdraw any of its natural gas in accordance with the provisions of any of the gas sale contracts are critical in the evaluation of these contracts. Whether or not we approve these future sales, we should make ourselves aware of all the facts before we give approval to any of the contracts. To that end I am supplying to you, for your own evaluation, the data before the Senate during their two days of reconsideration.

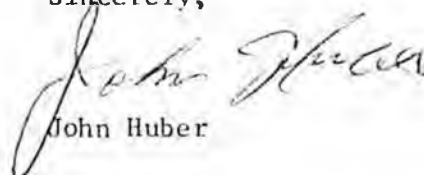
Obviously the recent actions of the FEA were not considered when the contracts were negotiated last year, nor was this winter's gas shortage and its affect on the politics of the Congress. This just goes to point out the outfalls of trying to crystal ball firm contracts with a minimum of 5 to 8 years before the first gas can flow.

The federal government seems sure to enact broader and more restrictive rather than legislation which will help Alaska with the wise and unselfish use of our oil and gas resources.

The material is presented to you in the hopes that it will in some small way help you to reach a more satisfactory answer than the Senate found.

I hope the wisdom of Solomon arrives in time to be with the House.

Sincerely,


John Huber

FEBRUARY 25, 1977

PAGE 1

MR. PRESIDENT:

HAVING BEEN CHASTISED BY THE CHAIR AND SOME OF MY COLLEAGUES FOR BEING DILATORY DURING THE DEBATE AND FLOOR ACTION ON SCR #4 YESTERDAY, IT IS WITH GREAT RELUCTANCE AND A HEAVY HEART THAT I ENTER INTO THIS DEBATE TODAY. I HAVE CAUSED THE TESTIMONY WHICH I PRESENTED YESTERDAY ALONG WITH A FEW EXHIBITS TO BE PLACED ON EACH DESK. I HOPE MY FELLOW SENATORS WILL RECONSIDER THIS INFORMATION ALONG WITH THE LEGAL OPINION WHICH I HAVE OBTAINED FROM LEGISLATIVE COUNCIL. I HAVE ALSO OBTAINED A COPY OF THE LEGAL OPINION BY A FIRM WITH OUTSTANDING CREDENTIALS IN THE ENERGY FIELD AND THE ONLY ONE TO DATE WHICH HAS ACCOMPLISHED A STUDY ON THIS PHASE OF THE ENERGY ACT, CHAPMAN, GADSBY, HANNAH AND DUFF. (INCLUDED)

I AM SURE OPEN MINDED SENATORS WILL FIND THAT MR. LA ROCCA'S NEWS RELEASES WERE CORRECT, AS WAS MY PRESENTATION TO THIS BODY. I HOPE THAT SOME OF YOU HAVE ACCEPTED MY INVITATION TO EXAMINE THE OVER 50 POUNDS OF MATERIAL PILED ON THE DIVIDER OF MY DESK SINCE YESTERDAY. OF COURSE, WE STILL HAVE NO TRANSCRIPT OR EXHIBITS FOR CONSIDERATION.

IN ANSWER TO SENATOR RADAR:

MR. PRESIDENT: IN LIGHT OF FEA LAW ALREADY ON THE BOOKS, AS LONG AS WE HAVE NO CONTRACT AND CAN BUILD AN INDUSTRY TO USE OUR GAS, WE ARE NOT LIKELY TO HAVE IT STOLEN FROM US OUTRIGHT, BY THE FEDERAL GOVERNMENT. THESE PARTICULAR CONTRACTS, NOT CONTRACTS IN GENERAL, ARE THE WEAK LINK WHICH WILL CAUSE THE LOSS OF USE OF ALL OUR GAS IN ALASKA; EVEN THOUGH IT IS TO THE BEST INTEREST OF THE

FEBRUARY 25, 1977

PAGE 2

LOWER 48 STATES BY PROVIDING FAR MORE ENERGY TO THEM. MR. PRESIDENT, INTELLIGENT CONTRACTS COULD BE DRAFTED TO DO WHAT SENATOR RADAR SAYS BUT THESE CONTRACTS ARE DEFECTIVE. SENATOR RADAR'S CRYSTAL BALL CAN'T TELL HIM WHAT'S GOING TO HAPPEN IN THE NEXT 5 TO 8 YEARS BEFORE GAS FLOWS.

REFERRING TO SCR #3 DURING DEBATE SENATOR HUBER SAID:

MR. PRESIDENT, I DO FEEL THAT I OWE AN APOLOGY TO SOME OF THE MEMBERS OF THIS BODY FOR CALLING THE SENATE AND HOLDING THIS MATTER OVER UNTIL THIS MORNING. I WOULD NOT HAVE DONE SO IF I HAD KNOWN AT 4 P.M. THAT WHICH I LEARNED BY 7 P.M. YESTERDAY; WHICH WAS, THAT THESE ILL CONCEIVED AND HASTILY DRAWN CONTRACTS WERE LOCKED IN SINCE THE FIRST OF THE WEEK BY A BOUND CAUCUS INSPIRED FROM THE THIRD FLOOR AS WELL AS THE ORGANIZATION FOR THE MISMANAGEMENT OF ALASKA'S RESOURCES. WHEN ONE COMPARES THE STATESMANSHIP BEING DISPLAYED BY THE LEADERSHIP OF THE OTHER HOUSE IN THE HANDLING OF THESE CONTRACTS WITH THE POLITICS OF THE LEADERSHIP OF THIS BODY, IT MAKES ME THANKFUL FOR NOT BEING A PART OF THAT FARCE. MR. PRESIDENT, I PRAY THAT ALL THE CITIZENS OF ALASKA WILL FOCUS ON THIS ADMINISTRATION AND LEADERSHIP REGARDING ITS ACTIONS IN THIS MOST IMPORTANT MATTER AS WELL AS OTHERS, USING A STRONG MAGNIFYING GLASS.

LAW OFFICES

CHAPMAN, GADSBY, HANNAH AND DUFF

1700 PENNSYLVANIA AVENUE, N.W.

WASHINGTON, D. C. 20006

TELEPHONE (202) 223-9100

CABLE ADDRESS

"CHAGAD"

February 9, 1977

OSCAR L. CHAPMAN
WILLIAM R. DUFF
NORMAN S. PAUL
PAUL A. LENZINI
GENE PERRY BOND
JAMES S. HOSTETLER
HENRY J. STAUDINGER
W. H. HARRELL SMITH
LAWRENCE I. ABRAMS
ALBERT D. STURTEVANT
CHARLES S. FAX
CARL W. ULRICH
JOEL L. GREENE

COUNSEL
PAUL F. HANNAH
MICHAEL V. DISALLE

ASSOCIATED FIRM
GADSBY AND HANNAH
140 FEDERAL STREET
BOSTON, MASSACHUSETTS 02110

Mr. George H. Shipley
Director and Consultant
Alaska Petroleum Company
Five Greenway Plaza East
Houston, Texas 77046

Re: Application of the Mandatory Petroleum Allocation
Regulations of the Federal Energy Administration
to the Sale of Royalty Crude Oil by the State of
Alaska

Dear Mr. Shipley:

At the request of Clinton B. Fawcett, Esq., we have prepared and enclose herewith a letter dated February 9, 1977, expressing our opinion regarding the application of the Mandatory Petroleum Allocation Regulations, 10 C.F.R. Part 211, of the Federal Energy Administration to the sale of royalty crude oil by the State of Alaska.

As set forth more fully in our letter, we conclude that the State of Alaska is subject to the provisions of 10 C.F.R. §211.63 in the same manner as other royalty owners. We further conclude that, whether the State of Alaska first receives its royalty in kind or in value, a change in crude oil purchasers or the election to receive in kind rather than in value is permitted only upon compliance with the provisions of paragraph (d) of Section 211.63, which provides for the termination of supplier/purchaser relationships under specific prescribed conditions.

Mr. George H. Shipley
Page Two

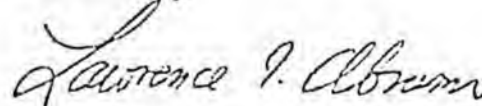
February 9, 1977

Also enclosed for your information and easy reference are copies of the following documents:

- (1) FEA Interpretation dated May 17, 1974 to Signal Oil and Gas Company;
- (2) FEA Interpretation dated December 12, 1975 to J & W Refining, Inc.;
- (3) FEA Remedial Order dated October 31, 1975 and Supplemental Order dated March 2, 1976 to the State Lands Commission of the State of California;
- (4) FEA Decision and Order in Colorado State Board of Land Commissioners, Case No. FEA-0974 (January 26, 1977); and
- (5) FEA Decision and Order in United States Geological Survey, Case No. FEA-0850 (January 26, 1977).

We shall be happy to discuss this matter with you and provide any additional information requested.

Sincerely,



Lawrence I. Abrams

LIA:jl
enclosures

cc: Clinton B. Fawcett, Esq.

LAW OFFICES
CHAPMAN, GADSBY, HANNAH AND DUFF

1700 PENNSYLVANIA AVENUE, N.W.

WASHINGTON, D. C. 20006

TELEPHONE (202) 223-9100

CABLE ADDRESS

"CHAGAD"

COUNSEL

PAUL F. HANNAH
MICHAEL V. DEBALLE

ASSOCIATED FIRM

GADSBY AND HANNAH
140 FEDERAL STREET
BOSTON, MASSACHUSETTS 02110

OSCAR L. CHAPMAN
WILLIAM R. DUFF
NORMAN S. PAUL
PAUL A. LENZINI
GENE PERRY BOND
JAMES S. HOSTETLER
HENRY J. STAUDINGER
W. N. HARRELL SMITH
LAWRENCE I. ABRAMS
ALBERT D. STURTEVANT
CHARLES S. FAX
CARL W. ULRICH
JOEL L. GREENE

February 9, 1977

Mr. George H. Shipley
Director and Consultant
Alaska Petroleum Company
Five Greenway Plaza East
Houston, Texas 77046

Re: Application of the Mandatory Petroleum Allocation
Regulations of the Federal Energy Administration
to the Sale of Royalty Crude Oil by the State of
Alaska

Dear Mr. Shipley:

You have requested our opinion regarding the application of the Mandatory Petroleum Allocation Regulations, 10 C.F.R. Part 211, of the Federal Energy Administration (FEA) to the sale of royalty crude oil by the State of Alaska. It is our understanding that the State of Alaska, as lessor, is entitled to receive its royalty either in kind or in value with respect to crude oil produced from State oil and gas leases in the Prudhoe Bay Basin. Production from these leases is currently scheduled to commence in September 1977. This letter will address the following specific issues:

(1) Whether the sale of royalty crude oil by the State of Alaska is subject to the provisions of the Mandatory Petroleum Allocation Regulations, 10 C.F.R. Part 211;

(2) Whether the State of Alaska is subject to the regulation on domestic crude oil supplier/purchaser relationships, 10 C.F.R. §211.63, with respect to the sale of royalty crude oil; and

(3) Whether the State of Alaska under the provisions of 10 C.F.R. §211.63 can elect to receive royalty in kind once having received its royalty in value.

As set forth more fully hereinafter, we conclude that the State of Alaska is subject to the provisions of 10 C.F.R. §211.63 in the same manner as other royalty owners. We further conclude that, whether the State of Alaska first receives its royalty in kind or in value, a change in crude oil purchasers or the election to receive in kind rather than in value is permitted only upon compliance with the provisions of paragraph (d) of Section 211.63, which provides for the termination of supplier/purchaser relationships under specific prescribed conditions. Our reasons for these conclusions are detailed below.

I

The sale of royalty crude oil by the State of Alaska is subject to the provisions of the Mandatory Petroleum Allocation Regulations.

Section 4(a) of the Emergency Petroleum Allocation Act of 1973, as amended, provides:

(a) Not later than fifteen days after November 27, 1973, the President shall promulgate a regulation providing for the mandatory allocation of crude oil, residual fuel oil, and each refined petroleum product, in amounts specified in (or determined in a manner prescribed by) and at prices specified in (or determined in a manner prescribed by) such regulation. Subject to subsection (d) of this section, such regulation shall take effect not later than fifteen days after its promulgation. Such regulations shall apply to all crude oil, residual fuel oil, and refined petroleum products produced in or imported into the United States. 15 U.S.C.A. §753(a) (1976). (Emphasis added.)

There are no provisions in the Emergency Petroleum Allocation Act of 1973 (P.L. 93-159) or in any subsequent amendments thereto (P.L. 93-511; P.L. 94-99; P.L. 94-133; P.L. 94-153; and P.L. 94-335) which provide an exemption for State and local governments from the regulation promulgated pursuant to Section 4(a) of the Act.

On January 14, 1974 the Federal Energy Office (now the Federal Energy Administration) issued the Mandatory Petroleum Allocation Regulations, 10 C.F.R. Part 211, 39 Fed. Reg. 1924, 1932 (January 15, 1974). These regulations, as amended, are still in effect as of this date.

10 C.F.R. §211.1(a) states:

This part applies to the mandatory allocation of crude oil, residual fuel oil and refined petroleum products produced in or imported into the United States.

10 C.F.R. §211.51 provides definitions for the following terms:

"State" means each of the 50 states, The District of Columbia, Puerto Rico, possessions and territories of the United States, other than the Panama Canal Zone.

"Supplier" means any firm or any part or subsidiary of any firm other than the Department of Defense which presently, during the base period, or during any period between the base period and the present supplies, sells, transfers or otherwise furnishes (as by consignment) any allocated product or crude oil to wholesale purchasers or end-users, including, but not limited to, refiners, natural gas processing plants or fractionating plants, importers, resellers, jobbers, and retailers.

"Firm" means any association, company, corporation, estate, individual, joint-venture, partnership, or sole proprietorship or any other entity however organized including charitable, educational, or other eleemosynary institutions, and the Federal Government including corporations, departments, Federal agencies, and other instrumentalities, and State and local governments.

One of the principal purposes of the Emergency Petroleum Allocation Act was to provide for:

. . . equitable distribution of crude oil, residual fuel oil, and refined petroleum products at equitable prices among all regions and areas of the United States and sectors of the petroleum industry, including independent refiners, small refiners, non-branded independent marketers, branded independent marketers, and among all users. 15 U.S.C.A. §753(b)(1)(F) (1976).

Accordingly, neither Congress in the enabling legislation nor the Federal Energy Administration in the allocation regulations has provided any exemption for State and local governments. The allocation regulations treat a State or local government like any other private firm, extending the same rights and imposing the same obligations thereunder. Therefore, the sale of royalty crude oil by the State of Alaska is governed by the same rules and regulations applicable to the sale of crude oil by any firm and is thus fully subject to the provisions of the Mandatory Petroleum Allocation Regulations.

II

The State of Alaska is subject to the regulation on domestic crude oil supplier/purchaser relationships with respect to the sale of royalty crude oil.

The allocation of crude oil produced in the United States, unless otherwise exempted is subject to the regulation set forth in 10 C.F.R. §211.63 governing domestic crude oil supplier/purchaser relationships. Section 211.63(a) states:

Scope. This section provides for the allocation of crude oil produced in the United States other than crude oil which is the subject of (1) purchases and sales made to comply with §211.65 of this subpart; (2) sales of crude oil made pursuant to Parts 225 and 225a, Chapter II of Title 30 of the Code of Federal Regulations; (3) the first sale of crude oil under 10 U.S.C. 7430(b), as amended by §201 of the Naval Petroleum Reserves Production Act of 1976; and (4) the first sale of any domestic crude oil produced and sold from a property from which domestic crude oil was not produced and sold prior to January 1, 1976.

The general rule regarding the establishment and maintenance of a supplier/purchaser relationship is set forth in Section 211.63(b)(1) and (2) which state:

General rule. (1) All supplier/purchaser relationships in effect under contracts for sales, purchases and exchanges of domestic crude oil on January 1, 1976 shall remain in effect for the duration of this program; provided, however, that any such supplier/purchaser relationship to which this section is applicable may be terminated as provided in paragraph (d) of this section.

(2) Once any first sale, purchase or exchange of domestic crude oil is made which is exempt from this rule pursuant to paragraph (a)(4) of this section, or once the sale, purchase or exchange of any domestic crude oil that has at any time been the subject of a supplier/purchaser relationship under subparagraph (1) of this paragraph (b) is made in accordance with this section to a firm that was not the purchaser thereof on January 1, 1976, or has not continued to purchase that crude oil without interruption since December 31, 1975, a supplier/purchaser relationship between the seller and purchaser shall be established thereafter under this section as though it had been in effect on January 1, 1976.

Since the subject state royalty crude oil was not produced and sold prior to January 1, 1976, under the provisions of Section 211.63(b)(2) once the first sale, purchase or exchange of the state royalty crude oil is made, a supplier/purchaser relationship between the supplier and purchaser is established thereafter as though it had been in effect on January 1, 1976. Under the provisions of Section 211.63(b)(1) the supplier/purchaser relationship thus established remains in effect for the duration of the program and may only be terminated under the specific and limited provisions set forth in Section 211.63(d) unless otherwise ordered by the Federal Energy Administration through the granting of an application for exception.

Section 211.63(d) sets forth the conditions for termination of supplier/purchaser relationships. None of the provisions provide for unilateral termination by the supplier. The provisions which would be relevant to termination of the supplier/purchaser relationship by the State of Alaska are Section 211.63(d)(1)(i) and (iii) which state:

→ (d) Termination of supplier/purchaser relationships.

(1) Any supplier/purchaser relationship established under paragraph (b) of this section may be terminated as follows:

(i) at the option of the purchaser, as evidenced by its written consent thereto together with notice of the termination date given to the producer, provided all subsequent purchasers of the crude oil involved have consented to such termination in writing;

* * *

(iii) by a producer (as defined in Part 212 of this chapter), if the present purchaser as to any old, new or stripper well lease crude oil (as defined in §§212.72 and 212.74 of Part 212 of this chapter) refuses, within a fifteen day period after receipt of written notice as to that offer from the producer, to meet any bona fide written offer made by another purchaser to purchase such crude oil at a lawful price above the price paid by the present purchaser.

In addition, Section 211.63(d)(iv) provides that a supplier/purchaser relationship may be terminated by a producer or reseller as to a reseller purchasing from it provided that certain complex and express conditions are satisfied. For the purpose of this rule a "producer" means "a firm or that part of a firm which produces crude oil or natural gas, or any firm which owns crude oil or natural gas when it is produced." 10 C.F.R. §212.31. If the State of Alaska owns the royalty crude oil when it is produced, it is a "producer" for purposes of Section 211.63(d). Consequently, the State of Alaska would be subject to the same rules applicable to a "producer" for the purposes of terminating a supplier/purchaser relationship.

The application of Section 211.63 to sales of state royalty crude oil have been considered by the FEA in a number of situations. In each case the applicability of Section 211.63 to sales of state royalty crude oil was either upheld or unchallenged. For example, in California State Lands Commission, 2 FEA ¶80, 507 (January 17, 1975), the FEA upheld an interpretation issued May 17, 1974 by the Deputy General Counsel to Signal Oil and Gas Company that under the provisions of Section 211.63 Signal Oil, a firm which on December 1, 1973 was receiving the royalty share of crude oil produced under the terms of a lease in effect with the State of California, was entitled to continue to receive that crude oil despite the fact that on November 29, 1973 the State had signed a new contract with two other companies who were to receive the crude oil involved as of May 1, 1974.

In another case, California State Lands Commission, 3 FEA ¶80,598 (March 12, 1976), the FEA upheld a Remedial Order issued to the California State Lands Commission on October 31, 1975 which found that the Commission had violated Section 211.63 by selling state royalty crude oil to U.S. Oil and Refining Co. at a time when its supplier/purchaser relationship for the crude oil involved was still in effect with Atlantic Richfield Co. who still desired to purchase the crude oil. In its decision the FEA made reference to the retroactive repeal of the exemption of price controls on the sale of crude oil and refined petroleum products by state and local governments which was sustained in California v. Simon, 504 F.2d. 430 (T.E.C.A. 1974), cert. denied, 419 U.S. 1021 (1974). The FEA decision stated in part:

. . . In this connection it should be noted that in promulgating the retroactive repeal the FEA clearly indicated that it was taking such action not only to prevent immediate price dislocations as suggested by the Commission, but also in order to prevent dislocations in the national distribution system by eliminating the opportunity and incentive for governmental entities to alter existing supplier/purchaser relationships with respect to royalty oil. See Notice, 39 Fed. Reg. 7176 (February 25, 1974). . . . California State Lands Commission at p. 80,869.

In Vaughey and Vaughey Oil Producers, 4 FEA ¶83,072 (August 27, 1976), the FEA granted exception relief to Vaughey and Vaughey Oil Producers which permitted them to sell 100 percent of the crude oil produced from the Lawry Bombing Range Field located in Arapahoe County, Colorado, for the benefit of the working interest owners at upper tier ceiling prices. On November 10, 1976, the Colorado Board of Land Commissioners, as royalty interest owner, filed an Appeal which, if granted, would have permitted Colorado to share in the additional revenues generated as a result of the relief granted to the working interest owners in the August 27 Order. In Colorado State Board of Land Commissioners, 4 FEA ¶ _____ (January 26, 1977), the FEA considered and rejected the Appeal by the State. The decision notes that Colorado as a royalty

interest owner is a producer of crude oil and thus subject to the price regulations which govern the first sale of domestic crude oil. FEA dismissed Colorado's contention that the Vaughey decision unlawfully impairs contractual obligations under the terms of the lease which provided that Colorado is entitled to 1/3 of the gross proceeds derived from the sale of all crude oil produced at those wells as a royalty. According to FEA's reading of the lease, Colorado's royalty payment was based upon a fraction of production, not revenue. The decision goes on to state:

. . . In enacting the Emergency Petroleum Allocation Act of 1973 (EPAA), as amended, the Congress expressly recognized that the Regulations which the FEA promulgates and the determinations which it issues to achieve the statutory objectives will on occasion abrogate certain prior private contractual arrangements. See H.R. Conference Rep. No. 623, 93rd Congress, 1st Sess. 24 (1973), Fed. Energy Guidelines, Par. 10,610, p. 10,619-9. The authority of the FEA to preempt private contracts in order to effectuate provisions of the EPAA has in fact been specifically sustained by the federal courts. See Basin, Inc. v. Federal Energy Administration, 534 F.2d. (324,326) (TECA 1976); Condor Operating Co. v. Sawhill, 514 F.2d. 351 (TECA), cert. denied, 421 U.S. 976 (1975); Citronelle-Mobile Gathering v. Gulf Oil Corp., 420 F. Supp. 162 (S.D. Ala. 1975); Trans World Airlines, Inc. v. Federal Energy Office, 380 F. Supp. 550 (D.D.C. 1974) affirmed, 520 F.2d 1339 (TECA 1975).

The FEA also rejected arguments by Colorado that the Vaughey Decision was invalid because of alleged statutory and constitutional conflicts. The Decision states:

We are also unpersuaded by the Board's further contentions that the Vaughey Decision is invalid because of alleged conflicts with a provision of the Constitution of Colorado and with a federal statute granting that State certain lands. Of course, to the extent that the Colorado Constitution necessarily conflicts with federal law, federal law would prevail. U.S. Const. art. 6. However, we perceive no real conflict between the Vaughey Decision and Article IX, Section 10 of the Constitution of Colorado which provides only that in making provision for the disposition of state lands, the Board shall "secure the maximum possible amount therefor." Nor do we perceive any conflict between the Vaughey Decision and Colorado's enabling act in which Congress, at Section 7, merely granted the State certain lands to be used for the support of common schools.

The Board further contends that the Vaughey Decision "appears to interfere with rights left to the State under article X of the United States Constitution." No authority has been cited by the Board for this proposition, nor has the Board described the nature of the supposed tenth amendment rights upon which the Decision allegedly encroaches. That contention must therefore be rejected. We note, however, that the relevant FEA statutory provisions were enacted by the Congress pursuant to the authority delegated to it under Article I of the Federal Constitution, viz. the commerce, general welfare and common defense clauses of Article I Section 8. See Federal Energy Administration Act of 1974 (P.L. 93-275, May 7, 1974), Section 2(a); Emergency Petroleum Allocation Act of 1973 (P.L. 93-159, November 27, 1973), Section 2(a)(3). Since these Acts were passed pursuant to powers delegated to Congress by Article I of the Constitution, they cannot also have been reserved to the states in the tenth amendment.

As further support that Section 211.63 is applicable to government royalty crude oil, FEA has consistently held that Section 211.63 is applicable to federal royalty crude oil. In Ruling 1974-22, the FEA stated:

Ruling: The mandatory allocation regulations in Part 211 provide no exemption for the Federal government. Therefore, the Department of the Interior is fully subject to all the provisions in that Part. Section 211.63(a) provides that "all supplier/purchaser relationships in effect under contracts for sales, purchases, and exchanges of domestic crude oil on December 1, 1973, shall remain in effect for the duration of this program. . . ." 39 Fed. Reg. 25228 (July 9, 1974).

In Mohawk Petroleum Corporation, Inc. v. Department of the Navy, 521 F.2d 1394 (T.E.C.A. 1975), the Temporary Emergency Court of Appeals confirmed that the Department of the Navy was subject to Section 211.63 with respect to sales of crude oil from the Elk Hills Petroleum Reserve. In that decision the court noted:

We are unable to fault, and are not sure whether the Department of the Navy now faults, the administrative determination of the President's delegatee that the power which Congress had conferred upon the President to regulate the sale of "all" crude oil includes some power to regulate sales by federal agencies. Indeed, this court recently held that FEA had validly subjected oil produced by the State of California to the emergency federal price controls by rescinding an earlier administrative exception

that had exempted transactions of States and municipalities from regulation. California v. Simon, T.E.C.A. 1974, 504 F.2d 430. If a federal statute empowering the President to control "all" domestic oil covers oil produced by other sovereignties, a fortiori, it covers oil produced by the federal government over which Congress and the President exercise supreme and direct legislative and executive power. 521 F.2d at 1395.

Subsequent to the TECA opinion cited above, Congress passed the Naval Petroleum Reserves Production Act of 1976 (P.L. No. 94-258) which among other things provided that the mandatory petroleum allocation and price regulations did not apply to the first sale of U.S. owned petroleum by the Secretary of the Navy from the naval reserves. Thus, Congress chose to provide only a limited and very specific exemption for the federal government on sales of crude oil.

In J & W Refining Co., 3 FEA ¶80,602 (March 19, 1976) the FEA confirmed an interpretation of the General Counsel that sales of crude oil by the U.S. Geological Survey were subject to the provisions of Section 211.63. The FEA concluded that under the circumstances of the case, Shell Oil Co. had not consented to a termination or waiver of its supplier/purchaser relationship with USGS because it had delivered the royalty oil to J & W Refining Co. in compliance with a USGS directive.

In a more recent decision, United States Geological Survey, 4 FEA ¶ (January 26, 1977), the FEA denied USGS the right, as a royalty owner, to share in the additional income which had been given to the working interest owners as a result of granting an application for exception in M.J. Mitchell, 3 FEA ¶83,146 (April 2, 1976). In denying the contention of USGS that such action unlawfully impaired the contractual obligations in the lease, the USGS decision states:

. . . It has been firmly established that the FEA has the authority to preempt the terms of any contract which prevents the effectuation of the policy objectives set forth by the Congress in the Emergency Petroleum Allocation Act of 1973, as amended, (EPAA, Pub. L. 93-159) and subsequent legislation. Trans World Airlines v. F.E.O., 2 CCH Fed. Energy Guidelines Par. 26,004 (DDC 1974), aff'd, 2 CCH Fed. Energy Guidelines Par. 26,006 (TECA 1975). Even if these leases had in fact been abrogated by the manner in which exception relief was granted in these cases, then the applicable statutes sustain the FEA action. . . .

Furthermore, in response to the assertion by USGS that the exception relief granted in the prior Decision contravenes the Oil and Gas Operating Regulations (30 C.F.R. Part 221) promulgated by the Secretary of Interior, under the authority of the Mineral Leasing Act of 1920 (30 U.S.C. §131 et seq.) the USGS Decision states:

We are unpersuaded by the USGS's argument. The Mineral Leasing Act itself fails to define the value of production, and, in fact, permits payment in kind by the lessee by allocating 12 1/2 percent of the total amount of production from a particular lease to the USGS. Although the Department of the Interior Regulations concerning royalties owed to the United States, as set forth in 30 CFR, Section 221.47, provide for the payment of not less than 12 1/2 percent of the gross proceeds from a lease as the royalty payment, these regulations can be superseded by an FEA determination that the Federal interest will be furthered by requiring the royalty payment to the USGS to be limited by the pricing provisions of the EPAA while the working interest share is sold at higher price levels. The FEA has made this determination in the present case. . . .

FEA's position is clear and consistent. Section 211.63 is equally applicable to federal, state and local governments as it is to private firms. The Courts have upheld FEA's removal of the exemption of State and local governments from price regulations, California v. Simon, supra, thus subjecting them to the same regulations as private firms. With respect to Section 211.63 itself, the Temporary Emergency Court of Appeals has held that Section 211.63 is constitutional and a rational exercise of the powers that had been delegated to FEA. Condor Operating Co. v. Sawhill, 514 F.2d 351 (TECA 1975).

However, it should be noted that on October 22, 1976, Judge Suttle of the U.S. District Court for the Western District of Texas held that Section 211.63 violated the congressional mandate that competitiveness in petroleum marketing be encouraged. The Court held that Section 211.63 amounted to a total denial of access to crude oil by new firms and was generally arbitrary and an abuse of FEA's discretion. The Court declared that Section 211.63 as it now exists is invalid, unlawful, null and void. Basin, Inc. v. FEA, No. SA-75-CA-250 (W.D. Tex. 1976). On November 3, 1976 the District Court's Order was stayed pending appeal by the Temporary Emergency Court of Appeal. Basin, Inc. v. FEA, No. 5-21 (TECA 1976). Briefs have been filed and oral argument was heard on January 21, 1977.

III

If the State of Alaska receives its royalty in value, it will be precluded from receiving its royalty in kind under the provisions of Section 211.63 unless the supplier/purchaser relationship for the crude oil involved is terminated pursuant to the provisions of paragraph (d) of Section 211.63

If the State of Alaska as lessor elects to receive its royalty in value, as is its option under the oil and gas lease, the lessee (producer or working interest owner) is required to pay the State the field market price or value at the well of all royalty oil produced and saved and removed or sold from said land. State of Alaska Competitive Oil and Gas Lease, paragraphs 11 and 14. Consequently, the royalty crude oil will either be removed and refined by or for the account of the lessee or sold or exchanged to a third party by the lessee.

See Page Five

As discussed previously, once the first sale, purchase or exchange of this royalty crude oil is made, a supplier/purchaser relationship between the supplier and the purchaser of the crude oil involved will be established under Section 211.63. At the outset, we note the question of whether the payment by the lessee to the State for royalty in value constitutes a "first sale" under the FEA allocation regulations. As background, it should be noted that the terms "first sale" and "producer" have not been defined under the allocation regulations. Under the price regulations, however, "first sale" means "the first transfer for value by the producer or royalty owner." 10 C.F.R. §212.72. "Producer" means "a firm or that part of a firm which produces crude oil or natural gas, or any firm which owns crude oil or natural gas when it is produced." 10 C.F.R. §212.31.

If FEA were to apply the same definitions of "first sale" and "producer" set forth in the price regulations to the allocation regulations, we believe that the receipt of payments for royalty in value would constitute a first sale only if the State of Alaska "owns" the royalty crude oil when it is produced. It is not entirely clear whether the State owns the crude oil when it is produced in the instant case and we need not attempt in this letter to examine the intricacies of Alaskan oil and gas law to determine the same, since a supplier/purchaser relationship under Section 211.63 will attach to the crude oil involved in either case.

FEA has held that a supplier/purchaser relationship under Section 211.63 existed between the lessor (State of California) and the lessee (Signal Oil and Gas Company) where on December 1, 1973 the State was receiving its royalty in value. California State Lands Commission, 2 FEA #80,507 (January 17, 1975). Therefore, it can be expected that the FEA would take the position that the payment of royalty in value constitutes a sale - actual or imputed - under the allocation regulations with respect to the royalty crude oil sufficient to establish a supplier/purchaser relationship under Section 211.63 between the

lessor (State of Alaska) and lessee (producer). To the extent that the payment of royalty in value constitutes a sale - actual or imputed - the State of Alaska will be precluded from receiving its royalty in kind at a subsequent date unless the supplier/purchaser relationship for the crude oil involved is terminated pursuant to the provisions of paragraph (d) of Section 211.63.

On the other hand if the payment of royalty in value does not constitute a sale under the allocation regulations, then the crude oil would be owned by the lessee when it is produced. Accordingly, the sale of the royalty crude oil by the lessee would constitute a first sale and a supplier/purchaser relationship would be established between the lessee and the third party purchaser under the provisions of Section 211.63. This relationship, once established, cannot be terminated except in accordance with the provisions of paragraph (d) of Section 211.63. Furthermore, if there are successive sales or exchanges of the royalty crude oil to additional firms, each successive sale or exchange establish as a supplier/purchaser relationship between the parties concerned. Under the provision of paragraph (d)(1)(i) of Section 211.63 the consent of each subsequent purchaser of the royalty crude oil is required in order to terminate the initial supplier/purchaser relationship.

A more difficult question arises where the lessee removes the crude oil from the lease and refines the crude oil itself or has the crude oil refined for its account by another refiner. It is possible that under this situation there has never been a sale, and hence, no first sale. To the extent that the lessee transfers the crude oil to affiliated entities for refining, FEA would most likely impute a sale as it has under the price regulations for transfers between affiliated entities. Even if FEA does not impute a sale, it will undoubtedly impose a supplier/purchaser relationship between the affiliated entities since FEA intends that there be a supplier/purchaser relationship in effect with respect to all crude oil sales. See 10 C.F.R. §211.1(a). Since it is the purpose of Section 211.63 to maintain the flow of crude oil in the same manner as on the freeze date, it is unlikely that FEA would permit a royalty owner to interfere with the obligations of a supplier or the rights of a purchaser under Section 211.63, even if FEA had to resort to the fiction of imputing a "first sale" in order to maintain the flow of crude oil as on the freeze date. Permitting royalty owners to redirect the sale of crude oil from producer-refiners who were receiving the crude oil involved on the freeze date would likely be deemed contrary to and inconsistent with the mandatory crude oil allocation program. If permitted, it could provide a disruptive and non-beneficial exception to the allocation program.

The FEA Decisions and Orders in the California State Lands Commission cases, supra, the Colorado State Board of Land Commissioners, supra, and the U.S. Geological Survey, supra, clearly hold that state, as well as federal governmental bodies, cannot redirect the sale of royalty crude oil unless the supplier/purchaser relationship in effect for the crude oil involved is terminated in accordance with paragraph (d) of Section 211.63. Since the State cannot redirect the sale of the royalty crude oil to a new purchaser, likewise it would

not be permitted to redirect the crude oil to itself for consumption or resale. We therefore conclude that as long as the purchaser who has a valid supplier/purchaser relationship in effect under Section 211.63 continues to purchase the royalty crude oil involved, the State of Alaska is legally precluded from receiving its royalty in kind until such time as the supplier/purchaser relationship is terminated, notwithstanding any terms of the lease or state statutes or regulations providing to the contrary.

IV

As a final matter, it should be noted that this letter does not address the question of whether the State of Alaska may, by contract, require the purchaser (and subsequent purchasers) of the royalty crude oil to consent to the termination of the supplier/purchaser relationship upon the request of the State. Whether such a contract provision is feasible or enforceable, in light of the intent underlying Section 211.63, is beyond the scope of this letter.

CONCLUSION

It is therefore our opinion that:

(1) The sale of royalty crude oil by either the State of Alaska or by the producer is subject to the provisions of the Mandatory Petroleum Allocation Regulations, 10 C.F.R. Part 211;

(2) The sale of royalty crude oil by either the State of Alaska or by the producer constitutes the sale of crude oil by a supplier subject to the regulation on domestic crude oil supplier/purchaser relationships, 10 C.F.R. §211.63; and

(3) If the State of Alaska receives its royalty in value, it will be legally precluded from receiving its royalty in kind under the provisions of 10 C.F.R. §211.63 unless the supplier/purchaser relationships established for the crude oil involved are terminated pursuant to the provisions of paragraph (d) of Section 211.63.

Sincerely,

Chapman, Gadsby, Hannah
and Duff

By Lawrence I. Abrams
Lawrence I. Abrams

LIA/mas

STATE OF ALASKA
THE LEGISLATURE

POUCHY - STATE CAPITOL
BUREAU, ALASKA 99514
907 465-2800

LEGISLATIVE AFFAIRS AGENCY

MEMORANDUM

February 25, 1977

SUBJECT: Effect of Federal Energy Administration regulations on royalty gas sale contracts.

TO: Senator Huber

FROM: Randolph Berry, Revisor of Statutes

The following questions have been presented for answer:

- (1) What was the basis for the mandatory continuation by the Federal Energy Administrator of the "Tesoro" contract beyond its contractual expiration date?
- (2) Would the same result occur had the issue been withdrawal of royalty gas under the provisions of the royalty gas sale contracts?

The answers to these questions must of necessity be somewhat brief as the time limits involved preclude an in-depth and detailed analysis.

The answer to the first question is found in the Federal Energy Administration regulations promulgated under the Emergency Petroleum Allocation Act of 1973.

Section 4(c)(1) of that Act provides for the establishment, by regulation, of a mandatory allocation program which would continue to allocate to a wholesale purchaser of crude oil and of petroleum products amounts not less than the amounts sold or otherwise supplied to that purchaser during the corresponding period of 1973.

The regulations issued under this section to carry out the mandatory petroleum allocation program are contained in 10 CFR, Part 211. Section 211.9(a)(2) of those regulations provide that supplier/wholesale purchaser relationships covered by the regulations shall be maintained for the duration of the mandatory petroleum allocation program, and may be terminated only with the express written approval of the FEA, or with the mutual consent of both parties.

As the contract providing for the sale of the state's royalty oil to Tesoro created a supplier/wholesale purchaser relationship

1116

covered by the allocation regulations, that relationship could not be terminated without the above conditions being met.

In answer to question (2), the Emergency Petroleum Allocation Act and the mandatory petroleum allocation regulations apply only to crude oil, residual fuel oil, and refined petroleum products produced in or imported into the United States. They do not apply to natural gas other than natural gas liquids. Consequently, under the present wording and coverage of that Act and the regulations under it, Sections 3.3 and 3.4 of the proposed royalty sale contracts relating to reduction of royalty gas deliveries by the state would not be affected. However, the regulatory tools which are provided in the petroleum allocation program would, if the coverage of the allocation Act were extended to cover natural gas, produce the same result as that obtained in the "Tesoro" contract.

The temporary Emergency Natural Gas Act of 1977 does not go to the extent of providing for mandatory allocation of natural gas. It does, however, contain a provision which would be relevant to the above question if the mandatory allocation program were extended to natural gas -- Section 9 of the Act provides that it is a defense in a breach of contract action that the Act constituting the breach was taken for the purpose of complying with an order issued under the Act and negates certain types of contract provision which would inhibit the effectiveness of the Act.

In view of the relatively rapid changes in federal energy legislation and the current interest in that area brought about by the events this winter, I would not feel confident to speculate about the likelihood of either the mandatory gas allocation or of the continued exemption of gas from mandatory allocation.

RB:vc

EMERGENCY PETROLEUM ALLOCATION ACT OF 1973

Section 4. MANDATORY ALLOCATION

7

means the effective date specified in section 402(b) of the Energy Policy and Conservation Act.

(3) The President in promulgating the regulation under subsection (a) shall give consideration to allocating crude oil, residual fuel oil, and refined petroleum products in a manner which results in making available crude oil, residual fuel oil, or refined petroleum products to any person whose use of fuels other than crude oil, residual fuel oil, and refined petroleum products has been curtailed by, or pursuant to a plan filed in compliance with, a rule or order of a Federal or State agency, or where such person's supply of such other fuels is unobtainable by reason of an abandonment of service permitted or ordered by a Federal or State agency.

(c)(1) To the extent practicable and consistent with the objectives of subsection (b), the mandatory allocation program established under the regulation under subsection (a) shall be so structured as to result in the allocation, during each period during which the regulation applies, of each refined petroleum product to each branded independent marketer, each nonbranded independent marketer, each small refiner and each independent refiner, and of crude oil to each small refiner and each independent refiner, in an amount not less than the amount sold or otherwise supplied to such marketer or refiner during the corresponding period of 1972, adjusted to provide—

(A) in the case of refined petroleum products, a pro rata reduction in the amount allocated to each person engaged in the marketing or distribution of a refined petroleum product if the aggregate amount of such product produced in and imported into the United States is less than the aggregate amount produced and imported in calendar year 1972; and

(B) in the case of crude oil, a pro rata reduction in the amount of crude oil allocated to each refiner if the aggregate amount produced in and imported into the United States is less than the aggregate amount produced and imported in calendar year 1972.

(2)(A) The President shall report to the Congress monthly, beginning not later than January 1, 1974, with respect to any change after calendar year 1972 in—

(i) the aggregate share of nonbranded independent marketers,

(ii) the aggregate share of branded independent marketers,

and

(iii) the aggregate share of other persons engaged in the marketing or distributing of refined petroleum products,

of the national market or the regional market in any refined petroleum product (as such regional markets shall be determined by the President).

(B) If allocation of any increase of the amount of any refined petroleum product produced in or imported into the United States in excess of the amount produced or imported in calendar year 1972 contributes to a significant increase in any market share described in clause (i), (ii), or (iii) of subparagraph (A), the President shall by order require an equitable adjustment in allocations of such product under the regulation under subsection (a).

(3) The President shall, by order, require such adjustments in the allocations of crude oil, residual fuel oil, and refined petroleum products established under the regulation under subsection (a) as may reasonably be necessary (A) to accomplish the objectives of subsection

legislative history of what the language was intended to do.

I hope the record indicates that those of us on the minority side who are concerned about trying to solve the problem at this moment, have not in any way either slowed down or tried to confuse this legislation.

I would hope that we would go ahead and pass this rule and pass the conference report.

Mr. DELANEY. Mr. Speaker, I yield 1 minute to the chairman of the Committee on Interstate and Foreign Commerce, the gentleman from West Virginia (Mr. STAGGERS).

(Mr. STAGGERS asked and was given permission to revise and extend his remarks.)

Mr. STAGGERS. Mr. Speaker, I would like to agree with the gentleman from Ohio who just spoke that we have an emergency in this land. There has been a lot of effort directed toward trying to lead us off of what we are trying to do.

We have an emergency we need to solve. I should like to say categorically now for the record that any gas ordered to be allocated will be paid back either in kind or with the monetary compensation. We are not trying to take any intrastate gas, or regulate it, and the Members cannot point to any place in the record where the bill does. Every individual in this House knows that we must do something or we will be called a do-nothing Congress, and then they ought to turn us all out. There are many people who are sick and do not have heat and who are disabled. We need to do something now, and I think that we ought to vote the rule up now and vote out the bill. I think every Member of the House knows that, and I think if they do not vote that way, there will be something the matter with their thinking.

Mr. DELANEY. Mr. Speaker, I yield 1 minute to the gentleman from Michigan (Mr. DINGELL).

(Mr. DINGELL asked and was given permission to revise and extend his remarks.)

Mr. DINGELL. Mr. Speaker, this is the front page of the Washington Post: "Gas Crisis May Close Factories Until April."

People are out of work, and there are real dangers that pipelines are not going to have enough gas to distribute to the home heating users at the other end of the pipeline.

The real question before us now is, Are we going to move on legislation which helps the President and the Nation meet the natural gas crisis? That is what is before us. Whether or not some gas might be jurisdictional, or whether or not some might come under the allocation provision is not really important. What is important is do we meet the needs of the people in Ohio or elsewhere for warm homes, and to keep houses and hospitals going? That is the question.

Vote for the rule; vote for the conference report; and let us move ahead.

Mr. DELANEY. Mr. Speaker, I note the previous question on the resolution.

The previous question was ordered.

The SPEAKER. The question is on the resolution.

The question was taken; and the Speaker announced that the yeas appeared to have it.

Mr. MOORE. Mr. Speaker, I demand a recorded vote.

A recorded vote was refused.

So the resolution was agreed to.

A motion to reconsider was laid on the table.

EMERGENCY NATURAL GAS ACT OF 1977

Mr. STAGGERS submitted the following conference report and statement on the Senate bill (S. 474) to authorize the President of the United States to order emergency deliveries and transportation of natural gas to deal with existing or imminent shortages by providing assistance in meeting requirements for high-priority uses; to provide authority for short-term emergency purchases of natural gas; and for other purposes:

CONFERENCE REPORT (H. REPT. 95-7)

The committee of conference on the disagreeing votes of the two Houses on the amendment of the House to the bill (S. 474) to authorize the President of the United States to order emergency deliveries and transportation of natural gas to deal with existing or imminent shortages by providing assistance in meeting requirements for high-priority uses; to provide authority for short-term emergency purchases of natural gas; and for other purposes, having met, after full and free conference, have agreed to recommend and do recommend to their respective Houses as follows:

That the Senate recede from its disagreement to the amendment of the House and agree to the same with an amendment as follows: In lieu of the matter proposed to be inserted by the House amendment insert the following:

"That this Act may be cited as the 'Emergency Natural Gas Act of 1977'.

"DEFINITIONS

"Sec. 2. As used in this Act:

(1) The term 'high-priority use' means—
(A) use of natural gas in a residence;
(B) use of natural gas in a commercial establishment in amounts of less than 50 Mcf on a peak day; or

(C) any other use of natural gas the termination of which the President determines would endanger life, health, or maintenance of physical property.

(2) The term 'interstate pipeline' means any natural-gas company, as defined in section 2(6) of the Natural Gas Act, which is engaged in the transportation by pipeline of natural gas.

(3) The term 'intrastate pipeline' means any person (other than an interstate pipeline) engaged in the transportation by pipeline of natural gas.

(4) The term 'interstate natural gas' means natural gas (other than natural gas transported pursuant to a transportation certificate issued under 18 C.F.R. 279) transported by an interstate pipeline in a facility which is certificated under the Natural Gas Act or which would be required to be so certificated but for section 1(c) of such Act.

(5) The term 'local distribution company' means any person (including a governmental entity) which receives natural gas for local distribution and resale to natural gas users.

(6) The term 'antitrust laws' means the Sherman Act (15 U.S.C. 1 et seq.), the Clayton Act (15 U.S.C. 12, 13, 14-19, 29, 31, 32-37), the Federal Trade Commission Act (15 U.S.C. 41 et seq.), sections 73 and 74 of

the Wilson Tariff Act (15 U.S.C. 8-9), and the Act of June 19, 1936, chapter 592 (15 U.S.C. 13, 13a, 13b, and 21a), and similar State laws.

(7) The term 'State' means any State of the United States and the District of Columbia.

PRESIDENTIAL DECLARATION

Sec. 3. The President may declare a natural gas emergency if he finds that a severe natural gas shortage endangering the supply of natural gas for high-priority uses exists or is imminent in the United States or in any region thereof and that the exercise of his authorities under section 4 is reasonably necessary. Having exhausted other remedies to the maximum extent practicable, to assist in meeting requirements for such uses. Such emergency shall be terminated when the President finds that such shortages no longer exist and are no longer imminent.

EMERGENCY DELIVERIES AND TRANSPORTATION OF NATURAL GAS

Sec. 4. (a) (1) If the President finds it necessary to assist in meeting the requirements for high-priority uses of natural gas (including short-term storage replenishment or injection for protection of high-priority uses), on the basis of a notification by the Governor of any State pursuant to subsection (c) or on the basis of other information available to the President, the President may, during a natural gas emergency declared under section 3, by order, require—

(A) any interstate pipeline to make emergency deliveries of, or to transport, interstate natural gas to any other interstate pipeline or to any local distribution company served by an interstate pipeline for purposes of meeting such requirements;

(B) any intrastate pipeline to transport interstate natural gas from any interstate pipeline to another interstate pipeline or to any local distribution company served by an interstate pipeline for purposes of meeting such requirements; or

(C) the construction and operation by any pipeline of any facilities necessary to effect such deliveries or transportation.

No such delivery or transportation may continue after April 30, 1977, or after the President terminates the emergency declared under section 3, whichever is earlier.

(2) No order may be issued under this subsection unless the President determines that such order will not—

(A) create for the interstate pipeline delivering interstate natural gas a supply shortage which will cause such pipeline to be unable to meet the requirements for high-priority uses served, directly or indirectly, by such pipeline;

(B) result in a disproportionate share of deliveries or curtailments of natural gas experienced by such interstate pipeline when compared to deliveries and resulting curtailments which are experienced as a result of orders applicable to other interstate pipelines (as determined by the President); and

(C) require transportation of natural gas by any pipeline in excess of its available transportation capacity.

(3) In issuing such order the President shall also consider the relative availability of alternative fuel to users of the interstate pipeline ordered to make deliveries pursuant to this section.

(b) Compliance by any pipeline with an order issued under subsection (a) shall not subject such pipeline to regulation under the Natural Gas Act (15 U.S.C. 717 et seq.) or to regulation as a common carrier under any provision of State or Federal law. No action required to be taken under an order issued under subsection (a) shall be subject to any provision of the Natural Gas Act and any such order shall supersede any provision of a certification, or other requirement, un-

of the Natural Gas Act which is inconsistent with such order.

(1) The Governor of any State may certify the President of any finding by such Governor that a shortage of natural gas within such State, endangering the supply of natural gas for high-priority uses, exists or is imminent and that the State, and agencies and instrumentalities thereof, have exercised their authority to the fullest extent practicable and reasonable under the circumstances to overcome such shortage.

(2) The Governor shall submit, together with any notification under paragraph (1), information upon which he has based his finding under such paragraph, including—

(A) volumes of natural gas required to meet the requirements for high-priority uses in such State;

(B) information received from persons in the business of producing, selling, transporting, or delivering natural gas in such State as to the volumes of natural gas available in such State; and

(C) such other information as the Governor determines appropriate to apprise the President of emergency deliveries and transportation of interstate natural gas needed in such State.

(d) The President may request that representatives of interstate pipelines, intrastate pipelines, local distribution companies, and other persons meet and provide assistance to the President in carrying out his authority under this section.

(e) (1) In order to obtain information to carry out his authority under this Act, the President may—

(A) sign and issue subpoenas for the attendance and testimony of witnesses and the production of books, records, papers, and other documents;

(B) require any person, by general or special order, to submit answers in writing to interrogatories, requests for reports or for other information, and such answers shall be made within such reasonable period, and under oath or otherwise, as the President may determine; and

(C) secure, upon request, any information from any Federal department or executive agency.

(2) The appropriate United States district court may, upon petition of the Attorney General at the request of the President, in the case of refusal to obey a subpoena or order of the President issued under this subsection, issue an order requiring compliance therewith, and any failure to obey an order of the court may be punished by the court as a contempt thereof.

(f) (1) If the parties to any order issued under subsection (e) fail to agree upon the terms of compensation for deliveries (which may include compensation in kind) or transportation required pursuant to such order, the President, after a hearing held either before or after such order takes effect, shall, by supplemental order, prescribe the amount of compensation (which may include compensation in kind) to be paid for such deliveries or transportation and for any other expenses incurred in delivering or transporting such gas.

(2) If, for the purpose of a supplemental order pursuant to paragraph (1), the party making emergency deliveries pursuant to subsection (e)—

(A) indicates a preference for compensation in kind, the President shall direct that compensation in kind be provided by August 1, 1977, to the maximum extent practicable,

(B) indicates a preference for compensation, or the President determines pursuant to paragraph (A) of this subsection that any portion thereof cannot practicably be compensated in kind, the President shall calculate the amount of compensation for deliv-

eries of natural gas, based upon the amount required to make the interstate pipeline delivering such natural gas and its local distribution companies whole for loss of sales resulting therefrom; including the actual amount paid by such interstate pipeline or any of its local distribution companies for the volumes of natural gas or higher cost gas such as synthetic natural gas which were needed to replace natural gas delivered pursuant to an order under subsection (e); and for transportation, storage, and other expenses, based upon reasonable costs, as determined by the President.

(g) In order to effect the purposes of this Act, the President shall monitor the operation of any order made pursuant to this section to assure that natural gas delivered pursuant to this section is applied to high-priority uses only.

ANTITRUST PROTECTIONS

Sec. 5. (a) There shall be available as a defense for any person to civil or criminal action brought for violation of the antitrust laws (or any similar law of any State) with respect to any action taken or meeting held pursuant to a request or order of the President under section 4 (a) or (d) of this Act, if—

(1) such action was taken or meeting held solely for the purpose of complying with the President's request or order;

(2) such action was not taken for the purpose of injuring competition; and

(3) such person complied with the requirements of subsection (b) of this section. Persons interposing the defenses provided by this subsection shall have the burden of proof, except that the burden shall be on the person against whom the defense is asserted with respect to whether the actions were taken for the purpose of injuring competition.

(b) A meeting held pursuant to a request by the President under section 4(d) or pursuant to an order under section 4(a) complies with the requirements of subsection (a) if—

(1) there is present at such meeting a full-time Federal employee designated for such purposes by the Attorney General;

(2) a full and complete record of such meeting is taken and deposited, together with any agreements resulting therefrom, with the Attorney General, who shall make it available for public inspection and copying;

(3) the Attorney General and the Federal Trade Commission have the opportunity to participate from the beginning in the development and carrying out of agreements and actions under sections 4(a) and 4(d). In order to propose any alternative which would avoid or overcome, to the greatest extent practicable, possible anticompetitive effects while releasing substantially the purposes of this Act; and

(4) such other procedures as may be specified in such request or order are complied with.

EMERGENCY PURCHASES

Sec. 6. (a) The President may authorize any interstate pipeline or local distribution company served by an interstate pipeline (or class or category of such pipelines or companies) to contract, upon such terms and conditions as the President determines to be appropriate (including provisions respecting fair and equitable prices), for emergency supplies of natural gas for delivery before August 1, 1977—

(1) from any producer of natural gas (other than a producer who is affiliated with the purchaser as determined by the President) if (A) such natural gas is not produced from the Outer Continental Shelf and (B) the sale or transportation of such gas

was not, immediately before the date on which such contract was entered into, certificated under the Natural Gas Act; or

(2) from any intrastate pipeline, local distribution company, or other person (other than an interstate pipeline or a producer of natural gas).

The President may not authorize any emergency purchase contract under this subsection for emergency supplies of natural gas for sale and delivery from any intrastate pipeline which is operating under court supervision as of January 1, 1977, unless the court approves.

(b) (1) The provisions of the Natural Gas Act shall not apply—

(A) to any sale of natural gas to an interstate pipeline or local distribution company under the authority of subsection (a) or to any transportation by an intrastate pipeline in connection with any such sale; or

(B) to any natural gas company (within the meaning of the Natural Gas Act) solely by reason of any such sale or transportation.

(2) In exercising its authority under the Natural Gas Act, the Federal Power Commission shall not disallow, in whole or in part, recovery by any interstate pipeline, through the rates and charges made, demanded, or received by such pipeline, the amounts actually paid by it for natural gas purchased, transported, or other costs incurred pursuant to subsection (a).

(c) (1) The President may, by order, require any pipeline to transport such natural gas, and to construct and operate such facilities for transportation of natural gas, as may be necessary to carry out contracts authorized under subsection (a). The costs of any such required construction shall be paid by the party receiving such natural gas. No such order shall require any pipeline to transport any natural gas in excess of such pipeline's available capacity.

(2) Compliance by any pipeline with any order under this subsection shall not subject such pipeline to regulation under the Natural Gas Act or to regulation as a common carrier under any provision of State law.

(d) As used in this section, the term "Outer Continental Shelf" has the same meaning as such term has under section 2 of the Outer Continental Shelf Lands Act (43 U.S.C. 1331).

ADJUSTMENT IN CHARGES FOR LOCAL DISTRIBUTION COMPANIES

Sec. 7. Compensation received by an interstate pipeline pursuant to section 4 in excess of the amount such pipeline would have charged its local distribution companies shall be credited to such local distribution companies in proportion to their share of any natural gas not delivered together with credits necessary to make whole any local distribution company which replaced such natural gas with higher cost gas such as synthetic natural gas as prescribed in section 4(f)(2)(ii). Compensation paid by an interstate pipeline for deliveries or emergency purchases of natural gas pursuant to section 4 or section 6 shall be charged to such interstate pipeline's local distribution companies in proportion to their share of such natural gas deliveries or purchases.

RELATIONSHIP TO NATURAL GAS ACT

Sec. 8. Except as expressly provided in this Act, nothing contained in this Act shall be interpreted to change, modify, or otherwise affect rules, regulations, or other regulatory requirements or procedures of the Federal Power Commission pursuant to the provisions of the Natural Gas Act.

EFFECT OF CERTAIN CONTRACTUAL OBLIGATIONS

Sec. 9. (a) There shall be available as a defense to any action brought for breach of contract under Federal or State law arising out of any act or omission that such act was

taken or that such omission occurred for purposes of complying with any order issued under section 4(a).

(b) Any contractual provision—

(1) prohibiting the sale or commingling of natural gas subject to such contract with natural gas subject to the provisions of the Natural Gas Act, or

(2) terminating any obligation under any such contract as a result of such sale or commingling.

is hereby declared against public policy and unenforceable with respect to such natural gas if an order under section 4(a) or an authorization under section 6(a) applies to the delivery, transportation, or contract for supplies of such natural gas.

(c) The amounts and prices of any natural gas purchases pursuant to an order under section 4(a), an authorization under section 6(a), or a contract entered into pursuant to 18 C.F.R. 2.68 after the date of the enactment of this Act and before August 1, 1977, shall not be taken into account for purposes of any contractual provision which determines the price of any natural gas (or terminates the contract for the sale of natural gas) on the basis of sales of other natural gas.

ADMINISTRATIVE PROCEDURES AND JUDICIAL REVIEW

Sec. 10. (a) Subchapter II of chapter 5 of title 5 of the United States Code (other than sections 553, 556, and 557 thereof) shall apply to orders and other actions under this Act.

(b) Except with respect to enforcement of orders or subpoenas under section 4(e), the Temporary Emergency Court of Appeals, established pursuant to section 211(b) of the Economic Stabilization Act of 1970, as amended, shall have exclusive original jurisdiction to review all cases and controversies under this Act, including any order issued, or other action taken, under this Act. The Temporary Emergency Court of Appeals shall have exclusive jurisdiction of all appeals from the district courts of the United States in cases and controversies arising under section 4(e) of this Act; such appeals shall be taken by the filing of a notice of appeal with the Temporary Emergency Court of Appeals within thirty days of the entry of judgment by the district court.

(c) Prior to a final judgment, no court shall have jurisdiction to grant any injunctive relief to stay or defer the implementation of any order issued, or action taken, by the President under this Act.

ENFORCEMENT

Sec. 11. (a) Any person who violates an order or supplemental order issued under section 4 or an order under section 6(c) shall be subject to a civil penalty of not more than \$25,000 for each violation of such order. Each day of violation shall constitute a separate offense.

(b) Any person who willfully violates an order or supplemental order issued under section 4 or an order under section 6(c) shall be fined not more than \$50,000 for each violation of such order. Each day of violation shall constitute a separate violation.

(c) Whenever it appears to the President that any individual or organization has engaged, is engaged, or is about to engage in acts or practices constituting a violation of any order issued under section 4(a), any supplemental order issued under section 4(f), or any order under section 6(c), the President may request the Attorney General to bring a civil action to enjoin such acts or practices and, upon showing, a temporary restraining order or preliminary or permanent injunction shall be granted without bond. In any such action, the court may also issue mandatory injunctions commanding any person to comply with any such order or supplemental order.

REPORTING

Sec. 12. (a) In issuing any order under section 4(a) or granting any authorization under section 6, the President shall require that the prices and volumes of natural gas delivered, transported, or contracted for pursuant to such order or authorization shall be reported to him on a weekly basis and such reports shall be made available to the Congress.

(b) The President shall report to Congress not later than October 1, 1977, respecting his actions under this Act.

DELEGATION OF AUTHORITIES

Sec. 13. The President may delegate all or any portion of the authority granted to him under this Act to such executive agencies (within the meaning of 5 U.S.C. 105) or officers of the United States as he determines appropriate, and may authorize such delegation as may be appropriate. Except with respect to section 553 of title 5 of the United States Code, any officer or executive agency of the United States to which authority is delegated or redelivered under this Act shall be subject only to such procedural requirements respecting the exercise of such authority as the President would be subject to if such authority were not so delegated.

PREEMPTION OF INCONSISTENT STATE OR LOCAL ACTION

Sec. 14. Any order issued pursuant to this Act shall preempt any provision of any program for the allocation, emergency delivery, transportation, or purchase of natural gas established by any State or local government if such program is in conflict with any such order.

And the House agree to the same.

HAROLD O. STAGGERS,
JOHN D. DINGELL,
BOB BACHMANN,
PHILIP R. SHARP,
ANTHONY TOBY MOFFETT,
JAMES T. BROYSILL,
CLAUENCE J. BROWN.

Managers on the Part of the House.

ADAM E. STEVENSON, III,
ERNEST P. HOLLINGS,
J. BENNETT JOHNSON,
JAMES H. PEARSON,
TED STEVENS.

Managers on the Part of the Senate.

JOINT EXPLANATORY STATEMENT OF THE COMMITTEE OF CONFERENCE

The managers on the part of the House and the Senate at the conference on the disagreeing votes of the two Houses on the amendment of the House to the bill (S. 474) to authorize the President of the United States to order emergency deliveries and transportation of natural gas to deal with existing or imminent shortages by providing assistance in meeting requirements for high-priority uses; to provide authority for short-term emergency purchases of natural gas; and for other purposes, submit the following joint statement to the House and the Senate in explanation of the effect of the action agreed upon by the managers and recommended in the accompanying conference report:

The House amendments struck out all of the Senate bill after the enacting clause and inserted a substitute text, and the Senate disagreed to the House amendment.

The committee of conference recommends that the Senate recede from the disagreement to the amendment of the House, with an amendment which is a substitute for both the text of the Senate bill and the House amendment to the text of the Senate bill.

The text of the conference substitute is the same as the text of the Senate bill with four changes described below.

Section 2(2) of the Senate bill defines the term "interstate pipeline" as any person en-

gaged in the transportation of interstate natural gas.

The conference substitute adopts the House language which defines the term "interstate pipeline" as any natural gas company, as defined in section 2(6) of the Natural Gas Act, which is engaged in the transportation by pipeline of natural gas.

Section 2(4) of the Senate bill defines "interstate natural gas" as natural gas which, but for this Act, is subject to the Natural Gas Act.

Section 2(3) of the conference substitute adopts the House language which defines "interstate natural gas" as natural gas (other than natural gas transported pursuant to a transportation certificate issued under 18 C.F.R. 2.79) transported by an interstate pipeline in a facility certified under the Natural Gas Act and adds at the end of the House language the following: "or which would be required to be so certified but for section 1(c) of such Act".

Section 2(c) of the Senate bill provides that the amounts and prices of any natural gas purchased pursuant to an order under section 4(a) or an authorization under section 6(a) will not be taken into account for purposes of any contractual provision which determines the price of any natural gas (or terminates the contract for the sale of natural gas) on the basis of sales of other natural gas.

Section 9(c) of the conference substitute closely follows the Senate bill and the House amendment and provides that the amounts and prices of any natural gas purchases pursuant to an order under section 4(a), an authorization under section 6(a), or a contract entered into pursuant to 18 C.F.R. 2.68 after the date of enactment of this Act and before August 1, 1977, shall not be taken into account for purposes of any contractual provision which determines the price of any natural gas (or terminates the contract for the sale of natural gas) on the basis of sales of other natural gas.

Section 10 of the bill was modified to insure that criminal prosecutions under the Act are heard in the district courts as opposed to the Temporary Emergency Court of Appeals by the addition of the word "civil" before the words "cases and controversies" in section 10.

The House conferees receded from the House position on the Eckhardt amendment, which appeared in section 6(a) and (d) (1) of the House amendment (relating to reasonable prices), on the basis of the representations made by Dr. Schlesinger in his letter of January 31, 1977, to Senator Stevenson. The letter reads as follows:

THE WHITE HOUSE,
Washington, D.C., January 31, 1977.

HON. ADAM E. STEVENSON,
U.S. Senate,
Washington, D.C.

DEAR SENATOR STEVENSON: This is in response to your inquiry about the implementation of the "Fair and Equitable" price standard in Section VI of EISA, the Emergency Natural Gas Act of 1977.

It is our intention to provide price certainty so that once a specific transaction has been authorized by the President, there would be no risk of a price roll-back for that transaction.

We believe a fair amount of flexibility is desirable to assure the maximum flow of natural gas to areas of shortage. Toward that end, we would expect to establish a threshold level, such as, for example, the price at which natural gas has recently been sold in intrastate commerce at which sales would be authorized by general rule and not subject to roll-back. Sales above that level might be subject to specific review. In any event, there would be no roll-back of the price for a

MR. PRESIDENT I THINK IT IS PERTINENT TO REVIEW SOME OF THE FACTS SURROUNDING THE NATURAL GAS SALES CONTRACTS. THEY WILL NOT BE IN ORDER OF IMPORTANCE AND ALL BUT ONE MAY BE AVAILABLE IN THE MOUNTAINS OF TESTIMONY WHICH HAS ACCUMILATED ON THE SUBJECT.

METHYL FUEL

PAGE 1

- FACT - ENERGY EQUIVALENT OF NATURAL GAS TO OIL IS ABOUT 7 - 1.
- FACT - ALL 3 ENERGY DELIVERY SYSTEMS NOW PROPOSED WITHOUT GOVERNMENT OR USER SUBSIDY WILL NEED TO MARKET ALASKA GAS AT \$4-\$5 PER MCF OR EVEN HIGHER THIS CORRESPONDS TO \$28 - \$35 A BBL FOR OIL.
- FACT - THE EL PASO LINE IS THE MOST EXPENSIVE OF THE 3.
- FACT - THE LIQUEFACTION OF NATURAL GAS IS ONE OF THE LEAST LABOR INTENSIVE PETROLEUM ASSOCIATED INDUSTRIES.
- FACT - SOME OF THE OPEC NATIONS HAVE REFUSED TO ENTER INTO LNG CONTRACTS FOR THE REASON THAT THEY RECEIVED SO LITTLE VALUE FROM SUCH A SYSTEM THAT THEY WOULD SOONER FLARE UNTIL A PROPER PETRO-CHEMICAL INDUSTRY WAS FEASIBLE.
- FACT - ALASKA'S TOTAL NORTH SLOPE NATURAL GAS RESERVES AMOUNT TO LESS THAN A ONE YEAR SUPPLY FOR THE LOWER 48 AT PRESENT CONSUMPTION LEVELS.
- FACT - ALASKA'S NORTH SLOPE GAS MARRIED TO OUR PRESENTLY UNMARKETABLE AND ECONOMICALLY UNFEASIBLE COAL RESERVES WOULD SUPPLY NOT ONLY A PETRO-CHEMICAL INDUSTRY TO ALASKA BUT INCREASE OUR CRITICAL ENERGY SUPPLY TO THE LOWER 48 BY A FACTOR OF 6, AND MORE.
- FACT - THIS MEANS TO THE LOWER 48 STATES, HUNGRY BURNERS, A 6 YEAR ENERGY SUPPLY INSTEAD OF ONE YEAR. HOW BETTER COULD WE USE OUR NORTH SLOPE NATURAL GAS TO ALLEVIATE THE ENERGY SHORTAGE.
- FACT - THE ANSWER IS ECONOMICALLY FEASIBLE METHYL FUEL; A MAJORITY OF WHICH IS AN ALCOHOL, CH_3OH , WHICH BURNS CLEANER THAN NATURAL GAS. THIS SUBSTANCE CAN BE MANUFACTURED FROM NATURAL GAS OR MORE EFFICIENTLY FROM A SYNERGESTIC MARRIAGE OF OUR ECONOMICALLY UNFEASIBLE NATURAL GAS TO OUR ECONOMICALLY UNFEASIBLE COAL. METHYL FUEL CAN EVEN BE RECONVERTED TO VASTLY MORE NATURAL GAS THAN THE ORIGINAL GAS QUANTITIES INVOLVED.
- FACT - THE OFFERS OF INDUSTRY, SHOWING THE INTEREST TO BUILD SUCH FACILITIES ARE BEFORE THE ADMINISTRATION AND HAVE BEEN FOR OVER A YEAR.
- FACT - THE ADMINISTRATION REJECTED ALL OFFERS FOR OUR GAS IF THEY DID NOT CONTAIN AN OFFER TO SUPPORT THE ECONOMICALLY UNFEASIBLE EL PASO GAS LINE.
- FACT - SUCH ORGANIZATIONS AS WESTINGHOUSE ELECTRIC, SIGNAL BURMAH,

OIL COMPANY, AND WENTWORTH BROTHERS OF CINCINNATI CANNOT EVEN GET ANSWERS TO THEIR LETTERS FROM THE ADMINISTRATION.

FACT - THE INFORMATION SUPPLIED TO THE SENATE SPECIAL COMMITTEE BY SOME OF THESE ORGANIZATIONS IS NOT AVAILABLE FOR OUR CONSIDERATION UNTIL THE TRANSCRIPT IS READY.

FACT - THE IRREVOCABLE COMMITMENT OF OUR NATURAL GAS FROM THE NORTH SLOPE FOREVER FORCLOSES THE ABILITY OF THE STATE OF ALASKA TO USE THIS RESOURCE TO ESTABLISH A METHYL FUEL INDUSTRY OR ANY OTHER PETRO-CHEMICAL INDUSTRY BASED ON THE METHANE ETHANE FRACTIONS IN THE NORTH SLOPE GAS AS WELL AS A LARGE PORTION OF THE NATURAL GAS LIQUIDS.

FACT - THE CONTRACTS COMMIT 100% OF OUR DAILY NORTH SLOPE GAS PRODUCTION RESERVING NOTHING FOR PRESENT AND FUTURE USE. ERRONEOUSLY ADMITTING THERE IS NO USE IN ALASKA AT THE TIME OF THE START OF FLOW OF GAS FOR ANY OF IT. DO YOU BELIEVE WE WILL BE ALLOWED TO DEVELOPE A FUTURE USE AT THE EXPENSE OF COLD STOVES IN GEORGIA OR ELSEWHERE WHEN CURRENT FEA LAW HAS THE JURISDICTION TO FORBID SUCH CONTRACT PROVISIONS.

FACT - THIS HOUSE HAS RESPONDED TO THE MILITARISTIC TACTICS OF THE ORGANIZATION FOR THE MISMANAGEMENT OF ALASKA'S RESOURCES. TO THE EXTENT OF PASSING THESE APPROVALS BEFORE EVEN HAVING THE FULL RECORD OF THE HEARINGS AND THE EXHIBITS AVAILABLE MUCH LESS HAVING READ THEM.

FACT - WASTE MAKES WASTE.

FACT - THE FEDERAL ENERGY ADMINISTRATION HAS THE POWER TO REQUIRE THE FULL DELIVERY OF OIL AND GAS UNDER ANY EXISTING CONTRACT WITHOUT DIMINISHMENT.

FACT - THE 3 COMPANIES EL PASO, TENNECO, AND SOUTHERN COULD AFFORD TO GAMBLE THEY HAD A PAT HAND OF 5 ACES INCLUDING THE JOKER WHICH THE FEA DEALT TO THEM FROM THE BOTTOM OF THE DECK.

FACT - ONCE ALASKA'S ROYALTY SHARE OF EITHER OIL OR GAS IS CONTRACTED THIS ALREADY EXISTING FEA LAW WILL NOT ALLOW DIMINISHMENT WITH OR WITHOUT CONTRACT. UNLESS A SURPLUS OF NATURAL GAS EXISTS WE WILL NOT BE ALLOWED TO DEVELOPE A NEED FOR ANY OF OUR NATURAL GAS.

- FACT - THIS LAW HAS BEEN INVOKED AGAINST ALASKA AND 2 DAYS AGO THE ALASKA OIL & GAS ADVISORY BOARD ACKNOWLEDGED OUR HELPLESSNESS AND EXTENDED THE NOTORIOUS TESORO CONTRACT ON A YEARLY BASIS.
- FACT - IT DIDN'T MAKE ONE BIT OF DIFFERENCE WHETHER THEY EXTENDED IT OR NOT THE FULL COMMITMENT CONTINUES AND WILL BE INVOKED IN LIKE MANNER BY THE FEA IF WE TRY TO WITHDRAW OUR GAS.
- FACT - ONCE THESE CONTRACTS ARE FINALIZED ALASKA'S GAS INCLUDING OUR ROYALTY SHARE ARE FOREVER LOST TO THIS STATE.
- FACT - YOU CAN KISS GOOD-BYE THE OVER 350 MILLION CUF PER DAY NEEDED AFTER 1985 IN YOUR COMMUNITY FOR HEAT AND POWER MR. PRESIDENT.
- FACT - I CAN KISS GOOD-BYE THE CHANCE FOR MY COMMUNITY TO USE THE OVER 150 MCF A DAY NEEDED FOR POWER AND HEAT IN MY COMMUNITY TODAY.
- FACT - ALL OF ALASKA CAN KISS GOOD-BYE THEIR DREAMS TO USE THE NATURAL GAS RESOURCE OF PRUDHOE BAY TO MAKE ALASKA A BETTER PLACE TO LIVE, WORK, AND RAISE OUR FAMILIES.
- FACT - EL PASO, TENNECO & SOUTHERN WILL HAVE AN EDGE ON THEIR COMPETITORS; THEIR VAST INVESTMENT WILL NOT BECOME WORTHLESS AS SOON AS THEIR COMPETITORS WILL.
- FACT - THE INITIATIVE WITH OVER 9000 NAMES ON IT WILL BE TOO LATE TO PROTECT OUR FUTURE USE OF GAS IN THIS STATE IF WE PASS THESE CONTRACTS NOW. FOR A NEW LAW PASSED AFTER A CONTRACT IS IN EXISTENCE IS LIKE LOCKING THE BARN DOOR AFTER THE HORSES ARE STOLEN.

Mr. PRESIDENT, THESE CONTRACTS AND FULL COMMITMENT OF 100% OF THE DAILY PRODUCTION OF OUR NATURAL GAS WILL BE FOREVER LOST TO THE PEOPLE OF THE STATE OF ALASKA. THESE CONTRACTS ONCE IN FORCE WILL BE EVEN MORE IRREVOCABLE THAN WAS YOUR MANDATORY BOROUGH LAW AND FAR MORE DAMAGING. Mr. PRESIDENT, I ASK OF YOU PLEASE REVIEW THE FACTS, COME DOWN OFF YOUR PODIUM AND USE YOUR BRILLIANT ORATORY POWER TO HELP THIS FARMER BOY PROTECT OUR CHILDRENS SHARE OF ALASKA'S ENERGY.

FELLOW LEGISLATORS, I ASK OF YOU, TAKE ANOTHER LOOK, RECONSIDER THIS COMPLICATED SUBJECT AND CAST A NO VOTE TODAY. AT LEAST VOTE NO ON THIS ONE CONTRACT, THE EL PASO CONTRACT, WHICH IS NOT NEEDED IN ORDER TO CONVINCE EL PASO TO FIGHT FOR THE ALL ALASKA ROUTE AND DOES LEAVE US WITH A LITTLE NORTH SLOPE GAS 3 1/4 % FOR OUR OWN USE. SENATORS THIS LAW WHICH MAY BE SUMMARILY USED AT ANY TIME BY FEA IS NOT ONE OF THE THINGS THAT MIGHT HAPPEN MAYBE OR IF OR BUT. IT IS HERE IN EXISTENCE TODAY AND WAS INVOKED AGAINST US JUST THIS WEEK IN REGARDS TO OUR ROYALTY OIL. TODAY THE OIL. TOMORROW THE GAS.

SURELY ALASKANS ARE ENTITLED TO THIS CONSIDERATION. IT IS COLDER AND DARKER HERE THAN ANYWHERE ELSE IN AMERICA.

ROYALTY OIL - ONE
LA ROCCA

UNLESS THE STATE OF ALASKA SEIZES PHYSICAL CONTROL OF ITS MASSIVE VOLUMES OF NORTH SLOPE ROYALTY OIL THE MOMENT IT'S PRODUCED, IT WILL LOSE THE RIGHT TO TAKE THE CRUDE FOR RESALE OR IN-STATE USE LATER, (ACCORDING TO A PRESTIGIOUS) WASHINGTON, D.C. LAW FIRM WHICH HAS STUDIED THE QUESTION.

THE STATE'S OIL AND GAS LEASES CONTAIN PROVISIONS GIVING THE STATE THE RIGHT TO TAKE ITS 12 1/2 PERCENT ROYALTY SHARE OF OIL PRODUCTION IN-KIND, RATHER THAN IN CASH VALUE, AT ANY TIME. BUT AN OBSCURE FEDERAL ENERGY ADMINISTRATION RULE NEGATES THE LEASE PROVISION AND ONCE THE OIL STARTS TO FLOW BARS THE STATE FROM LATER TAKING THE OIL IN-KIND FOR RESALE OR ITS OWN USE WITHOUT THE CONSENT OF THE PRODUCER OR ANY FIRM WHICH MAY HAVE CONTRACTED TO PURCHASE THE CRUDE FROM THE PURCHASER.

THE RESTRICTION STEMS FROM THE FEDERAL EMERGENCY PETROLEUM ALLOCATION ACT WHICH CONGRESS ENACTED AT THE HEIGHT OF THE ARAB OIL EMBARGO IN 1973. THE ACT'S SWEEPING SIGNIFICANCE IN CONNECTION WITH THE STATE'S ROYALTY OIL FIRST CAME TO LIGHT JUST TWO DAYS AGO WHEN KINY/KICY/BCN REVEALED THAT THE STATE HAD NO CHOICE UNDER THE REGULATIONS BUT TO EXTEND INDEFINITELY AN EIGHT-YEAR-OLD CONTRACT ALLOWING THE TESORO PETROLEUM CORP. TO PURCHASE ALL OF THE STATE'S ROYALTY SHARE OF COOK INLET CRUDE PRODUCTION TOTALLING NEARLY 20,000 BARRELS PER DAY.

UNDER THE FEA REGULATIONS, ONCE A CONTRACTUAL RELATIONSHIP HAS BEEN ESTABLISHED BETWEEN AN OIL SUPPLIER AND PURCHASER, THE CONTRACT CAN BE TERMINATED ONLY WITH THE CONSENT OF THE PURCHASER.

ROYALTY OIL -- TWO

LA ROCCA

IN SHORT, IF THE STATE TAKES IN VALUE ANY OR ALL OF ITS ROYALTY SHARE OF NORTH SLOPE CRUDE - EXPECTED TO EXCEED 150,000 BARRELS PER DAY AT PEAK PRODUCTION - IT WILL BE PRECLUDED FROM TAKING IT IN-KIND UNTIL THE CONTRACTUAL RELATIONSHIP BETWEEN THE PRODUCERS OF THE OIL AND ANY PURCHASERS HAS BEEN FORMALLY TERMINATED AT THE INITIATIVE OF THE PURCHASERS.

SINCE NO PURCHASER IN TODAY'S WORLD MARKET IS LIKELY TO RELINQUISH VOLUNTARILY ANY CRUDE SUPPLIES, THE STATE WOULD LOSE ITS RIGHT TO TAKE ITS ROYALTY OIL IN-KIND SO LONG AS THE FEDERAL MANDATORY PETROLEUM ALLOCATION REGULATIONS ENDURE.

THE LEGAL IMPLICATIONS OF THE FEA REGULATIONS IN CONNECTION WITH THE STATE'S NORTH SLOPE ROYALTY CRUDE WERE OUTLINED IN A LETTER FROM A WASHINGTON, D.C. LAW FIRM, CHAPMAN, GADSBY, HANNAH AND DUFF, TO GEORGE SHIPLEY. SHIPLEY IS AN EXECUTIVE OF THE ALASKA PETROLEUM COMPANY, A HOUSTON FIRM WHICH IS SEEKING TO PURCHASE ALL OF THE STATE'S PRUDHOE BAY ROYALTY OIL.

Royalty Board - One
la rocca

Federal mandates have locked the state into an extension of the eight-year-old contract requiring the state to continue to sell all of its royalty oil from Cook Inlet production to the Tesoro Corporation's refinery at North Kenai indefinitely, bcn/kicy/kiny has learned.

The contract, which started January, 1970, and expires next January, has poured an average of 20,000 barrels of oil per day into Tesoro's refinery over the eight-year contract period.

The Tesoro contract is up for review at a meeting of the State Royalty Oil and Gas Board scheduled for Tuesday here in Juneau.

But spokesman said that the state has no choice but to extend the contract under the Federal Mandatory Crude Allocation Program, which forbids crude suppliers from unilaterally halting their sales to crude purchasers.

The implications of the federal program in connection with Alaska's enormous volumes of pending North Slope royalty oil have "opened up a real can of worms," the spokesman told bcn/kiny/kicy, and that subject will be discussed at length at Tuesday's board meeting by State Commissioner of Natural Resources, Guy Martin, he said.

It implies, among other things, that the federal government could invoke similar powers effectively precluding in state use of Alaska's North Slope royalty oil. Use of its North Slope gas could be similarly jeopardized if threats to repeal a recent federal law allowing the state to withdraw its royalty gas from one of the proposed North Slope gas pipelines should materialize. The Cook Inlet royalty oil sale contract was secretly negotiated in 1968 during the Hickel administration, and its disclosure precipitated a series of sensational events. These included, legislative committee hearings which forced the state's

Royalty Board - two

la rocca

then-Commissioner of Natural Resources, Tom Kelly, to testify under subpoena, the first time the legislative subpoena power had been invoked in the state's history.

The hearings revealed, among other things, that the purchaser of the royalty crude, an oilman from Texas, had negotiated the contract on behalf of a paper corporation, which then sold the royalty oil rights to Tesoro at a multi-million dollar profit.

this is jl, rpgtg for bcn/kicy/kiny