

ALASKA LEGISLATURE SPECIAL COMMITTEE/SUBJECT FILES 8672

3121 SCOMM 144: HOUSE SPECIAL COMMITTEE ON OIL & GAS 2005-2006

# Alaska State Legislature

## Representative Ethan Berkowitz



### SPONSOR STATEMENT

#### House Bill 224

**"An Act relating to the sale or securitization of  
certain of the state's oil taken as royalty"**

House Bill 224 asks the Alaska Royalty Oil and Gas Development Advisory Board to research the possibility of either selling or securitizing the State's royalty share of oil from currently producing fields. Under our current system, the royalties from oil, a non-recurring source of income, are used for recurring expenses. While the price of oil fluctuates, the volume produced by existing fields is declining. The State Division of Oil and Gas projects that by 2020, 160 million fewer barrels will be produced annually on the North Slope. HB 224 offers the state the option of taking a lump sum up front that can subsequently be invested, allowing for a stable and growing revenue stream for the State.

Besides benefits to the State, a royalty sale to the current producers would increase fiscal stability, reserves and potentially the economics of operating on the North Slope. While a royalty sale could involve the current producers on the North Slope, there is the potential that a sale could attract new Producers to the state and offer new companies a foothold on the North Slope.

Securitization can happen independently of the producers. Securitization would allow the State to receive money upfront for the forward sale of revenue over a given period of time.

HB 224 simply asks the question of the Alaska Royalty Oil and Gas Development Advisory Board whether a royalty sale or securitization of currently producing oil fields would be worthwhile.

# **Tobacco Settlement Payment Securitization**

## **March, 2001**

Alaska  
Housing  
FINANCE

**State of Alaska**

# **Overview of the Tobacco Settlement**

- **The Master Settlement Agreement (“MSA”)**
  - **Benefits of the MSA**
  - **MSA Payments and Adjustments**
  - **Total MSA Payments to the State of Alaska**
- **Options for spending Settlement Money**
- **How Securitization works**
  - **Benefits**
  - **Risks and Costs**
  - **Uses of Bond Proceeds**
  - **Summary of NTSC 2000 transaction and 2001 proposal**
- **General Obligation vs. Tobacco Revenue Bonds**

# **The Master Settlement Agreement (“MSA”)**

- **The MSA was signed on November 23, 1998 and included 46 states, five U.S. territories, the District of Columbia, and the four largest cigarette manufacturers.**
  - **The MSA requires the Participating Manufacturers (“PM”) to make unadjusted payments exceeding \$6.2 billion over the next 40 years, with additional payments in perpetuity.**
  - **Florida, Minnesota, Mississippi and Texas reached their own settlement agreements with the cigarette manufacturers.**
  - **Payments are for recovery of all claims and costs of the states.**
- **Most cigarette manufacturers are now parties to the MSA.**
  - **The Original Participating Manufacturers (“OPM”), Philip Morris, R.J. Reynolds, Brown & Williamson and Lorillard comprise approximately 96% of the domestic cigarette market.**
  - **24 other manufacturers (Subsequent Participating Manufacturers “SPM”) have also signed the agreement.**
  - **In total, the PMs comprise approximately 99.7% of the domestic cigarette market, indicating that the MSA is acceptable to the tobacco industry.**

# **Benefits of the MSA**

- **From the State's perspective:**
  - Alaska should receive large cash payments annually in perpetuity;
  - The MSA is an industry-wide settlement with payments based on total domestic cigarette shipments nationwide;
  - The MSA has been financed by higher cigarette prices, making it similar to an excise tax on cigarettes.
- **From the PM's perspective:**
  - They are released from past, present, and future smoking-related claims of the States;
  - The cost of the settlement is spread out over many years and passed on to consumers through higher prices;
  - They pay in proportion to their market share.

# MSA Payments

- **MSA payments are based on domestic cigarette shipments.**
  - **Payments are recalculated each year, based on relative U.S. market share, and are subject to other adjustments.**
  - **Payments can fluctuate significantly based on cigarette consumption in the U.S.**
  - **If cigarette brands are sold, payment obligations follow the brands to the new manufacturer.**
- **Payments are adjusted annually for several factors, including inflation and volume of domestic cigarette shipments.**
- **Payments are allocated to states based upon percentages specified in the MSA.**
  - **Alaska's Initial and Annual Payment percentage is .3414187%**

# **MSA Payments**

(continued)

- **There are three types of payments to the states under the MSA:**

## **Initial Payments**

- **Up front payments made by the OPM through 2003;**

## **Annual Payments**

- **Annual payments made by the OPM and SPM based on market share, in perpetuity;**

## **Strategic Contribution Payments**

- **Payments in 2008-2017 to reimburse states for their contributions to the legal costs associated with the MSA.**

# MSA Payment Adjustments

- The MSA Payments are adjusted each year for a number of factors.
- The adjustments apply to certain payments. Some adjustments are expected to have little or no impact on Alaska's payments. However, other adjustments could be significant.

| Adjustment                                    | Initial Payments | Annual Payments | Strategic Payments |
|-----------------------------------------------|------------------|-----------------|--------------------|
| Inflation Adjustment                          |                  | X               | X                  |
| Volume Adjustment                             | X                | X               | X                  |
| Previously-Settled States Reduction           |                  | X               |                    |
| Non-Participating Manufacturer Adjustment     |                  | X               | X                  |
| Non-Settling States Reduction                 | X                | X               | X                  |
| Offset for Miscalculated or Disputed Payments | X                | X               | X                  |
| Federal Tobacco Legislation Offset            |                  | X               | X                  |
| Litigating Releasing Parties Offset           |                  | X               | X                  |
| Offset for Claims-Over                        |                  | X               | X                  |

# Total MSA Payments to the State of Alaska

*(Without any offsets, reductions or adjustments other than the previously settled states reduction)*

| Payment Type                            | Scheduled       |         |            | Amount     | Aggregate Amount |
|-----------------------------------------|-----------------|---------|------------|------------|------------------|
|                                         | Date of Payment |         |            |            |                  |
| Annual Payment                          | (04/15/01)      |         |            | 13,358,196 | 13,358,196       |
| Initial Payment                         | (01/10/02)      |         |            | 7,254,157  | 7,254,157        |
| Annual Payment                          | (04/15/02)      |         |            | 17,267,462 | 17,267,462       |
| Initial Payment                         | (01/10/03)      |         |            | 7,224,048  | 7,224,048        |
| Annual Payment                          | (04/15/03)      |         |            | 17,195,793 | 17,195,793       |
| Annual Payments                         | (04/15/04)      | through | (04/15/07) | Various    | 87,206,129       |
| Annual Payments                         | (04/15/08)      | through | (04/15/17) | Various    | 244,340,648      |
| Strategic Contribution Pmnts.           | (04/15/08)      | through | (04/15/17) | Various    | 147,674,050      |
| Annual Payments                         | (04/15/18)      | through | (04/15/25) | Various    | 246,950,976      |
| Total to be received through 04/15/2025 |                 |         |            |            | \$ 788,471,459   |

| Summary of amounts to be received through 04/15/2025 |                |
|------------------------------------------------------|----------------|
| Initial Payments                                     | \$ 14,478,205  |
| Strategic Contribution Payments                      | \$ 147,674,050 |
| Annual Payments                                      | \$ 626,319,204 |
|                                                      | \$ 788,471,459 |

# Options for spending Settlement Money

- The MSA Payments can be utilized to accomplish many different objectives. Some of the popular strategies being employed by other states are:
  - Spend as you go. This strategy, as its name states, would include MSA Payments reflected in annual budgets as the funds have been or are scheduled to be received;
  - Trust built over time. This approach would work like the Permanent Fund, with the MSA Payments deposited to the Trust and a portion of income from the Trust used in future years for targeted expenditures;
  - Securitization. This approach involves borrowing money with the MSA Payments as collateral and source for repayment of bonds. The proceeds from the issuance of the bonds could be spent or put into a trust fund/endowment.

# Tobacco Transactions

## completed and anticipated

|                       |            |                   |
|-----------------------|------------|-------------------|
| • TSASC (NYC)         | \$ 709,280 | November, 1999    |
| • Various NY Counties | 1,391,247  | 1999 to 2001      |
| • TCPFA (CA)          | 45,000     | December, 1999    |
| • North Dakota        | 32,095     | March, 2000       |
| • Alabama             | 50,000     | September, 2000   |
| • NTSC (AK)           | 116,050    | October, 2000     |
| • Puerto Rico         | 397,005    | October, 2000     |
| • Washington D.C.     | 521,105    | March, 2001       |
| • TSRMA (SC)          | 934,530    | March, 2001       |
| • Guam/US VI          | 47,000     | 2nd Quarter, 2001 |
| • Various CA Counties | 830,000    | **Delayed         |
| • Iowa                | 600,000    | Late, 2001        |
| • Arkansas            | 60,000     | Late, 2001        |
| • Nevada              | 200,000    | Late, 2001        |

# NTSC

**\$116,050,000**

## Tobacco Settlement Asset-Backed Bonds, Series 2000

|                                  | <u>Serial Bonds</u> | <u>2022 Term Bond</u> | <u>2031 Term Bond</u> |
|----------------------------------|---------------------|-----------------------|-----------------------|
| Legal Final Maturity             | 2013                | 2022                  | 2031                  |
| Projected Final Turbo Redemption | 2013                | 2011                  | 2015                  |
| Projected Average Life (Years)   | N/A                 | 7.00                  | 13.30                 |
| <u>Yield</u>                     | <u>5.55%-6.00%</u>  | <u>6.22%</u>          | <u>6.60%</u>          |

|                                    | <u>Series 2000<br/>Actual</u> | <u>Series 2001<br/>Proposed</u> |
|------------------------------------|-------------------------------|---------------------------------|
| Gross Bond Proceeds                | \$ 116,050,000                | \$ 160,305,000                  |
| Debt Service Reserve Fund          | (11,324,015)                  | (13,332,920)                    |
| Capitalized Interest Account       | (7,602,640)                   | 0                               |
| Cost of Issuance                   | (2,845,579)                   | (2,808,200)                     |
| Original Issue Discount            | (877,766)                     | (16,763,880)                    |
| Deposit for Operating Expenses     | <u>(400,000)</u>              | <u>(400,000)</u>                |
| Net Bond Proceeds                  | <u>\$ 93,000,000</u>          | <u>\$ 127,000,000</u>           |
| Percentage of MSA Sold             | 40%                           | 40%                             |
| First Payment from MSA             | FY 2002                       | FY 2002                         |
| Final Payment from MSA (projected) | FY 2015                       | FY 2023                         |

3/27/01

# **How Securitization Works**

- **Securitization, in the case of the tobacco settlement, is the process of issuing bonds that are backed by the MSA Payments.**
- **The State sells all or a portion of their expected tobacco payment funding stream to a special-purpose entity (in this case, the Northern Tobacco Securitization Corporation, NTSC), whose sole purpose is to issue bonds backed by those payments. NTSC, not the State or AHFC, would be the sole entity legally responsible for paying the debt service on the bonds.**

# **How Securitization Works**

- **The State and AHFC are legally separate from NTSC and, therefore, would not put their own credit ratings at risk through the tobacco bond issuance. This mechanism affords the State and AHFC protection from problems resulting from reduced, stalled, or halted payment streams from the MSA.**
- **Securitization provides a sizeable, up-front payment, rather than smaller payments spread over a number of years.**
  - **For immediate, pressing needs or special projects, securitization provides access to cash now. This approach is no different than borrowing money based on your future earnings to purchase a house, and paying it back over the next 30 years.**

# **Benefits of Securitization**

- **Securitization transfers the risks associated with the MSA Payments to the buyers of the bonds, including:**
  - **Reductions in cigarette sales;**
  - **Bankruptcy of any or all of the PMs;**
  - **Invalidation of the MSA.**
  - **A possible increase in the federal cigarette tax;**
  - **Individual lawsuits against the industry and states; and**
  - **The impact of the additional volume reductions attributable to national smoking prevention and public education campaigns and significant additional restrictions related to the tobacco industry's marketing, advertising, and lobbying.**

# **Uses of Bond Proceeds**

- **On what and how the money is spent determines the tax status of the bonds. Tax-exempt bonds generally have lower interest costs than taxable bonds, reducing the cost of the financing to the State.**
- **If Bond Proceeds are spent on qualifying capital projects or other qualifying expenditures, interest paid on them will be exempt from federal income taxes.**
- **If Bond Proceeds are spent on operating items, or the earnings of a trust/endowment fund created with Bond Proceeds are invested in taxable securities yielding above the cost of the bonds, the interest paid to holders of the bonds will be taxable.**

# **General Obligation vs. Tobacco Revenue Bonds**

**Even though General Obligation Bonds have lower interest costs than Revenue Bonds, there are compelling reasons to use Revenue Bonds:**

- **There is a limited amount of G.O. bond capacity available to the State.**
- **By not selling the revenue stream to bondholders, the state is, in effect, holding an investment in the Tobacco Industry, exposing the State to unnecessary industry concentration, credit concerns and illiquidity.**
- **Revenue bonds are generally issued with debt service payable only from the revenue source identified. This makes them attractive to issuers where revenue streams are uncertain.**

*In the opinion of Wohlforth, Vassar, Johnson & Brecht, A Professional Corporation, Bond Counsel, and Kutak Rock LLP, Special Tax Counsel, under existing laws, regulations, rulings and judicial decisions, interest on the Series 2000 Bonds (defined below) (i) is excluded from gross income for Federal income tax purposes and (ii) is not treated as a specific preference item to be included in calculating the alternative minimum tax imposed under the Internal Revenue Code of 1986, as amended, on individuals and corporations; but such interest is included in calculating the "adjusted current earnings" of certain corporations for purposes of computing the alternative minimum tax on such corporations. In the opinion of Bond Counsel, under existing laws, interest on the Series 2000 Bonds is free from taxation by the State of Alaska except for transfer, inheritance and estate taxes. See "TAX MATTERS."*

**\$116,050,000**

**Northern Tobacco Securitization Corporation  
Tobacco Settlement Asset-Backed Bonds, Series 2000**

Northern Tobacco Securitization Corporation ("NTSC") is a nonprofit corporation organized as a subsidiary of the Alaska Housing Finance Corporation ("AHFC"). As a subsidiary of AHFC, NTSC is a government instrumentality of, but separate and apart from, the State of Alaska (the "State").

The Tobacco Settlement Asset-Backed Bonds, Series 2000 (the "Series 2000 Bonds") are to be issued pursuant to an Indenture and a Series 2000 Supplemental Indenture, each dated as of October 1, 2000 (collectively, the "Indenture"), and each between NTSC and U.S. Bank Trust National Association, Seattle, Washington, as indenture trustee (the "Trustee"). The Indenture does not permit NTSC to issue any additional series of bonds secured by a pledge of the Pledged Receipts, other than those which may be issued for refunding purposes. See "THE SERIES 2000 BONDS—Additional Refunding Bonds."

The Series 2000 Bonds are being issued to finance NTSC's purchase of the "Pledged Receipts" consisting of 40% of all amounts required to be paid to the State beginning January 10, 2002 under the Master Settlement Agreement (the "MSA") entered into by participating cigarette manufacturers (the "PMs"), 46 states and six other U.S. jurisdictions in November 1998 in settlement of certain smoking-related litigation. Pledged Receipts derive from certain initial payments, annual payments and strategic contribution fund payments (such payments as more fully defined herein, the "TSRs") to be made by the PMs under the MSA. Under applicable Alaska statutes, the claim of NTSC to that portion of the TSRs being sold to NTSC is on a parity with the claim of the State to ownership of the remaining 60% of all amounts required to be paid to the State beginning January 10, 2002 under the MSA.

Payment of the Series 2000 Bonds is dependent on receipt of TSRs. The amount of TSRs actually collected is dependent on many factors including cigarette consumption and the financial capability of the PMs. See "RISK FACTORS" for a discussion of certain factors that should be considered in connection with an investment in the Series 2000 Bonds.

The Series 2000 Bonds will be secured by and payable solely from (i) the Pledged Receipts and investment earnings on accounts pledged with respect to the Series 2000 Bonds under the Indenture (as more fully defined herein, the "Collections"), (ii) amounts held in a certain reserve account established for the Series 2000 Bonds under the Indenture (the "Series 2000 Reserve Account") and (iii) amounts held in the other funds and accounts established for the Series 2000 Bonds under the Indenture.

Interest on the Series 2000 Bonds will be payable on each June 1 and December 1, commencing June 1, 2001.

The Series 2000 Bonds shall consist of Serial Bonds and Term Bonds. The Series 2000 Bonds maturing on June 1, 2008 through June 1, 2013, inclusive, shall be "Serial Bonds" and shall each be referred to herein as a "Serial Maturity" and, collectively, as the "Serial Maturities". All other Series 2000 Bonds shall be "Term Bonds" and shall be subject to mandatory redemption according to the schedule of amortization payments (the "Sinking Fund Payments"). Interest payments, and Serial Maturities and Sinking Fund Payments (together, "Principal Installments"), will be paid from Collections and, if necessary, the Series 2000 Reserve Account. In addition, 100% of all Surplus Collections (as defined herein), if any, shall be applied to the special mandatory par redemption ("Turbo Redemptions") of the Term Bonds. Surplus Collections, if any, will be applied to the Turbo Redemption of the Term Bonds in ascending order of maturity and such Turbo Redemptions will be credited against Sinking Fund Payments for any particular Term Bond in ascending order of Sinking Fund Payment Dates.

Due to NTSC's covenant to apply all Surplus Collections to Turbo Redemptions, it is expected that receipt of principal on the Term Bonds will be substantially earlier than the schedule of Sinking Fund Payments.

Certain of the Series 2000 Bonds are subject to redemption and prepayment, as described herein.

**See Inside Front Cover for Dated Date, Maturity Schedule, Interest Rates and Prices or Yields**

The Series 2000 Bonds shall not be a debt of AHFC or the State nor shall AHFC or the State be liable thereon. NTSC shall not have the power to pledge the credit, the revenues or the taxing power of the State or the credit or revenues of AHFC, and neither the credit, nor the revenues nor the taxing power of the State or the credit or revenues of AHFC shall be, or shall be deemed to be, pledged to the payment of any of the Series 2000 Bonds. NTSC has no taxing power.

**Bear, Stearns & Co. Inc.  
Lehman Brothers**

**Morgan Stanley Dean Witter  
Salomon Smith Barney**

The Series 2000 Bonds are offered when, as and if issued and received by the Underwriters, subject to the approval of legality by Wohlforth, Vassar, Johnson & Brecht, A Professional Corporation, Anchorage, Alaska, Bond Counsel, and to the confirmation of certain tax matters by Wohlforth, Vassar, Johnson & Brecht, A Professional Corporation, and Kutak Rock LLP, Special Tax Counsel, and to certain other conditions. Certain legal matters will be passed on for the State by the Attorney General of the State and for the Underwriters by their counsel, Hawkins, Delafield & Wood, New York, New York. It is expected that delivery of the Bonds will be made to DTC in New York, New York, on or about October 26, 2000.

October 13, 2000


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PAGE ONE

## Oil Companies Reap Cash Windfall From Price Surge

Investors Say Big Stockpiles Can Help Pump Up Returns; Exxon's \$23.1 Billion Hoard

By JEFFREY BALL and RUSSELL GOLD  
 Staff Reporters of THE WALL STREET JOURNAL  
 March 18, 2005; Page A1

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The surge in oil prices over the past year is generating an immense cascade of cash that is flooding the coffers of oil companies, raising pressure on their bosses to pursue acquisitions, further boost spending on production or give more of the gains to shareholders.

So far, big Western oil companies have been reluctant to commit the bulk of that cash toward any of those ends, over concern that the rise in oil prices will prove temporary. They argue that big acquisitions could lose value if oil prices drop, and say it's not worth pouring even their extra resources into further development if returns don't justify the expense -- despite rising competition from oil-hungry nations like China and India.

Moreover, though the cash windfall is large -- Exxon Mobil Corp., the world's biggest oil company, ended 2004 with \$23.1 billion in cash on hand, more than double its hoard from a year earlier -- plans at most oil companies assume prices will drop from today's highs.

But some shareholders say they should get a big share of that windfall -- perhaps with a special dividend like the one Microsoft Corp. paid investors last year, worth \$32.6 billion. With the tax rate on dividends at 15%, and the possibility that could rise in the future, Frederick Leuffer, an oil analyst at Bear Stearns, says a special payment this year is preferable to incremental boosts over several years.

### Cash Machines

Total cash reserves, in billions

\$25

 20 2002  
 15 2003  
 10 2004

Investors also say they're concerned because cash sitting on a company's books typically earns far less than when it's invested in an oil or natural-gas project. Despite company assertions that they have plenty of oil left to pump, some investors argue the industry lacks investment options in parts of the world that have the most fossil fuel -- particularly the Middle East.

To be sure, most oil companies have been boosting regular

dividends and buying back shares; Exxon, for instance, raised spending on dividends and buybacks to \$14.9 billion in 2004 from \$11.5 billion a year earlier. Additionally, at least two large companies, **ChevronTexaco Corp.** and **Eni SpA**, are said to be considering a deal for **Unocal Corp.**, which could be valued at \$17 billion.

In response to questions from investors, industry executives preach patience. At a meeting with analysts last week in New York, Exxon Chairman and Chief Executive Lee Raymond said the company is carefully watching spending and doesn't plan a major acquisition soon. Exxon officials say a one-time special dividend wouldn't do much to boost the long-term value of the stock.

"Oil is a commodity," Mr. Raymond said. "It's hard to identify a single commodity that has maintained a very high price over a very long period of time."

Exxon's not alone in seeing its hoard of cash -- that is, the amount of money left over after paying all expenses, from capital projects to taxes -- grow as oil prices climb higher. At **Royal Dutch/Shell Group**, cash on hand rose to \$8.5 billion in 2004, from \$2 billion a year earlier. ChevronTexaco's cash jumped to \$9.3 billion from \$4.3 billion.

Together, the world's five biggest oil companies -- which include **BP PLC** and **Total SA** besides Exxon, Royal and ChevronTexaco -- generated \$67.4 billion in free cash flow in 2004, according to Norwalk, Conn., energy-research firm John S. Herold. That figure refers to the amount of money left after capital spending, but before paying dividends and buying back shares. The 2004 figure, boosted by some asset sales, was up nearly 32% from the \$51.1 billion generated in 2003.

Herold estimates the five companies will throw off just \$55.5 billion in free cash flow in 2005 -- but that estimate is premised on an average oil price of \$40 a barrel for the year. Right now, oil is priced much higher, driven steadily upward by surging demand, in the U.S. and in growing economies like China's, even as the industry pumps about as hard as it can.

Yesterday, crude oil for April delivery finished the day at \$56.40, down six cents, after hitting a new intraday record in trading on the New York Mercantile Exchange of \$57.60. That figure remains behind historical highs when adjusted for inflation.

Herold predicts Exxon will be the industry's biggest generator of free cash this year, racking up another \$16.4 billion. Even allowing for a moderate increase this year in capital spending, share buybacks and the regular dividend, Exxon's cash pile is likely to rise to at least \$35 billion by the end of the year, estimates Fadel Gheit, an oil analyst at Oppenheimer & Co. That would amount to a roughly 50% increase in Exxon's cash in 2005 alone.

Mr. Gheit calculates that every \$1 increase in the average price per barrel of oil adds about \$550 million to Exxon's after-tax annual profit. If its expenses don't change, that additional profit all piles up as cash -- a problem, Mr. Gheit says, that shows up in a company's "return on capital employed." That common industry measure is meant to capture how effectively the company's capital produces profit.

Though high oil prices boost the short-term profits of oil companies, they make it tougher for companies to produce enough new oil and natural gas to replenish what is pumped out of the ground. Under agreements that are becoming increasingly common in the oil industry, governments that own much of the remaining big fossil-fuel stashes give Western oil companies

proportionately less fossil fuel as the price of those commodities rises.

Industry executives have reason to watch spending. When oil prices surged in the 1970s, companies sought new investments, as when the former Mobil Corp. bought Montgomery Ward and Occidental Petroleum Corp. acquired Iowa Beef Processors. Neither purchase succeeded, and each company ended up shedding its acquisition.

Even so, if executives are wrong, and prices keep rising and stay high, the companies may well be forced to rethink their current approach. If they don't, they could lose potential assets to smaller competitors, including state-controlled oil companies in the developing world, that are hungrier for growth.

The cash windfall goes well beyond the industry giants. **Burlington Resources Inc.**, a Houston-based independent, reported last month that it had \$2.18 billion in cash and cash equivalents at the end of 2004, nearly triple the amount it had a year earlier. Steven Shapiro, Burlington's chief financial officer, told analysts in January that his company was "interested" in acquisitions but wouldn't aggressively ramp up capital spending because that tends to hurt returns. He acknowledged that the company was nearing a point at which, if it didn't find an acquisition in 2005, adding more cash would become "inefficient," and promised to address the issue.

Exxon's Mr. Raymond, though downplaying the likelihood his company would make a major purchase soon, hasn't ruled one out down the road. Indeed, in signaling that Exxon probably will raise its rate of share buybacks, he recalled at last week's meeting that Exxon has used buybacks in previous periods of high oil prices to amass equity that the company later used to pounce when prices fell.

One such buyback started in the early 1980s, he recalled. Exxon ended up repurchasing one billion shares at a cost of \$16 billion. In 1999, it used them to buy Mobil for about \$80 billion.

"A pretty good investment for the shareholders," Mr. Raymond said.

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**BP Trinidad, Tobago to Sell 3 Oil Fields, to Invest in Gas**

Mon, Mar 14, 2005 04:30 GMT

PORT-OF-SPAIN, Trinidad - BP Trinidad and Tobago wants to sell three oil fields off Trinidad's southeast coast as the company moves to expand its production of natural gas, officials said Sunday.

The three oil fields - Teak, Samaan and Poui - produce about 21,000 barrels of oil a day, or 5% of BP Trinidad and Tobago production of oil and gas, said Robert Riley, the company's chairman and chief executive.

With a sale, bpTT (BP Amoco PLC's (BP) Trinidad branch) would be able to focus on expanding its gas business while allowing a new player to grow the oil business, Riley said. The asset comprises bpTT's three longest-producing fields (30 years), 14 platforms and exploration and production licenses, he said.

The company said it will retain deep exploration rights around the three fields. Riley didn't say whether any buyers had contacted the company.

BP Trinidad is the largest shareholder in Atlantic LNG, Trinidad's liquid natural gas company.

In recent years, Trinidad has become the leading supplier of liquid natural gas to the U.S., supplying 75% of imports last year. Liquid natural gas comprised only 3% of the total natural gas used in the U.S. in 2003, but that share is expected to grow to 15% by 2025.

The former British colony, which has proven natural gas reserves of at least 30 trillion cubic feet, reported economic growth of 12.8% last year - much of it due to liquid natural gas.

The nation of 1.2 million people relies on oil and gas for more than 25% of gross domestic product. Trinidad and Tobago is one of the wealthiest countries in the Caribbean.

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**CS FOR HOUSE BILL NO. 234( )**

**IN THE LEGISLATURE OF THE STATE OF ALASKA**

**TWENTY-FOURTH LEGISLATURE - FIRST SESSION**

**BY**

**Offered:  
Referred:**

**Sponsor(s): HOUSE SPECIAL COMMITTEE ON OIL AND GAS**

**A BILL**

**FOR AN ACT ENTITLED**

1 **"An Act amending the rate of interest payable on royalties or net profit shares."**

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

3 **\* Section 1.** AS 38.05.135(d) is amended to read:

4 (d) If a royalty or net profit share payment to which the state is entitled under  
5 AS 38.05.135 - 38.05.181

6 (1) is not paid when it becomes due under this section or is  
7 underpaid when it becomes due under [(c) OF] this section and the error in the  
8 amount of the underpayment is manifest or not the result of a redetermination  
9 and recalculation following an inspection of records or an audit conducted under  
10 AS 38.05.036, the unpaid amount of the royalty or net profit share payment bears  
11 interest in a calendar quarter at the rate of five percentage points above the annual rate  
12 charged member banks for advances by the 12th Federal Reserve District as of the  
13 first day of that calendar quarter, or at the annual rate of 11 percent, whichever is  
14 greater, compounded quarterly as of the last day of that quarter;

15 (2) is underpaid when it becomes due under this section and the

1 error in the amount of the underpayment is disclosed based on a redetermination  
2 and recalculation following an inspection of records or an audit conducted under  
3 AS 38.05.036, the unpaid amount of the royalty or net profit share payment bears  
4 interest, if the date of the commissioner's notice to the lessee advising of the  
5 underpayment is

6 (A) not more than two years after the payment due date, at  
7 the annual rate of 11 percent for amounts that are unpaid for the period  
8 between the payment due date and the date of the commissioner's  
9 transmittal letter;

10 (B) more than two years but not more than three years  
11 after the payment due date, at the annual rate of 11 percent for amounts  
12 that are unpaid for two years after the payment due date and at the  
13 annual rate of 5.5 percent for amounts that are unpaid for the period after  
14 the second anniversary of the payment due date;

15 (C) more than three years but not more than four years  
16 after the payment due date, at the annual rate of 11 percent for amounts  
17 that are unpaid for two years after the payment due date, at the annual  
18 rate of 5.5 percent for amounts that are unpaid for the period between the  
19 second and third anniversaries of the payment due date, and at the annual  
20 rate of 2.75 percent for amounts that are unpaid for the period between  
21 the third and fourth anniversaries of the payment due date; and

22 (D) more than four years after the payment due date, at the  
23 annual rate of 11 percent for amounts that are unpaid for two years after  
24 the payment due date, at the annual rate of 5.5 percent for amounts that  
25 are unpaid for the period between the second and third anniversaries of  
26 the payment due date, and at the annual rate of 2.75 percent for amounts  
27 that are unpaid for the period between the third and fourth anniversaries  
28 of the payment due date, but the disputed amount of the royalty or net  
29 profit share bears no interest for amounts that are unpaid for the period  
30 after the fourth anniversary of the payment due date.

31 \* Sec. 2. AS 38.05.135(e) is amended to read:

1 (e) If a royalty or net profit share payment to which the state is entitled under  
2 AS 38.05.135 - 38.05.181 is overpaid, interest at the rate and compounded in the  
3 manner provided in (d)(1) [(d)] of this section shall be allowed and paid on the  
4 overpayment. The interest allowance is subject to the following:

5 (1) if the state grants a credit against future payments for the  
6 overpayment, the state shall pay interest on the overpayment

7 (A) from the date that is the later of the date the overpayment  
8 was

9 (i) due; or

10 (ii) received;

11 (B) to the date that is the earlier of the date

12 (i) of notice to the lessee of the credit; or

13 (ii) on which the lessee actually takes the credit;

14 (2) if the state refunds the overpayment, the state shall pay interest on  
15 the overpayment

16 (A) from the date that is the later of the date the overpayment  
17 was

18 (i) due; or

19 (ii) received;

20 (B) to the date the state issues the refund.



House Oil and Gas Committee – HB 234  
April 7, 2005

Mr. Chairman and members of the committee, for the record, my name is Michael Hurley. I am director of state government relations for ConocoPhillips Alaska, based in Anchorage.

ConocoPhillips supports a change in the statutory interest rate for over and under payments of royalties to something much more reflective of the actual time value of money. The current statute, with its arbitrary, high fixed rate acts more like a penalty than a reimbursement of the opportunity cost of funds.

Let me first point out that from ConocoPhillips perspective, this hasn't historically been a big dollar issue one way or the other. The interest rate applicable to most of our production is governed by the royalty settlement agreement we have with the state. However as a matter of public policy, we believe interest should reflect the cost of funds, not be a cudgel to try to force people to pay more than they think they owe just out of fear.

Additionally, the current system often makes resolution of substantive issues difficult because of the magnitude of the dollars that end up being at stake, just due to the interest. At the current statutory 11% compounded quarterly, the interest can amount to 50% of the value of the underlying issue in just 4 years. And in just over 6 years can double the monetary value of an issue.

We believe that rather than acting as an incentive for producers to pay their royalties in a timely fashion, it has become a disincentive for the state to work out substantive issues.

Recapture of the true time value of money... that's fine. But having a rate that appears to be more of an onerous penalty seems out of step with a culture of encouraging resource development.

One thing we would suggest the committee consider is applying the new interest rate defined in HB 234 more broadly.

As currently drafted, section 2 of the bill applies only to interest charged on under and over payments of royalties. If you agree that this change makes sense, you should consider changing the corresponding statute on the tax side as well, which is defined in AS 43.05.225.

Thank you Mr. Chairman for this opportunity to testify, I'd be happy to try to answer any questions the committee may have.

## Alaska Oil and Gas Association



121 W. Fireweed Lane, Suite 207  
Anchorage, Alaska 99503-2035  
Phone: (907)272-1481 Fax: (907)279-8114

**Testimony  
of the  
Alaska Oil and Gas Association  
to the  
House Special Committee on Oil and Gas  
Regarding HB 234**

**April 7, 2005**

Good afternoon. My name is Marilyn Crockett, and I am Deputy Director of the Alaska Oil and Gas Association ("AOGA"). AOGA is a private trade association whose 18 member companies account for a majority of the oil and gas exploration, development, production, transportation, refining and marketing activities in Alaska. On behalf of AOGA and its members, I thank you for this opportunity to testify on House Bill 234, relating to the accrual of interest for purposes of audit adjustments to (and other underpayments of) oil and gas royalty and net-profits-share payments to the State.

AOGA supports the purpose and intent of HB 234, and particularly the changes to the statutory rate of interest under AS 38.05.135(d) that are proposed in Section 2 of the Bill. Currently the statutory rate is five percentage points over the Federal Reserve "discount rate" or 11% APR, whichever is higher, and it is compounded quarterly. HB 234 would set the rate at two percentage points above the Federal Reserve "discount rate," would eliminate the 11% floor-rate, and would use simple interest and eliminate the quarterly compounding.

These changes under HB 234 would make the law much more reasonable and fair. Frankly, when prime interest rates are running below 6% as they are today and have been for several years, a statutory rate of 11% goes far beyond the line between proper compensatory interest and interest that constitutes a punishment for underpaying. AOGA believes that if abusive underpayments are a problem, there are better ways to deal with it than having punitive interest rates. But, from our experience, the great majority of royalty underpayments are not abusive. Under "paragraph 16" of the lease, a producer owes royalty on the highest of A) the price it gets for the oil, B) the posted price for oil from the same field, and C) the highest price any other producer is getting for its oil from that field. For competitive and antitrust reasons, individual companies cannot find out what other producers get for their oil. They only find out about other producers' prices if DNR makes a claim on that basis during audit. In such a situation, it is inappropriate to apply a punitive rate of interest for the underpayment.

HB 234 would change statutory interest back into a compensatory mechanism, instead of being an instrument of punishment. AOGA welcomes this change in philosophy about the purpose of statutory interest.

# ALASKA STATE LEGISLATURE

*Interim:*

600 East Railroad Avenue  
Wasilla, Alaska 99654  
(907) 373-1842  
Fax (907) 373-4729



*Session:*

State Capitol Building  
Juneau, Alaska 99801-1182  
(907) 465-2186  
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## REPRESENTATIVE VIC KOHRING DISTRICT 14

### House Bill 234 Sponsor Statement

House Bill 234 revises the due date for payment of oil and gas royalties and net profit shares to the state. In addition, the legislation amends the interest rate charged for underpayment of royalties for oil and gas.

HB 234 is not a new concept. Similar legislation was proposed in 1993 by Governor Hickel. His administration recognized that a fixed interest rate becomes outdated and usurious if prevailing rates fall while the statutory rate can remain excessively high in comparison. Interest rates determine the level of compensation for the use of one's money while it is in the hands of another.

The current statute has not been significantly modified since 1993. Over the 12 years since then, we have seen interest rates fluctuate from as 5.75% to as low as .75%, substantially lower than the 11% currently charged by statute. HB 234 provides a mechanism for adjusting an interest rate that better reflects current and prevailing market rates.

# FISCAL NOTE

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

Fiscal Note Number: \_\_\_\_\_  
Bill Version: HB234-DNR-O&G-03-30-  
( ) Publish Date: \_\_\_\_\_

Revision Date/Time (Note if correction): \_\_\_\_\_ Dept. Affected: Natural Resources  
Title Oil/Gas Royalty Due Date & Interest Rate RDU Resource Development  
Component Oil and Gas Development  
Sponsor House Oil and Gas  
Requester House Oil and Gas Component No. 439

**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      | 273.0        | 273.0        | 273.0        | 273.0        | 273.0        | 273.0        |
| Travel                 | 20.0         | 20.0         | 20.0         | 20.0         | 20.0         | 20.0         |
| Contractual            | 4.5          | 4.5          | 4.5          | 4.5          | 4.5          | 4.5          |
| Supplies               | 15.0         | 6.0          | 6.0          | 6.0          | 6.0          | 6.0          |
| Equipment              |              |              |              |              |              |              |
| Land & Structures      |              |              |              |              |              |              |
| Grants & Claims        |              |              |              |              |              |              |
| Miscellaneous          |              |              |              |              |              |              |
| <b>TOTAL OPERATING</b> | <b>312.5</b> | <b>303.5</b> | <b>303.5</b> | <b>303.5</b> | <b>303.5</b> | <b>303.5</b> |

|                             |  |  |  |  |  |  |
|-----------------------------|--|--|--|--|--|--|
| <b>CAPITAL EXPENDITURES</b> |  |  |  |  |  |  |
|-----------------------------|--|--|--|--|--|--|

|                               |                                     |  |  |  |  |  |
|-------------------------------|-------------------------------------|--|--|--|--|--|
| <b>CHANGE IN REVENUES ( )</b> | <b>***Indeterminate Negative***</b> |  |  |  |  |  |
|-------------------------------|-------------------------------------|--|--|--|--|--|

**FUND SOURCE** (Thousands of Dollars)

|                                         |              |              |              |              |              |              |
|-----------------------------------------|--------------|--------------|--------------|--------------|--------------|--------------|
| 1002 Federal Receipts                   |              |              |              |              |              |              |
| 1003 GF Match                           |              |              |              |              |              |              |
| 1004 GF                                 | 312.5        | 303.5        | 303.5        | 303.5        | 303.5        | 303.5        |
| 1005 GF/Program Receipts                |              |              |              |              |              |              |
| 1037 GF/Mental Health                   |              |              |              |              |              |              |
| Other (Specify Type--Do not abbreviate) |              |              |              |              |              |              |
| <b>TOTAL</b>                            | <b>312.5</b> | <b>303.5</b> | <b>303.5</b> | <b>303.5</b> | <b>303.5</b> | <b>303.5</b> |

Estimate of any current year (FY2005) cost: 0.0

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

**POSITIONS**

|           |   |   |   |   |   |   |
|-----------|---|---|---|---|---|---|
| Full-time | 3 | 3 | 3 | 3 | 3 | 3 |
| Part-time |   |   |   |   |   |   |
| Temporary |   |   |   |   |   |   |

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

HB 234 would change the date from which interest on underpayments or nonpayments of oil and gas royalties and net profit share leases would be calculated (from the original due date to 60 days after notification by the state of an underpayment through an audit claim). This bill also amends the interest rate set under AS 38.05.135 for oil and gas royalties and net profit share payments from an 11 percent floor to two percent above the annual rate charged member banks for advances by the 12th Federal Reserve as of the first day of that calendar quarter (currently the federal discount rate is 3.75 percent resulting in a legal rate of 5.75 percent). In addition, HB 234 eliminates the quarterly compounding of interest.

Continued on next page.

Prepared by: Mark D. Myers, Director Phone 269-8800  
Division Oil and Gas Date/Time 3/29/2005  
Approved by: Tom Irwin, Commissioner Date 3/30/2005  
Agency Natural Resources

## FISCAL NOTE

STATE OF ALASKA  
2005 LEGISLATIVE SESSION

BILL NO. HB234-DNR-O&G-0:

### ANALYSIS CONTINUATION

Currently under AS 38.05.135(d), if a royalty or net profit share payment is not paid or is underpaid when it becomes due, the unpaid amount bears interest in a calendar quarter at the rate of five percentage points above the annual rate charged member banks for advances by the 12th Federal Reserve District as of the first day of that calendar quarter or at the annual rate of 11 percent, whichever is greater, compounded quarterly. In short, the state is assured of a floor of 11 percent which compounds quarterly. In addition, interest is calculated from the original date that the payment was due. See AS 38.05.135(c). The same interest calculations also apply to refunds paid by the state to lessees as a result of over-payment (see AS 38.05.135(e)).

\*\*\*This bill will result in a significant negative fiscal impact to the state. It is difficult to estimate the exact fiscal impact to the state. The Division of Oil and Gas examined the royalty refilings for just one company during the last four years (2001-2004) comparing the current interest rate and the proposed interest rate. Had the interest rate proposed in this bill been in effect, the state would have collected approximately \$12.4 million less in royalty refilings from this one company (after considering both underpayments and over-payments). When looking at all lessees, it is clear that the state would lose tens of millions of dollars on underpayments determined through audits.

In effect, the lessee gets an interest free loan on money that it owes the state from the month of production until the state conducts an audit and discovers that an underpayment has been made. Interest in all situations whether for oil and gas royalty sales or net profit shares are intended to account for the time value of money and to make the state (or the lessee) whole for under- (or over-) payments that occur in the normal course of business.

It should also be noted that because 25 percent of royalty revenues are dedicated to the Permanent Fund, underpayment means that the Permanent Fund is also losing the opportunity to invest the amount of the underpayment and receive a return on its investment.

Because the bill creates a major incentive for underpayment, the Division of Oil and Gas anticipates a significant increase in the number and scope of audits performed by the division. The division would require three additional Revenue Auditor V (Range 22 A) positions (3 x \$90,941 = \$272,823). An additional \$20,000 would be required for travel expenses associated with audits.

## HB 234

HB 234 creates an incentive for oil and gas lessees to underpay royalties and net profit shares owed to the state. It would result in a loss of revenue to the state, and substantially increase the workload for the Division of Oil and Gas audit section. Companies would pay interest or underpayments only **after** a completed audit and then pay interest at a much lower rate (5.75 percent today) than their typical return on capital. In effect, the lessee gets an interest free loan on money that it owes the state from the month of production until the state conducts an audit and discovers that an underpayment has been made. Conversely, if the companies overpay, the state pays interest to the lessee from the date of the over payments. Over the past four years, this bill would have cost the state tens of millions of dollars. Because the bill creates a major incentive for underpayment, the Division of Oil and Gas anticipates a significant increase in the number and scope of audits performed by the division.

### Background:

Currently under AS 38.05.135(d), if a royalty or net profit share payment is not paid or is underpaid when it becomes due, the unpaid amount bears interest in a calendar quarter at the rate of five percentage points above the annual rate charged member banks for advances by the 12<sup>th</sup> Federal Reserve District as of the first day of that calendar quarter or at the annual rate of 11 percent, whichever is greater, compounded quarterly. In short, the state is assured of a floor of 11 percent, which compounds quarterly. In addition, interest is calculated from the original date that the payment was due. This interest rate has acted as an incentive to industry to submit royalty and net profit share payments on time. While 11 percent may seem like a high rate, it is less than the typical rate of return expected by oil companies on capital employed (12 percent to 15 percent).

The amendments proposed by this bill would set a new rate without a floor and with a simple, non-compounding interest. Interest would not begin to accrue until 60 days after notification by the state through an audit claim or other redetermination.

### HB 234 does the following:

- Changes the interest rate for royalties or net profit shares due the state to two percent above the annual rate charged member banks for advances by the 12<sup>th</sup> Federal Reserve as of the first day of that calendar quarter.
- Eliminates the 11 percent interest floor and the quarterly compounding of interest.
- Eliminates the requirement that interest on unpaid or underpaid royalties or net profit shares be calculated back to the original due date. Replaces it with the requirement that interest begin accruing 60-days **after** DNR notifies the lessee of the underpayment or lack of payment. In other words, there would be no interest on royalties or NPSL revisions as long as the lessee pays within 60 days of being notified.
- In the case of an overpayment to the state, the state continues under AS 38.05.135(e) to pay interest on the overpayment from the date that the overpayment was due or received to the date the state issues a refund.
- Interest in all situations whether for oil and gas royalty sales, lessee payments of royalties, lease rents and net profit shares are intended to account for the time value of money and to make the state (or the lessee) whole for under- (or over-) payments that occur in the normal course of business. In the situation where the lessee has underpaid its royalty, the state has not had use of this money and should receive some compensation for the opportunity cost of drawing on other revenues to make up the difference.
- In addition, because 25 percent of royalty revenues are dedicated to the Permanent Fund, underpayment means that the Permanent Fund is losing the opportunity to invest the amount of the underpayment and receive a return on its investment.
- This interest rate has acted as an incentive to industry to submit royalty and net profit share payments on time. This bill could have the effect of encouraging industry to not make any royalties or net profit share payments until 60 days after notification since it is interest free until then.

**Unocal Alaska**  
Union Oil Company of California  
909 West 9th Avenue, P.O. Box 196247  
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Telephone (907) 276-7600  
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**Kevin A. Tabler, Manager**  
Land/Government Affairs

March 29, 2005

Representative Vic Kohring  
State of Alaska Legislature  
Room 24, State Capitol  
Juneau, Alaska 99801-1182

Re: Support for HB 234

Representative Kohring:

Union Oil Company of California is pleased to see the introduction of HB 234. Establishing a date certain when an error in the oil or gas royalty or net profit share payment due the State of Alaska (State) has been identified by the State and communicated to the producer and allowing for a sixty (60) day period of time to respond to such notification prior to interest penalty accumulation, is just and fair.

Under the current statute and procedure, notification to the producer of a potential underpayment is not normally received until years later through the audit process. At that time, it requires a certain amount of time for the producer to check its records, etc. to determine whether or not it agrees with the notification. Interest charges at an arbitrary and artificially "higher of" rate of 11% are accrued back to the period of time in dispute. In some cases, by the time the producer is notified, the interest accumulation can be as much, or nearly as much, as the amount owed.

This rate of interest creates a coercive environment in negotiations and discussions with the State. A company is forced to make a payment that it may dispute simply to stop the interest accumulation, and then is subsequently forced to negotiate and try and recoup any such overpayment. Since the amount of royalty due is always uncertain in the absence of a forward agreement with the State on royalties from particular fields, Unocal is constantly in negotiation with the State for additional royalties which may be due for prior production. The process, is unfair and usury.

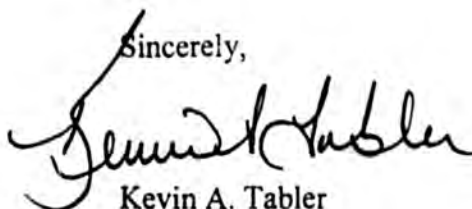
Representative Kohring  
March 29, 2005  
Page 2

Additionally, the elimination of the "higher of" provision from an arbitrary percentage to a rate of two (2) percent above a standard we can all look to, adjusting with the market, is a more reasonable and fair rate for unintentional underpayments and should be supported as a matter of fairness. In today's low interest environment, this rate adequately compensates the state for the lost opportunity costs of late payment of royalties.

Unocal encourages you and your committee to pass HB 234 out of the Oil and Gas Committee and support same through the legislative process.

Thank you for taking the initiative to address this area of inequity.

Sincerely,

A handwritten signature in cursive script, appearing to read "Kevin A. Tabler".

Kevin A. Tabler

**Memorandum**



**Marc D. Bond**

Assistant Counsel

Law Department

Tel 907.263.7813

Fax 907.263.7880

Cell 907.229.5750

e-mail mbond@unocal.com

DATE: March 31, 2005

TO: Kevin Tabler  
Manager, Land and Government Affairs

SUBJECT: **Interest Rates on Royalties**  
**The History of Interest Rates on Judgments in Alaska**

The basic concept of interest is to compensate one who is owed money by another for the time value of that money while it is in the hands of the other individual. The use of money is a commodity, and like any other commodity it has a value. Between individuals with arms length relationships, the value fluctuates depending upon the availability of money to loan. Subject to the usury laws, people freely set interest rates for the use of money in all manner of personal and commercial transactions.

A more difficult proposition arises when the government is called upon to establish a rate of interest for those who are involved in "involuntary transactions." These include the payment of interest on taxes or royalties which are owed. The situation is similar when money is recovered by a litigant in civil court by way of a judgment. When the interest rate on the money owed is established by contract, the court will award the contractual rate, subject, of course, to any usury restrictions. But when there is no contract between the litigants, or the contract does not set a rate of interest, the legislature has had to establish an interest rate on such judgments.

In 1962, when the legislature adopted the civil process, it adopted a provision on interest rates for judgments. In the early history of the state, interest rates were more stable and it was easy to fix a specific rate of interest.

Sec. 4.07. Interest on Judgments. The rate of interest on judgments and decrees for the payment of money is six percent per annum, except that a judgment or decree founded on a contract in writing providing for the payment of interest until paid at a specified rate exceeding six percent per annum and not exceeding eight percent per annum bears interest at the rate specified in the contract if the interest rate is set out in the judgment or decree.

101 SLA 1962, § 4.07 codified as AS 09.30.070.

Through the 1960's, as federal budget deficits and federal borrowing rose, interest rates also rose. In 1969, the legislature changed the rate to eight percent. 69 SLA 1969 § 1. Interest rates reached new highs at the conclusion of the Carter administration, and the legislature raised the judgment rate to ten and a half percent. 107 SLA 1980 §1.

In 1986, the legislature authorized the assessment of prejudgment interest starting with the day on which process was served or written notification of a claim. 139 SLA 1986 §3.

Throughout the 1990's, interest rates fell, and the defense bar and insurance industry (among others) complained that the 10.5% rate for prejudgment interest and judgment interest was well beyond that which would compensate a claimant for the time value of money. Accordingly, in 1997, tired of trying to chase interest rates, the legislature wisely elected to tie prejudgment and judgment interest rates to the federal discount rate.

\* Sec. 18. AS 09.30.070(a) is amended to read:

(a) Notwithstanding AS 45.45.010, the rate of interest on judgments and decrees for the payment of money, including prejudgment interest, is three percentage points above the 12<sup>th</sup> Federal Reserve District discount rate in effect on January 2 of the year in which the judgment or decree is entered, except that a judgment or decree founded upon a contract in writing, providing for the payment of interest until paid at a specified rate not exceeding the legal rate of interest for that type of contract, bears interest at the rate specified in the contract if the interest rate is set out in the judgment or decree.

With a minor provision relating to letters of credit, the statute remains as written above. See 75 SLA 1999 §1.

The 12<sup>th</sup> Federal Reserve District discount rate in effect on January 2, 2005, was 3.25%, so the interest rate on judgments in Alaska for 2005 is 6.25%, or just a little more than half of the interest rate on royalties.

Call me if you have additional questions.

Attachments:

Legislative enactments regarding judgment interest rates

entered in complete specified in the offer, for the adverse party when file the offer and all enter judgment. An incidence of that offer is judgment after verdict. If been made under this offer, or if there are more than the offer, the claim, shall pay all shall pay reasonable was made, as follows: as made the disclosures l pay 75 percent of the

as made the disclosures 90 days before the trial le actual attorney fees; as before the trial began, al attorney fees. ey fees under (a) of this purposes of an award of withstanding (a) of this the Alaska Rules of Civil section, the offeree shall es of Civil Procedure and a) of this section. A party ve attorney fees under the 1 ch 48 SLA 1981; am § 2

visions of ch. 26, SLA 1997, see 1997 in the 1997 Temporary and

ments. — The 1997 amendment, 1997, rewrote subsection (a) and

— Section 9, ch. 139, SLA 1986 1986 amendment to this section s of action accruing after June 11,

26, SLA 1997 provides that the s, SLA 1997 apply "to all causes of or after August 7, 1997."

court must add prejudgment interest it to compare its value to that of the ent, in order to determine whether ore favorable than final judgment. 375 P.2d 54 (Alaska 1999). ormed prior to offer. — The trial f full attorney's fees violated para- id because Alaska Civ. R. 68 and this section apply only from the date judgment is made, the superior court defendant attorney's fees for services re the offer of judgment. Kellis v.

Crites, 20 P.3d 1112 (Alaska 2001).

**Costs and attorney's fees.** — An offer of judgment made under this statute does not include costs and attorney's fees not expressly mentioned in the offer. LaPerriere v. Shrum, 721 P.2d 630 (Alaska 1986).

An offer of judgment, made under Civil Rule 68 or this statute requires that costs allowable under Rule 79, and attorney's fees on a noncontested or partially contested basis under Rule 82 be awarded in addition to the principal sum specified in the offer. LaPerriere v. Shrum, 721 P.2d 630 (Alaska 1986).

**Prejudgment interest.** — Because prejudgment interest on the underlying claim in a legal malpractice action became part of the underlying judgment and, as such, stood apart from the interest awarded on the judgment for the malpractice claim, a reduction of interest under the pre-1997 versions of Alaska Civ. R. 68 and this section reached back only to the accrual of the malpractice claim. Power Constructors, Inc. v. Taylor & Hintze, 960 P.2d 20 (Alaska 1998).

President could not receive an enhancement of prejudgment interest if his award was characterized as a Jones Act award; however if the trial court characterized the president's damages award as an unseaworthiness award, he was entitled to an enhancement of prejudgment interest. Marine Solution Servs. v. Horton, 70 P.3d 393 (Alaska 2003).

**Section inapplicable to prejudgment interest.** — This statute is not a prejudgment interest statute; it addresses the procedures for and consequences of

making offers of judgment. Under Alaska law, prejudgment interest is compensatory, not a cost or penalty for litigation. Home Indem. Co. v. Lane Powell Moss & Miller, 43 F.3d 1322 (9th Cir. 1995).

**Borrower's interest payments not included in prejudgment interest.** — The superior court erred in permitting the jury's damage award to include prejudgment interest on a borrower's interest payments because this effectively compounds interest and results in double recovery. Tookalook Sales & Serv. v. McGahan, 846 P.2d 127 (Alaska 1993).

**Appeal and remand.** — Offers of judgment, in general, remain effective after appeal and remand; the parties' decision to resolve their dispute through an alternative to trial, however, can invalidate such an offer. Mackie v. Chizmar, 965 P.2d 1202 (Alaska 1998).

Applied in Fairbanks N. Star Borough v. Tundra Tours, Inc., 719 P.2d 1020 (Alaska 1986); Lloyd's & Inst. of London Underwriting Cos. v. Fulton, 2 P.3d 1199 (Alaska 2000).

Quoted in Wood v. Collins, 812 P.2d 951 (Alaska 1991); Navistar Int'l Transp. Corp. v. Pleasant, 887 P.2d 951 (Alaska 1994).

Cited in Alaska Hous. Fin. Corp. v. Salvucci, 950 P.2d 1116 (Alaska 1997); Bobich v. Hughes, 965 P.2d 1196 (Alaska 1998); Magill v. Nelbro Packing Co., 43 P.3d 140 (Alaska 2001); Fleegel v. Estate of Boyles, 61 P.3d 1267 (Alaska 2002); Lawson v. Helmer, 77 P.3d 724 (Alaska 2003).

#### Sec. 09.30.070. Interest on judgments; prejudgment interest.

(a) Notwithstanding AS 45.45.010, the rate of interest on judgments and decrees for the payment of money, including prejudgment interest, is three percentage points above the 12th Federal Reserve District discount rate in effect on January 2 of the year in which the judgment or decree is entered, except that a judgment or decree founded on a contract in writing, providing for the payment of interest until paid at a specified rate not exceeding the legal rate of interest for that type of contract, bears interest at the rate specified in the contract if the interest rate is set out in the judgment or decree.

(b) Except when the court finds that the parties have agreed otherwise and except as provided by AS 45.05.111(d), prejudgment interest accrues from the day process is served on the defendant or the day the defendant received written notification that an injury has occurred and that a claim may be brought against the defendant for that injury, whichever is earlier. The written notification must be of a nature that would lead a prudent person to believe that a claim will be made against the person receiving the notification, for personal injury, death, or damage to property.

(c) Prejudgment interest may not be awarded for future economic damages, future noneconomic damages, or punitive damages. (§ 4.07 ch 101 SLA 1962; am § 1 ch 69 SLA 1969; am § 1 ch 107 SLA 1980; am § 3 ch 139 SLA 1986; am §§ 18, 19 ch 26 SLA 1997; am § 1 ch 75 SLA 1999)✓

**Cross references.** — For provisions requiring judgment against the state to include legal interest, see AS 09.50.280. For legal rate of interest, see AS 45.010. For provisions relating to the effect of 1997 addition of (c) to Rule 58, Alaska Rules of Civil Procedure, see § 53, ch. 26, SLA 1997 in the 1997 Temporary and Special Acts. For a statement of legislative intent relating to the provisions of ch. 26, SLA 1997, see § 1, ch. 26, SLA 1997 in the 1997 Temporary and Special Acts. For severability of the provisions of ch. 26, SLA 1997, see § 56, ch. 26, SLA 1997 in the 1997 Temporary and Special Acts. For transitional

provisions relating to the applicability of the 1999 amendment of subsection (b), see § 26, ch. 75, SLA 1999 in the 1999 Temporary & Special Acts.

**Effect of amendments.** — The 1997 amendment, effective August 7, 1997, rewrote subsection (a) and added subsection (c).

The 1999 amendment, effective January 1, 2000, inserted "and except as provided by AS 45.05.111(d)" in the first sentence in subsection (b).

**Editor's notes.** — Under § 4, ch. 107, SLA 1980, the interest rate provided in this section applies only to judgments entered after July 1, 1980.

**Sec. 4.07. Interest on Judgments.** The rate of interest on judgments and decrees for the payment of money is six percent per annum, except that a judgment or decree founded on a contract in writing providing for the payment of interest until paid at a specified rate exceeding six percent per annum and not exceeding eight percent per annum bears interest at the rate specified in the contract if the interest rate is set out in the judgment or decree.

#### Article V. Miscellaneous

**Sec. 5.01. Successive Actions.** Successive actions may be maintained upon the same contract or transaction when a new cause of action arises under the contract.

**Sec. 5.02. Corporate Sureties.** When, by the laws of the state or by a charter, ordinance, rule, or regulation of a political subdivision, municipality, public corporation, or by a board, body, organization, court, or judge, a recognizance, stipulation, bond, undertaking, or bail in an action, suit, proceeding, or matter conditioned for the faithful performance of an act or duty or for the doing of an act or thing is permitted or required to be given with one or more sureties, it is sufficient compliance if the instrument is executed by a corporation which has complied with the laws of the state and is authorized by law to act as surety upon instruments and in proceedings, actions, suits, and matters as set out above.

**Sec. 5.03. Parties Exempt from Giving Bond.** In an action or proceeding in any court in which the state is a party or in which the state is interested, no bond or undertaking is required of the state or an officer of the state.

**Sec. 5.04. Lis Pendens.** In an action affecting the title to or the right of possession of real property, the plaintiff at the time of filing the complaint, or afterwards, and the defendant, when affirmative relief is claimed, at the time of filing the answer, or afterwards, may record in the office of the recorder of the recording district in which the property is situated a notice of the pendency of the action, containing the names of the parties, and the object of the action or defense, and a description of the property affected in that district. From the time of filing the notice for record, a purchaser, holder of a contract or option to purchase, or encumbrancer of the property affected has con-

structive notice of the pendency of the action and of its pendency against parties designated by their real names.

**Sec. 5.05. Jurisdiction of the Parties.** From the time of the service of a copy of the summons and complaint, or of the completion of the publication when service by publication is ordered, the court acquires jurisdiction and has control of all the subsequent proceedings. The voluntary appearance of the defendant is equivalent to personal service of a copy of the summons and complaint upon him.

**Sec. 5.06. Death or Disability of a Party.** In case of the death or disability of a party to an action, the court may at any time within two years after the death or disability, on motion, allow the action to be continued by or against his personal representatives or successor in interest.

**Sec. 5.07. Defense Not Prejudiced by Assignment.** If there is an assignment of a thing in action, the action by the assignee is without prejudice to any setoff or other defense existing at the time of, or before notice of the assignment. But this section does not apply to a negotiable promissory note or bill of exchange transferred in good faith and upon valuable consideration before due.

**Sec. 5.08. Liability of Guardian Ad Litem for Costs.** No person appointed guardian ad litem by a court for an infant or incompetent defendant is liable for the costs of the action.

**Sec. 5.09. Guardian's Responsibility for Allowance against Infant Plaintiff.** When costs or disbursements are adjudged against an infant plaintiff or incompetent, the guardian by whom he appeared in the action is responsible for the payment, and payment may be enforced against him as if he were the actual plaintiff.

**Sec. 5.10. Costs Where Party Is a Representative.** In actions in which an executor, administrator, trustee of an express trust, or a person authorized to represent a party is a party, costs may be allowed as in other cases. However, when costs are allowed against that party, they are chargeable solely upon the estate, fund, or party represented unless the court orders the costs to be paid by that party personally for mismanagement or bad faith in the conduct of the action.

**Sec. 5.11. Costs Awarded a Borough, City, District, or Agencies.** When the state or city, or other public agency, or any officer thereof in his official capacity is a party, costs shall be awarded on the same basis as against a natural person or party. However, if the action is brought upon the claim of a natural person, that person shall be liable for costs awarded against the state until after execution has been obtained against that person and the costs against that person are unsatisfied in whole or in part.

**Sec. 5.12. Security for Costs of Plaintiff a Nonresident or Foreign Corporation.** When the plaintiff is a nonresident or a foreign corporation, security for the attorney fees, which may be awarded against the plaintiff, may be required of the defendant. When required, proceedings in the action shall be stayed until an undertaking executed by a sufficient sureties is filed with the court to the effect that they will pay the attorney fees which are awarded against the plaintiff, not less than \$200. A new or an additional undertaking may be ordered by the court if the proof that the original undertaking is sufficient in amount or security is not satisfactory.

**Sec. 5.13. Suits against Local Governments and Public Corporations.** Suits against local governments and public corporations may be maintained against the local government or public corporation in its corporate character and within the scope of its authority, or for the infringement of the rights of the plaintiff by some act or omission of the local government or public corporation.

**Sec. 5.14. Costs Allowed Against a Party.** Except as otherwise provided by statute, the supreme court or the district court may, by rule or order, allow costs to any party, including attorney fees, to the prevailing party in an action.

#### Title II. Special Civil Actions and Provisional Remedies

##### Article VI. Adverse Claims

**Sec. 6.01. Action to Determine Claim.** Any person in possession of real property, or his tenant, or his agent, or his assignee, or his transferee, or his estate, or his interest in the property, may bring an action against another person claiming an estate or interest in the property.



# LAWS OF ALASKA

1969

Source

Chapter No.

AS 09.30.130

69

## AN ACT

Relating to the amount of interest allowed on judgments.

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

\* Section 1. AS 09.30.070 is amended to read:

Sec. 09.30.070. INTEREST ON JUDGMENTS. The rate of interest on judgments and decrees for the payment of money is eight per cent per annum, except that a judgment or decree founded on a contract in writing, providing for the payment of interest until paid at a specified rate not exceeding the legal rate of interest for that type of contract, bears interest at the rate specified in the contract if the interest rate is set out in the judgment or decree, but in no event may it be more than 10 per cent per annum.

\* Sec. 2. AS 45.45.010(a)(2) is repealed.

Approved by governor: May 5, 1969  
Actual effective date: August 3, 1969

May 5, 1969  
May 6, 1969

AN ACT

relating to offers of judgment and to prejudgment and post-judgment interest rates; and providing for an effective date.

\* Section 1. AS 09.30.070 is amended to read:

Sec. 09.30.070. INTEREST ON JUDGMENTS. The rate of interest on judgments and decrees for the payment of money is 10.5 [EIGHT] percent a year, except that a judgment or decree founded on a contract in writing, providing for the payment of interest until paid at a specified rate not exceeding the legal rate of interest for that type of contract, bears interest at the rate specified in the contract if the interest rate is set out in the judgment or decree [, BUT IN NO EVENT MAY IT BE MORE THAN 10 PERCENT A YEAR].

\* Sec. 2. AS 45.45.010(a) is amended to read:

(a) The rate of interest in the state is 10.5 [EIGHT] percent a year and no more on money after it is due except as provided in (b) of this section. [THE RATE OF INTEREST IN THE STATE IS SIX PERCENT A YEAR AND NO MORE ON (1) MONEY RECEIVED TO THE USE OF ANOTHER AND RETAINED BEYOND A REASONABLE TIME WITHOUT THE OWNER'S EXPRESS OR IMPLIED CONSENT; (2) MONEY DUE UPON THE SETTLEMENT OF MATURED ACCOUNTS FROM THE DAY THE BALANCE IS ASCERTAINED; OR (3) MONEY DUE OR TO BECOME DUE WHEN THERE IS A CONTRACT TO PAY INTEREST AND NO RATE IS SPECIFIED.]

\* Sec. 3. AS 45.45.010 is amended by adding a new subsection to read:

(1) On or before the 60th day following the filing of an answer in



# LAWS OF

1980

Source

CSHB 970 (Finance)

AN ACT

Making a special appropriation for  
associations; and providing for

BE IT ENACTED BY THE LEGISLATURE OF

THE ACT FOLLOWS

## Chapter 107

1 a civil action, and on the fifth day following the day discovery closes  
2 as ordered by the court, either the party making a claim or the party  
3 defending against a claim may serve upon the adverse party an offer to  
4 allow judgment to be entered in complete satisfaction of the claim for  
5 the money or property or to the effect specified in his offer, with  
6 costs then accrued. If within 10 days after the service of the offer  
7 the adverse party serves written notice that the offer is accepted,  
8 either party may then file the offer and notice of acceptance together  
9 with proof of service, and the clerk shall enter judgment. An offer  
10 accepted within 10 days is considered withdrawn and evidence of that  
11 offer is not admissible except in a proceeding to determine the form of  
12 judgment after verdict. If the judgment finally entered on the claim  
13 to which an offer has been made under this section is more favorable to  
14 the offeree than the offer, the interest awarded under (a) of this  
15 section and accrued up to the date judgment is entered shall be adjusted  
16 as follows:

17 (1) if the offeree is the party making the claim, the in-  
18 terest rate shall be increased by two percent a year;

19 (2) if the offeree is the party defending against the claim,  
20 the interest rate shall be reduced by two percent a year.

21 \* Sec. 4. The interest rate provided in sec. 1 of this Act applies only  
22 to those judgments rendered after the effective date of this Act. The in-  
23 terest rate provided in sec. 2 of this Act applies only to cases filed after  
24 the effective date of this Act.

25 \* Sec. 5. This Act does not amend Rule 68 of the Alaska Rules of Civil  
26 Procedure.

27 \* Sec. 6. This Act takes effect July 1, 1980.  
28

Approved by the Governor: June 26  
Actual Effective Date: July 2, 1980

Chapter 139

notice of acceptance together with proof of service, and the clerk shall enter judgment. An offer not accepted within 10 days is considered withdrawn and evidence of that offer is not admissible except in a proceeding to determine the form of judgment after verdict. If the judgment finally entered on the claim as to which an offer has been made under this section is not more favorable to the offeree than the offer, the interest awarded under AS 09.30.070 [AS 45.45.010(a)] and accrued up to the date judgment is entered shall be adjusted as follows:

- (1) if the offeree is the party making the claim, the interest rate shall be reduced by five [TWO] percent a year;
- (2) if the offeree is the party defending against the claim, the interest rate shall be increased by five [TWO] percent a year.

\* Sec. 3. AS 09.30.070 is amended by adding a new subsection to read:

(b) Except when the court finds that the parties have agreed otherwise, prejudgment interest accrues from the day process is served on the defendant or the day the defendant received written notification that an injury has occurred and that a claim may be brought against the defendant for that injury, whichever is earlier. The written notification must be of a nature that would lead a prudent person to believe that a claim will be made against the person receiving the notification, for personal injury, death, or damage to property.

\* Sec. 4. AS 09.60.010 is repealed and reenacted to read:

Sec. 09.60.010. COSTS AND ATTORNEY FEES ALLOWED PREVAILING PARTY. The supreme court shall determine by rule or order the costs, if any, that may be allowed a prevailing party in a civil action. Unless specifically authorized by statute or by agreement between the

parties, attorney fees may not be awarded for personal injury, death or property out of fault, as defined in AS 09. contested without trial, or fully court.

\* Sec. 5. AS 09.17.040 and 09.17.050 the effect of amending Alaska Rule of jury to answer the special interrogator the amount of damages and the percent the parties and to itemize the verdict punitive damages as specified in AS 09

\* Sec. 6. AS 09.17.080 enacted in amending Alaska Rule of Civil Procedure specific findings regarding the amount fault to be allocated among the parties

\* Sec. 7. AS 09.17.040 and 09.17 the effect of amending Alaska Rule court to include a specific item in

\* Sec. 8. AS 09.60.010 as amended of amending Alaska Rule of Civil Procedure attorney fees in certain civil actions statute or by agreement of the parties tested without trial or fully contested

\* Sec. 9. APPLICABILITY. Sections causes of action accruing after 1975

\* Sec. 10. SEVERABILITY. If tion thereof to any person or of of this Act and the application affected.

and experienced in the same discipline or school of practice as a directly related to a matter at issue; and  
 by a board recognized by the state as having acknowledged  
 ly related to the particular field or matter at issue.  
 of (a) of this section do not apply if the state has not  
 certified the witness in the particular field or matter at

ended to read:

ers of judgment. At any time more than 10 days before  
 erty making a claim or the party defending against a claim  
 party an offer to allow judgment to be entered in complete  
 r the money or property or to the effect specified in the  
 ed. If within 10 days after the service of the offer the  
 notice that the offer is accepted, either party may then file  
 pta nce together with proof of service, and the clerk shall  
 ot accepted within 10 days is considered withdrawn, and  
 admissible except in a proceeding to determine the form  
 f the judgment finally entered on the claim as to which an  
 this section is at least five percent less [NOT MORE]  
 n the offer, or if there are multiple defendants at least  
to the offeree than the offer, the offeree, whether the  
or defending against the claim, shall pay all costs as  
a Rules of Civil Procedure and shall pay reasonable  
red by the offeror from the date the offer was made,  
 ED UNDER AS 09.30.070 AND ACCRUED UP TO THE  
 ITERED SHALL BE ADJUSTED] as follows:

er was served no later than 60 days after both parties  
ired by the Alaska Rules of Civil Procedure, the offeree  
ie offeror's reasonable actual attorney fees [OFFEREE  
 IG THE CLAIM, THE INTEREST RATE SHALL BE

REDUCED BY FIVE PERCENT A YEAR];

(2) if the offer was served more than 60 days after both parties  
made the disclosures required by the Alaska Rules of Civil Procedure but more  
than 90 days before the trial began, the offeree shall pay 50 percent of the  
offeror's reasonable actual attorney fees;

(3) if the offer was served 90 days or less but more than 10 days  
before the trial began, the offeree shall pay 30 percent of the offeror's reasonable  
actual attorney fees [OFFEREE IS THE PARTY DEFENDING AGAINST THE  
 CLAIM, THE INTEREST RATE SHALL BE INCREASED BY FIVE PERCENT A  
 YEAR].

\* Sec. 17. AS 09.30.065 is amended by adding a new subsection to read:

(b) If an offeror receives costs and reasonable actual attorney fees under (a)  
 of this section, that offeror shall be considered the prevailing party for purposes of an  
 award of attorney fees under the Alaska Rules of Civil Procedure. Notwithstanding  
 (a) of this section, if the amount awarded an offeror for attorney fees under the Alaska  
 Rules of Civil Procedure is greater than a party would receive under (a) of this section,  
 the offeree shall pay to the offeror attorney fees specified under the Alaska Rules of  
 Civil Procedure and is not required to pay reasonable actual attorney fees under (a) of  
 this section. A party who receives attorney fees under this section may not also  
 receive attorney fees under the Alaska Rules of Civil Procedure.

\* Sec. 18. AS 09.30.070(a) is amended to read:

(a) Notwithstanding AS 45.45.010, the [THE] rate of interest on judgments  
and decrees for the payment of money, including prejudgment interest, is three  
percentage points above the 12th Federal Reserve District discount rate in effect  
on January 2 of the year in which the judgment or decree is entered [10.5  
 PERCENT A YEAR], except that a judgment or decree founded on a contract in  
 writing, providing for the payment of interest until paid at a specified rate not  
 exceeding the legal rate of interest for that type of contract, bears interest at the rate  
 specified in the contract if the interest rate is set out in the judgment or decree.

\* Sec. 19. AS 09.30.070 is amended by adding a new subsection to read:

(c) Prejudgment interest may not be awarded for future economic damages.

Chapter 26

1 future noneconomic damages, or punitive damages.

2 \* Sec. 20. AS 09.50.280 is amended to read:

3 Sec. 09.50.280. Judgment for plaintiff; punitive damages. If judgment is  
4 rendered for the plaintiff, it shall be for the legal amount found due from the state with  
5 [LEGAL] interest as provided under AS 09.30.070 [FROM THE DATE IT BECAME  
6 DUE] and without punitive damages.

7 \* Sec. 21. AS 09.55.440(u) is amended to read:

8 (a) Upon the filing of the declaration of taking and the deposit with the court  
9 of the amount of the estimated compensation stated in the declaration, title to the estate  
10 as specified in the declaration vests in the plaintiff, and that property is condemned  
11 and taken for the use of the plaintiff, and the right to just compensation for it vests in  
12 the persons entitled to it. The compensation shall be ascertained and awarded in the  
13 proceeding and established by judgment. The judgment must include interest at the  
14 rate of 10.5 percent a year [SET OUT IN AS 09.30.070] on the amount finally  
15 awarded that [WHICH] exceeds the amount paid into court under the declaration of  
16 taking. The interest runs from the date title vests to the date of payment of the  
17 judgment.

18 \* Sec. 22. AS 09.55.536(a) is amended to read:

19 (a) In an action for damages due to personal injury or death based upon the  
20 provision of professional services by a health care provider, including a person  
21 providing services on behalf of a governmental entity, when the parties have not  
22 agreed to arbitration of the claim under AS 09.55.535, the court shall appoint within  
23 20 days after filing of answer to a summons and complaint a three-person expert  
24 advisory panel unless the court decides that an expert advisory opinion is not necessary  
25 for a decision in the case. When the action is filed, the court shall, by order,  
26 determine the professions or specialties to be represented on the expert advisory panel,  
27 giving the parties the opportunity to object or make suggestions.

28 \* Sec. 23. AS 09.55.536(c) is amended to read:

29 (c) Not more than 30 days after selection of the panel, the panel [IT] shall  
30 make a written report to the parties and to the court, answering the following questions  
31 and other questions submitted to the panel by the court in sufficient detail to explain

AN ACT

1 Relating to letters of credit under the Uniform Commercial Code; and providing for an effective  
2 date.

3  
4 \* Section 1. AS 09.30.070(b) is amended to read:

5 (b) Except when the court finds that the parties have agreed otherwise and  
6 except as provided by AS 45.05.111(d), prejudgment interest accrues from the day  
7 process is served on the defendant or the day the defendant received written  
8 notification that an injury has occurred and that a claim may be brought against the  
9 defendant for that injury, whichever is earlier. The written notification must be of a  
10 nature that would lead a prudent person to believe that a claim will be made against  
11 the person receiving the notification, for personal injury, death, or damage to property.

12 \* Sec. 2. AS 45.01.105(b) is amended to read:

13 (b) Where one of the following provisions of the code specifies the applicable  
14 law, that provision governs and a contrary agreement is effective only to the extent

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# Federal Reserve Bank of San Francisco

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### FRBSF Discount Rate

**"Discount Rate" on Advances to Depository Institutions under Sections 13 and 13a of the Federal Reserve Act in Effect at the Federal Reserve Bank of San Francisco**

For more information:



The following is a list of rates of interest on our advances to, and discounts for, member banks and other depository institutions under Sections 13 and 13a of the Federal Reserve Act. Each rate (also referred to as the "discount rate") was in effect until the next date indicated.

SEARCH THE SITE:

| Effective Date      | Rate<br>(% per annum) | Effective Date                  | Rate<br>(% per annum) |
|---------------------|-----------------------|---------------------------------|-----------------------|
| 2005 March 22       | 3.75*                 |                                 |                       |
| 2005 February 2     | 3.5                   | 1996 January 31                 | 5                     |
| 2004 December 14    | 3.25                  | 1995 February 1                 | 5.5                   |
| 2004 November 10    | 3                     | 1994 November 15                | 4.75                  |
| 2004 September 21   | 2.75                  | 1994 August 17                  | 4                     |
| 2004 August 10      | 2.5                   | 1994 May 17                     | 3.5                   |
| 2004 June 30        | 2.25                  | 1992 July 2                     | 3                     |
| 2003 June 25        | 2                     | 1991 December 20 <sup>(2)</sup> | 3.5                   |
| 2003 January 9      | 2.25 <sup>(2)</sup>   | 1991 November 6                 | 4.5                   |
| 2002 November 6     | 0.75                  | 1991 September 13               | 5                     |
| 2001 December 11    | 1.25                  | 1991 April 30                   | 5.5                   |
| 2001 November 6     | 1.5                   | 1991 February 1                 | 6                     |
| 2001 October 2      | 2                     | 1990 December 19                | 6.5                   |
| 2001 September 17   | 2.5                   | 1989 February 24                | 7                     |
| 2001 August 21      | 3                     | 1988 August 9                   | 6.5                   |
| 2001 June 27        | 3.5                   | 1987 September 9                | 6                     |
| 2001 May 15         | 3.5                   | 1986 August 21                  | 5.5                   |
| 2001 April 18       | 4                     | 1986 July 11                    | 6                     |
| 2001 March 20       | 4.5                   | 1986 April 21                   | 6.5                   |
| 2001 January 31     | 5                     | 1986 March 7                    | 7                     |
| 2001 January 4      | 5.5                   | 1985 May 21                     | 7.5                   |
| 2001 January 3      | 5.75                  | 1984 December 24                | 8                     |
| 2000 May 16         | 6                     | 1984 November 21 <sup>(2)</sup> | 8.5                   |
| SLF <sup>(1)</sup>  | 7.5                   | 1984 April 13                   | 9                     |
| Basic Discount Rate | 5.5                   | 1982 December 14                | 8.5                   |
| 2000 March 21       |                       | 1982 November 22                | 9                     |
| SLF                 | 7.5                   | 1982 October 11                 | 9.50                  |
| Basic Discount Rate | 5.5                   | 1982 August 27                  | 10                    |

|      |                     |      |      |              |       |
|------|---------------------|------|------|--------------|-------|
| 2000 | February 2          |      | 1982 | August 16    | 10.50 |
|      | SLF                 | 7    | 1982 | August 2     | 11    |
|      | Basic Discount Rate | 5    | 1982 | July 20      | 11.50 |
| 1999 | November 16         |      | 1981 | December 4   | 12    |
|      | SLF                 | 6.75 | 1981 | November 2   | 13    |
|      | Basic Discount Rate | 4.75 | 1981 | May 5        | 14    |
| 1999 | October 1           |      | 1980 | December 5   | 13    |
| 1999 | August 24           | 4.75 | 1980 | November 17  | 12    |
| 1998 | November 17         | 4.5  | 1980 | September 26 | 11    |
| 1998 | October 15          | 4.75 | 1980 | July 28      | 10    |
|      |                     |      | 1980 | June 13      | 11    |
|      |                     |      | 1980 | May 29       | 12    |
|      |                     |      | 1980 | February 15  | 13    |

**\* current rate**

The Federal Reserve Bank expresses no opinion on the applicability of the basic discount rate or surcharge to any transaction governed by a Federal or state usury or usury preemption statute.

(1) The Federal Reserve Board established a Century Date Change Special Liquidity Facility (SLF), a program for lending to depository institutions from October 1, 1999 through April 7, 2000. The interest rate charged on loans from the SLF is 150 basis points higher than the Federal Open Market Committee's intended federal funds rate.

(2) On January 9, 2003, Regulation A (Extensions of Credit by Reserve Banks) was amended to restructure Federal Reserve credit programs that resulted in a new method of establishing the discount rate. The rate change on January 9, 2003, did not reflect a change in the stance of monetary policy. See more information about the Discount Window.

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**Chapter 20** **SECURITIES** Amends the Alaska Securities Act of 1959. Authorizes the Department of Commerce and Economic Development to set fees related to registration and application by regulation. Permits the use of certain registration, examination, and other procedures to avoid duplication of security regulation requirements. Exempts certain securities from the registration requirements of the Act. (HB 210)

Effective Date: September 8, 1991

**Chapter 21** **1991 REVISOR'S BILL** Makes technical amendments to the Alaska Statutes to correct errors, repeal outdated provisions of law, and to otherwise improve the form and substance of the statutory law of the State. . . sectional analysis of the Act was published in House Journal Supplement No. 10, May 13, 1991. (HCS CSSR 86(JUD))

Effective Date: June 11, 1991

**Chapter 22** **ANATOMICAL GIFTS** Clarifies that anatomical gifts do not require the consent of another person after the death of the donor. Requires certain hospital personnel, law enforcement officers, and emergency medical responders to make reasonable searches for a document of gift or other information identifying the bearer as either a donor or a person who has refused to make an anatomical gift. (CSSB 112(JUD))

Effective Date: September 8, 1991

**Chapter 23**

*SLA 1991 Sponsored by Senate Rules by Request of Governor*  
**AMENDMENTS AFFECTING INTEREST RATES ON STATE TAXES AND ROYALTIES AND DUE DATES ON ROYALTIES** Effective October 31, 1991, replaces the 12 percent simple interest computation currently applied to interest on unpaid and overpaid taxes, royalties, and net profit share payments with a compounded interest computed using a floating rate tied to Federal Reserve rates, with a minimum rate of 11 percent. Makes that change applicable to taxes, royalties, and net profit shares that are unpaid or overpaid on that date and to the interest accrued on those unpaid and overpaid taxes, royalties, and net profit shares before that date. Requires that payment of a royalty becomes due on the date and in the manner specified in the lease in which the royalty is reserved or in a regulation of the Department of Natural Resources. (CSSB 158(FIN)(cfd am))

Effective Date: October 31, 1991

*Summary of legislation that passed in 1991 changing the interest rate to 11% or 5 percentage points above 12% Fed Reserve rate, whichever is greater.*

*The 12% rate was in AS 43.05.225 prior to 1991 (see next page)*

**\$ 43.05.225**

## ALASKA STATUTES

## REVENUE AND TAXATION

(c) If a tax deficiency or part of a tax deficiency is due to civil fraud penalty equal to 50 percent of the tax due or \$50,000, whichever is greater, shall be added to the tax. This penalty is in addition to the penalties determined under (a) or (b) of this section.

(d) A person required to collect or account for a tax imposed by this title who wilfully fails to collect the tax or to truthfully account for and pay over the tax, or wilfully attempts to evade payment thereon, is, in addition to other penalties provided by law, liable to a civil penalty equal to the total amount of the tax not collected, accounted for, not paid over, or evaded. The penalty imposed by this subsection is in place of the tax not paid to the state. The penalty shall be paid upon demand by the commissioner or a designee of the commissioner, and shall be assessed and collected in the same manner as taxes are assessed and collected under this title.

(o) A penalty imposed by this section shall be collected at the same time, in the same manner, and as a part of the original tax. If the original tax is paid before neglect or fraud is discovered, the penalty shall be collected in the same manner as the original tax. Interest may not be collected on a penalty imposed by this section. (S 2 ch 166 SLA 1976; am § 1 ch 113 SLA 1980; am § 1 ch 113 SLA 1982)

Collateral references. -- What constitutes "reasonable cause" under state statutes imposing penalty on taxpayer for failure to file timely tax return where such failure was due to "reasonable cause." 29 ALR2d 413

**Sec. 43.05.225. Interest on taxes.** Unless otherwise provided when a tax levied in this title becomes delinquent it bears the rate of 12 percent a year. (§ 2 ch 166 S.L.A. 1976; am § 2, 1982)

Sec. 43.05.230, Disclosure of tax returns and reports unlawful for a current or former officer, employee, or agent to divulge the amount of income or the particular disclosed in a report or return made under this title, and

(1) in connection with official investigations or proceedings of any department, whether judicial or administrative, involving or relating to the subject matter covered by this title;

(2) in connection with official investigations or proceeding child support enforcement agency, whether judicial or administrative, involving child support obligations imposed or imposable under AS 47;

(3) as provided in AS 38.05.036 pertaining to audit functions

(4) as otherwise provided in this section.

(b) The department, upon written request, shall furnish to payor a copy of the taxpayer's tax return upon payment of \$1.00 per page.

department may permit the proper officer of a state, territory or possession of the United States, or a province or territory of Canada, or the representative, to inspect tax returns or reports, or may furnish to the officer or representative, if the other jurisdiction grants substantially the same privilege to the department or its representative or if the department determines that the adequate safeguards for the confidentiality of the returns and reports will be maintained. The department may also permit the representative of the state Department of Labor to inspect the returns and reports, if the representative is in communication with the department or may furnish the returns and reports for tax purposes only.

Commissioner may furnish to the Multistate authorized agent information containing, related schedules and documents in connection with a multistate business made by the taxpayer. Information may be furnished for tax purposes to the Commissioner or other authorized agent in any State, Territory, or Possession of the United States and its territories.

ing in this section prohibits the publication to prevent the identification of particular publication of delinquent lists showing have failed to pay their taxes at provided by law, together with other r the opinion of the department may assist taxes.

violation of the provisions of this :  
if not more than \$5,000, or by impris-  
years, or by both.

Information contained in a license is revenue or the commissioner of commerce under AS 43.50, AS 43.60, AS 43.6 public information.

Commissioner shall, upon request, furnish natural Resources copies of tax returns, AS 43.65, and the Department of Workpapers. The Department of Natural Resources shall maintain the confidentiality that the Department requires of the returns, reports, documents and workpapers furnished to the Department of Natural Resources. (S 2 ch 166 SLA 1976: 1977: 1978: 1979: 1980: 1981: 1982: 1983: 1984: 1985: 1986: 1987: 1988: 1989: 1990: 1991: 1992: 1993: 1994: 1995: 1996: 1997: 1998: 1999: 2000: 2001: 2002: 2003: 2004: 2005: 2006: 2007: 2008: 2009: 2010: 2011: 2012: 2013: 2014: 2015: 2016: 2017: 2018: 2019: 2020: 2021: 2022: 2023: 2024: 2025: 2026: 2027: 2028: 2029: 2030: 2031: 2032: 2033: 2034: 2035: 2036: 2037: 2038: 2039: 2040: 2041: 2042: 2043: 2044: 2045: 2046: 2047: 2048: 2049: 2050: 2051: 2052: 2053: 2054: 2055: 2056: 2057: 2058: 2059: 2060: 2061: 2062: 2063: 2064: 2065: 2066: 2067: 2068: 2069: 2070: 2071: 2072: 2073: 2074: 2075: 2076: 2077: 2078: 2079: 2080: 2081: 2082: 2083: 2084: 2085: 2086: 2087: 2088: 2089: 2090: 2091: 2092: 2093: 2094: 2095: 2096: 2097: 2098: 2099: 2100: 2101: 2102: 2103: 2104: 2105: 2106: 2107: 2108: 2109: 2110: 2111: 2112: 2113: 2114: 2115: 2116: 2117: 2118: 2119: 2120: 2121: 2122: 2123: 2124: 2125: 2126: 2127: 2128: 2129: 2130: 2131: 2132: 2133: 2134: 2135: 2136: 2137: 2138: 2139: 2140: 2141: 2142: 2143: 2144: 2145: 2146: 2147: 2148: 2149: 2150: 2151: 2152: 2153: 2154: 2155: 2156: 2157: 2158: 2159: 2160: 2161: 2162: 2163: 2164: 2165: 2166: 2167: 2168: 2169: 2170: 2171: 2172: 2173: 2174: 2175: 2176: 2177: 2178: 2179: 2180: 2181: 2182: 2183: 2184: 2185: 2186: 2187: 2188: 2189: 2190: 2191: 2192: 2193: 2194: 2195: 2196: 2197: 2198: 2199: 2200: 2201: 2202: 2203: 2204: 2205: 2206: 2207: 2208: 2209: 2210: 2211: 2212: 2213: 2214: 2215: 2216: 2217: 2218: 2219: 2220: 2221: 2222: 2223: 2224: 2225: 2226: 2227: 2228: 2229: 2230: 2231: 2232: 2233: 2234: 2235: 2236: 2237: 2238: 2239: 2240: 2241: 2242: 2243: 2244: 2245: 2246: 2247: 2248: 2249: 2250: 2251: 2252: 2253: 2254: 2255: 2256: 2257: 2258: 2259: 2260: 2261: 2262: 2263: 2264: 2265: 2266: 2267: 2268: 2269: 2270: 2271: 2272: 2273: 2274: 2275: 2276: 2277: 2278: 2279: 2280: 2281: 2282: 2283: 2284: 2285: 2286: 2287: 2288: 2289: 2290: 2291: 2292: 2293: 2294: 2295: 2296: 2297: 2298: 2299: 2300: 2301: 2302: 2303: 2304: 2305: 2306: 2307: 2308: 2309: 2310: 2311: 2312: 2313: 2314: 2315: 2316: 2317: 2318: 2319: 2320: 2321: 2322: 2323: 2324: 2325: 2326: 2327: 2328: 2329: 2330: 2331: 2332: 2333: 2334: 2335: 2336: 2337: 2338: 2339: 2340: 2341: 2342: 2343: 2344: 2345: 2346: 2347: 2348: 2349: 2350: 2351: 2352: 2353: 2354: 2355: 2356: 2357: 2358: 2359: 2360: 2361: 2362: 2363: 2364: 2365: 2366: 2367: 2368: 2369: 2370: 2371: 2372: 2373: 2374: 2375: 2376: 2377: 2378: 2379: 2380: 2381: 2382: 2383: 2384: 2385: 2386: 2387: 2388: 2389: 2390: 2391: 2392: 2393: 2394: 2395: 2396: 2397: 2398: 2399: 2400: 2401: 2402: 2403: 2404: 2405: 2406: 2407: 2408: 2409: 2410: 2411: 2412: 2413: 2414: 2415: 2416: 2417: 2418: 2419: 2420: 2421: 2422: 2423: 2424: 2425: 2426: 2427: 2428: 2429: 2430: 2431: 2432: 2433: 2434: 2435: 2436: 2437: 2438: 2439: 2440: 2441: 2442: 2443: 2444: 2445: 2446: 2447: 2448: 2449: 2450: 2451: 2452: 2453: 2454: 2455: 2456: 2457: 2458: 2459: 2460: 2461: 2462: 2463: 2464: 2465: 2466: 2467: 2468: 2469: 2470: 2471: 2472: 2473: 2474: 2475: 2476: 2477: 2478: 2479: 2480: 2481: 2482: 2483: 2484: 2485: 2486: 2487: 2488: 2489: 2490: 2491: 2492: 2493: 2494: 2495: 2496: 2497: 2498: 2499: 2500: 2501: 2502: 2503: 2504: 2505: 2506: 2507: 2508: 2509: 2510: 2511: 2512: 2513: 2514: 2515: 2516: 2517: 2518: 2519: 2520: 2521: 2522: 2523: 2524: 2525: 2526: 2527: 2528: 2529: 2530: 2531: 2532: 2533: 2534: 2535: 2536: 2537: 2538: 2539: 2540: 2541: 2542: 2543: 2544: 2545: 2546: 2547: 2548: 2549: 2550: 2551: 2552: 2553: 2554: 2555: 2556: 2557: 2558: 2559: 2560: 2561: 2562: 2563: 2564: 2565: 2566: 2567: 2568: 2569: 2570: 2571: 2572: 2573: 2574: 2575: 2576: 2577: 2578: 2579: 2580: 2581: 2582: 2583: 2584: 2585: 2586: 2587: 2588: 2589: 2590: 2591: 2592: 2593: 2594: 2595: 2596: 2597: 2598: 2599: 2600: 2601: 2602: 2603: 2604: 2605: 2606: 2607: 2608: 2609: 2610: 2611: 2612: 2613: 2614: 2615: 2616: 2617: 2618: 2619: 2620: 2621: 2622: 2623: 2624: 2625: 2626: 2627: 2628: 2629: 2630: 2631: 2632: 2633: 2634: 2635: 2636: 2637: 2638: 2639: 2640: 2641: 2642: 2643: 2644: 2645: 2

## Federal Reserve Statistical Release



H.15

## Selected Interest Rates (Daily)

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Release Date: April 1, 2005

Weekly release dates and announcements | Historical data | About

Daily update Other formats: Screen reader | ASCII

The weekly release is posted on Monday. Daily updates of the weekly release are posted Tuesday through

H.15 DAILY UPDATE: WEB RELEASE ONLY  
SELECTED INTEREST RATES

For immediate release  
April 1, 2005

Yields in percent per annum

|                                       | 2005<br>Mar<br>28 | 2005<br>Mar<br>29 | 2005<br>Mar<br>30 | 2005<br>Mar<br>31 |
|---------------------------------------|-------------------|-------------------|-------------------|-------------------|
| Instruments                           |                   |                   |                   |                   |
| Federal funds (effective) 1 2 3       | 2.79              | 2.72              | 2.74              | 2.96              |
| Commercial paper 3 4 5                |                   |                   |                   |                   |
| Nonfinancial                          |                   |                   |                   |                   |
| 1-month                               | 2.75              | 2.75              | 2.73              | 2.74              |
| 2-month                               | 2.85              |                   |                   | 2.85              |
| 3-month                               |                   |                   |                   |                   |
| Financial                             |                   |                   |                   |                   |
| 1-month                               | 2.77              | 2.79              | 2.78              | 2.79              |
| 2-month                               | 2.88              | 2.90              | 2.86              | 2.90              |
| 3-month                               | 2.92              | 2.98              | 2.99              | 2.99              |
| CDs (secondary market) 3 6            |                   |                   |                   |                   |
| 1-month                               | 2.81              | 2.81              | 2.82              | 2.83              |
| 3-month                               | 3.03              | 3.04              | 3.06              | 3.06              |
| 6-month                               | 3.33              | 3.33              | 3.33              | 3.34              |
| Eurodollar deposits (London) 3 7      |                   |                   |                   |                   |
| 1-month                               |                   | 2.80              | 2.81              | 2.81              |
| 3-month                               |                   | 3.02              | 3.04              | 3.05              |
| 6-month                               |                   | 3.32              | 3.33              | 3.34              |
| Bank prime loan 2 3 8                 | 5.75              | 5.75              | 5.75              | 5.75              |
| Discount window primary credit 2 9    | 3.75              | 3.75              | 3.75              | 3.75              |
| U.S. government securities            |                   |                   |                   |                   |
| Treasury bills (secondary market) 3 4 |                   |                   |                   |                   |
| 4-week                                | 2.64              | 2.66              | 2.66              | 2.58              |
| 3-month                               | 2.79              | 2.78              | 2.77              | 2.73              |
| 6-month                               | 3.10              | 3.08              | 3.06              | 3.04              |
| Treasury constant maturities          |                   |                   |                   |                   |
| Nominal 10                            |                   |                   |                   |                   |
| 1-month                               | 2.69              | 2.70              | 2.71              | 2.63              |
| 3-month                               | 2.84              | 2.84              | 2.83              | 2.79              |
| 6-month                               | 3.19              | 3.17              | 3.15              | 3.13              |
| 1-year                                | 3.43              | 3.41              | 3.39              | 3.35              |
| 2-year                                | 3.90              | 3.87              | 3.86              | 3.80              |
| 3-year                                | 4.09              | 4.05              | 4.03              | 3.96              |
| 5-year                                | 4.33              | 4.30              | 4.26              | 4.18              |
| 7-year                                | 4.48              | 4.44              | 4.40              | 4.33              |
| 10-year                               | 4.64              | 4.60              | 4.56              | 4.50              |

|                            |      |      |      |      |
|----------------------------|------|------|------|------|
| 20-year 11                 | 5.01 | 4.98 | 4.93 | 4.88 |
| Inflation-indexed 12       |      |      |      |      |
| 5-year                     | 1.48 | 1.45 | 1.42 | 1.31 |
| 7-year                     | 1.65 | 1.63 | 1.59 | 1.49 |
| 10-year                    | 1.94 | 1.91 | 1.89 | 1.79 |
| 20-year                    | 2.05 | 2.03 | 1.98 | 1.91 |
| Inflation-indexed          |      |      |      |      |
| long-term average 13       | 2.03 | 2.01 | 1.97 | 1.89 |
| Interest rate swaps 14     |      |      |      |      |
| 1-year                     | 3.86 | 3.85 | 3.85 | 3.82 |
| 2-year                     | 4.30 | 4.28 | 4.27 | 4.21 |
| 3-year                     | 4.53 | 4.50 | 4.48 | 4.42 |
| 4-year                     | 4.67 | 4.64 | 4.62 | 4.55 |
| 5-year                     | 4.77 | 4.74 | 4.72 | 4.65 |
| 7-year                     | 4.92 | 4.89 | 4.86 | 4.80 |
| 10-year                    | 5.08 | 5.06 | 5.03 | 4.96 |
| 30-year                    | 5.38 | 5.36 | 5.34 | 5.28 |
| Corporate bonds            |      |      |      |      |
| Moody's seasoned           |      |      |      |      |
| Aaa 15                     | 5.52 | 5.48 | 5.44 | 5.40 |
| Baa                        | 6.22 | 6.20 | 6.17 | 6.14 |
| State & local bonds 16     |      |      |      | 4.61 |
| Conventional mortgages 17  |      |      |      | 6.04 |
| -----                      |      |      |      |      |
| See overleaf for footnotes |      |      |      |      |

## FOOTNOTES

1. The daily effective federal funds rate is a weighted average of rates on brokered trades.
2. Weekly figures are averages of 7 calendar days ending on Wednesday of the current week; monthly figures include each calendar day in the month.
3. Annualized using a 360-day year or bank interest.
4. On a discount basis.
5. Interest rates interpolated from data on certain commercial paper trades settled by The Depository Trust Company. The trades represent sales of commercial paper by dealers or direct issuers to investors (that is, the offer side). The 1-, 2-, and 3-month rates are equivalent to the 30-, 60-, and 90-day dates reported on the Board's Commercial Paper web page ([www.federalreserve.gov/releases/cp](http://www.federalreserve.gov/releases/cp)).
6. An average of dealer offering rates on nationally traded certificates of deposit.
7. Bid rates for Eurodollar deposits collected around 9:30 a.m. Eastern time.
8. Rate posted by a majority of top 25 (by assets in domestic offices) insured U.S.-chartered commercial banks. Prime is one of several base rates used by banks to price short-term business loans.
9. The rate charged for discounts made and advances extended under the Federal Reserve's primary credit discount window program, which became effective January 9, 2003. This rate replaces that for adjustment credit, which was discontinued after January 8, 2003. For further information, see

- [www.federalreserve.gov/boarddocs/press/bcreg/2002/200210312/default.htm](http://www.federalreserve.gov/boarddocs/press/bcreg/2002/200210312/default.htm). The rate reported is that for the Federal Reserve Bank of New York. Historical series for the rate on adjustment credit is available at [www.federalreserve.gov/releases/h15/data.htm](http://www.federalreserve.gov/releases/h15/data.htm).
10. Yields on actively traded non-inflation-index issues adjusted to constant maturities. Source: U.S. Treasury.
  11. A factor for adjusting the daily nominal 20-year constant maturity in order to estimate a 30-year rate can be found at [www.treas.gov/offices/domestic-finance/debt-management/interest-rate/ltcomposi](http://www.treas.gov/offices/domestic-finance/debt-management/interest-rate/ltcomposi)
  12. Yields on Treasury inflation protected securities (TIPS) adjusted to constant maturities. Source: U.S. Treasury. Additional information on both nominal and inflation-indexed yields may be found at [www.treas.gov/offices/domestic-finance/debt-management/interest-rate/index.htm](http://www.treas.gov/offices/domestic-finance/debt-management/interest-rate/index.htm)
  13. Based on the unweighted average bid yields for all Inflation Protected Securities with remaining terms to maturity of more than 10 years.
  14. International Swaps and Derivatives Association (ISDA(R)) mid-market par swap rates. Rates are for a Fixed Rate Payer in return for receiving three month LIBOR, and are based on rates collected at 11:00 a.m. Eastern time by Garban Intercapital plc and published on Reuters Page ISDAFIX(R)1. ISDAFIX is a registered service mark of ISDA. Source: Reuters Limited.
  15. Moody's Aaa rates through December 6, 2001 are averages of Aaa utility and Aaa industrial bond rates. As of December 7, 2001, these rates are averages of Aaa industrial bonds only.
  16. Bond Buyer Index, general obligation, 20 years to maturity, mixed quality; Thursday quotations.
  17. Contract interest rates on commitments for fixed-rate first mortgages. Source: FHLMC.

#### DESCRIPTION OF THE TREASURY NOMINAL AND INFLATION-INDEXED CONSTANT MATURITY SERIES

Yields on Treasury nominal securities at "constant maturity" are interpolated by the U.S. Treasury from the daily yield curve for non-inflation-indexed Treasury securities. This curve, which relates the yield on a security to its time to maturity, is based on the closing market bid yields on actively traded Treasury securities in the over-the-counter market. These market yields are calculated from composites of quotations obtained by the Federal Reserve Bank of New York. The constant maturity yield values are read from the yield curve at fixed maturities, currently 1, 3 and 6 months and 1, 2, 3, 5, 7, 10 and 20 years. This method provides a yield for a 10-year maturity, for example, even if no outstanding security has exactly 10 years remaining to maturity. Similarly, yields on inflation-indexed securities at "constant maturity" are interpolated from the daily yield curve for Treasury inflation protected securities in the over-the-counter market. The inflation-indexed constant maturity yields are read from this yield curve at fixed maturities, currently 5, 7, 10, and 20 years.

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Last update: April 1, 2005

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# ALASKA STATE LEGISLATURE

## House of Representatives

### COMMITTEE ASSIGNMENTS

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## Representative Norman Rokeberg

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### SPONSOR STATEMENT FOR HB 254

By: Representative Norman Rokeberg

**Title: An Act directing the Alaska Natural Gas Development Authority to use money appropriated from the Railbelt energy fund and from other sources for preliminary engineering and design work for the construction of pipeline facilities to transport Alaska North Slope natural gas to the Southcentral Alaska gas distribution grid, and amending the definition of 'project' as applied to the work of the Alaska Natural Gas Development Authority; and providing for an effective date.**

House Bill 254 is a companion to an appropriation bill (HB 253) that grants \$8,000,000 to the Alaska Natural Gas Development Authority (ANGDA) for purposes described in AS 41.41.210. This bill, HB 254, creates the referenced statute, AS 41.41.210.

~~AS 41.41.210 creates the statutory authority for the Alaska Natural Gas Development Authority to use money appropriated from the Railbelt energy fund and from other sources to initiate and continue the preliminary engineering, design and construction of the gas transmission pipeline and other facilities for delivering gas from the principal Alaska North Slope natural gas pipeline to the Southcentral Alaska gas distribution grid.~~

HB 254 clarifies the project definition and ANGDA's scope of work to include: 1) a spur line route adjacent to the Parks Highway to Southcentral from an appropriate Northern point of the main gas pipeline; 2) a direct ("bullet line") pipeline from Prudhoe Bay to Southcentral; 3) the spur pipeline from Glennallen to Southcentral; and 4) the Prudhoe Bay to Valdez gas pipeline.

→ The expanded activities and routes will allow the State of Alaska to be prepared to meet future deadlines for construction of the main natural gas pipeline project or provide an alternative means of transporting Alaska's stranded gas to a market servicing the needs of the majority of our citizens.

I urge your support of this legislation.

**Walter J. Hickel**

Box 101700  
Anchorage, Alaska 99510-1700  
Telephone 907-343-2400  
Fax 907-343-2211  
Email [wjhickel@gci.net](mailto:wjhickel@gci.net)

April 19, 2005

The Honorable Norm Rokeberg  
Chairman, House Rules Committee  
Alaska State Capitol, Room 214  
Juneau, AK 99801-1182

FAX 907-465-2040

Dear Chairman Rokeberg:

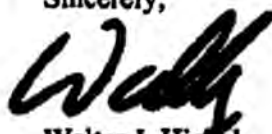
On behalf of the citizen organization Backbone 2, I am writing in support of your legislation HB253 and HB254. We feel that the options for gas-line development that will bring gas into Southcentral Alaska and provide the basis for an ongoing economy for our state are very important. It is clear that the majority of the people of Alaska support an all-Alaska pipeline.

Your legislation will provide the necessary funding for the Alaska Natural Gas Development Authority to move forward with such a project.

Thank you for your leadership for the future of Alaska.

With best regards.

Sincerely,

  
Walter J. Hickel

# ALASKA STATE LEGISLATURE

## House of Representatives

### COMMITTEE ASSIGNMENTS

RULES COMMITTEE, CHAIRMAN  
LABOR & COMMERCE COMMITTEE, MEMBER  
LEGISLATIVE COUNCIL, MEMBER  
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SPECIAL COMMITTEE ON WAYS & MEANS, MEMBER

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## Representative Norman Rokeberg

e-mail: [Representative\\_Norman\\_Rokeberg@legis.state.ak.us](mailto:Representative_Norman_Rokeberg@legis.state.ak.us)

### SECTIONAL ANALYSIS FOR HB 254

By: Representative Norman Rokeberg

**Title:** An Act directing the Alaska Natural Gas Development Authority to use money appropriated from the Railbelt energy fund and from other sources for preliminary engineering and related work for the construction of pipeline facilities to transport Alaska North Slope natural gas to the Southcentral Alaska gas distribution grid, and amending the definition of 'project' as applied to the work of the Alaska Natural Gas Development Authority; and providing for an effective date.

**Section 1:** Provides legislative findings.

**Section 2:** Establishes AS 41.41.210, which provides the authority for the Alaska Natural Gas Development Authority (ANGDA) to initiate the preliminary engineering, design, and construction of the gas transmission pipeline and other facilities for delivering gas from the principal Alaska North Slope natural gas pipeline to the Southcentral Alaska gas distribution grid.

**Section 3:** Amends the definition of "project" to provide ANDGA with several project options.

**Section 4:** Immediate effective date.

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# ALASKA STATE LEGISLATURE

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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> |
|-----------------------------|------------|------------|------------|------------|------------|------------|

|                               |            |            |            |            |            |            |
|-------------------------------|------------|------------|------------|------------|------------|------------|
| <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> |

|                             |  |  |  |  |  |  |
|-----------------------------|--|--|--|--|--|--|
| <b>CAPITAL EXPENDITURES</b> |  |  |  |  |  |  |
|-----------------------------|--|--|--|--|--|--|

|                                  |  |  |  |  |  |  |
|----------------------------------|--|--|--|--|--|--|
| <b>CHANGE IN REVENUES (1141)</b> |  |  |  |  |  |  |
|----------------------------------|--|--|--|--|--|--|

**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

701 WEST EIGHTH AVENUE, SUITE 300  
ANCHORAGE, ALASKA 99501-3469  
PHONE: (907) 276-6222  
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WEBSITE: [www.state.ak.us/rca/](http://www.state.ak.us/rca/)

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 printed name and title.

Kate Giard  
Chairman

1 STATE OF ALASKA

2 THE REGULATORY COMMISSION OF ALASKA

3  
4 Before Commissioners:

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

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

P-04-20

ORDER NO. 5

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

U-05-20

ORDER NO. 3

13  
14 ORDER DECIDING QUESTION 1  
AND GRANTING TEMPORARY EXEMPTION

15 BY THE COMMISSION:

16 Summary

17 We find CIGGS a pipeline subject to jurisdiction under AS 42.05 and grant  
18 a comprehensive temporary exemption under AS 42.05.711(d) from the provisions of  
19 AS 42.05 to Marathon and Unocal Alaska pending further proceedings. We continue  
20 the briefing schedule outlined in Phase One.

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.