

AK LEGISLATURE SPECIAL COMMITTEE FILES SCOMM 155 3322

Westney Consulting Group, Inc.

Scope of Work Performed

- Completion Review
- Analysis, Finding
- Cost and scheduling, LOS analysis

Company Biography

Westney has over thirty years of experience in providing risk assessment advice related to major construction projects involving energy and other companies around the world. Westney's representative clients on major projects in the past have included each of the Major NS Producers. Since 1978, Westney Consulting Group has been providing owners and contractors with methodologies and services to reduce the cost and risk of capital projects. The company's business focus is the energy industry, and its services are based on its differentiated approaches to strategic risk management, strategic project planning, as well as the evaluation and improvement of the effectiveness of project organizations. Westney's services are based on its proprietary Risk Resolution™ concepts and processes that allow Strategic Project Risks to be framed very early in project development.

Key Project Personnel:

Eric Briel serves as Westney's Chief Operating Officer and supports and leads large team facilitation events, including Project Execution Planning and Project Delivery System Assessment, as well other best practices including VE, Constructability, Risk Analysis and Lessons Learned. Eric has a total of 25 years of professional experience and expertise including six years as an officer in the US Army, Corps of Engineers involved with all phases of operational planning and project execution, coupled with 18 years of progressive PM responsibilities on international projects for BP (formally Amoco). His knowledge and professional skills in project management span all project phases from initial development of a business opportunity through detailed design, fabrication, installation, start-up and initial facility operation. He holds a BS in Civil Engineering from the Virginia Military Institute and an MBA from Regis University.

John Coppens has extensive experience in the natural gas pipeline industry. His focus is on strategic planning and risk management. Prior to joining Westney, John held executive and project management positions with various Interstate pipelines and energy companies, including VP for Risk Management for Duke Energy. He holds a BS in Civil Engineering from Michigan Technological University, and an MBA from the University of Houston.

Keith Dodson has extensive experience in the natural gas and LNG industries. Mr. Dodson's focus is on Strategic Risk Management and Risk-Driven Contract Strategy. Keith is the developer of the Risk Resolution™ process. Keith joined Westney in 2003, after holding executive positions with international engineering & construction contractors, such as Vice Chairman and CEO of MW Kellogg Ltd., President and CEO of Stone & Webster, and Executive VP of Brown & Root. He was also Senior VP with a major energy company. He holds a BS in Engineering from the University of Texas, and was Chairman of the Engineering Foundation. He was also Chairman of the Construction Industry Institute. He is a graduate of the Advanced Management Program at Rice University.

(Westney Consulting Group, Inc. continued)

Pete Oppenheim brings decades of mega-project planning and execution experience to his work leading Strategic Risk Management teams. As an executive with leading engineering and construction firms such as KBR, Stone & Webster and MW Kellogg, he served as Executive Sponsor/Project Director for large and complex international projects such as LNG plants, major upstream developments, and infrastructure. Pete's earlier background in managing cost estimating and project controls provides a deep understanding of cost and schedule management and risk analysis. Prior to beginning his career with engineering and construction firms, he served in the US Army Corps of Engineers, engaged in major projects in the Middle East and USA, retiring as a Colonel. He holds BS and MS degrees in Engineering from North Carolina State University, and is a licensed professional engineer in Texas.

Wood Mackenzie

Scope of Work Performed

- Price modeling

Company Biography

Wood Mackenzie's reputation as one of the leading providers of high quality research to the Energy industry dates back to May 1973 when its very first North Sea Report was published. Its energy coverage now extends across 93 countries covering upstream oil and gas, oil refining and marketing, downstream gas and power generation. Ninety-six percent (96%) of the world's top 25 energy companies are clients of Wood Mackenzie.

Clients throughout the world subscribe to Wood Mackenzie's research retainer services on an annual basis and can choose to have analysis delivered to their desktops via a number of media, including the Internet and CD-ROM. Wood Mackenzie's knowledge-based consulting expertise include strategy development, market analysis, corporate and competitor analysis, public policy and regulation, valuations, benchmarking and project analysis. The company's clients include virtually every major company in the global Energy industry, as well as governments and government agencies across the globe.

Gas Strategies Consulting

Scope of Work Performed

- Price modeling
- Commercial LOS analysis

Company Biography

Gas Strategies Consulting is the consulting arm of Gas Strategies Group Ltd. The group also includes Alphanat, which provides specialist training courses on the gas industry and Gas Matters which provides news, analysis and comment on the gas industry through its publications Gas Matters, Gas Matters Today and LNG Focus.

Gas Strategies was formed in 1989 by Economatters Ltd and Trichem Consultants with Economatters acquiring the whole business in 2001. In 2003, Economatters Limited was purchased by CRISIL, India's leading ratings, financial news, risk and policy advisory company. In 2006 Economatters became Gas Strategies Group Ltd.

Gas Strategies Consulting provides advice and data on strategic energy matters for commercial and governmental clients around the globe from their London base and also has a presence through consultants, associates and joint venture partners around the globe in Spain, France, Italy, Germany, Australia, Singapore, Brunei, Korea, South Africa and the US.

Gas Strategies Consulting operates across natural gas and LNG chains from markets to supply source specializing in the following key areas: gas market supply, demand and pricing analysis; commercial due diligence for project sponsors and lenders; project structuring, evaluation and feasibility; business strategy development and implementation; competitor analysis and benchmarking; monetization strategy for gas exploration and production; contract advice, negotiation, valuation and arbitration; and market regulation, restructuring, liberalization and competition.

Key Project Personnel

Salman Wasti is a Manager in Gas Strategies, based in London. He has over 10 years experience in the energy industry, with 7.5 years as an energy analyst with Datamonitor focused on retail power and gas markets, followed by over 2 years with Gas Strategies. His principal areas of expertise are market analysis, company Strategy, supply/demand analysis, midstream and downstream / retail market analysis, due diligence and strategy advisory work.

His experience includes:

- North West European Regasification due diligence, evaluating the risks to secure cash flow and long term revenue to finance the terminal in capital markets
- Advising an upstream supplier on the cost competitiveness of its gas production for LNG and pipeline gas into Atlantic Basin markets
- Supporting a chemical company with gas-fired power plants to understand future fuel price movements to develop their fuel procurement strategy
- Assisting a government energy ministry to evaluate the preferred commercial option between LNG and pipeline supply to maximize its rent – where his role was to determine Asian demand out to 2050 in the key Asian markets including India and China.

(Gas Strategies Consulting continued)

- Assessing the seasonal and longer term supply and demand balances in Europe and the likely future outlook for prices and availability of gas
- Supporting a major Atlantic Basin LNG supplier in analyzing the Iberian fuels markets to prepare for future LNG contract price reviews.

Rob Fenton is a Managing Consultant at Gas Strategies. He has conducted a wide range of consulting and training assignments for leading companies, many dealing with LNG ranging across market and opportunity evaluation, due diligence of investment proposals, advice on competitor activities and organizations, evaluation of business risks, assessment of strategies and development of commercial processes and competencies. Prior to joining Gas Strategies, Rob spent many years with Shell where he was particularly involved in commercial management and strategy development in the gas business. He led the development and delivery of a review of Shell's global LNG strategy and worked on Shell's gas business in UK, USA, Mexico, Turkey and Central Asia.

His experience includes:

- Providing advice to a client on the evaluation of potential routes to wholesale gas markets in USA and possible participation of the Government in shipping, regasification and wholesale marketing
- Providing initial analysis of the scope for development of gas resources in a west African country with options of how an integrated project might be structured for companies and the state and a proposed schedule for engagement to develop that structure.
- Participating in several studies evaluating gas market supply and demand and pricing to underpin strategies for gas monetization
- Providing analysis to leading oil and gas companies on the strategies and business models of companies participating in the LNG value chain.

Rob Sheperd is a Senior Consultant with Gas Strategies. His interests include the commercial and strategic aspects of LNG projects, industry and regulatory structures across the world, and the future of liberalized gas markets. Before joining Gas Strategies, Rob spent many years with BP, managing BP's share of the North West Shelf LNG project in Australia and of Qatargas. He played a leading role in BP's UK gas business, selling to British Gas and starting BP's move into direct gas marketing.

His experience includes:

- Advising on the development of Atlantic LNG in Trinidad
- Due diligence on many recent LNG export and receiving terminal projects from RasGas to Yemen LNG.
- Advice on development of commercial operational procedures for two LNG projects.
- Assistance in developing institutional structures for South Africa and the West African Gas Pipeline with the World Bank.

Goldman Sachs

Scope of Work Performed

- Financial analysis relating to financing feasibility cost of debt, credit capacity, and other financial aspects of the project.

Company Biography

Goldman Sachs is a leading global investment banking, securities and investment management firm that provides a wide range of services worldwide to a substantial and diversified client base that includes corporations, financial institutions, governments and high net worth individuals. Founded in 1869, it is one of the oldest and largest investment banking firms. The firm is headquartered in New York and maintains offices in London, Frankfurt, Tokyo, Hong Kong and other major financial centers around the world.

Key Project Personnel

Paul Bloom, Vice President of Public Sector and Infrastructure Banking, grew up in Anchorage and began his career in 1986 working in government finance for the Portland Development Commission, the City of New York and the Port of Seattle, where he managed all aspects of the Port's capital planning and financing program. Mr. Bloom received a BS from Willamette University and an MBA from Columbia University.

Since his investment banking career began in 1994, Mr. Bloom has focused on the Northwest region and served as lead banker to a variety of Alaska clients, including the State of Alaska, the Municipality of Anchorage, Alaska Industrial Development and Export Authority and the Alaska Energy Authority. Other notable Pacific Northwest clients include the Port of Portland, Port of Seattle, the City of Portland, TriMet, Energy Northwest, and the Bonneville Power Administration. Mr. Bloom's financing experience with these clients includes a variety of structures and forms of debt including project financings in the energy, port and airport sectors.

Ray Strong is a Managing Director in the Global Natural Resources Group at Goldman Sachs, based in New York. With over seventeen years of investment banking experience, Ray has executed mergers and acquisitions transactions and equity and debt offerings for companies in the energy sector, including downstream, midstream, upstream, and oilfield services companies. Ray's primary focus is on downstream, midstream and master limited partnership clients within the Natural Resources Group. Ray joined Goldman Sachs, Energy & Power Group from CSFB's Natural Resources Group as a Vice President in 1999 and was promoted to Managing Director in 2001.

Selected relevant transactions include advising Barrett Resources on the sale to Williams Companies, advising Chevron on its restructuring of its Dynegy investment, advising Texaco on the formation of Equilon and Motiva, advising Texaco on the acquisition of Monterey Resources, advising Goldman Sachs and Kelso on the acquisition of Coffeyville Resources, numerous financings for Tesoro, the IPO and subsequent high yield offerings for Holly Energy Partners, the acquisition and IPO of CVR Energy, GE on its acquisition of the GP of Regency Energy Partners, advising Kinder Morgan management and a consortium of financial sponsors on taking the company private, Union Pacific Resources on its sale to Anadarko, and Crystal Gas Storage on its sale to El Paso. Ray is an active participant in the Middlebury Alumni Association as well as Mystic Seaport, a leading maritime museum. Ray earned a BA in Economics from Middlebury College in 1991.

(Goldman Sachs continued)

Tim Romer is Managing Director and Co-head of the Public Sector Banking at Goldman Sachs. Mr. Romer joined Goldman Sachs in July 2003 in the firm's Los Angeles office. He offers over 20 years of experience in infrastructure finance, having been Co-Head and Managing Director of Merrill Lynch's western region public finance group until February 2000 and more recently, Managing Director in Bank of America Securities' Real Estate Secured Finance Group.

Mr. Romer provides a deep and diverse background in government, energy and project finance, completing large and small real estate, housing, infrastructure, general municipal and specialty credit financings throughout most of the western region of the United States. His experience includes all types of financings including fixed rate, variable rate, swaptions, senior/subordinate liens, asset-backed securities, refundings, lease/lease back and cash flow financings. He has led the firm's efforts with over \$50 billion in financing and derivative transactions for many major state and local governments. He has been involved in a wide range of large infrastructure projects and public private ventures.

Tim received a BS in Industrial Engineering from Stanford University and a MBA, with honors, from the Wharton School at the University of Pennsylvania.

Bruce Schwartz is a Vice President in the Credit Risk Management & Advisory Group at Goldman, Sachs, based in New York. Bruce's primary focus is managing Goldman's credit risk to the energy sector, including upstream, downstream, midstream, oilfield services, and utility companies across debt and derivative products. In addition, Bruce advises companies on the credit aspects of merger and acquisition transactions and corporate finance strategies.

Prior to joining Goldman Sachs in 2005, Bruce worked at Standard & Poor's Corporate Ratings, where he served as one of two global coordinators for their oil and gas ratings practice. During his nine year tenor at Standard & Poor's, Bruce was on the coverage teams of more than 70 energy companies and project finance and structured finance transactions.

Bruce earned a BA in international relations from Tufts University and a Master of Science of Foreign Service degree from Georgetown University.

Brown, Williams, Moorhead & Quinn **Energy Consultants**

Scope of Work Performed

BWMQ has provided assistance and analysis to the Alaskan Department of Natural Resources concerning the analysis and evaluation of TransCanada's AGIA application to build an Alaskan natural gas pipeline system. In particular, BWMQ has addressed four distinct regulatory issues: an evaluation of the negotiated rate practices employed by Lower 48 pipeline projects compared to TransCanada's proposed negotiated rate structure; an evaluation of the rate of return on equity mechanism proposed by TransCanada compared to the incentive rate of return on equity mechanism authorized by the Federal Energy Regulatory Commission (FERC) for the original Alaska Natural Gas Transportation System; an evaluation of the natural gas supply support for shipper contracts on Lower 48 pipeline projects as compared to the known and expected Alaskan natural gas supplies; and finally, an evaluation of relevant regulatory practices TransCanada has employed for its Lower 48 natural gas pipeline investments. BWMQ specializes in regulatory matters and issues as instituted and practiced at FERC.

Company Biography

Brown, Williams, Moorhead & Quinn, Inc. (BWMQ) is a leading energy consulting firm that has been providing advice and assistance to clients for more than twenty two years. BWMQ provides comprehensive energy related services to hundreds of clients, including electric, natural gas and oil pipeline companies, local distribution companies, energy producers, trade associations, shippers and federal and state agencies. BWMQ provides advice on how to properly interpret and account for FERC precedents and current policies in the electric, natural gas and oil pipeline industries. BWMQ prepares complete regulatory filings for clients on a wide variety of regulatory matters and offers insights into the regulatory issues that arise in the evolving world of FERC regulation.

Key Project Personnel

Barry Sullivan, President, joined BWMQ in September 2005 after a long career in the Office of Litigation at FERC. Mr. Sullivan has filed expert witness testimony on a wide range of regulatory issues over the years, including all phases of natural gas pipeline regulation, market power, and oil pipeline ratemaking testimony. Mr. Sullivan has over 29 years of experience in litigated formal rate proceedings before FERC.

Bruce Warner, Vice-president, has over 34 years of experience as a consultant, CPA, Certified Depreciation Professional (CDP), accountant, strategic planner and regulatory executive. Mr. Warner served in regulatory, strategic planning and accounting management capacities for Williams Gas Pipelines-West and Kern River Gas Transmission Company for 25 years. His management experience and testimony experience includes: FERC regulation, rates and governmental affairs, property and inventory accounting, financial reporting, regulatory research, tariffs, nominations and strategic planning.

Edward H. Feinstein, Vice-president, has over 45 years of rate and regulatory experience in natural gas and oil pipeline issues at the Federal Energy Regulatory Commission. Mr. Feinstein has applied his expertise in a wide range of formal rate case proceedings before FERC concerning natural gas supply, depreciation, and storage and rate design issues. Mr. Feinstein filed testimony at FERC concerning depreciation in the original ANGTS proceeding.

Energy Capital Advisors, LLC

Scope of Work Performed

- General advisor for the Technical, Commercial, and Financial Analysis Teams

Company Biography

Energy Capital Advisors is an energy consulting firm with Scott Hobbs as its managing member and principal consultant.

Key Project Personnel

Scott Hobbs has been in the natural gas industry for over 30 years with experience in all facets of the business. Over the last six years, Mr. Hobbs has provided consulting services to state government, investment bankers, private equity firms, and other investors evaluating major projects, acquisitions, and divestitures principally involving oil and gas pipelines, processing plants, power plants, and gas distribution assets. During that period, he also served as Executive Chairman of Optigas, Inc., a private midstream (gathering and processing) natural gas company which was sold in March, 2006 to Energy Spectrum, a private equity firm in Dallas, TX. He is presently on the Board of Directors of Buckeye GP LLC, the general partner of Buckeye Partners, L.P., a publicly traded master limited partnership.

From 1977 through 2001, Mr. Hobbs worked for the Coastal Corporation where he last served as Executive Vice President and Chief Operating Officer for its regulated gas pipeline operations (CIG and WIC) in the Rocky Mountain region. As President of CIG Resources, he was also responsible for certain non-regulated business activities in the Rocky Mountain area. Prior to that, he was Senior Vice President of Gas Supply for all of Coastal's interstate gas pipelines. In 2000 CIG was named the #1 interstate gas pipeline company in the U.S. in a study by Fosters and Co., a Washington, D.C.-based consulting firm. He left Coastal in April 2001 shortly after its merger with El Paso.

In his different positions at Coastal's pipeline subsidiaries, Mr. Hobbs was responsible for operations, engineering, regulatory compliance, and all commercial activities including gas transportation and storage, gathering and processing, gas production and development, and merchant and trading activities. He began his career at Coastal providing audit and consulting services for its accounting and finance group as well as its different operating divisions.

Prior to joining the Coastal Corporation, Mr. Hobbs also worked as an auditor with Price Waterhouse and Co. in New Orleans, LA. He received a Bachelor of Science degree in Accounting from Louisiana State University and holds a CPA license in inactive status. Mr. Hobbs has been active in civic affairs and trade associations holding multiple directorships and memberships.

Energy Operations Consulting, LLC

Scope of Work Performed

- Technical analysis of AGIA applications
- Operation and maintenance expense analysis

Company Biography

Energy Operations consulting, LLC was formed in 2005 to provide operations cost expertise and consulting services to Pipeline and Gas Processing Owner/Operating Companies, and Investors in those facilities.

Services provided by Energy Operations Consulting, LLC include the following:

- Operating cost analysis of new and new and existing facilities
- Advice on best operating and maintenance practices
- Trouble shooting of operating and maintenance problems
- Staffing level analysis

Key Project Personnel

Jimmy (Jim) F. Vaughan has 40 years experience in the operations and maintenance of natural gas pipelines, gas treating and processing facilities. He has extensive managerial experience and has been involved in due diligence studies of seven major gas transmission companies and dozens of gas processing facilities. He recently worked for Entrega Gas Pipeline Company (Encana) developing best operating practices and then contracting an operating company to operate a large diameter gas pipeline.

Energy Project Consultants, LLC

Scope of Work Performed

- Technical analysis of AGIA applications
- Cost and schedule duration analysis
- Technical likelihood of success (LOS) analysis

Company Biography

Energy Project Consultants, LLC (EPC) was formed in 2001 to provide high level project management expertise and consulting services to Pipeline Owner/Operating Companies, Pipeline Investors, Law Firms, Government Agencies, Engineering Service Firms and Construction Contractors.

Services provided by Energy Project Consultants, LLC include the following:

- Overall Project Management
- Management of Engineering and Construction Contractors
- Engineering, Construction and Material Procurement Strategies
- Engineering/Construction Proposal Evaluations
- Project Feasibility Studies
- Acquisition Due Diligence Investigations
- Strategic Project Planning
- Cost/Schedule Risk Analysis and Management
- Evaluation and Negotiation of Construction Claims
- Permitting Strategies

Key Project Personnel

William H. (Bill) Sparger has more than 35 years experience in project management, design and construction of natural gas pipelines, compressor stations, and gas processing facilities. He has extensive and proven managerial experience, with the ability to handle large and diversified engineering programs. He has a proven track record of "on time" and "on budget" project execution on all sizes and scopes of projects. He recently worked for Entrega Gas Pipeline Company (EnCana) on a large diameter natural gas pipeline project in the Rocky Mountains. He also provided EnCana initial project management oversight for a proposed 1300 mile 42" pipeline from the Cheyenne Hub to eastern Ohio. That project is moving forward today with BP and ConocoPhillips participation.

Gaffney, Cline and Associates

Scope of Work Performed

- Provided cost information of the GTP and other economic aspects of the proposed TC Alaska Project.
- Provided economic and fiscal system expertise for the analysis.

Company Biography

Gaffney, Cline and Associates (GCA) is an independent, international advisory firm focused on the provision of integrated technical and managerial advisory services to all sectors of the oil and gas industry. For over forty years, GCA has provided across the board expertise - upstream, mid-stream and downstream - combined with the use of multidisciplinary teams.

GCA's assignments range from differentiated studies such as exploration program assessment, reserves definition, field development planning or rehabilitation assistance, asset valuation, LNG chain evaluation through to integrated techno-commercial evaluations to support corporate development, asset enhancement, acquisition or divestment.

Key Project Personnel

Robert George

Richard Ruggiero

(Black and Veatch continued)

gas marketing strategies and commercial agreements, performance and risk measurement, and analysis & utilization of natural gas industry structural models.

M.S., Engineering Management, Dartmouth College (2000)

M.S., Economics, B.I.T.S. (1999)

B.E. Mechanical Engineering (1999)

Mike Elenbaas leads financial analysis, risk management, market analysis and asset management studies for energy and water utilities. He also specializes in strategic planning and risk management for the energy and water industries. Mr. Elenbaas has played a significant role in his career with Black & Veatch developing strategic planning and risk analysis solutions. His responsibilities have included creation of a capital project prioritization process and tool for both energy and water utilities, and several innovative and complex risk analysis models.

B.S., Mechanical Engineering, Dordt College (2000)

(Black and Veatch continued)

M.B.A., Southern Methodist University (1990)
B.S., Chemical Engineering, University of Texas (1982)

H. Edwin Overcast brings over thirty years of energy industry experience to the project. He is a specialist in the practice areas of regulatory policy and economics, energy pricing and rate design, economic analysis, strategic planning, legislative analysis, industry restructuring analysis, competitive analysis and open access and unbundling implementation.

Ph.D., Virginia Polytechnic Institute and State University (1972)
B.A., Economics, (1969)

Dr. Hua Fang is a Senior Economist at Black & Veatch. She provides expertise in derivative asset pricing, econometrics modeling, stochastic processes and fundamental market analysis. Dr. Fang is responsible for fundamental market analysis, stochastic price modeling, energy asset valuation, econometrics modeling and forecasting. Dr. Fang applies the most recent developments in financial theory to the real world energy context and to provide better methods of asset evaluation and risk management for the energy industry.

Ph.D., Economics, University of Virginia (2001)
M.A. Economics, University of Virginia (1998)
M.A. International Finance, People's University of China (1996)
B.A. International Finance, People's University of China (1993)

Dr. Jeff Dykstra's modeling and oversight is in the area of financial assessments, risk assessments/prioritization, forecasting, optimization, statistical evaluations, and reliability assessment. He brings 15 years of experience in the area of Monte Carlo simulation and statistical characterization.

Ph.D., Mechanical Engineering, Iowa State University (1993)
M.S., Mechanical Engineering, Iowa State University (1990)
B.S., Mechanical Engineering, Dordt College (1988)

Joe Trainor is an electrical engineer with specialties in the areas of class cost of service analyses and modeling, statistical and comparative cost and operating analysis, load and sales forecasting, demand-side management and financial modeling. Mr. Trainor is the architect and implementer of Black & Veatch's Demand-Side Management and Cost of Service models. He has performed electric and gas cost of service and marginal cost of service projects for a variety of clients. In addition to his utility and energy industry analytical skills, Mr. Trainor's broader IT expertise includes, application programming and database management.

M.B.A., Long Island University (2003)
B.S., Electrical Engineering, Manhattan College (1993)

Deepa Poduval is a Principal with Black & Veatch and is responsible for business strategy and project management. Ms. Poduval's client engagements focus on strategic analytical services supporting portfolio optimization, asset acquisition, risk management, and business strategy development. Her expertise includes the valuation of energy industry assets, analysis of oil &

Black and Veatch Corporation

Scope of Work Performed

- Modeling – overall, price
- FERC regulatory expertise (relevant to the rate model and overall LOS regulatory issues)
- Commercial LOS analysis
- Net Present Value analysis model development including Monte Carlo Simulation
- Upstream cash flows (expenses and revenues) and production analysis and module for the NPV model jointly developed with the State of Alaska
- Pipeline tariff and cost-of-service analysis and module for the NPV model
- Price forecasts for Henry Hub, AECO and NGL prices
- Statistical and uncertainty analysis of costs, schedules and projected cash flows
- FERC regulatory expertise (relevant to the rate model and overall Likelihood of Success regulatory issues)
- Commercial Likelihood of Success Analysis

Company Biography

Black & Veatch Corporation is a leading global engineering, consulting and construction company. Founded in 1915, Black & Veatch specializes in infrastructure development in energy, water, telecommunications, federal management consulting, and environmental markets. Black and Veatch is an employee-owned company with more than 100 offices worldwide. Among other rankings and awards, Black & Veatch is ranked on the Forbes "500 Largest Private Companies in the United States" listing.

Key Project Personnel

Greg Hopper is vice president and a founding member of Lukens Energy Group and brings nearly twenty years of energy industry experience to the company. At LEG he works with clients in the natural gas and electric generation industries, focusing on strategic and analytic services regarding capital asset investments and optimization. As part of this work he led due diligence valuations supporting three interstate pipeline acquisitions and a large LNG import terminal. Mr. Hopper leads the firm's market analysis practice and has consulted to numerous clients on regional needs for new pipeline capacity; work which ultimately led to the development of LEG's Gas Market Advisor.

M.B.A., Finance, Rice University (1988)
B.B.A., Accounting, University of Texas (1982)

Scott R. Smith is a Senior Vice President with Black & Veatch Corporation (B&V) and leads Lukens Energy Group for B&V's Enterprise Management Solutions division. He has over twenty years of energy industry experience with the majority of his efforts focused on natural gas marketing, power marketing and natural gas processing. Mr. Smith leads the asset valuation, asset optimization, enterprise risk management and risk software development activities at B&V Lukens Energy Group. Mr. Smith's specific areas of expertise include energy asset optimization, risk management, business strategy development, natural gas and power project development, trading and marketing strategy development, energy decision analysis and contract negotiations.

ARCADIS U.S., Inc.

Scope of Services Performed

- Finding document preparation
- Employment forecast

Company Biography

ARCADIS is a global network of business professionals that provides project management, consultancy and engineering. ARCADIS develops, designs, implements, maintains and operates projects for companies and governments. With 13,000 employees and \$1.9 billion in gross revenue the company is multi-nationally present with a close-knit local network. Expertise and experience are of international significance.

Key Project Personnel

Glenn Ruckhaus has more than 20 years of professional experience in managing and authoring various types of environmental, risk, and economic evaluations documents for various resource development projects throughout the western U.S. and Alaska. This experience includes pipelines, exploration, development, economic analysis, NEPA planning and process, regulatory, health risk, and community relations.

Conrad Mulligan has more than 14 years experience as a strategic planner, and issues analyst. Mr. Mulligan has developed an expertise in communicating technical and scientific information; he is adept at working with decisionmakers, engineers, and researchers to craft compelling, focused documents that are accessible, accurate, correct, and that meet their intended audiences' needs. He is skilled at 'translating' complex information for non-technical readers and discerning and packaging the key points and messages from large studies or bodies of knowledge.

Bennett Jones

Scope of Work Performed

- Canadian regulatory expertise (relevant to the rate model and overall LOS regulatory issues)

Company Biography

Internationally recognized Canadian law firm with long-standing practice in oil and gas industry, mergers and acquisitions, foreign exploration and international investment coupled with evolving regulatory legislation, stakeholder community, commercial matters, and strategic advice on export and commodity tax compliance matters. Bennett Jones has extensive experience negotiating joint ventures and resource development agreements for native reserve and treaty lands, counseling governments and proponents on engineering, procurement and construction contracts, and representing industry participants on surface rights acquisition matters for wells, facilities and pipelines.

Key Project Personnel

Marie Buchinski represents a diverse group of clients providing counsel on matters related to oil and gas developments, including pipelines and facilities, rates, tolls and tariffs, common carrier matters, land acquisition, cost of capital, and energy imports and exports. She assists her clients with Aboriginal rights issues and has also been involved with environmental matters, with experience in provincial and federal environmental assessment processes. She has participated in energy proceedings before the National Energy Board, the Alberta Energy and Utilities Board, the Surface Rights Board, and the Environmental Appeal Board, and related appeals to the Court of Queen's Bench and Alberta Court of Appeal, and has experience with regulatory and environmental matters as they relate to acquisitions and divestitures of oil and gas assets. Marie has assisted in the preparation of papers and publications relating to the *Canadian Environmental Assessment Act*, exports of oil and gas, and regulatory developments. She is currently a director of TXU Energy Trading Company Limited.

Karen Illsey acts on energy transactions and matters involving the regulation of the oil and gas, electricity and telecommunications industries. She advises on regulatory matters before various regulatory agencies, including the National Energy Board, Alberta Energy and Utilities Board, Ontario Energy Board, and Canada-Nova Scotia Offshore Petroleum Board. Karen has appeared before the Alberta Energy and Utilities Board on matters such as facility applications, gas deregulation hearings, and utility rate proceedings. Karen, with experience gained in-house as a member of the government and regulatory affairs department of a leading energy retailer, advises market participants on affiliate code of conduct, consumer protection and privacy matters. She assists in the preparation and publication of articles on issues relating oil and gas regulation, environmental impact assessment, and telecommunications law. Prior to entering legal practice, Karen worked for a geotechnical engineering and environmental consulting firm.

(Bennett Jones continued)

Loyola Keough, chair of the firm's regulatory department and a member of the firm's Partnership Board, acts for utility companies, pipelines and project developers, industry associations, gas buyers, producers and banks. He has particular experience in oil, gas, electricity, liquefied natural gas (LNG) and compressed natural gas (CNG) matters. He appears before the National Energy Board (NEB), the Alberta Energy and Utilities Board as well as the British Columbia Utilities Commission and the public utilities boards of the Yukon and Northwest Territories. Loyola also represents clients before a variety of other government bodies and agencies as part of project development work. Prior to entering private practice, Loyola acted as counsel to the NEB and also spent several years with the Federal Department of Energy, Mines and Resources. To complement his practice, Loyola speaks on the subject of procedures, approvals and necessary applications involved in exporting gas to the U.S. and on recent legislative and regulatory developments in the oil, gas and electricity fields. Additionally, Loyola has co-authored a chapter on the National Energy Board for a multi-volume publication by Matthew Bender entitled *Energy Law and Transactions*. Loyola is an appointed director of WBI Canadian Pipeline, Ltd., Interenergy Sheffield, Pipeline Ltd. and Nytis Exploration.

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LEGAL SERVICES

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

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

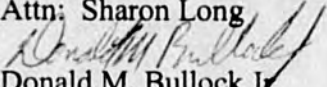
State Capitol
Juneau, Alaska 99801-1182
Deliveries to: 129 6th St., Rm. 329

MEMORANDUM

June 7, 2008

SUBJECT: Amending the Alaska Gasline Inducement Act
(Work Order No. 25-LS1714)

TO: Senator Charlie Huggins
Chair of the Senate Special Committee on Energy
Attn: Sharon Long

FROM: 
Donald M. Bullock Jr.
Legislative Counsel

You asked for an opinion about the effect of amending the Alaska Gasline Inducement Act (AGIA)¹ on the proposed license being considered during this Third Special Session.

You did not submit a proposed amendment or indicate whether the amendment would have an effect on the state's obligations under the license, the licensee's obligations, or both. AGIA offered inducements in return for commitments and conditions agreed to by a successful licensee. A material reduction in inducements or a material increase in the obligations, costs, and commitments of the licensee without rejecting the issuance of the license the commissioner of revenue and the commissioner of natural resources (commissioners) have forwarded for consideration raises complex issues regarding the doctrine of separation of powers and the process for determining a complete application under AGIA.

The legislature has before it the determination by the commissioners that the project proposed by TransCanada Alaska Company, LLC and Foothills Pipe Lines Ltd. (together, "TransCanada") will sufficiently maximize the benefits to the people of the state and merits the issuance of a license.² The commissioners made the determination after soliciting proposals and after TransCanada submitted its application under the terms and conditions of AGIA. AGIA includes inducements the state offered³ and the requirements and obligations an applicant must satisfy or agree to in order to qualify for a license.⁴

¹ AGIA is codified at AS 43.90.100 - 43.90.990.

² See AS 43.90.180(a).

³ AS 43.90.110.

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AGIA also provides resource inducements as incentives for encouraging persons with natural gas resources to commit to the project proposed by the licensee.⁵

Based on AGIA, and in response to the request for proposals issued by the commissioners, four companies submitted applications that the commissioners found to be incomplete, two companies submitted letters explaining why they were not submitting applications, and TransCanada submitted an application that was found to be complete and ultimately submitted by the commissioners to the legislature for approval.⁶ If the legislature approves the issuance of the license, the commissioners are required to issue the license as soon as practicable.⁷

If the legislature fails to pass SB 3001, HB 3001, or some other legislation that approves the issuance of the license the commissioners have recommended within the 60 days after June 3, 2008,⁸ the proposed license to be issued to TransCanada dies. Without legislative approval of the proposed licensee, AS 43.90.190(d) prohibits the commissioners from issuing the license the legislature failed to approve, but allows the commissioners to start the process over again by requesting new applications for a license. If AGIA is amended in conjunction with the failure to approve the TransCanada project, the amendments would be incorporated in a new request for proposals, should the commissioners opt to begin the process again.⁹

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⁷ AS 43.90.190(b).

⁸ This schedule presumes that the President of the Senate and the Speaker of the House both received the determination by the commissioners on the first day of the Third Special Session. AS 43.90.190(b) requires the legislature to pass a bill approving the license within 60 days "after the last date a presiding officer receives a determination by the commissioners" before the commissioners may issue the license. By my count, August 2, 2008 would be the last date for having a bill pass that approves the current proposed licensee.

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If the legislature fails to approve the TransCanada license or amends AGIA, there is the possibility that the commissioners may nevertheless issue the license under the terms of AGIA as originally enacted under the separation of powers doctrine.¹⁰

Potential for issuing a license without legislative approval or without AGIA amendments.

When it comes to legislative approval of executive branch contracts, and the license under AGIA is a contract, the Attorney General's office has long held that legislative approval is a violation of the separation of powers. The Attorney General's office stated its views quite plainly in the following excerpt from a 1982 informal opinion:¹¹

In approving individual contracts, the legislature does not exercise a lawmaking function. Consequently, in the absence of a constitutional grant of such power or some unique circumstance that we cannot presently contemplate, a statute requiring legislative approval of an individual contract is a violation of the separation of powers. See *Chadha v. Immigration and Naturalization Service*, 634 F.2d 408 (9th Cir. 1980). In *Public Defender Agency v. Superior Court, Third Judicial District*, 534 P.2d 947 (Alaska 1975), the Alaska Supreme Court held that the doctrine of separation of powers, though not expressly set out in the Alaska Constitution, is clearly implied. See also Minutes of the Alaska Constitutional Convention 1955-56, at 2228-29. Furthermore, the court has expressly recognized that it was a purpose of the framers of the Alaska

amendment of AGIA before new proposals are subsequently solicited are political questions and can be expected to be found nonjusticiable by the courts. *Department of Natural Resources v. Tongass Conservation Soc'y*, 931 P.2d 1016, 1019 (Alaska 1997) ("Imputing a motive to the legislature for failing to act risks expressing a lack of respect for that branch of government. Further, there are no 'judicially discoverable and manageable standards' which might be used to resolve the question as to why the legislature failed to take a particular action.")

¹⁰ The doctrine of separation of powers between the executive and legislative branches is based on the constitutional allocation of power in art. II, sec. 1, and art. III, sec. 1, Constitution of the State of Alaska.

¹¹ 1982 Inf. Alaska Atty. Gen. Op. (file no. 366-269-83), November 3. The Attorney General's office has reiterated this position at least two other times in opinions. See 1085 Inf. Alaska Atty. Gen. Op. (file no. 166-065-86), August 13, and 1987 Inf. Alaska Atty. Gen. (file no. 663-88-0094), September 17 (noting "the position of the Department of Law has consistently been that such requirements of legislative approval are unconstitutional as a violation of the doctrine of separation of powers").

Constitution to create a strong executive branch of government. *Bradner v. Hammond*, 553 P.2d 1 (Alaska 1976).

The separation of powers issues arises under art. III, sec. 1 (powers of the governor), and art. II, sec. 1 (powers of the legislature), Constitution of the State of Alaska. A governor may waive the separation of powers and involve the legislature in a process to which the legislature would otherwise be excluded but the governor's mind may change. Such was the case in *Bradner v. Hammond*, wherein the court noted in a footnote:¹²

The attorney general candidly admitted at oral argument that examination of practice between the legislative and executive branches since statehood indicates that the executive has at least acquiesced to legislative confirmation of certain subcabinet officials. However, he argued that the political reality of a legislature dominated by the same party as that of the governor, as well as the minor interference such intervention created, indicates that the executive stance in the past should not be read as a "constitutional interpretation by a coordinate branch of government," but rather as a product of a realistic ordering of executive goals at the time.

Despite the precedence of governors submitting subcabinet appointments to the legislature for confirmation, when the issue was presented to the court of whether confirmation was required under the state constitution, the court found that the executive could make those appointments without legislative confirmation.

With regard to AGIA, Governor Palin wanted the legislature to participate in the process leading to the issuance of a license and appears to have initially waived the constitutional power to enter into a contract without legislative confirmation. In the AGIA bills introduced at the request of the governor -- HB 177 and SB 104 -- the governor proposed that the legislature could stop the issuance of a license. In both bills, the proposed AS 43.90.200(a) and (b) described the legislative involvement as follows:

Sec. 43.90.200. Legislative action; issuance of license. (a) A determination and notice of intent to issue a license under AS 43.90.190 is a final agency action, effective under this chapter on the 30th legislative day after the date of referral to the legislature, unless the notice of intent is disapproved by joint resolution of the legislature. After the determination and notice of intent are effective under this subsection, the commissioners may issue the license under this chapter.

(b) If the legislature disapproves the notice of intent to issue a license before the 30th legislative day after referral, the commissioners may commence another public process under AS 43.90.130 to request applications.

¹² 553 P.2d 1, 5 n. 5 (Alaska 1976).

In the initial proposal for legislative involvement, the legislature could stop the issuance of a license by passing a joint resolution; if the legislature did nothing, the commissioners could issue the license. In other words, the legislature had only "red light" power -- only the power to stop the license.

As consideration of the legislation progressed, legislative involvement was changed from being able to stop the issuance of a license, by passing a joint resolution, to requiring the legislature to approve the issuance of a license in the form of a bill. The change in vehicle from a joint resolution to a bill was required because the legislature would or will be taking action that has a binding effect on those outside of the legislature.¹³ Thus the legislative power was changed from "red light" to "green light" -- the ultimate power to go forward with the license became contingent upon legislative approval.

While it may be argued that the authority for the executive to issue a license under AGIA as originally enacted is not fully granted until the proposed license is approved by the legislature, there may still be a challenge to this approach under the separation of powers doctrine. Should the commissioners issue the license without legislative approval or without subsequent amendments to AGIA, and the legislature or another party challenges the license, the commissioners could argue that issuing a license that is consistent with the original statutory requirements (other than the requirement of legislative approval) is authorized by the constitution under the separation of powers doctrine. If the commissioners' argument is successful before the court, art. I, sec. 15, Constitution of the State of Alaska, would prohibit the legislature from passing a law that impairs the obligation of that contract by trying to change the terms of the license.

In the course of considering whether the executive has the power to issue the license without legislative approval, the court may also address whether the legislative approval in AS 43.90.190 is unconstitutional. Despite the severability provision in AGIA,¹⁴ the court could find that the legislative approval requirement was such an integral part of the intent of the legislature in enacting AGIA that the requirement could not be severed.¹⁵

¹³ See, *State v. A.L.I.V.E. Voluntary*, 606 P.2d 769, 773 (Alaska 1980) (when the legislature wishes to act in an advisory capacity it may act by resolution; however, when it means to take action having a binding effect on those outside the legislature it may do so only by following the enactment procedures).

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[T]he court's severance powers are restrained by the same constraints that fence its powers to adopt limiting constructions: "If a court finds a statute or portions of it unconstitutional, it has the power to strike it down or sever the invalid portion. It does not have the power to redraft the statute

However, given the elaborate requirements for the qualification of a licensee, the duties of the executive to solicit and evaluate proposed pipeline projects, and the enactment of a severability clause (as opposed to relying on the generally applicable severance clause in AS 01.10.030), it is likely that the court would sever the legislative approval provision and uphold the remainder of the Act. ★

The effect of an amendment to AGIA.

There is no authority within AS 43.90 for the legislature to do anything with regard to a license proposed to be issued by the commissioners other than to approve or disapprove the issuance of the license. AS 43.90.190(a) requires the rules committee in each house of the legislature to "introduce a bill in the committee's respective chamber that provides for the approval of the license proposed to be issued by the commissioners." Two things are particularly noteworthy in this mandate. First, the bill is to provide for the approval of the license, and not a bill "relating to the issuance of a license"; if the bill passes, AS 43.90.190(b) requires the commissioners to "issue the license as soon as practicable after the effective date of the Act approving the issuance of the license." Second, the issue before the legislature is the "approval of the license proposed to be issued by the commissioners," not some other license or variation. Rhetorically, if the legislature tries to change the terms and conditions, is the bill that passes the "license proposed to be issued by the commissioners," or a different license? There is also an issue under the separation of powers doctrine as to whether the legislature or the executive is the branch with the authority to negotiate contractual terms. This separation of powers issue is discussed above. ★

If the legislature makes changes to AGIA that require additional or different requirements from those offered by TransCanada in its application, the application would no longer be complete. Under AS 43.90.140, the commissioners are required to reject applications that do not satisfy what are commonly referred to as "must haves" in AS 43.90.130. An application that does not contain the required provisions may not be forwarded to the legislature for consideration.

Additionally, should the legislature modify the license terms, including amending the

as that is the province of the legislature." *Thus, not only must the remaining portion of a severed statute be "valid as a law by itself," but it must also "give effect to the apparent intention of the legislature" that enacted the original provision.* Just as a court must do when it considers adopting a narrowing construction, a court contemplating severance must initially determine that "severing the invalid portion will not do violence to the intent of the legislature." If the court determines instead that "by sustaining only a part of a statute, the purpose of the act is changed or altered, the entire act is invalid."

Senator Charlie Huggins
June 7, 2008
Page 7

requirements for a license in AGIA, nothing in AGIA requires the party submitting the proposal to accept the modified license. If the legislature does not approve the issuance of the license that the commissioners have proposed, it may identify its reasons for not approving the license in a letter of intent or similar document. If the commissioners choose to request new applications, they could revise the requirements in the request for applications issued under AS 43.90.120 to address the concerns of the legislature and the amendments that might be made to AGIA.

A legislative finding that the project proposed by TransCanada's fails to sufficiently maximize the benefits to the people of the state and, therefore, does not merit the issuance of a license begs the question as to whether the failure is with the application or the underlying law. If the legislature determines that the problem is with the law, it could consider amending AGIA, but those amendments will, of course, be vulnerable to a veto.

AGIA is a law like any other law subject to amendment and revision by the legislature. If AGIA is amended in the course of considering the award of the license to TransCanada and awards the license to TransCanada, or the legislature attempts to negotiate different terms for the license, other applicants for the license may challenge the award on due process and equal protection grounds. Although the applicants were required to waive the right to appeal the issuance of a license to another applicant under AS 43.90.130(16), it is my opinion that if the process and requirements for the license are changed by the legislature, the courts would consider a constitutionally-based challenge to the process.

In conclusion, I caution against amending AGIA or attempting to negotiate terms of the license with TransCanada. An amendment to AGIA may void the current license application as incomplete and the negotiation with the proposed licensee may be found by a court to be beyond the power of the legislature under the separation of powers doctrine.

DMB:ljw
08-253.ljw

Q 4 Don

Don, pg 3. June 7, 2008,
"Chadha v Immigration..."

Does this mean AGIA is
unconstitutional? or is
it that we are merely
showing support for a license
w/ subsequently blames ^{upon} signing a contract

LEGAL SERVICES

DIVISION OF LEGAL AND RESEARCH SERVICES
LEGISLATIVE AFFAIRS AGENCY
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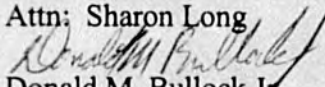
State Capitol
Juneau, Alaska 99801-1182
Deliveries to: 129 6th St., Rm. 329

MEMORANDUM

June 7, 2008

SUBJECT: Amending the Alaska Gasline Inducement Act
(Work Order No. 25-LS1714)

TO: Senator Charlie Huggins
Chair of the Senate Special Committee on Energy
Attn: Sharon Long

FROM: 
Donald M. Bullock Jr.
Legislative Counsel

You asked for an opinion about the effect of amending the Alaska Gasline Inducement Act (AGIA)¹ on the proposed license being considered during this Third Special Session.

You did not submit a proposed amendment or indicate whether the amendment would have an effect on the state's obligations under the license, the licensee's obligations, or both. AGIA offered inducements in return for commitments and conditions agreed to by a successful licensee. A material reduction in inducements or a material increase in the obligations, costs, and commitments of the licensee without rejecting the issuance of the license the commissioner of revenue and the commissioner of natural resources (commissioners) have forwarded for consideration raises complex issues regarding the doctrine of separation of powers and the process for determining a complete application under AGIA.

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Senator Charlie Huggins
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DMB:ljw
08-253.ljw

SCOMM

155:35

LEGAL SERVICES

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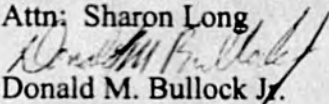
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Attn: Sharon Long

FROM: 
Donald M. Bullock Jr.
Legislative Counsel

You asked for an opinion about the effect of amending the Alaska Gasline Inducement Act (AGIA)¹ on the proposed license being considered during this Third Special Session.

You did not submit a proposed amendment or indicate whether the amendment would have an effect on the state's obligations under the license, the licensee's obligations, or both. AGIA offered inducements in return for commitments and conditions agreed to by a successful licensee. A material reduction in inducements or a material increase in the obligations, costs, and commitments of the licensee without rejecting the issuance of the license the commissioner of revenue and the commissioner of natural resources (commissioners) have forwarded for consideration raises complex issues regarding the doctrine of separation of powers and the process for determining a complete application under AGIA.

The legislature has before it the determination by the commissioners that the project proposed by TransCanada Alaska Company, LLC and Foothills Pipe Lines Ltd. (together, "TransCanada") will sufficiently maximize the benefits to the people of the state and merits the issuance of a license.² The commissioners made the determination after soliciting proposals and after TransCanada submitted its application under the terms and conditions of AGIA. AGIA includes inducements the state offered³ and the requirements and obligations an applicant must satisfy or agree to in order to qualify for a license.⁴

¹ AGIA is codified at AS 43.90.100 - 43.90.990.

² See AS 43.90.180(a).

³ AS 43.90.110.

⁴ AS 43.90.130.

AGIA also provides resource inducements as incentives for encouraging persons with natural gas resources to commit to the project proposed by the licensee.⁵

Based on AGIA, and in response to the request for proposals issued by the commissioners, four companies submitted applications that the commissioners found to be incomplete, two companies submitted letters explaining why they were not submitting applications, and TransCanada submitted an application that was found to be complete and ultimately submitted by the commissioners to the legislature for approval.⁶ If the legislature approves the issuance of the license, the commissioners are required to issue the license as soon as practicable.⁷

If the legislature fails to pass SB 3001, HB 3001, or some other legislation that approves the issuance of the license the commissioners have recommended within the 60 days after June 3, 2008,⁸ the proposed license to be issued to TransCanada dies. Without legislative approval of the proposed licensee, AS 43.90.190(d) prohibits the commissioners from issuing the license the legislature failed to approve, but allows the commissioners to start the process over again by requesting new applications for a license. If AGIA is amended in conjunction with the failure to approve the TransCanada project, the amendments would be incorporated in a new request for proposals, should the commissioners opt to begin the process again.⁹

⁵ AS 43.90.300 - 43.90.330.

⁶ The four incomplete applications were submitted by Aenergia, LLC; the Alaska Gasline Port Authority; the Alaska Natural Gas Development Authority; and Little Susitna Construction Company of Anchorage, Alaska, and its prime sub-consultant, subcontractor, Zhongyuan Engineering General Construction Company of ZPEB SINOPEC, Design Institute of ZYEC SINOPEC, and its ZPEB SINOPEC International Division, all part of China Petroleum and Chemical Corporation. The two companies that wrote to explain why an application would not be submitted are BG Group, plc, and MidAmerican Energy Holdings Company. Information on the AGIA application process is published on the Governor's web site at <http://www.gov.state.ak.us/agia/> (accessed June 6, 2008).

⁷ AS 43.90.190(b).

⁸ This schedule presumes that the President of the Senate and the Speaker of the House both received the determination by the commissioners on the first day of the Third Special Session. AS 43.90.190(b) requires the legislature to pass a bill approving the license within 60 days "after the last date a presiding officer receives a determination by the commissioners" before the commissioners may issue the license. By my count, August 2, 2008 would be the last date for having a bill pass that approves the current proposed licensee.

⁹ Given the legislature's discretion to approve or disapprove the proposed license under AS 43.90.190, the issue of the legislature's disapproval of the current proposal and the

If the legislature fails to approve the TransCanada license or amends AGIA, there is the possibility that the commissioners may nevertheless issue the license under the terms of AGIA as originally enacted under the separation of powers doctrine.¹⁰

Potential for issuing a license without legislative approval or without AGIA amendments.

When it comes to legislative approval of executive branch contracts, and the license under AGIA is a contract, the Attorney General's office has long held that legislative approval is a violation of the separation of powers. The Attorney General's office stated its views quite plainly in the following excerpt from a 1982 informal opinion:¹¹

In approving individual contracts, the legislature does not exercise a lawmaking function. Consequently, in the absence of a constitutional grant of such power or some unique circumstance that we cannot presently contemplate, a statute requiring legislative approval of an individual contract is a violation of the separation of powers. See *Chadha v. Immigration and Naturalization Service*, 634 F.2d 408 (9th Cir. 1980). In *Public Defender Agency v. Superior Court, Third Judicial District*, 534 P.2d 947 (Alaska 1975), the Alaska Supreme Court held that the doctrine of separation of powers, though not expressly set out in the Alaska Constitution, is clearly implied. See also Minutes of the Alaska Constitutional Convention 1955-56, at 2228-29. Furthermore, the court has expressly recognized that it was a purpose of the framers of the Alaska

amendment of AGIA before new proposals are subsequently solicited are political questions and can be expected to be found nonjusticiable by the courts. *Department of Natural Resources v. Tongass Conservation Soc'y*, 931 P.2d 1016, 1019 (Alaska 1997) ("Imputing a motive to the legislature for failing to act risks expressing a lack of respect for that branch of government. Further, there are no 'judicially discoverable and manageable standards' which might be used to resolve the question as to why the legislature failed to take a particular action.")

¹⁰ The doctrine of separation of powers between the executive and legislative branches is based on the constitutional allocation of power in art. II, sec. 1, and art. III, sec. 1, Constitution of the State of Alaska.

¹¹ 1982 Inf. Alaska Atty. Gen. Op. (file no. 366-269-83), November 3. The Attorney General's office has reiterated this position at least two other times in opinions. See 1085 Inf. Alaska Atty. Gen. Op. (file no. 166-065-86), August 13, and 1987 Inf. Alaska Atty. Gen. (file no. 663-88-0094), September 17 (noting "the position of the Department of Law has consistently been that such requirements of legislative approval are unconstitutional as a violation of the doctrine of separation of powers").

Constitution to create a strong executive branch of government. *Bradner v. Hammond*, 553 P.2d 1 (Alaska 1976).

The separation of powers issues arises under art. III, sec. 1 (powers of the governor), and art. II, sec. 1 (powers of the legislature), Constitution of the State of Alaska. A governor may waive the separation of powers and involve the legislature in a process to which the legislature would otherwise be excluded but the governor's mind may change. Such was the case in *Bradner v. Hammond*, wherein the court noted in a footnote:¹²

The attorney general candidly admitted at oral argument that examination of practice between the legislative and executive branches since statehood indicates that the executive has at least acquiesced to legislative confirmation of certain subcabinet officials. However, he argued that the political reality of a legislature dominated by the same party as that of the governor, as well as the minor interference such intervention created, indicates that the executive stance in the past should not be read as a "constitutional interpretation by a coordinate branch of government," but rather as a product of a realistic ordering of executive goals at the time.

Despite the precedence of governors submitting subcabinet appointments to the legislature for confirmation, when the issue was presented to the court of whether confirmation was required under the state constitution, the court found that the executive could make those appointments without legislative confirmation.

With regard to AGIA, Governor Palin wanted the legislature to participate in the process leading to the issuance of a license and appears to have initially waived the constitutional power to enter into a contract without legislative confirmation. In the AGIA bills introduced at the request of the governor -- HB 177 and SB 104 -- the governor proposed that the legislature could stop the issuance of a license. In both bills, the proposed AS 43.90.200(a) and (b) described the legislative involvement as follows:

Sec. 43.90.200. Legislative action; issuance of license. (a) A determination and notice of intent to issue a license under AS 43.90.190 is a final agency action, effective under this chapter on the 30th legislative day after the date of referral to the legislature, unless the notice of intent is disapproved by joint resolution of the legislature. After the determination and notice of intent are effective under this subsection, the commissioners may issue the license under this chapter.

(b) If the legislature disapproves the notice of intent to issue a license before the 30th legislative day after referral, the commissioners may commence another public process under AS 43.90.130 to request applications.

¹² 553 P.2d 1, 5 n. 5 (Alaska 1976).

In the initial proposal for legislative involvement, the legislature could stop the issuance of a license by passing a joint resolution; if the legislature did nothing, the commissioners could issue the license. In other words, the legislature had only "red light" power -- only the power to stop the license.

As consideration of the legislation progressed, legislative involvement was changed from being able to stop the issuance of a license, by passing a joint resolution, to requiring the legislature to approve the issuance of a license in the form of a bill. The change in vehicle from a joint resolution to a bill was required because the legislature would or will be taking action that has a binding effect on those outside of the legislature.¹³ Thus the legislative power was changed from "red light" to "green light" -- the ultimate power to go forward with the license became contingent upon legislative approval.

While it may be argued that the authority for the executive to issue a license under AGIA as originally enacted is not fully granted until the proposed license is approved by the legislature, there may still be a challenge to this approach under the separation of powers doctrine. Should the commissioners issue the license without legislative approval or without subsequent amendments to AGIA, and the legislature or another party challenges the license, the commissioners could argue that issuing a license that is consistent with the original statutory requirements (other than the requirement of legislative approval) is authorized by the constitution under the separation of powers doctrine. If the commissioners' argument is successful before the court, art. I, sec. 15, Constitution of the State of Alaska, would prohibit the legislature from passing a law that impairs the obligation of that contract by trying to change the terms of the license.

In the course of considering whether the executive has the power to issue the license without legislative approval, the court may also address whether the legislative approval in AS 43.90.190 is unconstitutional. Despite the severability provision in AGIA,¹⁴ the court could find that the legislative approval requirement was such an integral part of the intent of the legislature in enacting AGIA that the requirement could not be severed.¹⁵

¹³ See, *State v. A.L.I.V.E. Voluntary*, 606 P.2d 769, 773 (Alaska 1980) (when the legislature wishes to act in an advisory capacity it may act by resolution; however, when it means to take action having a binding effect on those outside the legislature it may do so only by following the enactment procedures).

¹⁴ Sec. 8, ch. 22, SLA 2007.

¹⁵ The court discussed legislative intent for an Act and the severability of a provision of that Act in *Alaskans for a Common Language, Inc. v. Kritz* as follows:

[T]he court's severance powers are restrained by the same constraints that fence its powers to adopt limiting constructions: "If a court finds a statute or portions of it unconstitutional, it has the power to strike it down or sever the invalid portion. It does not have the power to redraft the statute

However, given the elaborate requirements for the qualification of a licensee, the duties of the executive to solicit and evaluate proposed pipeline projects, and the enactment of a severability clause (as opposed to relying on the generally applicable severance clause in AS 01.10.030), it is likely that the court would sever the legislative approval provision and uphold the remainder of the Act.

The effect of an amendment to AGIA.

There is no authority within AS 43.90 for the legislature to do anything with regard to a license proposed to be issued by the commissioners other than to approve or disapprove the issuance of the license. AS 43.90.190(a) requires the rules committee in each house of the legislature to "introduce a bill in the committee's respective chamber that provides for the approval of the license proposed to be issued by the commissioners." Two things are particularly noteworthy in this mandate. First, the bill is to provide for the *approval* of the license, and not a bill "relating to the issuance of a license"; if the bill passes, AS 43.90.190(b) requires the commissioners to "issue the license as soon as practicable after the effective date of the Act approving the issuance of the license." Second, the issue before the legislature is the "approval of the license proposed to be issued by the commissioners," not some other license or variation. Rhetorically, if the legislature tries to change the terms and conditions, is the bill that passes the "license proposed to be issued by the commissioners," or a different license? There is also an issue under the separation of powers doctrine as to whether the legislature or the executive is the branch with the authority to negotiate contractual terms. This separation of powers issue is discussed above.

If the legislature makes changes to AGIA that require additional or different requirements from those offered by TransCanada in its application, the application would no longer be complete. Under AS 43.90.140, the commissioners are required to reject applications that do not satisfy what are commonly referred to as "must haves" in AS 43.90.130. An application that does not contain the required provisions may not be forwarded to the legislature for consideration.

Additionally, should the legislature modify the license terms, including amending the

as that is the province of the legislature." *Thus, not only must the remaining portion of a severed statute be "valid as a law by itself," but it must also "give effect to the apparent intention of the legislature" that enacted the original provision.* Just as a court must do when it considers adopting a narrowing construction, a court contemplating severance must initially determine that "severing the invalid portion will not do violence to the intent of the legislature." If the court determines instead that "by sustaining only a part of a statute, the purpose of the act is changed or altered, the entire act is invalid."

Senator Charlie Huggins

June 7, 2008

Page 7

requirements for a license in AGIA, nothing in AGIA requires the party submitting the proposal to accept the modified license. If the legislature does not approve the issuance of the license that the commissioners have proposed, it may identify its reasons for not approving the license in a letter of intent or similar document. If the commissioners choose to request new applications, they could revise the requirements in the request for applications issued under AS 43.90.120 to address the concerns of the legislature and the amendments that might be made to AGIA.

A legislative finding that the project proposed by TransCanada's fails to sufficiently maximize the benefits to the people of the state and, therefore, does not merit the issuance of a license begs the question as to whether the failure is with the application or the underlying law. If the legislature determines that the problem is with the law, it could consider amending AGIA, but those amendments will, of course, be vulnerable to a veto.

AGIA is a law like any other law subject to amendment and revision by the legislature. If AGIA is amended in the course of considering the award of the license to TransCanada and awards the license to TransCanada, or the legislature attempts to negotiate different terms for the license, other applicants for the license may challenge the award on due process and equal protection grounds. Although the applicants were required to waive the right to appeal the issuance of a license to another applicant under AS 43.90.130(16), it is my opinion that if the process and requirements for the license are changed by the legislature, the courts would consider a constitutionally-based challenge to the process.

In conclusion, I caution against amending AGIA or attempting to negotiate terms of the license with TransCanada. An amendment to AGIA may void the current license application as incomplete and the negotiation with the proposed licensee may be found by a court to be beyond the power of the legislature under the separation of powers doctrine.

DMB:ljw

08-253.ljw

LEGAL SERVICES

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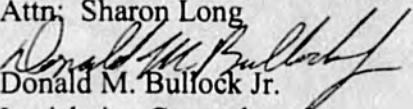
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MEMORANDUM

June 10, 2008

SUBJECT: Application of the Alaska Natural Gas Transportation Act of 1976 and the Alaska Natural Gas Pipeline Act to an AGIA project (Work Order No. 25-LS1715)

TO: Senator Charlie Huggins
Chair of the Senate Special Committee on Energy
Attn: Sharon Long

FROM: 
Donald M. Bullock Jr.
Legislative Counsel

You want to know how the Alaska Natural Gas Transportation Act of 1976¹ (ANGTA) and the Alaska Natural Gas Pipeline Act² (ANGPA) relate to a project under the Alaska Gasline Inducement Act (AGIA) (AS 43.90).

ANGPA did not displace ANGTA. 15 U.S.C. 720h,³ enacted as part of ANGPA, clarifies ANGTA status and authorities. In particular, 15 U.S.C. 720(a) provides that nothing in

¹ Alaska Natural Gas Transportation Act of 1976, 15 U.S.C. 719 et seq.

² Alaska Natural Gas Pipeline Act, 15 U.S.C. 720 et seq.

³ 15 U.S.C. 720h. **Clarification of ANGTA status and authorities**

(a) Savings clause. Nothing in this division [15 USCS §§ 720 et seq.] affects--

(1) any decision, certificate, permit, right-of-way, lease, or other authorization issued under section 9 of the Alaska Natural Gas Transportation Act of 1976 (15 U.S.C. 719g); or

(2) any Presidential finding or waiver issued in accordance with that Act.

(b) Clarification of authority to amend terms and conditions to meet current project requirements. Any Federal agency responsible for granting or issuing any certificate, permit, right-of-way, lease, or other authorization under section 9 of the Alaska Natural Gas Transportation Act of 1976 (15 U.S.C. 719g) may add to, amend, or rescind any term or condition included in the certificate, permit, right-of-way, lease, or other authorization to meet current project requirements (including the physical

ANGPA "affects any decision, certificate, permit, right-of-way, lease or other authorization under sec. 9 of [ANGTA]." Both acts were intended to encourage and expedite the construction of a natural gas pipeline to transport natural gas from the State's North Slope. AGIA is consistent with the purposes and intent of ANGTA and ANGPA and an AGIA project can benefit from the facilitating provisions of those federal acts.

ANGTA

ANGTA was enacted in 1976. Congress described the purpose of the Act as providing the means "for making a sound decision as to the selection of a transportation system for delivery of Alaska natural gas to the contiguous States for construction and initial operation by providing for the participation of the President and the Congress in the selection process."⁴ ANGTA required the President to issue a decision before September 1, 1977, "as to whether a transportation system for delivery of Alaska natural gas should be approved under [ANGTA]."⁵ On September 22, 1977, President Jimmy Carter forwarded to Congress his decision to select the Alcan project, which follows the Alaska Highway. Congress approved the president's selection on November 2, 1977.⁶ The Alcan project was developed by the Alaska Northwest Natural Gas Transportation Company (ANNGTC). As of February 5, 2001, the only remaining partners of ANNGTC were Foothills Pipe Lines Ltd. and TransCanada PipeLines Ltd.⁷ The Alaska Highway Project was demobilized in the early 1980's because natural gas demand was

design, facilities, and tariff specifications), if the addition, amendment, or rescission--

(1) would not compel any change in the basic nature and general route of the Alaska natural gas transportation system as designated and described in section 2 of the President's decision; or

(2) would not otherwise prevent or impair in any significant respect the expeditious construction and initial operation of the Alaska natural gas transportation system.

(c) Updated environmental reviews. The Secretary shall require the sponsor of the Alaska natural gas transportation system to submit such updated environmental data, reports, permits, and impact analyses as the Secretary determines are necessary to develop detailed terms, conditions, and compliance plans required by section 5 of the President's decision.

⁴ 15 U.S.C. 719(a).

⁵ 15 U.S.C. 719e(a). The president was given authority to delay the issuance of the decision for up to 90 days if certain conditions were met.

⁶ H.R.J. 621, Public Law No. 95-158, 93 Stat. 1268, 95th Cong. 1st Sess. (1977).

⁷ Presentation by John Ellwood, Vice President, Engineering and Operations for Foothills Pipe Lines Ltd., before the Alaska State Senate Resources Committee (Feb. 5, 2001).

not increasing as anticipated, but ANNGTC continued to hold and maintain federal right-of-way grants and other federal certificates and permits, at least through February 2001.⁸

The route for the pipeline project selected under ANGTA appears to be substantially similar to the route offered in the AGIA project that has been recommended by the commissioner of revenue and the commissioner of natural resources. Other than the continuation of any rights-of-way, certificates, or permits issued pursuant to the selection of the project under ANGTA, much of the Act does not appear to be applicable to the project proposed under AGIA.⁹

ANGPA

ANGPA became law on October 13, 2004, and is applicable to the project proposed under AGIA. For the purposes of ANGPA, "Alaska natural gas" means "natural gas derived from the area of the State of Alaska lying north of 64 degrees north latitude," and defines "Alaska natural gas transportation project" to mean, "any natural gas pipeline system that carries Alaska natural gas to the border between Alaska and Canada . . . that is authorized under [ANGTA] or [15 U.S.C. 720(a)]." 15 U.S.C. 720(a) authorizes the Federal Energy Regulatory Commission (FERC) to issue a certificate of public convenience and necessity (CPCN) in accordance with 15 U.S.C. 717f(c) (Natural Gas Act) for the construction and operation of an Alaska natural gas transportation project other than that selected under ANGTA. In other words, the exclusivity for the project selected under ANGTA in 1977 no longer applies and FERC may issue a CPCN to either the original project or a new project, such as that proposed under AGIA.

ANGPA imposes limits on the source of the gas; gas for the project must be produced north of 64 degrees north latitude, *supra*. The route the project must follow is also restricted; the project must enter Canada south of 68 degrees north latitude and may not traverse land beneath navigable waters (as defined in sec. 2 of the Submerged Lands Act) in the vicinity of the Beaufort Sea.¹⁰ The project proposed under AGIA avoids the prohibited routes.

ANGPA required FERC to issue regulations governing the conduct of open seasons for Alaska natural gas transportation projects,¹¹ which FERC did in 2005.¹² The regulations governing the conduct of the open season are applicable to the AGIA project.

⁸ *Ibid.*

⁹ As discussed below, 15 U.S.C. 720h, enacted as part of ANGPA, provides for the continuation of decisions, certificates, permits, rights-of-way, leases, and other authorizations issued under 15 U.S.C. 719g of ANGTA, as well as any Presidential finding or waiver issued under the earlier Act.

¹⁰ 15 U.S.C. 720a(d).

¹¹ 15 U.S.C. 720a(e).

Alaska-in-State gas needs are addressed in ANGPA. 15 U.S.C. 720a(g) requires the holder of the CPCN to demonstrate that the holder has conducted a study of Alaska in-State needs, including tie-in points for in-State access. AS 43.90.130(1) requires a description of receipt and delivery points in the State and AS 43.90.130(12) requires the AGIA licensee to provide a minimum of five delivery points in the State. Regardless of the result of the study, AGIA requires delivery points and access points.

15 U.S.C. 720a(h) authorizes the State to request reasonable access to the project for the transportation of royalty gas for in-State consumption and provides that the rates of shippers of subscribed capacity on the project shall not be increased as a result of the State being granted access. This provision could be the basis for ensuring an in-State supply of natural gas in the form of the State's royalty gas. AGIA requires a commitment to offer firm transportation service to delivery points in this State as part of the tariff and offer distance-sensitive rates regardless of whether the gas is royalty gas or not.¹³

15 U.S.C. 720b designates FERC as the lead agency for purposes of complying with the National Environmental Policy Act of 1969 and provides for expediting the environmental impact statement. This requirement will expedite the environmental impact review of an AGIA project.

15 U.S.C. 720c authorizes FERC to order the expansion of the pipeline project if expansion is found to be required "by the present and future public convenience and necessity." AS 43.90.130(5) - (7) require the AGIA licensee to evaluate the market demand for increased capacity, commit to expand the proposed project in reasonable engineering increments and on commercially reasonable terms, and propose rolled-in rates or a combination of incremental and rolled-in rates for the expanded capacity.

15 U.S.C. 720d establishes the Office of the Federal Coordinator for Alaska Natural Gas Transportation Projects. The coordinator -- former State Senator Drue Pearce -- will be available to expedite and coordinate reviews by federal agencies that are required by the AGIA project. The federal position is similar to the position of Alaska Gasline

¹² The regulations appear at 18 CFR Part 157 and were issued February 9, 2005. Order No. 2005, 110 FERC 61,095 (Feb. 9, 2005). An Order clarifying the original order was issued June 1, 2005. Order No. 2005-A, 111j FERC 61,332 (June 1, 2005). Exxon Mobil Corp. sought pre-enforcement review of two regulations that asserted FERC's authority to condition a CPCN on the project sponsor's willingness to increase the capacity or expandability of the project on the basis that that condition was inconsistent with the Natural Gas Act and ANGPA. The United States Court of Appeals for the D.C. Circuit denied the permission. *Exxon Mobil Corp. v. Federal Energy Regulatory Commission*, 378 U.S. App. D.C. 205, 501 F.3d 204 (2007).

¹³ AS 43.90.130(13).

Inducement Act coordinator established by AS 43.90.250 to expedite State action required for the AGIA project.

15 U.S.C. 720e provides for expedited judicial review to determine the validity of any final order or action of a federal agency under ANGPA, the constitutionality of a provision of ANGPA, or the adequacy of any federal environmental impact statement. This provision will expedite the judicial review of federal action regarding the AGIA project and is similar to the short period for challenging the constitutionality of the license or AGIA provided in AS 43.90.420. Sec. 7 of AGIA is also similar in its expression of the intent of the legislature that Alaska courts expedite the consideration of a "case related to the development and construction of a natural gas pipeline under this Act or to the commitment of a shipper to acquire firm transportation capacity during the first binding open season for a project developed under [AGIA], expedite the resolution of the case by giving the case priority over all other civil cases to the extent permitted under the Alaska Rules of Court."

15 U.S.C. 720f addresses State jurisdiction over in-State delivery of natural gas. The section treats a facility receiving natural gas from an Alaska natural gas transportation project to be deemed a local distribution facility and not subject to FERC jurisdiction, provides that ANGPA does not preclude a future in-State gas pipeline, and requires FERC to establish rates for the transportation of natural gas on any Alaska natural gas transportation project and consult with the State regarding rates applicable to natural gas transported on and delivered from the project for use in the State. AGIA anticipates the potential jurisdiction of the Regulatory Commission of Alaska over the AGIA project in AS 43.90.110, 43.90.130, 43.90.200, and 43.90.900.

15 U.S.C. 720g required the Secretary of the Department of Energy to conduct a study of alternative approaches to the construction and operation of an Alaska natural gas transportation project if an application for the issuance of a CPCN or amended CPCN was not received within the 18 months following October 13, 2004.¹⁴ AGIA offers another approach for the inducement of a gas pipeline project.

15 U.S.C. 720h clarifies ANGTA status and authorities under ANGPA.¹⁵ ANGTA does not affect "any decision, certificate, permit, right-of-way, lease, or other authorization

¹⁴ October 13, 2004 was the date ANGPA was enacted. The Department of Energy commenced an Alternative Means of Construction Study. Report Submitted to the United States Congress by the Federal Energy Regulatory Commission, *Second Report to Congress on Progress Made in Licensing and Constructing the Alaska Natural Gas Pipeline* (July 10, 2006). The report is published on the Internet at <http://www.ferc.gov/legal/staff-reports/angta-second.pdf> (accessed June 9, 2008).

¹⁵ The text of 15 U.S.C. 720h is set out in footnote 3, *supra*.

issued under section 9 of the ANGTA,"¹⁶ but allows a federal agency with jurisdiction to add to, amend, or rescind any term or condition to meet current project requirements so long as the change "would not compel any change in the basic nature and general route of the [pipeline project selected under ANGTA]" and "would not otherwise prevent or impair in any significant respect the expeditious construction and initial operation of the Alaska natural gas transportation system."¹⁷ To the extent the AGIA licensee has the benefit of a "certificate, permit, right-of-way, lease, or other authorization" previously granted under ANGTA, that benefit can continue under a project subject to ANGPA and AGIA.

15 U.S.C. 720i expresses the sense of Congress that the gas pipeline "would provide significant economic benefits to the United States and Canada." To maximize those benefits, the provision directs the project sponsors to use steel manufactured in North America in the project and to "negotiate a project labor agreement to expedite construction of the pipeline." AGIA does not address the source of steel, but AS 43.90.130(17) does require the licensee to commit "to negotiate, before construction, a project labor agreement to the maximum extent permitted by law."

15 U.S.C. 720j is another section expressing the sense of Congress. The provision encourages the sponsors of a gas pipeline project "to maximize the participation of small business concerns in contracts and subcontracts awarded in carrying out the project."¹⁸ Although AGIA does not directly require the use of small businesses in conjunction with the development of the pipeline, AS 43.90.130(15) requires a commitment to hire Alaska residents and contract with businesses in the state "to the maximum extent permitted by law."

15 U.S.C. 720k requires the Secretary of Labor to make grants to recruit and train adult and dislocated workers in Alaska in the skills required to construct and operate the gas pipeline, and for the construction of training facilities, specifically in Fairbanks, to support a pipeline training program. For the grants to be issued, the governor must request the grant funds and must certify that construction will commence within two years after the date of the certification. Also, the Secretary of Energy must concur with the governor's certification. The section also authorizes the appropriation of \$20,000,000 to carry out the requirements of the section, of which not more than 15 percent of the amount may be for the construction of the training facility. AS 43.90.470 of AGIA requires the commissioner of labor to "develop a job training program that will provide training for Alaskans in gas pipeline project management, construction, operations, maintenance, and other gas pipeline-related positions." There may be grants available

¹⁶ 15 U.S.C. 720h(a).

¹⁷ 15 U.S.C. 720h(b).

¹⁸ 15 U.S.C. 720j(b)(2).

under 15 U.S.C. 720k to help fund the job training program developed by the commissioner.

15 U.S.C. 720i does not directly impact AGIA. The ANGPA section expresses the sense of Congress that the demand for natural gas will increase dramatically during the next several decades, that both Alaska's gas pipeline and a pipeline project to transport natural gas from the Mackenzie Delta will be necessary to meet the demand, that both U.S. and Canadian officials should work together to move both projects forward, and that natural gas from Alaska will not displace or reduce the commercial viability of natural gas produced from the Mackenzie Delta or the lower 48.

15 U.S.C. 720m expresses the sense of Congress that Alaskan Native Regional Corporations, Alaskan companies, and individual Alaskans should have the opportunity to own shares of the gas pipeline and that the sponsors should negotiate with any willing Alaska person that desires to be involved in the project. As noted earlier, AS 43.90.130(15) requires a commitment to use Alaska workers and to contract with Alaska businesses. Ownership by Alaskans is not addressed in AGIA, but was discussed when AGIA was considered by the legislature before enactment.

15 U.S.C. 720n provides for a federal loan guarantee for a holder of a CPCN or a person determined to be qualified to construct and operate a liquefied natural gas project to ship liquefied natural gas from Southcentral Alaska to West Coast States.¹⁹ The loan guarantee is also available to the owner of the Canadian portion of a qualified infrastructure project.²⁰ The authority to issue the loan guarantees expires two years after the final CPCN, including any Canadian CPCN, is issued.²¹ The U.S. CPCN may be an initial CPCN issued under ANGPA or an amended CPCN initially issued under ANGTA.²² The loan guarantee may be used only by the project chose as the qualified project by FERC,²³ and imposes other eligibility requirements. Except with regard to a liquified natural gas project, the total amount of all guarantees may not exceed 80 percent of the total capital costs, including interest, or a total principal amount of \$18,000,000,000 as adjusted for inflation after October 13, 2004. The guarantee for a qualified liquefied natural gas project may not exceed a principal amount of \$2,000,000,000.²⁴ The section identifies eligible lenders and provides for other terms and fees connected with the loan guarantees. An AGIA licensee may benefit from the

¹⁹ 15 U.S.C. 720n(a)(1).

²⁰ 15 U.S.C. 720n(a)(2).

²¹ 15 U.S.C. 720n(a)(3).

²² 15 U.S.C. 720n(b)(1).

²³ 15 U.S.C. 720n(b)(4).

²⁴ 15j U.S.C. 720n(c). October 13, 2004 is the date of the enactment of ANGPA.

Senator Charlie Huggins
June 10, 2008
Page 8

guarantees, provided the licensee and other project owners qualify under the terms and conditions of 15 U.S.C. 720n.

Conclusion

Although the above is a fairly cursory review of ANGTA and ANGPA and the interrelationship between AGIA and two federal Acts, all three Acts are complementary. AGIA seems to have been modeled after and to be consistent with many of the terms of the two Acts. An AGIA licensee that also meets the conditions of the federal Acts will benefit from the loan guarantees and the intent of the federal Acts to expedite the construction of an Alaska natural gas pipeline.

I urge you to discuss the interaction of the two federal Acts with the consultants that have been retained by the legislature and executive branch to further AGIA.

If I may be of further assistance, please advise.

DMB:ljw
08-257.ljw

SCOMM

155:36

SENATE CONCURRENT RESOLUTION NO.

IN THE LEGISLATURE OF THE STATE OF ALASKA

TWENTY-FIFTH LEGISLATURE - SECOND SESSION

BY THE SENATE RESOURCES COMMITTEE

Introduced:

Referred:

A RESOLUTION

1 **Urging the governor to expand the subjects to be addressed during the Third Special**
2 **Session of the Twenty-Fifth Alaska State Legislature to include an in-state natural gas**
3 **pipeline for the transport of natural gas produced on the North Slope and to develop a**
4 **plan for the economical distribution of that natural gas to communities throughout the**
5 **state.**

6 **BE IT RESOLVED BY THE LEGISLATURE OF THE STATE OF ALASKA:**

7 **WHEREAS** energy prices, including home heating bills, are at an all-time high in
8 every community in the state; and

9 **WHEREAS** the production of natural gas is declining and the decline is projected to
10 result in energy shortages and increasing utility rates for the population centers in the state;
11 and

12 **WHEREAS**, although significant reserves of natural gas have been confirmed to exist
13 on the North Slope, these reserves continue to be undeveloped; and

14 **WHEREAS** the people of Alaska expect that the natural resources of the state are to
15 be developed in a responsible manner that benefits all Alaskans; and

1 **WHEREAS** the State of Alaska holds at least three trillion cubic feet of royalty gas in
2 developed North Slope petroleum fields and significant additional reserves at Point Thomson;
3 and

4 **WHEREAS** petroleum companies are, for the first time, drilling and exploring for
5 natural gas on the North Slope and will need the development of a transportation system to
6 encourage continued exploration, development, and production on the North Slope;

7 **BE IT RESOLVED** that the Alaska State Legislature urges the governor to use her
8 influence to encourage public and private sector entities to

9 (1) prepare information and a project description for a natural gas pipeline and
10 delivery system that will provide affordable energy to urban and rural communities in the
11 state;

12 (2) identify opportunities for the value-added processing of natural gas
13 resources in the state;

14 (3) develop a plan for the commercialization and development of the natural
15 gas resources on the North Slope; and

16 (4) identify alternative plans to maximize a project for transporting natural gas
17 from the North Slope to market, including the export of liquefied natural gas and the creation
18 of opportunities for the industrial use of natural gas; and be it

19 **FURTHER RESOLVED** that the Alaska State Legislature urges the governor to
20 identify and assemble potential sponsors, including natural gas producers, marketing entities,
21 construction and engineering firms, and financial institutions who could participate in the
22 development, construction, and operation of an in-state natural gas pipeline project; and be it

23 **FURTHER RESOLVED** that the Alaska State Legislature urges the governor to expand the
24 subjects to be addressed during the Third Special Session of the Twenty-Fifth Alaska State
25 Legislature to include an in-state gas pipeline for the transport of natural gas produced on the
26 North Slope and to develop a plan for the economical distribution of that natural gas to
27 communities throughout the state.

Instate Gas Resolution
Senate Concurrent Resolution

We've heard overwhelmingly from Alaskans STATEWIDE, that development of our resources, especially natural gas, for instate use and employment is paramount.

Heading toward a budget that is unsustainable, Alaska suffers from an abundance of stranded energy resources, and our citizens are suffering from exorbitant and economically debilitating fuel costs.

We are being asked to change this course, and the upcoming special session is pivotal to this mission.

Myself and many colleagues are contacted almost daily by Alaskans urging consideration of the Bullet line and other instate options.

It is CLEAR that our constituents do not want this option left in the dust or eclipsed by the enormity of the 1700 mile, world tilting, pipeline to Alberta.

The governor has conceded to evaluating in state and LNG options in the course of AGIA application evaluation.

Expanding the call of the special session to include these added evaluations codifies and fully legitimizes our taking those findings into consideration during the special session.

These are weighty decisions we're now called to make that will impact our economy, and the livelihoods and lifestyles of Alaskans deep into this century.

We cannot confine our deliberations to a "call" which too narrowly constrains our universe of inquiry and thereby may thwart the will and wisdom of Alaskans.

The special session must allow us a broader [than one applicant) base of considerations for development of our natural gas resources to ensure the maximum benefit for all Alaskans.