

ALASKA LEGISLATURE SPECIAL COMMITTEE / SUBJECT FILES 8672

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1 that made by the Governor and Attorney General Gross, but
2 I'm prepared to answer what questions I can and direct
3 your others to any other individuals we have here who can
4 help. Thank you very much.

5 SENATOR RADER: Thank you, Commissioner, Attorney General.

6 Have we any questions from any members?

7 REP. GRUENING: Somebody has got to start here.

8 SENATOR RADER: Mr. Gruening?

9 REP. GRUENING: I think this goes to Mr. Gross. In the
10 comparative evaluation it stated -- November of '76,
11 there is a letter, December 2nd, 1976, to the Governor
12 in which on page three of that letter, on the bottom of
13 the third paragraph, Chairman Gross makes these remarks:
14 "I think Alaska would agree that if we reached a point
15 where support of the El Paso route as no longer feasible,
16 the state should throw its support behind the Alcan route.
17 The only real question is at what point." And then in the
18 next paragraph you suggest a number of points at which
19 that support might be switched, and one of them was the
20 decision of the Federal Power Commission Hearing Judge.
21 And that decision, as I understand it, will be made
22 tomorrow, and I don't know what the decision will be, but
23 let's assume that it is not favorable to the all-Alaska
24 Route. Is it your position now that that is not an
25 important stage at which we should consider the -- our

1 first choice or is it important as you see it?

2 ATTORNEY GENERAL GROSS: Well, it is certainly important,
3 Representative Gruening. I think that since I wrote this
4 letter we have had an opportunity to discuss with both
5 the Congressional Delegation and the people involved in
6 the effort in Washington, what the impact will be of
7 an adverse decision before the Federal Power Commission.
8 It is my impression, from discussing that with those
9 people, that the fight will still be very much an open
10 one at that stage, that the basic decision is going
11 to be made by the President and the Congress, and that
12 the issue will not be foretold by a Federal Power
13 Commission decision even if it were adverse. So I
14 would say at this point that an adverse decision would
15 not cause me, at least, to recommend to the Governor a
16 re-evaluation of our position.

17 Commissioner Martin has been more in charge of
18 the Washington aspects of this and I think he would be
19 more appropriate to answer that; but that would be my
20 own reflection on what I consider.

21 COMMISSIONER MARTIN: I'd only add, Mr. Chairman, that I think
22 the circumstances that exist now, after the passage of
23 the Alaska Natural Gas Transportation Act, should be noted
24 to be substantially different than that which would exist
25 under ordinary certification processes. As that bill is

1 structured the FPC administrative law judge's opinion
2 ultimately leading to an FPC decision becomes only a part
3 on an overall structure which will involve a number of
4 other federal agencies, the President and Congress prior
5 to the decision. Whereas, under the ordinary circumstances
6 the finding of the judge followed by the Commission would
7 be determinative. So, I think that the circumstances
8 change but I would want to add that we intend to look at
9 that decision and we anticipate, quite frankly, that it
10 will be lengthy, several hundred pages, and we anticipate
11 that it will have a number of subtle and sophisticated
12 points in it. So that I think that it would be very
13 difficult now to say before seeing it what the position
14 would be. But, standing alone I don't think that it
15 represents a -- necessarily a single factor to change the
16 state's position.

17 REP. GRUENING: In this new legislation, what role or what
18 importance would you play on the presidential -- the
19 President's decision?

20 COMMISSIONER MARTIN: Well, all of these are somewhat subjective
21 judgments. My own feeling would be that the way the
22 decision will be made, and I guess I say this from the
23 perspective of my experience somewhat from the oil line
24 as well as this present dispute, Mr. Chairman, is this,
25 that my guess is that the President will take advantage

1 of the fact finding period set up in the bill utilizing
2 the federal agencies as well as the FPC. He will then
3 move toward a position on it without probably taking a
4 final position and then work with members of Congress to
5 see if the issue can somehow be brokered or somehow
6 resolved between the two branches prior to the time that
7 it goes.

8 So my guess is that the President is going to be
9 very important but that he will not send a recommendation
10 to Congress without having a fairly good idea of how it
11 will be returned. His role is unquestionably crucial.

12 REP. GRUENING: What I'm trying to determine, Commissioner,
13 is at what point, interpreting the Governor's remarks
14 today that you read, at what point would he make a re-
15 consideration? If I understood it correctly, he said in
16 Congress. In other words, the President's decision wasn't
17 as important to him -- or I'm trying to understand at
18 just what point you think these considerations that
19 Chairman Gross pointed out earlier are important.

20 COMMISSIONER MARTIN: I don't think that you can identify a
21 single instance but I can give you some examples that
22 would be the sort of thing that would be important. For
23 instance, if we get an early indication that the -- if
24 the President simply does what I suggest, he may not, and
25 that is, takes a position simply within the next sixty or

1 ninety days, stakes out a position and says "I'm going
2 to support the Arctic route" or "I'm going to support the
3 El Paso route", we will know something then that will be
4 definitive. We don't know whether he will do that.

5 Similarly there could be an action taken in
6 Canada, a definitive action which would give us an idea
7 whether Canada has any capability at all to approve any
8 pipeline through its country or whether it will act so as
9 to facilitate it. And I really think that you're not going
10 to get an answer as to a definitive point in time and
11 this is what we think is one of the strengths of the
12 contracts, that it puts us in a position where we can be
13 somewhat flexible in response to that but at the same time
14 have our basic position well established and well supported

15 SENATOR RADER: Senator Croft?

16 SENATOR CROFT: Could I ask -- I'd like to get back to Attorney
17 General Gross' letter of December 2nd. You said in the
18 last sentence -- the last paragraph of that, "I feel there
19 is every possibility that the Trans-Alaska project will
20 eventually be selected for the transportation of North
21 Slope gas." Do you expect Judge Litt tomorrow to in effect
22 recommend the El Paso route?

23 ATTORNEY GENERAL GROSS: No.

24 SENATOR CROFT: What has happened to date to make you think
25 there is every possibility that that route will be

1 selected?

2 ATTORNEY GENERAL GROSS: I think the indications I have,
3 Senator Croft, primarily revolve about the Canadian
4 situation. I think that the Canadian situation is going
5 to be a great deal more formidable than the administrative
6 law judge contemplates and that the land claims issue --
7 the national situation in Canada at the present time are
8 going to create a climate in which a Trans-Canadian route
9 of any kind is going to be difficult. And I think that
10 will be a highly determinative force on a national level.

11 SENATOR CROFT: Mr. --

12 SENATOR RADER: Senator?

13 SENATOR CROFT: Unless somebody else has another question. I
14 was going to ask in that regard that the Anchorage Times
15 of Saturday had reference to a treaty that had been
16 recently concluded with Canada and somebody had said that
17 that treaty had no material effect on the pipeline debate.
18 Do you believe that's correct and exactly what does that
19 treaty do?

20 ATTORNEY GENERAL GROSS: I do believe that is correct but I
21 think Commissioner Martin can better explain it if that
22 is all right.

23 COMMISSIONER MARTIN: Well, I think that it has some effect.
24 I don't think that it is going to be determinative in any
25 way. That's -- the treaty that was signed and now

1 subsequently has to be ratified in each country, is
2 basically a formalization of the ad referendum agreement
3 that was made earlier and that agreement really doesn't
4 resolve any of the difficult questions that confront
5 Canada on this issue. It tends to be more of an agreement
6 to agree than anything else. I can have Assistant Attorney
7 General Boness describe the terms of that treaty, I'm
8 sure you are already familiar with them, but I don't think
9 that treaty in any way is an agreement for a Trans-
10 Canadian pipeline, either Alcan or Arctic.

11 SENATOR CROFT: The reason I ask is because I had heard that
12 there was going to be a move on the part of our congressional
13 delegation to fight this because it did have implications.
14 You would expect then no fight out of our congressional
15 delegation as a result of it?

16 COMMISSIONER MARTIN: I would think that they might oppose it
17 but my own indication is that they share the view that I
18 just expressed regarding the treaty, that it essentially
19 establishes more normalized working relations between the
20 United States and Canada on sort of a broad range of
21 issues, but it does virtually nothing to materially advance
22 either an Alcan or Arctic route.

23 SENATOR CROFT: Mr. Chairman, would you expect that the
24 administration in conjunction with the Congressional
25 Delegation and the purchasers of the North Slope gas would

1 then oppose that treaty in Congress?

2 COMMISSIONER MARTIN: I really wouldn't take a position on
3 that. Our position throughout has been not to obstruct
4 relationships with Canada nor to highlight differences
5 between Alaska or the U.S. and Canada on this issue. I
6 think the bigger issue really is simply the Canadian
7 self-interest and the internal Canadian problems in terms
8 of approving it. But, without examining in detail, my
9 preliminary guess would be no, that we would not make
10 major efforts to oppose it, if any.

11 SENATOR RADER: Any other questions? Mr. Parr?

12 REP. PARR: Yes. I believe my question would be for
13 Commissioner Martin. In reading the Governor's statement,
14 Mr. Martin, the purpose of this is to build a constituency
15 in the Lower 48. Now, the Governor in dealing with the
16 reason for not getting legislative concurrence in his
17 switch said that a decision to shift, and these are
18 almost his exact words, would have to be reached quickly
19 and perhaps in hours or days and therefore it wouldn't
20 be possible to get the legislature back into it. I
21 would like to know what credibility you think we would
22 have if on July 3rd we are supporting the El Paso route
23 and July 4th we are supporting the Alcan, not only what
24 credibility we'd have but what credibility our presumed
25 allies would have?

1 COMMISSIONER MARTIN: Mr. Parr, as I see it there are really
2 two situations that might exist to change the state's
3 position on this issue. One could occur any time and one
4 could occur, as I see it, only relatively early in the
5 debate. The one that could occur relatively early would
6 involve the substantive merits of the routes themselves
7 and that is the emergence of facts, whether those facts
8 are deregulation of gas or other factors, which would
9 just simply change the substantive judgment of Alaskans
10 on which routes are in its best interest.

11 The second factor which I think could occur at
12 any point, would be the development of facts which
13 indicate that our first choice, El Paso, simply cannot
14 succeed and that we would lose to Arctic, a third choice,
15 unless we changed our support to a second.

16 Now, in terms of your question about credibility,
17 I think that most of the early development with regard
18 to new substantive aspects will happen probably during
19 the time -- or a good part of it will happen during the
20 time that the legislature is considering this issue and
21 should be very much a part of our debate.

22 With regard to the second factor, I think that
23 anytime we switch, based on the fact that El Paso can
24 no longer prevail, we are simply -- we are not impairing
25 credibility because we are not changing our mind about

1 which is the best route. We are simply saying that the
2 best route can't succeed and we're changing our allegiance
3 of support to the one that is the next best in our
4 interest. So, I think that either the State or the
5 companies could make that argument.

6 REP. PARR: Then you would say that the people down in
7 Tennessee or wherever who were supposedly writing their
8 Congressman in support of the El Paso route would under-
9 stand that they were being asked to switch the next day
10 as to writing their Congressman to support the Alcan
11 route?

12 COMMISSIONER MARTIN: I don't think that they would know, Mr.
13 Parr. I think that it is a very difficult situation.
14 I mean, there is no question in my mind that you have --
15 that your point is valid to some extent. The logical
16 extension of it, however, is that we lock ourselves into
17 a single avenue of support at this time and give ourselves
18 no avenue to get out of it if circumstances do change.

19 REP. PARR: Thank you.

20 ATTORNEY GENERAL GROSS: Representative Parr, I think -- is
21 it any more -- is it any different than in any political
22 process where a position is reached where a compromise
23 must be made which some person may not wish independently
24 but, forced to it is, nonetheless, required to make a
25 compromise? It happens in the Legislature, it happens in

1 the Congress, it happens all the time and I don't think
2 it is a question of credibility. It is a question of
3 you seeking the best thing you can get for your constituents.
4 View it to the extent you can and I don't think it is a
5 question that will be not credible, it's simply dealing
6 with reality.

7 COMMISSIONER MARTIN: Representative Parr, I'd like to add
8 one other thing when you asked about your constituency
9 in Tennessee. Under those circumstances they are not
10 going to lose the gas if the position changes. I mean
11 those same people who have been writing the letters are
12 going to be getting the gas but getting it through a
13 system which can succeed rather than through one that may
14 be a hopeless -- you know, a loser and can't succeed at
15 some later time. So those individuals will still have
16 the gas supply.

17 REP. PARR: May I reply?

18 SENATOR RADER: You still have the floor.

19 REP. PARR: Well, in reply to Mr. Gross, I see his point and
20 after all we all know that politics is the art of
21 compromise, right? But, that is a little bit different
22 from what I was talking about, I think. We were talking
23 about persuading a bunch of ordinary people who are just --
24 who are not politicians but to support our cause by
25 persuading their politicians, right? And I think that is

1 quite a bit different from the fact that we in the
2 legislature and in the Governor's office and everywhere
3 else all have to accept compromise as a political fact
4 of life. I think there is quite a little difference
5 there.

6 ATTORNEY GENERAL GROSS: I think Commissioner Martin's point
7 is well taken. If the compromise will still protect the
8 interests of those individuals, I think they would support
9 it.

10 REP. PARR: Mr. Chairman, well, of course and if that's the
11 case, what we ought to do is make it pretty clear, "look,
12 we want you to support whatever the State of Alaska wants
13 supported, so you can get the gas. not that we want you
14 to support El Paso so you can get the gas." Right? We
15 were telling them that El Paso is the best route, okay?

16 ATTORNEY GENERAL GROSS: Right.

17 REP. PARR: And they are supposed to honestly believe that
18 and try and persuade their congressmen, not just because
19 they are going to get the gas because that is purely a
20 selfish motive and if that is the way we are going to
21 play it, we ought to know it. But I felt we were going
22 to persuade them that El Paso was the best route and
23 then we come along and say, "well, no soap, boys, now it's
24 Alcan we have to go for." That's all I have Mr. Chairman.

25 SENATOR RADER: Mr. Chatterton?

1 REP. CHATTERTON: Mr. Chairman, Mr. Commissioner, on November 22,
2 1976, why the Alaska Royalty Oil and Gas Development
3 Advisory Board met and did indeed approve your determi-
4 nation to waive the competitive bid process and sub-
5 sequent to that why you as required by statute set forth
6 some findings and conclusions. And I realize fully,
7 Commissioner, that you were operating within a time
8 frame, that you had to come up with something prior to
9 the early portion of the first session of the Tenth
10 Legislature. But, you in effect say that one of the
11 rationales for not having any competitive bidding as far
12 as intrastate use of gas is that no specific proposals
13 for such purchases were forthcoming. Now, and in your
14 judgment, how far on down through the future calendar
15 time do you think that situation would remain in effect?

16 COMMISSIONER MARTIN: My experience thus far with the royalty
17 oil and gas, Representative Chatterton, would indicate
18 that rather than a highly competitive situation arising,
19 what will happen is that a series of possible users of
20 royalty oil or gas will develop. Now these may be small
21 utilities, Golden Valley or some other electric cooperative,
22 they may be municipal -- municipalities that go toward
23 some gas system or a system that uses oil as a fuel for
24 electrical generation or other purposes, or there may be
25 large users that develop from major petrochemical or other

1 projects, and it may be that as those uses develop or
2 we define uses that are beneficial to the state, that
3 we can structure competitive sales to reach particular
4 objectives but that they will be largely predicated on
5 individual development or uses that may be competitive.
6 For instance, in the case of Golden Valley Electric,
7 it is very unlikely that we would expose Golden Valley
8 Electric to a highly competitive sale which might be at
9 the expense of consumers along with somebody else who
10 had come in to compete with Golden Valley Electric. Now,
11 we have not made any final determination on this but I
12 think we'll see that situation confronted. So, I don't
13 foreclose the possibility of competitive sales but I
14 think it will arise in the context of a lot of individual
15 proposed uses that will have to face a competitive sale
16 on one of those proposals.

17 REP. CHATTERTON: My follow-up question, Mr. Chairman. Is
18 it further and under your finding speaking to interstate
19 sale of gas -- you say, "under present legal and regulatory
20 circumstances a competitive sale based on price competition
21 is not feasible because the price at which natural gas
22 may be sold in interstate commerce is controlled by the
23 Federal Power Commission." And, I ask you, Commissioner,
24 how far into the future can you guarantee the citizens
25 of Alaska that "present legal and regulatory circumstances"

1 will make it -- will keep the situation so that you
2 cannot ask for competitive bids for interstate sale?

3 COMMISSIONER MARTIN: Well, I don't think I can give you a
4 figure of guarantee and I doubt that you would force me
5 to come up with it in a short period of time. Under the
6 new administration I'm sure you are aware that the
7 President has indicated his desire to move toward de-
8 regulation. Exactly how reliable that makes an absolute
9 promise for deregulation is anyone's guess and I think
10 it is something that might well be granted with our
11 congressional delegation. I do think that the situation
12 is unpredictable. The odds are now substantially higher
13 in favor of deregulation occurring than they were before
14 President Carter made that statement.

15 In terms of this contract, we would be again
16 benefiting by prices realized from the Prudhoe Bay
17 field if we went to a deregulated situation. I know
18 that later in this week there is going to be additional
19 testimony on the price provision that deals with de-
20 regulation and I'm hopeful that perhaps at sometime we
21 can come back and have a discussion which I think will
22 be complex and an interesting discussion on what that
23 means. And, I think that there will be -- that we are
24 largely protected under a deregulated or regulated
25 situation to get the highest price from that field. I

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1 will not tell you that there may not be circumstances
2 that can arise that are unforeseeable at this time which
3 may not make some differences and I want to discuss that
4 with the committee. But, basically speaking, I think
5 that this contract ties itself to the highest price,
6 whether or not deregulation occurs.

7 REP. CHATTERTON: Thank you, Mr. Commissioner, thank you.

8 SENATOR RADER: Any further questions? Senator Croft?

9 SENATOR CROFT: I'm curious in regard to the use of political
10 influence exactly where you expect that political
11 influence to fall? Whom are we trying to effect?

12 ATTORNEY GENERAL GROSS: Political influence, I think the
13 Governor's words, I think, are more apropos. I think
14 he called it "building a national constituency". I
15 think what he is trying to do, Senator Croft, is to give
16 people in other states as well as Alaska, an interest in
17 seeing the Trans-Alaska pipeline route approved. Now in --
18 as they are influenced, as they desire that route, hope-
19 fully their congressional representatives will also desire
20 that route. Hopefully there will be more of a national
21 constituency as would influence the President in his
22 decision. That is the type of thing we are talking about.

23 SENATOR CROFT: You don't anticipate these contracts having
24 any effect on the FPC then?

25 ATTORNEY GENERAL GROSS: I think that frankly the contracts

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1 have come too late to influence the FPC decision except
2 as it indicates a commitment of the gas. But in terms
3 of building a constituency for the pipeline, no. I think
4 the FPC decision is probably already written.

5 COMMISSIONER MARTIN: Each of the buyers, Senator, did
6 intervene in the FPC in favor of the Trans-Alaska route
7 but I think beyond that it is certainly not a political
8 situation with the FPC from here on out. They'll be
9 participating in the standard legal procedures of the
10 FPC and doing so on behalf of the Trans-Alaska route.

11 SENATOR CROFT: As an educated guess, is it fair to assume
12 that you anticipate that Judge Litt tomorrow will basically
13 rule in favor -- or recommend in favor of the Arctic
14 route and that the FPC in its full commission hearing,
15 which decision they have to make prior -- or on or before
16 May 1st will likely follow his recommendations?

17 COMMISSIONER MARTIN: Well, the former question with regard
18 to Judge Litt's decision is difficult to guess. The only
19 way that you can guess is the way in which the Judge has
20 asked his questions and made his statements during the
21 hearing. In my own view that has tended to follow a strong
22 bias toward the Arctic route and some dissatisfaction
23 with both of the other alternatives. So, I -- my honest
24 personal expectation is he will rule in a fairly compli-
25 cated decision probably, in favor of the Arctic route

1 and the decision will be somewhat complex beyond that.

2 In terms of the FPC following his decision, I
3 think that's just too speculative to really guess. I
4 believe there is one and possibly two seats vacant on
5 the FPC. The way those seats are filled will have a
6 tremendous impact on that and I think that the information
7 that is produced outside of the FPC proceeding from here
8 on out will also have an impact on it, and that is one
9 case in which I think the State will want to participate.
10 As you may know, during that period of time the ex parte
11 rule is waived for some purposes and a great deal of
12 information will be made available to FPC commissioners
13 in addition to that which is made available for the record
14 itself. So, I just think it is too unpredictable to know.

15 SENATOR CROFT: Do you think then that these contracts may
16 have an effect on the FPC?

17 COMMISSIONER MARTIN: I think they'll have a substantive
18 effect and I think it will be important that the people
19 that we have working for us will be able to produce new
20 information and hopefully develop better information on
21 the routes but I don't think they will have a political --
22 To answer your questions in terms of politics, I doubt if
23 it will have a political effect. I think, Senator, it is
24 very important to say a couple things here to at least
25 give my own personal opinion with regard to this idea

1 about politics being at the heart of it. I don't share
2 that view. First of all, someone said earlier, I think
3 it was Clark, that what is important is what you get and
4 what you give up. In terms of what you get, I think we
5 spend too much of our time really dealing with thinking
6 the only thing we get is political support. As I see it,
7 there are really four major things, some of them having sub-
8 parts that we get. One is, we get a good price for this
9 gas and we get it, I think, according to a term that gives
10 us the best protection we can get aside from getting a
11 premium. We may at a later time be able to get a premium
12 and I'm -- I've said that throughout this entire consideration.
13 It's a matter of whether or not you want to withhold this
14 action waiting for that time to possibly arise. It is not
15 here now and we can't get it now, but we get a good price.

16 Secondly, we get a contract which very closely
17 follows the theory that Mr. Moody advanced last year and
18 that could be followed to protect our royalty gas. We get
19 in-state protection of gas by a total take back provision,
20 which I think most people agree is extraordinary in its
21 coverage of future in-state uses and to protect. That may
22 or may not be something we can accomplish later.

23 Third, we get, I think, a reasonable exercise of
24 the rights that we gain through the amendment that passed
25 the Gas Transportation Act and last years Congress. There

1 has been some disagreement over whether or not this is
2 the way and the time in which that should be exercised.
3 I personally believe it is a reasonable way and a reason-
4 able time to exercise it, and I think the Congressional
5 Delegation agrees with that.

6 And, fourth, and only fourth do we get the
7 support for the pipeline that we are talking about and
8 even there, that support while it has a political aspect,
9 that is it builds a constituency in a certain area and
10 it puts people on our side working for it. It also has
11 a substantive aspect, Senator Croft, in that these
12 companies, Tenneco and Southern, are companies with great
13 resources in terms of their substantive capability,
14 whether it is LNG or offshore operations and the way in
15 which they merge into the El Paso system in a logical
16 distribution pattern. They bring a great deal more to
17 it than politics. So, I think that while it is unques-
18 tionable that there will be political or other -- you
19 know, something to be characterized as political support.
20 There is much more to the contract than that that is of
21 benefit to the state.

22 SENATOR CROFT: Mr. Chairman, could I reply to that? The
23 phrase "political support" did not originate with me.

24 COMMISSIONER MARTIN: I understand.

25 SENATOR CROFT: I don't know whether it did with you or the

1 Attorney General but on page twelve of the Governor's
2 speech dated November 12th, he says, "Gaining political
3 support at this critical stage of the pipeline proceedings
4 is the major reason for acting now on royalty gas, but
5 there are other reasons also." And then on page fifteen
6 he says, "The primary objective of this sale is to gain
7 additional support for the pipeline route the State
8 supports."

9 COMMISSIONER MARTIN: I understand that and I think it is
10 fair to characterize it as a primary reason, or the primary
11 reason, but I'm trying to make it a point ---

12 SENATOR CROFT: The primary reason is political support?

13 COMMISSIONER MARTIN: That -- in my view, it is not. I think
14 in my view there are many reasons and they are all of
15 somewhat equal character. I think the Governor said that,
16 and that is his view, that he thinks it is a primary
17 reason.

18 ATTORNEY GENERAL GROSS: I think you may be getting into a
19 semantic difficulty here. I think what you read,
20 Senator Croft, said the reason for selling the gas
21 now is to generate political support, and I think that's
22 unquestionably accurate and the Governor stressed it.
23 That is the reason we are doing it now as opposed to
24 doing it a year from now, that a year from now it will
25 have no impact in gaining us any support for our position

1 in the Trans-Alaska pipeline dispute. I think Commissioner
2 Martin is stressing that the contract itself whenever
3 made, also has certain highly desirable features to it,
4 which he has stressed. And I think that is absolutely
5 accurate too.

6 SENATOR CROFT: Could I ask one more question and then Mr.
7 Chatterton has one. To what extent does either the
8 Federal Power Commission or the United States Congress
9 have authority or the possibility of allocating this gas
10 wherever it goes anyway? Couldn't they simply say, "we
11 approve this route and we determine that 2.5 billion
12 cubic feet a day are to be sold east of the Mississippi
13 River"? And doesn't -- I mean, doesn't Congress have the
14 power to allocate that gas rather than them having to
15 say, "We're going to approve a route because then a
16 supplier may buy it through some contract"?

17 COMMISSIONER MARTIN: Well, Senator, I think you know partially
18 what the answer to that is. That is the stuff with
19 which interstate commerce clause battles are made between
20 states and the federal government. Under some circumstances
21 I would say, yes. Under the -- as you know, oil is
22 allocated and I don't suppose that there is any over-
23 riding reason that they couldn't do that. The circumstances
24 would have to exist to do so.

25 Let me just point out on the other side, though,

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1 that we were successful in drafting a proposal and
2 our delegation was even more successful in gaining the
3 passage of the amendment which gave Alaska the right to
4 utilize its gas in-state. So that I think all you can do
5 is judge that subjectively as a political possibility.
6 In other words, a legislative congressional possibility.
7 Right now, I think, that given the gas shortage in the
8 Lower 48, how we react, responsibly or not to that in
9 Alaska, has a great deal to do with that. How other gas
10 producing states react has something to do with that.

11 In my view, the passage of the amendment was a
12 hopeful sign and it may be one that we can capitalize on
13 and protect future in-state uses. But -- the question
14 is simply, can they do it? I would say, sure.

15 SENATOR CROFT: I have some additional questions but I notice
16 Mr. Chatterton wants the floor.

17 SENATOR RADER: First of all, anybody who has not yet asked a
18 question, who would like to, we'll open it up to everyone
19 before we get to -- Mr. Chatterton, then.

20 REP. HAYES: Mr. Chairman?

21 SENATOR RADER: Mr. Hayes?

22 REP. HAYES: Commissioner Martin, just one item of clarification.
23 The statement regarding the primary purpose of the
24 contract which had to do with political considerations,
25 that was the Governor's position and not yours?

1 COMMISSIONER MARTIN: Yes, sir.

2 REP. HAYES: I read it in the transcript of your Royalty Oil
3 and Gas Development Advisory Board of November 22nd,
4 where I got the impression that it was your opinion.

5 COMMISSIONER MARTIN: My view is that -- just to clarify it,
6 Mr. Hayes, is that all of these purposes are extremely
7 important and that is one of them. Whether it is not
8 the most important or not, or the primary purpose, is that
9 I think it is subjective judgment. I think each of them
10 are important, in a combination they make up a very good
11 argument.

12 SENATOR RADER: Mr. Chatterton?

13 REP. CHATTERTON: Thank you, Mr. Chairman. I'm sorry, Mr.
14 Commissioner, but I would like to recall your memory and
15 see if you still stay. Going back to those findings
16 that I referred to that you made following the November
17 board meeting, why you do say that the "primary objective
18 of the proposed" -- "presently proposed sales to improve
19 and strengthen the position of the state with respect to
20 the decision process for the system to transport North
21 Slope natural gas" and I gather --

22 COMMISSIONER MARTIN: Well, Mr. Chatterton, I'd stand by that
23 statement.

24 REP. CHATTERTON: Yes, I think that is what you said here.

25 ATTORNEY GENERAL GROSS: Mr. Chatterton, as one who has been

1 involved in this from the Gas Pipeline Task Force point
2 of view, I think when you say "political influence", what
3 you are really saying is that it is a roundabout way of
4 saying any influence. This is a political decision which
5 is going to be made in the larger sense. A political
6 decision as to policy consideration clashing to produce
7 a decision as to where this pipeline route is going to
8 be built. If the state is going to have any influence
9 in this, it is going to have to have political influence
10 in this. That's -- we either have the choice of doing
11 nothing and watching it happen, or we have the choice of
12 becoming actively involved and trying to influence the
13 decision. The Governor made the latter choice.

14 SENATOR RADER: Senator Poland, then Senator Bradley.

15 REP. BRADLEY: Representative.

16 SENATOR RADER: Representative Bradley.

17 REP. BRADLEY: You don't know what an insult that is.

18 SENATOR RADER: I didn't mean to insult you, Representative.
19 Senator Poland?

20 SENATOR POLAND: As long as we are on this political issue,
21 one of the things that has bothered me about the switch
22 provision in there is what incentives do these three
23 companies particularly have when they're going -- as I read
24 the contract, they're going to get the gas no matter what
25 route.

1 COMMISSIONER MARTIN: You have made a common error, Senator
2 Poland, I believe in reading the contracts, because they
3 will not get the gas no matter which route it is. I
4 have talked to a number of legislators who have made the
5 same error reading the contracts.

6 The gas will only be given -- if they are support-
7 ing the position that the state supports and if that
8 position prevails so that if the state never changes its
9 position from El Paso and Alcan is certificated, none --
10 these contracts will simply be void.

11 If the state changes its position to a second
12 route, let's say Alcan, and one of the companies refuses
13 to switch at the time the state does so and then Alcan
14 prevails, or the other route prevails, they similarly
15 lose the gas. So, the only circumstances under which they
16 get gas is if they are supporting the state position and
17 if that position prevails. Under all other circumstances
18 the contracts would be void, so they have an undeniable
19 incentive to be with the state on the prevailing position.

20 SENATOR POLAND: Excuse me, Commissioner, I didn't express
21 myself well because I understood that the state had to
22 switch its position for their contracts still to be in
23 power. But, if the state does -- I mean, they have no
24 incentive to particularly work to hold the state on the
25 all-Alaska position.

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1 COMMISSIONER MARTIN: I would think they would have the
2 incentive of wanting to prevail since that is the
3 position we are going to take and the position we believe
4 would prevail.

5 SENATOR POLAND: Mr. Chairman, I have one other question that
6 I would like to ask the Commissioner.

7 SENATOR RADER: You still have the floor.

8 SENATOR POLAND: The state has the right to take back whatever
9 gas it needs for in-state use, including the exchange of
10 Prudhoe Bay gas for other gas elsewhere in Alaska. If
11 the exchange gas is used in Alaska and including lique-
12 faction of the gas provided the liquid gas is used in
13 Alaska, now, does this mean that we cannot sell gas to a
14 third party for liquefaction and export?

15 COMMISSIONER MARTIN: Let me ask. Yes, that is right. I
16 wanted to make sure that I had followed your question.

17 SENATOR POLAND: Then if we want to use those things we have
18 to go into that business ourselves?

19 COMMISSIONER MARTIN: I want to be sure I understand your
20 question, Senator Poland. Would you run that by one more
21 time? I'm not sure I understood it.

22 SENATOR POLAND: Does this mean that we can't use -- we can't
23 sell to a third party for liquefaction and export?

24 COMMISSIONER MARTIN: That is right, we could not do that.

25 In my view that is right but we could sell for liquefaction

1 and use. The statement we make is protected from all
2 in-state uses except liquefaction for export. What you
3 are suggesting is a way that we might essentially cheat
4 that provision. What we have sold in these contracts,
5 I have made it clear in all my statements, is the -- the
6 one thing we have sold is gas that is surplus to state
7 needs and the sole judge of state needs is the state
8 itself through its statutory process. But, anything that's
9 surplus the state needs by our own choice is committed
10 under those contracts and what you're suggesting is a
11 way to -- essentially to surrogate that bargain, if the
12 bargain is to sell gas that's surplus.

13 SENATOR POLAND: In other words, you don't consider that the
14 state needs the liquids?

15 COMMISSIONER MARTIN: This has -- I assume -- I didn't under-
16 stand your question to have anything to do with gas
17 liquids, Senator Poland. I can discuss that -- I didn't
18 think -- were you asking about gas liquids?

19 SENATOR POLAND: No, I asked on this other and then I'm also
20 interested in -- what about the liquids? Because your
21 answer --

22 COMMISSIONER MARTIN: Well, the liquids have been the subject,
23 I think, of some misunderstanding. Under the terms of
24 this contract Alaska has a full right to the liquids from
25 this gas. Let me give it to you in practical terms. It

1 first has a right -- and this has nothing to do with the
2 notice provisions under the contract, it has a right to
3 take those liquids and do whatever it wishes with them,
4 including exporting them or any use in Alaska and to take
5 them at any point where those liquids are taken from the
6 gas, whether it's in Alaska or outside.

7 In addition to that, it has the right to take the
8 liquid -- the gas off itself and take the liquids from
9 the gas and to use it in Alaska. The only limitation is
10 not in the contract but it is a practical economic
11 limitation as to whether or not those liquids will actually
12 be taken out in Alaska or whether or not the state can
13 justify the building of a plant to take out the liquids
14 itself for only the royalty share. Now, it's been
15 suggested and I think by several people, that one of the
16 things the state did not do in this contract is to use
17 the contract to coerce in some way or to negotiate for
18 the fact that the liquids of all of the gas would be
19 taken out in Alaska. That is accurate, we did not. But
20 I can assure you that we would not have been able to get
21 this contract if that were our objective. Now, if the
22 legislature believes or other believe that that should
23 be our objective, to force the eight-eighths on us -- every-
24 one to take out their liquids in Alaska, we can take a
25 run at doing that but that is not one of the objectives

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1 of the contracts. Other than that, we have a full right
2 to our liquids anywhere they come out or we want to take
3 them.

4 SENATOR RADER: Representative Bradley?

5 REP. BRADLEY: Commissioner Martin, is the State of Alaska
6 engaged -- and this is somewhat in following the four or
7 five or six or eight questions regarding political clout,
8 is the State of Alaska embarking on some sort of un-
9 precedented new morality or new ethics or something that
10 is unusual that's ever been done -- that's never been
11 done by any other states. I mean it doesn't -- I'm --
12 this is somewhat rhetorical. It doesn't appear to me
13 that way but some people have commented on bad morality
14 and some people have -- and of course when people mention
15 politics, I guess in a lot of cases they're talking about
16 it as being bad. I don't feel that way and I don't think
17 some people do but -- are we entering into some sort of
18 new era of sin regarding our resource development?

19 COMMISSIONER MARTIN: Well, I have never heard the point
20 raised by anyone until raised by one -- raised by
21 Lieutenant Governor Boucher at the Royalty Board and
22 raised just in the last week. Those are the two occasions
23 on which I heard the issue raised in the whole last year
24 or so that this issue has been discussed and quite frankly
25 has been very openly known.

1 My own view of that is, no, we are not entering
2 into any new period and we don't intend to. I don't
3 think there is a specific precedent for a state doing
4 what we have done. Let me try to answer the question
5 this way in terms of what was involved. First of all,
6 other states don't fool around with -- you know, even
7 the kind of contract we have, which is I think a
8 reasonably complex answer to a problem that is itself
9 complex, they just simply spend money and they pay people
10 money to go down and lobby people in Washington and
11 lobby people elsewhere to do what they want.

12 Secondly, I think it is very important to remember
13 that we are not coercing the national will using our
14 resources. If we were in a position of saying, "we want
15 the Trans-Alaska pipeline and we are not going to let
16 our gas leave this state to go to the people in the
17 Lower 48 under any circumstances except the certification
18 of this route", I would think then we would be in a
19 coercive and somewhat morally questionable position.
20 What we're saying is we're expressing a preference for
21 the route we want and we're making a contract that would
22 award gas only to companies that help us get that route.
23 If the route fails the contract -- the only implication
24 of that is that the route fails. The implication of it
25 is not that the people in the Lower 48 who may need it,

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1 are deprived of some portion of our surplus gas, so we're
2 not coercing.

3 And finally let me just say that there is only
4 certain tests of what may or may not be politically or
5 ethically acceptable actions and I think that a year of
6 public debate on which that question simply was not
7 raised, followed by what I would say is ongoing consul-
8 tations with our Congressional Delegation with regard to
9 their perception of the way this would be heard in
10 Washington. This indicated to me that they consider it
11 to be a highly proper and in fact, a desirable course of
12 action and not one, which at least to them, has indicated
13 moral questions.

14 SENATOR RADER: We have gone a little bit more than an hour.
15 We will take a ten minute break and we'll strictly limit
16 it to ten minutes. We will bang it back to order in ten
17 minutes sharp. We're adjourning -- or recessing.

18 (Whereupon the hearing was recessed at

19 3:30 p.m. and reconvened at 3:40 p.m.)

20 SENATOR RADER: Representative Rhode has to leave the hearing
21 and asked to be permitted to ask a question. Mr. Rhode?

22 REP. RHODE: Thank you, Mr. Chairman. I have just one question
23 and I'll be satisfied with a short answer. Under the
24 present law, as I understand it, we have the privilege
25 of taking our one-eighths share of the gas out of this

1 line at any place and anytime. Now, if this contract is
2 not approved -- or I should say, if this contract is
3 approved and the Congress repeals that privilege, where
4 do you stand with this contract?

5 COMMISSIONER MARTIN: Representative Rhode, the Congressional
6 amendment indicates that we have that right and it orders
7 the Federal Power Commission to approve any contract that
8 does that. If we have approved this contract and if the
9 amendment is repealed prior to the time we get that FPC
10 approval, it's our legal belief that we are not protected,
11 that we would then have to rely on FPC approval without
12 the amendment. That is still possible but the chances
13 of it being approved at that point are substantially less.

14 SENATOR RADER: Mr. Gruening had an exhibit, I believe.

15 REP. GRUENING: I have an exhibit but I would like to ask
16 some questions based on facts that appear in this. The
17 exhibit numbered exhibit three is based on Tenneco's
18 interstate natural gas pipeline market areas and it has
19 some figures on the states that are served and the amount
20 of gas that they provided these states. And based on
21 that the staff for the House Special Committee has come
22 up with some figures that show that Tenneco's share of
23 its twenty-five states that they serve is about ten per-
24 cent. In other words, they provide about ten percent of
25 the natural gas to these twenty-five states in 1975.

1 Tenneco's share of royalty gas under these
2 contracts, based on those same figures, would be less
3 than three-tenths of a percent. Now, that is fifty
4 percent of our royalty gas. You put that in juxtaposition
5 with the fact that there is twenty trillion cubic feet
6 consumed in the United States in 1975, what impact is
7 this going to have on building a constituency? It
8 appears to me -- doesn't it -- it appears to me and does
9 it appear to you, Commissioner, that the amount of royalty
10 gas we're committing really is infinitesimal when you are
11 trying to deal with the energy gas shortage problem that
12 we have?

13 COMMISSIONER MARTIN: I think you can only answer that in
14 terms of the -- you know, rather than looking at the
15 numbers and I do agree with your analysis. I'd like to
16 see the figures but I understand what you are saying,
17 three trillion cubic feet. And, in fact the entire
18 Prudhoe Bay, which is let's say twenty-six to thirty-one
19 trillion cubic feet, about one years supply in the United
20 States. People forget that. We're very limited by the
21 importance of any amount, getting our royalty amount.
22 But the true measure of it is the level of interest and
23 the level of support it genders and it seems to me that
24 in terms of the effort that it has generated and the
25 support that it has generated and the interest it has

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1 generated, we're making it go pretty far, but we can't
2 be right, we can't make it go any farther than the basic
3 amount and that is somewhat limited. That is about all
4 I can say.

5 REP. GRUENING: Commissioner, unless the -- you know, the
6 emotionalism of the crisis that is presently in the
7 Lower 48, you know, upsets Congress to the degree that
8 they don't look at these facts, won't Congress really
9 look at the total energy picture and determine that if
10 they are going to solve the gas problem, it is not going
11 to be through, you know, picking a pipeline route, but
12 reallocating the gas on a major basis as legislation is
13 already introduced to do?

14 COMMISSIONER MARTIN: I mean it is a subjective judgment.

15 I think that that is a possibility but right now we have
16 a gas line procedural act that sets up an exactly
17 opposite procedure to reach a decision on the route. So,
18 that if you have to bet on what is the most expectable
19 thing to happen, I would put my trust in the fact to
20 carry out the terms of the gas line procedural act and
21 try to reach a decision on the route. Now, whether or not
22 allocation comes with that, I don't know. It's -- it's in-
23 tangible.

24 REP. GRUENING: What I'm trying to get at though is what are
25 we actually receiving by selling the gas now? In other

1 words, I understand your concern and I think the contract
2 really has addressed itself to a lot of the points in
3 terms of price, but even the best attorneys can't see
4 six, seven, ten years in the future. So, if we're
5 getting very marginal influence -- in other words, if
6 Congress looks at it and says, "this isn't going to
7 make it -- a lot of difference, this commitment one way
8 or another" and this constituency really won't exist.

9 I'm trying to determine whether we really are
10 building a constituency.

11 COMMISSIONER MARTIN: Clark, I've never tried to change what
12 I think was the basic position on what we get in terms
13 of support for the route. It is a subjective judgment.
14 It could be analyzed, as you have done it, by trying to
15 figure out the amount of gas as it compares to something
16 else or it can be done by talking about whether Tenneco's
17 a good or bad company or any other number of ways. I
18 can only judge it myself in terms of what it appears
19 to be doing and what it appears that it would do in
20 that decision. And I've tried to apply the judgment of
21 many people doing it. To me, the fact that our Congres-
22 sional Delegation has to make that fight thinks that it
23 is one of the most important things that we can do and
24 they believe that it is crucially important to win the
25 debate is a very important factor and goes beyond what

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1 we can find on paper to demonstrate that it is not an
2 important factor. So what we get, it seems to me, is
3 more than just the figures on the paper but what people
4 think they can make out of that. Right now that appears
5 to be important.

6 REP. GRUENING: Will the companies' own decision on which
7 route to support have an effect? I relate back to
8 Senator Poland's earlier question in that what is the
9 incentive of these companies to lobby for the first
10 choice, El Paso, when in fact they know that the state
11 would accept a certification of the Alcan line. I mean
12 I don't think logically or reasonably we'd reject that
13 certification if it was the only one and why not -- what's
14 -- I mean, won't they be in the drivers seat in deter-
15 mining which one they want --

16 COMMISSIONER MARTIN: Well, we would accept it. We would
17 accept it but the question is whether or not we will be
18 supporting it at the time. That is what we're left with.
19 It may well be that we conclude throughout the procedure
20 that El Paso's in our best interest and that the companies
21 stay with us throughout and that that route simply loses.

22 I made an error earlier and I want to correct it.
23 I said that the contracts would terminate. The contracts
24 may be terminated rather than they would terminate. It's
25 policy that we would terminate it and I said it that way

1 because if it's policy then that would be the case.

2 But under any circumstances, they're under incentive to
3 support the state position because they must be with that
4 position when it prevails.

5 ATTORNEY GENERAL GROSS: If I might add to that, the Congres-
6 sional Delegation, Representative Gruening, can shift
7 its support to an Alcan route without the Governor shifting
8 his support. That the result that even if an Alcan
9 route prevailed in Congress, these companies would not
10 receive the royalty gas.

11 SENATOR RADER: Any further questions?

12 REP. GRUENING: Not at this time.

13 UNIDENTIFIED VOICE: Would you explain that again, please?

14 ATTORNEY GENERAL GROSS: Sure. The Congressional Delegation
15 could in the end end up voting for somebody supporting
16 an Alcan route. If the Governor did not formally shift
17 the state support under the contract to the Alcan route,
18 these companies would not receive any gas because they
19 would not be -- they would not be in support of the route
20 that the state would be supporting and that route would
21 not be successful. So long as the state stayed with
22 support of the El Paso route.

23 SENATOR RADER: Representative --

24 COMMISSIONER MARTIN: I think --

25 SENATOR RADER: Excuse me, sir.

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1 COMMISSIONER MARTIN: I was just going to say that I think
2 that is an entirely appropriate question to ask the
3 buyers and I'm sure you will, in terms of how they're
4 basing their activities and their judgment. There is no
5 question in my mind that based on the activity that has
6 already been undertaken and based on the preference of
7 the buyers and based on what would be done -- you know,
8 even during the time that the legislature is working on
9 this, that a case for support of the El Paso route is
10 being put together. It has been put together basically
11 without any difference of opinion from many people in the
12 state for some time.

13 I think questions about how difficult it is to
14 change are appropriate but nevertheless we think we may
15 reach that time.

16 REP. GRUENING: I have just a comment on -- the hypothetical
17 that the delegation would be for one line and the Governor
18 the other is pretty improbable. If I understand what you
19 said earlier is that if the delegation -- whatever they
20 say goes as far as you're concerned, they're --

21 COMMISSIONER MARTIN: No.

22 REP. GRUENING: No?

23 COMMISSIONER MARTIN: What the Governor said is pretty clear.
24 He said that we may reach a time at which it is appropriate
25 to change. If it looks like El Paso can't prevail and

1 we'll lose to Arctic without -- unless we switch our
2 support to Alcan. He'd base his decision to change on
3 the consensus of the delegation and legislative leader-
4 ship and gave his pledge in his statement, as I under-
5 stand it, to call a special session after consultation
6 with the legislative leadership if time permits.

7 ATTORNEY GENERAL GROSS: I suppose as a scenario you are
8 suggesting that the companies behind the scenes could be
9 working in support of an Alcan route, which they hope
10 would ultimately prevail, under the assumption that
11 eventually the state would have to come over to that
12 when they saw that the El Paso route would collapse.
13 I think the state would probably take it amiss if it
14 found that the people who were receiving the gas under
15 the contract who had been committed to supporting a
16 Trans-Alaska route were actually working under the scenes
17 to support an Alcan route. I think that would probably
18 affect the state's decision as to what it did and I
19 don't think the companies would in any sense do that.
20 I don't think that they would act in such a fashion.

21 REP. GRUENING: I can't believe the state in a myth would
22 then forego the opportunity -- In other words, you are
23 saying that it would -- if it found that, it would not --
24 it would reject the contract, if it found that they
25 weren't living up to snuff, in your view?

1 ATTORNEY GENERAL GROSS: Well, I suppose what you are asking
2 is would the state approve it after the fact. I mean
3 if the Alcan proposal was then approved by Congress,
4 would the state switch its support so it could give the
5 royalty gas to these people. If that is what you are
6 asking I can't imagine why that decision would be made
7 just for that. I don't know.

8 SENATOR RADER: Representative Chatterton, I'm going to tend
9 to go to persons who have not previously asked a
10 question, however, Representative Chatterton did want
11 to have a follow-up on something that occurred before
12 the recess and then I'm going to start recognizing
13 persons who have not yet spoken. Representative
14 Chatterton?

15 REP. CHATTERTON: Thank you, Mr. Chairman. Commissioner,
16 I sense that there is a consensus of agreement amongst
17 this group with your statement that the primary objective
18 of these gas sales contracts are to strengthen our end
19 in the decision making process that you get an all-
20 Alaska line. Just before we broke for coffee I very
21 admirably -- I think I heard you speak to the point
22 that you would in no way want to coerce any decision as
23 far as Alaska gas is concerned to the South 48. Now,
24 as I say, I think that is admirable and I share that
25 position with you. Now my question to you, Mr. Commissioner,

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1 is very simply this: That if subsequent testimony before
2 here develops that the city gate price in Columbus,
3 Ohio, would be lower by some route other than the all-
4 Alaska line, would you still favor these contracts?

5 COMMISSIONER MARTIN: Well, I don't know.

6 ATTORNEY GENERAL GROSS: Can I respond to that, Representative
7 Chatterton?

8 REP. CHATTERTON: Please.

9 ATTORNEY GENERAL GROSS: For one thing, I think that the
10 price in Ohio probably is going to be lower by another
11 route than the all-Alaska line. I think that the
12 evidence which has developed indicates that the delivered
13 price of the gas down below will probably be the cheapest
14 by the Arctic Gas route, next by the Alcan route and
15 finally by the El Paso route. So, the decision already
16 has been made to make -- to support that and that is
17 for a number of reasons. Some environmental, having to
18 do with environmental considerations other than purely
19 economic ones, the other having to do with political
20 problems with building the lines themselves. Now the
21 Arctic Gas, for instance, the model for Arctic Gas is
22 constructed under the assumption of certain provisions
23 for construction -- Arctic construction, using snow
24 roads. Our people in the state government believe that
25 that is a totally unfeasible way of constructing the

1 line and that as a practical matter if Arctic Gas is
2 certificated they will end up spending a great deal more
3 building the line than they anticipate spending at this
4 time, that their cost overruns will be substantially
5 greater and that therefore their cost of delivery will
6 be substantially more.

7 Similarly, the political problems in Canada may
8 mean that the lines may not be able to be constructed
9 until many years in the future, beyond the point at
10 which the gas under the El Paso proposal could be
11 traveling southward. So, price is one consideration.
12 An additional factor is the point that construction of
13 an all-Alaska line will be using American labor and
14 materials, it will be constructed wholly within the
15 United States and the net economic benefit of that for
16 the country is higher than using a gas Arctic proposal.
17 So, there are other economic benefits to the country
18 than just the price of delivered gas.

19 REP. CHATTERTON: Thank you.

20 SENATOR RADER: Representative Meekins?

21 REP. MEEKINS: Commissioner Martin, following up on what
22 Senator Poland asked you about, the liquefaction, invoking
23 the take back provision in order to commit our royalty
24 gas to a third party for liquefaction and export, you
25 indicated, as I understand it, that that would not be

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1 possible in this contract. Is that correct?

2 COMMISSIONER MARTIN: That is right.

3 REP. MEEKINS: What about taking back our royalty gas for
4 purposes of using -- to then recommit it to a third
5 party in order to give an incentive for the location of
6 a petrochemical industry?

7 COMMISSIONER MARTIN: We could not take it back if they
8 subsequently exported it but we could certainly take it
9 back to be used in such a facility.

10 REP. MEEKINS: But we could not -- for instance, if that
11 exactly was our purpose, to increase the incentive if
12 necessary, for a location of a petrochemical industry
13 at tidewater for export to the Lower 48 or elsewhere,
14 we could not do that under this contract?

15 COMMISSIONER MARTIN: That is right and that's a very -- I
16 think a very important question. It is one of the
17 alternative courses that I think ought to be very carefully
18 considered by the legislature. I tried to point this out
19 before. What we have committed in this contract and it's
20 a fairly -- in other words, I said this last year to this
21 committee. You really have to sell something in order to
22 get anything back. Now, the only thing that we have
23 committed is whatever gas is surplusd to any state needs
24 in the future and is going to be exported. So that the
25 only -- the only really meaningful arrangement that will

1 be difficult to enter into with regard to that surplus
2 gas in the future is one where someone comes to us and
3 says "we will build you a petrochemical plant in five
4 years if you will let us export your surplus gas for five
5 years and then use it." That we would not be able to do
6 but what we would be able to do is to take it back and
7 commit it to that plant in five years, as soon as they
8 are ready to build.

9 Incidentally, we have looked at -- in the oil
10 situation we have looked at a couple contracts and we are
11 still actively looking at them, where they propose to
12 do this kind of thing. In other words, to take an export
13 for a period of time and then tie it back to a -- what I'd
14 say a possible refinery at some later time. And, at
15 least thus far we haven't found anything that looks like
16 a good deal for the state.

17 REP. MEEKINS: Thank you.

18 SENATOR RADER: Representative Rudd?

19 REP. RUDD: Mr. Martin, I would like to follow up on
20 Representative Rhode's question having to do with the
21 possibility that Congress would repeal the Alaska
22 exemption.

23 SENATOR RADER: Representative, would you speak a little
24 louder, please?

25 REP. RUDD: I'd like to follow up Representative Rhode's

1 question on the possibility that Congress will repeal the
2 Alaska exemption. If that happens, does it depend on
3 Congress as to whether or not they make it retroactive
4 or would our contracts, if we had entered into them,
5 then be void?

6 COMMISSIONER MARTIN: Well, let me be very clear. We don't
7 believe as a legal matter that simply entering into the
8 contract now gives us any special protection. We believe
9 we not only have to enter into the contract but we have
10 to advance it to the FPC using that provision in order
11 to gain protection. Congress could do basically anything
12 it wants and there is no reason -- at the time that it
13 repealed it, it would act retroactively. My feeling
14 would be that if it wanted to repeal it, it would vary.
15 It would not be likely that they would be in a mood to
16 make it retroactive to pick up this contract.

17 REP. RUDD: But you feel even if they don't make it retro-
18 active that our contracts are in danger at that point?

19 COMMISSIONER MARTIN: Well, I discussed this the other night
20 with the House Special Committee. It's again a subjective
21 judgment, what the risk of repeal of that provision is.
22 I made the statement that Congressmen have said they are
23 going to try to repeal it. I have no question but what
24 some attempt will be made. Whether or not it will be
25 successful is a purely subjective judgment and I've tried

1 to poll our delegation on that on a continuing basis
2 and they have no strong feeling for it other than the
3 fact that they believe that an attempt will be made and
4 that there is some risk of repeal.

5 REP. RUDD: And may I ask you, how much weight did this
6 possibility of repeal carry in your negotiations in the
7 contract? In other words, how much weight did you give
8 to the idea that you wanted to get something started
9 before --

10 COMMISSIONER MARTIN: It carried -- it carried very little
11 in my personal opinion, Representative Rudd. What it
12 did do, not the threat of repeal, but what the provision
13 did was change somewhat my position on the issue of the
14 contracts themselves. This is one reason I stress other
15 values of the contract other than the political aspects.
16 Last year I testified before Senator Rader's committee
17 and others that I was quite skeptical about the meaning
18 of any of these contracts because I thought that they
19 had almost no chance of ever being realized because it
20 was doubtful the FPC would ever approve of a take back
21 provision absent some Congressional assistance.

22 But once Section 13(b) was enacted, it increased
23 substantially, in fact it increased almost to the extent
24 of making it virtually certain, that we could get approval
25 of such a provision if we could put one together, get

1 it advanced and approved and put it before the FPC while
2 the provision was in place. But, it came along late
3 enough that it really didn't change the nature of the
4 negotiations a great deal. We were working on the
5 contracts and quite frankly if we had finished the
6 contracts and Congress had not acted to put that provision
7 in as they did in the closing hours, I would -- we might
8 be advancing the contracts to the legislature right now
9 but I would be saying to you quite honestly that they
10 would have a very low chance of being approved in the
11 FPC. Now I can say to you I think they have a very good
12 chance of being approved in the FPC.

13 REP. RUDD: May I ask just one more?

14 SENATOR RADER: Certainly.

15 REP. RUDD: Do you think that there is an element of time
16 that is involved here, that we must move rapidly?

17 COMMISSIONER MARTIN: Judgment with respect to time again is
18 subjective but I personally think there are two things
19 to be said. One, I think that we have a responsible
20 attempt together to try to utilize the benefits of that
21 provision. I think that the way we have done it is
22 responsible and I think we're capable of selling it.
23 Obviously our delegation agrees because they think they
24 can live with the results of this contract and preserve
25 the amendment. Whether or not we can wait and bank on the

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1 fact that the amendment will stay in place and go to some
2 other kind of arrangement is simply a calculated risk that
3 everyone will just have to take.

4 SENATOR RADER: Senator Huber?

5 SENATOR HUBER: Thank you, Mr. Chairman. I think my question
6 is mostly for Guy.

7 SEANTOR RADER: Senator, you are going to have to speak up.
8 I am certain they can't hear you.

9 SENATOR HUBER: All right, Senator, I'll speak up. I think
10 my question is mostly for Guy. We have -- in the gas
11 contracts themselves there is a provision that says
12 pretty close like this, that there is no front end money
13 but that whatever the highest price paid by anybody that
14 is allowable by the FPC or if in case the FPC isn't
15 controlling it, whatever the highest price is that is
16 paid to any of the producers in the field will be what
17 the price is to the Alaska royalty share. Is that roughly
18 correct?

19 COMMISSIONER MARTIN: I think so. Let me defer to our two
20 price experts. They're with me on that.

21 SENATOR HUBER: Well, in effect that says that if anybody else
22 who has a share that is proportionate to ours, let's say
23 that ARCO has twice twelve and one-half, they probably
24 have got a little more than that, or twenty-four percent,
25 and they get Fifty Million Dollars of head end money.

1 Proportionately if any head end money is allowed by any-
2 body, shouldn't we have had a provision that also bounces
3 back and says that we'll get the highest price per cubic
4 foot, no head end money unless anybody else gets head end
5 money, if anybody else gets head end money, we'll get a
6 proportionate amount in accordance with our percentage.
7 Wouldn't that protect the State of Alaska a lot better
8 on price?

9 COMMISSIONER MARTIN: No, we don't have such a provision and
10 it could be something that could be negotiated for,
11 Senator.

12 SENATOR HUBER: Is it still negotiable?

13 COMMISSIONER MARTIN: Well, not under the present circumstances.

14 I would say that it would have to be capable of being
15 passed through in the rate base. I will tell you this,
16 that if that could not be passed through either in the
17 ARCO situation or in ours, these contracts would not be
18 possible. In other words, the company -- we may be able
19 to negotiate some other kind of a deal but I don't believe
20 we could have negotiated these contracts -- included that
21 provision unless it could have been passed through
22 totally.

23 SENATOR HUBER: Well, Mr. Chairman, I --

24 COMMISSIONER MARTIN: And it is not legal to pass it through
25 now.

1 SENATOR HUBER: I could foresee the possibility under de-
2 regulation that they may allow front end payments and
3 in which case other people would quickly negotiate
4 them, being they don't have them, and we would be left
5 out in the cold at the lower price. And it don't look like
6 the contracts protect us sufficiently in that area.

7 COMMISSIONER MARTIN: I don't think the terms of the contracts
8 as they are presently drafted would include that. That
9 is right, sir.

10 SENATOR RADER: Senator Croft?

11 SENATOR CROFT: Commissioner, before we leave the subject,
12 you made the statement that no front end payment could
13 be built into the rate base. Is that -- is that statement
14 actually correct? Aren't there circumstances in which it
15 can be built into the rate base?

16 COMMISSIONER MARTIN: The -- yes.

17 SENATOR CROFT: And in that regard we have not gotten the
18 highest possible price for our gas, isn't that correct?

19 COMMISSIONER MARTIN: Jack, do you want to answer that?

20 MR. BYRD: Under the present FPC rules --

21 SENATOR RADER: Mr. Byrd, why don't you sit down and identify
22 yourself for the record? You'll be the first new voice
23 here and --

24 MR. BYRD: Thank you, Senator. I'm Jack Byrd from Kansas.
25 Under the present FPC rules if front end money is advanced

1 and included by the pipeline to advance freight rates,
2 then you -- whoever sells the gas takes a penalty on the
3 price.

4 SENATOR CROFT: That is right, but what as to companies that
5 are not regulated by the FPC?

6 MR. BYRD: On intrastate purchasers?

7 SENATOR CROFT: Right.

8 MR. BYRD: They could still do it.

9 SENATOR CROFT: So there could have been intrastate purchasers
10 not subject to FPC regulations who would have bought this
11 gas and could have paid us front end money --

12 MR. BYRD: Still can, under the contract.

13 SENATOR CROFT: And there are utilities in California that
14 could do that?

15 MR. BYRD: Well, no, not in California.

16 SENATOR CROFT: Where are they?

17 MR. BYRD: The only intrastate purchaser you would have
18 would be in Alaska and you could still sell -- withdraw
19 gas to an intrastate purchaser in Alaska and demand front
20 end money, if you want.

21 COMMISSIONER MARTIN: And you could not do that and sell to --
22 as you suggested, we disagree that you could do that to
23 anyone in California because the transportation would be
24 regulated, Senator, and the same provisions would apply.

25 SENATOR CROFT: The transportation, but would the distribution

1 with the utility itself, if it bought the gas not for re-
2 sale to somebody else, would that sale itself be regulated
3 as well as the transportation tariff?

4 MR. BYRD: The only provision I know of in which you can do
5 that now would be under order 533, the transportation
6 provision. The direct sale to an industrial customer for
7 a high priority use, not for resale, a distribution company
8 cannot do that.

9 SENATOR CROFT: But somebody that used it themselves could
10 pay front end money?

11 MR. BYRD: Right. They could pay a premium price, they are
12 exempt from regulation under the FPC.

13 SENATOR CROFT: Thank you.

14 SENATOR FADER: Representative Hayes -- excuse me, were you
15 through with your --

16 MR. BYRD: One other point, the transportation of any such
17 moving of gas from Alaska to California would have to be
18 certified by the FPC. They would have no control over
19 the price paid if it was not for resale and it was used
20 for a high priority industrial use.

21 SENATOR CROFT: A higher price than what we have in these
22 contracts could be paid in that situation?

23 MR. BYRD: Yes. But we have a provision in here that if any
24 of our working interest owners sells theirs under that
25 kind of a rule, these -- then our prices go up.

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1 SENATOR CROFT: Yes, but whether they do or not, we could
2 have sold our gas conceivably -- legally sold our gas for
3 a higher price than what we have in these contracts.

4 COMMISSIONER MARTIN: Only by pursuing a completely different
5 objective. We don't deny that, Senator. I mean, the
6 fact is that we could have chosen a number of different
7 objectives including not selling and waiting to do it
8 later after deregulation. So, we think there are a number
9 of possibilities in not carrying out these objectives
10 we're doing it.

11 SENATOR CROFT: I understand that. But if I could, just so
12 that we understand the policy questions that are involved,
13 this sale does involve a sale of our gas at not the highest
14 possible price?

15 COMMISSIONER MARTIN: That is a great overstatement, Senator
16 Croft.

17 SENATOR CROFT: But isn't it correct?

18 COMMISSIONER MARTIN: No. It's correct but in the context
19 of a number of other things. It's correct in the context
20 of selling the gas for other purposes in this, but selling
21 it for the purposes that we have attempted to carry out
22 here, we believe that we have gotten the highest price.
23 If we sold it for other purposes in which we subjected
24 all other considerations to price, I think it is possible
25 we could have gotten a higher price, yes.

1 SENATOR CROFT: As I understand it, if we sell it primarily
2 for political purposes, we got the highest possible
3 price.

4 SENATOR RADER: Representative --

5 COMMISSIONER MARTIN: You are still wrong, Senator. I mean
6 I think he is wrong factually, Senator. Maybe we ought
7 to respond. Let me ask Mr. Boness to do it. He is
8 characterizing my answers.

9 MR. BONESS: Senator Croft, the FPC regulates two things. It
10 regulates transportation and it regulates the sale. In
11 a direct sale -- do not have to have -- a direct sale is
12 not regulated. In that sense you seem to be suggesting
13 that the FPC -- the higher price could be paid or front
14 end money could be paid. However, the FPC has the power
15 to prevent that kind of sale from taking effect by virtue
16 of its control over the transportation aspects of the
17 pipeline. The Transco case was a case which involved
18 essentially that set of facts, where a sale took place,
19 the shipment of the gas was to be over an interstate
20 pipeline to be sold -- to be delivered, I believe, between
21 Texas and New Jersey. The Federal Power Commission said
22 they don't like the terms under which that sale takes
23 place, therefore we are not going to approve the trans-
24 portation. They had no authority over the sale itself
25 but they did have authority over the transportation.

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1 Whenever you are talking about moving the gas outside of
2 Alaska, you're not within the realm of 13(b), and the
3 Federal Power Commission would have authority over whether
4 or not to approve the sale. They couldn't regulate the
5 price but they could absolutely preclude the sale.

6 MR. BYRD: Plus the fact that under the contract, if Atlantic
7 Richfield or one of our -- one of the lessees up here
8 sold royalty -- or sold their gas under 533 and got a
9 higher price, then our gas from those leases would
10 escalate up to that price.

11 COMMISSIONER MARTIN: Jack, but Senator Croft's question
12 was going to our gas.

13 SENATOR CROFT: My question is, regardless of what they do
14 with ours -- with theirs, what could we have done with
15 ours?

16 COMMISSIONER MARTIN: Yes, I understand.

17 SENATOR CROFT: And as I understand the answer, it is we
18 could have gotten a higher price but Commissioner Martin
19 feels there were other factors that weigh into the
20 decision that means that it was not in our interest to
21 do it, and secondly, it might have been unlikely that
22 we would have gotten a higher price. It is legally
23 possible.

24 COMMISSIONER MARTIN: That's -- yes.

25 SENATOR RADER: Mr. Hayes?

1 REP. HAYES: Thank you. I was wanting to pursue that line
2 of questioning that Senator Croft was just pursuing,
3 regarding just how much we might be paying for -- by
4 giving up alternative sales that might have some front
5 end money involved for this political clout that we're
6 going to get from the three gas companies that are
7 purchasing our royalty gas. But it is probably not a
8 figure that you can put any -- that you can put an exact
9 number on, however, I think testimony indicates that
10 under certain circumstances that we are giving up some --
11 something of value. Whatever that is, I don't know, but
12 we are pursuing this on the basis -- that there is no
13 front end money possible on the basis that the payment
14 of front end money for interstate sale would not allow
15 the incorporation of the front end money in the price
16 scheduling. But, isn't it possible that -- I'll ask
17 this to Commissioner Martin, isn't it possible or con-
18 ceivable that a purchaser for interstate sale purposes
19 might be willing to give up to the State of Alaska a
20 portion of his anticipated profit in the way of front
21 end money, regardless of whether he's ever passed it on?
22 And in that event there is a possibility of getting the
23 premium price.

24 COMMISSIONER MARTIN: Representative Hayes, yes. I think
25 it is conceivable that we could have structured a

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1 situation where maybe even in a -- you know, maybe a
2 competitive situation or maybe a situation where we
3 simply just solicited people to do that, that we could
4 have gotten some amount. In other words if the question
5 is how much would some interstate buyer eat of their
6 proceeds, I think the answer -- our determination
7 basically is that it would be generally quite a small
8 amount and secondly that it was certainly not possible
9 with these buyers. And quite frankly, it was not con-
10 sistent with at least the purpose of the contract which
11 had to do with getting the best and strongest support
12 for the pipeline route.

13 I might just say that our process in attempting
14 to do that was to try to work with the available buyers
15 we have and then to consult pretty much continuously
16 with the delegation of others to try to see who could
17 give us the greatest amount of help. So that trading
18 all those things off, I don't think we got a realistic
19 expectation of getting a small enough front end.

20 SENATOR RADER: Any members who have not yet asked questions,
21 first?

22 SENATOR HUBER: I'd like to pursue this same thing.

23 SENATOR RADER: Well, Mr. Carpenter has not yet had a
24 question. Mr. Carpenter, unless you want to waive --

25 REP. CARPENTER: I'll yield. I'll yield to the Senator.

1 SENATOR HUBER: Well, I think we was to a point, Mr. Chairman,
2 and I'd like to pursue the same thing being I started
3 this.

4 SENATOR RADER: Proceed.

5 SENATOR HUBER: We have picked our purchasers that we have
6 contracts with that are now going for approval from a
7 certain group of purchasers. These are pipeline trans-
8 porters, not users, for instance. A user has different
9 rules applied to him. If we had sold six percent to
10 Pacific Gas and Electric and six percent to Wentworth
11 Brothers for making into methanol and certain other
12 things and certain other people -- for users there is
13 different set of rules applied. Would you care to discuss
14 that and have you shown in your deliberations consideration
15 for these other type of contractors -- or these other
16 type of purchasers?

17 COMMISSIONER MARTIN: Only to this extent, Senator, that we
18 dealt to some extent with everyone who came to us with
19 an offer to deal with us. We made some tough decisions
20 as to who we would work with. To finally go through, and
21 we consulted broadly to try to get the ones that could
22 do the most good. These are the ones that ended up in
23 our final judgment being that. Now, we're willing to
24 stand with that. We did not consider Wentworth Brothers
25 nor did Wentworth Brothers approach us with the idea of

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1 buying under these terms and adding their support to
2 the pipeline that we favor, nor the other one you mentioned.

3 SENATOR HUBER: I'm trying to get back to the basic considera-
4 tion of whether we're getting the highest price, which
5 this contract says we are. What it really says is that
6 we're getting the highest price from a certain class
7 of buyer only, those who are in the pipeline transporta-
8 tion distribution business, and cannot enter into -- by
9 FPC rule, cannot enter into another phase of the business.
10 Isn't that right?

11 MR. BYRD: Whoever bought it would have to have the certi-
12 fication of the FPC to get it transported, and if you'd
13 sell it to Pacific Gas and Electric for boiler fuel
14 you'd never get a certificate.

15 SENATOR HUBER: Well, I didn't say for boiler fuel, you
16 said that.

17 MR. BYRD: I don't know what they would do with it. It would
18 have to be for a high priority industrial use and not
19 for resale.

20 SENATOR RADER: Mr. Carpenter.

21 REP. CARPENTER: I'm departing from the present line of
22 questioning.

23 SENATOR RADER: Did somebody wish to pursue this line of
24 questioning, or were you through?

25 SENATOR HUBER: Mr. Carpenter yielded to me, Mr. Chairman,

1 and I thank him very much. So we can continue.

2 SENATOR RADER: I think Mr. Meekins wanted to pursue the
3 same line of questioning. You have the floor, Mr. Meekins.

4 REP. MEEKINS: Thank you, Mr. Chairman. Just to clarify
5 that then, there are trade-offs here involved, and there
6 are some things we give up in order to have this contract.
7 One of those, I understand, is a small premium (in your
8 view), a fairly small premium, if that premium comes
9 out of profits of the companies because it can't be
10 passed through into the rate base; is that correct?

11 COMMISSIONER MARTIN: Under future circumstances, the size
12 of it is unknown.

13 REP. MEEKINS: If there was deregulation?

14 COMMISSIONER MARTIN: These questions, you know, stand in
15 the present time frame. It may well be under deregulation
16 there are different terms in the future, we could
17 restructure it and do something else. That has to be
18 balanced against how important it is, how important the
19 gas line decision is to the use of the amendment in
20 Congress and so on. So our view is that for now this
21 is a good alternative. It may be that under changing
22 circumstances that the premium could be larger, or the
23 price could be unregulated.

24 REP. MEEKINS: Right. That's a possibility; we don't know
25 it as yet ---

1 COMMISSIONER MARTIN: That's right.

2 REP. MEEKINS: -- whether that's going to be the case. But
3 in any case, that small premium, in your view a small
4 premium, is one of the trade-offs, and I'm not quite
5 sure if the higher price by sale to users or not -- I
6 seem to get contradictory information -- on the one
7 hand, it seems that the FPC would not approve transpor-
8 tation of such a sale, and on the other hand it seems
9 like they would. I'm not sure what ---

10 COMMISSIONER MARTIN: I think Mr. Byrd's answer is the proper
11 one, for certain high priority users they would have a
12 chance of getting approval of the transportation. For
13 most users, and certainly any large scale ones that are
14 not priority, they would have virtually none.

15 REP. MEEKINS: So what you're saying is it is conceivable
16 to some scale to get a higher price if that sale was
17 to a high priority use and, therefore, it would be
18 approved.

19 COMMISSIONER MARTIN: Yes, it's possible, and it may have
20 been possible to accomplish, but we had no indication
21 that it was and no offer.

22 REP. MEEKINS: Thank you.

23 SENATOR RADER: Any further questions along this line?
24 Senator Croft.

25 SENATOR CROFT: When was the decision that prohibited

1 building advance payments into the rate base?

2 MR. BYRD: It became effective November 5.

3 SENATOR CROFT: Of '76?

4 MR. BYRD: '76.

5 SENATOR CROFT: So that it is true that if this sale had
6 been entered into possibly a year ago we could have
7 gotten a higher price?

8 MR. BYRD: No. That November 5 date affected only advance
9 payment or interest free loans that were made prior
10 to an order that came out abolishing it, but it was
11 the end of 1975. But there were a lot of advances,
12 advance payment contracts, that still had not been
13 executed, or advancements had not been made. Those
14 were not abolished. Then the order coming out effective
15 November 5, in 770-A they say that if the producer
16 draws those down and the purchaser puts them in rate
17 base, then the producer has to decrease his price, pay
18 the carrying charges on it.

19 SENATOR CROFT: Then is it correct that if these contracts
20 had been entered into in 1975 we could have gotten a
21 higher price?

22 MR. BYRD: It would have been legal to extract ---

23 SENATOR CROFT: Front end money.

24 MR. BYRD: -- an advance payment.

25 SENATOR RADER: Any further questions on this line of

1 questions?

2 SENATOR HUBER: Just one, Mr. Chairman.

3 SENATOR RADER: Senator Huber.

4 SENATOR HUBER: Then in a deregulated system, and we look
5 like we're headed toward deregulation now, some of the
6 gas that will be in the deregulated system will be gas
7 that has had front end money paid on it from Prudhoe Bay
8 gas that's had front end money paid on it, and is also
9 paying a certain rate to the field gas, which is
10 apparently what we're getting, and if we had just held
11 our gas until deregulation we could sell it for any
12 price we wanted to make up for that, couldn't we?

13 COMMISSIONER MARTIN: Yes, assuming, Senator, that deregu-
14 lation occurs, that we can structure the kind of contract
15 that allows us to take back, and that that contract is
16 approved, then you can be in a similar circumstance and
17 you get more money and sort of have, you know, guns and
18 butter at the same time. But you have to make all those
19 assumptions to get there, and I think some of them are
20 at least speculative.

21 SENATOR HUBER: These early sales, the amount that goes in
22 is a very large amount of the sale price too, isn't it?

23 COMMISSIONER MARTIN: I'm sorry?

24 SENATOR HUBER: These early sales that were made that were
25 approved, the front end money really amounts to a large

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amount.

COMMISSIONER MARTIN: There were some large advance payments,
that's right.

SENATOR HUBER: Thank you.

SENATOR RADER: Representative Gruening.

REP. GRUENING: Commissioner, if, given the fact we have an
active Congress allowing us to take back our gas for
in-State use and if we assume that the primary goal was
not to affect a political decision on the line, how long
could the State wait safely to decide what to do under
contract or how it wanted to sell its gas?

COMMISSIONER MARTIN: Mr. Chairman, there's only a subjective
answer to that question. It could be years or it could
be terminated during the next year. It seems to me that
what we have now is a good alternative to take advantage
of, and it may be that we want to pass that one up and
try to structure another one.

REP. GRUENING: If I understand what you were saying earlier,
we don't gain any rights by entering the contract in
terms of this amendment. I mean, the amendment is there.

COMMISSIONER MARTIN: We only gain rights by having the
contract approved by the FPC at a time that the amendment
is in place. So our question is, how long will we have
the amendment in place, and I made it very clear the
other night that I'm not trying to create an atmosphere

1 of fear that it will be repealed. I honestly don't know
2 if it will be repealed. I'm almost certain an attempt
3 will be made to repeal it, and what we have is an
4 opportunity now to take advantage of it while it's in
5 place.

6 REP. GRUENING: Do you read that amendment as allowing the
7 FPC to do anything other than approve the take back
8 provisions in the contract?

9 COMMISSIONER MARTIN: Yes, I think they might be able to
10 approve -- well, let me ask to be certain of that. I think
11 they would be able to approve something of a sale. They
12 could approve a direct application, couldn't they?

13 MR. BONESS: They could approve.

14 COMMISSIONER MARTIN: I guess the answer is, there are other
15 formulations that they can approve.

16 REP. GRUENING: Well, like price. But I'm talking about the
17 take back.

18 COMMISSIONER MARTIN: No, I'm talking about the take back.
19 I mean, I think that there would be other ways to
20 approach them other than a sale configuration, but
21 I'm not certain what those would be at this time. I'm
22 not saying there aren't other avenues that you could
23 approach the FPC with using 13-B. The question is
24 really, how long you'll have the ability to use 13-B and
25 whether or not this is a satisfactory way or not to

1 exercise the privileges. If this one were approved,
2 putting aside all other things, it would give the State
3 unprecedented protection for its royalty gas never before
4 enjoyed by any state; there's no question about that.
5 Whether or not we could do it in a better or more success-
6 ful way, I don't know. It's pretty hard for me to
7 imagine a more comprehensive coverage of future in-State
8 use than this one. I can think of a few ways to do it,
9 but not very many.

10 REP. GRUENING: Despite that do you think there's a danger
11 that the FPC may not approve?

12 COMMISSIONER MARTIN: No, I think that 13-B pretty much
13 mandates FPC approval.

14 REP. GRUENING: Where the slippage might occur is in their
15 approval of the price, the pricing arrangements under
16 the contract; is that what you're referring to?

17 COMMISSIONER MARTIN: I'm sorry if I'm not making myself
18 clear, Mr. Gruening.

19 REP. GRUENING: No, I understood what you said before, but
20 if that last statement of mine about the pricing isn't
21 correct ---

22 COMMISSIONER MARTIN: Would you repeat it? I'm sorry, I
23 didn't understand.

24 REP. GRUENING: I do understand correctly that as you see,
25 the FPC would have to approve the take back provisions

1 in this contract, these contracts, under the Congressional
2 Act.

3 COMMISSIONER MARTIN: Right.

4 REP. GRUENING: Is there a problem then with the pricing
5 provisions of the Act in terms of the FPC approving them?

6 COMMISSIONER MARTIN: I don't see any, Mr. Chairman.

7 MR. BONESS: Again, the amendment addresses the problems
8 related to transportation aspects of the FPC's juris-
9 diction. Even though the State is not subject to FPC
10 jurisdiction for purposes of sale, the FPC could have
11 prevented the State from getting, either effect to the take
12 off provision in the contract or entry into the contract
13 because it didn't like the prices the State was getting;
14 the State had extracted a price higher than the price
15 which the FPC approved. They could have prevented the
16 transportation aspects of it. The amendment, Section
17 13-B, prohibits the FPC from doing that with respect
18 to transporting the gas for intrastate uses. There is
19 no problem with respect to the FPC regulating a sale
20 which is the price provision, and under the amendment
21 we're free with respect to both taking off and the price.
22 Absent the amendment, we have to convince the FPC to
23 authorize the transportation of the gas for use in the
24 State.

25 REP. GRUENING: Reading the amendment, do I understand

1 correctly, the FPC could disapprove pricing arrangements?

2 MR. BONESS: No.

3 REP. GRUENING: Under the contract, they cannot?

4 MR. BONESS: Not under that amendment. They have to give
5 effect to the transportation and they have no other
6 basis for disapproving of it.

7 REP. GRUENING: Maybe I should follow this up because the
8 last part of that amendment says that the FPC shall only
9 review the justness and reasonableness of the rate charge
10 for such transportation.

11 MR. BONESS: Yes, I apologize. I should have picked up on
12 that was what you were concerned about. What it addresses
13 is the notion of the transportation charges for moving
14 the gas, say, as far as Fairbanks or as far as Valdez.
15 Obviously, intrastate transportation of gas is going
16 to affect the overall tariff for everybody else, and the
17 FPC is given authority to review that rate and make sure
18 that it's just and reasonable. That is really for the
19 State's protection and also for the protection of all
20 the other shippers on the line, to make sure that costs
21 are allocated between interstate and intrastate shipping
22 in a just and reasonable fashion.

23 COMMISSIONER MARTIN: Rather than going to the price paid
24 for the gas itself.

25 MR. BONESS: But it's like the price of a ticket for moving

1 on the line, is what we're talking about, not the price
2 of the sale of the gas.

3 REP. GRUENING: But do you see any danger, other than the
4 fact we're losing, maybe losing options on dealing with
5 which route we want, in delaying then a decision on
6 how we want to sell the gas? Put aside the question,
7 just for a moment, of which route we're trying to affect;
8 is there any danger in delay, because I understand it
9 you don't buy the theory that without the amendment
10 that there's much advantage in getting the FPC to approve
11 a contract?

12 COMMISSIONER MARTIN: Well, I don't reject it, but I don't
13 think that -- you know, Dr. Moody thinks that's a
14 controlling theory, and I don't think it is. I think
15 there are still problems, but I think it's a valid
16 theory, it's something that could be tried. You only
17 made one exclusion. You said that if we exclude the
18 purpose of helping the line.

19 REP. GRUENING: Yes. I know that's a major exclusion, but ---

20 COMMISSIONER MARTIN: Even if you exclude that, then there
21 would be a great value in attempting to take advantage
22 of 13-B before it's lost. There would also be an
23 advantage, some advantage, I would think, in this
24 contract over others in terms of price. I'm not saying
25 we couldn't do better, depending where our objectives are,

1 but there are advantages in each of those four categories
2 I indicated you would be giving up. There are also
3 improvements that you might seek in another direction
4 if you take out one of the objectives. If you take
5 out the political assistance objective, you might be
6 able to substitute another one.

7 SENATOR RADER: Mr. Carpenter now.

8 REP. CARPENTER: Thank you, Mr. Chairman.

9 SENATOR RADER: You've been very patient.

10 REP. CARPENTER: After all this time, I really wish that
11 my question were an exciting one, but it's not. It
12 relates to a technical provision in the sales agreement,
13 in Article Five, which addresses quality. In Section One
14 we mention that the gas to be delivered by the seller
15 to the buyer at the delivery points shall conform to
16 the quality specifications, etc. But in the preceding
17 paragraph, Article Four, Section Four, we say the
18 seller shall retain the right to receive all liquids
19 removed from the gas prior to its delivery to the
20 pipeline, etc. My question is this: if the liquids are
21 removed as provided in that section in Article Four,
22 I understand that the quality specifications will drop
23 because the btu content will change. Doesn't Section One
24 of Article Five negate Section Four of Article Four?

25 COMMISSIONER MARTIN: Representative Carpenter, I've heard

1 that concern expressed before, and we've looked at it.
2 Mr. Boness, I think, can answer that question.
3 MR. BONESS: Yes. 5.1 deals with the delivery point, which
4 is a point on the North Slope prior to the time the
5 gas will be put in the pipeline, and our gas will be
6 at the same quality, wherever our delivery point to,
7 as the gas the producer is moving along that stream and,
8 therefore, we don't have to do anything special to it.
9 Once the gas is put on the pipeline to move south we
10 will have the opportunity to take that gas off and
11 change it without being in violation of 5.1, because
12 5.1 addresses only the question of the quality of gas
13 at the delivery point.

14 REP. GRUENING: I see.

15 COMMISSIONER MARTIN: We looked at that carefully, and when
16 I heard it the first time it sounded like it was a good
17 argument. But it looks like it only applies to that one
18 point.

19 REP GRUENING: I see.

20 SENATOR RADER: I have one question, myself. Do you have
21 staff that will be able to analyze the decision of the
22 Trial Judge if it comes out today or tomorrow and be
23 able to report back to us, at least in a summary sense,
24 the day after tomorrow perhaps, as to whether or not
25 that decision does, in fact, substantially affect the

1 posture of the situation?

2 COMMISSIONER MARTIN: You are looking at the group that will

3 probably try to do that, and Mr. Byrd, and Mr. Boness

4 and others will probably try to do that, and we'll try

5 our very best to get a report back.

6 SENATOR RADER: So we'll expect to hear from you perhaps

7 Wednesday then on that item?

8 COMMISSIONER MARTIN: If we get the decision in a form that

9 we can analyze I think we can do that, sir.

10 ATTORNEY GENERAL GROSS: Senator Rader, we do have Washington,

11 D.C. counsel that are, of course, participating for us

12 in the hearing, and I anticipate that they should have a

13 report to us probably by tomorrow night as to at least

14 a summary of what's happening, and we'll share it with

15 the committee.

16 SENATOR RADER: You will share it?

17 ATTORNEY GENERAL GROSS: Yes.

18 SENATOR RADER: There were some other questions. Mr. Swanson,

19 did you have a question?

20 REP. SWANSON: I never said a word.

21 SENATOR RADER: Anybody who has not? Senator Hohman and

22 then Senator Sumner.

23 SENATOR HOHMAN: I was calling your attention to Senator

24 Sumner.

25 SENATOR RADER: Senator Sumner.

1 SENATOR SUMNER: Mr. Chairman, I'd like to ask the Commissioner,
2 I get the impression from Senator Croft that maybe
3 Senator Croft is still under the impression that the
4 State could have got a higher price for its gas. I'd
5 really like to put that to rest. Do you think there is
6 any real probability, under any circumstances, that
7 reflect reality at all, that the State should have
8 negotiated for a higher price in this contract or in
9 other contracts?

10 COMMISSIONER MARTIN: Generally, no; but only if it had picked
11 a completely different objective related to only price
12 itself.

13 SENATOR SUMNER: Mr. Chairman, I'm not so concerned about
14 picking a different objective if it's real. Is it real
15 to expect that the State could have gotten more money?

16 COMMISSIONER MARTIN: I think it's, yes -- real isn't exactly
17 it -- I think it would have been unlikely that we would
18 have gotten more money.

19 SENATOR SUMNER: On a scale of one to ten, where would you
20 say?

21 COMMISSIONER MARTIN: I couldn't give you that, I don't know.

22 SENATOR SUMNER: Well, it creates some serious doubts.

23 COMMISSIONER MARTIN: I would be pleased to do this, Senator
24 Croft and Senator Sumner -- you know, I understand your
25 question, and I'll look back at the transcript to get

1 the intent of it rather than trading back characteriza-
2 tions of one another's answers. I would be pleased to
3 look at that and give you something at least indicating
4 what I think the alternatives were for getting a higher
5 price and the probabilities. Would that be acceptable
6 to the Chair?

7 SENATOR RADER: It would be, although I'm sure the committee
8 would like to share in that dialogue. Do you mean
9 tomorrow, perhaps?

10 COMMISSIONER MARTIN: Tomorrow or Wednesday. I mean, we'll
11 look at it and give you back an answer that's more
12 definitive.

13 SENATOR RADER: Senator Croft, does that sound all right to
14 you?

15 SENATOR CROFT: Maybe in the meantime you could tell me, as
16 well, whether you initiated any contact with anybody
17 that might have paid a higher price and asked them to
18 bid as well.

19 COMMISSIONER MARTIN: No, I don't think that we did, because
20 we weren't pursuing that as the principal objective.

21 SENATOR SUMNER: Mr. Chairman, let me continue for just one
22 minute then.

23 SENATOR RADER: Senator Sumner.

24 SENATOR SUMNER: Do you think at this time it's worthwhile
25 to postpone this contract in view of the merits of the

1 contract and what you're aware of at the present time
2 that it can buy in the form of developing an expanded
3 constituency for support in the South 48?

4 COMMISSIONER MARTIN: No, I don't.

5 SENATOR SUMNER: And on a scale of one to ten, how sure are
6 you of that position regarding that? I'm really interested
7 in knowing where your impact is.

8 COMMISSIONER MARTIN: I don't know where on a scale of one
9 to ten, but I'm quite sure that that's right, I think,
10 this objective as opposed to that one, is more important
11 to pursue at the present time.

12 SENATOR SUMNER: Then would it follow that you believe that
13 to the benefit of most Alaskans that the sale, that the
14 contracts you've drawn here relating to the sales of
15 royalty gas, is the best under most reasonable circum-
16 stances?

17 COMMISSIONER MARTIN: Yes.

18 SENATOR SUMNER: Thank you, Mr. Chairman.

19 SENATOR RADER: Senator Huber.

20 SENATOR HUBER: One short one to get in perspective again,
21 one short little question came up. The class of people
22 that we dealt with here, the three companies that we have
23 sold to, are they, under FPC type language, are these
24 the type of customers that are called common purchasers--
25 the regulations that apply to common purchasers?

1 MR. BYRD: They're natural gas companies that are under the
2 jurisdiction of the Federal Power Commission.

3 SENATOR HUBER: For instance, I am aware that all three of
4 these companies do not sell any gas to anyone, they
5 purchase the gas here and sell the gas to other gas
6 companies that sell the gas, at exactly the same price
7 they purchase it at, plus their transportation charges.
8 Isn't that correct?

9 MR. BYRD: I don't know whether any of them are burner tip
10 distributors or not.

11 SENATOR HUBER: The only thing I wanted to know so I can
12 analyze it, are all three of these classed as common
13 purchasers by the FPC?

14 MR. BYRD: I don't know what you mean by common purchasers.
15 They're all natural gas companies under the regulation
16 of the Federal Power Commission. They buy gas and
17 transport it for resale.

18 SENATOR HUBER: Could you try to find the answer?

19 COMMISSIONER MARTIN: Could you say what you mean by common
20 purchasers? What statutes would you reference?

21 SENATOR HUBER: FPC requires that pipeline companies be
22 both common carriers and common purchasers. That's not
23 true in oil pipelines but it is true in gas pipelines.
24 I don't know about the next term, whether it's a
25 correct one or not. Rather than analyzing it against

1 specific purchasers, maybe somebody who sells to customers
2 in Northwest Michigan, for instance, and then in turn
3 purchases from Tenneco or something.

4 MR. BYRD: I'm not familiar, Senator, with the terms "common
5 purchaser" and "common carrier". There are natural
6 gas companies and there are distribution companies.
7 Distribution companies normally buy gas at the city gate
8 from the natural gas companies, which these three
9 companies are, and then they distribute it to the burner
10 tip and sell it. They're under the jurisdiction of
11 the State Commission. I don't know of any place in
12 the Natural Gas Act where it refers to common purchasers
13 or common carriers. They are not common carriers.
14 They're natural gas companies and pipeline companies that
15 are moving gas interstate for resale. They do move the
16 gas interstate that's not for resale, it's sold directly
17 to an end user, and they do do that. But that still
18 doesn't make them common purchasers or common carriers.

19 SENATOR HUBER: So you can't list whether these three
20 class as common purchasers or some other term?

21 MR. BYRD: As we use common purchasers in oil proration in
22 the Lower 48, because you have to purchase commonly or
23 equally from all the producers, but that doesn't apply
24 to natural gas pipelines. There's no use of the term
25 "common carrier" or "common purchaser" in the Natural

1 Gas Act that I'm familiar with.

2 SENATOR RADER: Any further questions? Mr. Parr.

3 REP. McKINNON: I had a couple questions, Senator.

4 SENATOR RADER: Oh, excuse me, Mr. McKinnon, did you have
5 a question?

6 REP. McKINNON: No.

7 SENATOR RADER: Mr. Parr.

8 REP. PARR: Going back to what we were talking about a while
9 ago, other possible sales and so forth, who is buying
10 the other seven-eighths, the producers' gas?

11 COMMISSIONER MARTIN: At the present time, Mr. Parr, I don't
12 have the precise percentages. There is one contract
13 which is valid, that's the Columbia contract we discussed
14 at length the other night, which is approximately thirty
15 percent. I'll be honest, I haven't been able to nail
16 down the figure, but that's roughly accurate. And we
17 believe that there's a small contract, and I can't recall,
18 but it's less than one percent.

19 REP. PARR: Who is that?

20 COMMISSIONER MARTIN: Texas Eastern, we think. So far as
21 we know, it's less than one percent. Those are the two
22 that are still outstanding. The Columbia contract is the
23 one we discussed at length at the hearing the other night.

24 REP. PARR: I realize, of course, that we're talking now
25 about contracts which we know have been signed and are a

1 matter of public record and so forth. Do we have any
2 information as to where this gas is going that is not
3 a matter of public record, officially signed contracts,
4 etc.? I would assume some of your high-powered experts
5 would probably know.

6 COMMISSIONER MARTIN: Mr. Parr, I asked them -- in fact,
7 after we had our conversation the other night in the
8 committee, I attempted to find out. I wanted to know
9 essentially if there was industry scuttlebutt or, you
10 know, just information that was around that there were
11 contracts. My best information, and it's limited by
12 what is on the record, is that there are no others
13 and there are no shadow contracts as far as I know that
14 commit the gas, that people are waiting for the certifi-
15 cation decision or for price information to firm up
16 before those contracts are made. I've heard various
17 rumors, but I know of no information with regard to
18 other contracts.

19 REP. PARR: Mr. Chairman, I have just one other question.

20 SENATOR RADER: You still have the floor, Mr. Parr.

21 REP. PARR: Would it be your assumption that either one of
22 the three companies that are involved in this is one
23 of the three companies that is probably getting a good,
24 large share of the producers' gas as well?

25 COMMISSIONER MARTIN: The company, our purchasers?

1 REP. PARR: These three.

2 COMMISSIONER MARTIN: No. In fact, my information is that
3 none of them have made any commitments, informally or
4 otherwise, any other contracts for any other part of it.

5 REP. PARR: Were there any of the other companies who were
6 interested in getting our royalty gas whom we even know
7 or have reason to assume were getting producer gas?
8 Now, the only one you know for sure is Columbia. Did,
9 for example, Columbia try to get in on the royalty gas
10 deal as well?

11 COMMISSIONER MARTIN: No, they did not come to us. Northwest
12 attempted to get into the royalty gas and, so far as I
13 know, is attempting to buy producer gas, without success.

14 REP. PARR: I guess that leads up to my final question, Mr.
15 Martin, and that is that I presume there were a lot of
16 companies back in '75 that put up a lot of money and
17 made all sorts of deals of lending money, and various
18 other ways, in order to get this gas on the North Slope,
19 and the FPC, I guess, or the courts, or somebody put the
20 Kibash on this; right? These people were interested in
21 getting large amounts and so forth. What is it that
22 these companies such as Tenneco and Southern and El Paso
23 actually have to gain by getting such minute amounts?
24 I get the impression, or apparently at least as far as
25 we know, that they have not tried to get the producer gas.

1 One would assume that ---

2 COMMISSIONER MARTIN: No, I didn't say that, Mr. Chairman.

3 I thought you asked if they had it. I think they're all
4 making substantial efforts to buy as much gas as they
5 possibly can, as are a number of others.

6 REP. PARR: Is the amount of gas that is available from the
7 royalty gas really significant? I mean, it's one-eighth
8 less whatever we keep, right?

9 COMMISSIONER MARTIN: Representative Parr, again I'd just
10 very briefly say, I think part of that is going to
11 have to be judged by how important people think it is.
12 I urge you to direct that question also to the producers
13 and to the Delegation. They think it's important;
14 three trillion cubic feet of gas, or whatever percentage
15 they get, they believe it to be important, and I think
16 it's a mistake to assume that that amount of gas is
17 minuscule or unimportant. It is an important supply of
18 gas, given the fact that we're talking about very limited
19 gas supplies. The thing that holds this contract
20 together, obviously, is that they believe that we will
21 not be using great amounts of our royalty gas, and
22 we believe that we will be using it all. Those beliefs
23 are in conflict and we think that we have the ability
24 to take it back if we want it. If they didn't have
25 confidence they would get a substantial portion of it

1 they wouldn't invest their time and effort in the contract.

2 REP. PARR: Mr. Chairman.

3 SENATOR RADER: Certainly.

4 REP. PARR: I guess the thing that kind of bothers me is
5 that in the initial commitments by the producers, at
6 least the information I've seen, no one of these three
7 companies was listed as getting it. There were a number
8 of other companies listed. Now, these other companies
9 would also have an interest in the route taken.
10 Presumably, they were buying an awful lot more gas.
11 I don't know how they compare in size to the three
12 companies we're dealing with, but they must be pretty
13 large, and presumably would have the money and the
14 expertise for a lot of political clout. It just sort
15 of disturbs me -- we keep acting as if this one-eighth
16 is going to be the tail wagging the dog.

17 COMMISSIONER MARTIN: Mr. Parr, if I can suggest, there are
18 some very important differences. For instance, we had
19 a prolonged discussion the other night about the Columbia
20 contract. There's quite a great difference between the
21 Columbia commitment and ours. The fact, I think Mr.
22 Gruening used the words, "Let's don't play the constituency
23 game," -- well, we think it could conceivably be very
24 important. The difference between the Columbia contract
25 and this one is this: Columbia is going to get that gas

1 whatever way the route goes. They're going to get the
2 gas whether it goes El Paso, or Alcan, or Arctic. In
3 fact, they're on record with the FPC as saying that,
4 that they think they'll get the gas just as well through
5 any route. Our contract is different in that ours is
6 the only contract, and may remain the only contract,
7 where our buyers only get it if they back the successful
8 route that's also backed by the State. So where we are
9 different from them is that we have gained support in
10 addition to simply committing our gas, generally speaking.

11 REP. PARR: Do you think the statement you just made about
12 Columbia is true of the other major companies that were
13 trying to buy the producer gas?

14 COMMISSIONER MARTIN: I would guess it would be, yes.

15 REP. PARR: In any event, it doesn't make any difference
16 which route is chosen, they get the gas?

17 COMMISSIONER MARTIN: I don't know of any of those contracts
18 that limit it.

19 REP. PARR: Thank you.

20 SENATOR RADER: Senator Croft and then Representative
21 Chatterton.

22 SENATOR CROFT: I just want to pursue what Representative
23 Parr was talking about. There is nothing that prohibits
24 Tenneco from negotiating with the other owners of gas at
25 Prudhoe Bay to purchase gas; is that right?

1 COMMISSIONER MARTIN: No.

2 SENATOR CROFT: And as far as you know, more than fifty
3 percent of the gas at Prudhoe Bay is uncommitted?

4 COMMISSIONER MARTIN: That's accurate.

5 SENATOR CROFT: And for Tenneco to decide that it no longer
6 wants to support the Alaska route, the only penalty under
7 the contract is it doesn't get the Alaska gas. So,
8 quite conceivably, since it's not prohibited from
9 negotiating with other owners of gas, it could enter
10 into an agreement, perfectly legal under the contract,
11 with somebody that would furnish them more gas than
12 the State, and the condition of that would be to support
13 some other route in Congress.

14 COMMISSIONER MARTIN: That would be possible, but unlikely.

15 SENATOR CROFT: But it's not prohibited by the contract?

16 COMMISSIONER MARTIN: No.

17 SENATOR CROFT: Thank you.

18 SENATOR RADER: Mr. Chatterton.

19 REP. CHATTERTON: Thank you, Mr. Chairman. Commissioner,
20 I've been told, rightly or wrongly, that some of the
21 routes proposed need as an economic threshold a daily
22 through-put on the magnitude of two billion to 2.4
23 billion cubic feet per day, and over probably a twenty-year
24 period, in order to be economically viable. Is what
25 I've been told roughly right, in your opinion?