

SCOMM

118:23

Alaska State Legislature

House Resources Committee

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Juneau, Alaska 99801



Co-Chair Bill Hudson
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Committee Meetings
M/W/F 1 - 3 p.m.

Members: Vice Chair John Cowdery, Representatives: Ramona Barnes, John Harris, Carl Morgan, Jim Whitaker, John Cowdery, Reggie Joule, and Mary Kapsner

SPONSOR STATEMENT

HB 290-An Act relating to stranded gas pipeline carriers and to the intrastate regulation by the Regulatory Commission of Alaska of pipelines and pipeline facilities of stranded gas pipeline carriers

Before a stranded gas pipeline project can proceed, certain amendments to existing state statutes are required. These changes are intended: 1) to apply to all potential stranded gas pipeline projects, 2) to clarify respective state and federal jurisdictions in regulating such projects, 3) to be complementary to a non-discriminatory federal process which will apply to any export volumes of stranded gas, 4) to provide for local (in state) gas transportation and sales, and 5) to provide needed exemption from public utility designation for a stranded gas pipeline project.

House Bill 290 (HB 290) will amend the Pipeline Act (AS 42.06) to define a stranded gas pipeline consistent with the existing state statute, will clarify that the Regulatory Commission of Alaska's (RCA's) authority in regulating a stranded gas pipeline extends only to the intrastate transportation of gas through such a system, to define a fair, predictable and timely process to identify and dedicate sufficient initial intrastate capacity in a stranded gas pipeline and to establish the criteria for needed pipeline system expansions over the life of a stranded gas pipeline system to accommodate increased demand for in state gas supplies.

HB 290 will amend the Public Utilities Act (AS 42.05) to clarify that stranded gas pipeline systems are exempt from the requirement of operating as a public utility, and will amend the Right-of-Way Leasing Act (AS 38.35) to limit the requirement of common carriage for stranded gas pipeline systems to the transportation of intrastate gas volumes only.

HB 290 also defines *the types of* intrastate transportation services that will be available in a stranded gas pipeline system, provides that in its tariff filed with the RCA a stranded gas pipeline carrier may charge separate rates for those services, and may also charge a reservation *fee* for reserving capacity in a stranded gas pipeline system.

Collectively, these changes are intended to provide greater certainty and predictability in the regulation of stranded gas pipeline systems. This increased certainty will enhance the ability of gas export project sponsors to market Alaska's stranded gas reserves, to compete more effectively with alternative export projects and to attract the large *investments required* to construct and operate the *pipeline* and related facilities necessary to condition, transport and export stranded gas reserves.

FISCAL NOTE

STATE OF ALASKA
2000 LEGISLATIVE SESSION

BILL NO. HB 290

Revision Date/ <u>2/7/00 2:25 PM</u>	Dept. Affected <u>DCED</u>	
Title <u>Intrastate Regulation of Stranded Gas</u>	BRU <u>RCA</u>	
<u>Pipeline Carriers</u>	Component <u></u>	
Sponsor <u>House Resources</u>	<u>RCA</u>	
Requester <u>Oil & Gas Committee</u>	Component No. <u>2417</u>	

Expenditures/Revenues (Thousands of Dollars)

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

OPERATING EXPENDITURES	FY 2001	FY 2002	FY 2003	FY 2004	FY 2005	FY 2006
Personal Services	0.0	33.8	0.0	0.0	0.0	0.0
Travel	0.0	0.0	0.0	0.0	0.0	0.0
Contractual	0.0	0.0	0.0	0.0	0.0	0.0
Supplies	0.0	0.0	0.0	0.0	0.0	0.0
Equipment	0.0	0.0	0.0	0.0	0.0	0.0
Land & Structures	0.0	0.0	0.0	0.0	0.0	0.0
Grants & Claims	0.0	0.0	0.0	0.0	0.0	0.0
Miscellaneous	0.0	0.0	0.0	0.0	0.0	0.0
TOTAL OPERATING	0.0	33.8	0.0	0.0	0.0	0.0

CAPITAL EXPENDITURES	0.0					
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CHANGE IN REVENUES ()						
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FUND SOURCE (Thousands of Dollars)

1002 Federal Receipts	0.0					
1003 GF Match	0.0					
1004 GF	0.0					
1005 GF/Program Receipts	0.0					
1037 GF/Mental Health	0.0					
Other (Regulatory Cost Charge)	0.0	33.8	0.0	0.0	0.0	0.0
TOTAL	0.0	33.8	0.0	0.0	0.0	0.0

Estimate of any current year (FY2000) cost: 0.0

POSITIONS

Full-time		0.5				
Part-time						
Temporary						

ANALYSIS: (Attach a separate page if necessary)

HB 290 is not expected to cause any increase to the agency's FY01 budget. One-half of one Utility Engineering Analyst III position (approximately \$33,800) will be necessary in the FY02 budget to process and analyze the increase in workload due to stranded gas pipeline certification applications. In subsequent fiscal years, these applications will be part of the Commission's ongoing certification workload and are not expected to generate additional costs.

Prepared by: <u>G. Nanette Thompson, Chair</u>	Phone <u>276-6222</u>
Division <u>Regulatory Commission of Alaska</u>	Date/Time <u>2/7/00 2:25 PM</u>
Approved by <u>Commissioner Deborah B. Sedwick</u>	Date <u>02/07/00</u>
Agency <u>Dept. of Community & Regional Affairs</u>	

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FISCAL NOTE

**STATE OF ALASKA
2000 LEGISLATIVE SESSION**

BILL NO. HB 290

Revision Date/Time (Note if correction) Jan. 26, 2000

Dept. Affected Revenue

Title Stranded gas pipeline carriers
regulation

BRU Revenue Operations

Component Oil and Gas Audit

Sponsor House Resources

Requester House Oil & Gas

Component No. 115

Expenditures/Revenues

(Thousands of Dollars)

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

OPERATING EXPENDITURES	FY 2001	FY 2002	FY 2003	FY 2004	FY 2005	FY 2006
Personal Services						
Travel						
Contractual						
Supplies						
Equipment						
Land & Structures						
Grants & Claims						
Miscellaneous						
TOTAL OPERATING	0.0	0.0	0.0	0.0	0.0	0.0

CAPITAL EXPENDITURES	0.0	0.0	0.0	0.0	0.0	0.0
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CHANGE IN REVENUES ()	0.0	0.0	0.0	0.0	0.0	0.0
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FUND SOURCE

(Thousands of Dollars)

1002 Federal Receipts						
1003 GF Match						
1004 GF						
1005 GF/Program Receipts						
1037 GF/Mental Health						
Other (Specify Type)						
TOTAL	0.0	0.0	0.0	0.0	0.0	0.0

Estimate of any current year (FY2000) cost:

0.0

POSITIONS

Full-time	0	0	0	0	0	0
Part-time	0	0	0	0	0	0
Temporary	0	0	0	0	0	0

ANALYSIS: (Attach a separate page if necessary)

This bill clarifies the regulatory environment for a potential North Slope natural gas pipeline, and would not impose any additional costs beyond those necessary for regulation currently. It would not create any revenues either.

Prepared by: Roger Marks

Division Oil and Gas Audit

Approved by Commissioner

Wilson Condon

Agency

Department of Revenue

Phone 269-0082

Date/Time 26-Jan-00

Date 1/26/00

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FISCAL NOTE

STATE OF ALASKA 2000 LEGISLATIVE SESSION

BILL NO. HB 290

Revision Date/Time:

Dept Affected: Natural Resources

Title: Stranded Gas Pipeline Carriers

BRU: Oil & Gas Development

Component: Pipeline Coordinator

Sponsor: House Resources Committee

Requestor: (H)O&G

Component No. 1191

Expenditures/Revenues

(Thousands of Dollars)

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

OPERATING EXPENDITURES	FY2001	FY2002	FY2003	FY2004	FY2005	FY2006
PERSONAL SERVICES						
TRAVEL						
CONTRACTUAL						
SUPPLIES						
EQUIPMENT						
LAND & STRUCTURES						
GRANTS & CLAIMS						
MISCELLANEOUS						
TOTAL OPERATING	0.0	0.0	0.0	0.0	0.0	0.0

CAPITAL EXPENDITURES	0.0	0.0	0.0	0.0	0.0	0.0
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CHANGE IN REVENUES (fund code)	0.0	0.0	0.0	0.0	0.0	0.0
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FUND SOURCE

(Thousands of Dollars)

1002 Federal Receipts						
1003 GF Match						
1004 GF						
1005 GF/Program Receipts						
1037 GF/Mental Health						
Other (Specify Type)						
TOTAL	0.0	0.0	0.0	0.0	0.0	0.0

Estimate of any current year (FY2000) cost: \$ none

POSITIONS

FULL-TIME	0	0	0	0	0	0
PART-TIME	0	0	0	0	0	0
TEMPORARY	0	0	0	0	0	0

ANALYSIS:

(Attach a separate page if necessary)

There is no anticipated fiscal impact to the Pipeline Coordinator's Office associated with implementation of this legislation.

Prepared by: Bill Britt
Division: State Pipeline Coordinators Office

Phone: 271-4412

Date: 01-Feb-00

Approved by Commissioner:

John Shively

Date:

Agency: Natural Resources

2-1-2000

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MEMORANDUM

TO: REPRESENTATIVES MULDER AND THERRIALT
FROM: NAN THOMPSON, REGULATORY COMMISSION OF ALASKA
SUBJECT: HB 290-TARIFF PROVISION
DATE: 03/23/00
CC: HOUSE FINANCE COMMITTEE MEMBERS

You asked for a list of items that would be excluded from a utility pipeline tariff that a pipeline carrier could argue should be included in their tariff. There are APUC decisions excluding the following types of expenses from utility rates, but no comparable decision excluding them from pipeline rates:

- Public relations costs
- Lobbying expenses
- Charitable contributions
- Association dues
- Extraordinary management compensation
- Research and development costs
- Acquisition adjustments
- Pensions and employee benefits

Only imagination and conscience limit the types of expenses that a pipeline owner could ask be included in their tariff. The sponsor group correctly noted that the RCA would have the authority to exclude the expenses when they are presented to us for review. However, the RCA could not exclude them with the assurance that the pipeline owner would not appeal. An appeal means time delay and uncertainty in the business environment, and additional legal expenses for the RCA and carriers. The carriers would be entitled to argue that those legal expenses should be included in their rates.

How the difference between the utility and pipeline tariff methodology affects the RCA's decision-making process was well-articulated in a 1992 pipeline decision, Re Kenai Pipeline Company, 12 APUC 425 on page 434:

The methodology the Commission uses to determine the value of the property of public utilities is set by statute. A.S. 42.05.441(b) reads as follows: "In determining the value for rate-making purposes of public utility property used and useful in rendering service to the public, the commission shall be guided by the acquisition cost, or, if lower, the original cost of the property to the person first placing it to public service, less accrued depreciation, plus materials and supplies and a reasonable allowance for cash working capital when required. There is no similar provision under AS 42.06. Thus, the Commission is free to determine the appropriate way to value pipeline property for the purposes of ratemaking.

The APUC went on, in that forty-page opinion, to discuss the options and arguments of the parties and make a decision. The RCA can determine what is just and reasonable, but the lack of case law in this area to guide the RCA and the pipeline owners creates room for arguments. Arguments mean delay; litigation expenses and a less predictable environment for instate shippers. The RCA would generally follow its utility tariff decisions, except where the Federal Energy Regulatory Commission (FERC, the federal agency with pipeline jurisdiction) has a different rule. Thus, a prospective in-state shipper would have to reference federal caselaw to predict the likely outcome of a pipeline tariff case.

The APUC has set rates for only two oil pipelines in this state. The Kenai Pipeline case cited above was one, and Cook Inlet Pipeline was the other. Both cases were extensively litigated. The APUC has set tariffs for all other oil pipelines in the based on settlements between the affected parties.

The APUC has set rates for only one gas pipeline under the pipeline statute. The affected parties agreed to those rates as part of a comprehensive settlement package that has no precedential value. All other gas pipeline tariffs have been set using a utility tariff methodology.

AMENDMENT

2

OFFERED IN THE HOUSE

TO: Amendment 1-LS1269\A.2 to HB 290

1 Page 1, lines 1 - 6:

2 Delete all material and insert:

3 "Page 1, lines 1 -3:

4 Delete all material and insert:

5 **""An Act relating to pipeline carriers of undeveloped natural gas produced from**
6 **the North Slope of Alaska and to the intrastate regulation by the Regulatory**
7 **Commission of Alaska of pipelines and pipelines facilities of that undeveloped**
8 **natural gas.""**

9 Page 7, line 15, following "means gas":

10 Insert "that is produced from the area of Alaska lying north of 68 degrees North
11 latitude"

Subject: Message for Jim

Date: Fri, 11 Feb 2000 18:16:59 -0900

From: Lori Backes <lori_backes@legis.state.ak.us>

To: Patricia_Nelson@legis.state.ak.us

Jim...here's a quick sketch of what I managed to get through today:

Concerns of HB 290...

***The need for and effect of excluding the marine terminal facilities from the definition of stranded gas pipeline.**

I still don't get it why they want to exclude them...Nan Thompson, Bill Britt, Roger Marks, and Bill Walker are among those who are concerned about this. Nan is going to discuss it with Bill Britt again, due to marine terminals then not falling under the jurisdiction of JPO, and will get back with me Monday. Roger Mark's concern that they would then be eliminated from right of way leasing is shared vehemently by Ray Gardner, who although is not sure that exclusion would do that, says the bill must not pass with that exclusion if it does do that. This is being addressed by an amendment I've got Chenoweth working on, that would leave the exclusion in...but make sure it does not apply to right of way leasing. Chenoweth thinks the exclusion is alright, and expressed no concern to the regulatory effect of it.

***Continuing to refer to the project as a "Stranded Gas Pipeline"**

Chenoweth, Marks and Thompson agree with my concern, and Chenoweth is drafting the amendment to change all references of such, to..."undeveloped natural gas"...or some such thing to make sure it doesn't mess up what's being done in Cook Inlet.

***Capacity allocated for instate use, both initially and expansion**

Chenoweth has drafted legislation to change to AS 38.05.182 to make "in kind" royalty the priority, as well as instate use, and require legislative approval of the determination.

BUT if that bill doesn't pass...we have no such protection in HB290, other than what Jim Eason and Mike Hurley proposed for lowering the bar to get in. But, even with their plan, the communities will still need to commit up front to buy gas, albeit at "their best guess needs", but for a purchase and transportation price uncertain. AND, if the name change doesn't pass muster, the royalty percentage is questionable anyway. (can you tell I'm still not happy?)

***How to structure the tariffing of the instate portion**

Nan has recommended an amendment to require the tariffing be handle as for a utility as opposed to common carrier. I think it works better...the tariffs allow a return on investment but not really wiggle room for the pipeline project to make a windfall off padding their expenses, and a utility methodology allocates capacity on a public interest basis, rather than pro-rata among all users. (intrastate)

Not related to HB 290;

I got the written response from Tam Cook re: taking gas under eminent domain, and gave a copy to Bill Walker who came by today to discuss both of these issues, and faxed one to Ray Gardner. Will hear from them Monday to see if something can be done.

I contacted the General for the Greely Missile Defense Site, he will send us a letter saying he believes the power needs will roughly match what it currently requires. He did suggest however, that I contact Ft. Wainwright and Eielson, suggesting that they may see some increased need in the future.

Hope you have a good meeting with the constituents!

I'll be here after 10 or 11 Saturday...

Lori

Comments of Keith Hand to D. & H. Committee
2/1/00

2/1/00

HB 290 Testimony

Mr. Chairman and members of the committee, for the record I am Keith Hand and I represent Fairbanks Natural Gas and the current and future natural gas users of the Interior.

Speaking for the Interior citizens in addition to the employees of Fairbanks Natural Gas, we are strong advocates of the development of a natural gas pipeline that will provide North Slope gas to the Interior. We have just become familiar with HB 290 and have not spent a great time studying it, but understand and applaud the effort to advance the foundational framework for the pipeline project. However, we have some concerns with the bill in its current state.

After our limited review, we have the following comments:

- Concern on the pricing of the intrastate rates. What pricing scheme is envisioned? Pro-rata mileage based rates or traditional postage stamp pricing?
- Allocation of pipeline capacity between intrastate use and gas for export abroad.
- Concern regarding the treatment of seasonal peaking demand. Interior space heating historically has experienced a three to one swing in consumption. What assurances can be made that the winter peak demand can be met without overly burdensome costs to be borne by Interior residents?
- We would like to ensure that the intrastate gas consumers will have adequate representation in the planning and design phases of the process. I'm not sure if this would properly be delegated as the responsibility of the RCA, but some overview is justified to meet the concerns of intrastate gas consumers.

In conclusion, let me stress that we have not performed a thorough review of this bill, so we may have additional comments in the future. Overall, we are in favor of the intentions of the bill and the direction it is heading towards, but we have some concerns as addressed, so we currently are withholding our support of the bill in current form. However, we're optimistic an equitable solution is possible for all parties involved and look forward to resolving these issues.

**GOLDEN VALLEY ELECTRIC ASSOCIATION
FAIRBANKS ALASKA**

**WRITTEN COMMENTS IN SUPPORT OF VERBAL PRESENTATION
FEBRUARY, 2000 REGARDING HB 290**

Chairman and Committee members, I am Bradley Evans and I represent Golden Valley Electric Association and its member owners.

Golden Valley represents and has a high duty to serve approximately 37,000 consumers who are potential users of the proposed pipeline through our cooperative association. As such, we have concern over the development of legislation, which governs the access, capacity allocations and charges for intrastate use of the pipeline.

At this time our concerns are:

- **The procedures used for allocation of capacity and access to the line;**
- **The methodology for rate design; specifically we support an approach based on cost causer cost payer over a postage stamp rate design;**
- **We desire some representation in reviewing the design of the line such that intrastate users needs, current and future are adequately and fairly satisfied;**
- **The RCA's jurisdiction should include issues and information on interstate matters if they impact the rate, access, allocation or use by intrastate users of the pipeline;**
- **Because of limited time to prepare for this meeting we ask for another opportunity to provide input after studying the Pipeline Act and the impact(s) this may have on intrastate users;**
- **Intrastate users appear to be disadvantaged having to nominate capacity and negotiate contracts for gas before knowing what transportation costs will be added. Golden Valley is price sensitive to gas conversion in Fairbanks area generation. Existing fuel and purchase power contracts have economic value to our customers which caps our flexibility in switching fuel sources. In essence, we have to know the total price before nominating the desired capacity and;**
- **We have not had adequate time to research the issue of a gas line and our participation in its use. In light of direction of the current language**

Golden Valley requires additional time to study this matter to protect the interest of our consumer-owners.

In summary, Golden Valley supports the efforts required to successfully construct a gas pipeline that fairly serves Alaska residents and consumers while at the same time facilitating the necessary export of gas. In its current form, we do not believe this Bill adequately addresses intrastate user concerns and in some instances may impede or unfairly burden Alaskan consumers when using the pipeline. To the extent this Bill can be modified to satisfy our concerns, Golden Valley would commit its full support to the passage of the bill and construction of the gas pipeline. .

House Bill 290
Comments of Roger Marks
State of Alaska Department of Revenue
February 10, 2000

Last week the administration stated four concerns about this bill:

1. The problem of pre-committing to secure pipeline capacity without knowing the cost.
2. The allocation of capacity between in-state and export use in the event of shortages or excesses of capacity.
3. Exclusion of the marine terminal from the Right-of-Way Leasing Act.
4. Jurisdictional issue of whether the pipeline belongs in the Public Utilities Act or the Pipeline Act.

While we continue to support the basic intent of the bill, and while our concerns about the first three issues have not abated, our thinking over the past week has focused on the last issue. It is difficult to deal with the other issues with their jurisdictional context undefined.

The bill puts the pipeline under the regulatory jurisdiction of AS 42.06, the Pipeline Act. Here are the concerns we have:

The Pipeline Act may only have applicability to common carrier pipelines. However, as we understand the bill, the pipeline may not be operating under what we understand a common carrier to be.

A common carrier pipeline must carry gas that is tendered to it by all prospective gas shippers. If the tendered shipments exceed the available capacity of a common carrier line, then the common carrier must pro-rate on an equal basis the tendered gas. This could potentially mean that in-state utilities that have committed to use a certain amount of capacity on the gas line could have some of their gas "pro-rated" or bumped off the line when a new shipper comes on line.

A common carrier requirement is ill-suited for gas pipelines because utilities, especially home heating utilities, must have assurance that their gas will not be pro-rated by a new gas shipper. Moreover, natural gas is very difficult to store (unlike crude oil) so it is very difficult for utilities to react to a sudden pro-ration of gas shipments.

Therefore today, gas pipelines are typically *contract* carriers where utilities are assured a certain amount of the gas pipeline's capacity.

However, as HB 290 is structured, where the pipeline may function as a common carrier insofar as the pre-construction commitment is concerned, the expansion provisions may be troublesome. As we understand HB 290, if a party wants additional capacity after the pipeline is operational, but none is available, it could only procure the capacity after

requesting construction of additional capacity, and waiting for the time consuming process of the construction.

For example, suppose Fairbanks and Valdez were to pre-commit for 10 and 5 cubic feet of gas, respectively, for a total of 15 cubic feet of gas of capacity in the pipeline. And then suppose after the pipeline is operational, Anchorage wants 85 cubic feet of gas, for a total of 100 cubic feet of demand. But, there is only 15 cubic feet of capacity for in-state use. If this were truly a common carrier, Anchorage would get 85 percent of the 15 cubic feet, and Fairbanks and Valdez would be drastically scaled down. However, under the bill, Anchorage would have to request and await construction of additional capacity for its needs.

While we believe this would make sense, we also believe this may not constitute a "common carrier" as the term has been used in case law. This could create ambiguities, which would decrease certainty rather than enhance it.

Again, we continue to support the basic intent of the bill. However, this pipeline is very different from anything we have ever seen in the state, and the existing body of law has not addressed anything like it. It is difficult to know for sure how laws that were written for something else will apply to it. We will continue to analyze the bill. I am available to answer questions, along with Nan Thompson, Chair of the Regulatory Commission of Alaska, and Michael Barnhill, Assistant Attorney General with the Department of Law.

Comments of Roger Marks

State of Alaska Department of Revenue

House Bill 290

February 1, 2000

This represents a preliminary analysis by the administration, including the Departments of Law, Revenue, and Natural Resources, the Regulatory Commission of Alaska, and the State Pipeline Coordinator's Office.

In-state use of gas would be a very valuable benefit of an Alaska North Slope liquefied natural gas (LNG) project. However, if the gas is commercialized most of the volume will be for export. And the financing of this multi-billion dollar project will require establishment of long term contracts with buyers. A set amount of pipeline capacity will need to be reserved for contractual obligations.

At the same time the economics of the proposed export projects appear to be financially marginal. They could not afford to take North Slope gas to market if they have to bear the cost of pre-investing to provide substantial excess capacity if there were a risk the capacity would not be used. To do so

could affect the economics such that there would be no project, and no one would get gas.

Whereas it is straightforward to arrange for pipeline capacity and gas supplies for intrastate use before construction starts, attaining pipeline capacity after operation begins may be difficult and expensive.

Consequently, the question of how to allocate space and gas needs to be addressed before the line is built.

What this bill does is provide a possible way to reduce the potential gas supply risks perceived by the foreign market, facilitating the marketing of the gas, while providing a mechanism for communities to procure gas. The administration supports this broad intent.

This said, the bill raises complex issues that could have significant long-term impacts. Some of these issues include:

- 1) Local jurisdictions committing in advance to secure pipeline capacity without knowing what the cost will be, especially if the gas purchase contracts are also not in place. (There may be, however,

mechanisms available to reduce risks to buyers without unduly harming the pipeline sponsors.)

2) Allocation of capacity between intrastate and export use in the event of shortages or excesses of capacity.

3) Exclusion of the pipeline from the Alaska Public Utilities Regulatory Act and subjection to the Pipeline Act. We are still analyzing the extent to which the differences between the two may be material.

4) Exclusion of marine terminal facilities from the Right-of-Way-Leasing Act. This may affect the ability of the State to lease State land for such facilities and to oversee land management. It could also affect intrastate shipments of LNG should they be desired.

Thus we are not yet sufficiently comfortable with the measures in HB 290 to endorse them at this time. The multi-agency team will continue to analyze the bill and provide recommendations to the legislature.

To: Lori Backes
House Special Committee on Oil and Gas

From: Roger Marks
Petroleum Economist
Department of Revenue

Date: 1/26/00

Re: HB 290

Background

If North Slope gas is commercialized most of the volume will be for export. The expenditure of billions of dollars for a liquefied natural gas (LNG) project, including the conditioning plant, pipeline, liquefaction plant, and ships, will require the establishment of long-term contracts with buyers. A set amount of gas would need to be used for the contractual obligations, and a fixed amount of pipeline capacity will need to be reserved to carry it. At the same time, communities along the pipeline route may be interested in procuring gas supplies for local residential, commercial, and industrial use.

Whereas it is straightforward to arrange for pipeline capacity and gas supplies for intrastate use before construction starts, attaining pipeline capacity after operation begins may be difficult and expensive. Consequently, the question of how to allocate space and gas once the LNG infrastructure is in place needs to be addressed before the line is built.

Analysis

The certainty provided by the bill may reduce potential gas supply risks perceived by the foreign gas market, and may facilitate marketing of the gas. This said, the bill raises complex issues that could have significant long-term impacts. Some of these issues include:

- Local jurisdictions committing in advance to buying gas without known prices.
- Pricing of gas that results from costly capacity expansion.
- Allocation of gas volumes or capacity between intrastate and export use in the event of shortages or excesses of capacity or gas supply.
- Exclusion of the pipeline from the Alaska Public Utilities Regulatory Act.
- Exclusion of marine terminal facilities from the Right-of-Way-Leasing Act.

Findings

This bill attempts to add certainty to the regulatory environment surrounding intrastate use of gas from a potential North Slope natural gas pipeline. The administration has supported this goal since 1997 when Dr. Pedro Van Meurs identified these issues as

potential concerns for LNG project sponsors. However, we are not yet sufficiently comfortable with the measures in HB 290 to endorse them at this time.

A multi-agency team the Departments of Revenue, Natural Resources, and Law, the Regulatory Commission of Alaska, and the State Pipeline Coordinator's Office will continue to analyze HB 290 and provide recommendations to the legislature.

COMMENTS ON STRANDED GAS PIPELINE BILL
REGULATORY COMMISSION OF ALASKA
G. NANETTE THOMPSON, CHAIR

1. The RCA has no objection to the limitation of its jurisdiction to the intrastate portion of the pipeline. That is true now as a matter of law.
2. Agree that minimizing regulatory uncertainty is important goal. As currently drafted, the bill may not achieve that goal because it creates a hybrid regulatory regime that is somewhere between a common carrier and a utility. Any ambiguity in the regulatory regime would make litigation more likely.
 - Common Carrier pipelines are required to take all product offered, and allocate pro-rata amongst shippers if the demand exceeds the available capacity. Regulators can require capacity expansion under some circumstances, but the costs would be recoverable in tariffed rates.
 - Utilities' capacity is allocated by the RCA according to a public interest standard. Utilities are allowed to recover the cost of increasing capacity from ratepayers under tariffs approved by the RCA. Expansion costs are allocated between the new user and entire system based on who benefits from the expansion.
 - This bill creates a hybrid. The stranded gas pipeline would not be a utility (section 2), but it would also not be a traditional common carrier. The bill replaces the traditional common carrier pro-rata allocation scheme with a new standard. The finding the RCA must make to require capacity expansion- no "undue financial burden" is ambiguous. Ambiguity breeds litigation. Litigation breeds uncertainty and delay in a business environment.

The RCA could regulate the intrastate portion of this project as either a common carrier pipeline or a utility, but the hybrid described in the current draft of the bill is problematic. Alternatively, the legislature could define a new regulatory scheme under a new section of title 42.

3. The bill may unintentionally exclude many intrastate users. Most of the small communities/users along the line will not be able to project need that far in the future and commit to pay costs that have not been defined. The current bill draft requires intrastate users to bid like exporters.
 - The legislature could decide to dedicate a fixed percentage of the pipeline to intrastate uses and require the RCA to allocate that capacity as a utility (public interest concerns), common carrier (pro-rata according to demand) or according to a new regulatory scheme that it defines.
 - The bill could allow unused intrastate capacity to be offered to the exporters.

- The bill could define the circumstances under which the fixed percentage could be modified in the future.

Comments of Daniel M. Dieckgraeff

ENSTAR Natural Gas Company

House Bill 290

February 10, 2000

Mr. Chairman and members of the committee, my name is Daniel Dieckgraeff. I am the Vice President of Finance and Rates for ENSTAR Natural Gas Company in Anchorage. ENSTAR serves over 102,000 customers in South Central Alaska, providing the natural gas that keeps half of the state's population warm.

ENSTAR understands the purpose of HB 290 and we do not object to the overall concept. We can appreciate the sponsor group's desire and need for predictability, especially for the high volume export facility that is planned. We are very supportive of efforts to bring North Slope gas near the State's population centers.

Everyone who has looked at the Cook Inlet knows that gas reserves are declining. The huge fields that we have been living on were all discovered by 1965. Gas discoveries in Cook Inlet in the last 30 years have totaled to less than one year's Cook Inlet production. ENSTAR and the other users of gas know that they need to begin to look at other areas like the North Slope to meet future gas needs.

With respect to HB 290, ENSTAR does have some concerns.

As the bill is currently drafted, it is unlikely that there will be much utility use of the North Slope gas.

Why? In its current form, the bill would require intrastate buyers to commit to take or pay contracts for gas well in advance of the construction of the pipeline. Local utilities

will be unable to commit themselves that far ahead, as they will not know when they will be able to take the gas, nor at what cost.

When the pipeline shows up, ENSTAR and the other utilities utilizing gas can't change from totally relying upon Cook Inlet gas to totally relying upon North Slope gas. We will have to blend-in the change over time and that too poses problems with the type of contracting mandated by the Bill.

Total utility instate gas usage would be a small portion of the total projected gas pipeline throughput. Currently, 60 to 65 billion cubic feet a year of gas is used by utilities in the entire state. The vast majority of that from Cook Inlet production. Demand in Fairbanks and other pipeline route communities could add another 10 to 15 Bcf in demand for a total of 85Bcf per year. That is about 10% of the 2 Bcf per day line that is being discussed by the Sponsor group and about 5% of the 4 Bcf per day line that is being discussed by the Port Authority group.

The pipeline should be designed and this bill should be revised to accommodate those volumes. Alaskan residents should have reasonable access to their gas resource.

ENSTAR sees three primary uses of the gas that comes off the North Slope:

1. The "big export project", more than likely an LNG export facility
2. A large instate project, like an iron ore reduction plant or a chemical plant
3. Instate utility use of gas

The bill provisions appropriately address the big project uses, but not utility use. The bill's provisions lump the instate utilities and large instate projects together. They are very dissimilar.

The LNG project and a large instate project will be sized for their markets. After a normal ramp-up period, usage will remain quite constant.

ENSTAR urges the committee to revise the bill so that there is open access for local utility use. North Slope gas should be available to heat Alaskan homes on reasonable terms. Utility use would be about 5 - 10% of capacity. That amount should not cause economic problems with a pipeline project.

Mr. Chairman, ENSTAR would like to thank you and the Committee for this opportunity to express our views on HB 290. I would be happy to address any questions at this time, or later at your convenience.

**ANS LNG Sponsor Group – HB-290 Testimony
House Oil and Gas Committee
1/27/2000**

Mr. Chairman, members of the committee, for the record, my name is Michael Hurley. I work for ARCO Alaska, Inc in the ANS Gas Commercialization Group in Anchorage, and am currently assigned to manage the commercial regulatory efforts for the Alaska North Slope LNG Sponsor Group.

I am here today to express the sponsor group's support for HB-290. The sponsor group, as Steve Alleman testified to you two weeks ago, has been actively pursuing development of an LNG export project; including the development of a commercial regulatory regime which will provide the regulatory certainty our long term customers require, while at the same time, meeting the needs of the state and federal regulators for adequate access and commercial oversight. HB-290, we believe, strikes that balance, providing the Regulatory Commission of Alaska, clear and unambiguous oversight of intrastate gas transportation.

Section 1 of the bill clarifies the current Right of Way Leasing Act common carriage requirement to apply only to intrastate gas shipments.

The second and third sections of the bill clarify that a stranded gas pipeline system's intrastate shipments would be regulated under the Pipeline Act (AS 42.06), rather than under the Utilities Act (AS 42.05).

In section 4, a new subsection is added to the Pipeline Act creating procedures, within RCA's existing pipeline certification process, for determining the amount of pipeline capacity which should initially be set aside for intrastate transportation.

That process sets out distinct criteria for capacity for Local Distribution Companies (LDCs) which must submit their gas purchase contracts to the RCA under current regulations, and for industrial gas users who must provide written commitments to transport intrastate

gas volumes, supported by take or pay purchase commitments with stranded gas producers.

Likewise, in section 5 of the bill, expansions of a stranded gas pipeline may be ordered by the Commission only if such requests for additional intrastate capacity are supported by firm contractual commitments.

Section 6 allows the RCA to consider allowing a reservation or similar charge for firm intrastate transportation in the intrastate tariff.

Finally, section 7 of the bill adds several definitions of terms referred to in other sections of the bill, in an effort to increase the clarity and understanding of the other sections.

Mr. Chairman, thank you for this opportunity to express our support for HB-290, and if you or any members of the committee have any questions, I'd be happy to address those at this time, or at your convenience.

ALASKA NORTH SLOPE LNG PROJECT

700 G Street, PO Box 100360, Anchorage, AK 99510-0360, Phone: (907) 265-6157, Fax: (907) 265-6838

January 20, 2000

Representative Jim Whitaker, Chair
Alaska State Legislature
House Special Committee on Oil & Gas
State Capitol, Room 13
Juneau, Alaska 99801-1182

Dear Mr. Chairman,

Thank you for the opportunity to meet with you and the members of the Alaska House Special Committee on Oil and Gas last Thursday, January 13th. I appreciated the interest expressed and questions raised by you and your committee regarding the ongoing efforts of the Alaska North Slope LNG Project toward commercializing North Slope gas.

In response to the question posed during that meeting by Representative Kemplen concerning instate gas demand. Based in large part on a previous study of Daniel H. Zorbrist of anticipated instate demand for Fairbanks, Glennallen, and Valdez and upon completion of estimated market penetration, total gas demand including power generation and space heating is roughly estimated to be about 25 Bcf/year (or ~0.07Bcf/day). Using an example North Slope gas pipeline throughput of 1.4 to 1.6 Bcf per day that would be around 4-5% of pipeline throughput. According to the U.S. Department of Energy, gas demand for South Central Alaska could be as high as 260 Bcf/year (0.71 Bcf/day) with sufficient Cook Inlet gas resources to supply that need through at least 2009.

Much of South Central Alaska gas supplies are currently covered by long term, in-state gas contracts. While Fairbanks, Glennallen and Valdez volumes are not currently subject to existing gas supply contracts, they are subject to the development of a local distribution system and the fuel switching capabilities (physical and contractual) of the residential and power generation customers.

Finally, if I may, I'd like to take this opportunity to further clarify my response to Representative Green's question during my testimony relating to common carriage access to the system.

The question (paraphrased) was: If some company exploring for oil or gas in Alaska found a new huge gas field, 1) would they have to build their own pipeline, or 2) would our pipeline be a common carrier?

As further clarification regarding 1) building a separate pipeline, no, they wouldn't necessarily have to build their own pipeline. Our system would be expandable and we would be motivated to increase volumes for our system to help reduce the unit costs for all shippers on our system and would have an incentive to entice more gas through this system.

Regarding common carriage, 2) our system, at least for the export volumes would not be a common carrier. We would have common carriage for intrastate volumes, but the export volumes would be transported by contract carriage, under regulation by the Department of Energy. This would not limit access to our system, but would change the form by which others would gain access. Under the proposed contract carriage regime for exports, when we expanded our system, we would hold an open season for access to that increased capacity. This would satisfy the existing federal and state requirements for a non-discriminatory access process.

These questions and others can be more fully explored in testimony surrounding HB290 as the legislative process unfolds, but I wanted to further clarify my response of January 13, 2000.

Thank you again for the invitation to share our progress with you and your committee last week.

Sincerely,



Steve Alleman
Commercial Manager
907-265-6853

cc to Representatives:

Tom Brice
Fred Dyson
Joe Green
John Harris
Allen Kemplen
Gail Phillips
Brian Porter

* "The Potential In-State Demand for Alaska North Slope Gas", Daniel H. Zorbrist, Petroleum Economist, Division of Oil and Gas, Department of Natural Resources, October 1, 1997.

** DOE/MB Opinion and order no. 1473, April 2, 1999



Valdez Office:
P.O. Box 188, Valdez, AK 99686
Phone: (907) 835-5480 / Fax: (907) 835-5410
Email: afervdz@alaska.net
www.alaska.net/~afervdz

Fairbanks Office:
P.O. Box 82718, Fairbanks, AK 99708
Phone: (907) 479-8948
Email: ross@mosquitonet.com

February 21, 2000

TO: All Members, House Resources Committee

FR: Ross Coen

RE: House Bill 290

Dear Members of the House Resources Committee,

I am writing with regard to House Bill 290 in order to call your attention to what my organization believes to be a minor and altogether fixable fault in the bill. The Alaska Forum for Environmental Responsibility is a statewide, non-profit group that seeks to hold both government and industry accountable to the laws designed to safeguard Alaska's environment.

In Section 7, Paragraph 16 of HB 290, the definition for "stranded gas pipeline" specifically excludes "marine terminal facilities...including pollution control equipment[.]" I believe that this passage means the following: if this bill passes in its current form and the proposed natural gas pipeline is built by the ANS Sponsor Group then the marine terminal and spill response activities would be exempt from any regulation or oversight by the coordinated state agencies in the Joint Pipeline Office.

One could argue that this minor language in only one House Bill could not possibly grant such a monumental exemption, but it appears nevertheless to set a dangerous precedent as to what the state may regulate and what it may not. You might call it the proverbial first step down that slippery slope.

It is my understanding that the proponents of HB 290 have argued for this exemption because (1) by excluding the marine terminal you would decrease the gas' transportation costs, thereby increasing state revenue; and (2) the Joint Pipeline Office is charged with regulating only pipelines, not facilities. Both points are fallacious.

First, Roger Marks with the Department of Revenue has testified that the state may include regulatory authority on marine terminal oversight while not affecting the transportation costs of the gas. Second, both Bill Britt, the State Pipeline Coordinator, and Mike Barnhill with the Attorney General's office have testified that the state's regulatory authority is expressly defined as to include both pipelines and facilities. A claim to the contrary is not only erroneous, but ignores the more than 25-year history of the Valdez Marine Terminal.

I respectfully request that the House Resources Committee amend HB 290 to remove this exemption found in Section 7, Paragraph 16. Careful oversight of not only the gas pipeline but of all related facilities is necessary to ensure the safe operation of this industry so vital to Alaska's economic future.

Thank you,

A handwritten signature in black ink, appearing to read "Ross Coen".

Ross Coen



CHUGACH ELECTRIC

ASSOCIATION, INC.

EUGENE N. BJORNSTAD, P.E.
General Manager

February 16, 2000

Representative Jim Whitaker
State Capitol RM 13
MS: 3100
Juneau, Alaska 99801-1182

Dear Representative Whitaker:

Thank you for soliciting our comments on HB 290. At this time, Chugach Electric Association, Inc. (Chugach) has the following comments.

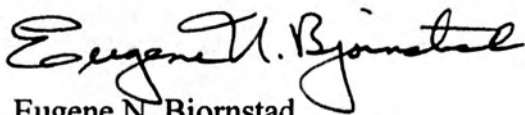
- Chugach supports efforts to develop sources of natural gas within Alaska and particularly within Southcentral Alaska. Certainly a pipeline to access stranded gas assets are a way to accomplish this important objective.
- Chugach expects that any participant that is capable of making a credible commitment to purchase capacity in such a line will deal directly with the builders of the line before the final commitment is made to construct the pipeline.
- Chugach supports efforts to ensure that as a condition of being allowed to build the line, the owners must allow in-state users to commit to purchase capacity in the line on a fair and non-discriminatory basis.
- The certificate of public convenience and necessity approval by the Regulatory Commission under HB 290 is made contingent on a process of notifying and offering access to the pipeline to in-state users. Chugach is presently unpersuaded of the need to establish regulatory oversight of this pipeline. Before creating this additional regulatory review and approval function, the specific anticipated benefits of the added layer of regulation should be clearly and specifically articulated and balanced against the detriments which include delay and the potential for obstruction of beneficial business ventures.

Representative Jim Whitaker
February 16, 2000
Page 2

- Chugach does not agree with the requirement for take-or-pay contracts for utilities well in advance of pipeline construction, rather Chugach supports the concept of some portion of the line being reserved for in-state utilities for some period of time after the line is built.

Chugach will continue to follow this legislation as it is a matter of interest to us.

Sincerely,

A handwritten signature in cursive script, reading "Eugene N. Bjornstad".

Eugene N. Bjornstad
General Manager

RE: Military Needs for Gas ^{copy}
→ F.W.W. - Public Works, Paul
384.3043 Knauff, est. 3.2 bcf/yr.
(G. Rich) to replace current coal use.
up to 3.5 w/increased use in
10 yrs. due to expanded steam
use. (3,239,000 mcf)

→ F.H. Greely - Gen. Oats ^{million cf/day}
70-357
428.6019

→ Edison AFB - Bill Havard,
Superintendent power plant 377-3151
approx "same as F.W.W.

Determination of Royalty Disposition

Alaska Land Act

Sec. 38.05.182. Royalty on natural resources

(a) Any royalty provided for in AS 38.05.135 - 38.05.181 may be taken in kind rather than in money if the commissioner determines that the taking in kind would be in the best interest of the state. However, royalties on oil and gas shall be taken in kind unless the commissioner determines that the taking in money would be in the best interest of the state.

(b) The commissioner shall submit a determination to take royalty in money to the legislature at the first opportunity during a current session or, if the legislature is not in session, at the next regular session. The legislature, within 60 days or by the adjournment of the session, whichever comes sooner, may revoke the determination by concurrent resolution.

Sec. 38.05.183. Sale of royalty

(a) The sale, exchange or other disposal of a mineral obtained by the state as a royalty under AS 38.05.182, or the sale, exchange or other disposal in whole or in part of a right to receive future mineral production under a state lease under this chapter, shall be by competitive bid and the sale, exchange or other disposal made to the highest responsible bidder, except that competitive bidding is not required when the commissioner, after prior written notice to the Alaska Royalty Oil and Gas Development Advisory Board under AS 38.06.050, determines that the best interest of the state does not require it or that no competition exists.

(b) When competitive bids are required, the commissioner, after prior written notice to the Alaska Royalty Oil and Gas Development Advisory Board, may reject all bids on a determination that because of the amount of the bids, the lack of responsibility on the part of the bidders, or for reasons consistent with the criteria set out in AS 38.06.070, the acceptance of the bids would not be in the best interest of the state.

(c) If the commissioner determines that a sale, exchange or other disposal of a mineral obtained by the state as a royalty under AS 38.05.182 or of a right to receive future mineral production under a state lease under this chapter shall be made otherwise than by competitive bid, and the Alaska Royalty Oil and Gas Development Advisory Board has been notified in writing of that determination, the commissioner shall make public in writing the specific findings and conclusions upon which that determination is based.

(d) Oil or gas taken in kind by the state as its royalty share may not be sold or otherwise disposed of for export from the state until the commissioner determines that the royalty-in-kind oil or gas is surplus to the present and projected intrastate domestic and industrial needs. The commissioner shall make public, in writing, the specific findings and reasons on which the determination is based.

(e) When a sale, exchange or other disposal of oil or gas taken in kind by the state as its royalty share, or a sale, exchange or other disposal in whole or in part of a right to receive future royalty oil or gas, under a state lease under this chapter is made other than by competitive bid, the sale, exchange or other disposal shall be awarded by the commissioner to the prospective buyer whose proposal offers the maximum benefits to citizens of the state. The commissioner shall consider

(1) the cash value offered;

(2) the projected effects of the sale, exchange or other disposal on the economy of the state;

(3) the projected benefits of refining or processing the oil or gas in the state;

(4) the ability of the prospective buyer to provide refined products or by-products for distribution and sale in the state with price or supply benefits to the citizens of the state; and

(5) the criteria listed in AS 38.06.070 (a). *(amendment to priority)*

(f) The commissioner may not enter into a contract for the sale of royalty oil unless the contract provides that any material amendment to the contract that appreciably reduces the consideration received by the state requires prior approval of the legislature.

(g) AS 38.05.035 (e) does not apply to a sale, exchange, or other disposal of oil or gas under this section.

(h) Upon legislative approval, the commissioner may enter into a contract to sell royalty gas taken in kind by the state to a gas or electric utility at a negotiated price for the gas if the commissioner, after considering the consumer benefits, other benefits, and detriments of the sale, makes a written finding that the sale is in the best interest of the state.

Alaska Royalty oil and Gas Development Advisory Board

Sec. 38.06.040. Powers and duties of the board.

(a) The board shall

(1) in accordance with the criteria set out in AS 38.06.070 , develop a plan for the wise development of the state's oil and gas royalty interests; the plan of development shall be consistent with

(A) growth of the private sector of the economy;

(B) environmental standards required by law; and

(C) public fiscal stability;

(2) hold public hearings on proposed sales, exchanges, or other disposals of royalty oil or gas to determine whether the proposals comply with AS 38.06.070 ;

(3) examine proposed sales, exchanges or other disposal of, and recommend to the legislature that it approve or disapprove a proposed sale, exchange or other disposal of

(A) the oil or gas that is obtained by the state as royalty under AS 38.05.182; or

(B) the rights to receive future oil or gas production under state leases; and

(4) recommend to the commissioner of natural resources the conditions relating to the sale, delivery, transportation, refining or processing of oil or gas which the commissioner may include in the offer and sale of oil or gas obtained by the state as royalty under AS 38.05.182 .

(b) The board may

(1) direct the commissioner of natural resources to solicit development plans or bids consistent with the criteria set out in AS 38.06.070 for

(A) the sale, exchange or other disposal of oil or gas obtained by the state as royalty under AS 38.05.182 ; or

(B) the sale, exchange or other disposal of all or a portion of the rights to receive future oil or gas production under a state lease;

Sec. 38.06.050. Board review and recommendation required.

(a) If legislative approval is required by AS 38.06.055 , a sale, exchange, encumbrance, or other disposition of oil or gas or of the rights or waiver of the rights to receive future production of royalty oil or gas may not be made by the commissioner of natural resources under AS 38.05.183 without prior review of the proposed sale, exchange, encumbrance, or other disposition by the board. A written recommendation of the board on the proposed sale, exchange, encumbrance, or other disposition of oil or gas or of the rights or waiver of the rights to receive future production of royalty oil or gas shall be submitted to the legislature at the time a bill approving the proposed sale, exchange, encumbrance, or other disposition is introduced in the legislature.

Sec. 38.06.055. Legislative approval.

(a) In addition to the recommendation by the board required under AS 38.06.050, the commissioner of natural resources may not enter into a sale, exchange, or other disposition of oil or gas or of the rights or waiver of the rights to receive future production of royalty oil or gas under AS 38.05.183 without the prior approval of the

legislature. The legislature may approve a sale, exchange, or other disposition of oil or gas or of the rights or of a waiver of the rights to receive future production of royalty oil or gas only by enacting legislation.

(b) The provisions of (a) of this section do not apply to

(1) the sale, exchange, or other disposition of oil or gas for one year or less if the sale, exchange, or other disposition is entered into to relieve storage or market conditions;

(2) contracts for the sale of state-owned royalty gas or oil that specify the sale and delivery of not more than

(A) 400 barrels of crude oil per day;

(B) 460 barrels of natural gas liquids per day; and

(C) 2,400 Mcf of natural gas per day.

(c) A sale, exchange, or other disposition of oil or gas under (b)(1) of this section may not be continued after the end of one year or renewed with the same party without the prior approval of the legislature under (a) of this section. This subsection does not apply to a sequential competitively bid sale of oil or gas made with the same party under (b)(1) of this section.

Alaska State Legislature

House Resources Committee

Co-Chair Beverly Masek
(907) 465-3715
FAX (907) 465-4822
Capitol Building, Room 124
Juneau, Alaska 99801



Co-Chair Bill Hudson
(907) 465-6890
FAX (907) 465-2273
Committee Meetings
M/W/F 1 - 3 p.m.

Members: Vice Chair John Cowdery, Representatives: Ramona Barnes, John Harris, Carl Morgan, Jim Whitaker, John Cowdery, Reggie Joule, and Mary Kapsner

MEMORANDUM

DATE: January 17, 2000

TO: Representative Jim Whitaker
Chairman, House Special Committee on Oil & Gas

FROM: Representative Beverly Masek *BM by jm*
Co-Chairman, House Resources Committee

RE: Hearing Request on House Bill 290 (HB 290)

At your earliest convenience please schedule HB 290, Stranded Gas Pipeline Carriers, for a hearing in the Oil & Gas Committee.

HB 290 makes necessary changes to existing statute before a stranded gas pipeline project can proceed.

Attachments.

Alaska State Legislature

House Special Committee on Oil & Gas

State Capitol
Room 13
Juneau, AK. 99801-1182



Phone (907) 465-3004
Fax (907) 465-2070

MEMORANDUM

TO: Tam Cook
FROM: Jim Whitaker *MTW*
DATE: 1/24/00
RE: Request for sectional analysis

This memo is to confirm my request for a sectional analysis of HB290, Stranded Gas Pipeline Carriers.

The Oil and Gas committee will be hearing this bill on Thursday, Jan. 27th. It is my request that this sectional analysis be prepared as soon as possible, however if it is not possible to have this by the date of that hearing, I would appreciate it if you could give me some idea as to when it will be.

Chairman: Representative Jim Whitaker
Committee Members:
Representatives Fred Dyson • Gail Phillips • Brian Porter • Joe Green • John Harris
• Allen Kemplen • Tom Brice • Hal Smalley

Subject: Re: HB 290

Date: Fri, 11 Feb 2000 17:09:43 -0900

From: Nanette Thompson <nanette_thompson@rca.state.ak.us>

Organization: Regulatory Commission of Alaska

To: Lori Backes <Lori_Backes@legis.state.ak.us>

My less than complete understanding of the marine terminal exclusion issue is that we should make sure that it is within the jurisdiction of the JPO. Under the current draft of the bill, it would arguably be excluded. I just tried to call Bill Britt at JPO to get clarification, he is gone for the night. I left him a message to call 1st thing Monday am, and I'll pass on whatever I learn.

I don't see a downside for the intent of the bill to go with a utility tariff methodology instead of a common carrier. The upside is more certainty for instate users, and probably lower tariff rates.

I'm going to try not to come into the office this weekend, but I check my e-mail from home if you need to get ahold of me as you work through this bill.

Nan

Lori Backes wrote:

> For that purpose, I think it works, but...do you see a downside for the
> intent of the bill to go with utility as opposed to common carrier?
> Also, I am really grappling with the exclusion of marine terminal
> facilities in the definition of stranded gas pipeline. I just don't get
> why they want those excluded. I have heard some rather strong concerns
> about that removing it from JPO oversight, as well as setting a precedent
> on TAPS due to it being inserted into the pipeline act.

> Any thoughts on that?

> Lori

>

> Nanette Thompson wrote:

>

> > Lori- I decided that we need a new section because the tariffing
> > provisions of 42.06 were not cited in the last draft. Here is my
> > proposal:

> >

> > Section_: A.S. 42.06.370 is amended by adding a new subsection that
> > reads as follows:

> >

> > (c) All rates demanded or received by a stranded gas pipeline carrier
> > for intrastate service shall be designed as if that portion of the
> > stranded gas pipeline was a public utility regulated under the
> > provisions of A.S. 42.05.

> >

> > How does this work?

Subject: HB290

Date: Sat, 12 Feb 2000 14:24:47 -0900

From: Lori Backes <lori_backes@legis.state.ak.us>

To: Jack_Chenoweth@legis.state.ak.us

Jack,

Yesterday in one of our many conversations you said you were going to try to work out an amendment for this bill that would change all references to the project from "stranded gas pipeline" to "undeveloped natural gas pipeline" or some such thing so as not to carry forward indefinitely the designation of "Stranded Gas" or to mess with what's already in the works in Cook Inlet with their gas. How is that coming?

If the name and references in this bill remain "stranded gas pipeline", would this bill then not apply to a pipeline that is not a "stranded gas pipeline" under the stranded gas act (HB393 from the 20th legislature)? For example, if a pipeline project does not require the tax negotiation advantages of HB393 for economic viability, and does not make the application or is denied, ie: the Port Authority proposal, then they would not have the designation of "Stranded Gas Pipeline", and perhaps not fall under the provisions of HB 290.

Your thoughts on this?

Lori

By the way, I don't know whether the Port Authority plans to make an application for that designation or not, but I am trying to get a handle on this notion of whether all gas pipelines in the future of Alaska would be considered "Stranded Gas Pipelines".

Lori Backes <Lori_Backes@legis.state.ak.us>

Oil & Gas Committee Aide
Representative Jim Whitaker
Alaska State Legislature

Facsimile Transmittal

REP. JIM WHITAKER

Alaska State Capitol Room 13

Juneau, Alaska 99801-1182

Phone (907) 465-3004

Fax (907) 465-2070

Date: 2/15/00

Attention: ANITA PORTER

From: LORI BACKES

Number of pages (including this cover): 1

Comment(s): Anita,

On Friday of last week, I spoke with General Oats about the possibility of a natural gas pipeline taking North Slope Natural Gas to tidewater, and asked the General to give me an estimate of how much gas Ft. Greely would need to replace the current fuel being used for electrical generation and heat, if Ft. Greely were to convert. I also questioned whether there would be an anticipated increase in demand with the missile defense site being located there. I know he'd come up with an estimate of 70-257 million cubic feet per day, depending on season, and that he didn't anticipate an increase with the operation of a missile defense site.

What I would like to get from you is a memo with the General's comments to those questions that I may provide to the members of the Oil and Gas Committee.

My fax number is 907-465-2070, phone is 465-2283, email is also a handy option, my address is Lori_Backes@legis.state.ak.us.

Thank You!

Lori Backes

Oil & Gas Committee Aide

LEGAL SERVICES

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

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

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

MEMORANDUM

February 16, 2000

SUBJECT: Amendment A.4 to House Bill 290

TO: Representative Jim Whitaker

FROM: Jack Chenoweth
Assistant Revisor of Statutes

The amendment identified as A.4 simply reverses the "exclusion" of marine facilities and related equipment from the definition of "stranded gas pipeline carrier" and includes the marine facility and related equipment as part of the term being defined.

I did not cross-reference the similar definition in AS 38.35.230 as was suggested because the definition of "pipeline facility" there also includes reference to "oil" and to "product."

The change made by amendment A.4 will have an effect on the term both as it is used in AS 42.06, the "[state] Pipeline Act," and, by virtue of the cross-reference to it in AS 38.35.120(a)(1)(B) (HB 290, page 2, lines 15 and 16), in the Right-of-Way Leasing Act, AS 38.35.

JBC:pl
00-054.plm

Subject: Re: HB290
Date: Thu, 17 Feb 2000 08:25:58 -0900
From: Jack Chenoweth <Jack_Chenoweth@legis.state.ak.us>
Organization: Alaska State Legislature
To: Lori Backes <Lori_Backes@legis.state.ak.us>

To the question of this morning: Substitution of "undeveloped natural gas" for "stranded gas" throughout HB 290 is the change proposed by amendment A.2. Critical to the change is the amendment of the definition made at the amendment's page 7, lines 13 - 17. The definition offered for "undeveloped natural gas" intentionally tracks the definition for "stranded gas" in existing AS 43.82.900 as far as I thought I could go. But the definition of "undeveloped natural gas" as offered in the amendment does not include the portion of the "stranded gas" definition, which is important to the way AS 43.82 is to operate, that the prevailing costs and price conditions must be based on an economic analysis made by the commissioner of revenue. The practical effect of not including that element of the definition of "stranded gas" is to expand the possible number of pipelines that would be covered by HB 290 as modified by adoption of amendment A.2. But the change itself would not necessarily mean that all proposed gas pipelines would be covered by these new provisions. Some gas lines may be built on the basis of contracts committing sale of the gas--additional lines out of Cook Inlet fields to serve an expanding metropolitan Anchorage market, for example--that probably would not fall within the definition because of the "but for" contingency. I appreciate that the substituted definition is very fuzzy--it is certainly less certain than the definition set out in AS 43.82 for "stranded gas"--so if someone can draw a clearer distinction to help the Regulatory Commission through the process of deciding whether HB 290 should or should not apply, the committee may want to give the language of that distinction very careful consideration.

* * *

To the question of the second paragraph of the Saturday e-mail: The answer is "yes," and I think your conclusion ("... would not have the designation of a "Stranded Gas Pipeline," and perhaps not fall under the provisions of HB 290.") is correct.

Lori Backes wrote:

Jack,

Yesterday in one of our many conversations you said you were going to try to work out an amendment for this bill that would change all references to the project from "stranded gas pipeline" to "undeveloped natural gas pipeline" or some such thing so as not to carry forward indefinitely the designation of "Stranded Gas" or to mess with what's already in the works in Cook Inlet with their gas. How is that coming?

If the name and references in this bill remain "stranded gas pipeline", would this bill then not apply to a pipeline that is not a "stranded gas pipeline" under the stranded gas act (HB393 from the 20th legislature)? For example, if a pipeline project does not require the tax negotiation advantages of HB393 for economic viability, and does not make the application or is denied, ie: the Port Authority proposal, then they would not have the designation of "Stranded Gas Pipeline", and perhaps not fall under the provisions of HB 290.

Your thoughts on this?

Lori

By the way, I don't know whether the Port Authority plans to make an application for that designation or not, but I am trying to get a handle on this notion of whether all gas pipelines in the future of Alaska would be considered "Stranded Gas Pipelines".

To: Lori Backes
From: John M. Larsen
Date: 2/22/00

Re: RIK Question

Lori;

Thank you for your questions regarding the Alaska Royalty Oil & Gas Development Advisory Board. I have read through, and copied (in bold typeface) for your convenience, the Statutes and Regulations that I believe apply to your questions.

Chapter 38.06. ALASKA ROYALTY OIL AND GAS DEVELOPMENT ADVISORY BOARD

Sec. 38.06.010. Purpose.

It is the purpose of this chapter to facilitate the wise development of Alaska's oil and gas royalty interests by providing means and procedures for sales, exchanges or other disposition of those interests in ways calculated to promote private economic growth consistent with applicable environmental standards and public fiscal stability, and in accordance with AS 38.05.183.

Your first question asked whether statutory provisions require the commissioner of DNR to "give preference to satisfying the instate domestic and industrial needs when making a determination to the taking of royalty oil or gas "in-kind" (RIK) or "in-value" (RIV)?" The second part of this question inquired whether "[t]he needs of instate domestic and industrial uses for natural gas are met when there is a pipeline to take North Slope natural gas to tidewater"?

I found no reference in either statute or regulation that refers to "tidewater". The state makes no distinction on the point of receipt for purposes of royalty oil & gas. As quoted below, in AS 38.05.182, royalties are required to be taken RIK, unless the commissioner determines that the taking in money (RIV) would be in the best interest of the state. (For example, if there are no RIK purchase contracts in place).

Sec. 38.05.182. Royalty on natural resources.

a) Any royalty provided for in AS 38.05.135 - 38.05.181 may be taken in kind rather than in money if the commissioner determines that the taking in kind would be in the best interest of the state. However, royalties on oil and gas shall be taken in kind unless the commissioner determines that the taking in money would be in the best interest of the state.

b) The commissioner shall submit a determination to take royalty in money to the legislature at the first opportunity during a current session or, if the legislature is not in session, at the next regular session. The legislature, within 60 days or by the adjournment of the session, whichever comes sooner, may revoke the determination by concurrent resolution.

Yes, the commissioner is required to consider the instate domestic and industrial needs prior to approving the sale or



exchange of state royalty oil & gas. AS 38.05.183(d) provides:

(d) Oil or gas taken in kind by the state as its royalty share may not be sold or otherwise disposed of for export from the state until the commissioner determines that the royalty-in-kind oil or gas is *surplus to the*

present and projected intrastate domestic and industrial needs. The commissioner shall make public, in writing, the specific findings and reasons on which the determination is based. [emphasis added by italics]

Your second question asked "What roles are played by the commissioner, the department, the advisory board, and the legislature in determining the taking of royalty oil and gas?"

The commissioner has primary responsibility in determining whether royalties shall be taken RIK or RIV. This decision is based on written findings published by the Department of Natural Resources. Generally, the decision to sell royalties taken "in-kind" (RIK) must be supported and approved by the legislature and the advisory board. However, there are some minor exceptions to this case: (1) when the sale is for a term of less than one year (sales in subsequent years are NOT allowed), or (2) when the sale involves less than 2,400 Mcf per day (AS 38.06.055(b)(2)(C)).

Lori, I hope this memo answers your questions and helps you in your interpretation of CS/HB290. For your further information I have also attached additional annotations from the statutes and regulations that I thought you might find helpful. Please let me know if I can be of any further assistance.

John M. Larsen, CPA

Sec. 38.06.050. Board review and recommendation required.

a) If legislative approval is required by AS 38.06.055, a sale, exchange, encumbrance, or other disposition of oil or gas or of the rights or waiver of the rights to receive future production of royalty oil or gas may not be made by the commissioner of natural resources under AS 38.05.183 without prior review of the proposed sale, exchange, encumbrance, or other disposition by the board. A written recommendation of the board on the proposed sale, exchange, encumbrance, or other disposition of oil or gas or of the rights or waiver of the rights to receive future production of royalty oil or gas shall be submitted to the legislature at the time a bill approving the proposed sale, exchange, encumbrance, or other disposition is introduced in the legislature.

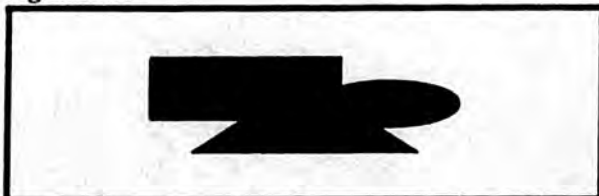
(b) Bids or applications for the purchase of royalty oil or gas may be rejected by the commissioner of natural resources if prior written notice of the proposed disapproval is given to the board.

(c) Competitive bidding in a sale, exchange or other disposition described in (a) of this section may not be waived by the commissioner of natural resources under AS 38.05.183 unless prior written notice of proposed waiver is given to the board.

(d) [Repealed, Sec. 5 ch 112 SLA 1980].

Sec. 38.06.055. Legislative approval.

(a) In addition to the recommendation by the board required under AS 38.06.050, the commissioner of natural resources may not enter into a sale, exchange, or other disposition of oil or gas or of the rights or waiver of the rights to receive future production of royalty oil or gas under AS 38.05.183 without the prior approval of the legislature. The legislature may approve a sale, exchange, or other disposition of oil or gas or of the rights or of a waiver of the rights to receive future production of royalty oil or gas only by enacting legislation.



y to



(1) the sale, exchange, or other disposition of oil or gas for one year or less if the sale, exchange, or other disposition is entered into to relieve storage or market conditions;

2) contracts for the sale of state-owned royalty gas or oil that specify the sale and delivery of not more than

A) 400 barrels of crude oil per day;

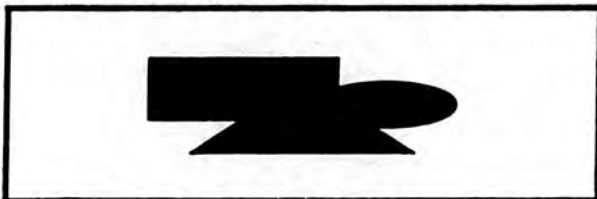
B) 460 barrels of natural gas liquids per day; and

C) 2,400 Mcf of natural gas per day.

c) A sale, exchange, or other disposition of oil or gas under (b)(1) of this section may not be continued after the end of one year or renewed with the same party without the prior approval of the legislature under (a) of this section. This subsection does not apply to a sequential competitively bid sale of oil or gas made with the same party under (b)(1) of this section.

Sec. 38.05.183. Sale of royalty.

a) The sale, exchange or other disposal of a mineral obtained by the state as a royalty under AS 38.05.182, or the sale, exchange or other disposal in whole or in part of a right to receive future mineral production under a state lease under this chapter, shall be by competitive bid and the sale, exchange or other disposal made to the highest responsible bidder, except that competitive bidding is not required when the commissioner, after prior written notice to the Alaska Royalty Oil and Gas Development Advisory Board under AS 38.06.050, determines that the best interest of the state does not require it or that no competition exists.



(b) When competitive bids are required, the commissioner, after prior written notice to the Alaska Royalty Oil and Gas Development Advisory Board, may reject all bids on a determination that because of the amount of the bids, the lack of responsibility on the part of the bidders, or for reasons consistent with the criteria set out in AS 38.06.070, the acceptance of the bids would not be in the best interest of the state.

c) If the commissioner determines that a sale, exchange or other disposal of a mineral obtained by the state as a royalty under AS 38.05.182 or of a right to receive future mineral production under a state lease under this chapter shall be made otherwise than by competitive bid, and the Alaska Royalty Oil and Gas Development Advisory Board has been notified in writing of that determination, the commissioner shall make public in writing the specific findings and conclusions upon which that determination is based.



(e) When a sale, exchange or other disposal of oil or gas taken in kind by the state as its royalty share, or a sale, exchange or other disposal in whole or in part of a right to receive future royalty oil or gas, under a state lease under

this chapter is made other than by competitive bid, the sale, exchange or other disposal shall be awarded by the commissioner to the prospective buyer whose proposal offers the maximum benefits to citizens of the state. The commissioner shall consider

- 1) the cash value offered;
- 2) the projected effects of the sale, exchange or other disposal on the economy of the state;
- 3) the projected benefits of refining or processing the oil or gas in the state;
- 4) the ability of the prospective buyer to provide refined products or by-products for distribution and sale in the state with price or supply benefits to the citizens of the state; and
- 5) the criteria listed in AS 38.06.070 (a).

f) The commissioner may not enter into a contract for the sale of royalty oil unless the contract provides that any material amendment to the contract that appreciably reduces the consideration received by the state requires prior approval of the legislature.

g) AS 38.05.035 (e) does not apply to a sale, exchange, or other disposal of oil or gas under this section.

h) Upon legislative approval, the commissioner may enter into a contract to sell royalty gas taken in kind by the state to a gas or electric utility at a negotiated price for the gas if the commissioner, after considering the consumer benefits, other benefits, and detriments of the sale, makes a written finding that the sale is in the best interest of the state. In this subsection,

Sec. 38.06.070. Criteria.

a) In the exercise of its powers under AS 38.06.040 (a) and 38.06.050 the board shall consider

- 1) the revenue needs and projected fiscal condition of the state;
- 2) the existence and extent of present and projected local and regional needs for oil and gas products and by-products, the effect of state or federal commodity allocation requirements which might be applicable to those



products and by-products, and the priorities among competing needs;

(3) the desirability of localized capital investment, increased payroll, secondary development and other possible effects of the sale, exchange or other disposition of oil and gas or both;

- 4) the projected social impacts of the transaction;
- 5) the projected additional costs and responsibilities which could be imposed upon the state and affected political subdivisions by development related to the transaction;
- 6) the existence of specific local or regional labor or consumption markets or both which should be met by the transaction;



(7) the projected positive and negative environmental effects related to the transaction; and



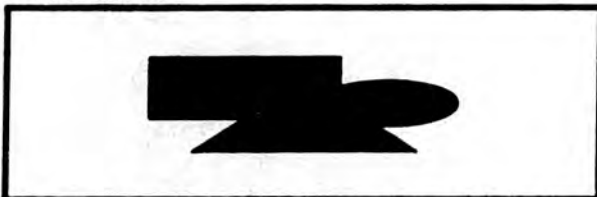
(8) the projected effects of the proposed transaction upon existing private commercial enterprise and patterns of investments.

b) When it is economically feasible and in the public interest, the board may recommend to the commissioner of natural resources, as a condition of the sale of oil or gas obtained by the state as royalty, that

- 1) the oil or gas be refined or processed in the state;
- 2) the purchaser be a refiner who supplies products to the Alaska market with price or supply benefits to state citizens; or
- 3) the purchaser construct a processing or refining facility in the state.

c) The board shall make a full report to the legislature on each criterion specified in (a) or (b) of this section for any disposition of royalty oil or gas that requires legislative approval. The board's report shall be submitted for legislative review at the time a bill for legislative approval of a proposed disposition of royalty oil or gas is introduced in the legislature.

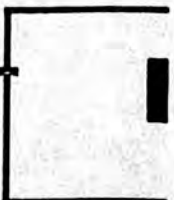
CHAPTER 026
ALASKA ROYALTY OIL AND GAS DEVELOPMENT ADVISORY BOARD
Editor's Notes -



Effective July 19, 1981, the regulations of the Alaska Royalty Oil and Gas Development Advisory Board were relocated to 3 AAC 56, as a result of the transfer of the board from the Department of Natural Resources to the Department of Commerce and Economic Development. As of May 11, 1986, the regulations have been returned to 11 AAC 26 in light of the return of the board to the Department of Natural Resources, by Executive Order No. 61, effective March 15, 1986. The history notes under the sections in 11 AAC 26 carry forward the history of these sections from their location in 3 AAC 56, but not from their earlier location in 11 AAC 26.

ARTICLE 01
ADMINISTRATIVE MATTERS

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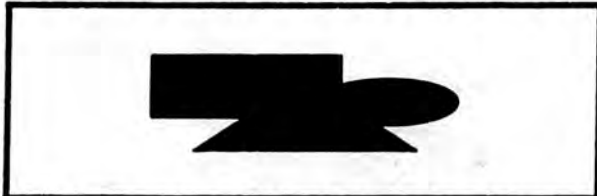
**ARTICLE 02
DUTIES OF THE BOARD**

**11 AAC 26.200
DEVELOPMENT PLANS FOR ROYALTY OIL AND GAS.**



- a) The board will, in accordance with the criteria set out in AS 38.06.070, develop a plan for the wise development of the state's oil and gas royalty interests which is consistent with growth of the private sector of the economy, environmental standards required by law, and public fiscal stability.
- (b) The plan shall be prepared and submitted to the governor, Department of Natural Resources, Department of Community and Economic Development, and the legislature annually. The board shall solicit comments from these agencies and include the comments received in the plan.
- (c) The plan shall include a statement of state policy relating to disposals, royalty board policy guidelines, recommended contract terms and conditions, recommended procedures for sale of royalty oil and gas which includes
 - (1) qualifications of purchasers;
 - (2) procedures for competitive bidding;
 - (3) procedures for sales by negotiated contract; and
 - (4) procedures for solicitations of bids or applications.The plan shall include specific goals and objectives and appropriate strategies for accomplishment. There will be a short-term (five years) and a long-term plan (10 years).

**11 AAC 26.220
REVIEW AND RECOMMENDATIONS OF PROPOSED SALES.**



- (a) If legislative approval is required in accordance with AS 38.06.055(a), proposed contracts or agreements must be received by the board at least 14 days before execution by the commissioner of natural resources and submission to the legislature.
- (b) In accordance with AS 38.06.050 (a), "prior review" means that the majority of the board members in attendance at a meeting of at least a quorum voted on the action proposed by the commissioner of natural resources and the final tally of votes of members of the board for and against the proposed action is recorded at the end of a document signed by the chairman setting out the recommendations to the legislature by the board.
- (c) In accordance with AS 38.06.050 (b), the notice of rejection of any bid or application must include any proposals received and correspondence from the rejected bidders.
- (d) In accordance with AS 38.06.050 (c), a written notice of waiver of competitive bidding must be received by the board. The board will, in its discretion, provide the commissioner of natural resources with its written comments and recommendations relating to the waiver.
- (e) Repealed 5/11/86.
- (f) The board will, after the receipt of sales contracts or agreements relating to proposed sales, exchanges, or other disposals of royalty oil and gas, recommend to the legislature that the sale be approved or disapproved.

The report may include the recommendations and analysis of the majority of the board, a minority report if necessary, a legal report, a record of the public hearing, and a technical or staff report.

History -

LEGAL SERVICES

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

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

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

MEMORANDUM

February 21, 2000

SUBJECT: Amendment A.5 to HB 290, relating to AS 38.05.182

TO: Representative Jim Whitaker
Attn: Lori Backes

FROM: Jack Chenoweth
Assistant Revisor of Statutes



Amendment A.5 derives directly from work order 1-LS1462\A. The thrust of the work order request was

-- (1) to ensure that the commissioner of natural resources not be able to take action in consideration of the taking of royalty gas without considering use of the gas for in-state industrial and utility purposes; and

-- (2) to require legislative approval of the commissioner's recommended decision.

Rather than amend in the section you had specifically identified, AS 38.05.183, following our conversation, the amendatory language was incorporated into AS 38.05.182.

The provisions cited by Jim Eason, AS 38.06.040 - 38.06.055, cover some of this same territory. AS 38.06.055 provides for legislative approval (with a set of limited exceptions described in AS 38.06.055(b), none of which appears relevant to a project or projects of the magnitude you contemplate). As to the specific requirement that the commissioner consider use of the gas for in-state industrial and utility purposes, explicit language to that end is not set out in the criteria enumerated in AS 38.06.070(a) that the Royalty Oil and Gas Development Advisory Board is to consider. Some of those criteria have a general relevancy that might be viewed by the board members as requiring attention to use of the gas for in-state industrial and utility purposes, but the requirement is not so stated in specific terms. Without the language, your interest in ensuring the in-state use of the gas for the purposes outlined rests principally on whether or not the Royalty Oil and Gas Development Advisory Board has, under AS 38.06.040, independently decided to incorporate the use of the gas for in-state industrial and utility purposes as a factor in its development plan for the use of the resource taken as royalty. If, on examination of applicable board regulations (11 AAC 26) or one or more recent versions of the approved plan, you are satisfied that the board does fully and appropriately consider use of the gas for in-state industrial and utility purposes as a factor in its development plan for the use of the resource taken as royalty, then you may

not want to press for amendment of either AS 38.05.182 or the relevant provisions of AS 38.06.

At this point, however, while the legislature may, under AS 38.06.055, review and must approve action of the commissioner of natural resources as to the "disposition of oil or gas or of the rights or waiver of the rights to receive future production of royalty . . . gas under AS 38.05.183," the statutes, but for the amendment set out in AS 38.05.182(b), are silent as to any directive to consider taking the gas in kind for uses related to in-state industrial and utility purposes.

*

The new language proposed for addition at the beginning of AS 38.05.182(b) is not inconsistent in its effect with the description of what the commissioner is to do under AS 38.06.055(a). If the new language at the beginning of AS 38.05.182(b) is dropped, AS 38.06.055(a) will still operate to prohibit the commissioner from "enter[ing] into a sale, exchange, or other disposition of oil or gas or of the rights or waiver of the rights to receive future production of royalty oil or gas under AS 38.05.183 without the prior approval of the legislature." (The only exception would be in conjunction with a disposition under one of the exceptions set out in AS 38.06.055(b).) Consequently, it seems to me that the objection made to inclusion of the new introductory language of AS 38.06.055(a) may also operate to prevent the commissioner from taking any action with respect to royalties, even the collection of payments already determined. I honestly don't think AS 38.06.055(a) has been interpreted to reach that conclusion.

JBC:jdr
00-088.jdr

Alaska State Legislature

House Resources Committee

Co-Chair Beverly Masek
(907) 465-3715
FAX (907) 465-4822
Capitol Building, Room 124
Juneau, Alaska 99801



Co-Chair Bill Hudson
(907) 465-6890
FAX (907) 465-2273
Committee Meetings
M/W/F 1 - 3 p.m.

Members: Vice Chair John Cowdery, Representatives: Ramona Barnes, John Harris, Carl Morgan, Jim Whitaker, Reggie Joule, and Mary Kapsner

February 22, 2000

Representative Beverly Masek
Representative Bill Hudson
Co-Chairmen, House Resources Committee
State Capitol, Juneau, AK 99801

Dear Representatives Masek and Hudson:

In the House Resources Committee on Monday, February 21, Representative Barnes asked that I summarize the phone conversation I had on Friday, February 18, with representatives from the Yukon Pacific Corporation (YPC). Below is my summary.

I returned a call to Mr. Wayne Lewis at about 12:30 p.m. Friday afternoon. The parties involved in that conference call were Wayne Lewis, Jeff Lowenfels, Ray Gardener, and Paul Fuhs. As soon as I was patched into their conference room, Mr. Lewis, Mr. Lowenfels, Mr. Gardener, and Mr. Fuhs all began talking at once making sarcastic jokes such as; "what the hell is going on down there?" "what's that Sponsor Group trying to pull now?" It is difficult for me to say who was speaking at any given time since they would often talk over each other and did not identify themselves before speaking.

Mr. Gardener, who I believe is their legal counsel, said they had concerns with CSHB 290(O&G). He stated they had talked with Mike Barnhill from the Department of Law, and read the testimony from Roger Marks of the Department of Revenue. The group identified their primary concerns as the exclusion of the marine terminal facilities from the Right-of-Way Leasing Act and that CSHB 290(O&G) would impair their conditional right-of-way lease to the Anderson Bay facility. They also said they have an attorney general opinion that confirms their concerns as valid (attached for your review).

The representatives from YPC frequently said the ANS-LNG Sponsor Group has a "hidden agenda," that they, "have ulterior motives for the exclusion of the marine terminal facilities" from the Right-of-Way Leasing Act, and that they were "secretly trying to avoid Joint Pipeline Office (JPO) oversight of their facilities." The representatives further said that if the Sponsor Group wanted to be excluded from JPO oversight then that was fine, but that the Sponsor Group needed

to come out in the open and say they want to avoid JPO oversight and give the state a good reason why.

Mr. Fuhs asked that I discuss this with Mike Barnhill and come up with language to offer as amendments before the House Resources Committee. He said it was important that I do this on behalf of the committee so they wouldn't need to talk with other members. Mr. Fuhs then asked me if I understood what he meant. My reply was "Yes, I understand what you mean and I do understand how to do my job."

I thanked them for the call and said I would discuss these issues with Mr. Barnhill as well as Representative Masek.

Sincerely,

A handwritten signature in cursive script, appearing to read "Lorali Meier".

Lorali Meier
House Resources Committee Aide

Attachments

Cc: House Resources Committee Members



Telecopy Transmittal Cover Sheet
Fax No. (907) 265-3180
Executive Suite

TO: Lorelei
COMPANY: House Resources Committee
Fax No. 907 465-4822
CITY/STATE: Juneau, AK
FROM: Shauna Nebeker for Ray Gardner
DATE: February 18, 2000

Page 1 of 12

If you do not receive all pages, please call (907) 265-3100

Ray asked that I fax you the following...

----- Page 5669 follows -----

981 WL 38506

Office of the Attorney General
State of Alaska

File No. F-66-055-81
May 18, 1981



Proper Leasing Procedure for the Alaska Gas Conditioning Facility--AS 38.05
and/or AS 38.35

The Honorable Robert E. LeResche
Commissioner
Department of Natural Resources
Pouch M
Juneau, Alaska 99811

Dear Commissioner LeResche:

You have requested our advice on whether AS 38.35 or AS 38.05 is the determining statute for a lease of state land for the gas pipeline conditioning plant at Prudhoe Bay. On March 18, 1981, Northwest Alaskan Pipeline Company (NWA), as operator for the parties to the cooperative agreement of June 20, 1980, submitted an application for the lease of state land for the Alaska Gas Conditioning Facility (AGCF) under authority of AS 38.05. Four weeks later, on April 15, 1981, NWA, as agent and operator for Alaskan Northwest Natural Gas Transportation Company, filed an application for a Right-of-Way Lease under AS 38.35 for the state lands which the Alaska Natural Gas Transportation System would cross. NWA has stated in that latter application that it was not including the conditioning plant in the application. (FN1)

For reasons discussed below, it is our opinion that AS 38.35 is the appropriate leasing authority for the Alaska Gas Conditioning Facility (AGCF), and that where facilities are covered by AS 38.35, AS 38.05 is not available as a leasing authority.

The Alaska Gas Conditioning Facility is proposed to be built entirely on state lands in Prudhoe Bay. It is to be located to the west of the Bay, near the existing compressor plant used by North Slope producers to compress the natural gas used in the fuel gas line which serves the Trans-Alaska Pipeline System (TAPS). The proposed location for the AGCF is not far from the shore; however, the Division of Lands has determined that the land is not tidelands. (FN2) The functional purpose of the AGCF is to prepare natural gas from the field for transportation in the Alaska Natural Gas Transportation System (ANGTS).

The general provisions covering the leasing of state lands for purposes other than the extraction of natural resources are found in AS 38.05.070-.105. The authorization to lease is found in AS 38.05.070. (a):

Sec. 38.05.070. Generally. (a) Land, including tide, submerged or shoreland, to which the state holds title or to which it may become entitled, may be leased, except for the extraction of natural resources, in the manner provided in Secs. 70-105 of this chapter.

The procedures for leasing pursuant to AS 38.05 call for competitive bidding (AS 38.05.075) for all lands whose appraised value exceed \$250/year [AS 38.05.070(b)]. The provisions of AS 38.05 are certainly broad enough to encompass the lease of state land for the AGCF. However, AS 38.05 is also sufficiently broad to encompass the lease of any lands which would fall within the provisions of the Right-of-Way Leasing Act, AS 38.35. The question is whether the two statutes provide alternative means for lease issuance or whether any land use encompassed by AS 38.35 can only be authorized under the provisions of AS 38.35.

The last sentence of AS 38.35.020(a) provides:

Except to the extent authorized by an oil and gas lease or unit agreement approved by the state, no person may engage in any construction or operation of any part of an oil, products, or natural gas pipeline, which in whole or in part is or is proposed to be on state land unless that person has obtained from the commissioner a right-of-way lease of the land under this chapter. [emphasis added]

In addition, AS 38.35.050(a) provides that:

A person or persons desiring to own a pipeline which is proposed to be located in whole or in part on state land, shall apply for a non-competitive right-of-way lease of the state land. [emphasis added]

These specific statutory requirements for pipeline right-of-way leases takes precedence over the more general site lease procedures contained in AS 38.05. E 2A Sands, Sutherland Statutory Construction, Sec. 51.05 (4th ed). A person may not build a pipeline which crosses state land without first obtaining an AS 38.35 lease.

The question, then, is whether the AGCF is a 'pipeline' within the meaning of AS 38.35. 'Pipeline' is defined in AS 38.35.230(7) (FN3):

... 'pipeline' or 'pipeline facility' means all the facilities of a total system of pipe (whether owned or operated under a contract, agreement, or lease) used by a carrier for transportation of crude oil, natural gas, or products for delivery, for storage, or for further transportation, and including all pipe, pump or compressor stations, station equipment, tanks, valves, access roads, bridges, airfields, terminals and terminal facilities, including docks and tanker loading facilities, operations control center for both the upstream part of the pipeline and the terminal, tanker ballast treatment facilities, and fire protection system, communication system, and all other facilities used or necessary for an integral line of pipe, taken as a whole, to effectuate transportation, including an extension or enlargement of the line[.] [emphasis added]

Therefore, if the AGCF is a facility used or necessary to effectuate transportation, the AGCF is a part of the pipeline for purposes of the Right-of-Way Leasing Act. 'Transportation' is defined in AS 38.35.230(10);

... 'transportation' means the shipment or carriage by a pipeline of crude oil, natural gas, or products from an upstream terminus in one or more fields or points of production or supply of the minerals to a downstream terminus in one or more points for delivery of the minerals to a purchaser or consignee, for storage, or for further carriage or shipment, including

shipment or carriage within the state that may be classified as interstate or foreign transportation to the extent that the transportation may institutionally be subjected to the provisions of this chapter, as well as all services necessary to effectuate shipment or carriage, including, among other things, the receipt, storage, processing, handling, transfer in transit, forwarding, and delivery of the minerals: [emphasis added]

Transportation thus includes the processing of minerals for shipment. As used in the statute, 'processing' of natural gas for transportation is what is commonly thought of in the industry as conditioning, i.e., the process necessary to prepare the gas for transportation. This usage is to be distinguished from the usage of the term 'processing' as a reference to the extraction of liquids from the natural gas stream for petrochemical or other purposes. As used throughout this opinion, 'processing' means preparing the gas for transportation. Consequently, a facility used or necessary to effectuate the processing of minerals for shipment is part of the pipeline for purposes of AS 38.35.

----- Page 5670 follows -----

The AGCF is designed to condition the natural gas so that it can be shipped in the pipeline designed by Northwest Alaskan Pipeline Company. The high pressure of the pipeline and the chilled gas feature require extensive processing of the gas so that it can be shipped through the pipe. See, e.g., Congressional Record, S16257 (September 27, 1978). Although there may be some technical differences between conditioning and processing, (FN4) the conditioning of the natural gas is sufficiently like processing to bring conditioning within the ambit of 'services necessary to effectuate shipment or carriage' as that term is used in AS 38.35.230(10). (FN5). Since the AGCF is a processing facility necessary to effectuate shipment or carriage, it is a part of a pipeline as defined in AS 38.35.230(7). Since it is a part of a pipeline, it is subject to the legislative declaration of AS 38.35.020 which forbids 'construction or operation of any part of an oil, products, or natural gas pipeline' unless a lease pursuant to AS 38.35 has been obtained.

We have examined the minimal existing legislative history of AS 38.35. We have not found anything which would imply that the legislative intent is other than what the unambiguous language of the statute indicates. Thus, it is our opinion that AS 38.35 is the appropriate leasing statute for the AGCF, unless the AGCF is otherwise exempted from AS 38.35 coverage.

There are two exemptions from the requirements of the Right-of-Way Leasing Act. The first is for land use authorized by an oil and gas lease or unit agreement approved by the state. AS 38.35.020(a). We know of no oil and gas lease or unit agreement which authorizes the proposed land use for the AGCF. (FN6) The second exemption is found in AS 38.35.020(b):

The commissioner may by regulation exempt the construction or operation of field gathering lines or any reasonable classification of them from the requirement of a right-of-way lease under this chapter.

The Commissioner has adopted regulations for this exemption:

11 AAC 80.045. FIELD GATHERING LINES EXEMPT. Field gathering lines are exempt from the requirement of obtaining a right-of-way lease under AS 38.35.

'Field gathering lines' is defined, in 11 AAC 80.055, as:

... pipe and associated facilities, including separators, test equipment, pumps, treaters and tanks, used in the transfer of gas or oil from a well or other facility used in the production of gas or oil to a point where there is either a custody transfer of the gas or oil or where the gas or oil enters a common carrier pipeline, whichever first occurs.

The AGCF would be exempted from the requirements of AS 38.35 if it fell within this definition.

There are two questions involved in the application of 11 AAC 80.055 to the AGCF. The first is the factual question as to the point of custody transfer of the natural gas. The available information on this point indicates that there will be a custody transfer at the inlet of the AGCF. ARCO Oil and Gas Company has entered into letters of agreement for the sale of Prudhoe Bay gas. These letters, attached as Appendix 'A,' provide:

Title shall pass at a mutually agreeable delivery point in the field at or near the inlet of any required gas conditioning facility.

Exxon Corporation has entered into a Gas Sale and Purchase agreement with Northern Natural Gas Company (April 30, 1979) which also provides for custody transfer at the inlet of the conditioning plant. (FN7) Sohio has also entered into a gas sales contract with Northern Natural Gas Company providing for custody transfer at the inlet of the conditioning facility (July 1, 1979).

These are the only contracts which we know to have been negotiated. We know of no changes in the provisions relating to custody transfer. Given the present indications as to the custody transfer of the natural gas, the inlet of the Alaska Gas Conditioning Facility would constitute the last possible termination point for the exempted field gathering lines. Should this factual situation change, it would then be necessary to examine the second possible termination point, i.e., the point at which the gas enters a common carrier pipeline, to determine whether or not that point would include the AGCF. Thus, it is our opinion that under the present facts, the AGCF is not a part of the field gathering lines and, thus, is not exempted from the requirements of AS 38.35.

In reaching this conclusion, we have considered that the President's Decision and Report to Congress on the Natural Gas Transportation System, Executive Office of the President, Energy Policy and Planning at 6, states:

The proposed Alcan pipeline will commence at the discharge side of the gas plant facilities in the Prudhoe Bay field.

We have also considered that the Federal Energy Regulatory Commission in Order 45, Docket No. RM 79-19 (effect presently stayed) has determined that:

... the production-related costs for the processing and conditioning [of the natural gas] should fall upon the producers or other 'first sellers' who perform the functions necessary to render the gas transportable through the GTS.

FERC Order 45 at 16. We are also aware that the Cooperative Agreement for

Design and Engineering of Alaska Gas Pipeline and Conditioning Plant between the Alaskan Northwest Natural Gas Transportation Company, The Prudhoe Bay Natural Gas Producers, and the State of Alaska (June 1980), sometimes refers collectively to the pipeline and conditioning plant as the 'Project.' It is our opinion that these facts are irrelevant to a determination of the proper interpretation of state law concerning leasing procedures for state land. Solely at issue in the question you have presented is a choice of procedures for disposal of an interest in state land. The conclusion we have reached does not extend to the treatment of the conditioning plant for purposes other than for the leasing of state land, such as the cost allocation for conditioning costs.

----- Page 5671 follows -----

In summary, it is our opinion that the Alaska Gas Conditioning Facility is a part of the 'pipeline' as that term is used in AS 38.35.230(7) for state land leasing purposes and that AS 38.35.020 dictates that the land for that facility must be leased according to the provisions of the Right-of-Way Leasing Act. Further, it is our opinion that the leasing procedures of AS 38.05 are not available to the Department for the leasing of state land for the Alaska Gas Conditioning Facility.

Very truly yours,

Wilson L. Condon

Attorney General

Mary E. Greene

Assistant Attorney General

Pacific Interstate Transmission Co.

Harry L. Lepape, President

120 West Eighth Street

Los Angeles, California 90017

Gentlemen:

ARCO Oil and Gas Company, a division of Atlantic Richfield Company, and Pacific Interstate agree that they will enter into negotiations towards execution of a Gas Purchase Contract providing for the sale by ARCO Oil and Gas Company and purchase by Pacific Interstate for a primary term of twenty years of a daily volume of gas production attributable to an undivided thirty-three percent (33%) of ARCO's working interest in the Prudhoe Bay (Permo-Triassic) Reservoir. Title shall pass at a mutually agreeable delivery point in the field at or near the inlet of any required gas conditioning facility. The contract price shall be negotiated but shall not be less than the price set forth in Section 109 of the NGPA of 1978 plus severance taxes and reimbursement of any other costs incurred by Seller and allowed under Sections 110 and 502(c) of the NGPA. Customary deregulation and price escalation provisions permitted by any statute or regulation will be included.

The parties hereto agree to begin as soon as mutually convenient, but in any

event within 90 days after the date of this letter, negotiations to conclude a definitive Gas Purchase Contract. If the parties, after good faith negotiations, fail to finalize the Gas Purchase Contract by May 1, 1980, either party may terminate this agreement by giving written notice thereof to the other party.

This agreement shall be of no force and effect unless executed by both parties within 15 days of the date first above written.

Very truly yours,

Danny D. Echols

Vice President

ACCEPTED AND AGREED this 12th day of September, 1979

PACIFIC INTERSTATE TRANSMISSION CO.

By Harry L. Lepape, President

Mr. R. C. Dixon

Panhandle Eastern Pipe Line Company

Post Office Box 1642

Wichita, Kansas 67205

Gentlemen:

ARCO Oil and Gas Company, a Division of Atlantic Richfield Company, and Panhandle Eastern agree that they will enter into negotiations towards execution of a Gas Purchase Contract providing for the sale by ARCO Oil and Gas Company and purchase by Panhandle Eastern for a primary term of twenty years of a daily volume of gas production attributable to an undivided twenty percent (20%) of ARCO's working interest in the Prudhoe Bay (Permo-Triassic) Reservoir. Title shall pass at a mutually agreeable delivery point in the field at or near the inlet of any required gas conditioning facility. The contract price shall be negotiated but shall not be less than the price set forth in Section 109 of the NGPA of 1978 plus severance taxes and reimbursement of any other costs incurred by Seller and allowed under Sections 110 and 502(c) of the NGPA. Customary deregulation and price escalation provisions permitted by any future statute or regulation will be included.

The parties hereto agree to begin as soon as mutually convenient, but in any event within 90 days after the date of this letter, negotiations to conclude a definitive Gas Purchase Contract. If the parties, after good faith negotiations, fail to finalize the Gas Purchase Contract by May 1, 1980, either party may terminate this agreement by giving written notice thereof to the other party.

This agreement shall be of no force and effect unless executed by both parties within 15 days of the date first above written.

Very truly yours,

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Danny D. Echols

Vice President

ACCEPTED AND AGREED this 13th day of September, 1979

HANDLE EASTERN PIPE LINE COMPANY

By R. C. Dixon, Senior Vice President

Mr. G. H. Ewing

Texas Eastern Transmission Corporation

Post Office Box 2521

Houston, Texas 77001

Gentlemen:

ARCO Oil and Gas Company, a Division of Atlantic Richfield Company, and Texas Eastern agree that they will enter into negotiations towards execution of a Gas Purchase Contract providing for the sale by ARCO Oil and Gas Company and purchase by Texas Eastern for a primary term of twenty years of a daily volume of gas production attributable to an undivided ten percent (10%) of ARCO's working interest in the Prudhoe Bay (Permo-Triassic) Reservoir. Title shall be at a mutually agreeable delivery point in the field at or near the inlet of a required gas conditioning facility. The contract price shall be negotiated but shall not be less than the price set forth in Section 109 of the NGPA of 1978 plus severance taxes and reimbursement of any other costs incurred by seller and allowed under Sections 110 and 502(c) of the NGPA. Customary deregulation and price escalation provisions permitted by any future statute or regulation will be included.

----- Page 5672 follows -----

The parties hereto agree to begin as soon as mutually convenient, but in any event within 90 days after the date of this letter, negotiations to conclude a definitive Gas Purchase Contract. If the parties, after good faith negotiations, fail to finalize the Gas Purchase Contract by May 1, 1980, either party may terminate this agreement by giving written notice thereof to the other party.

This agreement shall be of no force and effect unless executed by both parties within 15 days of the date first above written.

Very truly yours,

Danny D. Echols

Vice President

ACCEPTED AND AGREED this 12th day of September, 1979

TEXAS EASTERN TRANSMISSION CORPORATION

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By George H. Ewing

Mr. H. Ewing

Transwestern Pipeline Company

Post Office Box 2521

Houston, Texas 77001

Gentlemen:

ARCO Oil and Gas Company, a Division of Atlantic Richfield Company, and Transwestern agree that they will enter into negotiations towards execution of a Gas Purchase Contract providing for the sale by ARCO Oil and Gas Company and purchase by Transwestern for a primary term of twenty years of a daily volume of gas production attributable to an undivided ten percent (10%) of ARCO's working interest in the Prudhoe Bay (Permo-Triassic) Reservoir. Title shall pass at a mutually agreeable delivery point in the field at or near the inlet of any required gas conditioning facility. The contract price shall be negotiated but shall not be less than the price set forth in Section 109 of the NGPA of 1978 plus severance taxes and reimbursement of any other costs incurred by Seller and allowed under Sections 110 and 502(c) of the NGPA. Customary deregulation and price escalation provisions permitted by any future statute or regulation will be included.

The parties hereto agree to begin as soon as mutually convenient, but in any event within 90 days after the date of this letter, negotiations to conclude a definitive Gas Purchase Contract. If the parties, after good faith negotiations, fail to finalize the Gas Purchase Contract by May 1, 1980, either party may terminate this agreement by giving written notice thereof to the other party.

This agreement shall be of no force and effect unless executed by both parties within 15 days of the date first above written.

Very truly yours,

Danny D. Echols

Vice President

ACCEPTED AND AGREED this 12th day of September, 1979

TRANSWESTERN PIPELINE COMPANY

By George H. Ewing

Mr. D. L. Smith

United Gas Pipe Line Company

P Office Box 1478

Houston, Texas 77001

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Gentlemen:

ARCO Oil and Gas Company, a Division of Atlantic Richfield Company, and United Gas agree that they will enter into negotiations towards execution of a Gas Purchase Contract providing for the sale by ARCO Oil and Gas Company and purchase by United Gas for a primary term of twenty years of a daily volume of gas production attributable to an undivided fifteen percent (15%) of ARCO's working interest in the Prudhoe Bay (Permo-Triassic) Reservoir. Title shall pass at a mutually agreeable delivery point in the field at or near the inlet of any required gas conditioning facility. The contract price shall be negotiated but shall not be less than the price set forth in Section 109 of the NGPA of 1978 plus severance taxes and reimbursement of any other costs incurred by seller and allowed under Sections 110 and 502(c) of the NGPA. Customary deregulation and price escalation provisions permitted by any future statute or regulation will be included.

The parties hereto agree to begin as soon as mutually convenient, but in any event within 90 days after the date of this letter, negotiations to conclude a definitive Gas Purchase Contract. If the parties, after good faith negotiations, fail to finalize the Gas Purchase Contract by May 1, 1980, either party may terminate this agreement by giving written notice thereof to the other party.

This agreement shall be of no force and effect unless executed by both parties within 15 days of the date first above written.

Truly yours,

Danny D. Echols

Vice President

ACCEPTED AND AGREED this 13th day of September, 1979

UNITED GAS PIPE LINE COMPANY

By ??

Mr. J. H. Welsh, Jr.

Texas Gas Transmission Corporation

100 Milam Bldg., Suite 1533

Houston, Texas 77002

Gentlemen:

ARCO Oil and Gas Company, a Division of Atlantic Richfield Company, and Texas Gas agree that they will enter into negotiations towards execution of a Gas Purchase Contract providing for the sale by ARCO Oil and Gas Company and purchase by Texas Gas for a primary term of twenty years of a daily volume of gas production attributable to an undivided twelve percent (12%) of ARCO's working interest in the Prudhoe Bay (Permo-Triassic) Reservoir. Title shall pass at a mutually agreeable delivery point in the field at or near the inlet of

K Attorney General Opinions

File No. F-66-055-81

any required gas conditioning facility. The contract price shall be negotiated but shall not be less than the price set forth in Section 109 of the NGPA, plus severance taxes and reimbursement of any other costs incurred by the purchaser and allowed under Sections 110 and 502(c) of the NGPA. Customary deregulation and price escalation provisions permitted by any future statute or regulation will be included.

----- Page 5673 follows -----
The parties hereto agree to begin as soon as mutually convenient, but in any event within 90 days after the date of this letter, negotiations to conclude a definitive Gas Purchase Contract. If the parties, after good faith negotiations, fail to finalize the Gas Purchase Contract by May 1, 1980, either party may terminate this agreement by giving written notice thereof to the other party.

This agreement shall be of no force and effect unless executed by both parties within 15 days of the date first above written.

Very truly yours,

Danny D. Echols

Vice President

ACCEPTED AND AGREED this 13th day of September, 1979

THE GAS TRANSMISSION CORPORATION

By ??

FN1 In answer to question 39, page 10, Form DL-10-130, NWA states:
The proposed pipeline will commence at the outlet side of the proposed Prudhoe Bay Gas Conditioning Plant, which is not a part of the pipeline system.

FN2 Discussions with James Larsen, Division of Lands, April 13, 1981. Were the AGCF to be built on tidelands, the conclusions reached in this opinion might be different.

FN3 There is an error in Alaska Statutes which causes the repetition of certain definitions, including those of 'pipeline' and 'transportation.' Section 22 of Chapter 3, FSSLA 1973 repealed and reenacted AS 38.35.230. The first ten paragraphs which appear in AS 38.35.230 of Alaska Statutes are correct; the remainder were repealed.

FN4 See generally C. Barlow, Natural Gas Conditioning and Pipeline Design; A Technical Primer for Non-Technicians, with Specific Reference to Hydrocarbons from Prudhoe Bay and the Alaska Gas Pipeline, at 19 n. 3 (March 13, 1980). [Paper prepared for the State of Alaska, Department of Natural Resources.]

FN5 See, e.g., President's Decision and Report to Congress on the Alaska Natural Gas Transportation System, at 95 (Sept. 1977):
In addition, the transporters (i.e., the project sponsors) will probably be required to bear a portion of the 'conditioning' or processing cost of the gas.

FN6 If, however, the Prudhoe Bay Unit built the conditioning plant, it would

fall within the exemption. Similarly, the exemption may apply under particular leases, which, for Prudhoe Bay, usually provide that the: ssor does hereby grant and lease unto Lessee, exclusively, . . . for the purposes of exploration, development, production, processing and marketing of oil, gas, and associated substances . . . and of installing pipelines and structures thereon to find, produce, save, store, treat, process, transport . . . all such substances.

E.g., Form DL-1, reissued April 1961 (identical to Form DL-1, reissued May 1973). Northwest, however, has applied for the conditioning plant-site lease as operator for the Design and Engineering Board, not as the agent solely of the Prudhoe Bay Unit. Nor, to our knowledge, have the rights under any Prudhoe Bay lease been assigned to Northwest (assignments, under the leases, are subject to the state's approval.)

N7 Article VI of the Exxon gas sales contract provides:

POINT OF DELIVERY

6.1 The point of delivery for gas sold hereunder shall be at the outlet of the Unit gas gathering system, downstream of the gas/oil separators and Unit gas dehydration and certain compression and cooling facilities, at such point as may be mutually acceptable to Seller and Buyer and at or near the inlet of the gas conditioning facility. If other parties to the Unit Agreement execute agreements for the sale of Separator Off-Gas at the gas/oil separators or elsewhere upstream of the point of delivery herein described, Seller shall have the option to designate the same delivery point as designated by by said other parties. In the event of such designation, Seller shall have an option to require that this Agreement be amended to conform to approximately the same terms and conditions as such other Agreement or Agreements.

2 Title to Seller's Gas shall pass from Seller to Buyer at the point of delivery. Seller will provide all facilities upstream of the point of delivery including facilities necessary to separate Seller's Gas from oil, to gather, dehydrate, compress and cool said gas to the quality standards hereinafter specified. Buyer will provide all facilities at the delivery point for receipt and measurement of Seller's Gas and all downstream facilities necessary for the transportation of such gas.

6.3 Seller shall be in control and possession of Seller's Gas prior to delivery thereof to Buyer and Seller shall be responsible for any damage or injury or death caused thereby prior to such delivery. Following such delivery, Buyer shall be deemed to be in exclusive control and possession of Seller's Gas and shall bear responsibility for any and all claims, causes of action or judgments arising from property damage or injury or death caused thereby or arising from the conduct of Buyer.

----- Page 5674 follows -----

N8 The Sohio contract provisions regarding custody transfer are identical to those in the Exxon contract set out at n. 7, supra.

----- End of Document -----

LEGAL SERVICES

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

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

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

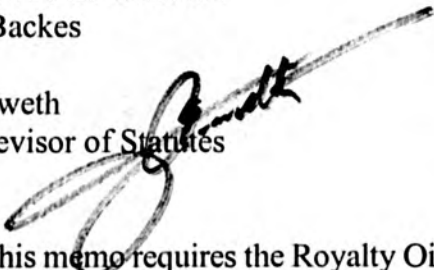
MEMORANDUM

February 24, 2000

SUBJECT: Amendment G.1 to CSHB 290(O&G) (Work Order No. 21-LS1269\G.1)

TO: Representative Jim Whitaker
Attn: Lori Backes

FROM: Jack Chenoweth
Assistant Revisor of Statutes



The amendment that accompanies this memo requires the Royalty Oil and Gas Development Advisory Board to consider the factors, as reordered and amended, "in order of priority."

AS 38.05.183(e)(5) also requires the commissioner of natural resources to consider the same factors, but does not contain language that the commissioner is to consider them in order of priority. If you want the commissioner to do so, you should consider an amendment to AS 38.05.183(a)(5) as well.

JBC:glc
00-084.glc

Enclosure

AMENDMENT

OFFERED IN THE HOUSE

TO: CSHB 290(O&G)

1 Page 1, line 6, through page 2, line 11:

2 Delete all material and insert:

3 **** Section 1.** AS 38.06.070(a) is amended to read:

4 (a) In the exercise of its powers under AS 38.06.040(a) and 38.06.050, the
5 board shall consider **each of the factors in order of priority set out as follows:**

6 (1) [THE REVENUE NEEDS AND PROJECTED FISCAL
7 CONDITION OF THE STATE;

8 (2)] the existence and extent of present and projected local and
9 regional **domestic and industrial** needs for oil and gas products and by-products, the
10 effect of state or federal commodity allocation requirements **that** [WHICH] might be
11 applicable to those products and by-products, and the priorities among competing
12 needs;

13 **(2) the existence and extent of present and projected local or**
14 **regional consumption markets that should be met by the transaction;**

15 (3) the desirability of localized capital investment, increased payroll,
16 secondary development, and other possible effects of the sale, exchange, or other
17 disposition of oil and gas or both;

18 (4) the projected **positive and negative environmental effects related**
19 **to the transaction** [SOCIAL IMPACTS OF THE TRANSACTION];

20 (5) **the revenue needs and projected fiscal condition of the state;**

21 (6) **the projected effects of the proposed transaction upon existing**
22 **private commercial enterprise and patterns of investments;**

23 (7) the projected additional costs and responsibilities **that** [WHICH]
24 could be imposed upon the state and affected political subdivisions by development
25 related to the transaction; **and**

1 (8) [(6)] the potential effects on [EXISTENCE OF] specific local or
2 regional labor [OR CONSUMPTION] markets that [OR BOTH WHICH] should be
3 met by the transaction [;

4 (7) THE PROJECTED POSITIVE AND NEGATIVE
5 ENVIRONMENTAL EFFECTS RELATED TO THE TRANSACTION; AND

6 (8) THE PROJECTED EFFECTS OF THE PROPOSED
7 TRANSACTION UPON EXISTING PRIVATE COMMERCIAL ENTERPRISE AND
8 PATTERNS OF INVESTMENTS]."

①

*By Michael Hurley —
not offered to committee*

HB-290

Amendment _____

Page 8, Line 8

Delete definition (15) in its entirety, and replace with

"Stranded gas has the meaning given in 43.82.900, except that the requirement for an economic analysis by the commissioner shall be deemed to be satisfied for gas from Alaska's North Slope.

HB290
Proposed Amendment

1. HB290 refers to the pipeline as a "stranded gas pipeline", a term referring to a specific situation applicable to HB393, the Stranded Gas Act from the 20th legislature. By applying that term in HB290, the legislation then makes the assumption that the gas line affected by this bill will indeed have applied for and received the status of a "stranded gas pipeline" under the auspices of the Stranded Gas Act. That assumption then renders HB290 inapplicable to any gas line project that has not received such designation.

*This amendment will change the references of "stranded gas pipeline" to "undeveloped natural gas pipeline".

AMENDMENT

OFFERED IN THE HOUSE

TO: HB 290

1 Page 1, line 1:

2 Delete "stranded"

3 Insert "undeveloped natural"

4 Page 1, line 3:

5 Delete "stranded"

6 Insert "undeveloped natural"

7 Page 2, line 15:

8 Delete "a stranded"

9 Insert "an undeveloped natural"

10 Page 2, line 17:

11 Delete "stranded"

12 Insert "undeveloped natural"

13 Page 4, line 25:

14 Delete "a stranded"

15 Insert "an undeveloped natural"

16 Page 5, line 3:

17 Delete "stranded gas through a stranded"

18 Insert "undeveloped natural gas through an undeveloped natural"

19 Page 5, lines 7 and 8:

- 1 Delete "a stranded gas pipeline carrier or person that will be a stranded"
2 Insert "an undeveloped natural gas pipeline carrier or person that will be an
3 undeveloped natural"

4 Page 5, line 11:

- 5 Delete "stranded"
6 Insert "undeveloped natural"

7 Page 5, line 12:

- 8 Delete "stranded"
9 Insert "undeveloped natural"

10 Page 5, line 13:

- 11 Delete "stranded"
12 Insert "undeveloped natural"

13 Page 5, line 17:

- 14 Delete "stranded"
15 Insert "undeveloped natural"

16 Page 5, line 19:

- 17 Delete "stranded"
18 Insert "undeveloped natural"

19 Page 5, line 20:

- 20 Delete "stranded"
21 Insert "undeveloped natural"

22 Page 5, line 24:

- 23 Delete "stranded"
24 Insert "undeveloped natural"

- 1 Page 5, line 27:
- 2 Delete "stranded"
- 3 Insert "undeveloped natural"

- 4 Page 5, line 29:
- 5 Delete "stranded"
- 6 Insert "undeveloped natural"

- 7 Page 5, line 30:
- 8 Delete "stranded"
- 9 Insert "undeveloped natural"

- 10 Page 5, lines 30 and 31:
- 11 Delete "a stranded"
- 12 Insert "an undeveloped natural"

- 13 Page 6, line 1:
- 14 Delete "stranded"
- 15 Insert "undeveloped natural"

- 16 Page 6, line 2:
- 17 Delete "stranded"
- 18 Insert "undeveloped natural"

- 19 Page 6, line 5:
- 20 Delete "stranded"
- 21 Insert "undeveloped natural"

- 22 Page 6, line 8:
- 23 Delete "stranded gas that the stranded"
- 24 Insert "undeveloped natural gas that the undeveloped natural"

1 Page 6, line 12:

2 Delete "stranded gas pipeline carrier wants to transport stranded"

3 Insert "undeveloped natural gas pipeline carrier wants to transport undeveloped
4 natural"

5 Page 6, line 15:

6 Delete "stranded"

7 Insert "undeveloped natural"

8 Page 6, line 21:

9 Delete "a stranded"

10 Insert "an undeveloped natural"

11 Page 6, line 22:

12 Delete "stranded"

13 Insert "undeveloped natural"

14 Page 6, line 23:

15 Delete "a stranded"

16 Insert "an undeveloped natural"

17 Page 6, line 24:

18 Delete "stranded"

19 Insert "undeveloped natural"

20 Page 6, line 25:

21 Delete "a stranded"

22 Insert "an undeveloped natural"

23 Page 6, line 26:

24 Delete "stranded"

25 Insert "undeveloped natural"

- 1 Page 6, line 29:
- 2 Delete "a stranded"
- 3 Insert "an undeveloped natural"

- 4 Page 6, line 30:
- 5 Delete "stranded gas pipeline carrier to transport stranded"
- 6 Insert "undeveloped natural gas pipeline carrier to transport undeveloped natural"

- 7 Page 7, line 1:
- 8 Delete "stranded"
- 9 Insert "undeveloped natural"

- 10 Page 7, line 3:
- 11 Delete "stranded"
- 12 Insert "undeveloped natural"

- 13 Page 7, line 5:
- 14 Delete "a stranded"
- 15 Insert "an undeveloped natural"

- 16 Page 7, line 6:
- 17 Delete "stranded"
- 18 Insert "undeveloped natural"

- 19 Page 7, line 9:
- 20 Delete "stranded"
- 21 Insert "undeveloped natural"

- 22 Page 7, line 12:
- 23 Delete "a stranded"
- 24 Insert "an undeveloped natural"

1 Page 7, line 14:

2 Delete "A stranded"

3 Insert "An undeveloped natural"

4 Page 7, line 16:

5 Delete "a stranded"

6 Insert "an undeveloped natural"

7 Page 7, line 21:

8 Delete "a stranded"

9 Insert "an undeveloped natural"

10 Page 7, line 23:

11 Delete "a stranded"

12 Insert "an undeveloped natural"

13 Page 7, line 24:

14 Delete "stranded"

15 Insert "undeveloped natural"

16 Page 7, line 25:

17 Delete "stranded"

18 Insert "undeveloped natural"

19 Page 7, line 26:

20 Delete "a stranded"

21 Insert "an undeveloped natural"

22 Page 7, line 30:

23 Delete "a stranded"

24 Insert "an undeveloped natural"

1 Page 8, line 3:

2 Delete "stranded"

3 Insert "undeveloped natural"

4 Page 8, line 5:

5 Delete "stranded"

6 Insert "undeveloped natural"

7 Page 8, line 6:

8 Delete "stranded"

9 Insert "undeveloped natural"

10 Page 8, line 7:

11 Delete "stranded"

12 Insert "undeveloped natural"

13 Page 8, line 8:

14 Delete ""stranded gas" has the meaning given in AS 43.82.900;"

15 Insert ""undeveloped natural gas" means gas that, but for a pipeline subject to
16 regulation under this chapter, had not been committed for sale and delivery in a commercial
17 market due to the prevailing costs or price conditions;"

18 Page 8, line 9:

19 Delete ""stranded gas pipeline" or "stranded gas pipeline facility""

20 Insert ""undeveloped natural gas pipeline" or "undeveloped natural gas pipeline
21 facility""

22 Page 8, line 10:

23 Delete "a stranded"

24 Insert "an undeveloped natural"

25 Page 8, line 11:

- 1 Delete "a stranded"
- 2 Insert "an undeveloped natural"
- 3 Page 8, line 12:
- 4 Delete "stranded"
- 5 Insert "undeveloped natural"
- 6 Page 8, line 18:
- 7 Delete "stranded"
- 8 Insert "undeveloped natural"
- 9 Page 8, line 19:
- 10 Delete ""stranded gas pipeline carrier""
- 11 Insert ""undeveloped natural gas pipeline carrier""
- 12 Page 8, line 21:
- 13 Delete "a stranded"
- 14 Insert "an undeveloped natural"
- 15 Page 8, line 23:
- 16 Delete "stranded"
- 17 Insert "undeveloped natural"

HB290
Proposed Amendment

2. In order to allocate initial space for the intrastate use of the pipeline, HB290 requires a person to submit to the RCA, with their application, a commitment with a take-or-pay contract for the volume they request.

*This amendment removes the requirement for a take-or-pay contract. It also allows the public utilities with fairly small volume individual customers to submit a written commitment with their "best current estimate" of their needs.

*This amendment does require public utility shippers and non-public utility shippers with larger volume individual customers to submit a take or pay contract with their application.

HB-290

* **Sec. 4.** AS 42.06.240 is amended by adding a new subsection to read:

(f) In addition to other requirements of (a) - (e) of this section, the provisions of this subsection apply to a certificate of public convenience and necessity for a stranded gas pipeline carrier or person that will be a stranded gas pipeline carrier under this chapter:

(1) the person making application shall dedicate a portion of the pipeline's initial capacity sufficient to transport the total volume of stranded gas that has been committed by producers and shippers of stranded gas to tendering for intrastate firm transportation service at the time that the operation of the stranded gas pipeline commences;

(2) upon receipt of the certificate application under this subsection, the commission shall issue a public notice inviting prospective intrastate shippers of stranded gas to file requests for service; a request for service submitted by a shipper in response to a notice issued under this paragraph must include a proof of the shipper's commitment to use the stranded gas pipeline for intrastate firm transportation service, specifying the volume of stranded gas that the shipper will tender for initial intrastate firm transportation service;

(3) in its review of an application submitted under this subsection,

(A) for purposes of evaluating the total volume of intrastate transportation of stranded gas to be accepted for initial intrastate transportation, the commission shall determine total volume based upon written commitments to tender stranded gas for intrastate firm transportation service continuously for a period of not less than three years after the operation of the stranded gas pipeline commences;

(i) each request for service by an intrastate shipper that is a public utility as defined in AS 42.05.990 for the purpose of furnishing natural gas for ultimate consumption within the state by its customers that individually consume an average annual volume of less than 20 million standard cubic feet per day, must be supported by a written commitment by the public utility that sets forth its best current estimate of the average annual volume it will require during the three year period;

(ii) each request for service by an intrastate shipper that is not a public utility, and each request for service by a public utility for the purpose of furnishing natural gas for ultimate consumption within the state by its customers that individually consume an average annual volume of 20 million standard cubic feet per day or more, who purchases stranded gas from a stranded gas producer must be supported by one or more contracts for the purchase of the stranded gas on a take-or-pay basis that extends for a period of not less than three years after the operation of the stranded gas pipeline commences;

(iii) the commission may consider peak volumes specified in the written commitments of stranded gas producers and purchase contracts; and

(B) the commission shall set out in its order granting a certificate of public convenience and necessity the total volume of intrastate stranded gas that the stranded gas pipeline carrier shall accept for intrastate transportation; the

total volume may not exceed the volume substantiated by written commitments and contracts that comply with the requirements of this chapter;

(4) if the stranded gas pipeline carrier wants to transport stranded gas within the state in excess of the amount set out in the statement of total volume in the pipeline carrier's certificate of public convenience and necessity, the pipeline carrier may apply for authority to transport a greater volume of stranded gas within the state than the carrier is required by the commission to transport in its order entered under (3)(B) of this subsection; the commission shall grant the authority requested by the pipeline carrier if the commission determines that the pipeline carrier's transportation of a greater volume is consistent with public convenience and necessity.

AMENDMENT

2

OFFERED IN THE HOUSE

TO: HB 290

1 Page 5, line 23, through page 6, line 5:

2 Delete all material and insert:

3 "(A) for purposes of evaluating the total volume of intrastate
4 transportation of stranded gas to be accepted for initial intrastate transportation,
5 the commission shall determine total volume based upon written commitments
6 to tender stranded gas for intrastate firm transportation service continuously
7 for a period of not less than three years after the operation of the stranded gas
8 pipeline commences, as follows:

9 (i) each request for service by an intrastate shipper that
10 is a public utility, as that term is defined in AS 42.05.990, for the
11 purpose of furnishing natural gas for ultimate consumption within the
12 state by its customers in which the consumption by customers is an
13 average annual volume of less than 20,000,000 standard cubic feet of
14 gas per day shall be supported by a written commitment by the public
15 utility that sets out the utility's best current estimate of the average
16 annual volume that the utility will require during the three-year period;

17 (ii) each request for service by an intrastate shipper that
18 is not a public utility, as that term is defined in AS 42.05.990, for the
19 purpose of furnishing natural gas for ultimate consumption within the
20 state by its customers in which the consumption by customers is an
21 average annual volume of 20,000,000 or more standard cubic feet of
22 gas per day, that purchases stranded gas from a stranded gas producer,
23 must be supported by one or more contracts for the purchase of the
24 stranded gas on a take-or-pay basis that extends for a period of not less
25 than three years after the operation of the stranded gas pipeline

1
2
3
4

commences;

(iii) the commission may consider peak volumes specified in the written commitments of stranded gas producers and purchase contracts; and"

from Gerald Meier

HB-290

Amendment No. 2

Page 5, Line 26:

Delete "(i)"

Page 5, Line 29:

After "commences;", insert "(i)"

Page 5, Line 30:

After the word "shipper", insert:

"that is a public utility as defined in AS 42.05.990 for the purposes of furnishing natural gas for ultimate consumption within the state by its customers that individually consume an average annual volume of less than 20 million standard cubic feet per day, must be supported by a written commitment by the public utility that sets forth its best current estimate of the average annual volume it will require during the three year period;

(ii) each request for service by an intrastate shipper that is not a public utility, and each request for service by a public utility for the purpose of furnishing natural gas for ultimate consumption within the state by its customers that individually consume an average annual volume of 20 million standard cubic feet per day or more."

Page 6, Line 4:

Delete "(ii)"

Insert "(iii) the commission"

J.B.
2/12/00

HB 290 Stranded Gas Pipeline Carriers

Concerns:

1) Referring to project as a "Stranded Gas Pipeline"

Continuing with a term coined in the Stranded Gas Act makes the assumption that any gas pipeline affected by this bill will be a "Stranded Gas Pipeline", thereby subject to all the provisions of HB393 including the ability to negotiate tax and royalty, as well as property tax exemptions. *Would this bill in essence carry forward that type of negotiations on all amounts of gas transported by this project into the future? (Once the pipeline is up and running, the gas is no longer stranded) HB393 did not define "project" or set a time limit, is lifetime of the project then the assumed length of time the negotiations of royalty are allowed?*

Projects that don't require the provisions of HB393 to be economically viable, are not "Stranded Gas Pipelines", therefore, *can the regulatory regime of this bill apply to them?*

*Amend title and all references to "stranded gas pipeline" to read "undeveloped natural gas pipeline".

2) Intrastate capacity allocation

In order to allocate a certain capacity of the project for intrastate use, Sec. 4 of the bill requires a 3 yr. Contract for purchase on a take or pay basis. This sets up an extremely difficult, if not impossible hurdle for entities, in that they must make these commitments without knowing price of gas or transportation costs.

*Sponsor Group proposed amendment that allows public utilities with small volume customers to make their commitment based on their best current estimate of the need. Public utilities with large volume customers and commercial gas purchasers must still have a "take or pay" contract. This amendment does not address price.

→ *Drafted bill to amend AS 38.05.182 gives preference to "in kind" taking of royalty versus "in value", and requires legislative approval of commissioner's determination. [If "Stranded Gas Pipeline" remains the designation, the royalty amount remains in question.]

2-3
38.05.182

3) **Expansion of intrastate capacity**

Sec. 5 of this bill requires that expansion of capacity does not affect their ability to satisfy their customer obligations, and requires those requesting the expanded capacity to pay for the expansion.

*Sponsor Group proposed amendment sets out that the required expansion must not harm pipeline or its customers, and removes reference as to who must pay for expansion. (leaving that up to the RCA)

4) **Exclusion of marine terminal facilities in definition of pipeline**

4-B delete exclusion
Sec. 7, (16) defines "stranded gas pipeline", but excludes marine terminal facilities and other processing facilities from that definition. The concern with this is that it may exclude marine terminal facilities from the right of way lease, and removes the marine terminal from JPO oversight. *Why is this exclusion necessary? Could this cause further problems with re-permitting TAPS?*

*Amendment being drafted by leg. Legal to ensure this exclusion does not remove the marine terminal facilities from right of way leasing. Does not address JPO oversight.

5) **Regulating structure for intrastate service**

This bill provides for the RCA to regulate set tariff rates for the intrastate portion of the capacity, but does not specify as to common carrier or utility. The reference to common carrier is in Sec. 1 (B), but in application, *is the intrastate portion of this pipeline going to be operated as a common carrier or more similar to a utility?*

*Amendment suggested by Nan Thompson to designate tariff rate methodology as utility, because capacity decisions will be more patterned as if it were a "utility" as opposed to "common carrier". Also, the operation of the intrastate portion will be similar to a utility, with the public interest standard being applied, as opposed to a commercial common carrier. Utility tariff methodology allows for a return on investment for project, but has a much tighter standard for allowing costs, and does not offer much opportunity for project owners to make a large profit off the rates.

Facsimile Transmittal

REP. JIM WHITAKER

Alaska State Capitol Room 13

Juneau, Alaska 99801-1182

Phone (907) 465-3004

Fax (907) 465-2070

Date:

2/16/00

Attention:

Jack Chenoweth

From:

Lori Backes - O+G Committee Aide

Number of pages (including this cover): 4

Comment(s):

These were provided by the sponsors of HB 290. Please draft them as amendments & comment as to the effect of these amendments, or any statutory concerns you may have with them should they be included in the bill.

Thanks!
Lori

Reply requested: ☐ Yes ☐ No

* **Sec. 4.** AS 42.06.240 is amended by adding a new subsection to read:

(f) In addition to other requirements of (a) - (e) of this section, the provisions of this subsection apply to a certificate of public convenience and necessity for a stranded gas pipeline carrier or person that will be a stranded gas pipeline carrier under this chapter:

(1) the person making application shall dedicate a portion of the pipeline's initial capacity sufficient to transport the total volume of stranded gas that has been committed by producers and shippers of stranded gas to tendering for intrastate firm transportation service at the time that the operation of the stranded gas pipeline commences;

(2) upon receipt of the certificate application under this subsection, the commission shall issue a public notice inviting prospective intrastate shippers of stranded gas to file requests for service; a request for service submitted by a shipper in response to a notice issued under this paragraph must include a proof of the shipper's commitment to use the stranded gas pipeline for intrastate firm transportation service, specifying the volume of stranded gas that the shipper will tender for initial intrastate firm transportation service;

(3) in its review of an application submitted under this subsection,

(A) for purposes of evaluating the total volume of intrastate transportation of stranded gas to be accepted for initial intrastate transportation, the commission shall determine total volume based upon written commitments to tender stranded gas for intrastate firm transportation service continuously for a period of not less than three years after the operation of the stranded gas pipeline commences;

(i) each request for service by an intrastate shipper that is a public utility as defined in AS 42.05.990 for the purpose of furnishing natural gas for ultimate consumption within the state by its customers that individually consume an average annual volume of less than 20 million standard cubic feet per day, must be supported by a written commitment by the public utility that sets forth its best current estimate of the average annual volume it will require during the three year period;

(ii) each request for service by an intrastate shipper that is not a public utility, and each request for service by a public utility for the purpose of furnishing natural gas for ultimate consumption within the state by its customers that individually consume an average annual volume of 20 million standard cubic feet per day or more, who purchases stranded gas from a stranded gas producer must be supported by one or more contracts for the purchase of the stranded gas on a take-or-pay basis that extends for a period of not less than three years after the operation of the stranded gas pipeline commences;

(iii) [(ii)] the commission may consider peak volumes specified in the written commitments of stranded gas producers and purchase contracts; and

(B) the commission shall set out in its order granting a certificate of public convenience and necessity the total volume of intrastate stranded gas that the stranded gas pipeline carrier shall accept for intrastate transportation; the

total volume may not exceed the volume substantiated by written commitments and contracts that comply with the requirements of this chapter;

(4) if the stranded gas pipeline carrier wants to transport stranded gas within the state in excess of the amount set out in the statement of total volume in the pipeline carrier's certificate of public convenience and necessity, the pipeline carrier may apply for authority to transport a greater volume of stranded gas within the state than the carrier is required by the commission to transport in its order entered under (3)(B) of this subsection; the commission shall grant the authority requested by the pipeline carrier if the commission determines that the pipeline carrier's transportation of a greater volume is consistent with public convenience and necessity.

Bill Text

BILL ID: HB 290

Sec. 5. AS 42.06.310 is amended by adding a new subsection to read:

(d) The requirement of (c) of this section does not apply to a stranded gas pipeline carrier to the extent that the capacity of the carrier's stranded gas pipeline does not allow for expanded capacity, and does not apply to require a stranded gas pipeline carrier to enlarge or extend its stranded gas pipeline system; however,

(1) the commission may require a stranded gas pipeline carrier to expand, enlarge, or extend its stranded gas pipeline system if, after notice and opportunity for hearing, the commission determines that

(A) a person making a request for expanded, enlarged, or extended service by a stranded gas pipeline carrier has made a firm contractual commitment to the stranded gas pipeline carrier to transport stranded gas [IN SUFFICIENT QUANTITY SO THAT MEETING THE COMMISSION'S REQUIREMENT WILL NOT IMPOSE AN UNDUE FINANCIAL BURDEN ON THE STRANDED GAS PIPELINE CARRIER OR ITS CUSTOMERS]; and

(B) that the expansion, enlargement or extension will not result in substantial injury, including economic injury, to the stranded gas pipeline facility or its customers, or in substantial detriment to the services furnished by the stranded gas pipeline facility, or in the creation of safety hazards.

[(B) THE ABILITY OF THE STRANDED GAS PIPELINE CARRIER TO PROVIDE ADEQUATE SERVICES TO ITS CUSTOMERS IS NOT IMPAIRED; AND

(2) IF, UNDER (1) OF THIS SUBSECTION, THE COMMISSION REQUIRES A STRANDED GAS PIPELINE CARRIER TO EXPAND, ENLARGE, OR EXTEND ITS STRANDED GAS PIPELINE SYSTEM, THE COMMISSION SHALL SET RATES FOR THE SERVICE SO THAT THE ADDITIONAL COST OF THE REQUIREMENT IS BORNE BY THE PERSON MAKING THE REQUEST, TAKING INTO CONSIDERATION ANY BENEFITS TO CUSTOMERS OF THE STRANDED GAS PIPELINE CARRIER THAT MAY RESULT FROM THE EXPANSION, ENLARGEMENT, OR EXTENSION OF THE SYSTEM.]

HB290
Proposed Amendment

2-B) *In an effort to ensure adequate capacity for intrastate use of gas from an undeveloped natural gas pipeline, this amendment requires the commissioner of natural resources to consider the needs of instate utility and industrial uses when making a determination whether to take the state's royalty gas "in kind" or "in value", and sets forth a requirement for legislative approval in order to implement that determination.

AMENDMENT

OFFERED IN THE HOUSE

TO: HB 290

1 Page 1, line 1:

2 Following "relating to":

3 Insert "oil and gas, to the sale and disposition of state royalty oil and gas,"

4 Following "carriers":

5 Insert ","

6 Page 1, following line 4:

7 Insert a new bill section to read:

8 **** Section 1.** AS 38.05.182 is amended to read:

9 **Sec. 38.05.182. Royalty on natural resources.** (a) Any royalty provided for
10 in AS 38.05.135 - 38.05.181 may be taken in kind rather than in money if the
11 commissioner determines that the taking in kind would be in the best interest of the
12 state. However, royalties on oil and gas shall be taken in kind unless the
13 commissioner determines that the taking in money would be in the best interest of the
14 state. In making a determination under this subsection about whether to
15 recommend that royalties on oil and gas be taken in kind or in money, the
16 commissioner shall give specific consideration as to whether the royalty oil and
17 gas taken in kind may be necessary to meet the state's present and projected
18 intrastate domestic and industrial needs.

19 (b) Before taking any action with regard to the taking and disposition of
20 royalties on oil and gas, the [THE] commissioner shall submit a proposed
21 determination to take royalty [IN MONEY] to the legislature at the first opportunity
22 during a current session or, if the legislature is not in session, at the next regular
23 session. The legislature, [WITHIN 60 DAYS OR] by the adjournment of the session,
24 [WHICHEVER COMES SOONER,] may approve [REVOKE] the proposed

1 determination by law. If the legislature does not approve the proposed
2 determination, the commissioner may not implement the determination as
3 submitted [CONCURRENT RESOLUTION]."

4 Page 1, line 5:

5 Delete "* Section 1."

6 Insert "* Sec. 2."

7 Renumber the following bill sections accordingly.

HB290
Proposed Amendment

3. If expansion, extension or enlargement of the pipeline is necessary, HB290 sets forth the criteria upon which RCA must make its determination, stating that the requirement must not impose undue financial burden on the carrier or its customers. It also sets into law the requirement that the cost be borne by the person making the request, considering any benefits to customers of the carrier.

*This amendment rewords the criteria in a less ambiguous fashion, and removes any mention as to who must bear the costs.

Bill Text

BILL ID: HB 290

Sec. 5. AS 42.06.310 is amended by adding a new subsection to read:

(d) The requirement of (c) of this section does not apply to a stranded gas pipeline carrier to the extent that the capacity of the carrier's stranded gas pipeline does not allow for expanded capacity, and does not apply to require a stranded gas pipeline carrier to enlarge or extend its stranded gas pipeline system; however,

(1) the commission may require a stranded gas pipeline carrier to expand, enlarge, or extend its stranded gas pipeline system if, after notice and opportunity for hearing, the commission determines that

(A) a person making a request for expanded, enlarged, or extended service by a stranded gas pipeline carrier has made a firm contractual commitment to the stranded gas pipeline carrier to transport stranded gas ~~[IN SUFFICIENT QUANTITY SO THAT MEETING THE COMMISSION'S REQUIREMENT WILL NOT IMPOSE AN UNDUE FINANCIAL BURDEN ON THE STRANDED GAS PIPELINE CARRIER OR ITS CUSTOMERS]~~; and

(B) that the expansion, enlargement or extension will not result in substantial injury, including economic injury, to the stranded gas pipeline facility or its customers, or in substantial detriment to the services furnished by the stranded gas pipeline facility, or in the creation of safety hazards.

~~[(B) THE ABILITY OF THE STRANDED GAS PIPELINE CARRIER TO PROVIDE ADEQUATE SERVICES TO ITS CUSTOMERS IS NOT IMPAIRED; AND~~

~~(2) IF, UNDER (1) OF THIS SUBSECTION, THE COMMISSION REQUIRES A STRANDED GAS PIPELINE CARRIER TO EXPAND, ENLARGE, OR EXTEND ITS STRANDED GAS PIPELINE SYSTEM, THE COMMISSION SHALL SET RATES FOR THE SERVICE SO THAT THE ADDITIONAL COST OF THE REQUIREMENT IS BORNE BY THE PERSON MAKING THE REQUEST, TAKING INTO CONSIDERATION ANY BENEFITS TO CUSTOMERS OF THE STRANDED GAS PIPELINE CARRIER THAT MAY RESULT FROM THE EXPANSION, ENLARGEMENT, OR EXTENSION OF THE SYSTEM.]~~

HB290
Proposed Amendment

4-B) In the definitions included in HB290, "marine terminal facilities" are excluded from the definition of stranded gas pipeline or stranded gas pipeline facilities. That action is to make certain that the marine terminal facilities will not be construed to be "common carrier". One concern over that action is that those facilities would then be removed from the Right-of-Way Leasing Act. This also raises a question as to where the oversight authority would lie.

*This amendment removes that exclusion from the definition of "stranded gas pipelines".

AMENDMENT

OFFERED IN THE HOUSE

TO: HB 290

- 1 Page 8, lines 15 and 16:
- 2 Delete ", but excluding"
- 3 Insert "; the term includes"

HB290
Proposed Amendment

5. HB290 acknowledges that RCA will set the rate of tariff on the intrastate portion of the pipeline, however, there is some question as to which rate methodology would apply, common carrier or utility.

*This amendment sets out that the "utility" rate methodology would be applied.

5

1-LS1269\A.3

Chenoweth

2/14/00

AMENDMENT

OFFERED IN THE HOUSE

TO: HB 290

1 Page 4, line 24:

2 Delete "The"

3 Insert "Except as provided by AS 42.06.370(c), the"

4 Page 7, following line 21:

5 Insert a new bill section to read:

6 "** Sec. 7. AS 42.06.370 is amended by adding a new subsection to read:

7 (c) Rates demanded, observed, charged, or collected by a stranded gas
8 pipeline carrier for intrastate service shall be designed as if that portion of the
9 stranded gas pipeline were a public utility regulated under the provisions of
10 AS 42.05."

11 Renumber the following bill section accordingly.

AMENDMENT

OFFERED IN THE HOUSE

TO: CSHB 290(O&G)

1 Page 1, line 6, through page 2, line 11:

2 Delete all material and insert:

3 **** Section 1. AS 38.06.070(a) is amended to read:**

4 (a) In the exercise of its powers under AS 38.06.040(a) and 38.06.050, the
5 board shall consider each of the factors in order of priority set out as follows:

6 (1) [THE REVENUE NEEDS AND PROJECTED FISCAL
7 CONDITION OF THE STATE;

8 (2)] the existence and extent of present and projected local and
9 regional domestic and industrial needs for oil and gas products and by-products, the
10 effect of state or federal commodity allocation requirements that [WHICH] might be
11 applicable to those products and by-products, and the priorities among competing
12 needs;

13 (2) the existence and extent of present and projected local or
14 regional consumption markets that should be met by the transaction;

15 (3) the desirability of localized capital investment, increased payroll,
16 secondary development, and other possible effects of the sale, exchange, or other
17 disposition of oil and gas or both;

18 (4) the projected positive and negative environmental effects related
19 to the transaction [SOCIAL IMPACTS OF THE TRANSACTION];

20 (5) the revenue needs and projected fiscal condition of the state;

21 (6) the projected effects of the proposed transaction upon existing
22 private commercial enterprise and patterns of investments;

23 (7) the projected additional costs and responsibilities that [WHICH]
24 could be imposed upon the state and affected political subdivisions by development
25 related to the transaction; and

1 (8) [(6)] the potential effects on [EXISTENCE OF] specific local or
2 regional labor [OR CONSUMPTION] markets that [OR BOTH WHICH] should be
3 met by the transaction [;

4 (7) THE PROJECTED POSITIVE AND NEGATIVE
5 ENVIRONMENTAL EFFECTS RELATED TO THE TRANSACTION; AND

6 (8) THE PROJECTED EFFECTS OF THE PROPOSED
7 TRANSACTION UPON EXISTING PRIVATE COMMERCIAL ENTERPRISE AND
8 PATTERNS OF INVESTMENTS]."

Amendment to CSHB290
Prioritization of Criteria for Royalty Dispensation

(Sec. 1) This amendment of AS 38.05.183(e) includes the prioritization of criteria in the list of subjects that the commissioner shall consider when determining the dispensation of the state's royalty oil or gas.

(Sec. 2) This amendment of AS 38.06.070(a) creates a prioritization of the list of criteria the Alaska Royalty Oil and Gas Advisory Board considers in the exercise of their powers.

The priorities have been laid out in such a manner as to give greatest priority to in-kind taking for instate use. They are in order:

1. Present and projected domestic and industrial needs.
2. Present and projected consumption markets.
3. Local economic effects.
4. Environmental effects.
5. Revenue needs of the state.
6. Effects on existing commercial enterprises.
7. Cost and Responsibilities to state and political subdivisions.
8. Potential effects on labor markets.

The organization of criteria, as listed in the amendment, is merely a prioritization of criteria already existing in statute with one exception. Under current AS38.06.070, number (4) "the projected social impacts of the transaction", has been deleted. The criteria number (6) in AS 38.06.070, "the existence of specific local or regional labor or consumption markets or both which should be met by the transaction;", has been divided into two separate issues as delineated in the amendment as number (2) and number (8).

not offered

AMENDMENT

OFFERED IN THE HOUSE

TO: CSHB 290(O&G)

1 Page 1, line 6, through page 2, line 11:

2 Delete all material and insert:

3 ** Section 1. AS 38.05.183(e) is amended to read:

4 (e) When a sale, exchange, or other disposal of oil or gas taken in kind by the
5 state as its royalty share, or a sale, exchange, or other disposal in whole or in part of
6 a right to receive future royalty oil or gas, under a state lease under this chapter is
7 made other than by competitive bid, the sale, exchange, or other disposal shall be
8 awarded by the commissioner to the prospective buyer whose proposal offers the
9 maximum benefits to citizens of the state. The commissioner shall consider

10 (1) the cash value offered;

11 (2) the projected effects of the sale, exchange, or other disposal on the
12 economy of the state;

13 (3) the projected benefits of refining or processing the oil or gas in the
14 state;

15 (4) the ability of the prospective buyer to provide refined products or
16 by-products for distribution and sale in the state with price or supply benefits to the
17 citizens of the state; and

18 (5) the criteria listed in AS 38.06.070(a) in the order of priority
19 required by that subsection.

20 * Sec. 2. AS 38.06.070(a) is amended to read:

21 (a) In the exercise of its powers under AS 38.06.040(a) and 38.06.050, the
22 board shall consider each of the factors in order of priority set out as follows:

23 (1) [THE REVENUE NEEDS AND PROJECTED FISCAL
24 CONDITION OF THE STATE;

25 (2)] the existence and extent of present and projected local and

1 regional domestic and industrial needs for oil and gas products and by-products, the
 2 effect of state or federal commodity allocation requirements that [WHICH] might be
 3 applicable to those products and by-products, and the priorities among competing
 4 needs;

5 (2) the existence and extent of present and projected local or
 6 regional consumption markets that should be met by the transaction;

7 (3) the desirability of localized capital investment, increased payroll,
 8 secondary development, and other possible effects of the sale, exchange, or other
 9 disposition of oil and gas or both;

10 (4) the projected positive and negative environmental effects related
 11 to the transaction [SOCIAL IMPACTS OF THE TRANSACTION];

12 (5) the revenue needs and projected fiscal condition of the state;

13 (6) the projected effects of the proposed transaction upon existing
 14 private commercial enterprise and patterns of investments;

15 (7) the projected additional costs and responsibilities that [WHICH]
 16 could be imposed upon the state and affected political subdivisions by development
 17 related to the transaction; and

18 (8) [(6)] the potential effects on [EXISTENCE OF] specific local or
 19 regional labor [OR CONSUMPTION] markets that [OR BOTH WHICH] should be
 20 met by the transaction [;

21 (7) THE PROJECTED POSITIVE AND NEGATIVE
 22 ENVIRONMENTAL EFFECTS RELATED TO THE TRANSACTION; AND

23 (8) THE PROJECTED EFFECTS OF THE PROPOSED
 24 TRANSACTION UPON EXISTING PRIVATE COMMERCIAL ENTERPRISE AND
 25 PATTERNS OF INVESTMENTS]."

26 Renumber the following bill sections accordingly.

LEGAL SERVICES

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

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

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Deliveries to: 129 6th St., Rm. 329

MEMORANDUM

January 24, 2000

SUBJECT: House Bill 290, relating to stranded gas pipeline carriers and to intrastate regulation of pipelines and pipeline facilities of stranded gas carriers -- sectional analysis (Work Order No. 1-LS1269\A)

TO: Representative Jim Whitaker, Chair
House Special Committee on Oil and Gas

FROM: Jack Chenoweth
Assistant Revisor of Statutes *Ben*

Bill section 1: Under the state Right-of-Way Leasing Act, AS 38.35, existing AS 38.35.120(a)(1) directs that the lessee of a noncompetitive lease for a natural gas pipeline must, as a general rule, operate as a common carrier, with one exception. The new material, page 2, lines 15 - 19, amends the Act to add a further exception, to limit the circumstances under which the carrier of stranded gas by pipeline must operate as a "common carrier" of the gas.

Bill section 2 amends the "Alaska Public Utilities Regulatory Act" (AS 42.05) to exclude from its provisions the regulation of persons owning or operating a natural gas pipeline as a stranded gas pipeline carrier. Instead, regulation of these carriers is to be by the commission under the state's "Pipeline Act," AS 42.06.

Bill section 3 extends the authority of the Regulatory Commission of Alaska under the "Pipeline Act," AS 42.06, to "intrastate transportation of stranded gas through a stranded gas pipeline."

Bill section 4: Pipeline carriers operate under a certificate of convenience and necessity issued by the Regulatory Commission of Alaska to authorize the pipeline operations. The material added by this bill section spells out the additional requirements bearing on issuance of a certificate of convenience and necessity for a stranded gas pipeline carrier. The several paragraphs speak to capacity and volume handling requirements, the giving of public notice involving requests or applications for service, the commission's evaluation of applications, and the action that the commission may take in its order granting a certificate of public convenience and necessity for the stranded gas pipeline carrier in intrastate transportation.

Bill section 5: State law (AS 42.06.310) establishes in generic terms the standards of service and facility standards for the pipeline carriers subject to regulation under the "Pipeline Act." One of the general standard is set out in AS 42.06.310(c):

(c) Every common carrier shall, when ordered by the commission, extend or enlarge its pipeline or storage facilities provided the extension or enlargement shall be found to be reasonable and required in the public interest and that the expense involved will not impair the ability of the common carrier or public utility to perform its duty to the public.

Bill section 5 exempts a stranded gas pipeline carrier from the requirements of (c) and substitutes for (c) an alternative procedure under which the Regulatory Commission of Alaska may require construction of an expanded, enlarged, or extended system for additional natural gas and related requirements for determining the appropriate rates that may be charged by the stranded gas pipeline carrier under the expanded, enlarged, or extended system.

Bill section 6: Existing law directs that

. . . every intrastate oil or gas pipeline carrier [must] file with the commission, within the time and in the form designated by the commission, all rates, tariffs, charges, classifications, rules, regulations, terms, and conditions pertaining to service provided under the certificate, . . .

AS 42.06.350(a). The additional material offered in bill section 6 specifically allows a stranded gas pipeline carrier to charge separate rates for gas transported in each of two service categories, referred to as "firm transportation service [of stranded gas]" and "interruptible transportation service [of stranded gas]," and specifies what may and may not be taken into account in determine the fees for the respective service categories.

Bill section 7 supplies definitions for terms relating to the material concerning stranded gas and stranded gas pipeline carriers that is added or amended by the other bill sections of the measure.

JBC:jdr
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Alaska State Legislature

House Resources Committee

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SECTIONAL ANALYSIS HB 290

Section 1:

Amends AS 38.35.120(a) by adding a new paragraph (a)(1)(B) that provides that a right-of-way lessee that owns or operates a stranded gas pipeline as a stranded gas pipeline carrier is required to operate as a common carrier only with respect to the intrastate transportation of stranded gas.

Section 2:

Amends AS 42.05.711 by adding a new subsection (n) which exempts the owners or operators of a stranded gas pipeline system from operating as a public utility.

Section 3:

Amends AS 42.06.230(b) to clarify that, with respect to a stranded gas pipeline, the Regulatory Commission of Alaska's (RCA's) jurisdiction and authority extend only to the intrastate transportation of stranded gas.

Section 4:

Amends AS 42.06.240 by adding a new subsection, (f)(1)-(4), within which:

(f)(1) provides that persons making application for a certificate of public convenience and necessity for a stranded gas pipeline must dedicate a portion of the pipeline's initial capacity sufficient to transport the total volume of stranded gas that has been committed to tendering for firm intrastate transportation services at the time pipeline operations commence;

(f)(2) provides that, upon receipt of an application, the RCA shall issue public notice inviting requests for service by prospective intrastate shippers, and specifies the criteria for a request of service;

(f)(3) defines the criteria by which the RCA will determine the total volume of intrastate transportation of stranded gas required for initial transportation by a stranded gas pipeline and provides the RCA authority to consider peak volumes in its determinations; and

(f)(4) requires the RCA to define in its orders the total volume of intrastate stranded gas that a stranded gas pipeline carrier must accept for intrastate transportation and limits such volumes to volumes substantiated by written commitments and contracts which comply with the requirements of the chapter.

Section 5:

Amends AS 42.06.310 by adding a new subsection which limits the applicability of AS 42.06.310 (c) to stranded gas pipeline carriers, to the extent the carrier's stranded gas pipeline does not allow for expanded capacity, determines the requirements which must be met for the RCA to require expansion, enlargement or extension of a stranded gas pipeline system, including the requirements that such expansion, enlargement or extension not impose undue financial burden on the carrier or its customers and that its ability to adequately serve its customers is not impaired, and requires the RCA, if it orders expansion, enlargement or extension, to set rates so that additional costs are borne relative to the benefits provided.

Section 6:

Amends AS 42.06.350 by adding a new subsection (c) establishing the right of a stranded gas pipeline carrier to charge separate rates for "firm transportation service" and "interruptible transportation service" under its tariff, providing for the carrier's imposition of a reservation fee for capacity in a stranded gas pipeline as a condition of providing firm transportation, setting limits on the types of costs that may be included in a reservation fee and prohibiting the imposition of reservation fees for interruptible transportation service.

Section 7:

Amends AS 42.06.630 by adding new paragraphs (11)-(17), which define certain terms, introduced in HB 290, including:

"capacity"

"firm transportation service"

"interruptible transportation service"

"intrastate"

"stranded gas"

"stranded gas pipeline"

"stranded gas pipeline carrier"

Taken from House Records recording of O&G Committee hearing on HB290, Feb. 17, 2000:
By Committee Aide, Lori Backes

In discussion over Amendment number 1, Representative Porter stated: "Just for clarification, the amendment to amendment number 1 was replacing "North Slope natural gas pipeline" with the term "undeveloped natural" all the way through the amendment?"

Rep. Whitaker: "Just the opposite"

Smalley: "Undeveloped" to North Slope natural gas, we're getting rid of "undeveloped" changing it to "North Slope natural gas".

Porter: "That's what I thought I said, but (chuckle) maybe I didn't. Yeah, I'm sorry, changing in the amendment, "undeveloped natural", and replacing that with "North Slope natural gas pipeline."

Whitaker: "That is correct, it is clear to me, is it clear to the other committee members? (pause) Are there objections to the amendment to amendment number 1?"

Kempen: "I withdraw my objection"

Whitaker: "There is no objection, and therefore, amendment number one passes, and will be incorporated into an eventual CS for HB290.