

ALASKA LEGISLATURE SPECIAL COMMITTEE/SUBJECT FILES 8672

3111 SCOMM 143: SENATE SPEC.COMM.ON NATURAL GAS DEV. 2005-2006

- FERC must find that adequate downstream facilities exist or are expected to exist to delivery incremental Alaska natural gas to market.

These conditions can probably be satisfied in the context of a compression-based expansion (*i.e.*, up to about 6 Bcf/day of capacity). However, once any expansion involves substantial looping then the "no subsidy of expansion customers by existing shippers" requirement becomes problematic (so long as rolled-in pricing is used). Unless such expansion capacity is priced on an incremental basis the obvious question that will arise is what constitutes a "subsidy." The FERC has not established rules for administering this section of the law, so no one can say with certainty whether any particular level of rate increase to existing shippers (as could occur in certain expansion scenarios involving rolled-in pricing) would be found to be an unacceptable "subsidy." This ambiguity alone invites prolonged litigation at the Commission with an uncertain outcome there and in the courts.

The third expansion tool is the State-initiated expansion (set forth in § 8.7 of the Contract). This vehicle comes with all of the conditions listed above with respect to a FERC-mandated expansion, but also includes the following additional limitations that gut its effectiveness:

- It can only be exercised once every 5 years;
- Expansion must be for a minimum of 50,000 Mcf/day on a Gas Transmission Pipeline and 125,000 Mmbtu/day on the mainline or the GTP
- Such minimum amounts must exclude any Producer or Producer-affiliate volumes but expansion facilities must be designed to include incremental volumes from a Producer or Producer-affiliate;
- Expansion does not require any lateral pipeline facilities;
- Expansion does not require installation of any loops in excess of 100 miles;

- New shippers must pay its proportionate share (as determined by the *Project Entity*) of all cost related to the filing of the application and to activities required to complete the application, including engineering studies and design and environmental reviews, "which costs may be recoverable under Article 8.7(a)(iv)(A)";
- New shippers are required to bid for new capacity in a new open season and are subject to proration or displacement under the open season process;
- New shippers must enter into "negotiated rate" agreements;
- Expansion must not require any existing shipper to pay a higher rate than it would have to pay absent the expansion;
- Expansion must not require any existing shipper to be assessed a higher fuel retention percentage than would have been assessed absent the expansion;⁶

Probably the most notable of these additional conditions are the prohibitions on any rate increase to existing shippers or any increase in fuel retention resulting from any expansion. The range of potential expansions that could possibly fit within these criteria will be very narrow, and even those narrow possibilities will be fraught with uncertainty of execution, implementation, and most importantly, timing. Here as well, once an expansion involves looping (even up to the 100-mile limit contained in § 8.7) these factors will effectively preclude any ability to obtain expansion capacity.

In addition, the requirements that a party trying to obtain capacity via Section 8.7 will have to pay all the up-front costs associated with obtaining an expansion certificate (which are not insignificant) will have a chilling effect upon potential new shippers. Similarly, the fact that an explorer producer seeking to avail itself of this provision will have to compete in an open season for any expansion capacity that is proposed by the owners, and may well only obtain a pro-rated share of the expansion that the party initially sought diminishes substantially the value of this

⁶ Compression fuel is typically stated as a percentage of throughput per contract rather than a dollar and cents item in most pipeline tariffs.

provision in terms of facilitating expansion of the system on a timely basis to accommodate new shippers.

Section 8.7 further states that it is effective unless FERC determines that any provisions are contrary to law. Moreover, this section also provides that, "If *FERC* issues a certificate on a basis different than the expansion proposal filed by the *Project Entity*, then the *Project Entity* shall reject the certificate unless any such difference is minor or all of the members of the *Project Entity* vote otherwise." (Emphasis added). Finally, the Fiscal Interest Finding (at 115) suggests that the Producers may be given rights of first refusal for capacity created under any such expansion, which itself defeats the purpose of an expansion to assist independent explorer producers – and is inconsistent with FERC policies as well. Taken together, these provisions strip Section 8.7 of any substantial value in terms of obtaining expansion capacity at reasonable rates on a timely basis.

Thus, while as a technical matter three expansion options do exist, only aggressive voluntary expansion policies will protect against anti-competitive behavior in a manner that will provide certainty to independent explorer producers. Such expansion policies can best be assured by the addition of appropriate contract provisions addressing voluntary expansions.

The point has been made that the State, through its membership in the LLC, will "be watching" the Producer-owners as expansion decisions are made. It was suggested that through such a "seat at the table" the State could effectively keep an eye on the Producers' activities and "blow the whistle" as needed. It was also suggested that as an "insider" the State would have documents in its hands, thus expediting any administrative litigation by shortening the discovery process. This is indeed a plus, but the FERC would still have to go through the administrative

hearing and decision process based on the evidence put into a litigated record. Thus, the time saving from a shortened discovery process may or may not be material.⁷

It should be asked, though, if reliance on enforcement litigation (*i.e.*, a “big stick”) should be the preferred approach at the outset. Providing the benefits of the Contract to the Producers (*i.e.*, “carrots”) in exchange for pre-agreed expansion terms is simpler and much faster. It also produces the desired result—timely voluntary expansion of the line mimicking what one would expect from an independent pipeline. Thus, State participation is helpful but not dispositive with respect to Basin Control litigation.

Agreement on some level of expansion may already exist.

At the roundtable discussions comments have been made that the Contract is “not expansion friendly.” Those remarks have been challenged or questioned by both the Producers and the Administration. Representations have been made that the pipeline will be expanded if necessary; certainly up to the level of about almost 6 Bcf/day at which point expensive looping will be required. Indeed, compression based expansions up to the 6 Bcf/day range should be expected since expansion to this level will have downward pressure on the pipeline’s rates—thus increasing the Producers’ netback for all volumes shipped and increasing the State’s RIK value as well.

If expansion to this level is indeed planned or intended, there should be no meaningful objection to putting such a commitment into the Contract. An expansion from 4- 4.5Bcf/day to the 5.9- 6 Bcf/day level would reflect a significant addition to the system’s capability. Since such expansion could be achieved in a manner that would generally reduce (or certainly not materially

⁷ Moreover, it must be asked whether the LLC agreements will contain confidentiality provisions that would impede the State in providing documents to litigants in any such FERC proceedings.

increase) rates, it would generally be in the interest of the State, the Producers and independent explorer shippers for such expansions to be undertaken. The Contract should so provide.⁸

Expansion above the 6 Bcf/day level appears to require more expensive pipeline looping. Under incremental pricing no such expansion will be supported by the market since the price for such service will substantially exceed the price that pre-existing shippers will be paying. Under rolled-in pricing this type of expansion would be economic but would increase rates to existing shippers. However, the rate to all shippers would be the same (*i.e.*, a "level playing field"), and the rate level for the existing shippers would not be nearly as high as the rate level for new shippers had the expansion been priced incrementally. Thus, there is no reason why the Mainline Entity as a pipeline owner would not want to pursue such expansion, nor why the State would not want to pursue such expansion as both a pipeline owner and as the sovereign.

The only downside to looping expansions that are priced on a rolled-in basis relates to increased rates to the existing shippers. The objection of the Producers to such an expansion thus relates to their interests as producers and shippers, and not to their interests as pipeline owners. Indeed, as pipeline owners they will benefit through increased rate base that results in increased equity return! There is no reason why, as pipeline owners the Producers should object to the use of rolled-in pricing for the expansion. Thus, in the context of a contract providing for the Producers

⁸ The assumption that expansion to the 6 Bcf range is economic is predicated upon the 52-inch design. That design is not a contract term as noted by Anadarko, and the Producers objected to its being put into the Contract. So, there is reason to question whether the pipeline that is built will in fact be capable of expansion to the 6 Bcf/day level. As noted by Anadarko the FIF indicates that only the sponsor group proposed using the larger diameter pipeline. It may be that the other companies that discussed the project with the State had a more realistic handle on the design issue and the Sponsors will eventually come around to the smaller design. In that case, of course, the economics of expansion will be much different than has been presented to date.

to become pipeline owners it would be entirely appropriate to provide for such expansions to take place using rolled-in pricing.

From the State's perspective expansions to capacities in excess of 6 Bcf/day should be a stated objective. Such expansions necessarily imply significant new gas supplies being found—supplies that will benefit the State in terms of additional royalty gas being produced or at a minimum of additional tax gas being produced. Additional jobs are also implied in potential expansions beyond 6 Bcf/day. Expansions at this level should be strongly supported by the State *even if* they would result in some increase in rates being paid by existing shippers and *even if* such expansions would result in a modest reduction in the State's own netback related to its in-kind volumes.⁹

Thus, to support pro-competitive behavior and to mimic the behavior of an independent pipeline owner, contract language should be developed to require "voluntary expansion" to meet growing market demand. The Contract should also require that all expansion proposals be made on a rolled-in pricing basis. By such means the risk of untoward Basin Control by the Producer-owners is materially reduced or even eliminated. Specific suggestions to accomplish these goals are set forth below:

- a) Require that the Project Entity conduct periodic open seasons (either binding or non-binding) at least every three-to-five years to determine the existence of market demand for expansion capacity.
- b) Provide the State (and any Producer) with authority to initiate expansions (including during the initial construction of the pipeline) upon request by creditworthy shippers in reasonable

⁹ In this regard it should be noted that rate increases occur for any number of reasons. Inflation causes pipelines to increase rates to maintain their equity return. Reductions in shipping commitments can result in rate increases to existing customers. Moreover, as a new pipeline FERC will probably require that the Mainline Entity file to justify its rates within 3-years after service commences—this could also result in a rate increase. Unless a shipper has a "negotiated rate" contract, FERC tariffs normally require shippers to pay the higher rates once the FERC has approved them.

engineering increments while requiring the Pipeline Entity to propose and defend the use of rolled-in pricing for such expansion capacity.

- c) Provide the State (and any Producer) with authority to initiate expansions requested by creditworthy shippers in less than reasonable engineering increments to the extent the new shippers make an appropriate contribution in aid of construction such that the expansion will not adversely affect the economics of the pipeline system.
- d) Provide the State (and any Producer) with authority to initiate open seasons without time limitations and to veto open season timing decisions as it believes necessary to foster full and fair competition.
- e) Replace Article 8.7 with the above provisions.

CONCLUSION

The Alaska gas pipeline will be a *basin opening* project. The fundamental concern is whether potential anti-competitive behavior arising out the vertical ownership of the pipeline by the Producers raises unacceptable risks that in opening the basin for some producers the basin can effectively be closed to others.

Remedying anti-competitive behavior can be dealt with in at least two ways. First, the matter can be deferred until the issue actually arises and then litigated at the FERC (and through the Courts on appeal). Second, the issue can be dealt with in the Contract, by putting in place mechanisms that will prevent the behavior from taking place in the first instance. The first approach creates uncertainty and time delay that could result in deterring explorer producers from seeking new Alaskan resources. The better solution is to forestall anti-competitive behavior before it occurs, by building competitive protections (addressing voluntary expansion terms and conditions) into the SGDA Contract, with the FERC as a backstop. Requiring voluntary expansion terms to be added to the contract as a *quid-pro-quo* for the State providing fiscal certainty to the

Producers, will provide fiscal certainty for the independent explorer producers and level the playing field to the benefit of State.

Greenberg Traurig

Memorandum

TO: Senator Ralph Seekins, Chair, Senate Special Committee on Natural Gas Development;
Senator Gene Therriault, Chair, Legislative Budget and Audit Committee;
and
Representative Ralph Samuels, Vice-Chair, Legislative Budget and Audit Committee

FROM: Donald C. Shepler

DATE: July 31, 2006

RE: Data on Producer-affiliate capacity holdings on Lower-48 pipelines and capacity of producer-owned pipelines

In the Special Senate Committee on Natural Gas Development hearings last week the point was made by one presenter that "there are no independent pipeline companies" in the Lower-48. This was a reference to the claim that all Lower-48 pipelines have producer-affiliates and/or marketing-affiliates. Attached is a table which appears as Attachment B to FERC's Order No. 2004-A relating to its rules regarding marketing and producer affiliates of interstate pipelines. This table lists all gas pipelines that are subject to the FERC's rule and shows the percent of capacity held by the pipeline company's marketing affiliate, its producer affiliate and its storage affiliate.

Significantly, only 16 pipelines have producer affiliates and on a weighted average basis the producer-affiliates hold only about 9% of the capacity on their affiliate pipelines. Even looking at an a simple, unweighted average, the percentage of capacity held by producer affiliates on those 16 pipelines is only about 37 percent. By comparison, it is anticipated that the production affiliates of the owners of the Alaskan pipeline will hold upwards of 80% of the system's capacity.

Also attached is a Department of Energy report showing reported system capacity for a number of gas gathering companies, pipeline companies and others. From this report it can be seen that the six "producer-owned pipelines" that were identified at last week's hearings are very small entities. The six companies listed at the hearings were:

- | | |
|----------------------------|----------------------------------|
| 1. Garden Banks | capacity shown as 1,000 MMcf/day |
| 2. Green Canyon | capacity shown as 200 MMcf/day |
| 3. Destin | capacity shown as 1,200 MMcf/day |
| 4. Discovery | capacity shown as 793 MMcf/day |
| 5. Maritimes and Northeast | capacity shown as 428 MMcf/day |
| 6. Nautilus | capacity shown as 600 MMcf/day. |

Thus, the average capacity of the "producer owned pipelines" listed at the hearing is about 600 MMcf/day.

This can be compared to five of the largest interstate pipelines listed below:

- | | |
|---------------------|-----------------------------------|
| 1. Transcontinental | capacity shown as 8,203 MMcf/day |
| 2. ANR | capacity shown as 6,785 MMcf/day |
| 3. Tennessee | capacity shown as 6,644 MMcf/day |
| 4. El Paso | capacity shown as 6,292 MMcf/day |
| 5. Texas Eastern | capacity shown as 6,196 MMcf/day. |

Thus, the producer-owned pipelines are clearly very small compared to the major, long-line pipelines and compared to the 4,000-4,500 MMcf/day capacity envisioned for the Alaskan pipeline.

I wanted to provide these official data to ensure that the Special Committee on Natural Gas Development and the rest of the Alaska Legislature was fully informed on this matter. As always, should you have any questions on this matter please let me know.

ATTACHMENT B

Staff Analysis of Interstate Natural Gas Pipeline Index of Customers Data

Staff compiled index of customers data from all 87 pipelines for which it was available for the October 1, 2003 filing.

Staff identified 63 pipelines which had reported affiliated transactions. Staff noted that 5 of these pipelines had contracts only with Transmission Provider affiliates and removed these from the study as a special category. The remaining 58 pipelines were then examined in more detail.

Staff then identified the type of affiliation, e.g., marketer, LDC, producer, for each customer from publicly available information.

The table "Summary of Natural Gas Pipeline Affiliate Information" shows summary affiliate information by pipeline and type of affiliation. Totals are shown also for all 58 pipelines examined. The information was derived from the detailed affiliated customer data as follows:

- Table rows labeled "Affil Vols (MMBtu)" are simply total volumes by affiliation type for individual pipelines or the group of 58 pipelines aggregated from the data for individual affiliated customers
- Table rows for each pipeline labeled "Pct of P/L Total Vols" are the affiliate volumes shown divided by the total contracted volumes for the pipeline
- The table row labeled "Pct of Relevant PL Tot Vols (WA)" for the group of 58 pipelines are the affiliate volumes shown divided by the total contracted volumes only for those pipelines that have affiliated customers of the type shown in that column of the table. This is a weighted average.
- The Table row labeled "Pct of Relevant PL Tot Vols (SA)" is the simple average of the "% of P/L Total Vols" figures for each pipeline with data in that column.

Some pipelines have more than one type of affiliate, and would be included in the summary information compiled under each affiliate type.

Summary of Natural Gas Pipeline Affiliate Information
Source: Oct 2003 Index of Customers

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Pipeline	Item	Transportation Affiliate	Storage Affiliate	Transpo Marketing Affiliate	Storage Marketing Affiliate	Transpo Producer Affiliate	Storage Producer Affiliate	Transpo LDC Affiliate	Storage LDC Affiliate
All Pipelines (58 PLs)	Affil Vols (MMBtu)	21,842,719	345,328,545	6,737,835	102,025,929	2,695,111	7,436,818	13,246,318	252,286,681
	% of Relevant PL Tot Vols (SA)	38	57	19	44	37	11	46	48
	% of Relevant PL Tot Vols (WA)	17	34	6	15	9	8	35	32
ALLIANCE PIPELINE L.P.	Affil Vols (MMBtu)	188,559	.	188,559	.	.	.	.	.
	% of P/L Total Vols	13	.	13	.	.	.	.	.
ANR PIPELINE COMPANY	Affil Vols (MMBtu)	78,000	.	21,000	.	.	.	.	.
	% of P/L Total Vols	1	.	0	.	.	.	.	.
CARNEGIE INTERSTATE PIPELINE CO.	Affil Vols (MMBtu)	13,000	.	.	.	.	.	13,000	.
	% of P/L Total Vols	57	.	.	.	.	.	57	.
CENTERPOINT ENERGY GAS TRANSMISSI	Affil Vols (MMBtu)	1,249,309	17,543,333	32,929	.	20,000	.	1,196,380	17,543,333
	% of P/L Total Vols	39	100	1	.	1	.	37	100
CENTRAL NEW YORK OIL AND GAS COMP	Affil Vols (MMBtu)	.	11,900,000	.	11,900,000	.	.	.	.
	% of P/L Total Vols	.	100	.	100	.	.	.	.
CHANDELEUR PIPE LINE COMPANY	Affil Vols (MMBtu)	210,000	.	.	.	210,000	.	.	.
	% of P/L Total Vols	77	.	.	.	77	.	.	.
CLEAR CREEK STORAGE COMPANY L.L.	Affil Vols (MMBtu)	.	8,000,000	.	8,000,000	.	.	.	.
	% of P/L Total Vols	.	100	.	100	.	.	.	.
COLORADO INTERSTATE GAS COMPANY	Affil Vols (MMBtu)	100,000	.	100,000	.	.	.	.	.
	% of P/L Total Vols	3	.	3	.	.	.	.	.
COLUMBIA GAS TRANSMISSION CORPORA	Affil Vols (MMBtu)	5,411,834	126,689,688	3,338	.	567	.	5,395,929	126,689,688
	% of P/L Total Vols	42	51	0	.	0	.	42	51
COLUMBIA GULF TRANSMISSION COMPAN	Affil Vols (MMBtu)	587,039	.	10,000	.	.	.	577,039	.
	% of P/L Total Vols	18	.	0	.	.	.	17	.
CROSSROADS PIPELINE COMPANY	Affil Vols (MMBtu)	8,700	.	8,700	.	.	.	.	.
	% of P/L Total Vols	9	.	9	.	.	.	.	.
DAUPHIN ISLAND GATHERING PARTNERS	Affil Vols (MMBtu)	28,440	.	28,440	.	28,440	.	.	.
	% of P/L Total Vols	14	.	14	.	14	.	.	.
DESTIN PIPELINE COMPANY L.L.C.	Affil Vols (MMBtu)	301,800	.	.	.	301,800	.	.	.
	% of P/L Total Vols	63	.	.	.	63	.	.	.
DOMINION COVE POINT LNG LP	Affil Vols (MMBtu)	95,000	.	95,000	.	.	.	.	.
	% of P/L Total Vols	7	.	.	.	.	.	.	.

Summary of Natural Gas Pipeline Affiliate Information
Source: Oct 2003 Index of Customers

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Pipeline	Item	Transportation Affiliate	Storage Affiliate	Transpo Marketing Affiliate	Storage Marketing Affiliate	Transpo Producer Affiliate	Storage Producer Affiliate	Transpo LDC Affiliate	Storage LDC Affiliate
DOMINION TRANSMISSION INC.	Affil Vols (MMBtu)	1,515,633	44,749,533	211,630	5,970,000	.	.	1,368,503	38,779,533
	% of P/L Total Vols	28	16	4	2	.	.	25	14
EASTERN SHORE NATURAL GAS COMPANY	Affil Vols (MMBtu)	45,465	255,803	.	.	.	.	45,465	255,803
	% of P/L Total Vols	41	74	.	.	.	.	41	74
EGAN HUB PARTNERS L.P.	Affil Vols (MMBtu)	.	3,000,000	.	3,000,000	.	.	.	.
	% of P/L Total Vols	.	18	.	18	.	.	.	.
EL PASO NATURAL GAS COMPANY	Affil Vols (MMBtu)	132,112	.	132,112	.	.	.	.	.
	% of P/L Total Vols	2	.	2	.	.	.	.	.
ENBRIDGE PIPELINES (ALATENN) L.L.	Affil Vols (MMBtu)	700	.	700	.	.	.	.	.
	% of P/L Total Vols	1	.	1	.	.	.	.	.
EQUITRANS L.P.	Affil Vols (MMBtu)	579,920	15,006,619	34,985	3,859,049	206,000	4,181,818	338,935	6,965,752
	% of P/L Total Vols	89	63	5	16	31	18	52	29
FLORIDA GAS TRANSMISSION	Affil Vols (MMBtu)	21,000	.	21,000	.	.	.	.	.
	% of P/L Total Vols	1	.	1	.	.	.	.	.
GARDEN BANKS GAS PIPELINE LLC	Affil Vols (MMBtu)	209,102	.	.	.	209,102	.	.	.
	% of P/L Total Vols	76	.	.	.	76	.	.	.
GRANITE STATE GAS TRANSMISSION I	Affil Vols (MMBtu)	105,400	.	.	.	.	.	105,400	.
	% of P/L Total Vols	92	.	.	.	.	.	92	.
GREAT LAKES GAS TRANSMISSION LIMI	Affil Vols (MMBtu)	93,540	.	93,540	.	.	.	.	.
	% of P/L Total Vols	2	.	2	.	.	.	.	.
GUARDIAN PIPELINE L.L.C.	Affil Vols (MMBtu)	1,302,500	.	2,500	.	.	.	1,300,000	.
	% of P/L Total Vols	99	.	0	.	.	.	99	.
GULF SOUTH PIPELINE COMPANY LP	Affil Vols (MMBtu)	340,000	26,865,998	340,000	26,865,998	.	.	.	.
	% of P/L Total Vols	14	90	14	90	.	.	.	.
KINDER MORGAN INTERSTATE GAS TRAN	Affil Vols (MMBtu)	171,470	2,179,485	.	.	.	.	5,086	.
	% of P/L Total Vols	21	54	.	.	.	.	1	.
KO TRANSMISSION COMPANY	Affil Vols (MMBtu)	218,000	.	218,000	.	.	.	.	.
	% of P/L Total Vols	80	.	80	.	.	.	.	.
MARITIMES & NORTHEAST PIPELINE L	Affil Vols (MMBtu)	199,335	.	199,335	.	185,335	.	.	.
	% of P/L Total Vols	30	.	30	.	28	.	.	.

Summary of Natural Gas Pipeline Affiliate Information
Source: Oct 2003 Index of Customers

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Pipeline	Item	Transportation Affiliate	Storage Affiliate	Transpo Marketing Affiliate	Storage Marketing Affiliate	Transpo Producer Affiliate	Storage Producer Affiliate	Transpo LDC Affiliate	Storage LDC Affiliate
MIDWESTERN GAS TRANSMISSION	Affil Vols (MMBtu)	1,600	.	1,600	.	.	.	.	.
	% of P/L Total Vols	0	.	0	.	.	.	.	.
MIGC INC.	Affil Vols (MMBtu)	90,000	.	90,000	.	.	.	.	.
	% of P/L Total Vols	69	.	69	.	.	.	.	.
MISSISSIPPI CANYON GAS PIPELINE	Affil Vols (MMBtu)	558,518	.	.	.	558,518	.	.	.
	% of P/L Total Vols	85	.	.	.	85	.	.	.
MISSISSIPPI RIVER TRANSMISSION CO	Affil Vols (MMBtu)	53,710	1,725,989	12,887	650,444	.	.	40,823	1,075,545
	% of P/L Total Vols	3	5	1	2	.	.	2	3
MOJAVE PIPELINE COMPANY	Affil Vols (MMBtu)	24,000	.	24,000	.	.	.	.	.
	% of P/L Total Vols	6	.	6	.	.	.	.	.
NATIONAL FUEL GAS SUPPLY CORPORAT	Affil Vols (MMBtu)	1,252,530	34,650,281	73,882	3,255,000	73,882	3,255,000	1,178,648	31,395,281
	% of P/L Total Vols	57	51	3	5	3	5	53	46
NAUTILUS PIPELINE COMPANY LLC	Affil Vols (MMBtu)	277,648	.	.	.	277,648	.	.	.
	% of P/L Total Vols	74	.	.	.	74	.	.	.
NORTHERN NATURAL GAS COMPANY	Affil Vols (MMBtu)	1,660,004	11,314,460	1,660,004	11,314,460	.	.	.	.
	% of P/L Total Vols	10	17	10	17	.	.	.	.
NORTHWEST PIPELINE CORPORATION	Affil Vols (MMBtu)	15,635	.	15,635	.	15,635	.	.	.
	% of P/L Total Vols	0	.	0	.	0	.	.	.
OZARK GAS TRANSMISSION L.L.C.	Affil Vols (MMBtu)	197,380	.	197,380	.	.	.	.	.
	% of P/L Total Vols	85	.	85	.	.	.	.	.
PATUTE PIPELINE COMPANY	Affil Vols (MMBtu)	81,100	400,571	.	.	.	.	81,100	400,571
	% of P/L Total Vols	51	82	.	.	.	.	51	82
PANHANDLE EASTERN PIPE LINE COMPA	Affil Vols (MMBtu)	27,880	1,471,800	.	.	.	.	27,880	1,471,800
	% of P/L Total Vols	1	2	.	.	.	.	1	2
PG&E GAS TRANSMISSION NORTHWEST CO	Affil Vols (MMBtu)	654,668	.	609,968	.	.	.	.	.
	% of P/L Total Vols	21	.	20	.	.	.	.	.
PINE NEEDLE LNG COMPANY LLC	Affil Vols (MMBtu)	.	3,255,000	.	3,255,000	.	.	.	.
	% of P/L Total Vols	.	79	.	79	.	.	.	.
PORTLAND NATURAL GAS TRANSMISSION	Affil Vols (MMBtu)	60,000	.	15,000	.	.	.	.	.
	% of P/L Total Vols	28	.	7	.	.	.	.	.

Summary of Natural Gas Pipeline Affiliate Information
Source: Oct 2003 Index of Customers

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Pipeline	Item	Transportation Affiliate	Storage Affiliate	Transpo Marketing Affiliate	Storage Marketing Affiliate	Transpo Producer Affiliate	Storage Producer Affiliate	Transpo LDC Affiliate	Storage LDC Affiliate
QUESTAR PIPELINE COMPANY	Affil Vols (MMBtu)	929,080	16,412,368	929,080	16,412,368	.	.	898,902	15,347,368
	% of P/L Total Vols	61	31	61	31	.	.	59	29
SABINE PIPE LINE LLC	Affil Vols (MMBtu)	64,000	.	64,000	.	60,000	.	.	.
	% of P/L Total Vols	72	.	72	.	67	.	.	.
TENNESSEE GAS PIPELINE COMPANY	Affil Vols (MMBtu)	213,565	6,403,610	161,500	6,403,610	.	.	.	.
	% of P/L Total Vols	3	8	2	8	.	.	.	.
TEXAS EASTERN TRANSMISSION LP	Affil Vols (MMBtu)	40,400	.	35,400	.	.	.	.	.
	% of P/L Total Vols	1	.	1	.	.	.	.	.
TOTAL PEAKING SERVICES LLC	Affil Vols (MMBtu)	72,000	1,140,000	72,000	1,140,000	.	.	.	.
	% of P/L Total Vols	100	100	100	100	.	.	.	.
TRANSCOLORADO GAS TRANSMISSION CO	Affil Vols (MMBtu)	125,000	.	.	.	125,000	.	.	.
	% of P/L Total Vols	18	.	.	.	18	.	.	.
TRANSCONTINENTAL GAS PIPELINE COR	Affil Vols (MMBtu)	457,630	.	457,630	.	.	.	.	.
	% of P/L Total Vols	7	.	7	.	.	.	.	.
TRANSWESTERN PIPELINE COMPANY	Affil Vols (MMBtu)	25,000	.	25,000	.	.	.	.	.
	% of P/L Total Vols	0	.	0	.	.	.	.	.
TUSCARORA GAS TRANSMISSION COMPAN	Affil Vols (MMBtu)	127,101	.	127,101	.	.	.	.	.
	% of P/L Total Vols	77	.	77	.	.	.	.	.
VECTOR PIPELINE L.P.	Affil Vols (MMBtu)	768,000	.	405,000	.	.	.	255,000	.
	% of P/L Total Vols	64	.	34	.	.	.	21	.
VENICE GATHERING SYSTEM L.L.C.	Affil Vols (MMBtu)	297,010	.	.	.	297,010	.	.	.
	% of P/L Total Vols	40	.	.	.	40	.	.	.
WESTGAS INTERSTATE INC.	Affil Vols (MMBtu)	11,372	.	.	.	.	.	11,372	.
	% of P/L Total Vols	85	.	.	.	.	.	85	.
WILLISTON BASIN INTERSTATE PIPELI	Affil Vols (MMBtu)	425,856	12,364,007	19,000	.	.	.	406,856	12,364,007
	% of P/L Total Vols	92	100	4	.	.	.	87	100
WYOMING INTERSTATE COMPANY LTD.	Affil Vols (MMBtu)	126,174	.	.	.	126,174	.	.	.
	% of P/L Total Vols	7	.	.	.	7	.	.	.

Natural Gas Pipeline Systems Database - as of April 24, 2006

<u>Pipeline Name</u>	<u>Reported Capacity (MMcf/d) - 2006(To date)</u>	<i>REPORTED SYSTEM CAPACITY</i>
Tyler County Gathering System	0	
Acadian Gas Gathering System	0	
Ada Gathering System	80	
Anaconda Pipeline System	400	
Anadarko Gathering System	0	
Antelope Valley Delivery Line	50	
Appleby Gathering System	40	
Arkoma Basin Gathering System	0	
Bastian Bay Pipeline Co	0	
Big Thicket Gathering System	0	
Bighorn Gas Gathering Co	250	
Blue Water Gathering System	1800	
Bonepile Gathering System	9	
Brigepoint Gathering System	650	
Brookland/Masters Creek Gathering System	100	
Canyon Chief Pipeline Co	350	
Canyon Express Pipeline Co	500	
Cardinal Gas Gathering System	145	
Carlsbad Natural Gas Gathering System	0	
Carthage Gas Gathering System	310	
Casper and Douglas Gathering Systems	210	
Chalk and Madison Gas Gathering Systems	0	
Chalkley/Rusk/Whiskey Bay/Vantex/Ranger/Dorado Sys	556	
Cleopatra Gathering System	500	
Conroe Gathering System & Gas Plant	65	
Constitution Gathering System	0	
Copano Pipelines Co	0	
Copano ScissorTail Gathering	0	
Cowtown Gathering System	75	
Crosstex Alabama Gathering System	70	
Crosstex Arkoma Gas Gathering System	30	
Crosstex Mississippi Pipeline System	175	
Dauphin Island Gathering System	1155	
Denton Gathering System	35	
Duke Energy Field Services LP (LA)	250	
Duke Energy Field Services LP (TX)	0	
East Breaks Gathering Co	400	
Elk City Gathering System	410	
Enbridge Pipelines (Fort Worth System)	81	
Enbridge Pipelines (North Texas)	170	
Enbridge Pipelines (Texas Gathering)	345	
Energy Bridge Connection	690	
Falcon Gas Gathering System	400	
Fort Union Gathering Header	634	
Foss Lake Gathering System	65	
FrontRunner Gathering Pipeline	100	
Gap Gathering System	18	

Garden Banks Gas Pipeline LLC	1000
Gas Gathering Enterprises System	15
Green Canyon System	220
Gregory Gathering System & Gas Plant	200
Harrison System	15
Indian Springs Gathering System	140
Jonah Gas Gathering Co	1500
Jupiter Pipeline Co	50
KN Wattenberg LLC	254
Keyes Gas Gathering System	0
Kinta Gas Gathering System	145
Lost Creek Gathering Co	275
Madison Gathering System	18
Magnolia Gathering System	275
Manta Ray Gathering System	755
Matagorda Texas Offshore Pipeline System	150
Minden Gathering System	115
Mississippi Canyon Gathering System	800
Mobile Area Gathering System	75
Mulhall Gathering System	150
Mulhall-Drumright Gathering Header	750
Nemo Pipeline Co	300
Northeast Spotted Horse System	0
OGC Pipeline Co	0
Okeanos Deepwater System	1200
Ozark Gas Gathering Co	0
Pandale Gathering System	40
Panther Interstate Pipeline Co	115
Pelican Gas Gathering System	50
Permian Basin System	0
Phoenix Gathering System	450
Piceance Basin Gas Gathering System	360
Ram Powell Pipeline Co	0
Raptor Intrastate Pipeline System	0
Red Cedar Gathering Co	700
Regency Dubach/Calhoun/Lisbon Gathering System	0
Regency MidContinent Gathering System	0
Regency WAHA Gathering System	125
Rendezvous Gathering Pipeline Co	275
Rimrock Gathering System	350
Saginaw Bay Pipeline North	135
San Juan Gathering System	1100
Seahawk Gathering System	0
SemKan Gathering System	0
Sonora Pipeline System	0
South Kitty Delivery Line	10
Southeast Texas Pipeline System	1245
Spectrum Golden Trend Gas Gathering System	0
Stone Mountain Gathering System	26
Superior Pipeline Co	122
TOP Gathering System	8
TPC Offshore System	0

Gas Transmission Northwest Co	2502
Granite State Gas Transmission Co	146
Great Lakes Gas Transmission Ltd	2796
Guardian Pipeline Co	773
Gulf South Pipeline Co	3863
Gulf States Transmission Corp	100
Gulfstream Natural Gas System	1241
Harve Pipeline Co	0
High Island Offshore System	1800
Horizon Pipeline Co	370
Iroquois Gas Transmission Co	1271
KO Transmission Co	356
Kelso-Beaver Pipeline Co	310
Kern River Gas Transmission Co	1833
Kinder Morgan Border Pipeline LP	300
Kinder Morgan Interstate Gas Co	1137
MIGC Pipeline Co	130
Maritimes & Northeast Pipeline Co	428
Michcon Gas Co	0
Michigan Gas Storage Co	0
Midwestern Gas Transmission Co	660
Mojave Pipeline Co	407
NGO Transmission Co	77
National Fuel Gas Supply Co	2215
Natural Gas PL Co of America	4485
Nautilus Pipeline Co	600
Norteno Pipeline Co	0
North Baja Pipeline Co -- US	512
North Country Pipeline Co	56
Northern Border Pipeline Co	2496
Northern Natural Gas Co	4625
Northwest Pipeline Corp	3509
OkTex Pipeline Co	1123
Ozark Gas Transmission LLC	321
Paiute Pipeline Co	680
Panhandle Eastern PL Co	2765
Penn York Energy Corp	0
Portland Gas Transmission Co	214
Questar Overthrust Pipeline Co	875
Questar Pipeline Co	2631
Regent Border Pipeline	20
SCG Pipeline Inc	0
Sabine Pipeline Co	1348
Sea Robin Pipeline Co	1038
Shoshone Pipeline	14
Sierra Border Pipeline	24
South Georgia Natural Gas Co	145
Southern Natural Gas Co	3340
Southern Star Central Gas PL Co	2450
Southern Trails Pipeline Co	85
Southwest Gas Transmission Co	294
St Lawrence Gas Co	62

Empire Pipeline Co	525
Enbridge Pipelines (Alabama Intra)	0
Enbridge Pipelines (East Texas)	500
Enbridge Pipelines (Louisiana Intrastate)	115
Enbridge Pipelines (Palo Duro)	75
Energy Transfer - Oasis Pipeline	1200
Enogex Inc	0
Enterprise Texas Pipeline LP	4040
Evangeline Gas Pipeline Co	0
Fort Worth Basin Pipeline	400
Fort Worth Basin Pipeline	250
Guadalupe Pipeline Co	0
Gulf Coast Pipeline System	250
Hallmark Laterals System	0
Heartland Pipeline	80
Houston Gas Pipeline System	2400
KM North Texas Pipeline	365
KM Rancho Pipeline	320
KM Tejas Pipeline System	3500
Kentucky-West Virginia Gas Co	100
KeySpan Energy Delivery (NH)	0
KeySpan Energy Delivery Co (NY)	0
KeySpan LNG LP	0
Kinder Morgan Texas Pipeline Co	0
Louisiana System	600
MarkWest Intrastate Pipeline Co	70
MarkWest New Mexico LP	162
Matagorda Island Pipeline Co	0
Mississippi Fuel Co	0
Missouri Gas Co	0
Missouri Interstate Pipeline Co	0
Missouri Public Service Co	0
Monterey Pipeline Co	0
Mustang Fuel Co	0
NORA Gas Transmission Co	50
National Fuel Gas Distribution Co	0
Ninilchik Pipeline Co	120
Norse Pipeline Co	0
North Coast Gas Transmission Co	82
North Penn Gas Co	0
North Side Loop Line	200
North Texas Pipeline	325
NorthWestern Energy Co	73
Northern Illinois Gas Co	0
Northern Utilities Inc (ME)	0
Northwest Natural Gas Co	0
Oklahoma Natural Gas Co	2000
Oklahoma Texas Gas Co	0
Overland Trail Transmission Co	0
PG&E Transmission Co	3200
Peoples Gas Co (TX)	0
Pub Svc Co of North Carolina	0

Public Service Co of New Mexico	0
Red River Pipeline Co	0
Regency Intrastate Pipeline System	615
River Gas Co	0
Rocky Mountain Natural Gas Co	0
Saginaw Bay Pipeline South	135
San Diego Gas & Electric Co	900
Sandhill Pipeline Co	300
South Shore Pipeline Co	10
Southern California Gas Co	4050
Southern Union Intrastate Pipelines	0
Southwest Gas Co	0
Southwestern Energy Pipeline Co	34
Tengasco Pipeline Co	25
Tidelands Pipeline System	0
Tuscaloosa Pipeline Co	0
Union Light Heat & Power	0
Vanderbuilt Pipeline System	60
West Texas Gas Pipeline Co	134
Westex Pipeline Co	0

Stingray Pipeline Co	1031
Tennessee Gas Pipeline Co	6644
Texas Eastern Transmission Corp	6190
Texas Gas Transmission LLC	3018
Trailblazer Pipeline Co	844
Trans-Union Pipeline Co	427
TransColorado Gas Transmission Co	933
Transcontinental Gas PL Co	8203
Transwestern Pipeline Co	3211
Trunkline Gas Co	1636
Tuscarora Gas Transmission Co	190
Vector Pipeline Co	983
Vermont Gas System Inc	49
Viking Gas Transmission Co	530
WTG Hugoton System	0
WestGas Interstate Pipeline Co	13
Western Gas Interstate Pipeline	50
Williston Basin Interstate PL Co	606
Wyoming Interstate Co	2331
	
AGL/Elizabethtown Gas Division	0
Acadian Gas Pipeline System	0
Alaska Pipeline Co	0
Amoco Pipeline Co	0
Arkansas Western Pipeline Co	27
Atmos Energy - Mississippi	0
Atmos Pipeline - Texas	1300
Barnett-Texoma Pipeline	700
Battle Creek Pipeline Co	0
Bossier Pipeline	500
Bridgeline Gas Systems Inc	1500
Buffalo Wallow System	0
CCNG Transmission System	350
Calpine Texas Pipeline	0
Cardinal Pipeline Co	263
Cardinal Pipeline System	100
Channel Industries Gas Pipeline Co	1300
Coos Bay Pipeline Co	70
Cornerstone Pipeline Co	0
Cranberry Pipeline Corp	0
Cypress Gas Pipeline Co	100
Dominion East Ohio Gas Co	0
Dominion Hope Gas co	0
Dominion West Ohio Gas Co	0
Dow Pipeline Co (LA)	0
Dow Pipeline Co (TX)	0
Duke Energy Intrastate Pipeline Co	0
Duke Energy Virginia Pipeline Co	0
ET Fuel System	1300
Eastern North Carolina Gas Pipeline Co	72
El Paso Intrastate-Alabama	200

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BASIN CONTROL

I am providing the following observations as a supplement to my prior written and oral comments concerning various issues related to the Draft Alaska Stranded Gas Fiscal Contract ("Contract"). I have recently had the benefit of reviewing both written comments and/or testimony by The Administration; BP, ExxonMobil, and ConocoPhillips ("Producers"); independent producers (i.e. Shell, British Gas, and Anadarko et al); and other Legislative Consultants on a variety of matters related to the issue of "basin control".

It remains my professional opinion that basin control is a significant concern should the Contract receive Legislative approval and become executed by the existing parties in its present form.

It is my understanding that under The Alaska Stranded Gas Development Act, there may be further negotiations between The State and the Producer participants and that a material revision of the current Contract may be developed and submitted for approval soon. It is also my understanding that an LLC currently being finalized may contain provisions that would substantially affect the issues of concern regarding basin control. The issues that I have highlighted (both here and previously) may be mitigated through those processes. The Governor's Chief of Staff and key members of his team have indicated that they have heard my comments and those offered by other stake holders and will be taking them into account in finalization of the LLC and in further negotiations of the Contract. I am particularly appreciative of his apparent openness and receptivity in that regard.

OBSERVATIONS:

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The Producers, as parties to the Contract", control the majority of the existing proved reserves necessary to support the firm transportation ("FT") commitments associated construction of a natural gas pipeline project from the North Slope to markets in the Lower 48 States and Alaska ("gasline"). To that extent, they have basin control in their position as majority owners and operators of the key fields (Prudhoe Bay, Point Thompson, and Kuparuk most particularly). The primary issue is to insure an environment is created where other independents will have timely and economic access to the gasline to support additional exploration in these and other basins across Alaska. Unlike the oil and products industries, the natural gas industry in North America has not traditionally been vertically integrated where major producers have owned or controlled interstate pipelines. Historically, there were legal prohibitions to this. Today, these Producers are fully entitled to own natural gas pipelines and FT shipping rights associated with those systems. The point is that industry custom and practice, along with both State and Federal regulatory regimens, arose over a long period of time under a different presumption of industry ownership and structure.

Consequently, it is my opinion that extraordinary care should be taken to protect the interests of independent producers through the Contract, LLC, and legislation. Further, the State should err on the side of caution and include to the fullest extent possible though explicit contract language in the LLC and Contract on gasline expansion; remedies and penalties; regulatory oversight; and access to State and Federal courts. I recommend not presuming that existing FERC regulations and policies will protect the State's interest and prevent basin control, either overtly or through subtle device.

It is apparent that the Producers have purposely limited ownership to the current participants and have rebuffed overtures from interested independents. They have indicated that they may now be open to ownership participation from those with interests in other prospective basins. This would be highly desirable in my opinion in helping to insure proper alignment of the interests of the broader industry in Alaska.

A critical element in minimizing the risks of basin control is for the gasline to be expansion friendly both explicitly and implicitly. The contract should be no less restrictive than FERC policy in establishing and administering expansions. The current draft of the Contract is not expansion friendly as previously indicated and as expressed at length by both Anadarko and British Gas ("BG Alaska E & P, Inc.") in written and oral comments.

The Contract could contain specific design parameters that are consistent with the project described in the Application. Short of that, specific design criteria could be specified to insure that both the initial design and expansion methodologies support ease of timely access at the lowest reasonable cost. Reasonable engineering increments and credit demands (and alternative financial mechanisms, ie. aid in construction) are important elements to moving towards an expansion friendly protocol.

Article 10 Capacity Management Program is causing considerable consternation among independents. As mentioned previously, this is a section that the Administration worked extremely hard on to mitigate the effects on the State's share of production given that the receipt point is on the upstream side of the gasline. I continue to urge that the State negotiate, if at all possible, to receive it's take in kind share at the terminus of the gasline system both in-state and out of state.

The Contract should insure regulatory oversight should FERC jurisdiction be limited or constrained now or in the future. The Contract currently seeks to preclude State regulatory oversight by the RCA or otherwise should FERC jurisdiction not apply. The gasline and related facilities constitute a natural monopoly and existing commercial terms would not protect the interests of independents in my opinion.

Proposed tariff provisions should be open to comment and review at the earliest possible juncture. The Administration has indicated that draft provisions are currently part of the LLC.

The draft Contract is available only for leases north of 68 degrees. Gas prone regions such as the "Foothills" would be eliminated.

The Contract does not offer identical terms to the independents as those afforded the Producer participants. Independents must make transportation commitments not required of the Producers before receiving the benefits of the Contract [AS 43.82.437(d)(4)(ii) in Section 1 of the proposed Act]. In addition, independents are only entitled to "substantially similar" terms in Articles 11, 16, 22, 23, 28 and 30 as contrasted with the same terms the Producers are entitled to.

As previously reported, the Contract specifically precludes seeking the protection and remedies of State and Federal Courts except for the enforcement of an award pursuant to arbitration under the Contract. The Contract completely limits liability for loss associated with consequential or incidental damages, including lost profits, or any special or punitive damages. Diligence is a weak standard that is defined in the Contract and is the basis for measuring certain important duties of performance. There has been Producer testimony that the penalties under existing law are a sufficient deterrent to anti-competitive behaviors and outcomes. I respectfully disagree. At this time, for instance, one of the Producers (BP) has a wholly owned affiliate which has been sued recently by the Commodities Futures Trading Commission after a months long investigation. The complaint is reported to accuse BP of unleashing a speculative trading strategy that cornered up to 88% of the U.S. propane market by late 2004. The Company has denied the allegations. Separate, but related, the U.S. Justice department announced very recently that a senior professional at BP had pleaded guilty to felony charges of conspiring to drive up propane prices. According to a press report, this individual said he "understood that the scheme was approved by senior executives at BP, and that steps were taken to avoid detection by market participants and others". Additional indictments are apparently expected.

In conclusion, I re-urge that every attempt to put belts and suspenders on the Contract be made and that reliance on oral statements and commitments by counter-parties

not be relied upon when evaluating the overall merits of of this massive transaction and all of its components.

Respectfully Submitted,

RICK HARPER

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7/31/2006 Session Expanded Table

	Last	Open High	Open Low	High	Low	Most Recent Settle	Change	Open Interest	Volume	L
~~Sep 2006~~	8.185	7.790	7.750	8.250	7.220	7.184	+1.001	120457	4279	0
~~Oct 2006~~	8.470	8.000	7.980	8.500	7.430	7.424	+1.046	80396	2426	0
~~Nov 2006~~	9.880	9.400	9.330	9.800	8.834	8.804	+996	41494	780	0
~~Dec 2006~~	10.800	n/a	n/a	11.100	10.184	10.159	+741	38340	571	0
~~Jan 2007~~	11.050	11.250	11.250	11.700	11.240	10.764	+886	51531	2147	0
~~Feb 2007~~	11.050	n/a	n/a	11.650	10.772	10.774	+876	29526	295	0
~~Mar 2007~~	11.430	n/a	n/a	11.430	10.550	10.534	+896	64009	5259	0
~~April 2007~~	8.800	n/a	n/a	8.800	8.594	8.644	+156	36845	4922	0
~~May 2007~~	8.600	n/a	n/a	8.640	8.520	8.464	+136	23939	477	0
~~June 2007~~	8.780	n/a	n/a	8.750	8.550	8.546	+204	12963	1	0
~~July 2007~~	8.800	n/a	n/a	8.800	8.730	8.649	+151	9785	n/a	0
~~Aug 2007~~	8.860	n/a	n/a	8.860	8.860	8.729	+131	9256	n/a	0
Sep 2007	8.960	n/a	n/a	8.960	8.900	8.829	+131	10039	n/a	0
Oct 2007	9.060	n/a	n/a	9.060	9.040	8.989	+071	27728	n/a	0
Nov 2007	9.830	n/a	n/a	9.900	9.830	9.769	+061	15260	n/a	0
Dec 2007	10.644	n/a	n/a	10.720	10.644	10.574	+070	28046	n/a	0
Jan 2008	11.144	n/a	n/a	11.144	11.090	11.074	+070	30338	61	0
Feb 2008	11.149	n/a	n/a	11.200	11.149	11.079	+070	11795	n/a	0
Mar 2008	10.980	n/a	n/a	10.980	10.880	10.814	+166	26032	n/a	0
April 2008	8.109	n/a	n/a	8.200	8.109	8.089	+020	19404	n/a	0
May 2008	7.864	n/a	n/a	7.900	7.864	7.844	+020	12339	n/a	0
June 2008	7.954	n/a	n/a	8.050	7.954	7.934	+020	4079	n/a	0
July 2008	8.024	n/a	n/a	8.150	8.024	8.024	+0	3140	n/a	0
Aug 2008	8.104	n/a	n/a	8.104	8.104	8.104	+0	3042	n/a	0
Sep 2008	8.219	n/a	n/a	8.219	8.219	8.219	+0	3364	n/a	0
Oct 2008	n/a	n/a	n/a	n/a	n/a	8.394	+0	14626	n/a	0
Nov 2008	n/a	n/a	n/a	n/a	n/a	9.154	+0	4683	n/a	0
Dec 2008	n/a	n/a	n/a	n/a	n/a	9.929	+0	8654	n/a	0
Jan 2009	10.450	n/a	n/a	10.450	10.450	10.399	+051	16171	n/a	0
Feb 2009	n/a	n/a	n/a	n/a	n/a	10.399	+0	1489	n/a	0
Mar 2009	n/a	n/a	n/a	n/a	n/a	10.139	+0	13341	n/a	0

April 2009	n/a	n/a	n/a	n/a	n/a	7.649	+0	13775	n/a	0
May 2009	n/a	n/a	n/a	n/a	n/a	7.404	+0	5830	n/a	0
June 2009	7.550	n/a	n/a	7.550	7.550	7.489	+0.061	2004	n/a	0
July 2009	n/a	n/a	n/a	n/a	n/a	7.579	+0	1622	n/a	0
Aug 2009	n/a	n/a	n/a	n/a	n/a	7.674	+0	2074	n/a	0
Sep 2009	n/a	n/a	n/a	n/a	n/a	7.789	+0	2628	n/a	0
Oct 2009	7.969	n/a	n/a	7.969	7.969	7.969	+0	5625	3	0
Nov 2009	n/a	n/a	n/a	n/a	n/a	8.719	+0	1306	n/a	0
Dec 2009	n/a	n/a	n/a	n/a	n/a	9.479	+0	4075	n/a	0
Jan 2010	n/a	n/a	n/a	n/a	n/a	9.964	+0	4135	n/a	0
Feb 2010	n/a	n/a	n/a	n/a	n/a	9.964	+0	1465	n/a	0
Mar 2010	n/a	n/a	n/a	n/a	n/a	9.739	+0	9341	n/a	0
April 2010	n/a	n/a	n/a	n/a	n/a	7.269	+0	11966	n/a	0
May 2010	n/a	n/a	n/a	n/a	n/a	7.029	+0	2142	n/a	0
June 2010	n/a	n/a	n/a	n/a	n/a	7.129	+0	2291	n/a	0
July 2010	n/a	n/a	n/a	n/a	n/a	7.224	+0	1309	n/a	0
Aug 2010	n/a	n/a	n/a	n/a	n/a	7.319	+0	1992	n/a	0
Sep 2010	n/a	n/a	n/a	n/a	n/a	7.414	+0	1537	n/a	0
Oct 2010	n/a	n/a	n/a	n/a	n/a	7.569	+0	4104	n/a	0
Nov 2010	n/a	n/a	n/a	n/a	n/a	8.324	+0	2266	n/a	0
Dec 2010	n/a	n/a	n/a	n/a	n/a	9.094	+0	8135	n/a	0
Jan 2011	n/a	n/a	n/a	n/a	n/a	9.584	+0	1811	n/a	0
Feb 2011	n/a	n/a	n/a	n/a	n/a	9.584	+0	1391	n/a	0
Mar 2011	n/a	n/a	n/a	n/a	n/a	9.359	+0	6328	n/a	0
April 2011	n/a	n/a	n/a	n/a	n/a	6.919	+0	3292	n/a	0
May 2011	n/a	n/a	n/a	n/a	n/a	6.679	+0	1288	n/a	0
June 2011	n/a	n/a	n/a	n/a	n/a	6.779	+0	747	n/a	0
July 2011	n/a	n/a	n/a	n/a	n/a	6.879	+0	703	n/a	0
Aug 2011	n/a	n/a	n/a	n/a	n/a	6.979	+0	648	n/a	0
Sep 2011	n/a	n/a	n/a	n/a	n/a	7.074	+0	669	n/a	0
Oct 2011	n/a	n/a	n/a	n/a	n/a	7.234	+0	2164	n/a	0
Nov 2011	n/a	n/a	n/a	n/a	n/a	7.979	+0	972	n/a	0
Dec 2011	n/a	n/a	n/a	n/a	n/a	8.744	+0	2436	n/a	0

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Natural Gas Development
COMMITTEE
Amendment # #2
To Bill Number: SB 3002
Sponsor: B Stevens
Date: 7/28/02 logged by: Mindy

AMENDMENT

OFFERED IN THE SENATE SPECIAL

BY B. STEVENS

COMMITTEE ON NATURAL GAS DEVELOPMENT

TO: CSSB 3002(NGD)(24-GS2095\G)

1 Page 8, following line 8:

2 Insert new bill sections to read:

3 ** Sec. 14. AS 43.82.430(b) is amended to read:

4 (b) After considering the material described in (a) of this section and securing the
5 agreement of the other parties to the proposed contract regarding any proposed
6 amendments prepared under (a) of this section, if the commissioner determines that the
7 contract is in the long-term fiscal interests of the state, the commissioner may execute
8 [SHALL SUBMIT] the contract [TO THE GOVERNOR].

9 * Sec. 15. AS 43.82.430(c) is amended to read:

10 (c) The commissioner's final findings and determination under (a) of this section
11 and decision regarding whether to execute the contract under (b) of this section are
12 final agency decisions under this chapter.

13 * Sec. 16. AS 43.82.440 is amended to read:

14 Sec. 43.82.440. Judicial review. An [A PERSON MAY NOT BRING AN]
15 action challenging the constitutionality of a law authorizing a contract developed under
16 this chapter [ENACTED UNDER AS 43.82.435] or the enforceability of a contract
17 executed under a process authorized by [A] law may not be brought [AUTHORIZING
18 A CONTRACT ENACTED UNDER AS 43.82.435] unless the action is commenced
19 within 120 days after the date that the contract was executed by the state and the other
20 parties to the contract."
21

1 Yes [] No []

2 * Sec. 27. If secs. 14 - 16 and 25 of this Act take effect, they take effect on the date that the
3 director of elections certifies the results of the 2006 general election at which a majority of the
4 votes cast on the proposition favor execution by the commissioner of revenue and binding effect
5 on the State of Alaska of the Alaska Stranded Gas Fiscal Contract between the State of Alaska
6 and BP Exploration (Alaska) Incorporated, ConocoPhillips Alaska, Incorporated, and
7 ExxonMobil Alaska Production, Incorporated."

8

9 Renumber the following bill sections accordingly.

10

11 Page 12, line 7:

12 Delete "Sections 2 - 14 and 17 - 20"

13 Insert "Sections 2 - 13, 17, and 20 - 23"

14

15 Page 12, following line 9:

16 Insert a new bill section to read:

17 "** Sec. 30. Sections 24, 25, and 26 of this Act take effect immediately under
18 AS 01.10.070(c)."

19

20 Page 12, line 10:

21 Delete "This"

22 Insert "Except as provided in sec. 30 of this Act, this"

Natural Gas Development
COMMITTEE #1
Amendment #
To Bill Number: SB 3002
24-GS2095\GSponsor: B. Stevens
7/28/06 Date: 7/29/06 logged by: Mindy

AMENDMENT

OFFERED IN THE SENATE

BY SENATOR BEN STEVENS

TO: CSSB 3002(NGD) -Version G

- 1 Page 6, line 6:
- 2 Delete "35"
- 3 Insert "25"
- 4
- 7 Page 6, line 10:
- 8 Delete "45"
- 9 Insert "35"
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CS FOR SENATE BILL NO. 3002(NGD)**IN THE LEGISLATURE OF THE STATE OF ALASKA****TWENTY-FOURTH LEGISLATURE - THIRD SPECIAL SESSION****BY THE SENATE SPECIAL COMMITTEE ON NATURAL GAS DEVELOPMENT****Offered:
Referred:****Sponsor(s): SENATE RULES COMMITTEE BY REQUEST OF THE GOVERNOR****A BILL****FOR AN ACT ENTITLED**

1 "An Act relating to the Alaska Stranded Gas Development Act, including clarifications
2 or provision of additional authority for the development of stranded gas fiscal contract
3 terms; making a conforming amendment to the Revised Uniform Arbitration Act;
4 relating to municipal impact money received under the terms of a stranded gas fiscal
5 contract; relating to determination of full and true value of property and required
6 contributions for education in municipalities affected by stranded gas fiscal contracts;
7 and providing for an effective date."

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

9 * **Section 1.** AS 09.43.300(a) is amended to read:

10 (a) AS 09.43.300 - 09.43.595 govern an agreement to arbitrate made on or
11 after January 1, 2005, except as otherwise provided in a contract term developed
12 under AS 43.82.200(a)(5) and (b).

13 * **Sec. 2.** AS 43.82.010 is amended to read:

1 **Sec. 43.82.010. Purpose.** The purpose of this chapter is to

2 (1) encourage new investment to develop the state's stranded gas
3 resources by authorizing establishment of fiscal terms related to oil and gas
4 agreements and taxes for a qualified sponsor, the members of a qualified sponsor
5 group, or a related party and related to their oil and gas business activity in the
6 state, including gas pipeline expansion pricing that encourages further gas
7 exploration [THAT NEW INVESTMENT WITHOUT SIGNIFICANTLY
8 ALTERING TAX AND ROYALTY METHODOLOGIES AND RATES ON
9 EXISTING OIL AND GAS INFRASTRUCTURE AND PRODUCTION];

10 (2) allow the fiscal terms applicable to a qualified sponsor or the
11 members of a qualified sponsor group, or a related party, with respect to a qualified
12 project, to be tailored to the particular economic conditions of the project and to
13 establish those fiscal terms in advance with as much certainty as the Constitution of
14 the State of Alaska allows; and

15 (3) maximize the benefit to the people of the state of the development
16 of the state's stranded gas resources.

17 * **Sec. 3.** AS 43.82.020 is amended to read:

18 **Sec. 43.82.020. Negotiation of contract terms** [CONTRACTS FOR
19 **PAYMENTS IN LIEU OF OTHER TAXES AND FOR ROYALTY**
20 **ADJUSTMENTS**]. The commissioner may, under this chapter, negotiate terms for
21 inclusion in a proposed contract with a qualified sponsor or qualified sponsor group
22 providing for

23 (1) periodic payment in lieu of one or more taxes that otherwise would
24 be imposed by the state or a municipality on the qualified sponsor, [OR] members of
25 the qualified sponsor group, or a related party; [AS A CONSEQUENCE OF THE
26 SPONSOR'S OR GROUP'S PARTICIPATION IN AN APPROVED QUALIFIED
27 PROJECT UNDER THIS CHAPTER; AND]

28 (2) certain adjustments regarding oil and gas lease agreements, unit
29 agreements, and other agreements [ROYALTY] under AS 43.82.220; in this
30 paragraph, "oil and gas lease agreements" includes royalty provisions of those
31 agreements; and

1 **(3) payment of the gas production tax under AS 43.55, or payment**
2 **in lieu of the gas production tax, by delivery of gas.**

3 * Sec. 4. AS 43.82.200 is amended to read:

4 **Sec. 43.82.200. Contract development.** If the commissioner approves an
5 application and proposed project plan under AS 43.82.140, the commissioner may
6 develop a contract that may include

7 (1) terms concerning periodic payment in lieu of one or more taxes on
8 oil or gas or both as provided in AS 43.82.210, and terms related to credits for
9 investment in a project that is the subject of a contract developed under this
10 chapter;

11 (2) terms developed under AS 43.82.220 concerning oil and gas
12 leases, unit agreements, and other agreements under AS 38, including terms
13 relating to

14 (A) timing and notice of the state's right to take royalty in kind
15 or in value; and

16 (B) royalty value;

17 (3) terms regarding the hiring of Alaska residents and contracting with
18 Alaska businesses under AS 43.82.230;

19 (4) terms regarding periodic payment to, or an equity or other interest
20 in a project for, municipalities under AS 43.82.500;

21 (5) terms regarding arbitration or alternative dispute resolution
22 procedures;

23 (6) terms and conditions for [ADMINISTRATIVE] termination of a
24 contract [UNDER AS 43.82.445]; and

25 (7) other terms or conditions that the commissioner determines are

26 (A) reasonable and promote [NECESSARY TO FURTHER]
27 the purposes of this chapter, including the implementation of AS 43.82.020 -
28 43.82.270; or

29 (B) in the long-term fiscal [BEST] interests of the state.

30 * Sec. 5. AS 43.82.200 is amended by adding a new subsection to read:

31 (b) Terms relating to arbitration and alternate dispute resolution may provide

1 for a waiver, with the concurrence of the attorney general, of the state's immunity from
2 suit. The waiver may include waiver of the state's sovereign or other immunity and
3 consent to entrance and enforcement of an arbitration award in any state court in the
4 United States that has jurisdiction over the State of Alaska. The authority granted in
5 this subsection is effective only after the arbitration award is entered and enforcement
6 is sought in the superior court of the state.

7 * Sec. 6. AS 43.82.210(a) is amended to read:

8 (a) If the commissioner approves an application and proposed project plan
9 under AS 43.82.140, the commissioner may develop proposed terms for inclusion in a
10 contract under AS 43.82.020 for periodic payment in lieu of one or more of the
11 following taxes that otherwise would be imposed by the state or a municipality on the
12 qualified sponsor, a [OR] member of a qualified sponsor group, or a related party
13 [AS A CONSEQUENCE OF PARTICIPATING IN AN APPROVED QUALIFIED
14 PROJECT]:

15 (1) oil and gas production taxes and oil surcharges under AS 43.55;

16 (2) oil and gas exploration, production, and pipeline transportation
17 property taxes under AS 43.56;

18 (3) [REPEALED

19 (4)] Alaska net income tax under AS 43.20;

20 (4) [(5)] municipal sales and use tax under AS 29.45.650 - 29.45.710;

21 (5) [(6)] municipal property tax under AS 29.45.010 - 29.45.250 or
22 29.45.550 - 29.45.600;

23 (6) [(7)] municipal special assessments under AS 29.46;

24 (7) [(8)] a comparable tax or levy imposed by the state or a
25 municipality after June 18, 1998;

26 (8) [(9)] other state or municipal taxes or categories of taxes identified
27 by the commissioner.

28 * Sec. 7. AS 43.82.220(a) is amended to read:

29 (a) Notwithstanding any contrary provisions of AS 38 or regulations adopted
30 under that title, the commissioner of natural resources, with the concurrence of the
31 commissioner of revenue and, if necessary, the affected parties holding a state lease or

unit agreement, may develop proposed terms for inclusion in a contract under AS 43.82.020 that modify [THE TIMING AND NOTICE] provisions of the applicable oil and gas leases, [AND] unit agreements, and other agreements under AS 38, including provisions

(1) pertaining to the state's rights to receive its royalty on gas in kind or in value if

(A) [(1)] the viability of the approved qualified project depends on long-term gas shipping commitments [PURCHASE AND SALE AGREEMENTS];

(B) [(2)] certainty over time regarding the quantity of royalty gas that the state may be taking in kind is needed to enter into long-term gas shipping commitments or marketing agreements [SECURE THE LONG-TERM PURCHASE AND SALE AGREEMENTS];

(3) THE SPECIFIED PERIOD OF THE STATE'S COMMITMENT TO TAKE ITS ROYALTY SHARE IN VALUE OR IN KIND DOES NOT EXCEED THE TERM OF THE PURCHASE AND SALE AGREEMENTS]; and

(C) [(4)] the modification does not impair the ability of the approved qualified project or the state to meet the reasonably foreseeable demand in this state for gas within economic proximity of the project during the term of the contract developed under AS 43.82.020; and

(2) relating to lease or unit expenses for separation, cleaning, dehydration, gathering, salt water disposal, and preparation for transportation on or off the lease.

* Sec. 8. AS 43.82.220(c) is amended to read:

(c) The commissioner of revenue shall include any proposed terms [RELATING TO ROYALTY] developed in accordance with this section in the proposed contract under AS 43.82.400.

* Sec. 9. AS 43.82.220 is amended by adding a new subsection to read:

(e) An agreement by the state to take royalty gas in kind as part of a contract developed under this chapter that satisfies (a)(1)(A) - (C) of this section is not subject to the provisions of AS 38, or regulations adopted under that title, relating to decisions

1 to take royalty in kind.

2 * Sec. 10. AS 43.82.250 is amended to read:

3 Sec. 43.82.250. Term of contract; effective date. The term of a contract
4 developed under AS 43.82.020 [MAY BE FOR NO LONGER THAN IS
5 NECESSARY TO DEVELOP THE STRANDED GAS THAT IS SUBJECT TO THE
6 CONTRACT; HOWEVER, THE TERM OF THE CONTRACT] may not exceed 35
7 years from the commencement of commercial operations of the approved qualified
8 project, excluding suspensions of contract obligations that are covered by the
9 force majeure terms of any contract developed under this chapter. However, the
10 term of contract may not exceed 45 years from the effective date of a contract
11 approved under AS 43.82.435.

12 * Sec. 11. AS 43.82 is amended by adding a new section to read:

13 Sec. 43.82.255. Terms of contract provisions related to oil. (a) The
14 provisions of this section apply to a contract developed under AS 43.82.020 that
15 provides for periodic payment in lieu of taxes on oil under AS 43.55.

16 (b) For the period of the contract term beginning immediately after the date of
17 full project funding or the date of issuance of a certificate of public convenience and
18 necessity for construction and initial operation of the Alaska Natural Gas Pipeline,
19 whichever date is later, and ending 14 years after that date, the commissioner may
20 modify those terms of the contract relating to payments in lieu of the taxes on oil set
21 out in AS 43.55. For the period of the contract term covered by this subsection, the
22 payments in lieu of taxes may be established with as much certainty as the
23 Constitution of the State of Alaska allows.

24 (c) For the period of the contract term beginning immediately after the period
25 described in (b) of this section, and ending on a date not later than 25 years after the
26 effective date of the contract, the amount of the payment in lieu of tax on oil under
27 AS 43.55 must be equal to the amount of the tax levied by law. However, the
28 commissioner may develop a contract term that, in the event of a material change in
29 the taxes enacted after the effective date of the contract, establishes a procedure for
30 restoring the parties to substantially the same economic position they had as of the end
31 of the period described in (b) of this section immediately before the change.

(d) Implementation of a contract provision authorized in (c) of this section may be made subject to the dispute resolution procedures of the contract.

* Sec. 12. AS 43.82.270 is amended to read:

Sec. 43.82.270. Project plans and work commitments. A contract under AS 43.82.020 must include provisions for implementation of the qualified project plan approved under AS 43.82.140, as may be modified as a result of the development of a contract under this chapter, and provisions for updating the plan at reasonable intervals until the commencement of commercial operations of the approved qualified project. The commissioner of revenue, in consultation with the commissioner of natural resources, may, as a term in a contract under AS 43.82.020, include work commitments or other obligations in the contract to be accomplished before the commencement of commercial operations of the approved qualified project.

* Sec. 13. AS 43.82.410 is amended to read:

Sec. 43.82.410. Notice and comment regarding the contract. The commissioner shall

(1) give reasonable public notice of the preliminary findings and determination made under AS 43.82.400;

(2) make copies of the proposed contract, the commissioner's preliminary findings and determination, and, to the extent the information is not required to be kept confidential under AS 43.82.310, the supporting financial, technical, and market data, including the work papers, analyses, and recommendations of any independent contractors used under AS 43.82.240 available to the public and to

(A) the presiding officer of each house of the legislature;

(B) the chairs of the finance and resources committees of the legislature; and

(C) the chairs of the special committees on oil and gas, if any, of the legislature;

(3) offer to appear before the Legislative Budget and Audit Committee to provide the committee a review of the commissioner's preliminary findings and determination, the proposed contract, and the supporting financial, technical, and market data; if the Legislative Budget and Audit Committee accepts the

1 commissioner's offer, the committee shall give notice of the committee's meeting to
2 the public and all members of the legislature; if the financial, technical, and market
3 data that is to be provided must be kept confidential under AS 43.82.310, the
4 commissioner may not release the confidential information during a public portion of
5 a committee meeting; and

6 (4) establish a period of at least 60 [30] days for the public and
7 members of the legislature to comment on the proposed contract and the preliminary
8 findings and determination made under AS 43.82.400.

9 * Sec. 14. AS 43.82.500 is amended to read:

10 **Sec. 43.82.500. Obligation to share payments with municipalities.** If the
11 commissioner develops a contract under AS 43.82.020 that includes terms that exempt
12 a qualified sponsor, the members of a qualified sponsor group, or a related party
13 to the contract, and the property, gas, products, and activities associated with the
14 approved qualified project that is subject to the contract, from a municipal tax or
15 assessment in accordance with AS 29.45.810 or AS 29.46.010(b), or AS 43.82.200
16 and 43.82.210, the commissioner shall include a term in the contract that provides for
17 [THE PARTY PAY] a portion of the periodic payments to be made payable [DUE
18 UNDER THE CONTRACT] to the revenue-affected municipality.

19 * Sec. 15. AS 43.82.505 is amended to read:

20 **Sec. 43.82.505. Payments to economically affected municipalities.** If the
21 commissioner executes a contract under AS 43.82.020 that will produce one or more
22 economically affected municipalities, the commissioner shall include a term in the
23 contract that provides for [A PORTION OF THE] periodic impact payments to the
24 state that may be appropriated to the Alaska natural gas pipeline construction
25 impact fund established in (c) of this section to benefit the economically affected
26 municipalities under the principles in AS 43.82.520.

27 * Sec. 16. AS 43.82.505 is amended by adding new subsections to read:

28 (b) A special account is established in the general fund into which the
29 Department of Revenue shall deposit impact payments received by the state under (a)
30 of this section.

31 (c) The Alaska natural gas pipeline construction impact fund is established in

1 the Department of Commerce, Community, and Economic Development. The
2 legislature may appropriate money deposited in the special account established in (b)
3 of this section, as well as any additional money considered necessary, to the Alaska
4 natural gas pipeline construction impact fund to address the economic and social
5 impacts incurred by an economically affected municipality, or incurred by a nonprofit
6 organization serving the unorganized borough, during the construction of a project that
7 is the subject of a proposed contract developed under this chapter.

8 (d) The Department of Commerce, Community, and Economic Development
9 shall adopt regulations under which economically affected municipalities and
10 nonprofit organizations may apply for and be eligible to receive grants to alleviate
11 impact caused by construction of a gas pipeline. The department shall give priority in
12 the allocation of grants to municipalities and organizations that are experiencing or
13 will experience the most direct or severe impact from gas pipeline construction. The
14 department shall finance, under (e) of this section, all meritorious grant applications
15 each year, to the extent money is available in the Alaska natural gas pipeline
16 construction impact fund. Within 10 days after the convening of each regular session
17 of the legislature, the department shall submit to the legislature a list of all
18 municipalities and organizations that have received grants, a list of all municipalities
19 and organizations determined by the department to be eligible for further grants, a
20 recommendation of the amount of money to be granted for those additional
21 applications, and written justification of each past and potential grant.

22 (e) The commissioner of commerce, community, and economic development,
23 in consultation with the relevant municipal advisory group established under
24 AS 43.82.510, shall use money appropriated to the Alaska natural gas pipeline
25 construction impact fund to make grants to municipalities, and to nonprofit
26 organizations serving the unorganized borough, for impacts on transportation,
27 infrastructure, law enforcement, emergency services, health and human services,
28 education, the labor force, population, wages, and subsistence and for socio-cultural
29 impacts, brought about by the construction of the gas pipeline. In determining whether
30 an expenditure or proposed expenditure by a municipality or nonprofit organization is
31 eligible for a grant under this subsection and in allocating available money among

1 grant proposals, the commissioner shall consider the recommendations of the relevant
2 municipal advisory group established under AS 43.82.510 and whether the proposed
3 expenditure meets the purposes of this section.

4 (f) Before making awards of grants under this section for a fiscal year, the
5 commissioner of commerce, community, and economic development shall provide
6 reasonable public notice of all grant applications received, the recommendations of the
7 relevant municipal advisory group, preliminary determinations made concerning the
8 eligibility of each municipality or organization for a grant, the eligibility of each
9 expenditure or proposed expenditure for a grant, and the proposed allocation of
10 available money among grant proposals. The public notice must specify a time and
11 place for a public hearing during which the commissioner will receive comments
12 concerning the preliminary determinations and allocations of the department. The
13 commissioner shall give reasonable public notice of the final awards of grants made
14 under this section. Thirty days after such public notice is given, final awards take
15 effect and may be paid to the grantees according to procedures established by
16 regulation.

17 (g) Grant money received under this section may not be used for the
18 retirement of municipal debt.

19 (h) Amounts appropriated to the Alaska natural gas pipeline construction
20 impact fund under (c) of this section for a fiscal year that are not used for grants to
21 municipalities and organizations under (d) and (e) of this section shall be retained in
22 the Alaska natural gas pipeline construction impact fund and remain available for
23 distribution as grants under this section in succeeding fiscal years.

24 (i) Nothing in this chapter exempts money deposited into the special account
25 in the general fund established in (b) of this section from the requirements of AS 37.07
26 (Executive Budget Act) or dedicates that money, or money appropriated to the Alaska
27 natural gas pipeline construction impact fund, for a specific purpose.

28 (j) In this section, "direct or severe impact" means a clearly demonstrable
29 effect on a community that proximately contributes to a material change to
30 transportation, infrastructure, law enforcement, emergency services, health and human
31 services, education, the labor force, population, wages, subsistence, or for socio-

1 cultural impacts brought about by the construction of a gas pipeline.

2 * Sec. 17. AS 43.82.510(c) is amended to read:

3 (c) Each municipal advisory group serves until the later of 90 days after
4 final distribution of impact payment money under AS 43.82.505, or
5 commencement of operations of the qualified project. Expenses of a municipal
6 advisory group are eligible for reimbursement under a grant made under
7 AS 43.82.505 [A FINAL ACTION IS TAKEN ON THE APPLICATION FOR
8 WHICH THE GROUP WAS APPOINTED].

9 * Sec. 18. AS 43.82 is amended by adding a new section to article 7 to read:

10 **Sec. 43.82.650. Calculations of education funding.** To determine the amount
11 of required local contribution under AS 14.17.410(b)(2) and (c) for a school district in
12 a revenue-affected municipality, and to perform its duties under AS 14.17.510, the
13 Department of Commerce, Community, and Economic Development shall adopt
14 regulations. The regulations must establish assessment standards for any property that
15 would have been assessed under AS 43.56 but is instead generating a payment to a
16 revenue-affected municipality in lieu of a municipal property tax as provided in a
17 contract developed under this chapter. The regulations must ensure that the property is
18 included in the full and true value of the city or borough school district for the purpose
19 of determining required local contributions for education funding under
20 AS 14.17.410(b)(2) and (c).

21 * Sec. 19. AS 43.82.900 is amended by adding a new paragraph to read:

22 (14) "related party" means an entity, including a limited liability
23 company or similar incorporated or unincorporated entity, that

24 (A) is affiliated with a qualified sponsor or qualified sponsor
25 group;

26 (B) owns or operates a qualified project or any segment of a
27 qualified project; and

28 (C) is an intended beneficiary of the fiscal terms included in a
29 contract developed under this chapter.

30 * Sec. 20. AS 43.82.445 is repealed.

31 * Sec. 21. The uncodified law of the State of Alaska is amended by adding a new section to

1 read:

2 REVISOR'S INSTRUCTION. The revisor of statutes is instructed to change the
3 section heading of AS 43.82.220 from "Contract terms relating to royalty" to "Contract terms
4 relating to oil and gas lease, royalty provisions, and other agreements."

5 * Sec. 22. The uncodified law of the State of Alaska is amended by adding a new section to
6 read:

7 RETROACTIVITY. (a) Sections 2 - 14 and 17 - 20 of this Act are retroactive to
8 January 1, 2004.

9 (b) Section 1 of this Act is retroactive to January 1, 2005.

10 * Sec. 23. This Act takes effect immediately under AS 01.10.070(c).

DIRECT (832) 636-8808 • MAIN (832) 636-1000 • FAX (832) 636-8234 • E-MAIL bob_daniels@anadarko.com
ANADARKO PETROLEUM CORPORATION

1201 LAKE ROBBINS DRIVE • THE WOODLANDS, TX 77380
P.O. BOX 1330 • HOUSTON, TEXAS 77251-1330



ROBERT P. DANIELS
SENIOR VICE PRESIDENT
EXPLORATION AND PRODUCTION

July 24, 2006

The Honorable Frank Murkowski
Governor, State of Alaska
State Capitol
Juneau, AK 99801

Dear Governor Murkowski:

We would like to begin our comments on the draft gas line contract by thanking you for your longstanding and strong personal support for oil and gas explorers in Alaska, both as a U.S. Senator and as Governor. Your leadership as Senator resulted in FERC's expanded authority to help ensure fair access on reasonable terms to any gas line built out of Alaska. As Governor you have helped encourage new investment through exploration incentives, reduced and expedited permitting, extended tundra travel seasons and other improvements.

One of Anadarko's top Alaska priorities is to have a gas line built as soon as possible, which will stimulate new gas exploration and improve oil exploration economics. As you are keenly aware, another priority regarding the gas line continues to be fair access to the line with reasonable and equitable terms and conditions.

We appreciate your efforts to move a project forward, and we appreciate this opportunity to provide you with input and suggested changes that we believe will improve the contract and encourage a new wave of gas exploration in Alaska. Thank you again for all of your support for explorers, and we look forward to continuing our productive relationship with you and your administration.

Please do not hesitate to contact us if you or members of your administration have questions about our comments or would like additional information.

Sincerely,

A handwritten signature in dark ink, appearing to read "Robert P. Daniels".

Robert P. Daniels

Cc: Commissioner Bill Corbus, Department of Revenue
Commissioner Mike Menge, Department of Natural Resources

**COMMENTS OF
ANADARKO PETROLEUM CORPORATION
ON
DRAFT ALASKA STRANDED GAS FISCAL
CONTRACT**

Dated: July 24, 2006

**ANADARKO PETROLEUM
CORPORATION**

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**COMMENTS OF
ANADARKO PETROLEUM CORPORATION
ON
DRAFT ALASKA STRANDED GAS FISCAL CONTRACT**

On May 10, 2006, the Draft Stranded Gas Fiscal Contract ("Contract") between the State of Alaska and BP Exploration (Alaska) Inc., ConocoPhillips Alaska, Inc. and ExxonMobil Alaska Production Inc. (the "Project Sponsors") was released for public comment. In accordance with the established schedule, Anadarko Petroleum Corporation ("Anadarko") hereby submits these comments.

INTRODUCTION

Anadarko believes that constructing the Alaska natural gas pipeline as soon as possible is critical to the State of Alaska and to explorers looking to develop Alaska's undiscovered natural gas resources. A pipeline will facilitate the production of existing reserves and the exploration of gas prone acreage, resulting in new capital investment and jobs, natural gas for Alaskan communities, and significant revenue for the State.

But it is not the mere existence of a pipeline that will encourage exploration. The pipeline must be properly designed and operated to ensure access for explorers and ease of expansion – two of Governor Murkowski's "guiding principles" for the development of the Alaska pipeline. And, if access for future explorers and expansions to accommodate future natural gas discoveries are to be meaningful, they must be timely, sufficient in quantity, and reasonable in price. Capacity which is not available when needed, or which is only available in insufficient quantities or at excessive prices, does little to encourage companies like Anadarko to invest hundreds of millions of dollars in Alaska natural gas development programs.

SPECIFIC CONCERNS

A. The Contract Could Inhibit Access By Allowing A Premature Open Season

The owners of any proposed pipeline project determine when to hold an open season for purposes of allocating capacity in the project, and in this respect, the Alaska pipeline will be no different.¹ Deciding when to hold that open season is one of the most important decisions the owners can make.

Generally speaking, if the pipeline holds its open season before explorers in a production region have identified their reserves, the pipeline will either be undersubscribed or undersized. An undersubscribed pipeline will not be built. An undersized pipeline will face significant competition from future pipeline developers for newly-discovered reserves unless the pipeline has been designed for easy expansion. Therefore, in the lower 48, the risk of future competition from other pipeline developers usually ensures that a pipeline will not be undersized, that it will be designed with expansion in mind, and that it will be expanded any time there are sufficient developed reserves to justify the expansion.

Here, with the Alaska pipeline being developed by the producers who own the discovered reserves and are competitors of explorers who looking for undiscovered reserves, the point in time when the open season is held takes on added significance. With the Alaska pipeline, 35 Tcf of reserves have already been discovered and are owned by the pipeline's project developers. Therefore, the pipeline can be built to accommodate *only* the project developers' reserves, at deliverability levels that are determined by the

¹ 18 C.F.R. § 157.38 (2006).

pipeline developers. Therefore, even if there are expectations that reserves available to the pipeline by the in-service date would justify a 4 or 5 Bcf/d pipeline, the project sponsors might decide to build a 3 Bcf/d pipeline. The pipeline would not be undersubscribed, but it would be undersized.

Unlike a lower 48 pipeline project developer that faces potential competition from other pipelines, the Alaska pipeline project developers do not face that risk. Undersizing the Alaska pipeline to exclude competition from explorers does not create competitive risk for the pipeline. The availability of the open season process required by the Alaska Natural Gas Pipeline Act and the regulations promulgated by the Federal Energy Regulatory Commission does not ensure access to the pipeline if the open season is held too early, before it is necessary for project development. A premature open season will ensure that only the project developers can bid for capacity on the pipeline. For this reason, the Contract should allow the State – whose interests on this issue are aligned with explorers – to have the power to veto the holding of a premature binding open season.

As written, the Contract seems to accept that the pipeline's initial capacity will be committed exclusively to its owners. The Preliminary Fiscal Interest Findings ("FIF") speaks in terms of the initial capacity of the pipeline being allocated proportionately to the pipeline's owners – 20% to a state-owned entity and 80% to entities created by the Producers. (FIF-ES-14). This, of course, is the likely outcome of a premature open season, but is not the likely outcome of an open season held at a time that will both facilitate timely project development and access by explorers. The primary concern of explorers like Anadarko is that the decision as to *when* to hold the open season will be

driven by the interests of the Project Sponsors as producers, rather than the interests of the Project Sponsors as pipeline project developers. Because the outcome of the initial open season will serve as a basis for the project's design capacity, it should be held no sooner than necessary to advance the project. Project Summaries that are currently available indicate that the initial open season will be held within 2 years of the Effective Date of the Contract. If the Contract is executed this fall, an open season could be held before year-end 2008, which seems to be premature.

**A.1. AOGCC Authorizations For Prudhoe Bay/Point Thomson Gas Offtake
Should Be Required Before An Open Season Can Be Held**

In December of 2004, the Alaska Oil and Gas Conservation Commission ("AOGCC") advised FERC that AOGCC approval of reservoir offtake (depletion plans), in excess of current limits, will be required before hydrocarbons may be taken from Prudhoe Bay and Point Thomson. The purpose of the AOGCC review is to avoid premature gas withdrawal resulting in waste of liquid hydrocarbons. The AOGCC informed FERC that preliminary reservoir study results it received in 2002 from the Prudhoe Bay Producers indicated that significant liquid hydrocarbons (up to several hundred million barrels) could be lost if the pipeline project is initiated prematurely. AOGCC further informed FERC that it did not have sufficient information to make informed conservation decisions with respect to major gas sales that may occur in the future and, for it to perform an analysis of that magnitude would require up to three years following the filing of applications by the Producers.²

² Letter from John K. Norman, Chairman, Alaska Oil and Gas Conservation Commission, and Dan Seamount, Commissioner, Alaska Oil and Gas Conservation Commission, to Commissioners, Federal Energy Regulatory Commission, Dec. 16, 2004.

The FIF recognizes the need for AOGCC off-take authorizations for both Prudhoe Bay and Point Thomson and the Contract requires the Point Thomson producers to apply to the AOGCC for the issuance of pool rules to authorize the rate of gas extraction within six months of the effective date of the Contract. (FIF-ES-12). At the present time, the, Prudhoe Bay gas offtake is limited to 2.7 Bcf/d and offtake authorizations for Point Thomson have yet to be issued. If new offtake authorizations are to be sought for Prudhoe Bay, AOGCC will have to review the new proposed plan and issue new authorizations. (FIF-15).

To the best of Anadarko's knowledge, applications have yet to be filed with the AOGCC by the Prudhoe Bay or Point Thomson unit holders. Accordingly, there can be no meaningful open season and commitment of volumes to the pipeline until the AOGCC rules on the allowable gas off-take from those units, unless, of course, the pipeline is to be sized to accommodate only the currently authorized 2.7 Bcf/d from Prudhoe Bay and the Contract-required 0.5 Bcf/d from Point Thomson for a total initial capacity of 3.2 Bcf/d.

A. 2. Front End Engineering Design (FEED) Must Be Completed Before An Open Season Can Be Held

Under regulations promulgated by FERC,³ the Notice of the Open Season must include, among other things, the following information:

- The general route, including receipt and delivery points
- Alternate routes under consideration
- Size and design capacity
- Capacity at delivery points
- Designs for expansions

³ *Regulations Governing the Conduct of Open Seasons for Alaska Natural Gas Transportation Projects*, Order No. 2005, 110 FERC ¶ 61,095; Order No. 2005-A, 111 FERC ¶ 1,332 (2005).

- Estimated dates for consideration of expansion
- Maximum allowable operating pressure
- Expected actual operating pressure
- Pressure at all delivery points
- Projected in-service date
- Estimated unbundled transportation rate for each delivery point for each service offered including reservation rates, usage rates, fuel retention percentages, and any other charges
- Estimated cost of service including cost of facilities, depreciation, rate of return and capitalization, taxes, operating and maintenance expenses, cost allocation, rate design volumes, and rate design
- Estimated transportation rate for in-state deliveries, based upon the completed study of in-state needs
- Negotiated rate and other rate options
- Quality specifications

Based upon the May 10, 2006 Project Summary, Front End Engineering Design (FEED) is the "Preliminary Engineering" that must be undertaken in order to develop project definition and analyze project economics. The FIF acknowledges that this "Preliminary Engineering" is a necessary prerequisite to the holding of a meaningful open season that will lead to the execution of binding precedent agreements: "As FEED is completed, the next major step may be the holding of the open season for the project." (FIF-230). Indeed, it is difficult to see how the pipeline could provide prospective shippers with the kind of information required by the Notice and expect prospective shippers to submit binding, non-contingent bids until it has at least completed the Preliminary Engineering for the project.

The most recent Project Summary shows that this Preliminary Engineering, an essential pre-requisite to the holding of a binding open season, is not expected to be

completed until some time between 2009 and 2011. If that is the case, holding a binding open season in 2008 would be premature.

A. 3. A Premature Open Season Will Restrict Access To The Pipeline

For the Alaska pipeline, Congress directed, and the FERC requires, that any open season be conducted in a manner that encourages competition in the exploration, development, and production of Alaska natural gas. The ability to obtain pipeline capacity is essential to the achievement of this objective. Holding the open season at a time when no one other than the pipeline's owners can bid precludes competition for project capacity and inhibits competition in the exploration, development, and production of Alaska natural gas.

Anadarko is currently planning to drill its first natural gas exploration wells in the Foothills Region of Alaska's North Slope this winter. Therefore, the earliest Anadarko is likely to be positioned to bid on capacity for gas from the Foothills is in 2009 or 2010. Yet, despite the fact that "the state and the producers will not be in a position to make a decision to proceed with construction of the project until four or five years after the effective date of the contract" (FIF-115), the Project Sponsors have indicated that the open season will be held in 2008, at a time when it is not likely that Anadarko, or any other explorer, will be positioned to bid on the pipeline's initial capacity.

An independent pipeline company is neutral as to which entities secure capacity on the line and is normally eager to expand to accommodate additional demand for capacity. Anadarko is concerned that the Project Sponsors' economic interest as *producers* will outweigh the economic interest they may have as *pipeline owners*. It is, therefore, critically important that the State, as the pipeline owner whose interests are

most likely aligned with explorers, have the ability to ensure that a binding open season is not held before it is necessary for project advancement.

Suggested Changes

- Provide the State with the authority to veto the premature holding of a binding open season for the initial capacity.
- Require that the Project Sponsors provide the State with information to make determinations regarding when to hold the open season.
- Prohibit a binding open season for the initial capacity of the pipeline from being held prior to the later of (1) the AOGCC setting offtake rates from Prudhoe Bay and Point Thomson; or (2) the date on which the pipeline has completed its Preliminary Engineering/FEED.

B. The Contract Should Reflect The Design of The Project Described In The Application And The Preliminary Findings And Determination

A pipeline designed with adequate initial capacity and expansion capability is crucial in encouraging the gas exploration in Alaska by new market entrants.⁴ The Application filed by the Project Sponsors in their efforts to obtain the Contract represented that the design reflected an *expandable pipeline that accommodates the State's objectives of promoting exploration in Alaska*. That pipeline was described in relatively clear detail, being the result of a 2-year, \$125 million study, and encompasses:

1. A design capacity of approximately 4 Bcf/d (Application at 4,6, 7, 8,16);
2. 52-inch pipe operating at approximately 2500 psi (Application at 7);
3. Compressor stations located at regular intervals (Application at 7);
4. Ability to accommodate new discoveries during the initial open season (Application at 15, A-1-3);
5. Ability to accommodate new discoveries through expansions (Application at 15, A-3);
6. Ability to increase capacity by 1 Bcf/d through infill compression (Application at A-3); and

⁴ "Exploration and development opportunities for new market entrants are critical for the State's future." (FIF-248).

7. Ability to increase capacity by looping all or portions of the line
(Application at A-3).

Yet, the Contract contains none of this detail. The State seems to assume that this is the pipeline that will be built. However, the Project Sponsors' willingness to adhere to this pipeline design, or to any design or expansion which may be necessary to accommodate the needs of explorers, has become increasingly unclear.

Most recently, the Project Sponsors have advised the Senate in hearings being conducted on the Contract that there is no commitment to construct a pipeline, much less a pipeline of any particular design. In addition, the Project Sponsors have sought judicial review in the United States Court of Appeals for the District of Columbia Circuit of FERC's Order Nos. 2005 and 2005-A, challenging the FERC's statutory authority to require design changes in the initial pipeline or any proposed expansion. Reading this in the light of the Application's statements that "details" of the pipeline project are likely to change, and that the feasibility of any expansion will have to be evaluated at the time the expansion is considered elevates Anadarko's concern that the pipeline that is ultimately designed by the Project Sponsors will not be the pipeline described in the Application on which the Contract is premised.

It seems clear that the State relied heavily on the project description reflected in the Application as a key reason to negotiate with the North Slope Producers rather than other potential project sponsors. The Preliminary Fiscal Interest Finding ("FIF") describes the pipeline project as including, as a critical component, the expandability of the base design, with the base design consisting of a 52-inch pipeline, an operating pressure of 2500 psi, and an initial capacity of between 4Bcf/d and 4.5Bcf/d, expandable

through compression to 6 Bcf/d. (FIF-100). The importance of the initial size of the pipeline being as represented in the Application and its ease of expansion is clear:

"Building a 52-inch line is riskier and more expensive than building a smaller line, and for this reason the pipeline companies that state officials talked to said that they would build a smaller-diameter line. Not so the sponsor group. They were willing to take this 52-inch risk in order to take maximum advantage of the economies of scale associated with gas pipelines. This large-diameter pipeline not only allows a large volume of gas to be transmitted through the line while limiting fuel loss, it also allows for a relatively inexpensive and attractive large increment of expansion. In fact, the average capital cost per unit decreases for an almost 50 percent expansion of the line. This decreasing cost function means that expansions not only will be in the pipeline entity's best interest (through more tariff revenue), but will also benefit existing shippers as well as expansion shippers through lower per-unit tariffs. Apart from the FERC access regulations, or the SGDA contract provisions, the 52-inch decision is a concrete way of telling explorers that if the gas is there, the pipe capacity will be there to take it to market."

(FIF-100-101, footnotes omitted).

The Contract, however, contains no specificity at all regarding the initial design or its expandability. It does not require that the Project Sponsors build a 52-inch pipeline, that the pipeline be designed to operate at 2500 psi, that the pipeline have daily deliverability of between 4 and 4.5 Bcf/d, or that the pipeline be designed for easy expansion to 6 Bcf/d through relatively inexpensive infill compression. Anadarko submits that the Contract should require adherence to the project design upon which the Administration committed to negotiate with the Project Sponsors.

Suggested Change:

- Include an Appendix to the Contract specifying the project design for the "Qualified Project" as a pipeline capable of transporting between 4

and 4.5 Bcf/d; initially expandable through infill compression to 6 Bcf/d.

C. The Contract Inhibits Access To The Initial Capacity By Non-Owner Shippers Through The Capacity Acquisition Provisions of Article 10

The Open Season that is required by federal law is intended to give all qualified shippers the opportunity to bid on capacity on the pipeline in the initial open season and in any expansion open season. Bids, almost certainly, will be valued on an NPV basis taking into account the contract term, the contract volume, and the price to be paid by the shipper for transportation service. This valuation process becomes important if a non-owner shipper bids on the capacity at a volume level that is equal to the volume level bid by one of the owner shippers. In that case, an owner-shipper could be outbid by a higher bid price for the same term contract.

To protect against a scenario where an owner-shipper can always outbid a non-owner shipper, the Contract should clearly preclude the Producers from bidding the State's volumes in a single capacity bid. Otherwise, the State's volume will inflate the Producer's bid volume for purposes of the NPV calculation and will also ensure, all other things being equal, that no owner-shipper can be outbid by a non-owner shipper. In fact, even if the Producer/State bid were priced lower than a non-owner shipper bid, it might still prevail due solely to the volume inflation. While the State's purpose in negotiating this provision was, presumably, to ensure that it is not charged more to transport its royalty gas than the pipeline charges for the transportation of the producer's production from the same lease, the structure of this provision is unfair to non-owner shippers.

Suggested Change

- Replace the option for the State to elect to have its capacity bid by the Producer Capacity Holder with a most favored nations clause that ensures

that the State is not charged more to ship its volumes than the pipeline charges the producer from whose leases the State's royalty derives.

- To the extent that the State is concerned with having different "terms and conditions" of service from those granted to the Producer/Shippers, include a provision to the effect that "all terms and conditions of service shall be set out in the FERC tariff." This is current FERC policy and should ensure that the affiliates of the owner-shippers do not receive preferential treatment over any shipper not affiliated with the pipeline.

D. The Contract Inhibits Access To Initial And Expansion Capacity Through Article 10's Capacity Management Program

Article 10 requires the Producers to accommodate any additional capacity needs of the State. This is to be accomplished by releasing a portion of the producer's capacity to the State, acquiring additional capacity for the State in the producer's name and then releasing that capacity to the State, or acquiring additional capacity with the State's proportional interest being acquired "on behalf of" the State, in the State's name, and the balance in the name of the producer. Alternatively, the producer may purchase the excess State gas at the AECO price less the Alaska to Alberta Tariff, or, simply reduce the amount of delivered gas, overall.

Article 10 also requires the State to acquiesce in the Producer's control over the management of any of the State's excess capacity. If the producer itself has excess capacity and seeks to purchase additional gas or release capacity to offset that excess capacity, then, it must give the State the opportunity to participate in the transaction to offset any excess capacity the State may hold. These transactions, and the related required reciprocal "Put" arrangements, are the *sole means* for the owner-shippers to manage their excess capacity. The terms under which they take place are subject to a Confidentiality requirement and are not subject to dispute by the State, except in the case of fraud; nor may they be challenged in any administrative proceeding or court of law.

Article 10 is complex but appears to be structured to ensure that as between the producers and the State, State capacity will be managed under these mechanisms before any capacity can otherwise be made available to or purchased from third parties. Not only does this provision restrict the ability of non-owner shippers to gain access to excess capacity from owner-shippers but, because every capacity release or capacity acquisition arrangement necessarily involves the State, all capacity release and capacity acquisition arrangements on the pipeline will take place behind the screen of this confidential "managed access" program. There will be no transparency due to the confidentiality requirement, there will be no bidding for capacity under FERC's capacity release rules, and disputes are to be handled outside of the purview of FERC, even in the case of suspected fraud. In short, Article 10 attempts to remove the trading of interstate pipeline capacity on the Alaska pipeline from FERC's jurisdiction and have it governed, instead, by private contract.

The State's Preliminary Fiscal Interest Finding describes the Capacity Management provisions as necessary to ensure that the State's gas can always be transported, and to mitigate the risk associated with making a long-term commitment for firm capacity. But if the State is to commit to take its gas in kind and, therefore, to purchase firm transportation capacity on the Alaska Pipeline in its own name, it cannot, by private contract, grant itself preferential terms and conditions to eliminate the business risks faced by all other shippers in committing to long-term firm capacity on the pipeline. Current FERC rules for transferring capacity on interstate pipelines do not allow the structure envisioned by Article 10.

In fact, Article 10 does not even appear to be in the best interest of the State. For, to receive these "advantages" the State must agree that all of the information involved in the transactions is confidential, that it will not challenge any producer decision on how to structure these capacity transactions, that it will not purchase or release capacity other than under the terms of the Contract, that it will not purchase or sell gas on the ANS from anyone other than through the producers, and that it will not allocate in-state capacity other than proportionately to the producers' interests in the relevant leaseholds.

Moreover, the State must agree that in the event that a producer breaches its obligations under this Article, the State's sole remedy is specific performance. The State must also indemnify, hold harmless, and defend each Producer Capacity Holder against any Loss arising out of the Producer's performance of its obligations under this Article. The term "Loss," as used here, includes any fine, fee, penalty, or other charge, settlement, and litigation expense incurred should the Producer Capacity Holder be found to have violated federal law in engaging in these activities.

Suggested Change

- Eliminate the capacity management program. Instead, the State should bid on its own capacity, and, to the extent that it is concerned that it will be disadvantaged vis-à-vis the producers which own the leases from which its royalty gas derives, it can insist on a most favored nations clause with respect to that particular producer's bid. Other than that, it should be required to abide by the Commission's rules on capacity release. It should not enter into any agreement that restricts its ability to sell gas, buy gas, sell capacity, or purchase capacity from any other shipper.

E. The Contract's Restrictions On Access For Non-Owner Shippers Will Be Exacerbated If The ROFR Provisions Discussed In The FIF Are Included In The Precedent Agreements For The Initial Capacity

According to the FIF, it is contemplated that the initial contracting parties, which, more likely than not will be the affiliates of the owners, may be granted rollover rights as

to their existing capacity and rights of first refusal to any expansion capacity in the initial open season. (FIF-115-116). If this is allowed, the owner-shippers will have *guaranteed* access over any explorer, not only for their existing reserves but also for any new reserves they may discover. Non-owner shippers, on the other hand, will be even more skeptical of their ability to obtain capacity in either the initial open season or any expansion open season if these rights are granted. The obvious purpose of granting such right is to lock up capacity for the life of the project for the project owners, should they desire to keep it. This will severely undercut the ability of Anadarko and other explorers to compete with the North Slope Producers in Alaska.

The FIF makes much of the fact that additional reserves will have to be found in order to keep the pipeline full for its expected 35-year regulatory depreciable life. (FIF-97, 115). But, if the Precedent Agreements grant rights of first refusal to the initial shippers for expansion capacity, no explorer will have assurance that it will be able to obtain capacity in a future open season, even if it submits a qualifying bid. FERC does not allow pipelines to grant shippers rights of first refusal over expansion capacity. And, while FERC may ultimately determine the terms and conditions of any open season, and is expected to preclude rights of first refusal to expansion capacity, the State should not support this provision; in fact, the State should affirmatively oppose any effort by the Project Sponsors to grant preferential capacity rights to expansion capacity in the initial open season.

Finally, any such provision will make it even less likely that the pipeline will accommodate requests for voluntary expansion. This is because with rollovers and rights of first refusal, the owner-shippers will be positioned to capture all of the initial capacity

and all of the first expansion capacity, leaving only expensive expansions for the non-owner shippers.

Suggested Change

- Specifically provide that the pipeline may not grant rights of first refusal for expansion capacity on the Alaska pipeline in the initial open season.

F. The "State-Initiated" Expansions Provisions Adversely Impact Non-Owner Shippers' Access To Expansion Capacity And Diminish The Progress Made At FERC

In its comments to FERC regarding the open season regulations, the State stressed the importance that the Alaska pipeline be built to realize the full potential of Alaska's natural gas resources. The State also emphasized the need for reasonable certainty to explorers that they will have access to the pipeline "when they successfully discover new gas supplies." (Comments of the State of Alaska at 10). Acknowledging that "more competition in exploration and development should lead to the discovery and exploitation of more gas reserves," and noting that the Prudhoe Bay and Point Thomson units represent but a fraction of the total possible gas supplies from Alaska, the State pressed the FERC hard for rules that would ensure the adequate initial sizing and expandability of the pipeline. As the State explained to FERC:

"North Slope and arctic offshore conventionally recoverable gas potential exceeds 225 Tcf. In addition, North Slope gas hydrate potential in the Prudhoe Bay/Kuparuk River/Milne Point area alone exceeds 100Tcf. Further, Alaska's Interior basins are for the most part unexplored, but some data indicates that they also have significant gas resource potential. The pipeline will pass very near some of those basins, and in order to motivate explorers to drill for and develop at least some of the yet to be discovered gas sooner rather than much later, the pipeline likely will have to be expanded in its early life. Explorers will not explore today if the pipeline is undersized or cannot be expanded early and easily, or both. It is simply unacceptable to explorers to have to wait for the decline in gas production at Prudhoe Bay and Point Thomson in order to monetize their gas; as Alaska's Commissioner of Natural

Resources testified, that decline in pipeline throughput may not occur until some 15 years after startup of the flow of gas."

(Comments of the State of Alaska at 11).

In its comments, the State asked FERC to require that the pipeline, in its open season, include information showing the "feasibility and estimated cost of pipeline expansions, either through compression or looping, including any physical limitations." (Comments of the State of Alaska at 13). FERC's regulations, as adopted, only require that the pipeline include in its open season package a description of possible designs for expansions of the pipeline together with an estimated date as to when an expansion would be considered.

In the Contract, the State has the opportunity to require that the project sponsors voluntarily provide to the FERC and to all prospective shippers, information showing the feasibility and cost of expansions, whether compression or looping. It also has the opportunity to require that the Project Sponsors hold periodic open seasons to test the market for an expansion and file for an expansion when economically and technologically feasible. In this way, the State can ensure that the pipeline will be expanded to meet the needs of explorers anytime there was market support for an expansion.

In the Legislative hearings on the Contract, the Administration expressed the view that the provisions of Article 8.7 - "State-Initiated Expansion" - were intended to provide a third avenue for pursuing an expansion of the pipeline. Although well-intentioned, Article 8.7 can actually hurt explorers in their efforts to obtain expansions of the pipeline. Of particular concern to Anadarko is the view that Article 8.7 somehow follows what Congress did in Section 105 of ANGPA - the mandatory expansion provision.

Moreover, because of its onerous requirements, its lack of certainty, and its limited availability, it is unclear how, or when the process would be used to assist explorers in obtaining capacity.

First, from a shipper's perspective, the terms and conditions of Article 8.7 are far more onerous than those required under ANGPA for a mandatory expansion. For example, instead of requiring that the rates to the existing shippers not subsidize expansion shippers, Article 8.7(a)(iv)(B) requires that the rates to the existing shippers must not be *increased*. In addition, it provides that fuel retention percentages may not be increased, referring to both increases as subsidies of expansion shippers by existing shippers.

In Order Nos. 2005 and 2005-A, FERC made it clear that whether or not an increase in rates to existing shippers due to an expansion constitutes a "subsidy" is a factual matter for the FERC to decide in the context of a particular Section 105 proceeding. This Article purports to define a "subsidy" and suggests that the Administration has already taken the position that any increase in the rate to exiting shippers, and any increase in the fuel percentages paid by existing shippers will constitute a "subsidy." Additionally, Article 8.7(a)(iii), requires that all contracts resulting from the open season be "negotiated rate" agreements. FERC regulations and policies do not allow any pipeline to require a shipper to enter into a negotiated rate agreement as a condition to receiving any service on a pipeline – even expansion service. *Natural Gas Pipeline Company of America*, 101 FERC ¶61,125 (2002).

Second, there is a lack of certainty in the process, even if a shipper were willing to choose this route. Any Article 8.7 expansion will require a FERC certificate. Yet, under

the Contract, "If FERC issues a certificate on a basis different than the expansion proposal filed by the Project Entity, then the *Project Entity shall reject the certificate* unless any such difference is minor or all the members of the *Project Entity* vote otherwise." (Contract, § 8.7(a)(iv)(H), emphasis added). Even the initiation of the process is subject to being disputed and the entire process is put on hold until the dispute is resolved through the arbitration provisions of the Contract.

Third, the state-initiated expansion is only available *after* service has commenced on the pipeline, and may only occur once every five years. This is unduly restrictive as the first expansion may be required *before* the in-service date and subsequent expansions may well be required earlier than five years after the first expansion, depending on the success of explorers' drilling programs.

Finally, the mere "availability" of this process could be used by FERC to delay action on a Section 105 request for mandatory expansion. The fewer impediments standing in the way of a final FERC decision on a mandatory expansion, the better off the explorer is.

For all of these reasons, Article 8.7 is not only unnecessary but detrimental to the interests of explorers in their efforts to obtain expansions of the pipeline. And, it undercuts the progress that the State and explorers have already made at FERC.

In Anadarko's view, a better way to assist explorers is for the Contract to require that open seasons be held periodically, or for the Contract to allow the State to require that the pipeline hold an open season at any time. This will provide the State with a real opportunity to ensure that expansions are timely pursued by the pipeline. Explorers need the State as an active ally in their efforts to gain access to capacity on this pipeline. The

State should not allow its ownership interest in the pipeline to compromise its role as an advocate for the development of competition in the exploration, development, and production of Alaska natural gas resources.

Suggested Changes

- Eliminate Article 8.7.
- Include a provision that allows the State, as an owner of the pipeline to propose expansions and/or hold a non-binding open seasons at any time.
- Include a provision to require the pipeline to hold periodic open seasons to assess the market's interest in an expansion.
- Include a provision that requires the pipeline to hold a binding open season, consistent with FERC regulations, if the results of any non-binding open season demonstrate a requisite level of interest.
- Include a provision that requires the pipeline to file a voluntary expansion in cases where the outcome of the binding open season is sufficient to support the expansion.
- Include a provision that requires the pipeline to include in its tariff a provision articulating the criteria it will use to in determining whether or not to voluntarily expand the pipeline. This will provide the opportunity for protest, comment, and advance determination by FERC as to whether the parameters satisfy regulatory requirements.

G. The Contract Should Not Eliminate Regulatory Protections for Shippers and Consumers

The Alaska pipeline and the facilities encompassing the Project will all be part of a natural monopoly that must be regulated, either at the federal or state level. For, absent effective regulation there is nothing to prevent the exercise of monopoly power through unreasonable access terms, conditions and rates to the detriment of shippers.

Articles 8.1, 8.2, and 8.3 of the Contract provide that the contracting parties (including the State) intend that access to and regulation of all of the Project facilities will be governed exclusively by federal law; and, to the extent that federal law does not apply, or if federal regulators elect not to regulate, then access and regulation of the relevant

facilities will be governed exclusively by commercial agreements. (Article 8.1) This Article also bars the Parties from seeking any additional, different, or supplemental regulatory requirements for the regulation of or *access to* any of the Project facilities. (Article 8.1)

Article 8.2 requires the Parties to affirmatively seek and support the exclusivity of FERC's jurisdiction over the facilities and provides that if FERC does not assert jurisdiction over any Midstream Element within 15 months after submitting an application, then that entity may enter into commercial arrangements to govern and control rates, terms, and conditions of access.

Finally, Article 8.3 bars the State from seeking or supporting jurisdiction of the Regulatory Commission of Alaska ("RCA") over any of the Project facilities and provides that if the RCA exercises jurisdiction over any aspect of the project facilities in a manner that results in a "Loss" to any Participant, that the State will reimburse that Participant for its "Loss." This raises serious concerns for shippers not affiliated with the owners.

The State should not agree to preclude itself from seeking or supporting regulation over any Project entity by the RCA. In the event that FERC does not have jurisdiction over particular facilities, access to the main transmission line or to other essential facilities can be blocked by whatever vote of the project entity is required if the RCA does not have jurisdiction. This can leave non-owner shippers at the mercy of their competitors both in terms of obtaining access to the facilities and in terms of the rates, terms and conditions of service. If they are not regulated, there is nothing to stop the pipeline from denying access or extracting monopoly rents from shippers. Regulation of

and access to any of the Project facilities should be required, either at the federal or state level.

Second, there is no certainty that every aspect of this Project will, in fact, be subject to federal regulation. This is particularly true with respect to the Gas Transmission Pipelines and the GTP. Without a final court determination as to the extent of FERC's jurisdiction, the State cannot be certain that federal regulation will apply to each of these facilities. To ensure that there is no regulatory gap, the State should eliminate this provision so that it is not precluded from taking action it deems necessary to ensure access to or regulation of any part of the Project.

Finally, similar concerns exist with respect to the facilities to be located in Canada. The State should not agree that if existing regulatory law does not regulate all necessary aspects of this pipeline that terms and conditions for access will be controlled by private contract and that it will not seek any additional, different, or supplementary requirements for regulation of or access to these facilities.

Suggested Changes

- Remove Articles 8.1, 8.2 & 8.3, but still require that the Parties request FERC jurisdiction over all parts of the Alaska pipeline project.
- Ensure that RCA has jurisdiction over the rates, terms and conditions of service on any facilities that will not be regulated by FERC and which are a part of the Project. This will eliminate the ability of the monopoly pipeline to control access directly or indirectly by private contract and will ensure that monopoly rents are not extracted from shippers as a condition of such access.

H. The Uniform Upstream Fiscal Contract Should be Modified

In analyzing the Contract, the FIF states that the benefits of the Stranded Gas Fiscal Contract should be made available to "other North Slope leaseholders" and that the purpose of the Uniform Upstream Fiscal Contract is to "create a level playing field for

explorers and producers not affiliated with the project." (FIF-98). Anadarko agrees with the need for a level playing field and appreciates the State's effort to make equal benefits available to explorers.

One improvement to Section 43.82.437(d)(4)(ii) and (iii) would be to ensure that the sale of leasehold gas production to a capacity holder on the pipeline qualifies the leaseholder for the benefits of the Uniform Upstream Fiscal Contract.

Suggested Change

- Revise Sec. 43.82.437(d)(4)(ii) to read: "the execution of a letter of intent from the person, an affiliate of that person, or a prospective purchaser of gas from that person to make a firm commitment that a minimum volume of gas that is discovered or yet to be discovered from the oil and gas lease interests committed to the uniform upstream fiscal contract will be transported on the *Project* for a minimum term, as specified by the Commissioner of Revenue with the concurrence of the Commissioner of Natural Resources."
- Revise Sec. 43.82.437(d)(4)(iii) to read: "termination if the work commitment is not diligently performed or the commitment specified in Sec. 43.82.437(d)(4)(ii) is not maintained or kept."

I. The Contract Should Specify The Rate Treatment To Be Accorded To Previously Used Assets To Eliminate A Write Up Of The Asset For Ratemaking Purposes

Article 8.6 provides that each Participant shall follow FERC policy regarding the treatment of previously used assets for ratemaking purposes. Anadarko assumes that the State contemplated that these assets would be valued at their depreciated original cost for ratemaking purposes rather than at their acquisition price. However, that is not necessarily the outcome under current FERC policy. FERC allows a write up of assets to include the full purchase price if (1) the acquired facility is being put to new use, and (2) the purchase price is less than the cost of constructing a comparable facility.

Suggested Change

- Require that any previously used assets being acquired for use in the Project be valued at depreciate original cost for ratemaking purposes.

J. Absent Disclosure Of The Project Entity Agreements It Is Impossible To Fully Evaluate The Impact On The Value Of Having The State "At The Table"

Part of the justification for the State's participation as an owner is its ability to be a party "at the table" and its ability to influence decisions of the Project Entities. Given that the State's interest is only 20%, it is not likely that this will be a real benefit to the State or to non-Project Sponsors seeking access to the project facilities under reasonable and nondiscriminatory terms and conditions. There are likely restrictions on the State's ability to take positions that are contrary to those advocated by the Project Sponsors in various provisions of the Contract. Further restrictions may well exist under the Project Entity documents. Substantial concern exists that the State's ability to have any influence over the Project Sponsors will be severely restricted through these documents.

Suggested Change

- Make the Project Entity Agreements public so that the entire package can be reviewed, commented on, and fully evaluated before the Contract is approved by the Legislature.

CONCLUSION

Anadarko respectfully requests that, in reviewing the Contract for purposes of making the necessary Fiscal Interest Finding required by the Stranded Gas Development Act, that the Commissioner of Revenue adopt the Suggested Changes proposed in these Comments.

DATE: 072506

UPDATE #:

Y or N

[illegible]

**Excerpts of Attorney General's
Presentation to the Legislature at
Centennial Hall Regarding the
May 10, 2006 Attorney General's
Opinion on the
Authority to Provide Fiscal
Certainty Under Article IX,
Sections 1 And 4 Of The Alaska
Constitution**

THE QUESTION PRESENTED:

Whether sections 1 and 4 of article IX of Alaska's Constitution permit the state to enter into a long term fiscal contract under the Stranded Gas Development Act ("SGDA"), AS 43.82.010 et seq.?

Can states enter into binding fiscal contracts that cannot be modified by subsequent legislative enactments?

- The federal contract clause (Art. I, § 10) provides that no state shall pass any law impairing the obligation of contracts.
- In a series of cases, starting in the 1800s, the United States Supreme Court held that the contract clause applied to contracts in which state legislatures agreed to specific tax obligations.

- Although the Court found that there are certain inherent and essential elements of sovereignty – referred to as “reserved powers” – that can never be contracted away, the Court also held that the power of taxation is not a reserved power.
- Rather, the taxation power is “alienable” and can be bargained away for consideration because it is incidental to the exercise of governmental functions and exists to facilitate inherent and legitimate governmental functions.
- Any such alienation must be allowable under the state’s constitution and must be expressed in a clear and unequivocal manner, i.e. it must be unmistakable.
- A state can therefore be held to a contract despite subsequent state legislation that alters the fiscal terms in a manner that substantially impairs the contract and is not otherwise justified as reasonable and necessary to serve an important public purpose.