

ALASKA LEGISLATURE SPECIAL COMMITTEE / SUBCOMMITTEE

534 SCOM116: JOINT SPEC. COMM. ROYALTY OIL & GAS 1977-78

1 COMMISSIONER MARTIN: That's right.

2 REP. CHATTERTON: At what point in time, Mr. Commissioner,
3 are you willing to guarantee to anyone that is willing
4 to build a transmission line that you will make available
5 from the Prudhoe Bay pool 2.4 billion cubic feet a day
6 of pipeline gas, available for them without jeopardizing
7 ultimate recovery?

8 COMMISSIONER MARTIN: The point at which that could be
9 guaranteed (if you want to stay with that word) is
10 probably several years away, Mr. Chatterton. And I want
11 to make it clear that that will be a guiding pivotal
12 decision. That decision will be determined, as opposed
13 to the decision with regard to the route. We intend to
14 carry out the conservation statute of the State, and it's
15 my feeling that the way it will go, roughly, is that
16 an initial off-take rate will probably be approved based
17 on a reservoir simulation study. A subsequent decision
18 will be based on early field history, and decisions past
19 that time will be based on the field performance to date.

20 REP. CHATTERTON: A follow-up question. Do you have any
21 feeling whatsoever that any good business-minded company
22 would commit funds for rolling of steel for pipelines,
23 or for permits, or you name it, until they were completely
24 assured of a steady supply of gas and with no possibility,
25 in other words, beyond all reasonable doubt, that they

1 would steadily have that supply of gas, it would not be
2 cut off for conservation purposes?

3 COMMISSIONER MARTIN: If I can get myself there for just a
4 second -- your question is just about as complicated
5 and confusing as some of my answers, Representative
6 Chatterton.

7 REP. CHATTERTON: I learned from you, Commissioner.

8 COMMISSIONER MARTIN: So, I'm willing to take the rap for
9 that. Let me say this: I think that, you know, putting
10 it your way, maybe no one would do it. But I think, as
11 a practical matter, what is likely to happen is that a
12 number of reservoir simulation studies and the early
13 field history will be extremely indicative of the way
14 in which that field is going to perform, and those who
15 are interested, who are certificated and interested
16 in building a pipeline, are going to have to make a hard
17 decision in regard to the reliability of that information.
18 But, my own opinion is they are not going to get a
19 guarantee because no one can guarantee how a field will
20 perform, and our conservation statute is rather clear in
21 terms of which demands to make that field operate
22 properly. So I think that there is a possibility, yes,
23 the people will invest based on what they believe, based
24 on sound information will be the deliverability figures
25 through that route. As you may know, this was a point

1 of substantial controversy between the State and the
2 Administrative Law Judge of the FPC, in which he
3 demanded with, quite frankly, some anger that we guarantee
4 him a figure. And I spent eight hours on the stand
5 one day basically answering the questions for him that
6 I just answered to you, saying that I couldn't and
7 wouldn't give him a guarantee, at which point he con-
8 cluded that we were obstructing the line because I
9 wouldn't give him a once and for all figure.

10 REP. CHATTERTON: Thank you, Commissioner.

11 SENATOR RADER: Mr. Meekins.

12 REP. MEEKINS: Thank you, Mr. Chairman. I'm trying to
13 approach this through the cost benefit analysis that
14 Representative Gruening indicated, that we should look
15 at it in terms of what we're giving up and what we're
16 getting. I want to come back to the question about
17 location of a petrochemical industry at tidewater. As
18 I've been approaching this, it seems to me one of the
19 benefits of a line reaching all the way to tidewater is
20 to increase the competitiveness of petrochemical products
21 in Lower 48 markets and other markets because they
22 wouldn't have to include in their costs the costs of
23 overland transport and trans-shipment. So what I'm
24 wondering is, does the contracts' prohibition against
25 taking back the royalty gas and using it for an incentive

1 to locate reduce the possibility or the likelihood of
2 a petrochemical industry locating in Alaska.

3 COMMISSIONER MARTIN: I really don't know if it reduces it
4 or not. I think it limits our flexibility in regard to
5 what we can offer, and maybe in that sense it does
6 reduce it, Representative Meekins. How much is something
7 I don't know. Let me say this: we've looked at that
8 question seriously as we can in trying to consider
9 various options before Royalty Board, and thus far at
10 least there has been a pretty low level of confidence
11 in the kind of deal where someone comes to you and says,
12 "Let us export for blank-number of years, during which
13 time we'll do a feasibility study or attempt to take some
14 type of action, and at the end of that period if it looks
15 good, build a refinery or a petrochemical plant."
16 So I think it may well reduce the options, but it
17 reduces one that thus far has not been particularly
18 attractive.

19 REP. MEEKINS: Do you know if any of the companies that are
20 in the contract that are getting the commitment of our
21 royalty gas are also in the business of petrochemical
22 products?

23 COMMISSIONER MARTIN: Yes, I'm certain there are subsidiaries
24 of Tenneco. I prefer for them to answer themselves.
25 There are probably subsidiaries in some cases.

1 REP. MEEKINS: Thank you.
2 SENATOR RADER: Any further questions?
3 REP. HAYES: I have one question, Mr. Chairman.
4 SENATOR RADER: Mr. Hayes.
5 REP. HAYES: Was the gas company mentioned that owns thirty
6 to forty percent -- what's the name -- Columbia Gas?
7 I've heard that they were so interested in getting that
8 quantity of gas, or in tying it up from SOHIO that they
9 went so far as to make a loan, an interest free loan of
10 several hundred million dollars as an incentive, or
11 whatever their purpose was. Anyway I understand it
12 was tied in with the right to buy that gas, and my
13 question is, when we were looking for purchasers for our
14 royalty gas did we contact them and, if so, what was
15 their reaction?
16 COMMISSIONER MARTIN: I can't say. I don't think we did
17 contact Columbia Natural Gas, Mr. Hayes. They were
18 unquestionably aware of the proceeding, and I made a
19 number of public statements indicating that we wanted
20 to hear proposals from anyone interested in engaging
21 in this type of contract with a take back provision and
22 supporting the Trans-Alaska route.
23 MR. BYRD: I might make one comment. There's been a lot of
24 talk about the front end loan and interest free loans.
25 You want to keep in mind that those are made to producers

1 for development and exploration, and I question whether
2 or not they would ever be made to a royalty owner that
3 doesn't really spend money for development of the acreage.
4 All of them that I'm familiar with have gone to producers,
5 and they have a commitment to develop, and then when
6 the gas is developed the advancer has the priority to
7 buy. I've never known of one to go to a royalty owner.

8 SENATOR HUBER: Mr. Chairman.

9 SENATOR RADER: Senator Huber.

10 SENATOR HUBER: Shouldn't that answer have been predicated
11 also that this is maybe the only state that's able to
12 take its gas in kind instead of otherwise?

13 MR. BYRD: Texas and New Mexico are taking theirs.

14 COMMISSIONER MARTIN: We're not the only state.

15 SENATOR HUBER: Well, we're virtually, aren't we?

16 COMMISSIONER MARTIN: Just a couple other little ones like
17 Texas.

18 SENATOR HUBER: Like Texas? Is that relatively recent though?

19 MR. BYRD: They've had the right for several years but they
20 haven't exercised it.

21 SENATOR HUBER: They haven't exercised it though, have they?

22 MR. BYRD: They are now, and so is New Mexico.

23 SENATOR HUBER: They're doing it now, but they haven't
24 been up until very recently.

25 MR. BYRD: That's right.

1 SENATOR HUBER: Mr. Chairman, I was taken by the remark
2 that a producer could expect this, but a royalty owner
3 couldn't, especially under the condition that the royalty
4 owner takes his gas in kind. If you will excuse me,
5 sir, it appeared to me, the separation, to be completely
6 ridiculous.

7 SENATOR RADER: Mr. Gruening.

8 REP. GRUENING: I just want a clarification of that last
9 statement. Isn't the reason Columbia Gas would pay a
10 cash bonus is to get a certain amount of gas committed,
11 it could care less what the producer does with it.
12 I mean, isn't the primary motivation of the gas company
13 to get the gas, and that's why they pay the bonus?

14 MR. BONESS: Representative Gruening, after the discussion on
15 Thursday night I attempted to find out additional
16 information about the Columbia sale. The Columbia sale
17 was entered into in 1971 ---

18 SENATOR RADER: Mr. Boness, would you speak up a little
19 bit more?

20 MR. BONESS: The Columbia sale was initially entered into
21 between SOHIO and Columbia in 1971. It involved actually
22 six separate documents -- well, at that time it involved,
23 I believe, four separate documents, two of which were
24 amended in 1974. I don't have all of those documents,
25 but those that I did have available I made available

1 to the committee's staff.

2 It's a very complicated arrangement, and the
3 basic purpose of it was to make money available for
4 development of the reservoirs and to insure that gas
5 would be produced at some time. When it was entered into
6 in 1971 the thought was the oil pipeline would be built
7 at an early date and gas would be moving many years ago.

8 In '74 when it was realized that the gas wasn't
9 going to move, some amendments were made to insure that
10 the gas would eventually move. The purpose behind the
11 advance payment orders, just in terms of the FPC policy,
12 was to encourage exploration for gas. That's the reason
13 (Mr. Byrd pointed out) it goes to producers and not
14 royalty owners. Royalty owners don't explore for gas,
15 producers do. It was to encourage the exploration of
16 gas and a commitment to that gas to the interstate market.
17 It was made at a time when oil companies were saying
18 the reason they couldn't explore was they didn't have
19 enough money to go out and explore.

20 Eventually, when the FPC reviewed that decision
21 pursuant to a court order, it concluded that particularly
22 with respect to Alaska the gas was going to be committed
23 in the interstate market in any event and, therefore,
24 advance payments with respect to Alaska were inappropriate.

25 In response to an earlier question by Senator

1 Croft, whether had the State entered into this advance
2 payment, into this contract, we could have gotten front
3 end money at an earlier time, the answer is only if we
4 had entered it between 1973 -- there were two orders
5 dealing with advance payment -- I believe August, but
6 I'd have to check the month. There were two orders,
7 and when the FPC issued its decision of December 31, 1976,
8 it ordered a show cause order with respect to those that
9 were entered into prior to 1973.

10 That included, I believe, four different companies,
11 El Paso, Columbia, -- I'm afraid I can't mention the
12 other two. Only the contractor Columbia dealt with
13 North Slope gas. All of the advance payment contracts
14 which had been entered into, and they had been for
15 virtually all of the gas, were ordered to refund the money.
16 So all of those contracts were refunded and, of course,
17 the gas companies were not allowed to put in the rate
18 base the terminated contract. The Columbia one, the
19 show cause order was issued, they filed the response in
20 March, and nothing has happened since then.

21 The Columbia contract, as a practical matter,
22 could be terminated. Columbia has out, I believe, a
23 Hundred and Seventy-Five Million Dollars in advance
24 payments. Their net cash flow, I believe, is around
25 a Hundred and Three Million Dollars, according to the

1 transcript, and obviously if a company has out a Hundred
2 and Seventy-Five Million Dollars and can't put it in
3 its rate base, it's going to be in a very difficult
4 situation. Columbia witnesses testifying in the FPC
5 proceeding testified that probably they would have to
6 terminate the contract if they were ordered to refund
7 the money.

8 REP. GRUENING: That question really went to the willingness
9 of the gas company to pay it in order to get the gas.
10 I can understand why the FPC wouldn't want it maybe
11 paid if it weren't going to be used for exploration and
12 development, but as far as the gas company went, their
13 prime motive was to get the gas.

14 SENATOR HUBER: Mr. Chairman, may I get back with Fred?

15 SEANTOR RADER: Were you through, Mr. Gruening?

16 REP. GRUENING: Yes.

17 SENATOR RADER: Senator Huber.

18 SENATOR HUBER: Mr. Boness, right exactly where you left off,
19 in the case of deregulation, which looks like it's
20 imminent right now in Congress, or appears to be at
21 least, wouldn't it be, if we approved these contracts,
22 only our commitment with these three contractors that
23 would prevent us from receiving a price that would allow
24 us to recover proportionately what other people got
25 in front end payments, by getting a higher price for our

1 royalty gas, because in effect others have got front end
2 payments -- or did some of them, at least Columbia did.
3 Wouldn't it be our contracts in case of the deregulation
4 that would stand in the way of us doing that?

5 MR. BONESS: Do you mean the Columbia contract? That's the
6 only one where advance payment happened.

7 SENATOR HUBER: No. For instance, right now Columbia has
8 a contract that had front end, and apparently they'll
9 get the highest field price that's allowed by the FPC
10 to be paid for that. Isn't it true that for the State of
11 Alaska to get that same higher price, including the front
12 end money, our contracts will be standing in the way of
13 that provided the gas is deregulated?

14 MR. BONESS: Let me start with the regulated situation.
15 In the regulated situation there is a penalty that takes
16 into account the fact that in the price, if everybody
17 else was getting the highest price, Columbia would be
18 paying something less because they'd already had some
19 money.

20 In the deregulated situation it depends on what
21 the contract between Columbia and SOHIO provides. I'm
22 not completely familiar with that contract, but I suspect
23 that Columbia will not be paying the same price for the
24 gas it receives that some other pipeline company will be
25 paying from somebody that had not advanced front end

1 money. In other words, I believe the Columbia contract
2 more than likely takes into account the fact that, if
3 deregulation occurs, some money has been paid already
4 and, therefore -- say, Texas Eastern may be able to pay
5 Arco a higher price than Columbia will be paying SOHIO.

6 SENATOR HUBER: You'd believe that we would be protected
7 by this highest field price clause where they wouldn't be?

8 MR. BONESS: Yes, sir.

9 SENATOR HUBER: Thank you, Fred.

10 SENATOR RADER: Any further questions of these witnesses?

11 SENATOR CROFT: Mr. Chairman.

12 SENATOR RADER: Senator Croft.

13 SENATOR CROFT: So that I can get in context some of the
14 questions that Representative Meekins has been asking,
15 is it true -- and I guess maybe Mr. Byrd would be the
16 one that might know this best, or Fred -- is it true
17 that once the route is certified that there is going to
18 be a tariff, in effect, approved for that basic facility?
19 Whatever the plan that's submitted at that time, that's
20 going to set that; is that basically correct?

21 MR. BONESS: Once the route is selected by the President
22 and approved by the Congress, it will go back to the FPC
23 and they will establish a tariff at that time.

24 SENATOR CROFT: Based on that particular facility?

25 MR. BONESS: That's right.

1 SENATOR CROFT: And any additions, changes, in that facility,
2 any spurs off that facility, would then have to stand
3 on their own weight in terms of economic viability; is
4 that correct?

5 MR. BONESS: Well, any spur off the line would have to be
6 certified first by the FPC in the new Section Seven
7 proceeding.

8 SENATOR CROFT: And when you tried to certify that spur,
9 would the FPC then go back and re-establish the tariff
10 for the whole line with that spur as an addition, or would
11 it keep the tariff on the existing line and set a new
12 tariff for that spur?

13 MR. BONESS: I believe it would set a new tariff for the spur.
14 The tariff sets a price for transportation between point
15 "A" and point "B".

16 SENATOR CROFT: Right, and with regard to the El Paso line
17 as it's proposed now, the tariff would be between Prudhoe
18 Bay and Valdez, is that correct, and there would be
19 intermediate tariffs for points in between?

20 MR. BONESS: Yes.

21 SENATOR CROFT: But there wouldn't be any other tariffs
22 in Alaska established except along the route of that line?

23 MR. BONESS: There would also be a separate tariff for the LNG
24 facility.

25 SENATOR CROFT: Right. But suppose somebody wanted to take a

1 portion of that to the Delta area, to Anchorage, or
2 wherever, and you had to construct a small line in order
3 to do that? The tariff for that small line would have to
4 be such as to pay for that entire facility, is that
5 correct, the entire spur?

6 MR. BONESS: That spur would be regulated by the State
7 Pipeline Commission, not by the Federal Power Commission.

8 SENATOR CROFT: And it would have to be economically viable
9 by itself; you wouldn't go back and get the FPC to come
10 up with a new tariff for the Prudhoe Bay to Valdez line;
11 is that correct?

12 MR. BYRD: It depends on where the sale was made. If the
13 sale was made by the State to somebody at a point where
14 the spur was going on, then that would be intrastate
15 and the FPC would already have collected their proportionate
16 share to get it there, and from the point of sale off
17 the certificated FPC line to Anchorage, say, that would
18 be a State regulated project and it would have to stand
19 on its own feet.

20 SENATOR CROFT: So my question is, to what extent, in order
21 to make sure that we have the maximum potential for
22 developing and using the gas intrastate -- shouldn't we
23 insist that any spurs be built into the basic line and,
24 thus, reflected in the overall tariff to pay for that
25 line rather than waiting until a later date and having

1 those spurs which then have to be economically justified
2 by themselves alone?

3 MR. BYRD: I question if the FPC would certificate on this
4 main line a facility solely for the movement of intra-
5 state gas. The legislation that was passed prohibits
6 them from preventing a take off and preventing the
7 transportation through the facility to the point of
8 take off, but I think from that point on it would be
9 an intrastate project.

10 SENATOR CROFT: But suppose that we wanted to build a spur
11 to Anchorage because, for some reason, it was more
12 suitable to an LNG type of operation or to a petro-
13 chemical operation than Point Gravina is? Then that
14 spur would have to stand on its own, would it not?

15 MR. BYRD: Yes.

16 SENATOR CROFT: But that if we built that in at this point,
17 prior to certification if we insisted on the spur, it
18 could be built in the overall tariff.

19 MR. BYRD: But the interstate shipper wouldn't pay any part
20 of it.

21 SENATOR CROFT: Why not?

22 MR. BYRD: The FPC just wouldn't let them. The interstate
23 shippers are only going to pay their proportionate share
24 of the cost of the pipeline and whatever facilities are
25 built that go on into interstate commerce.

1 SENATOR CROFT: Yes, and suppose you had a petrochemical
2 complex that did send it on into interstate commerce at
3 Anchorage so that it would be a part of interstate's
4 interests?

5 MR. BYRD: You're thinking about a cryogenic plant at
6 Anchorage that would move liquid gas on to the 48 States.
7 I question whether the FPC or El Paso, either one, would.
8 Under our contracts we couldn't do that, we couldn't
9 take the gas out to liquefy it and move it to the 48
10 States. If we were going to use the gas in a petro-
11 chemical plant we could take it and move it to Anchorage
12 or some other point, but we would pay the tariff from
13 the North Slope to the point of the take off, and we'd
14 pay the intrastate transportation, or our purchaser
15 would, for moving it from the point off on the FPC
16 certificated line over to Anchorage, and that spur
17 wouldn't be FPC jurisdiction.

18 SENATOR CROFT: Was the question of any type of spurs to be
19 constructed by El Paso considered during the negotiations?
20 Were they requested to make any change with regard to
21 their line?

22 COMMISSIONER MARTIN: Not during negotiations, Mr. Croft, but
23 we have demanded on several occasions that they or other
24 companies add spurs, or come forward with a proposal
25 of spurs, for instance, in the case of Haines or some

1 other place, and they have refused steadfastly to do that.

2 SENATOR CROFT: As I understand it, they're going to be
3 back Tuesday or Wednesday. I have some additional
4 questions, the hour is getting late.

5 SENATOR RADER: Well, we can -- if it's in the nature of a
6 general examination, then maybe we ought to pursue
7 them the first thing in the morning. I do expect you
8 to be back though probably -- first of all you said you
9 would like to be able to sum up anything that might
10 develop and secondly, you hope to report to us on the
11 decision if it can be analyzed. What's your desire,
12 Commissioner?

13 COMMISSIONER MARTIN: We're fine. We're in good shape until
14 about Thursday of this week, Senator, and then we'll be
15 sending -- I think Jack will have to return and Fred
16 will be heading to Washington to work on the reply brief
17 in the FPC, so Wednesday will be fine.

18 SENATOR RADER: Would you prefer that instead of tomorrow?

19 COMMISSIONER MARTIN: We'll be glad to come back and spend
20 any amount of time. Tomorrow is also fine.

21 SENATOR RADER: Any other questions of these witnesses? If
22 not, we will tentatively start out with Tenneco, Southern
23 and El Paso tomorrow, hopefully at 11:00 o'clock, or
24 as soon thereafter as the House and Senate adjourn.

25 (Whereupon the hearing adjourned at 5:00 p.m.)

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FEBRUARY 7, 1977

1
2 SENATOR RADER: The Joint Committee Hearings of the House
3 and Senate Royalty Gas Sale Committees will come to order.
4 We invited Commissioner Martin and such other persons
5 as he might deem appropriate to respond in any manner,
6 that they see fit, to questions that have been raised
7 that they think should be dealt with, or supplementary
8 information. Particularly did we want to get from you
9 an analysis of the opinion from the Trial Judge from
10 your point of view as to what it says and what it
11 doesn't say, and such other matters as you think may
12 be pertinent to the committee.

13 I think the best thing would be for you and
14 Mr. Boness, or either of you, directly to give us sort
15 of a rundown on where you think we are and then start
16 the questions, if that would be all right to do.

17 COMMISSIONER MARTIN: Yes, sir. Thank you, Senator Rader.

18 I should say that after talking to you last week I've
19 not come prepared to give you a full briefing and run-
20 down on the FPC Judge's opinion. In fact, my under-
21 standing of last week was that once the thing was
22 cancelled on Friday that we had moved beyond that, and
23 the decision has been well distributed up here now.
24 We can do that in rough form but, quite frankly, we
25 didn't come prepared to do that; we came prepared to try

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1 to respond to some of the questions that were raised and
2 to take all your questions.

3 SENATOR RADER: I would appreciate your doing it just in
4 rough form then as to your understanding generally, just
5 for purposes of the committee. I know I haven't seen
6 a copy of the decision, and I know that either you or
7 Mr. Boness will have read it in full and analyzed it,
8 and I would like to know what effect it has, if any,
9 on these hearings, and on your position or on a position
10 that we should take or might want to take.

11 COMMISSIONER MARTIN: Senator, let's take it on this way.
12 I think we can say that Fred has read the opinion, at
13 least largely. It's awfully long, and I have not gotten
14 all the way through it. I have read certain parts of
15 it, and I think we can give you a brief summary. Let's
16 just start by having Fred run down some of the key points
17 that are in the decision and then maybe we can talk
18 about the meaning of them.

19 SENATOR RADER: Excuse me. I see Senator Kerttula. Senator,
20 would you like to -- you're certainly welcome if you'd
21 like to join us up here for the questioning.

22 SENATOR KERTTULA: Thank you, Senator Rader. If I have
23 something I'll come up there. Thanks very much.

24 SENATOR RADER: Or you can stand and address the questions
25 there, if you wish, from your seat. Yes, Mr. Nakak,

1 also. Would you care to join us?

2 MR. NAKAK: Not presently.

3 SENATOR RADER: Proceed, Commissioner.

4 COMMISSIONER MARTIN: I'll let Fred just give a brief run-
5 down of the things.

6 MR. BONESS: I would like to start by indicating just a
7 little bit about the procedure, what will happen now.
8 The opinion, as you know, was issued on February 1.
9 We have thirty days in which to file a brief of exceptions.
10 Basically what that means is that the Judge throughout the
11 opinion says, "I find Arctic Gas will be able to construct
12 from snow roads in the time frame they've projected,"
13 and numerous other findings of that nature.

14 The State doesn't believe that that can be done.
15 It will have a number of exceptions to findings of the
16 Judge. We will have thirty days in which to file the
17 brief, and the purpose of my going back to Washington,
18 D.C. is to work with our attorneys back in Washington
19 to prepare that brief, and all the other parties will
20 be doing the same. Once that brief is filed, the Judge's
21 decision, the whole record and those briefs will go to
22 the Commission.

23 They will issue a decision, a recommendation to
24 the President on May 1. The opinion itself is very long,
25 it's four hundred and thirty pages with about another

1 seventy pages of appendices, some of which are also
2 pertinent to the decision and must be read to understand
3 the decision itself. It's organized into a number of
4 sections, there's a Gas Supply Section, a Construction
5 and Logistics Section, an Environmental Section, a Tariff
6 Section, a Financing Section; and within each of those
7 sections the Judge addresses generally what Arctic Gas
8 says it can do, what he believes they can do, what
9 El Paso says they can do, what he believes they can do.
10 There is some discussion in each section of Alcan.
11 although, rather interestingly, the Judge at times just
12 seems to ignore the Alcan proposal altogether. He never
13 praises it, he occasionally criticizes it, but in general
14 he just doesn't treat the Alcan proposal in anywhere
15 near the same length as he treats the El Paso and Arctic
16 Gas proposals.

17 I have not read all of the decision. I'm half
18 way to three-quarters of the way through the decision.
19 There are a number of places where the State of Alaska
20 is mentioned in terms of the positions it has taken.
21 We will have things to respond. As you may know or may
22 have heard, the Judge asserts that the State is a person
23 under the Natural Gas Act and that our sales will have
24 to be certificated by the Federal Power Commission.

25 As I indicated on Thursday night to Representative

1 Gruening's committee a week ago, we are intervening in
2 other cases -- we have intervened in other cases which
3 address that issue and which may form the precedent for
4 what would be the eventual finding in the Alaska proceeding.
5 But, in any event, I would point out that the Judge's
6 position is contrary to the position taken by the Office
7 of General Counsel for the Federal Power Commission,
8 and it will be a legal issue which will ultimately be
9 resolved, I feel quite certain, by the courts.

10 I don't believe the Judge's assertion that
11 jurisdiction exists is really in any particular fashion
12 detrimental to the State's position. It is really based
13 more on an assertion that it just must be so rather than
14 on any serious legal analysis, in my opinion.

15 I believe I would prefer to leave it there rather
16 than going into the number of specific issues that the
17 Judge addresses unless it would be the committee's pleasure
18 that I attempt to do that.

19 SENATOR RADER: Of course, the inquiry here is, should we
20 or should we not pass the resolutions approving the sale.
21 Is there anything in the decision from the point of view
22 of the State that would impinge upon our decision as to
23 one way or another in that regard, in your view -- or
24 in your recommendation to us in that regard?

25 COMMISSIONER MARTIN: I would stick by the statement that we

1 made earlier, Mr. Chairman. This decision, once the
2 procedural bill passed last year, is made less important
3 than it would be under ordinary circumstances, and I'm
4 not going to change that position because of the way
5 the decision came out. On the other hand, the strength
6 of the decision, it seems to me, points out two things
7 very clearly. One is that the State has a tremendously
8 long way to go to support either of the two routes that
9 are in the State's interests; and the second thing it
10 points out, and I want to mention this in the statement
11 that I'm going to make to you today, is that this is
12 a terrifically Federally oriented decision and points
13 out, sort of in the most vivid terms, the kinds of
14 things that we may be running up against in attempting
15 to protect the future in-State use of our gas and running
16 up against in terms of Federal jurisdiction over our gas.

17 So those two things very much, in my view,
18 make what we're considering here more important -- in my
19 view, make it substantially more important that we take
20 action at an early time, and make it more important
21 that we do what we can to support the El Paso route.

22 SENATOR RADER: I really didn't mean to open the questions
23 at this stage. However, inasmuch as I have, do other
24 members of the committee have any questions particularly
25 concerning the decision, and then we would go into the

1 other. Senator Croft.

2 SENATOR CROFT: I do on that point. One of the reasons these
3 contracts were announced on November 12 was so that they
4 could become a part of the record, and both the staff
5 report which was issued in December, and Judge Litt's
6 decision which came out in February thus considered those
7 contracts. What did the staff report and what did Judge
8 Litt say about these contracts? What effect did the
9 contracts have on their decisions?

10 COMMISSIONER MARTIN: I think they had pretty much the effect
11 that I thought, and that was less effect on the FPC
12 proceeding than they'll have on any subsequent proceeding.
13 I stated that before publicly, and that was a point I
14 made basically in trying to take additional time before
15 they were introduced. I think that they didn't affect
16 the decision a great deal, nor did I expect it to.

17 SENATOR CROFT: What did Judge Litt say about the contracts?

18 COMMISSIONER MARTIN: I don't recall that he treated them
19 in length at all.

20 SENATOR RADER: Any further questions on the decision?
21 Representative Parr.

22 REP. PARR: Mr. Martin, you used the term "Federally oriented"
23 a minute ago. Do you mean that this was the same thing
24 as what sometimes is called "In the National interest"?

25 COMMISSIONER MARTIN: Well, I don't know what sort of semantics

1 you're after, Mr. Parr.

2 REP. PARR: I'm not looking for semantics, Mr. Martin.

3 You said "Federally oriented" and I don't understand
4 the term.

5 COMMISSIONER MARTIN: Let me try to explain that. It seems
6 to me that the best that the State of Alaska can hope
7 to come out of this is with some agreed understanding
8 between the Federal Government and the State with regard
9 to the State's ability to use the royalty gas of their
10 own. That understanding, in my view, would be to acknowl-
11 edge that because of Alaska's production of these resources
12 and distance from other markets, the needs we have in
13 the State, that we will have a somewhat free hand to
14 use our own resources.

15 At worst, on the other hand, the Federal Govern-
16 ment will assert total jurisdiction over not just the
17 gas that comes out of Prudhoe Bay, but the royalty gas
18 that comes out of Prudhoe Bay, and direct that that gas
19 be sent somewhere else other than Alaska.

20 Now, that's a whole spectrum of possibilities
21 with respect to the gas that we own. When I say Federally
22 oriented, in this context I'm referring to the fact that
23 Judge Litt took the position that they should have
24 virtually total control not over just the Prudhoe Bay
25 gas but our State owned gas as well.

1 REP. PARR: In other words, what you're saying is Judge Litt
2 said that the Federal Government would have the power
3 then to decide where the gas would be most needed, including
4 our royalty gas.

5 COMMISSIONER MARTIN: That's right.

6 REP. PARR: And then to send it there.

7 COMMISSIONER MARTIN: And went much further than that to
8 advocate the repeal of Section 13-B and immediate asser-
9 tion of Federal jurisdiction over our gas right from
10 the wellhead.

11 REP. PARR: Thank you.

12 SENATOR RADER: Any other questions? Representative Gruening.

13 REP. GRUENING: Commissioner and Mr. Boness, is there anything
14 in the decision that indicates why he thinks 13-B ought
15 to be repealed?

16 COMMISSIONER MARTIN: Yes. He discusses it, not at length,
17 but he basically makes the assertion that the Federal
18 Government again should control all of the gas in the
19 national interest rather than just the seven-eighths that
20 belong to the producers, and really indicates that the
21 Federal Gas Act, in his opinion, has applicability to all
22 of it and that then all of the Federal powers given to
23 the Federal Power Commission under its act would apply.

24 REP. GRUENING: You mentioned just earlier that the decision
25 behooved us to move faster on these contracts. I think

1 that was your comment. What is there in the decision
2 that compels us to do that?

3 COMMISSIONER MARTIN: Basically the fact that it pointed
4 up the terribly uphill battle that the State faces in
5 supporting either one of its two routes, and it seems
6 to me that it just emphasizes the need for whatever
7 additional assistance we can get from these contracts
8 or the support that comes as a result of them.

9 REP. GRUENING: You recall that in the task force evaluation
10 that there was mention of the fact that at some point
11 the State would consider switching its support to Alcan,
12 and now having been asked that question, and the decision
13 hadn't come out yet -- now that it's out is there any-
14 thing in that decision that would give the Administration
15 cause to reflect and to change their position?

16 COMMISSIONER MARTIN: I think we'll continue to consider it,
17 and we'll probably be discussing it this week, but my
18 present reading of the situation is that the decision
19 would not indicate a change is necessary.

20 REP. GRUENING: You will be discussing the possibility of
21 switching support next week?

22 COMMISSIONER MARTIN: Yes, but I don't think that there is
23 any strong possibility that we'll change.

24 REP. GRUENING: But that matter will come up?

25 COMMISSIONER MARTIN: I should say, that matter is under

1 just continual scrutiny and discussion because we want
2 to make sure that whatever is in the State's best
3 interests is protected. But I think it highly unlikely
4 that we'd want to change because of this decision.

5 In fact, our present directive is for Mr. Boness to go
6 to Washington and prepare a brief opposing the recommen-
7 dations made by Judge Litt.

8 SENATOR RADER: Any further questions on the decision?

9 Representative Miles.

10 REF. MILES: Regarding Judge Litt's advocacy of repeal of
11 the exemption, Commissioner, has anybody been in contact
12 with our Congressional Delegation to gain a feel of how
13 Congress feels since the Litt decision came down, and
14 are you familiar with ---

15 COMMISSIONER MARTIN: Well, I've been in contact with the
16 staff of our Delegation. I think I've been in contact
17 with all of the staff since that time, not only on that
18 question or precisely on that question. But I've dis-
19 cussed this issue, although not personally with any
20 of the Delegation. What I'm learning from them is that
21 it's really too early to assess what happened in Congress
22 as a result of that decision. I don't think they've
23 really digested it really anymore than we've been able
24 to here. But they see the decision as damaging to the
25 El Paso and Alcan case.

1 REP. MILES: But they don't have any strong feeling on the
2 exemption either?

3 COMMISSIONER MARTIN: No.

4 SENATOR RADER: Senator Croft.

5 SENATOR CROFT: Could I -- just so we get it in perspective,
6 the State had certain points that it wanted to make
7 in the FPC hearing. One was support of the El Paso
8 route, two was, I guess, some support of Alcan just
9 so the State could keep that option open, three was
10 to convince Judge Litt that we were not a person within
11 the meaning of the Natural Gas Act and thus were not
12 under the terms of it. Obviously, we didn't want him
13 to come out for repeal of 13-B. Could you list the
14 major objectives that the State had in its participation
15 before the FPC? Just kind of run through it as to how
16 we came out under his decision.

17 COMMISSIONER MARTIN: I don't think a list is necessary,
18 Senator Croft. I'll just say that you listed at least
19 the major ones, and there are a number of minor ones.
20 My thought is that Judge Litt's decision went very much
21 against the State's interests.

22 SENATOR CROFT: On all of the major points?

23 COMMISSIONER MARTIN: On the major points.

24 SENATOR CROFT: On the most of the minor ones too?

25 COMMISSIONER MARTIN: Yes.

1 MR. BONESS: Senator, I'd like to respond to that. What I
2 believe you stated are really the ultimate objectives
3 that the State's case took. But, in fact, there are a
4 number of specific kinds of points which come up during
5 the hearing; for example, the question of whether Arctic
6 Gas would be able to construct its line from snow roads
7 was debated at length. That's a much finer question.
8 It goes to the State's objective because part of the
9 reason the State opposes Arctic Gas is that it is going
10 to involve substantial delays and substantial increases.
11 The State put on considerable testimony on that point.

12 El Paso hired special consultants to put on
13 considerable testimony on that point. Mr. Latts, who
14 was the Federal Government pipeline person, put on
15 testimony to the effect that it couldn't be done, and the
16 Judge essentially rejected all of that testimony.

17 There are a number of other kinds of things like
18 that, the question of whether adequate water would be
19 available to manufacture snow if, indeed, they were
20 going to use snow roads; the question of whether snow
21 fences would be adequate. It really breaks down into
22 a number of very specific kinds of things.

23 With respect to the El Paso proposal, questions
24 with respect to the amount of gravel available and a
25 number of things like that. And the Judge, in my opinion,

1 as far as his opinion that I've read, really accepted
2 Arctic Gas' arguments in almost all cases and ignored
3 the arguments of the State and others with experience
4 in the gas pipeline construction here in Alaska.

5 COMMISSIONER MARTIN: I might just add to that, I think
6 your question -- I don't think you assume this, but it
7 may create the implication that it was sort of the State
8 against these others. But the State was merely a part
9 of a much larger presentation, whereas the bulk of the
10 evidence was put on by El Paso, by Alcan, or some of
11 the other parties who were intervenors to the case.
12 Although we took a major role on most of these issues,
13 we were not (let's say) the leading case.

14 SENATOR CROFT: On some of them we were the only people
15 that were really interested in it, and that is particularly
16 true with regard to whether the State is a person
17 within the interpretation of the Natural Gas Act.

18 MR. BONESS: Senator, if I may respond to that one. The
19 State filed a brief on that very early in the proceeding.
20 No one filed a brief in opposition to that and, in fact,
21 I believe you would not find that in the record at all
22 except occasionally the Judge making a comment, "Well,
23 whether the State is or isn't a person, will you tell
24 us what you're going to do?"

25 The legal merits of that question were never

1 discussed or debated in the hearing at any point and,
2 quite frankly, I'm a little bit surprised to find as
3 much discussion of the issue in the Judge's opinion as
4 there is. I think it was, if anything, a gratuitous
5 effort on the part of the Judge to make sure that the
6 State does not get powers beyond those which he believes
7 we should have.

8 SENATOR CROFT: But in terms of that, in terms of 13-B,
9 in terms of the regulation of rates within the State,
10 which I think you, Commissioner Martin, made reference
11 to Tuesday when we had the first summary of Judge
12 Litt's decision, all of those points were basically
13 points that it was not particularly an adversary situation,
14 and yet he recommended against us on all of those as
15 well; is that correct?

16 COMMISSIONER MARTIN: Exactly right, and that's exactly
17 why I answered Mr. Parr's question that it was a very
18 overtly Federally oriented decision. On the question of,
19 let's say, rates he treated it very lightly in the
20 decision in most cases, much more lightly than I thought
21 he would given the fact I had been on the stand for
22 eight hours on that issue one day. But, you're right,
23 he took it on his own initiative to deal with those
24 issues, as Fred says, gratuitously.

25 SENATOR RADER: Any further questions just on the decision?

1 Commissioner, why don't you go ahead and give us your
2 general presentation?

3 COMMISSIONER MARTIN: Thank you, Senator. Last week, Mr.
4 Chairman, the committee had comprehensive hearings on
5 the gas line route issue and on the contracts, and as
6 the opening witness for the State and the spokesman
7 designated by the Governor, I took the approach basically
8 of attempting to lay the contracts and the route preference
9 decision before this committee, and to do so, at least
10 in my own view, for my own part without heavy advocacy
11 or really without a series of conclusionary statements.
12 I, in fact, didn't make an opening statement. And I did
13 that for several reasons that are somewhat important to
14 me and I think to the proceedings.

15 One is, I think this issue is critical, and I
16 believe it to be (like you) basically non-adversary and
17 non-partisan.

18 Secondly, to a very large extent I served as not
19 just the negotiator for the State, but the negotiator
20 for the Legislature as well as the Executive on this
21 matter, and I wanted the committee to have the best
22 opportunity to understand factually what the contracts
23 did as opposed to having to deal initially with a large
24 number of the conclusions or implications that might
25 spring from the contracts.

1 And I also wanted to hear, as a negotiator,
2 very much what other people had to say about the
3 contracts because no matter how substantial the level
4 of care is, and it was substantial on these contracts,
5 there is always a great deal more to be learned, par-
6 ticularly from the consultants and others that have an
7 opportunity to examine these contracts in a clear,
8 objective light. Basically I guess what I wanted to do
9 was to see how well the contracts and the route preference
10 stood on their own merits and to get an indication for
11 my own part how well we did.

12 I've never said to this committee, and I'm not
13 going to start saying today, that State decisions on this
14 issue are clear-cut. Yet I heard a number of people
15 say statements last week that were amazingly absolute,
16 in my view. Virtually any course that we take, Senator,
17 and I wouldn't want the committee to be mistaken about
18 this, is going to have substantial trade-offs, it's going
19 to have risks associated with it, and it's going to have
20 both advantages and disadvantages. I think that although
21 there are a number of people that really don't like to
22 hear this kind of conclusion, I think that the differences
23 between the alternative courses that are available to us
24 are going to depend very much on subjective judgments
25 made not just by myself or by the Governor, but by members

1 of this committee. Some things are going to be, and
2 remain, difficult to quantify. I think they're going
3 to have to be worked out subjectively by all of us
4 working together. That's very true of these contracts.

5 Now, my opinion after seeing the hearings for a
6 week, Senator, is that they were very useful. They
7 were comprehensive, and on balance I think they developed
8 some good information on very complex issues. There
9 were a number of factual errors made, and we're going to
10 try to be able to respond to those today. There were
11 some very legitimate differences expressed with regard
12 to State policy objectives that might be pursued. There
13 were some wide ranging political judgments expressed.
14 I think there was some good, expert consultation supplied
15 to the committee.

16 We paid close attention to the hearings. We had
17 them monitored throughout your consideration, and I
18 think we came away with a pretty good idea of what it
19 was we ought to do in future response to this committee.

20 I'm going to say some things in my statement
21 today and I'm going to be prepared to respond to questions,
22 and it may well be that we'll turn in additional written
23 information at a later time if we feel that everything
24 hasn't been covered.

25 It was a little hard to tell, looking at the

1 testimony last week, what the most shocking piece of
2 testimony was. It was probably a toss-up between Arlon
3 Tussing telling us that the entire State and its
4 leadership have been tricked into believing that we
5 have any role in this decision at all; it could have
6 been Mr. Dallas telling us we made a big mistake by
7 not coercing a gasoline plant in Fairbanks as a part
8 of these contracts; or it might have been that the
9 buyers couldn't assign a dollar for dollar value
10 to what it was they proposed to do.

11 But let me say that, at least from my personal
12 judgment, the most shocking piece of evidence before
13 the committee last week was probably Judge Litt's decision.
14 It was something that didn't happen here at all. In the
15 terms of the sort of significance that we have to deal
16 with in these hearings, it seemed to me that, as I said
17 earlier in response to Mr. Croft's question -- it seems
18 to me that we learned from that decision a great deal
19 more about the uphill battle we have to face and a good
20 deal more about the sorts of Federal orientation that
21 we're likely to meet as this issue is developed in
22 Congress.

23 What I'd like to do today, Mr. Chairman, is to
24 continue in the role of elaborating on the contract
25 factually and to respond to your questions. But I'd also

1 like to do one other thing that I feel somewhat compelled
2 to do in the role that I've tried to fulfill for the
3 State, and that is to try to add at least some perspective
4 to the issue based on my own judgment and on my experience
5 as a negotiator for this contract and on my experience
6 in dealing with this issue on behalf of the State
7 in the Federal context. I've spent time on this issue,
8 both for this Administration and for the last one,
9 and think that the committee probably can benefit from
10 at least what some of my judgments, again admitting
11 that they're only subjective, with some of the others
12 that have been made, to add my words to theirs.

13 In other words, I feel that after hearing a
14 great deal of useful testimony last week, I think that
15 it will be useful for me to at least give you the benefit
16 of my advice as well as the information I can supply.
17 First, I want to make it clear that I believe after
18 hearing everything, and you always hear these things
19 with a certain amount of trepidation as a person who
20 negotiates it, particularly in the context of our statute,
21 I want to share with you my belief that both the contract
22 and the route preference held up remarkably well during the
23 course of the hearings last week. No witness, with the
24 exception of those who favor another route, such as Mr.
25 Ward, Mr. Thompson or Mr. Tussing, made any substantial

1 allegation that the best route for Alaska was anything
2 but the Trans-Alaska route.

3 In addition to that, the clear-cut consensus
4 of the consulting experts hired by the Legislature was
5 that these are good contracts achieving some objectives
6 now which may not be reasonably expected to be surpassed
7 or even equalled later. Third, on taking into account
8 all that was discussed last week, I believe that no
9 questions have been raised which cannot be reasonably
10 answered and none that persuaded me on balance that
11 these contracts do not best achieve a series of crucially
12 important objectives for the State.

13 Now, beneath all of the specifics which have
14 been raised is the overall issue raised best by Mr.
15 Gruening, "What do we get and what do we give up?"
16 Slightly below that is a similar question, and I think
17 it went unspoken in many cases last week, "Can't we do
18 better in the future if we just wait now?" The answers
19 to those questions are complex and they depend on many
20 variables, and rather than cite them all, let me give you
21 an example of what I mean.

22 To the question, "What do we get," the variable
23 is, "What do we want?" And I think that what we want
24 is something that people have not been clear in addressing
25 beyond the words and the implications that were created

1 by public opinion and legislative actions and adminis-
2 trative actions since last year.

3 What do we want? It might be price, it might be
4 in-State use in the future, it might be the route that's
5 best for Alaska, it might be a lump sum payment, it
6 might be total future flexibility with regard to this
7 gas for the next three or four years. But in any case,
8 at some point what we want has to be defined rather
9 clearly. In my view it was defined rather clearly at
10 the time we led up to these contracts, and we ought to
11 establish that ground again.

12 To the question, what do we want, my own fear is
13 that one of the things that comes out of the hearings
14 last week is that the answer of too many people is
15 "everything." I just want to make it clear, both as an
16 advisor and a negotiator, I don't think we can expect
17 to get everything, and perhaps we didn't in these contracts.
18 But I don't think we can answer that question by saying,
19 "Everything."

20 Over all, and I want to make this very clear
21 because I believe the hearings narrowed in many cases
22 to an investigation of specific values, pro or con,
23 that were inherent in the contract. Let me make clear
24 what my own feeling as your advisor is on this matter.
25 Over all, what I believe we got in the contracts is a

1 balanced package of terms on key objectives for the State.
2 In my view the objectives are right, the terms are solid,
3 and there exists real risk that such a package cannot
4 come together in the future in exactly this way.

5 That may not mean, in your own mind, that you should do
6 it. But I want you to be clear that my feeling is that
7 that's my conclusion, and it will be difficult to put
8 this kind of package together again in this way.

9 I believe that many of the statements that were
10 made last week missed the balanced nature of these con-
11 tracts, and I believe they missed the present opportunity
12 they represent, and I believe that there was a certain
13 misconception with regard to what we can absolutely rely
14 on to be accomplished in the future.

15 What you get, in other words, is an approach
16 with many facets and many aspects to it, which is avail-
17 able now, and one which provides a whole series of terms
18 giving protections for the State which may or may not be
19 available later, but achieving this combination at a
20 later time, if it does represent desirable alternatives
21 and desirable objectives, may not be a dependable
22 assumption.

23 I do not propose to speak to you in absolute
24 terms as some did last week because I don't think this
25 is an absolute issue. I am going to lay out, however,

1 some of the benefits and risks as I see them, and to
2 give you the opportunity to work with me to try to balance
3 those risks and benefits, to look at these contracts
4 as a unit rather than in looking at them, as we did
5 last week in so many instances, as a series of specific
6 issues, all of which can be considered, I think according
7 to the assumption that we can achieve the same combination
8 again or whether we can't achieve it again.

9 First, in these contracts the State gets a
10 reasonable approach, in my view, to a decision on this
11 entire issue, and it gets it within the formidable
12 constraints of our royalty process. Now, our statute
13 is wise in the public interest, and I've said so before;
14 but it's cumbersome and it's politically charged. It's
15 a one-year cycle or perhaps somewhat less in which the
16 Administration, the Commissioner of Natural Resources
17 and others must either guess or ascertain what the public
18 will and the legislative will is with regard to royalty
19 oil or gas, then must work through the businesslike
20 task of negotiating an entire contract to deal with
21 these issues, and then must go through two levels of
22 review, which can be extremely time consuming, during
23 which time the circumstances that favor or disfavor any
24 deals so made can change.

25 The present contracts, in my opinion, have done

1 very well in this process, and they're based on a
2 reasonably identifiable public and legislative will.
3 In other words, we started with a reasonably good idea
4 of what was desired and we went through at least a very
5 large percentage of the complicated and cumbersome nature
6 of our process in fairly good form, and we're still
7 proceeding in that, in my view. Now, how well this
8 process works in the future is going to have a great
9 deal with how well it works in this instance and how
10 well all of us work with the process, and that has
11 nothing to do with whether the contracts are approved
12 or not. It has to do with the way in which we deal
13 with them.

14 To reject these contracts now, particularly
15 without a good understandable, specific basis of
16 guidance as to where we go next, leaves us with a process
17 which is neither rapid nor flexible, our royalty process,
18 and perhaps without clear direction, and still facing
19 the same problems which we believe were answered very
20 successfully in this contract. So I think that there's
21 an inherent risk in starting over again without clear
22 guidance. If we have the clear guidance and we have
23 the time, then it may well be a different case. But I
24 think that we have an alternative now that it's going
25 to be difficult to duplicate given the nature of the

1 process. I think it's a risk of rejection you should
2 clearly face; that is, very simply, the risk of putting
3 together a deal in this form and of this nature again.

4 Second, in these contracts we did get the best
5 price for royalty gas sold under any reasonably foresee-
6 able circumstances. I say that after listening to
7 testimony last week, hearing your consultants deal with
8 it very thoroughly. Quite frankly, after the strong
9 testimony that your own consultants gave, I'm hopeful
10 that this issue is put largely to rest. If it is not,
11 simply let me say that I believe that it should be,
12 and that the State can say with some certainty that it
13 did get the best price that it can reasonably expect to
14 get under any foreseeable circumstances.

15 For you to reject these contracts on this basis,
16 you must conclude that it is not only technically possible
17 to get a better price later, but that it is probable or
18 even possible that we can better or even equal what is
19 presently available to us.

20 For the record, my advice to you is that it is
21 not a risk worth taking, and it's not a possibility
22 that you can or should rely on, and not something you
23 can assure the people of the State is capable of
24 accomplishment. Remember that under these contracts
25 we tie the price the State gets for its gas to the best

1 price coming from the Prudhoe Bay oil field, oil and
2 gas field, so that if only one buyer gets a terrific
3 deal on his gas we're tied to that price. So we have
4 the benefit of virtually every other good negotiation
5 for gas from that field.

6 Third, there is the issue of in-State use.
7 What we get, again in a balanced package, is a negotiated
8 term in this contract that allows us to sell our gas
9 but not really to sell it, to take back virtually every
10 cubic foot of gas that we can use for Alaska's future.
11 So far as I am aware, this term is without precedent
12 in gas purchase history. The driving force for the term,
13 in my view, is uncertainty; uncertainty about what we will
14 ever use, which allows both the buyer and the seller to
15 make of it what they wish.

16 To reject this contract, you must accept the
17 risk that this total take-back term can be equalled or
18 surpassed later. I do not know how, quite frankly, it
19 can be surpassed. And as your negotiator, I can advise
20 you that I believe there are substantial risks to be
21 acknowledged if you were to act in the belief that such
22 a term can simply be renegotiated equally. I think there
23 are a number of reasons that indicate that it will be
24 quite difficult to establish such a term again.

25 Fourth, there is the protection of the take-back

1 provision itself. What we get, in my view, is the best
2 foreseeable opportunity that Alaska will have to protect
3 its ability to use gas in the State. We not only have
4 negotiated the best possible take-back provision, simply
5 the right to take back all of the gas, but we are able to
6 advance it for Federal approval at probably the most
7 advantageous time foreseeable for doing so..

8 To reject the contract now, I believe that you
9 must accept the risk that Section 13-B will remain
10 unchallenged and on the books and that at some later
11 time you will be not only able to negotiate the same
12 kick-back term, but that we will have the same or better
13 chance to get it approved at the Federal level. My
14 opinion, and again I'm acting in an advisory capacity
15 here, is that our best chance to avoid that risk is
16 by acting now.

17 And fifth, there is just the question of the route
18 itself. On the one hand we had Arlon Tussing, a good
19 friend on whom I've shared many opinions on this issue,
20 who basically indicated that we should fold our tents
21 and wait quietly for the end on the gas line issue.
22 On the other hand, we have the Congressional Delegation
23 and the Governor stating in no uncertain terms, as I
24 see it, that the State does have a definite role in this
25 gas line proceeding and that these contracts are important

1 to the outcome, that the combination of buyers is right,
2 and that the decision should be made as reasonably
3 quickly as possible.

4 For my own part, again giving you the benefit
5 of my feeling about this, I certainly want to come down
6 on the side of saying I think we do have a role in this,
7 and I say it from the perspective of participating
8 both in the Native Land Claims and Trans-Alaska Pipeline
9 decisions in Washington. I think it's simply fallacious
10 to assume the State has no role whatever and that we
11 should simply accept what comes our way. Again, I
12 would reiterate that what I say about the route is totally
13 separate from all the other points about the protections
14 that we may be able to gain from these contracts.

15 To reject these contracts, in my view, you
16 have to be willing to accept the risk that the additional
17 help afforded by the buyers either won't be any help
18 at all or that it won't help enough, and accept the
19 fact that no matter what your individual reasons, your
20 action in rejecting these contracts is going to be
21 perceived broadly as a rejection of the Trans-Alaska
22 route. For my own part, given the fact that the contracts
23 will be void if we lose, given the fact that they are
24 clearly of extreme importance to our Congressional
25 Delegation, given the fact that they will be void if

1 the full take-back scheme is not approved Federally,
2 given the fact that we will be doing all we can to
3 develop the in-State uses which could conceivably mean
4 that we never really sell a cubic foot of gas, that is,
5 get something for nothing; given those facts, I don't
6 think the risk of rejecting the additional assistance
7 makes a great deal of sense.

8 In conclusion, I would say that after a full
9 week of testimony a number of specific points have been
10 raised, but no one has yet suggested a concrete com-
11 prehensive alternative to the kind of advantages that
12 are suggested by these contracts.

13 Now, I'm going to be pleased to answer your
14 questions, but I hope that that additional subjective
15 judgment helps you at least to understand what I think
16 is important about the contracts.

17 Thank you, Mr. Chairman.

18 SENATOR RADER: Senator Huber.

19 SENATOR HUBER: Thank you, Mr. Chairman. Commissioner Martin,
20 would you care to comment on whether the course that we
21 embark upon with these contracts is anywhere as near
22 strong enough to win the route decision, especially in
23 light of Judge Litt's decision? Might not we be relying
24 on too little too late? Might not the contracts' greatest
25 drawbacks be that they stand in the way of an all-out

1 effort, such as that outlined by Jess Barry of Anchorage
2 when he talked to us Friday?

3 COMMISSIONER MARTIN: I'm sorry that I didn't read that
4 statement, but it seems to me that you're going to
5 get the maximum amount of effort that we can expect to
6 see from these contracts as they're presently framed.
7 In my view that would be my position, Senator Huber,
8 and it seems to me that we can always say that we're
9 later than we would like to be. Had not legislative
10 approval been necessary, had it not been as difficult
11 as it was to negotiate what I think are good contracts,
12 we may very well have been able to go earlier. But it
13 seems to me that we have an opportunity to do the right
14 thing now.

15 SENATOR HUBER: You're not familiar with Jess Barry's
16 proposal that he made before us Friday then?

17 COMMISSIONER MARTIN: Is it the proposal to eliminate the
18 flexibility provision in the contract?

19 SENATOR HUBER: No. It's a total proposal to get behind
20 it much harder. He likened it onto the way Alaska got
21 behind the Tennessee Plan to become a State, and he
22 meant getting with El Paso and joining with them, using
23 the State's bonding ability and everything else to help
24 in building the line so that we had something really
25 to sell to the people of the Lower 48, that Alaska is

1 getting in there to get them the energy they need.
2 COMMISSIONER MARTIN: I'd say two things, Senator. I haven't
3 read the proposal in detail. I'd be glad to do it.
4 I think that there will probably be things that we should
5 consider that would be of even more assistance. But if
6 I understand what you're saying, nothing that he proposes
7 in any way conflicts with the value or the benefits of
8 engaging in this contract.

9 SENATOR HUBER: That part may be true. Thank you.

10 SENATOR RADER: Representative Hayes.

11 REP. HAYES: Mr. Martin, on Friday Mr. Moody, who was
12 retained by this group, testified regarding one provision
13 in the contract which has been discussed as being one
14 of the major pluses, and that was the take-back provision.
15 He indicated that the contract was so strong in favor
16 of the State, particularly in that respect, that when the
17 producer/owners get around to financing the project
18 they may very well be faced with the problem, in dealing
19 with the financial institutions, of coming back to the
20 State and asking for some subordination or some relief
21 relating to that particular paragraph of the contract.
22 Have you taken that into consideration, or do you have
23 any opinion on it as far as ---

24 COMMISSIONER MARTIN: I've heard that point, Representative
25 Hayes, and, of course, it came up in negotiations as the

1 buyers attempted to tell us that we may, indeed, be
2 driving too hard a bargain. But it seems to me that
3 that again does not supply a reason to vote against the
4 contract, but only a fact that we may have to acknowledge
5 in the future. My own view is that he over-stated the
6 possibility of that happening. But, in any sense, I
7 think we ought to acknowledge it; but it doesn't give
8 me any pause at all in going ahead with the contracts.

9 REP. HAYES I think he made a statement to deal with
10 the alternative, which would not be entering into any
11 contract, and by not entering into any contract you would
12 not be put into the position of having to commit your
13 royalty gas. But then I think he, on the other hand,
14 said that if the State doesn't have their act together
15 by that time, by the time the pipeline is built, that
16 we may very well lose it anyway, the FPC may take it.
17 Do you agree with that?

18 COMMISSIONER MARTIN: That's the point I guess I was getting
19 at, and I would say this: a number of factors are going
20 to have to develop. Certification is the first of
21 several. Beyond certification, for which financing will
22 be a part, there will actually be the putting together
23 of a package to build whatever pipeline is certificated.
24 I think the State gives up nothing by going with these
25 contracts now that it can't adjust to and have a reasonable

1 opportunity to adjust to at a later time.

2 REP. HAYES: Thank you.

3 SENATOR RADER: Representative Gruening.

4 REP. GRUENING: Commissioner, can we infer from what you've
5 said that the Administration would not take kindly to any
6 suggestions of amendment to this contract? Do you see
7 any -- in other words, let me just say the consultants
8 did suggest some areas where the contracts weren't
9 perfect and there were some areas where we could lose
10 something in terms of price.

11 COMMISSIONER MARTIN: So far as I'm aware, Mr. Gruening,
12 none of the consultants suggested amendment. They sug-
13 gested in many cases clarifications which they felt
14 would be useful, and we'll attempt to supply those. Our
15 position on amending the contract is that if it's in
16 the public interest to do so, we're not totally closed
17 to the possibility. The Legislature should be advised
18 that amendments are a rejection of the present contracts.
19 Our procedure doesn't provide for amendments, but merely
20 approval or disapproval by the Legislature. We'll take
21 into consideration the reasons, if they're stated in
22 a unified manner, that a rejection is undertaken and
23 attempt to renegotiate the contract if it seems desirable
24 to do so. At the present time, frankly, we have not yet
25 had pointed out to us in any unified way suggestions for

1 amendments of the contract which would cause us to believe
2 they ought to be amended. I'm not saying we're closed
3 to it, but I'm saying it has implications for timing
4 and it has implications for future decisions on this
5 which we'll just have to discuss.

6 REP. GRUENING: Have you considered a special bill to allow
7 an expedited procedure for amendment?

8 COMMISSIONER MARTIN: I've given it some thought and I'm
9 not unwilling to discuss it. But as I've said before,
10 the way in which the Legislature deals with these
11 contracts is going to have a great deal to do with what
12 happens in the future in the royalty process. I think
13 you are well familiar with my view, that that's going
14 to have to be done in a way that doesn't create the
15 impression of the Legislature renegotiating the contracts.
16 I think that if you do that you'll simply find that
17 future individuals occupying my office are not going to
18 be willing to put anything on the line in negotiations.

19 REP. GRUENING: I'd like to call your attention to the
20 statutory provisions I think that govern you and the
21 Royalty Board, and I don't know if you were here but
22 you probably had an observer when Red Boucher made his
23 comments on a finding of surplus and immediate, domestic--
24 along with domestic and industrial needs for the royalty
25 gas. He stated that he was aware of no study that had been

1 submitted in accordance with the statute; in other words,
2 a report showing an immediate and long-range domestic
3 and industrial needs of the State for royalty gas. Is
4 that a correct assessment, or what reports or report
5 have been submitted in accordance with the statute?

6 COMMISSIONER MARTIN: There are really two answers to that
7 question. First, I don't believe it's a correct statement.
8 Two items have been submitted to the Legislature to
9 fulfill that requirement. The first is this analysis,
10 which is included in all the legislative packets.
11 I understood that it got left out of a few, but eighty
12 came over to the Legislature. The second was, this
13 document here, which wasn't in all the packets but
14 which was given to the Chairmen, at least to Senator
15 Rader, which is the background document for this.
16 And this document, Mr. Chairman, is a lengthy bibliography
17 which indicates the nature of all backup information
18 dealing with surplus gas.

19 Now, these things do exactly what the statute
20 demands, and that is to analyze the present and future
21 demands for surplus royalty gas. I'll go one step
22 further than that. The Legislature has a question before
23 it. I think we could spend a good deal of time deciding
24 whether or not this is exactly what you had in mind for
25 your report. In my mind it's unquestionable that this

1 deals with what we have, what the future may bring, and
2 what kind of surplus we have. So it's a technical decision
3 for the Legislature, which gives you every ability to
4 deal with the issue of future surplus. I should also
5 say that the Legislature received a copy of the Royalty
6 Board minutes and the indications of the Royalty Board's
7 consideration of this in which this was also well
8 discussed, and all of these documents referenced.

9 But as a further point, let me just say that
10 that point as a technical objection is exactly the kind
11 of thing that the Legislature should avoid to use as
12 an escape hatch for this kind of decision. The plain
13 and simple fact of the matter is that these contracts
14 take care of the surplus provision by definition.
15 There is no question that the future uses of royalty
16 gas in these contracts are protected by the terms of
17 the contract itself. Any future use -- and those future
18 uses are unknown -- is protected by the terms of the
19 contract. So that the analysis itself, while it's
20 interesting and fulfills the terms of the statutes,
21 is really not necessary to appreciate the fact that
22 we don't sell any future gas that's not surplus.

23 REP. GRUENING: Mr. Martin, I don't think it was the intention
24 of that question or any of the Legislators here in
25 raising that, to find an escape. I think we're looking

1 to see whether you and the Board have complied with the
2 law.

3 COMMISSIONER MARTIN: I understand.

4 REP. GRUENING: We have to examine, you know, it's our role
5 to examine that.

6 COMMISSIONER MARTIN: I understand, and I wasn't suggesting
7 that. I'm saying that -- I wasn't suggesting that motive.
8 I was suggesting that I think that it's not an appropriate
9 one, either in terms of being fulfilled or in reading
10 the contract fairly. I might say that I've asked Mr.
11 Boness, as well, to look at the material that was
12 submitted and to consider whether or not he thinks it's
13 reasonable in terms of fulfilling the law, that the
14 procedure might not have been fulfilled, and I'd ask
15 him to talk to that.

16 REP. GRUENING: No, let me just mention, you stated that
17 the take-back provisions in the contract -- the inference
18 was that that made the subject irrelevant as far as
19 surplus ---

20 COMMISSIONER MARTIN: No, I didn't say irrelevant.

21 REP. GRUENING: The inference was that the take-back pro-
22 visions had something to do with the compliance with
23 the statute, and it's just my reading that whether or
24 not there are take-back provisions in the contract
25 wouldn't have any effect on whether we find, in fact,

1 that you complied with the need to find a surplus.
2 COMMISSIONER MARTIN: I'm in agreement with you on that.
3 I didn't mean to suggest that they avoid the need for
4 fulfilling the requirement. I don't think they do.
5 But I think, to a large extent, the relationship between
6 those two ought to be understood in terms of the
7 objective of the statute, which is to protect us from
8 contracting away anything that is not surplus.

9 REP. GRUENING: These two reports, these are the documents
10 in which you place your reliance for compliance with
11 the statute?

12 COMMISSIONER MARTIN: That's right.

13 MR. BONESS: Representative Gruening ---

14 SENATOR CROFT: Could I ask?

15 SENATOR RADER: Senator Croft.

16 SENATOR CROFT: That particular statute, 38.05.184(d), that's
17 what we're referring to; right?

18 It says, "The Commissioner shall make public, in
19 writing, the specific findings and reasons on which his
20 determination is based and shall, within 10 days of the
21 convening of a regular session ..." -- I must have missed
22 that in my copy. Did you, yourself, Commissioner, make
23 specific findings?

24 MR. BONESS: Senator Croft, that refers to specific findings
25 in writing, I believe, for waiving of the competitive

1 bid provision; is that not correct?

2 SENATOR CROFT: That's not correct. "...within 10 days of
3 the convening of a regular session of the legislature,
4 submit a report showing the immediate and long-range
5 domestic and industrial needs of the state for oil and
6 gas and an analysis of how these needs are to be met."

7 MR. BONESS: That's right, that's the statute.

8 SENATOR CROFT: My question is, where are the specific findings
9 by the Commissioner?

10 MR. BONESS: These documents.

11 SENATOR CROFT: I thought those were done by the staff.

12 COMMISSIONER MARTIN: They were submitted as a part of the
13 information submitted from my office to the Legislature,
14 and by the Governor.

15 MR. BONESS: Senator Croft, you're not suggesting that the
16 Commissioner, himself, personally has to perform the
17 economic analysis, are you?

18 SENATOR CROFT: Yes. It seems to me that the Supreme Court
19 in the Kachemak Bay decision would probably read that
20 statute the same way.

21 MR. BONESS: Well, I would not recommend that. If you
22 look at the ---

23 SENATOR CROFT: That was the argument the State was making
24 in the Kachemak Bay case, wasn't it, that the Director
25 of the Division of Lands didn't actually have to do it?

1 MR. BONESS: Senator, I'd prefer not to debate that point.

2 I would point out that almost all of the statutes dealing
3 with the responsibilities of the Department of Natural
4 Resources refer only to two persons, the Commissioner
5 of Natural Resources and the Director of the Division
6 of Lands. As a legal matter, I would not render an
7 opinion that said that those two individuals had to
8 perform all of the tasks now being performed by however
9 many people are employed in that agency.

10 SENATOR CROFT: But isn't that the question we're talking
11 about with regard to whether 38.05.184(d) has been
12 complied with?

13 MR. BONESS: Yes, it is, and I believe these documents do
14 comply with that.

15 SENATOR CROFT: Then you are rendering a legal opinion that
16 that statute has been complied with?

17 MR. BONESS: That's right.

18 SENATOR RADER: Any further questions?

19 SENATOR CROFT: I had some additional questions. Commissioner,
20 with regard to your statement that, "We have gotten the
21 best price we could reasonably expect to get under the
22 circumstances," one of the things that Mr. Moody said
23 was that we are conceding by these contracts that the
24 State sale price is limited to the amount which the
25 Commission will permit the buyers to retain in their

1 jurisdictional rates. Do you mean by saying that we've
2 got the best price reasonably possible that we had no
3 chance of making the argument before the FPC and won't
4 be able to make the argument successfully before the FPC
5 that we are not a person within the meaning of the
6 Natural Gas Act?

7 MR. BONESS: No, Senator, it does not mean that at all.

8 SENATOR CROFT: Are we going to concede the point before
9 the FPC that we are a person?

10 MR. BONESS: No, we are not. We definitely are not going
11 to concede that point.

12 SENATOR CROFT: Do you think we have a reasonable chance
13 of prevailing on that?

14 MR. BONESS: Yes, I do.

15 SENATOR CROFT: And if we do prevail on that point then our
16 rates are not limited by the FPC?

17 MR. BONESS: No, I can't agree with that.

18 SENATOR CROFT: Isn't that what Mr. Moody said?

19 MR. BONESS: No. Let me tell you what I believe Mr. Moody
20 had in mind. Mr. Moody and Mr. Swanson both addressed
21 the question to the effect that the State might argue
22 in the rate setting proceeding which will occur sometime
23 in the future before the Federal Power Commission, that
24 the State might have a special argument to the effect
25

1 that royalty gas should receive a higher price than
2 working interest gas because the State is a state, and
3 the money received by the State will go to public
4 purposes. I'm afraid I don't recall what Mr. Swanson
5 and Mr. Moody's assessment of that is. I believe their
6 assessment was that that's pretty unlikely, although
7 I'm afraid I don't know whether they told the committee
8 that or I just recollect that from conversations with
9 them. But I am willing to state that it's my opinion
10 that that outcome is extremely unlikely, and there are
11 two reasons for it. First of all, in effect, what you're
12 doing is, you're saying that the working interest owners
13 have put money in at risk and have incurred certain
14 costs, they should receive a price less than the State,
15 where the State hasn't incurred any costs, hasn't put
16 any money at risk in terms of the development or
17 exploration of the field, and yet should receive a
18 higher price simply because it's going to put its money
19 to a public purpose presumably, and the oil companies
20 are not.

21 Furthermore, when you analyze that through, what
22 you're really saying is the purchasers of gas are going
23 to be paying a higher price for that gas which is sold
24 by the State of Alaska. I think when you carry that
25 argument through, what you're really saying is consumers

1 in New York and in the East are transferring money to
2 the treasury of the State of Alaska, and I think when
3 the argument is cast in those terms it's unlikely to be
4 persuasive at the Federal Power Commission. There is
5 no obligation on the Federal Power Commission to so find
6 that State owned royalty gas should receive a higher
7 price, and I just personally do not believe that there
8 are many compelling arguments that can be made to cause
9 the FPC to associate a higher price with respect to
10 State royalty gas than other gas.

11 SENATOR CROFT: I had thought that the position of the State,
12 Mr. Chairman, was that sales of royalty gas are not to
13 be regulated by the Federal Power Commission.

14 MR. BONESS: That's right.

15 SENATOR CROFT: And that was what Mr. Moody was also suggesting.

16 MR. BONESS: That's right.

17 SENATOR CROFT: And if they're not regulated, then a price
18 higher than what they allow could be obtained?

19 MR. BONESS: Only if you can find somebody to pay it.

20 SENATOR CROFT: That's correct, and what you're saying is
21 you think that there may well be -- we may well win
22 with regard to this point before the Federal Power
23 Commission if we don't execute these contracts, but
24 that we can't find anybody to pay the higher price?

25 MR. BONESS: I think that's a part of the problem.

1 SENATOR CROFT: And who did we negotiate with to determine
2 if they would pay a higher price?

3 COMMISSIONER MARTIN: We didn't negotiate with anybody,
4 Senator Croft, but we've solicited nation-wide two times
5 to attempt to find buyers who would come and negotiate
6 with us on those or any other terms to provide for in-State
7 use or for other purchases of our gas, and we haven't
8 found people who will do it. So the answer is, we didn't
9 negotiate with anybody, but we didn't find anybody to
10 negotiate with.

11 MR. BONESS: I would go beyond that, Senator. We still
12 confront another legal problem, and Mr. Moody did concur
13 on this, and that is the problem of sales to people
14 who are not regulated by the Federal Power Commission
15 and whom you seem to be suggesting might be willing to
16 pay a higher price.

17 SENATOR CROFT: No, no. What I'm talking about is because
18 this sale is not regulated. That's the State's position,
19 isn't it?

20 MR. BONESS: That's correct.

21 SENATOR CROFT: Do you agree with Mr. Moody that we are now
22 conceding that the FPC does regulate the price?

23 MR. BONESS: No, I certainly do not. In fact, Mr. Byrd
24 pointed out that the contracts were drafted to make sure
25 that there was no argument available to the Federal

1 Power Commission that the State was placing itself in
2 a position identical to that of the producer. We tie
3 ourselves to the price the pipeline companies are allowed
4 to include in their jurisdictional rate base. We do
5 not, although as a matter of convenience it's easy to
6 think of us as tying ourselves to the producers, and
7 indeed in many ways we do, as a legal matter I believe
8 we protected ourselves from an argument that these
9 contracts constitute an admission that we're subject
10 to the Federal Power Commission's jurisdiction because
11 of the way it's drafted.

12 SENATOR CROFT: So that you disagree with his statement
13 that we are conceding the point of FPC regulation?

14 MR. BONESS: Senator, I never understood Mr. Moody to say
15 that we were conceding we were subject to jurisdiction.
16 I understood him to say that we would find ourselves
17 being indirectly regulated by the Federal Power Com-
18 mission with respect to price. I agree with that, I
19 believe it's inescapable for us. But if you're talking
20 about a technical, legal matter, I do not believe
21 we have conceded it.

22 SENATOR CROFT: We've conceded that the only price that
23 these buyers can pay is what can be built into their
24 rate base?

25 MR. BONESS: That's correct.

1 SENATOR CROFT: And so that we have, in effect, given any
2 authority that we have to try and determine a rate.
3 MR. BONESS: That's correct.
4 SENATOR CROFT: And you'd agree with his point on that?
5 MR. BONESS: Yes, I do.
6 SENATOR CROFT: That whatever authority we had to try and get
7 the highest rate with regard to future sales is given
8 up and our sole rate determination is based upon what
9 third parties agree to?
10 MR. BONESS: The rate will be determined by outside parties,
11 yes.
12 SENATOR CROFT: Do you also agree with his point that there
13 is no price at this time and that if the status quo
14 remains that you will have to go back and renegotiate
15 these contracts in order to get a price?
16 MR. BONESS: No. If the status quo remains, there will be
17 no gas produced in Prudhoe Bay. The producers haven't
18 entered into contracts.
19 SENATOR CROFT: If the status quo with regard to no deregula-
20 tion, his point in item number three ---
21 MR. BONESS: If gas continues to be regulated the price that
22 Prudhoe Bay gas may be sold in interstate commerce for
23 resale will be set by the Federal Power Commission. It
24 will not be necessary to renegotiate the contracts. We
25 will accept the price that the pipeline companies are

1 allowed to include in their jurisdictional rate base.
2 That price will be determined by the Federal Power
3 Commission. I believe what Mr. Moody said was the
4 State ought to be prepared to participate in that rate
5 setting proceeding.

6 SENATOR CROFT: Maybe I'm missing something. What I'm
7 referring to, so there is no question, if I could,
8 Mr. Chairman, is on his page seven of his report,
9 Item Number Three.

10 MR. BONESS: Neither Section 6.3 nor 6.4 yields a present
11 price for their conditions precedent deregulation has
12 not occurred. Now, it's your suggestion that deregulation
13 does occur.

14 SENATOR CROFT: No, I'm saying if it doesn't. Isn't that
15 what he says, "I am at a loss, therefore, to advise
16 the committee on the sale price which will be applicable
17 at the time of first delivery."

18 MR. BONESS: If the status quo prevails.

19 SENATOR CROFT: Which means no deregulation, I assume?

20 MR. BONESS: All right, and the reason he's at a loss is
21 because -- it relates to the first sentence in that
22 paragraph, which says, "At this time the State cannot
23 determine its sale price because no rates have been set
24 for Alaska gas at this time." That's why he's at a loss
25 to tell you whether you're going to get Twenty Cents

1 or Two Dollars an mcf, because that rate making proceeding
2 has not occurred yet. It will occur before gas flows.

3 SENATOR CROFT: Then what does he mean by, " if the status
4 quo prevails through the time of first delivery"?

5 MR. BONESS: Meaning if no rate making hearing occurs before
6 the time of first delivery there will be no rate established.

7 I believe Mr. Moody went at some length to indicate
8 how the various ways of rate making proceeding could
9 come up. As you recall, he indicated there were a number
10 of ways. The FPC could adopt a rule making proceeding
11 and just decide to establish an Alaska rate as it did
12 for the National rate. The producers could enter into
13 contracts and file those contracts with the Federal
14 Power Commission, and a rate could be established that
15 way. And the third way a rate could be established is,
16 gas would start to flow and the pipeline company would
17 file a tariff, and the purchasers, or the producers'
18 gas would file tariffs for sales of it, and the FPC
19 would then investigate those tariffs and decide whether
20 it is. One of those three ways of rate making will
21 come about. It is most likely that will occur before
22 the gas begins to flow. It's conceivable it will not.

23 SENATOR CROFT: And that's what he's referring to?

24 MR. BONESS: That's right.

25 SENATOR CROFT: When he says the status quo?

1 MR. BONESS: That's right.

2 SENATOR CROFT: And if it doesn't occur, if none of those
3 three things occur, then there will have to be an addendum
4 to the contracts or modification

5 MR. BONESS: There will have to be a rate established at that
6 time, yes.

7 SENATOR CROFT: So as I understand it, with regard to
8 point three, you agree that there is no price in these
9 contracts but you think that by the time the gas is
10 produced there likely will be.

11 MR. BONESS: That's correct.

12 SENATOR RADER: Let me ask a question here. As I understood
13 it -- I think maybe you've answered the question and
14 maybe you haven't, I don't know. These contracts, as
15 I understand it, do not for a moment admit that the
16 State is under the regulation or jurisdiction for purposes
17 of sale of our gas, but what it does recognize is the
18 purchasers are under regulation, because it has to go
19 in a pipeline which is under regulation and that,
20 therefore, we indirectly, because our purchasers are
21 under regulation, that the price that we can get on an
22 interstate commerce carrier here will be regulated because
23 the purchaser is regulated; not because we're regulated;
24 is that correct?

25 MR. BONESS: Yes, it is.

1 SENATOR RADER: There is no way to avoid that for any gas
2 that goes into interstate commerce, is there?

3 MR. BONESS: Any gas that goes into interstate commerce for
4 resale would be the problem with respect to the provisions
5 we're now talking about, the regulation of natural gas
6 companies. Even if we made a sale of gas into interstate
7 commerce which was not for resale, the problem would
8 still exist because of the Federal Power Commission's
9 jurisdiction over the transportation aspects of the
10 pipeline. They could, in effect, veto a sale of gas
11 over which they did not have any direct jurisdiction
12 by vetoing transportation authority, and they have done
13 that in many cases. In fact, I was advised over the
14 weekend that last week the Federal Power Commission, with
15 respect to emergency sales in Tennessee Natural, which is
16 not related in any way to the pipeline we're selling gas
17 to, but in that proceeding they have a special procedure
18 called emergency sales which allows gas to be sold for
19 sixty days in an essentially unregulated fashion. The FPC
20 routinely grants certificates. Nevertheless, Tennessee
21 Natural negotiated a contract for Two Dollars and Seventy-
22 Five Cents per mcf, which the FPC felt was too high and
23 denied that certificate. They can apply the same kind
24 of approach to the State. If we were to negotiate a
25 contract for the sale of gas, for example, for boiler

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1 fuel, which would be a direct use and the FPC wouldn't
2 have jurisdiction over that sale, even assuming we were
3 a person, they could veto and probably would veto the
4 transportation aspects of that arrangement.

5 SENATOR RADER: Senator Croft.

6 SENATOR CROFT: I had a couple more. With regard, Commissioner
7 Martin, to these people that you had asked to bid, as I
8 understand it, competitive bidding and public bidding,
9 you asked for competitive bids?

10 COMMISSIONER MARTIN: No, sir. We went though, two times,
11 by national publication to express interest in having
12 buyers for Alaska royalty oil or gas. In each case we
13 indicated we wanted to have all expressions of interest
14 but that we favored expressions of interest which leaned
15 toward in-State use. I've expressed to this committee
16 and others before that, at least at this time, not a
17 great deal of interest has been expressed. I've given
18 the committee my findings with respect to competitive
19 sales in this situation and I've told them my view that
20 competitive sales are going to be difficult, even though
21 they're desirable, so long as we have fixed stated
22 objectives, and some people would be better than others
23 at fulfilling them.

24 SENATOR CROFT: Is competitive bidding, in your mind, the
25 same as public bidding?

1 COMMISSIONER MARTIN: No, I think that you could make
2 distinctions between the two.

3 SENATOR CROFT: I don't want to be overly technical, but I
4 noticed that the approval of the request of Commissioner
5 of Natural Resources to waive requirements of competitive
6 bidding, that it actually says that, "Now, therefor, the
7 Alaska Royalty Oil and Gas Development Advisory Board
8 hereby grants to the Commissioner of Natural Resources
9 its approval of his request to waive public bidding."
10 What's actually meant was competitive bidding?

11 COMMISSIONER MARTIN: I would think so in that context, yes.

12 SENATOR CROFT: I assume, Mr. Boness, you'd say legally
13 that there is no problem with that?

14 MR. BONESS: Senator, I haven't been involved in the drafting
15 of those. I apologize for the error, but I assure you
16 that it was not my intent and, I suspect, the intent
17 of the Royalty Board to draw any distinction between
18 public and competitive bidding.

19 SENATOR CROFT: But there is a difference between the two?

20 COMMISSIONER MARTIN: There could be in some context; I don't
21 think there is one intended there.

22 SENATOR CROFT: One final question, if I could. Commissioner
23 Martin, before the Royalty Gas Advisory Board, I think
24 you made some apologies to the Governor and said that
25 what you had thought we had done here was harness a team

1 of powerful horses to plow a very rocky field. I'm
2 curious with regard to, say, the Tenneco provision,
3 or the switching provision and Tenneco, who said basically
4 that they didn't think they would be able to switch;
5 do you really believe that with that switching provision
6 you're going to be able to take all of these powerful
7 horses with you if you decide to go in some other
8 direction?

9 COMMISSIONER MARTIN: I've always regretted that statement,
10 right from the time I wrote it, Senator. First of all,
11 we don't intend to switch. I've said that on many
12 occasions.

13 Secondly, it seems to me the situation that
14 would have to exist at the time any switch were desirable
15 would be really quite an extraordinary one. But my
16 point has been continually that I think that it's an
17 important benefit for the State to preserve, simply
18 because of the kind of flexibility that's afforded may
19 turn out to be in our interest at a later time.

20 For political purposes, I think it would clearly
21 be a greater expression of political faith for the
22 Governor, for the Legislature or for others to say,
23 "We're going all or none for one route." Quite frankly,
24 that's the position I take. I think that's where we are
25 going. But it does seem to me that it is at least

1 possible in the future that circumstances could change
2 and that El Paso could be shown to be and concluded to
3 be, by all the important decision-makers in this State,
4 a loser in the process, and it could be at that time
5 that Alcan, which is a second choice, far superior to
6 Arctic, could be at some future time our only remaining
7 alternative. If that situation existed it would not
8 be any lack of credibility that would confront us, because
9 our first choice would simply be out of the field and
10 we would not be saying that it's a worse possibility;
11 we'd simply be saying that that is no longer a possibility
12 and then we could switch the support.

13 SENATOR CROFT: I understand that that wouldn't cause you
14 a credibility problem, but Tenneco said it would cause
15 them a problem. My question is, do you believe that if
16 you switched you'd take Tenneco and El Paso with you?

17 COMMISSIONER MARTIN: My belief is yes, and I haven't read
18 the transcript of their response. But I recall talking
19 at length with our buyers on this issue really to ascertain
20 their level of commitment to the route that the State
21 favored. My feeling was that the buyers that we
22 eventually sold to do have a deep commitment to the El Paso
23 route. I never have heard them address the question
24 that you just said and the context I just did, "What if
25 it were only a choice between Alcan and Arctic, and

1 could you then with credibility switch and support
2 another route?" I would think that their answer would
3 be pretty much the same as mine, and that is, "If those
4 are your two alternatives, yes." You could make a
5 credible argument as between the two alternatives, so
6 I don't even agree with their assessment and I don't
7 think they answered in that context. I may be wrong.

8 SENATOR CROFT: Well, I guess the hearings will show whether
9 they did or not. Let me ask one final question in that
10 regard, with regard to this team of powerful horses,
11 and if it makes you uncomfortable I don't want to belabor
12 it, but I am curious as to exactly why you feel that
13 way with regard to El Paso. I mean, it seems to me,
14 and as Professor Tussing pointed out, that El Paso's
15 primary sales area is California, and yet one of the
16 areas of the country where most resistance to the El Paso
17 project exists, if not the area in which the greatest
18 opposition exists is in the primary market area of one
19 of the three companies with whom you contracted; how
20 can you really say El Paso brings to these contracts a
21 tremendous ability when their track record of two years,
22 more than two years now in California indicates just the
23 opposite?

24 COMMISSIONER MARTIN: Well, I think I tried to address this
25 question with you before, Senator Croft. I'll say two

1 things. One is, that's a subjective judgment I think
2 a number of people are going to have to make on their
3 own. In trying to assess that I've tried to do what I
4 have with the others, and that is to get the broadest
5 consensus as to which companies can help. Our Delegation
6 is unanimous in feeling, to the contrary of what you've
7 just suggested, that El Paso can be of help and should
8 get gas under this contract, and that it will help.

9 It seems to me that in spite of whatever dif-
10 ficulties exist in California, their argument is enhanced
11 by sale of the gas because they then can say that
12 they will not only win the route but will have a gas
13 supply to bring to their constituency, and that's the
14 difference. The difference is that they are put in a
15 position of being able to give gas to their consumers
16 as opposed to simply having a pipeline certificated in
17 their name but with no gas to go through it to their
18 consumers, and that, I suppose, is a very important
19 difference.

20 SENATOR RADER: Representative Parr:

21 REP. PARR: One final question, Mr. Chairman. Mr. Martin,
22 in talking about what went on last week there's one point
23 you went over in kind of a hurry and yet to me it is
24 one of the rather difficult points. The reason that
25 we're talking about going into contracts at this time is

1 very simple; we want to get some political clout,
2 national constituency, call it what you will, right, to
3 help us get the Trans-Alaska route ---

4 COMMISSIONER MARTIN: Mr. Parr ---

5 REP. PARR: Let me finish my question.

6 COMMISSIONER MARTIN: I'm sorry. You asked me "right" and
7 I thought that was the question.

8 REP. PARR: I'm sorry, I'm leading up to it; beg your pardon.

9 That was the reason that we were going into these contracts
10 at all, as I understood it. So we thought, "Well, now,
11 what kind of assistance are these companies going to
12 give us?" The contract, I think, just says actively
13 support; without looking back at it, that's my recollection
14 of what it says. And we tried to get that made a little
15 more specific, and we never got it last week. At least
16 I never heard it. In fact, I think I phrased the question
17 to the gentleman from Tenneco who had told us they had
18 Seven Billion Dollars in assets and did a Five Hundred
19 Million Dollar business. You know, I couldn't quite
20 believe they weren't going to budget something for this
21 effort. They weren't, or at least they haven't.

22 So would you mind commenting on that whole area, please?

23 COMMISSIONER MARTIN: Yes, Mr. Parr. I wish I could somehow
24 communicate to you, in spite of your characterization
25 of the issue, make it clear that my feeling is that that's

1 not the only reason. I tried very hard in my opening
2 statement to lay out a number of areas that I thought
3 were of equal importance in these contracts. So I'm
4 going to lay it on you squarely, that in rejecting these
5 contracts, should you choose to do so -- I want you to
6 know that my view is that regardless of your own character-
7 ization, my feeling is that you would not just be
8 rejecting whatever political clout you choose to assign
9 to these contracts, but one of the best opportunities
10 we have to accomplish all of the other objectives I
11 laid out. Now, in terms of the political issue itself,
12 which is one of many, let me say again, I don't think
13 that you are going to get a quantifiable idea of what
14 these companies will do.

15 Let me try to give you an idea of what I think
16 will happen. First, they've already intervened in the
17 FPC, as I discussed with Senator Croft. I don't think
18 they were the difference, pro or con, in that fight.

19 Secondly, I think each of them will mount
20 substantial efforts in support of the Trans-Alaska
21 pipeline in Congress. Those efforts will consist of
22 the retention of lobbyists, assignment of company
23 personnel, and the development of information within
24 their companies in support of that route, information
25 which, quite frankly, would be very difficult to produce

1 in the volumes and to disseminate in the way that would
2 be useful, without additional parties in the fight.
3 In addition to that I expect that they'll do substantial
4 work in their constituent areas to attempt to indicate
5 to people the benefits of the Trans-Alaska line as a
6 way to bring gas into their areas and will try to
7 mobilize those people at a local level to deal with
8 their Congressmen and Senators on the issue.

9 I also think that they'll participate with
10 El Paso as the design, and the details of any El Paso
11 route through Alaska that are put together. Both Tenneco
12 and Southern have substantial offshore capability and
13 substantial LNG experience. In my view, and I think in
14 the view of others, they have an opportunity to sub-
15 stantially and materially improve the quality of the
16 overall project once it's funded and to prove to Members
17 of Congress and the Administration that they're capable
18 of doing so as it's developed.

19 One of the problems with El Paso that's been
20 pointed out in the past has been that El Paso has not done
21 as well or as complete a job in its homework in terms of
22 design in proposing this route as they could have. I
23 think that both Tenneco and Southern have the capability
24 to substantially improve that.

25 I think that generally categorizes the sorts of

1 things that they're expected to do. My guess is that
2 overall the expenditures, while I can't give you a
3 budget figure either, will be in the over Hundred
4 Thousand Dollar category, and I also believe, it's my
5 personal belief -- and I also believe that this view
6 can only be made subjectively. In trying to deal with
7 my own subjective judgment, I feel compelled not to
8 try to rely on an individual judgment, but to check
9 it with others.

10 I've consulted with the Congressional Delegation
11 from beginning to end on this and they share, generally
12 speaking, the advantages that I outlined. But I don't
13 think that even the Congressional Delegation will be
14 able to give you a dollar for dollar quantification
15 of what will happen. They only know that it's very
16 valuable.

17 REP. PARR: Mr. Chairman.

18 SENATOR RADER: I'm quite certain that we're not going
19 to be able to conclude with the witnesses here. It's
20 12:00 o'clock now. The Senate goes in at 2:00 o'clock
21 and we should be through at 3:00 o'clock. I know that
22 Representative Chatterton has a series of questions that
23 he wants answered, and I think there's still a number
24 of unanswered questions that other members want to
25 depose. It would be my suggestion that we recess until

1 3:00 o'clock. I don't think there's any point in
2 coming back here at 1:30 for twenty minutes to try to
3 put anything together between 1:30 and the time the
4 Senate goes into session, although I think that we
5 could have a good two-hour shot at it between 3:00 and
6 5:00, or if we want to go we can go beyond that.

7 Does that sound appropriate to the committee?

8 Now, unless I'm interrupting you right in the
9 middle of a series of questions.

10 REP. PARR: No, a very short thing, Mr. Chairman, since I
11 won't be able to be back at 3:00. I've cancelled
12 committee meetings all last week for this and I can't
13 keep on doing it. I'd like to ask one very brief one.

14 SENATOR RADER: Go ahead.

15 REP. PARR: The first thing I'd like to say is to summarize
16 what Mr. Martin just said as I understand it, and I
17 guess this is where we have subjective judgment
18 disagreeing. First, I do think that perhaps my charac-
19 terization is accurate. If it weren't for the chance
20 to get a political clout we would be in no hurry to
21 enter into any contracts, number one.

22 Secondly, that what Mr. Martin has just said,
23 and if you listened to it carefully, he kept saying,
24 "I think," "I believe," and "the Congressional Delegation
25 believes," and he admitted, he said at the end -- not

1 admitted, he said at the end, "This is a subjective
2 judgment." So what we're really face down to is, are
3 we willing to subjectively have faith in these companies
4 to really make a significant effort. They have been
5 unwilling to quantify in any way the number of people
6 they will assign, the number of dollars they will spend,
7 or anything else at all. So we simply either have to
8 have faith in them or not.

9 I'm sorry, Mr. Chairman, to take so long but
10 that's the end of my statement, and I won't be here
11 this afternoon.

12 SENATOR RADER: Do we have any further questions that cannot
13 wait until 3:00 o'clock? We will stand in recess
14 until 3:00 o'clock.

15 (Whereupon the hearing recessed at 12:05 p.m.
16 and reconvened at 3:00 p.m.)

17 SENATOR RADER: The joint hearing will come to order. We
18 have clean copies of two documents which should be made
19 exhibits. The first would be the Federal Power Commission
20 News Release No. 22868. It will be Exhibit 28.

21 (Whereupon Exhibit 28 was duly marked.)

22 SENATOR RADER: That one is entitled "FPC Judge Recommends
23 Approval of Arctic Gas' \$8.5 Billion Alaskan Gas Project."
24 It consists of eleven pages. And Exhibit 29 will be
25 Federal Power Commission News Release No. 22869, entitled

1 "Alaskan Natural Gas Fact Sheet," consisting of four
2 numbered pages and three unnumbered attachments. Give
3 those to the reporter.

4 (Whereupon Exhibit 29 was duly marked.)

5 SENATOR RADER: Exhibit No. 30 is a letter from Ruth A. M.
6 Schmidt, Ph.D. of Anchorage, Alaska, dated January 30,
7 1977, consisting of two pages, addressed to the House
8 Special Committee on Royalty Gas Sale, Attention
9 Representative Clark Gruening. That will be introduced
10 then as Exhibit 30.

11 (Whereupon Exhibit 30 was duly marked.)

12 SENATOR RADER: Did you want this read or just introduced
13 as an exhibit?

14 REP. GRUENING: Introduced as an exhibit. Why don't we make
15 copies for everybody?

16 SENATOR RADER: Besides, I hate to keep our witnesses longer.
17 Senator Poland, why don't you join us up here? It would
18 be more convenient, I think, for participation, and if
19 Colletta or Senator Butrovich come we can make some other
20 arrangements.

21 SENATOR CROFT: Mr. Chairman, I might indicate that at 3:30
22 I'm going to have to go to a Judiciary Committee meeting.
23 When that's over I'll return here.

24 SENATOR RADER: Fine. Under those circumstances, Senator
25 Croft, do you have any particular further questions of

1 these witnesses?

2 SENATOR CROFT: I do, but I think Mr. Chatterton and Mr.
3 Hayes do.

4 REP. CHATTERTON: I'll yield to you.

5 SENATOR CROFT: Let me ask, in light of the fact, Mr.

6 Chairman, that we've now been furnished pages two and
7 three of the Power Commission news release that summarized
8 in ten pages Judge Litt's decision in that regard, (or
9 eleven pages) and the two and three that we had were a
10 part of another press release of the same date from the
11 Federal Power Commission, and the two and three that we
12 now have have some information that refer to prices,
13 which is what my questions were about, Commissioner
14 Martin and Mr. Boness. On page two there's some
15 obviously different language. Instead of describing
16 the El Paso and the Alcan projects he talked about
17 rolled in prices and city gate. But on page three in the
18 next to the last full paragraph of that page and in
19 the last full paragraph, he makes two comments.

20 In the middle of the next to the last full
21 paragraph he says, "The important missing ingredient was
22 sales contracts by any of the thirteen producers who hold
23 interest in Prudhoe Bay reserves." Then at the last of
24 the last full paragraph he says, "The producers, like
25 G. B. Shaw's dinnertime companion, have a price at which

1 they would sell their 'service,' and all their protes-
2 tations to the contrary cannot hide that they are mainly
3 dickering over price. Then on page ten, it seemed to me,
4 he made another reference to the fact that the producers'
5 failure to sign sales contracts indicates where their
6 concern lies.

7 I understand your feeling that the State got
8 the best possible price under the circumstances, but isn't
9 that a pretty clear indication that Judge Litt believes
10 that it's the producers' opinion that if they wait
11 until a later date that they can get the highest price,
12 and his feeling that the reason they are waiting is solely
13 to get a higher price?

14 COMMISSIONER MARTIN: Yes, sir, we think they're dickering
15 with the FPC over price. Let me put that in some perspec-
16 tive in terms of what that means to us. They definitely
17 are trying to deal with the FPC and to maximize their
18 advantage. But let me point out that it may or may not
19 be the case at a later time that they get a better price.
20 For instance, it may be they don't or, on the other hand,
21 it may be that some get a very good price under a
22 deregulated situation and others get a worse price.
23 But whatever that price is, under the contracts we have
24 we're going to get the benefit of the best deal that
25 anybody makes. So we basically tied ourselves to the

1 very best that anyone can do.

2 The second factor is simply to, I think, look
3 just very briefly at the fact that the significance that
4 he attaches to it beyond that is simply not to regard it
5 as an important influence on the decision, but simply
6 his irritation in not having information in regard to
7 who the buyers will be for financing purposes. So I
8 think that the State still stands in a better situation
9 by having sold and created some kind of an incentive
10 in favor of the route we support, as opposed to these
11 guys who, you know, are going to sell -- just like
12 Columbia -- to people who believe that they'll get the
13 gas whichever way the pipeline goes. Let me ask
14 Mr. Boness to respond a little further.

15 MR. BONESS: Yes. There's a basic difference between the
16 producers and the State that has to be faced up to, and
17 that is, the producers get to decide whether the gas is
18 ever produced or not. The State does not find itself
19 in that position.

20 The producers are telling the Federal Power
21 Commission, "If you don't set a high enough price for us
22 we're not going to sell the gas, we're never going to
23 commit it to the interstate market; we're not going to
24 produce it; we'll continue to reinject it as long as
25 we're allowed to do so." And in that context, they are

1 dickering with the FPC.

2 As you recall, both Rush Moody and Dr. Swanson
3 indicated that the range of the price that could be
4 set for this gas is very wide. That gas could be set as
5 low as Twenty Cents because of the problems associated
6 with establishing gas prices for a reservoir which has
7 both oil and gas in it, or it could be as high as the
8 national price, which is now a Dollar Forty-Two, and
9 conceivably it could be higher. That's the dickering
10 that's going on between the Federal Power Commission
11 and the producers. But the State does not participate
12 in that threshold decision with respect to whether the
13 gas is produced, except for the conservation statute,
14 but you have to realize that's a limited powers kind of
15 statute.

16 If I may, Senator Croft, I would quote to you
17 from a statement made by an attorney for Exxon to the
18 Federal Power Commission at the time the Judge was
19 asking why they wouldn't enter into contracts. I think
20 it really offers a great deal of insight into where
21 the producers are at. And with the committee's indulgence
22 I would do that, if I may.

23 Mr. Erck, (who is the attorney for Exxon) said,
24 "First of all, Exxon's position with respect to the
25 negotiation of definitive gas purchase and sales contracts

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