

SCOMM

144:12

# ALASKA STATE LEGISLATURE

*Interim:*

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Wasilla, Alaska 99654  
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*Session:*

State Capitol Building  
Juneau, Alaska 99801-1182  
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## REPRESENTATIVE VIC KOHRING DISTRICT 14

### SPONSOR STATEMENT HCR 8

The Senate and House Resources Committees held a joint committee meeting in Kenai in February 2005. The purpose of the meeting was to receive testimony from individuals and companies doing oil and/or natural business in the Cook Inlet basin. The committee heard comments and suggestions on methods to improve the business conditions in the oil and natural gas industry.

One of those suggestions was the need to provide some certainty regarding the oversight of the Regulatory Commission of Alaska (RCA) for the Cook Inlet Gas Gathering System (CIGGS).

Access to a natural gas pipelines in the Cook Inlet basin is an issue in moving new sources of natural gas to market. Attempts to increase the exploration and development within the Cook Inlet basin must necessarily consider that concern.

Currently, there is a case before the RCA regarding access to the CIGGS and this resolution should not be construed as a position statement for or against any party identified with the case.

The case currently before the RCA is critical to conclude so that certainty in the Cook Inlet basin is provided not only for companies looking at new exploration activity but also for the private owners of CIGGS.

The RCA is urged to complete its investigation for certainty for all parties; it is also recognized that expeditiously completing the investigation will help achieve the lowest possible cost to all parties.

# FISCAL NOTE

**STATE OF ALASKA**  
**2005 LEGISLATIVE SESSION**

Fiscal Note Number: \_\_\_\_\_  
 Bill Version: HCR 8  
 ( ) Publish Date: \_\_\_\_\_

Revision Date/Time (Note if correction): \_\_\_\_\_ Dept. Affected: Legislature  
 Title: "Encouraging the Regulatory Commission of BRU Legislative Council  
Alaska expeditiously to complete its investigation of the..." Component: Council and Subcommittees  
 Sponsor: House Special Committee on Oil and Gas  
 Requestor: House Special Committee on Oil and Gas Component No. 783

**Expenditures/Revenues** (Thousands of Dollars)

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

| OPERATING EXPENDITURES | FY 2006    | FY 2007    | FY 2008    | FY 2009    | FY 2010    | FY 2011    |
|------------------------|------------|------------|------------|------------|------------|------------|
| Personal Services      | 0.0        | 0.0        | 0.0        | 0.0        | 0.0        | 0.0        |
| Travel                 | 0.0        | 0.0        | 0.0        | 0.0        | 0.0        | 0.0        |
| Contractual            | 0.0        | 0.0        | 0.0        | 0.0        | 0.0        | 0.0        |
| Supplies               | 0.0        | 0.0        | 0.0        | 0.0        | 0.0        | 0.0        |
| Equipment              | 0.0        | 0.0        | 0.0        | 0.0        | 0.0        | 0.0        |
| Land & Structures      | 0.0        | 0.0        | 0.0        | 0.0        | 0.0        | 0.0        |
| Grants & Claims        | 0.0        | 0.0        | 0.0        | 0.0        | 0.0        | 0.0        |
| Miscellaneous          | 0.0        | 0.0        | 0.0        | 0.0        | 0.0        | 0.0        |
| <b>TOTAL OPERATING</b> | <b>0.0</b> | <b>0.0</b> | <b>0.0</b> | <b>0.0</b> | <b>0.0</b> | <b>0.0</b> |

|                             |            |            |            |            |            |            |
|-----------------------------|------------|------------|------------|------------|------------|------------|
| <b>CAPITAL EXPENDITURES</b> | <b>0.0</b> | <b>0.0</b> | <b>0.0</b> | <b>0.0</b> | <b>0.0</b> | <b>0.0</b> |
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|                               |            |            |            |            |            |            |
|-------------------------------|------------|------------|------------|------------|------------|------------|
| <b>CHANGE IN REVENUES ( )</b> | <b>0.0</b> | <b>0.0</b> | <b>0.0</b> | <b>0.0</b> | <b>0.0</b> | <b>0.0</b> |
|-------------------------------|------------|------------|------------|------------|------------|------------|

**FUND SOURCE** (Thousands of Dollars)

|                                         |            |            |            |            |            |            |
|-----------------------------------------|------------|------------|------------|------------|------------|------------|
| 1002 Federal Receipts                   |            |            |            |            |            |            |
| 1003 GF Match                           |            |            |            |            |            |            |
| 1004 GF                                 | 0.0        | 0.0        | 0.0        | 0.0        | 0.0        | 0.0        |
| 1005 GF/Program Receipts                |            |            |            |            |            |            |
| 1037 GF/Mental Health                   |            |            |            |            |            |            |
| Other (Specify Type--Do not abbreviate) |            |            |            |            |            |            |
| <b>TOTAL</b>                            | <b>0.0</b> | <b>0.0</b> | <b>0.0</b> | <b>0.0</b> | <b>0.0</b> | <b>0.0</b> |

Estimate of any current year (FY2004) cost: 0.0

Check this box (X) if funding for this bill is included in the Governor's FY 2005 budget proposal: ☐

**POSITIONS**

|           |  |  |  |  |  |  |
|-----------|--|--|--|--|--|--|
| Full-time |  |  |  |  |  |  |
| Part-time |  |  |  |  |  |  |
| Temporary |  |  |  |  |  |  |

**ANALYSIS:** (Attach a separate page if necessary)

This legislation has zero fiscal impact on the Legislative Affairs Agency.

Prepared by: Karla Schofield, Deputy Director Phone 465-6626  
 Division: Administrative Services Date/Time 4/11/05 10:16 AM  
 Approved by: Pamela Varni, Executive Director Date 4/11/2005  
 Agency: Legislative Affairs Agency

# FISCAL NOTE

**STATE OF ALASKA**  
**2005 LEGISLATIVE SESSION**

Fiscal Note Number: \_\_\_\_\_  
Bill Version: HCR 8  
( ) Publish Date: \_\_\_\_\_

Revision Date/Time: \_\_\_\_\_ Dept. Affected: Commerce  
Title Cook Inlet Gas Gathering Complaint RDU Regulatory Commission of Alaska (399)  
Component Regulatory Commission of Alaska  
Sponsor Oil & Gas  
Requester House Oil & Gas Component No. 2417

**Expenditures/Revenues** (Thousands of Dollars)

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

| OPERATING EXPENDITURES | FY 2006    | FY 2007    | FY 2008    | FY 2009    | FY 2010    | FY 2011    |
|------------------------|------------|------------|------------|------------|------------|------------|
| Personal Services      |            |            |            |            |            |            |
| Travel                 |            |            |            |            |            |            |
| Contractual            |            |            |            |            |            |            |
| Supplies               |            |            |            |            |            |            |
| Equipment              |            |            |            |            |            |            |
| Land & Structures      |            |            |            |            |            |            |
| Grants & Claims        |            |            |            |            |            |            |
| Miscellaneous          |            |            |            |            |            |            |
| <b>TOTAL OPERATING</b> | <b>0.0</b> | <b>0.0</b> | <b>0.0</b> | <b>0.0</b> | <b>0.0</b> | <b>0.0</b> |

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| <b>CAPITAL EXPENDITURES</b> |  |  |  |  |  |  |
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| <b>CHANGE IN REVENUES (1141)</b> |  |  |  |  |  |  |
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**FUND SOURCE** (Thousands of Dollars)

|                          |            |            |            |            |            |            |
|--------------------------|------------|------------|------------|------------|------------|------------|
| 1002 Federal Receipts    |            |            |            |            |            |            |
| 1003 GF Match            |            |            |            |            |            |            |
| 1004 GF                  |            |            |            |            |            |            |
| 1005 GF/Program Receipts |            |            |            |            |            |            |
| 1037 GF/Mental Health    |            |            |            |            |            |            |
| 1141 RCA Receipts        |            |            |            |            |            |            |
| <b>TOTAL</b>             | <b>0.0</b> | <b>0.0</b> | <b>0.0</b> | <b>0.0</b> | <b>0.0</b> | <b>0.0</b> |

Estimate of any current year (FY2005) cost: 0.0

Mark this box (X) if funding for this bill is included in the Governor's FY 2006 budget proposal: ☐

**POSITIONS**

|           |  |  |  |  |  |  |
|-----------|--|--|--|--|--|--|
| Full-time |  |  |  |  |  |  |
| Part-time |  |  |  |  |  |  |
| Temporary |  |  |  |  |  |  |

**ANALYSIS:** (Attach a separate page if necessary)

This resolution encourages the RCA to expeditiously resolve an already pending matter. The RCA is already involved in an expedited briefing schedule in order to obtain a sufficient record to determine whether CIGGS should be regulated by the RCA under AS 42.05 or AS 42.06. The RCA established the expedited schedule in its March 7, 2005 Order which consists of six questions that the RCA needs briefed by the parties before reaching its decision.

No fiscal impact on the operations of the RCA is anticipated as a result of this resolution.

Prepared by: Kate Giard, Chair Phone 907.263.2110  
Division: Regulatory Commission of Alaska Date/Time 4/12/05 7:08 PM  
Approved by: Edgar Blatchford, Commissioner Date 4/12/2005  
Agency: Commerce, Community, and Economic Development

**Comments on HCR 8**  
**Cook Inlet Gas Gathering System Complaint**  
**Regulatory Commission of Alaska**  
*12 April 2005*

This resolution encourages the RCA to expeditiously resolve an already pending matter. However, the RCA is already involved in an expedited briefing schedule in order to obtain a sufficient record to determine whether CIGGS should be regulated by the RCA under AS 42.05 or AS 42.06.

The RCA established the expedited schedule in its March 7, 2005 Order which consists of six questions that the RCA needs briefed by the parties before reaching its decision:

- ❑ Is CIGGS furnishing by transmission or distribution, gas to the public within the meaning of AS 42.05? The briefing cycle on that question was completed on March 29, 2005. An order determining this issue is expected to be released the week of April 18, 2005.
- ❑ Can CIGGS be bifurcated jurisdictionally as suggested by Unocal? Briefing cycle will be completed on May 3, 2005.
- ❑ Is CIGGS subject to jurisdiction under AS 42.06.630(10), as a Natural Gas Pipeline? Briefing cycle will be complete on June 7, 2005.
- ❑ Is CIGGS subject to jurisdiction under AS 42.06.630 as a total system of pipe? Briefing cycle will be complete on July 27, 2005.
- ❑ Does CIGGS use its facilities to provide transportation "for hire" and as a common carrier within the meaning of AS 42.06.630(16)? Briefing cycle will be complete on September 7, 2005.
- ❑ Is CIGGS subject to regulation under AS 38.35, the Right of Way Leasing Act? Briefing cycle will be complete on November 2, 2005.

There are six parties involved in this case -- Unocal, Marathon, Agrium, Enstar, State of Alaska, and Aurora Gas LLC. Three of the parties (State of Alaska, Agrium, and Aurora) have requested the RCA consider consolidating the briefing schedule. Unocal and Marathon have filed opposition briefs to the request for consolidation. The pleading cycle on the consolidation issue was completed April 11, 2005 and the issue is now under consideration by the RCA.

The Chairman of the RCA will be testifying on the procedural matters associated with this docket in legislative hearings.

No fiscal impact on the operations of the RCA is anticipated.

# STATE OF ALASKA

DEPARTMENT OF COMMUNITY AND  
ECONOMIC DEVELOPMENT  
REGULATORY COMMISSION OF ALASKA

April 28, 2005

FRANK H. MURKOWSKI, GOVERNOR

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The Honorable Vic Kohring  
Alaska State Capitol, Room 24 A  
Juneau, AK 99801-1182

Re: Cook Inlet Gas Gathering System (CIGGS)

Dear Representative Kohring:

The following is a background and summary of the CIGGS order, as you requested.

On October 1, 2004, Agrium filed a complaint contending that Unocal Alaska and Marathon were operating the Cook Inlet Gas Gathering System (CIGGS) in violation of AS 42.05 (the Alaska Public Utilities Regulatory Act) and AS 42.06 (the Pipeline Act). The RCA ordered an expedited briefing schedule of the parties for evaluating whether CIGGS should be regulated under AS 42.05 or AS 42.06?

In response to the briefs filed on Question One (Is CIGGS an AS 42.05 pipeline?), we decided that Unocal Alaska and Marathon, as owners of CIGGS, are public utilities under AS 42.05 and issued our Order on April 22, 2005. We also exempted Unocal Alaska and Marathon from AS 42.05 regulation by us while the parties complete the pleading cycle on the remaining questions.

A public utility, as relevant to the RCA's decision on CIGGS is defined (in AS 42.05.990(4)) as:

every corporation whether public, cooperative, or otherwise, company, individual, or association of individuals, their lessees, trustees, or receivers appointed by a court, that owns, operates, manages, or controls any plant, pipeline, or system for . . .

(D) furnishing by transmission or distribution of natural or manufactured gas to the public for compensation.

Earlier today, we issued another order, which, among other things, scheduled a pre-hearing conference with the parties for May 4, 2005. We instructed the



Letter to Representative Kohring  
April 28, 2005  
Page 2 of 2

parties to be prepared to discuss their recommendations for the consolidation of the current pleading schedule and a settlement procedure for this Docket.

If you have any questions, please contact me at (907) 263-2110.

Warm regards,

REGULATORY COMMISSION OF ALASKA

A handwritten signature in cursive script, appearing to read "Kate Giard", is written over the typed name and title.

Kate Giard  
Chairman

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Background

Agrium U.S., Inc. (Agrium) filed a formal complaint<sup>1</sup> against Marathon Oil Company (Marathon) and Union Oil Company of California (Unocal Alaska) (collectively CIGGS Owners) for operating the Cook Inlet Gas Gathering System (CIGGS) in violation of the Alaska Public Utilities Regulatory Act<sup>2</sup> and the Pipeline Act.<sup>3</sup> We found that good cause existed to institute an investigation and opened an investigation into Agrium's Complaint.<sup>4</sup>

We granted intervention in the investigation to ENSTAR,<sup>5</sup> Aurora Gas, LLC and the State of Alaska (the State). A prehearing conference was conducted on January 21, 2005. Agrium, Marathon, Unocal Alaska, ENSTAR and Aurora Gas participated. Those present at the prehearing conference were unable to agree on a preliminary joint statement of issues and, therefore, submitted separate preliminary statements.

Based on statements made at the prehearing conference, we recognized that many of the parties had a common procedural concern, that the scope of the investigation was very broad and could become burdensome. We also recognized that we needed to take a strong role in completing this proceeding with the lowest possible

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<sup>1</sup>Agrium U.S. Inc.'s Formal Complaint Against Marathon Oil Company and Union Oil Company of California for Their Ongoing Violations of the Alaska Public Utilities Regulatory Act and the Alaska Pipeline Act Through Providing Unregulated Transportation Service and Refusing to Provide Regulated Transportation Service Through the Cook Inlet Gas Gathering System, filed October 1, 2004 (Complaint).

<sup>2</sup>AS 42.05.

<sup>3</sup>AS 42.06.

<sup>4</sup>Order P-04-20(2), Order Finding Good Cause to Investigate Formal Complaint, Opening Investigation, Setting Prehearing Conference, and Inviting Intervention, dated December 22, 2004.

<sup>5</sup>ENSTAR Natural Gas Company, a division of SEMCO.

1 cost to all parties. Therefore, we established a sequential pleading process that permits  
2 us to focus on whether CIGGS is a jurisdictional pipeline under either AS 42.05 or AS  
3 42.06. We identified this process as Phase One.<sup>6</sup> Phase One consists of submission of  
4 specified information by the CIGGS Owners, some limited discovery, and briefing of six  
5 questions by the parties. We specified Question One as: Is CIGGS furnishing, by  
6 transmission or distribution, gas to the public for compensation within the meaning of  
7 AS 42.05.990(4)(D)?

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<sup>6</sup>Order P-04-20(3)/P-05-20(1), *Order Granting Intervention, Defining Adjudicatory Process, Opening New Docket, Establishing Procedural Schedule and Denying Motion for Clarification*, dated March 7, 2005.

Unocal Alaska,<sup>7</sup> Marathon,<sup>8</sup> Agrium,<sup>9</sup> Aurora,<sup>10</sup> and the State<sup>11</sup> filed initial and reply briefs on Question 1. ENSTAR filed only an initial brief.<sup>12</sup> As we requested, Unocal Alaska<sup>13</sup> and Marathon,<sup>14</sup> each filed a list of gas customers with associated gas volumes and destinations for all gas shipped through CIGGS during 2004 and indicated whether those customers, volumes, and destinations were typical of the last three years and the current year. Marathon told us that the detailed information in its customer list

<sup>7</sup>*Initial Brief of Union Oil Company of California on Question 1*, filed March 22, 2005 (Unocal Alaska Brief); *Reply Brief of Union Oil Company of California on Question 1*, filed March 29, 2005.

<sup>8</sup>*Initial Brief of Marathon Oil Company Addressing the Question: Whether the CIGGS Owners are "Furnishing by Transmission or Distribution of . . . Gas to the Public for Compensation" Within the Meaning of AS 42.05.990(4)(D)*, filed March 22, 2005 (Marathon Brief); *Reply Brief of Marathon Oil Company Addressing the Question: Whether the CIGGS Owners are "Furnishing by Transmission or Distribution of . . . Gas to the Public for Compensation" within the Meaning of AS 42.05.990(4)(D)*, filed March 29, 2005 (Marathon Reply Brief).

<sup>9</sup>*Agrium U.S. Inc.'s Opening Brief Addressing Question 1: Is the CIGGS Furnishing, by Transmission or Distribution, Gas to the Public for Compensation Within the Meaning of AS 42.05.990(4)(D)?*, filed March 22, 2005; *Agrium U.S. Inc.'s Reply Brief to Question 1 Opening Briefs*, filed March 29, 2005 (Agrium Reply Brief).

<sup>10</sup>*Aurora Gas, LLC's Opening Brief on the Issue of Whether CIGGS is Furnishing, by Transmission or Distribution, Gas to the Public for Compensation Within the Meaning of AS 42.05.990(4)(D)*, filed March 22, 2005; *Aurora Gas, LLC's Reply Brief on the Issue of Gas Transmission by CIGGS*, filed March 29, 2005 (Aurora Reply Brief).

<sup>11</sup>*State of Alaska's Response to Commission Question 1*, filed March 22, 2005; *State Reply to CIGGS Owners' Opening Briefs on Question 1*, filed March 29, 2005 (State Reply Brief).

<sup>12</sup>*ENSTAR's Opening Memorandum on Question No. 1*, filed March 22, 2005.

<sup>13</sup>Letter from Bradford G. Keithley with two-page attachment, dated March 15, 2005; Letter from Bradford G. Keithley with revised two-page attachment, dated March 29, 2005 (collectively Unocal customer list).

<sup>14</sup>*Notice of Submission with attached Summary of CIGGS Deliveries—for the Year 2004*, filed March 15, 2005; *Notice of Updated Submission with attached Summary of CIGGS Deliveries—for the Year 2004*, filed March 24, 2005 (collectively, Marathon customer list).

1 is representative of 2002, 2003, and the current year.<sup>15</sup> Unocal Alaska told us that its  
2 information was also representative, except volumes delivered to ENSTAR.<sup>16</sup>

3 Discussion

4 To determine if CIGGS is subject to our jurisdiction under AS 42.05, as  
5 Agrium asserted in its Complaint, we asked the parties to brief whether CIGGS, as  
6 currently operated, meets the statutory definition of "public utility."<sup>17</sup> AS 42.05.990(4)(D)  
7 defines "public utility," in part, as including:

8 every corporation whether public, cooperative, or otherwise, company,  
9 individual, or association of individuals, their lessees, trustees, or  
10 receivers appointed by a court, that owns, operates, manages, or controls  
any plant, pipeline, or system for . . .

11 (D) furnishing by transmission or distribution of natural or  
12 manufactured gas to the public for compensation.

13 The term "public" in subsection (4)(D) is further clarified by AS 42.05.990(3) as:

14 (A) a group of 10 or more customers that purchase the service or  
15 commodity furnished by a public utility;

16 (B) one or more customers that purchase electrical service for use  
17 within an area that is certificated to and presently or formerly served by an  
18 electric utility if the total annual compensation that the electrical utility  
receives for sales of electricity exceeds \$50,000; and

19 (C) a utility purchasing the product or service or paying for the  
20 transmission of electric energy, natural or manufactured gas, or petroleum  
21 products that are re-sold to a person or group included in (A) or (B) of this  
22 paragraph or that are used to produce the service or commodity sold to  
23 the public by the utility.

24 <sup>15</sup>Notice of Submission at 2.

25 <sup>16</sup>Page 1 of attachment to letter from Bradford G. Keithley, dated March 15, 2005.

26 <sup>17</sup>Order P-04-20(3)/P-05-20(1).

1 For purposes of our analysis, we divide AS 42.05.990(4)(D) into three  
2 parts to evaluate whether CIGGS is jurisdictional. First, we review the operations of  
3 CIGGS to determine whether it is a pipeline that furnishes gas by transmission.<sup>18</sup>  
4 Second, we review whether CIGGS furnishes gas by transmission to the public. Third,  
5 we review whether CIGGS furnishes gas by transmission to the public for  
6 compensation.

7 Does CIGGS Furnish Gas by Transmission?

8 The CIGGS Owners, Marathon and Unocal Alaska, argued that the  
9 pipeline operates as a gathering line and not a transmission line. Marathon stated that  
10 CIGGS was originally constructed in 1971 by the CIGGS Owners as a field gathering  
11 line and, as is characteristic of field gathering lines, CIGGS collects gas from a number  
12 of producing properties and producing facilities located along much of its length.  
13 Marathon supported its argument by offering the following description of the pipeline  
14 system:

15 CIGGS begins at the Trading Bay Production Facility on the west side of  
16 Cook Inlet, where gas from offshore production platforms in the Trading  
17 Bay Unit and McArthur River Field is put into the lines. From the Trading  
18 Bay Production Facility, CIGGS extends about 26 miles, picking up gas  
19 from other fields, including from offshore platforms at Granite Point and  
20 from several onshore points, to an interconnection with the Beluga  
21 Pipeline at Granite Point. From the interconnection with Beluga Pipeline,  
22 CIGGS crosses under the Cook Inlet (approximately 22 miles), then  
23 continues on-shore for about 4.5 miles where it connects to KPL Junction,  
24 a hub where pipelines from several different fields come together. The  
25 pipelines converging at KPL Junction include Marathon's Kenai Nikiski  
26

<sup>18</sup>Unocal Alaska observed that no party to this proceeding has contended that CIGGS has been used for distribution of gas and that the only question has been whether CIGGS is used for transmission of gas. Unocal Alaska Brief at 4. Because no party contends that CIGGS furnishes gas by distribution we do not discuss distribution in this Order.

1 Pipeline ("KNPL"), Unocal's unregulated Swanson River Pipeline,  
2 ConocoPhillips' unregulated Tyonek Pipeline, and the Alaska Pipeline  
3 (APL). From KPL Junction, CIGGS extends about a mile to its termination  
4 point near Nikiski, where it connects Unocal and Marathon's production  
5 with the industrials located there (including primarily the Agrium fertilizer  
6 plant, the Marathon/ConocoPhillips LNG plant, and the Tesoro Refinery).<sup>19</sup>

7 Marathon distinguished its activities as a gas producer using its own line  
8 to gather and deliver natural gas from those of a pipeline transmission service. It is the  
9 pipeline transmission service that would give rise to the status of public utility, Marathon  
10 asserted.<sup>20</sup> Marathon quoted *Clajon Gas Co., L.P. v. Commissioner* to illustrate the  
11 differences between a gathering pipeline and a transmission pipeline. In *Clajon*, the  
12 court stated,

13 Gas typically flows from the well to a gathering system through "gathering  
14 pipelines" and the gathering system then aggregates the gas for delivery  
15 to a gas processing plant, transmission pipeline or other central point.<sup>21</sup>

16 Marathon argued that it "furnishes by gathering" and uses its own facilities  
17 to bring its own gas to the point of sale and concluded that those activities are excluded  
18 from the scope of AS 42.05. Marathon further stated that if the Legislature had intended  
19 gathering lines, like CIGGS, to be regulated as public utilities, it would not have limited  
20 the phrase "furnishing gas" in its definition of public utility to "furnishing gas by  
21 transmission and distribution."<sup>22</sup>

22  
23 <sup>19</sup>Marathon Brief at 5-6

24 <sup>20</sup>*Id.* at 9.

25 <sup>21</sup>*Clajon Gas Co., L.P. v. Commissioner*, 354 F.3d 786, 787 (8th Cir. 2004).

26 <sup>22</sup>Marathon Brief at 10-11.

1 Unocal Alaska explained that it is a co-owner and separate capacity  
2 holder in CIGGS. Unocal Alaska joined Marathon's argument that CIGGS functions as  
3 a gathering line asserting, "the primary function of Unocal Alaska's interest in CIGGS is  
4 to gather gas to a central point, not to serve as a transmission line."<sup>23</sup>

5 Unocal Alaska cited a regulation<sup>24</sup> that lists three different kinds of gas  
6 facilities—gathering, transmission and distribution—and asserted that  
7 AS 42.05.990(4)(d) limits our jurisdiction to transmission and distribution lines only and  
8 that we have no jurisdiction over gathering lines.

9 Unocal Alaska further argued that we recognized these jurisdictional limits  
10 in our past actions. Unocal Alaska observed that CIGGS has existed since the 1960s  
11 and that when we certificated the Beluga Pipeline, which is fed by CIGGS, in March  
12 1993, we did not require AS 42.05 certification for CIGGS. Unocal Alaska concluded  
13 we properly applied AS 42.05.990(4)(D) at that time and recognized our jurisdiction  
14 extended only to transmission and distribution pipelines and not to gathering facilities  
15 like CIGGS. Unocal Alaska stated that "the facts related to CIGGS have not changed  
16 since that time; and neither should the jurisdictional consequence."<sup>25</sup>

17 Unocal Alaska also referenced 3 AAC 48.277(5) – (8) in which we adopted  
18 the Federal Energy Regulatory Commission's (FERC's) Uniform System of Accounts for  
19 natural gas companies. Under that system of accounts, gas utilities are required to

20  
21 <sup>23</sup>Unocal Alaska Brief at 10.

22 <sup>24</sup>3 AAC 52.080(1) states:

23 "accident" means an accident or incident occurring in the state involving  
24 escape of gas from gas gathering, transmission or distribution facilities  
25 resulting in personal injury requiring hospitalization, fatality, or property  
26 damage exceeding \$1,000.

<sup>25</sup>Unocal Alaska Brief at 10.

1 classify gathering facilities together with production facilities in their plant accounts while  
2 transmission facilities are separately classified.<sup>26</sup> Unocal Alaska explained that the  
3 Uniform System of Accounts for natural gas companies provides a definition of  
4 transmission pipelines:

5 Transmission system means . . . equipment used primarily for transmitting  
6 gas from a . . . gathering system . . . to one or more distribution areas.  
7 The transmission system begins at the outlet side of the valve at . . . the  
8 connection to gathering lines . . . and ends at the outlet side of the  
9 equipment which meters or regulates the entry of gas into the distribution  
10 system or into a storage area.<sup>27</sup>

11 According to Unocal Alaska, the Uniform System of Accounts does not contain a  
12 definition for a "gathering" facility. However, Unocal Alaska asserted, there is a  
13 significant body of law describing the meaning of the term. The FERC has developed a  
14 primary function test, Unocal Alaska further asserted, to determine whether a facility is a  
15 gathering facility:

16 Under section 1(b) of the NGA, the Commission's [FERC's] jurisdiction  
17 does not extend to facilities used for "the production or gathering of natural  
18 gas" or to gathering services. The Commission [FERC] has, over the  
19 years, developed a number of legal tests to determine which facilities are  
20 non-jurisdictional gathering facilities and which are jurisdictional  
21 transmission facilities. The Commission [FERC] presently relies on the  
22 modified "primary function test," which includes consideration of several  
23 physical and geographic factors, including: (1) the length and diameter of  
24 the pipelines; (2) the extension of facilities beyond the central point-in-the-  
25 field; (3) the facilities' geographic configuration; (4) the location of  
26

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<sup>26</sup> *Id.* at 5.

<sup>27</sup> 18 C.F.R. Part 201, Definition 29.B.

1 compressors and processing plants; (5) the location of wells along all or  
2 part of the facilities; and (6) the operating pressures of pipelines.<sup>28</sup>

3 Unocal Alaska concluded that under the FERC criteria, CIGGS qualifies  
4 as a gathering facility because its primary function is to collect gas from a number of  
5 production points for delivery to one or more central points. CIGGS gas is delivered to  
6 a central point in Nikiski (on the east side of Cook Inlet) or to a central point on the west  
7 side of Cook Inlet from which gas subsequently is transported by certificated  
8 transmission facilities to consuming markets.<sup>29</sup>

9 Unocal Alaska predicted that if we decide pipeline facilities used to  
10 connect wellhead points of production to certificated transmission lines are jurisdictional,  
11 important dollars will be diverted away from exploration and development activities  
12 because of significant additional regulatory costs. Unocal Alaska warned us to carefully  
13 consider the jurisdictional reach of AS 42.05.990(4)(D) and not extend its scope beyond  
14 what the statute and our regulations already provide.

15 The opposing parties, Agrium, Aurora, and the State, disagreed with the  
16 CIGGS Owners' position that CIGGS is not used for "transmission" but instead is used  
17 exclusively as a gathering line.

18 Agrium contended that we have applied the plain meaning of the term  
19 "transmission" under the AS 42.05 for three decades and that the CIGGS Owners'  
20 argument that CIGGS is not performing a "transmission" function does not merit serious  
21 consideration.<sup>30</sup> Agrium reminded us that AS 42.05 and AS 42.06 must be broadly and  
22

23 <sup>28</sup>Unocal Alaska Brief at 7, quoting *Equitrans, L.P.*, 109 FERC ¶ 61,209 at  
24 61,995.

25 <sup>29</sup>*Id.*

26 <sup>30</sup>Agrium's Reply Brief at 12.

1 not narrowly or restrictively construed.<sup>31</sup> Both Agrium and Aurora asserted that we  
2 should consider the Alaska Supreme Court's admonition in *Tesoro Alaska Petroleum*  
3 *Co. v. Kenai Pipe Line Co.* that regulatory statutes are to be interpreted liberally.<sup>32</sup>

4 Agrium stated that the CIGGS Owners argued for an overly-technical and  
5 restrictive reading of the jurisdictional definition of public utility when they argued that  
6 CIGGS is not used for the "transmission" of gas.<sup>33</sup> Agrium observed that regulated  
7 pipelines such as Alaska Pipeline Company (APLC), the Beluga Pipeline System and  
8 the Kenai Nikiski Pipeline System perform a function identical to CIGGS' function.<sup>34</sup>  
9 Aurora stated that the proper focus should be on the functions performed by CIGGS,  
10 rather than on the individual activities of the CIGGS Owners and questioned whether  
11 there would be any doubt that CIGGS is rendering public utility service if it were owned  
12 and operated by Alaska Pipeline Company (APLC) or Chugach Electric Association  
13 (Chugach).<sup>35</sup>

14 Aurora stated that, if CIGGS performs a transmission function, it can be  
15 subject to our jurisdiction even though CIGGS also performs a gathering function.<sup>36</sup> The  
16 State agreed. It asserted:

17 The recent filings of the CIGGS owners summarizing the 2004 shipments  
18 over CIGGS established that a significant volume of the gas shipped is  
19 delivered for sale to the public (utilities), and suggest that those shipments  
20 are more properly characterized as "transmission" under the FERC

21 <sup>31</sup>*Id.* at 2.

22 <sup>32</sup>Aurora Reply Brief at 4 and Agrium Reply Brief at 3-4, quoting *Tesoro Alaska*  
*Petroleum Co. v. Kenai Pipe Line Co.*, 746 P.2d 896, 906 (Alaska 1987).

23 <sup>33</sup>Agrium Reply Brief at 5.

24 <sup>34</sup>*Id.* at 7.

25 <sup>35</sup>Aurora Reply Brief at 2.

26 <sup>36</sup>*Id.* at 7.

1 physical and geographic factors. CIGGS is therefore functioning as a  
2 "public utility" subject to regulation under AS 42.05 regardless of whether  
3 CIGGS has a substantial or even a primary additional function that can be  
classified as "gathering."<sup>37</sup>

4 The State further asserted:

5 It appears to be beyond dispute however, that a major component of the  
6 CIGGS system – the dual ten-inch marine pipelines that run from a  
7 Granite Point connection with the 16-inch CIGGS west side pipeline to  
8 Nikiski on the east side of Cook Inlet – does not directly connect to any  
9 wells or production leaseholds, and is a physically and geographically  
10 distinct pipeline facility from the CIGGS west side pipeline system. One  
major CIGGS component thus appears likely to fall outside of the  
"gathering" classification under FERC test based on facts and common  
knowledge.<sup>38</sup>

11 The State's argument precisely summarizes the factual circumstances of  
12 CIGGS today. We find that CIGGS functions both as a gathering line and as a  
13 transmission line and further find that it is unnecessary for us to find whether CIGGS  
14 functions primarily as a gathering line or primarily as a transmission line. Our statute  
15 contains no exemption for gathering lines. Thus, if a facility otherwise meets the  
16 definition of public utility by furnishing gas by transmission, the fact that the facility also  
17 performs a gathering function is irrelevant to jurisdiction under AS 42.05, though it may  
18 bear on the question of exemption from AS 42.05 regulation and in fashioning any final  
19 remedies. We have jurisdiction to regulate the system of pipe, including the portions  
20 that perform gathering functions.

21 The CIGGS Owners' arguments that CIGGS remains a gathering line from  
22 start to finish, however, are not plausible. As observed by the State, "CIGGS'  
23

24 <sup>37</sup>State Reply Brief at 2-3.

25 <sup>38</sup>*Id.* at 8.

1 continuing operation of its extensive off-the-leasehold pipeline facilities without any  
2 regulation by the Commission is in fact a nearly unique situation in Alaska."<sup>39</sup>

3 We do not know if CIGGS was ever a pure gathering system. However, it  
4 is historically accurate to describe it as a closed system traversing the Cook Inlet. The  
5 construction of the Beluga pipeline opened CIGGS on the west side of Cook Inlet and,  
6 at the same time, clearly delineated the pipeline into distinct gathering and transmission  
7 functions.

8 While repetitive, it is also instructive to again review Marathon's  
9 description of the CIGGS system. We find it is possible, just from this description, to  
10 categorize the dual nature of this pipeline into gathering and transmission functions.

11 Gathering Functions:

12 CIGGS begins at the Trading Bay Production Facility on the west side of  
13 Cook Inlet, where gas from offshore production platforms in the Trading  
14 Bay Unit and McArthur River Field is put into the lines. From the Trading  
15 Bay Production Facility, CIGGS extends about 26 miles, picking up gas  
16 from other fields, including from offshore platforms at Granite Point and  
from several onshore points, to an interconnection with the Beluga  
Pipeline at Granite Point.<sup>40</sup>

17 Transmission Functions:

18 From the interconnection with Beluga Pipeline, CIGGS crosses under the  
19 Cook Inlet (approximately 22 miles), then continues on-shore for about 4.5  
20 miles where it connects to KPL Junction, a hub where pipelines from  
21 several different fields come together. The pipelines converging at KPL  
22 Junction include Marathon's Kenai Nikiski Pipeline ("KNPL"), Unocal's  
23 unregulated Swanson River Pipeline, ConocoPhillips' unregulated Tyonek  
24 Pipeline, and the Alaska Pipeline (APL). From KPL Junction, CIGGS  
extends about a mile to its termination point near Nikiski, where it

25 <sup>39</sup>*Id.* at 4.

26 <sup>40</sup>Marathon Brief at 5.

1 connects Unocal and Marathon's production with the industrials located  
2 there (including primarily the Agrium fertilizer plant, the  
3 Marathon/ConocoPhillips LNG plant, and the Tesoro Refinery).<sup>41</sup>

4 We decide CIGGS operates as a transmission pipeline and we next  
5 consider the issue of whether CIGGS transmits gas to the public.

6 Does CIGGS Furnish Gas by Transmission to the Public?

7 CIGGS furnishes gas by transmission to the public if it furnishes gas by  
8 transmission to ten or more customers<sup>42</sup> or to a public utility. Upon review of the  
9 customer lists provided by the CIGGS Owners, we conclude that CIGGS transmits gas  
10 to the public as defined by AS 42.05.990(3). We find the pipeline is used to furnish gas  
11 to APLC, a natural gas transmission utility owned by SEMCO and to electric utilities  
12 Chugach and Homer Electric Association via a cogeneration facility. Those entities are  
13 public utilities as defined in AS 42.05 and CIGGS therefore is used to furnish gas to the  
14 public.

15 We do not address two issues raised by Unocal Alaska regarding the joint  
16 ownership of CIGGS—its contention that it does not transmit gas to the public<sup>43</sup> and its  
17 suggestion that the jurisdiction of CIGGS under AS 42.05 should be bifurcated. Rather  
18 we make a general factual finding that CIGGS, the system, is used to furnish gas to the  
19 public and leave factual distinctions between the two owners and possible bifurcation of  
20

21 <sup>41</sup>Marathon Brief at 5-6.

22 <sup>42</sup>No party contended that CIGGS furnishes gas by transmission to ten or more  
23 customers and we do not discuss that portion of the definition of "public" in this Order.

24 <sup>43</sup>We do not consider transmission of gas to APLC in January and February  
25 2004, described by Unocal Alaska, to constitute transmission to the public for  
26 compensation because this event is distinguishable as emergency and remedial in  
nature.

1 jurisdiction to be decided after the parties complete the briefing cycle for Question Two  
2 if this Phase.

3 Does CIGGS Furnish Gas by Transmission to the Public for Compensation?

4 Thus far we concluded that CIGGS is a transmission pipeline as well as a  
5 gathering pipeline and that CIGGS is used in its transmission capacity to transmit gas to  
6 the public. We now address compensation for transmission which is the third  
7 component of AS 42.05.990(D)(4).

8 Marathon asserted that no utility pays Marathon for transmission service,  
9 therefore, CIGGS is not a public utility. Marathon stated its customers pay a price for  
10 the gas commodity that does not vary with the supply source, pipeline tariff or  
11 transportation route. Marathon stated it absorbs the costs of moving its product to the  
12 customer as part of Marathon's marketing expense.<sup>44</sup> Marathon stated that it "has  
13 discretion to select which pipelines and which sources of supply to use to fulfill its  
14 obligations to supply the gas commodity, and there is no transportation charge added to  
15 the commodity price."<sup>45</sup> Marathon stated there is no basis on this record from which we  
16 could find that any such "paying utility" exists.<sup>46</sup>

17 Marathon described its use of CIGGS to move production to the  
18 interconnection with the Beluga Pipeline where it is transported to Chugach and APLC;  
19 to the cogeneration facility located within the Agruim plant at Nikiski, and to the KPL  
20 Junction where gas is sold to APLC.<sup>47</sup>

21 In the case of each sale to a utility, Marathon uses CIGGS to move gas  
22 from the wellhead to the point of sale or to the point of receipt into an

23 <sup>44</sup>Marathon Reply Brief at 9.

24 <sup>45</sup>Marathon Brief at 12.

25 <sup>46</sup>Marathon Reply Brief at 10.

26 <sup>47</sup>Marathon Brief at 7.

1 interconnecting pipeline. The sale occurs after the movement on CIGGS  
2 is completed, so the point of sale is downstream of CIGGS or at the  
3 downstream end of CIGGS. In none of these cases does the utility pay  
4 any compensation, nor is the utility separately charged for gathering,  
5 transmission, or distribution by Marathon. The cost of moving the gas  
6 over CIGGS to the point of sale is always borne by Marathon. The price  
7 of the gas to the utility does not depend on whether any pipeline facility,  
including CIGGS, is used or not used, and the price of the gas does not  
vary with the costs of transporting on whatever pipeline facility or facilities  
may be used.<sup>48</sup>

8 Agrium argued against Marathon's assertion that it does not use CIGGS to  
9 furnish gas to the public for compensation because there is no additional transportation  
10 charge added to the price it charges utility gas customers. Agrium stated that "[e]ven if  
11 no distinguishable transportation charge can be identified, it does not follow that  
12 Marathon does not receive compensation for furnishing gas through CIGGS."<sup>49</sup> Agrium  
13 argued that Marathon is compensated for "transmission" based on the delivered price in  
14 the same fashion as Marathon is compensated for "transmission" for gas through KNPL  
15 or Beluga. Agrium concluded that Marathon includes the price of "transmission" within  
16 the price of the gas it provides on a delivered basis.<sup>50</sup>

17 Aurora echoed Agrium sentiments that the price of gas delivered to utilities  
18 appears to be transmitted through CIGGS on a delivered-price basis, as envisioned by  
19 AS 45.02.319(a)(2), which states, "when the term is F.O.B. the place of destination, the  
20 seller must, at the expense and risk of the seller, transport the goods to that place and  
21 there tender delivery of them in the manner provided in AS 45.02.503."<sup>51</sup> Aurora argued  
22

23 <sup>48</sup>*Id.* at 7-8.

24 <sup>49</sup>Agrium Reply Brief at 21.

25 <sup>50</sup>*Id.* at 22.

26 <sup>51</sup>Aurora Reply Brief at n.8.

1 that "[i]t is simply not credible to assume that Marathon's delivered-price fails to include  
2 a component to cover usage of the CIGGS transportation infrastructure, even if that  
3 component is not separately itemized. Compensation for the transmission of the gas is  
4 implicitly being paid in the delivered-price."<sup>52</sup>

5 We agree. We find the price utilities and other customers pay for gas at a  
6 particular point of sale necessarily includes the cost to transport the gas to that point,  
7 just as much as it includes the cost of producing that gas. As an unregulated pipeline,  
8 CIGGS has had the flexibility to express its pricing policies without regard to a tariffed  
9 transportation rate. Given the age of the pipeline, there is a significant likelihood that  
10 much of the infrastructure has been depreciated under Generally Accepted Accounting  
11 Principles, but operating maintenance and other costs exist and are somehow  
12 economically incorporated in the business model of gas sales and delivery.

13 We intentionally limited discovery during this phase of the process to  
14 reduce litigation costs to all parties. We have authority to compel discovery of all gas  
15 contracts and of the pricing policies and cost accounting records of CIGGS Owners if  
16 necessary to build a more complete record on the issue of compensation. However, we  
17 believe it is unnecessary to venture further into this area. We find it strains common  
18 sense for Marathon to allege that it absorbs the costs of moving its product to the  
19 customer as part of Marathon's marketing expense.<sup>53</sup> Absorbing costs into marketing  
20 expense does not make them disappear. Marketing, production, overhead,  
21 transportation, litigation and profit margin are all components considered when the  
22 selling price is established. The transportation element is commonly identified as a  
23 separate component of any business arrangement when shipment is made on a tariffed

24 <sup>52</sup>*Id.* at 8-9.

25 <sup>53</sup>Marathon Reply Brief at 9.

1 pipeline (such as the case with APLC). CIGGS has been a private pipeline with no  
2 third-party shippers so there has been no historical business reason for the  
3 transportation component to be separately calculated, identified or charged. Marathon's  
4 argument is a convenient use of circumstance but it is not convincing.

5 After carefully considering the facts and arguments presented by the  
6 parties, we conclude that CIGGS furnishes gas by transmission to the public for  
7 compensation within the meaning of AS 42.05.990(4)(D).

8 Under AS 42.05.990(4) any company owning a pipeline or system that  
9 furnishes natural gas by transmission to the public for compensation is a public utility.  
10 Both Unocal Alaska and Marathon own an interest in CIGGS. Therefore, we find  
11 Unocal Alaska and Marathon are public utilities subject to our jurisdiction under  
12 AS 42.05.

13 This determination is consistent with the decision in Docket U-70-73 that  
14 Unocal Alaska and Marathon, as owners of KNPL, were subject to jurisdiction under  
15 AS 42.05 as public utilities.<sup>54</sup> Marathon argued that the KNPL decision is an anomaly  
16 and that the consistently applied modern regulatory practice is not to require certification  
17 for producers who use their upstream pipe to move gas destined for sale to public  
18 utilities.<sup>55</sup>

19 We strongly disagree. We believe the KNPL decision correctly interprets  
20 the statute and, further, that it provides us with a viable strategy to consider in  
21 determining the level of regulation we choose to assert over CIGGS. In that decision,  
22 the APUC acknowledged:

23 <sup>54</sup>1 APUC 281 (1971) (Order U-70-73(2), dated September 28, 1971). Docket  
24 U-70-73 is titled *In the Matter of the Certification of UNION OIL COMPANY and*  
25 *MARATHON OIL COMPANY*.

26 <sup>55</sup>Marathon Reply Brief at 5.

1 the reluctance of the Applicants to submit all of their pipeline operations to  
2 regulation as a public utility, particularly in view of the extremely small  
3 percentage of the total pipeline capacity dedicated to public utility service.  
4 On the other hand, the Commission must recognize its obligation to  
5 protect the interest of all ultimate utility customers who depend on the  
6 Applicants for the gas they use regardless of the fact that their usage is  
7 only a minuscule part of the gas transmitted by the Pipeline.<sup>56</sup>

8 Thirty-four years later, we still have an obligation to protect the interest of  
9 all ultimate utility customers who depend on CIGGS for natural gas. ENSTAR made  
10 clear its concern that "no matter what this Commission determines in this docket, that it  
11 not do anything that reduces the existing flow of gas over CIGGS, especially the flow of  
12 gas to utilities like ENSTAR."<sup>57</sup> ENSTAR stated that it has "relied on the fact that its  
13 supplier Marathon owns capacity on CIGGS and is free to use that capacity to serve  
14 ENSTAR's requirements, regardless of any other demand."<sup>58</sup> ENSTAR stated that  
15 curtailment of ENSTAR's residential and commercial customers is not practical.  
16 ENSTAR asked that, if we regulate CIGGS, we "do so in a way that preserves the  
17 capacity rights of the existing shippers and their customers, and provides a utility priority  
18 (applicable to both utilities and shippers who supply utilities) in the event of a capacity  
19 constraint."<sup>59</sup>

20 Marathon pointed out that "[t]here are not substantial volumes of pipeline  
21 quality gas accessible to CIGGS that are not moving to market already. The small  
22 volumes that have been identified could be moved by private carriage arrangements."<sup>60</sup>

23 <sup>56</sup>1 APUC 281, 283 (1971) (Order U-70-73(2), dated September 28, 1971).

24 <sup>57</sup>ENSTAR's *Opening Memorandum on Question No. 1* at 2, filed  
25 March 22, 2005.

26 <sup>58</sup>*Id.* at 3.

<sup>59</sup>*Id.* at 3-4.

<sup>60</sup>Marathon Brief at 14.

1 Marathon further warned us to consider the substantial costs that would be imposed (by  
2 regulation) both in dollars and in lost gas production and describes in detail the  
3 modifications which might need to be made to the pipeline in terms of measurement and  
4 control facilities.<sup>61</sup> Marathon concludes that the end result would be counterproductive  
5 to the public interest, which it describes is to maximize gas production in Cook Inlet.<sup>62</sup>

6 We take these arguments seriously and, as a result, will be mindful to rest  
7 the mantle of regulation appropriately around this pipeline. Fortunately, regulation  
8 under AS 42.05 is flexible and we have a great deal of discretion to act in the public  
9 interest.<sup>63</sup> We can protect the interests of the public — utilities and utility customers,  
10 gas producers and consumers, gas buyers and sellers — by regulating CIGGS to the  
11 exact extent necessary to achieve that protection without overburdening the CIGGS  
12 Owners. We seek balance; the parties need to seek balance; and we will continue to  
13 maintain a firm hand guiding this process. By this initial decision, we do not subject  
14 Marathon or Unocal Alaska to a "panoply of burdensome, costly, inappropriate,  
15 inapplicable and unnecessary regulation."<sup>64</sup>

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22 <sup>61</sup>/d. at 16.

23 <sup>62</sup>/d. at 17.

24 <sup>63</sup>Under AS 42.05.711(d) we can exempt the owners of CIGGS from some or all  
25 of the provisions of AS 42.05 if it is in the public interest to do so.

26 <sup>64</sup>Marathon Reply Brief at 3.

1 To further that objective, we grant Marathon and Unocal Alaska a  
2 temporary exemption from all the provisions of AS 42.05 while we complete Phase One  
3 of these proceedings.

4 **ORDER**

5 THE COMMISSION FURTHER ORDERS:

6 1. The owners of the Cook Inlet Gas Gathering System, Marathon Oil  
7 Company and Union Oil Company of California, are public utilities subject to the  
8 jurisdiction of this Commission.

9 2. Marathon Oil Company and Union Oil Company of California are  
10 granted a temporary exemption under AS 42.05.711(d) from all provisions of AS 42.05,  
11 pending further order of this Commission.

12 DATED AND EFFECTIVE at Anchorage, Alaska, this 22nd day of April, 2005.

13 BY DIRECTION OF THE COMMISSION  
14 (Commissioners Dave Harbour and  
15 James S. Strandberg, not participating.)  
16  
17

18 (SEAL)  
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1 STATE OF ALASKA

2 THE REGULATORY COMMISSION OF ALASKA

3 Before Commissioners:

Kate Giard, Chairman  
Dave Harbour  
Mark K. Johnson  
Anthony A. Price  
James S. Strandberg

7 In the Matter of the Formal Complaint Filed by )  
8 Agrium U.S. Inc. Against MARATHON OIL )  
COMPANY and Union Oil Company of California )

P-04-20

ORDER NO. 6

10 In the Matter of the Formal Complaint Filed by )  
11 Agrium U.S. Inc. Against MARATHON OIL )  
COMPANY and Union Oil Company of California )

U-05-20

ORDER NO. 4

12 ORDER DENYING JOINT PETITION FOR PARTIAL  
13 RECONSIDERATION AND SCHEDULING PREHEARING  
14 CONFERENCE

15 BY THE COMMISSION:

16 Summary

17 We deny the joint petition filed by Agrium,<sup>1</sup> Aurora Gas<sup>2</sup> and the State<sup>3</sup> for  
18 partial reconsideration of Order P-04-20(3)/U-05-20(1).<sup>4</sup> We schedule a prehearing  
19 conference.

21 \_\_\_\_\_  
22 <sup>1</sup>Agrium U.S. Inc. (Agrium).

23 <sup>2</sup>Aurora Gas, LLC (Aurora Gas).

24 <sup>3</sup>The State of Alaska (the State).

25 <sup>4</sup>Order P-04-20(3)/U-05-20(1), *Order Granting Intervention, Defining Adjudicatory*  
26 *Process, Opening New Docket, Establishing Procedural Schedule and Denying Motion*  
*for Clarification*, dated March 7, 2005.

Background

In Order P-04-20(3)/U-05-20(1), we required sequential briefing on six questions raised in Agrium's formal complaint<sup>5</sup> against Marathon Oil Company (Marathon) and Union Oil Company of California (Unocal Alaska). We established a schedule for briefing and for filing specific information with us over a nine-month period from March to November 2005. Agrium, the State, and Aurora Gas (the Petitioners) jointly petitioned us to reconsider our Order and

1. consolidate and expedite the briefing and discovery schedules for Questions 2, 3, 4 and 6;
2. set a complete and expedited procedural schedule for Question 5; and
3. require such additional disclosures or discovery as the parties may request.<sup>6</sup>

Marathon and Unocal Alaska responded.<sup>7</sup>

Discussion

Petitioners stated that this proceeding would be more efficient if certain issues were considered simultaneously rather than sequentially and that sequential consideration of the issues ignores the overlap among them. Petitioners contended that

<sup>5</sup>Agrium U.S. Inc.'s Formal Complaint Against Marathon Oil Company and Union Oil Company of California for Their Ongoing Violations of the Alaska Public Utilities Regulatory Act and the Alaska Pipeline Act Through Providing Unregulated Transportation Service and Refusing to Provide Regulated Transportation Service Through the Cook Inlet Gas Gathering System, filed October 1, 2004 (Complaint).

<sup>6</sup>Joint Petition for Partial Reconsideration of Order Defining Adjudicatory Process and Establishing Procedural Schedule, filed March 29, 2005 (Joint Petition).

<sup>7</sup>Response of Marathon Oil Company to Joint Petition for Partial Reconsideration of Order Defining Adjudicatory Process and Establishing Procedural Schedule, filed April 11, 2005 (Marathon Response); Partial Opposition of Union Oil Company of California to Joint Petition for Partial Reconsideration of Order Defining Adjudicatory Process and Establishing Procedural Schedule, filed April 8, 2005 (Unocal Alaska Response).

1 Question 5, relating to common carriage under the Pipeline Act, involves a number of  
2 fact-based issues that require different treatment than the other Questions. Petitioners  
3 asked us to handle Question 5 in a more traditional way, with discovery followed by  
4 briefing on legal matters and a hearing on any remaining factual matters. Petitioners  
5 also asked us to schedule a prehearing conference to establish an expedited procedural  
6 schedule for the resolution of Question 5. Further, Petitioners reserved the right to  
7 request additional discovery upon a showing of good cause.

8 Marathon opposed establishment of an expedited schedule. Marathon  
9 stated that the expedited procedures, with the enhanced discovery sought by  
10 Petitioners, threaten to transform this investigation from a focused manageable process  
11 into an all-consuming regulatory drill.<sup>8</sup> Marathon also opposed the expedited schedule  
12 because Marathon is currently involved in two other proceedings pending before us,  
13 one of which is already on an expedited schedule.<sup>9</sup> Marathon stated it cannot  
14 simultaneously respond to these proceedings and others on the Petitioners' requested  
15 schedule.<sup>10</sup> Marathon concluded that expedited schedules in one or more of the  
16 proceedings would also interfere, perhaps fatally, with reasonable efforts to settle any of  
17 them.<sup>11</sup> Marathon opposed the request to create third party discovery rights.<sup>12</sup>

18  
19 <sup>8</sup>Marathon Response at 2.

20 <sup>9</sup>In addition to these Dockets, Marathon is participating in Docket U-04-81, and  
21 Docket P-04-12. Docket U-04-81 is titled *In the Matter of the Protest by AURORA GAS,*  
22 *LLC, Against BELUGA PIPE LINE COMPANY for Rates BELUGA PIPE LINE*  
23 *COMPANY Charges for the Transportation of Natural Gas.* Docket P-04-12 is titled *In*  
*the Matter of the Consideration of TL2- 689 and First Supplemental TL2- 689, filed by*  
*MARATHON OIL COMPANY d/b/a KENAI NIKISKI PIPELINE.*

24 <sup>10</sup>Marathon Response at 5.

25 <sup>11</sup>*Id.*

26 <sup>12</sup>*Id.*

1 Marathon stated that Order P-04-20(3)/U-05-20(1) precisely identified reasonable  
2 requirements for information we need. Marathon opposed "any attempt to allow Agrium  
3 and others to turn this case into a burdensome and uncontrolled fishing expedition into  
4 the business of the CIGGS owners."<sup>13</sup>

5 Unocal Alaska responded that it did not necessarily oppose consolidating  
6 for briefing certain of the issues, and requested that, if we decide to make any  
7 modifications to the procedural schedule, we require the parties to engage in an  
8 informal settlement conference supervised by a settlement judge we appoint. Unocal  
9 Alaska stated its belief the issues in these Dockets can be settled if all parties take the  
10 time and effort to do so. Unocal Alaska stated that, while other cases have been settled  
11 on the eve of trial, this proceeding can be resolved earlier in the process before  
12 extensive and prolonged pre-trial proceedings are incurred.<sup>14</sup> Unocal Alaska further  
13 requested that any new dates be established through a prehearing conference. Like  
14 Marathon, Unocal Alaska stated that it is involved in a number of proceedings at the  
15 moment and expressed the need to coordinate demands on it. Unocal Alaska  
16 expressed concern that if we establish new and expedited dates without taking into  
17 account the demands on the parties, we could unfairly prejudice the ability of the  
18 Marathon and Unocal Alaska to adequately prepare for and respond to our concerns.  
19 Unocal Alaska concluded that a prehearing conference will enable all parties,  
20 interactively, to work out a schedule that accounts for other demands.<sup>15</sup>

21 Unocal Alaska opposed Petitioners' request for additional disclosures or  
22 discovery. Unocal Alaska stated that the need for us to take a strong role remains as

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23 <sup>13</sup>/d. at 6.

24 <sup>14</sup>Unocal Alaska Response at 3.

25 <sup>15</sup>/d. at 4-5.

1 important now as ever. Unocal Alaska stated we should retain the provisions of Order  
2 P-04-20(3)/U-05-20(1) dealing with discovery in any subsequent order in this Docket.<sup>16</sup>  
3 Unocal Alaska did ask that, if we decide to expand discovery, we also extend the  
4 schedule in order to permit Marathon and Unocal Alaska to handle any expanded  
5 discovery requirements in an orderly and deliberate manner.

6 The petition for partial reconsideration of Order P-04-20(3)/U-05-20(1)  
7 (CIGGS Procedural Order) was filed pursuant to 3 AAC 48.105 which states in part:

8 Within 15 days after an order of the commission is served, a party  
9 may file a petition for reconsideration of that order setting out  
10 specifically the grounds upon which the petitioner believes the  
order is unreasonable, erroneous, unlawful, or otherwise defective.

11 Petitioners filed the Petition on March 29, 2005, one business day after  
12 the reconsideration period had passed. Even assuming the Petition was filed timely,  
13 Petitioners failed to provide any support for an argument that our Order was  
14 unreasonable, erroneous, unlawful, or otherwise defective. Rather, Petitioners merely  
15 express a preference for an expedited pleading schedule and expanded discovery  
16 opportunities. This is an insufficient basis for us to grant reconsideration. Therefore,  
17 we deny the petition for partial reconsideration.

18 We find Unocal Alaska's comments made in response to the Petition give  
19 us sufficient reason to schedule a prehearing conference. Unocal Alaska did not  
20 necessarily oppose the request to consolidate for briefing certain of the issues identified  
21 in these Dockets. Unocal Alaska also asserted that if we appoint a settlement judge,  
22 through diligent effort the parties could agree on terms and conditions of service which  
23 serve all of their interests. We concur that it is appropriate to consider the merits of  
24

25 <sup>16</sup>*Id.* at 6.  
26

1 appointing a settlement judge and also to discuss whether there is sufficient reason to  
2 consolidate issues in the pleading cycle.

3 We schedule a prehearing conference for May 4, 2005 at 2 p.m. Parties  
4 are instructed to be prepared to discuss their recommendations, if any, for the  
5 consolidation of the pleading schedule and any settlement procedures they would like to  
6 have established in these Dockets. We believe that early communication and any  
7 agreements they form will make the prehearing conference activities more efficient.

8 **ORDER**

9 THE COMMISSION FURTHER ORDERS:

10 1. The joint petition for partial reconsideration filed by Agrium U.S. Inc.;  
11 Aurora Gas, LLC; and the State of Alaska on March 29, 2005, is denied.

12 2. A prehearing conference is scheduled to convene at 2 p.m.,  
13 May 4, 2005 in the East Hearing Room of the Regulatory Commission of Alaska, 701  
14 West Eighth Avenue, Suite 300, Anchorage, Alaska.<sup>17</sup>

15 DATED AND EFFECTIVE at Anchorage, Alaska, this 27th day of April, 2005.

16 BY DIRECTION OF THE COMMISSION

17  
18 (SEAL)  
19  
20  
21

22 <sup>17</sup>Any party wishing to appear telephonically at the status conference must advise  
23 us, in writing, by 4 p.m., May 2, 2005, and provide a telephone number where it may be  
24 reached for that appearance.

25 If you are a person with a disability who may need a special accommodation,  
26 auxiliary aid, or service or alternative communication format in order to participate in this  
status conference, please contact Joyce McGowan at 1-907-276-6222 or TTY  
1-907-276-4533, by 4 p.m., May 2, 2005, to make the necessary arrangements.