

ALASKA LEGISLATURE SPECIAL COMMITTEE / SUBJECT FILES 86/2

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

Applied in *Arco Pipeline Co. v. 3.60*
Acres, More or Less, Sup. Ct. Op. No. 1177
(File No. 2419), 539 P.2d 64 (1975).

Sec. 38.35.010. Legislative declaration of policy. (a) The natural resources of this state in crude oil and natural gas and in its land for transportation of these resources and their products by pipeline toward markets both in and out of the state are capable of making a significant contribution to the general welfare of the people of this state. It is the policy of this state that the development, use, and control of a pipeline transportation system be directed to make the maximum contribution to the development of the human resources of this state, the increase in the standard of living for all of its residents, the advancement of existing and potential sectors of its economy, the strengthening of free competition in its private enterprise system, and the careful protection of its incomparable natural environment.

(b) The State of Alaska reserves unto itself all rights, powers, privileges and immunities not preempted by federal interstate commerce laws and regulations in the right-of-way leasing of any state lands for pipeline construction, transmission, or operation within its boundaries. (§ 1 ch 72 SLA 1972; am § 1 ch 3 FSSLA 1973)

Effect of amendment. — The 1973 amendment added subsection (b).

Sec. 38.35.020. Grant of right-of-way lease. (a) Rights-of-way on state land including rights-of-way over, under, along, across, or upon the right-of-way of a public road or highway or the right-of-way of a railroad or other public utility, or across, upon, over, or under a river or other body of water or land belonging to or administered by the state may be granted by noncompetitive lease by the commissioner for pipeline purposes for the transportation of oil, products or natural gas under those conditions prescribed by law or by administrative regulation. Except to the extent authorized by an oil and gas lease or unit agreement approved by the state, no person may engage in any construction or operation of any part of an oil, products, or natural gas pipeline, which in whole or in part is or is proposed to be on state land unless that person has obtained from the commissioner a right-of-way lease of the land under this chapter.

(b) The commissioner may by regulation exempt the construction or operation of field gathering lines or any reasonable classification of them from the requirement of a right-of-way lease under this chapter. (§ 1 ch 72 SLA 1972; am § 2 ch 3 FSSLA 1973)

Effect of amendment. — The 1973 amendment designated the provisions of this section as subsection (a), added the exception to the beginning of the second sentence of that subsection, made such other changes in that subsection as to make a detailed comparison impracticable, and added subsection (b).

Sec. 38.35.030. Abandonment, reduction or impairment of service of pipeline. No lessee may abandon any portion of a pipeline that is subject to a lease granted under this chapter, or operation or transportation, service, or sale by it, or reduce or impair service, except in accordance with the terms of the lease or § 40 of this chapter. (§ 1 ch 72 SLA 1972; am § 3 ch 3 FSSLA 1973)

Effect of amendment. — The 1973 amendment deleted "carrier" following "lessee" and substituted "subject to a lease granted under this chapter" for "on state public land or subject to the lease" and "except in accordance with the terms of the lease or § 40 of this chapter" for provisions requiring a certificate that the abandonment, reduction, or impairment is in accordance with the terms of the lease.

Sec. 38.35.040. Temporary or emergency service or temporary abandonment, reduction or impairment of service by lessee. The commissioner may, either upon a request made in the form he shall by regulation require, or upon his own motion without request, authorize or require temporary or emergency rendering of service or temporary or emergency abandonment, reduction or impairment of service by a pipeline of a lessee without compliance with §§ 50 — 100 of this chapter. Nothing in this section prevents a carrier from temporarily suspending operations in the event of an emergency which threatens public health or safety; however, notice shall be given the commissioner as soon as possible. (§ 1 ch 72 SLA 1972; am § 4 ch 3 FSSLA 1973)

Effect of amendment. — The 1973 amendment deleted "carrier" following "lessee" near the end of the first sentence.

Sec. 38.35.050. Applications for right-of-way leases. (a) A person or persons desiring to own a pipeline which is proposed to be located in whole or in part on state land, shall apply for a noncompetitive right-of-way lease of the state land.

(b) Applications under (a) of this section shall be made in a form and manner prescribed by regulation, and shall include any and all data, information, plans and exhibits which the commissioner determines are necessary to prepare the analysis required by § 80 of this chapter and to make a decision under § 100 of this chapter.

(c) Any amendment to an application filed under this section which constitutes a substantial change in the application is subject to all provisions of this chapter applying to an original application.

(d) All persons owning or planning to own an interest in a pipeline or proposed pipeline subject to a lease must join in the application under (a) of this section. Any person employed by the lessee in operating the

pipelin
within
lease
against
72 SL

Effect
amendr

Sec
service

Rep

Edit
derived

Sec
under

(1)

circu

pipel

(A)

(B)

(2)

(3)

requ

(4)

appr

am §

Eff
amen

"§ 50

subst

daily

Se

shal

an a

incl

stat

wh

of t

(b)

the

app

ava

pipeline is bound by the covenants of the lease applicable to functions within the scope of his employment as if he were an applicant under the lease and the state may enforce any breach of a covenant directly against an operator who is not in compliance with the covenant. (§ 1 ch 72 SLA 1972; am § 5 ch 3 FSSLA 1973)

Effect of amendment. — The 1973 amendment rewrote this section.

Sec. 38.35.060. Application for certificate to abandon or diminish service.

Repealed by § 6 ch 3 FSSLA 1973.

Editor's note. — The repealed section derived from § 1, ch. 72, SLA 1972.

Sec. 38.35.070. Notice of application. Upon receiving an application under § 50 of this chapter, the commissioner shall

(1) cause notice of it to appear in a daily newspaper of general circulation published in the vicinity of the location of the proposed pipeline, the notice to include:

- (A) a general description of the land involved;
- (B) a summary of the substance of the application;
- (2) file copies of the application with each coordinate agency;
- (3) furnish at cost copies of a notice or application to persons requesting them; and

(4) provide other publication and notice he considers reasonable and appropriate to inform the public of the application. (§ 1 ch 72 SLA 1972; am § 7 ch 3 FSSLA 1973)

Effect of amendment. — The 1973 amendment deleted "or 60" following "§ 50" in the introductory language, substituted "a daily newspaper" for "the daily newspaper" and "in the vicinity of"

for "nearest" in the introductory language of paragraph (1), inserted "the notice to include" in that language, added paragraphs (1)(A) and (1)(B), and added paragraph (4).

Sec. 38.35.080. Analysis and public hearing. (a) The commissioner shall, within a reasonable time after receiving the application, prepare an analysis of the application or of the matter of which he was notified, including a proposal for action if feasible; a proposed lease and a general statement of his basis and purpose, if favorable action is proposed; or, when a proposal for action is not feasible before a hearing, a description of the subjects and issues involved.

(b) Upon completion of the analysis but not less than 30 days before the date set for hearing an application or a substantial amendment to an application, the commissioner shall publish notice, and make copies available as provided in § 70 of this chapter.

(c) The commissioner shall set all applications for public hearing as soon as practicable, if a public hearing on an application is requested by any person within 30 days of publication of notice under § 70(a) of this chapter or if the proposed action being considered involves a substantial public interest. The commissioner shall set the application for public hearing and publish notice of the time and place of the public hearing at least 30 days before the hearing.

(d) The provisions of the Administrative Procedure Act (AS 44.62) do not apply to hearings held under this section. (§ 1 ch 72 SLA 1972; am § 8 ch 3 FSSLA 1973)

Effect of amendment. — The 1973 amendment inserted "or of the matter of which he was notified" and deleted "or certificate or both" following "a proposed lease" in subsection (a), added the language beginning "if a public hearing on an application is requested" to the end of the first sentence of subsection (c), added the

second sentence of that subsection, and added subsection (d).

Editor's note. — The reference to § 70(a) of this chapter in the first sentence of subsection (c) should be to § 70(1) of this chapter. AS 38.35.070 contains no subsection designations.

Sec. 38.35.100. Decision on application. (a) The commissioner shall promptly determine, on an application filed with him under § 50 of this chapter, whether the applicant is fit, willing and able to perform the transportation or other acts proposed in a manner that will be required by the present or future public interest. In making a determination the commissioner shall consider whether or not

(1) the proposed use of the right-of-way will unreasonably conflict with existing uses of the land involving a superior public interest;

(2) the applicant has the technical and financial capability to protect state and private property interests;

(3) the applicant has the technical and financial capability to take action to the extent reasonably practical to

(A) prevent any significant adverse environmental impact, including but not limited to, erosion of the surface of the land and damage to fish and wildlife and their habitat;

(B) undertake any necessary restoration or revegetation; and

(C) protect the interests of individuals living in the general area of the right-of-way who rely on fish, wildlife and biotic resources of the area for subsistence purposes;

(4) the applicant has the financial capability to pay reasonably foreseeable damages for which he may become liable on claims arising from the construction, operation, maintenance or termination of the pipeline.

(b) If the commissioner makes these determinations favorably to the applicant, then he may grant the whole or part of the application. Otherwise, he shall deny the application. In order to grant the whole or part of the application the commissioner shall offer a lease to the applicant for its acceptance through signing of the lease and agreeing

to comply with its terms, conditions, and obligations. Only upon proper acceptance of offered lease by the applicant within 30 days after its having been presented is the grant of the application consummated. (§ 1 ch 72 SLA 1972; am § 9 ch 3 FSSLA 1973)

Effect of amendment. — The 1973 amendment rewrote this section.

Sec. 38.35.110. Term of lease. Each lease of state land for pipeline right-of-way purposes shall contain a provision that the lease shall run for a specified term of not greater than 30 years, and shall be renewable for additional periods of up to 10 years each, so long as the lessee is in commercial operation and is in full compliance with all state law, including but not limited to state law pertaining to regulation and taxation of the pipeline facility, and is in compliance with all terms of the lease. In making this determination he shall take into consideration the cost of the proposed pipeline, its useful life, and the probable financing requirement for the proposed pipeline. (§ 1 ch 72 SLA 1972; am § 10 ch 3 FSSLA 1973)

Effect of amendment. — The 1973 amendment substituted "30 years" for "25 years" and inserted "is in commercial operation and" in the first sentence and added the second sentence.

Sec. 38.35.120. Covenants required to be included in lease. (a) A noncompetitive lease of state land for a right-of-way for an oil or natural gas pipeline valued at \$1,000,000 or more may be granted only upon the condition that the lessee expressly covenants in the lease, in consideration of the rights acquired by it under the lease, that

(1) it assumes the status of and will perform all of its functions undertaken under the lease as a common carrier and will accept, convey, and transport without discrimination crude oil or natural gas, depending on the kind of pipeline involved, delivered to it for transportation from fields in the vicinity of the pipeline subject to the lease throughout its route both on state land obtained under the lease and on other land; however, a lessee who owns or operates a natural gas pipeline subject to regulation either (A) under the Natural Gas Act (15 U.S.C. 717 et seq.) of the United States, or (B) by the state or political subdivisions with respect to rates and charges for the sale of natural gas, is, to the extent of that regulation, exempt from the common carrier requirement in this paragraph; it will accept, convey, and transport crude oil or natural gas without unjust or unreasonable discrimination in favor of one producer or person, including itself, as against another but will take the crude oil or natural gas, depending on the kind of pipeline involved, delivered or offered, without unreasonable discrimination, that the Alaska Pipeline Commission shall, after a full hearing with due notice to the interested parties and a proper finding of facts, determine to be reasonable in the performance of its duties as a common carrier;

(2) it will interchange crude oil or natural gas, depending on the kind of pipeline involved, with each like common carrier and provide connections and facilities for the interchange of crude oil or natural gas at every locality reached by both pipelines when the necessity exists, subject to rates and regulations made by the appropriate state or federal regulatory agency;

(3) it will maintain and preserve books, accounts, and records and will make those reports that the state may prescribe by regulation or law as necessary and appropriate for purposes of administration of this chapter;

(4) it will accord at all reasonable times to the state and its authorized agents and auditors the right of access to its property and records, of inspection of its property, and of examination and copying of records;

(5) it will provide connections, as determined by the Alaska Pipeline Commission under AS 42.06.340, to facilities on the pipeline subject to the lease, both on state land and other land in the state, for the purpose of delivering crude oil or natural gas, depending on the kind of pipeline involved, to persons (including the state and its political subdivisions) contracting for the purchase at wholesale of crude oil or natural gas transported by the pipeline when required by the public interest;

(6) it shall, notwithstanding any other provision, provide connections and interchange facilities at state expense at such places the state considers necessary if the state determines to take a portion of its royalty or taxes in oil or natural gas;

(7) it will construct and operate the pipeline in accordance with applicable state laws and lawful regulations and orders of the Alaska Pipeline Commission;

(8) it will, at its own expense, during the term of the lease

(A) maintain the leasehold and pipeline in good repair;

(B) promptly repair or remedy any damage to the leasehold;

(C) promptly compensate for any damage to or destruction of property for which the lessee is liable resulting from damage to or destruction of the leasehold or pipeline;

(9) it will not transfer, assign, or dispose of in any manner, directly or indirectly, or by transfer of control of the carrier corporation, its interest in a right-of-way lease, or any rights under the lease or any pipeline subject to the lease to any person other than another owner of the pipeline (including subsidiaries, parents and affiliates of the owners), except to the extent that the commissioner, after consideration of the protection of the public interest (including whether the proposed transferee is fit, willing and able to perform the transportation or other acts proposed in a manner that will reasonably protect the lives, property and general welfare of the people of Alaska), authorizes; the commissioner shall not unreasonably withhold his consent to the transfer, assignment or disposal;

(10) it will file with the commissioner a written appointment of a named permanent resident of the state to be its registered agent in the state and to receive service of notices, regulations, decisions and orders of the commissioner; if it fails to appoint an agent for service, service may be made by posting a copy in the office of the commissioner and filing a copy of it in the office of the lieutenant governor and by mailing a copy to the lessee's last known address;

(11) the applicable law of this state will be used in resolving questions of interpretation of the lease;

(12) the granting of the right-of-way lease is subject to the express condition that the exercise of the rights and privileges granted under the lease will not unduly interfere with the management, administration, or disposal by the state of the land affected by the lease, and that the lessee agrees and consents to the occupancy and use by the state, its grantees, permittees, or other lessees of any part of the right-of-way not actually occupied or required by the pipeline for the full and safe utilization of the pipeline, for necessary operations incident to land management, administration, or disposal;

(13) it will be liable to the state for damages or injury incurred by the state caused by the construction, operation or maintenance of the pipeline and it will indemnify the state for the liabilities or damages;

(14) it will procure and furnish liability and property damage insurance from a company licensed to do business in the state or furnish other security or undertaking upon the terms and conditions the commissioner considers necessary if the commissioner finds that the net assets of the lessee are insufficient to protect the public from damage for which the lessee may be liable arising out of the construction or operation of the pipeline.

(b) For a right-of-way lease granted under this chapter for an oil or natural gas pipeline valued at \$1,000,000 or more to be valid and of legal effect, it must contain the terms required to be inserted under the provisions of §§ 110 — 140 of this chapter. An oil or natural gas pipeline right-of-way lease granted under this chapter that does not contain the required terms is null and void and without legal effect and does not vest any interest in state land or any authority in the carrier granted the lease.

(c) The commissioner may insert in any right-of-way lease other reasonable provisions and conditions that he determines the public interest requires.

(d) The lease will also contain terms and conditions that are reasonably necessary to obligate the lessee, to the extent reasonably practicable, to

(1) prevent conflicts with other existing uses of the land involving a superior public interest;

(2) protect state and private property interests;

(3) prevent any significant adverse environmental impact, including but not limited to the erosion of the surface of the land, and damage to fish and wildlife and their habitat;

(4) restore and revegetate during the term and at termination of the lease; and

(5) protect the interests of individuals living in the general area of the right-of-way who rely on the fish, wildlife, and biotic resources of the area for subsistence purposes.

(e) In the event the commissioner proposes to offer a lease or leases to two or more lessees for the same pipeline, the commissioner may include terms in the lease or leases which establish the limit of the obligations and liabilities of each lessee arising under this chapter or under the lease or leases.

(f) The commissioner may, at his discretion, include any or all of the terms set out in this section in leases of state land for products pipeline right-of-way purposes. (§ 1 ch 72 SLA 1972; am § 11 ch 3 FSSLA 1973)

Effect of amendment. — The 1973 amendment rewrote this section.

Sec. 38.35.130. Right-of-way easements or leases acquired from others. (a) The lessee may, if the commissioner delegates the function to it, condemn, by declaration of taking, under AS 09.55.420 — 09.55.450, real property and acquire leases of or easements or rights-of-way on lands in the state required for right-of-way purposes for a pipeline subject to the lease on behalf of and as agent for the state in which title to or interest in the land shall vest.

(b) The lease shall contain a covenant that the land, right-of-way, or easement acquired under this section is or will form part of the land leased to the lessee. (§ 1 ch 72 SLA 1972; am § 12 ch 3 FSSLA 1973)

Effect of amendment. — The 1973 amendment rewrote subsection (a), deleting the paragraph designations and deleting the provisions of former paragraphs (1) and (2). The amendment also, in subsection (b), substituted "The lease shall contain a covenant" for "The

lease covenant required by this section shall be accompanied by a provision" and deleted "carrier" following "lessee."

Quoted in *Arco Pipeline Co. v. 3.60 Acres, More or Less*, Sup. Ct. Op. No. 1177 (File No. 2419), 539 P.2d 64 (1975).

Sec. 38.35.140. Payment of rental and costs. (a) The lease price for a right-of-way lease shall be the annual fair market rental of the state lands included in the right-of-way based on the appraised fair market value of the land. The lease price is payable annually in advance on or before the anniversary of the lease. The appraised fair market rental value shall be adjusted periodically under the provisions of AS 38.05.015. Rental may not be charged for any land acquired by the lessee under § 130(b) of this chapter and conveyed without cost to the state.

(b) The lessee shall reimburse the state for all reasonable costs incurred in monitoring the construction of the pipeline on the right-of-way. (§ 1 ch 72 SLA 1972; am § 13 ch 3 FSSLA 1973)

Effect of amendment. — The 1973 amendment rewrote this section.

Sec. 38.35.150. Additional provisions of lease.

Repealed by § 14 ch 3 FSSLA 1973.

Editor's note. — The repealed section derived from § 1, ch. 72, SLA 1972.

Sec. 38.35.160. Transfer of right-of-way lease, certificates, or pipeline.

Repealed by § 15 ch 3 FSSLA 1973.

Editor's note. — The repealed section derived from § 1, ch. 72, SLA 1972.

Sec. 38.35.170. Forfeiture of lease. Failure to begin construction of the pipeline facility within a reasonable time of the granting of a right-of-way lease under this chapter for reasons within the control of the lessee or failure of an owner of an interest in the granted right-of-way substantially to comply with the terms of the right-of-way shall be grounds for forfeiture of the right-of-way interest of the lessee or owner in an action brought by the commissioner in the superior court. Before the commencement of any action for forfeiture of an interest in a right-of-way under this section, the commissioner shall give the lessee or owner of the interest notice in writing of the alleged default and shall not commence the proceeding unless the lessee or owner of the interest has failed to initiate good faith efforts to cure the default within 60 days of the notice of the alleged default. (§ 1 ch 72 SLA 1972; am § 16 ch 3 FSSLA 1973)

Effect of amendment. — The 1973 amendment rewrote this section.

Sec. 38.35.180. Suits to enjoin or recover damages for defaults.

(c) Neither this section nor the state's obtaining an injunction or recovering penalties extinguishes any civil cause of action arising out of a violation of this chapter or the provisions of a right-of-way lease. (am § 17 ch 3 FSSLA 1973)

Effect of amendment. — The 1973 amendment, in subsection (c), deleted "or criminal responsibility" following "civil cause of action" and "or certificate under a lease" following "a right-of-way lease,"

inserted "or the provisions of," and deleted the former second sentence.

As the rest of the section was not affected by the amendment, it is not set out.

Sec. 38.35.190. Application of the Administrative Procedure Act.

(a) AS 44.62.010 — 44.62.320, 44.62.640 and 44.62.650 apply to

regulations adopted by the commissioner under the authority of this chapter.

(b) Repealed by § 18 ch 3 FSSLA 1973.

(c) Repealed by § 18 ch 3 FSSLA 1973.

(d) Repealed by § 18 ch 3 FSSLA 1973. (§ 1 ch 72 SLA 1972; am § 18 ch 3 FSSLA 1973)

Effect of amendment. — The 1973 amendment repealed subsections (b), (c), and (d).

Sec. 38.35.200. Judicial review of decisions of commissioner on application. (a) An applicant or competing applicant or a person who has a direct financial interest affected by the lease who raises objections within 60 days of the publication of notice under § 70 of this chapter are the only persons with standing to seek judicial review of a decision of the commissioner under § 100 of this chapter.

(b) The only grounds for judicial review of a decision of the commissioner are

(1) failure to follow the procedures set out in this chapter; or

(2) abuse of discretion so capricious, arbitrary or confiscatory as to constitute a denial of due process. (§ 1 ch 72 SLA 1972; am § 19 ch 3 FSSLA 1973)

Effect of amendment. — The 1973 amendment rewrote this section.

Sec. 38.35.205. Lease savings clause. A judicial finding that any term or condition of a right-of-way lease issued under this chapter is unlawful or invalid may not operate to invalidate the lease or any other term or condition of the lease. (§ 23 ch 3 FSSLA 1973)

Sec. 38.35.210. Delegation of commissioner's authority. The commissioner may delegate to an employee of the Department of Natural Resources or the Department of Law the authority granted under this chapter, except for the authority to execute leases. (§ 1 ch 72 SLA 1972; am § 20 ch 3 FSSLA 1973)

Effect of amendment. — The 1973 amendment deleted "and certificates" following "leases" at the end of the section.

Sec. 38.35.220. Continued operation of certain carriers.

(d) Repealed by § 21 ch 3 FSSLA 1973.

(am § 21 ch 3 FSSLA 1973)

Effect of amendment. — The 1973 amendment repealed subsection (d).

Sec.
under
in the
cove
its poli
the les
as own
or oth
covena

Sec.
(1) "
(2) "
of Hig
Alaska
(3) "
under
right-c
operat
natur
(4) "
the co
(5) "
not de
(6) "
regar
and th
or ext
and c
(7) "
system
or lea
or pro
includ
tanks
facili
contr
termi
comm
integ
includ
(8) "
proce
stock
casin
kero
blend
deriv

Sec. 38.35.225. Binding effect of covenants. By entering into a lease under this chapter, the lessee is bound by all the covenants provided for in the lease to the full extent of the power of the state to impose those covenants under its authority as owner of the land to be leased or under its police or regulatory powers or otherwise; provided that the right of the lessee to challenge the power of the state to require such a covenant as owner of the land to be leased or under its police or regulatory powers or otherwise is preserved until such time as action to enforce the covenant is taken by the state. (§ 23 ch 3 FSSLA 1973)

Sec. 38.35.230. Definitions. In this chapter

- (1) "commissioner" means the commissioner of natural resources;
- (2) "coordinate agencies" includes Department of Labor, Department of Highways, Department of Environmental Conservation, and the Alaska Pipeline Commission;
- (3) "lease" means the instrument or extension of an instrument issued under this chapter granting a leasehold interest in state land for pipeline right-of-way purposes to a person and authorizing the construction or operation of, or transportation, service or sale by a pipeline for crude oil, natural gas, or products;
- (4) "lessee" means a person or persons holding a valid lease issued by the commissioner;
- (5) "natural gas" includes all hydrocarbons produced at the wellhead not defined as oil;
- (6) "oil" includes crude petroleum oil and other hydrocarbons regardless of gravity which are produced at the wellhead in liquid form and the liquid hydrocarbons known as distillate or condensate recovered or extracted from gas, other than gas produced in association with oil and commonly known as casinghead gas;
- (7) "pipeline" or "pipeline facility" means all the facilities of a total system of pipe (whether owned or operated under a contract, agreement, or lease) used by a carrier for transportation of crude oil, natural gas, or products for delivery, for storage, or for further transportation, and including all pipe, pump or compressor stations, station equipment, tanks, valves, access roads, bridges, airfields, terminals and terminal facilities, including docks and tanker loading facilities, operations control center for both the upstream part of the pipeline and the terminal, tanker ballast treatment facilities, and fire protection system, communication system, and all other facilities used or necessary for an integral line of pipe, taken as a whole, to effectuate transportation, including an extension or enlargement of the line;
- (8) "product" means refined crude oil, crude tops, topped crude, processed crude petroleum, residue from crude petroleum, cracking stock, uncracked fuel oil, fuel oil, treated crude oil, residuum, gas oil, casinghead gasoline, natural gas gasoline, naphtha, distillate, gasoline, kerosene, benzene, wash oil, waste oil, blended gasoline, lubricating oil, blends or mixtures of petroleum and any liquid product or by-product derived from crude petroleum oil or natural gas;

(9) "state land" means

(A) "state lands" as defined in AS 38.05.365;

(B) public land of the United States selected by the state under sec. 6 of the Alaska Statehood Act of 1958 (PL 85-508; 72 Stat. 399), as amended, and real property of the United States transferred to the state under secs. 21, 35 and 45 of the Alaska Omnibus Act of 1959 (PL 86-70; 73 Stat. 141), as amended;

(C) any interest owned by the state in land;

(10) "transportation" means the shipment or carriage by a pipeline of crude oil, natural gas, or products from an upstream terminus in one or more fields or points of production or supply of the minerals to a downstream terminus in one or more points for delivery of the minerals to a purchaser or consignee, for storage, or for further carriage or shipment, including shipment or carriage within the state that may be classified as interstate or foreign transportation to the extent that the transportation may constitutionally be subjected to the provisions of this chapter, as well as all services necessary to effectuate shipment or carriage, including, among other things, the receipt, storage, processing, handling, transfer in transit, forwarding, and delivery of the minerals. (§ 1 ch 72 SLA 1972; am § 22 ch 3 FSSLA 1973)

Effect of amendment. — The 1973 amendment rewrote this section.

Chapter 40. Local Hire Under State Leases.

Section

30. Resident employment

40. Reporting provisions

60. Hearings and investigations

Section

70. Penalties

80. Injunctive relief

90. Definitions

Sec. 38.40.030. Resident employment. (a) In order to create, protect and preserve the right of Alaska residents to employment, the commissioner of natural resources shall incorporate into all oil and gas leases, easements or right-of-way permits for oil or gas pipeline purposes, unitization agreements, or any renegotiation of any of the preceding to which the state is a party, provisions requiring the lessee to comply with applicable laws and regulations with regard to the employment of Alaska residents, a provision requiring the employment of qualified Alaska residents, a provision prohibiting discrimination against Alaska residents and, when in the determination of the commissioner of natural resources it is practicable, a provision requiring compliance with the Alaska Plan, all in accordance with the provisions of this chapter.

(b) All employment falling within the purview of § 50 of this chapter shall be filled by Alaska residents if they are qualified and available. The commissioner of labor, whose decision is final as to residency, shall determine the resident status of individuals for purposes of this chapter

Extra

(3) the desirability of localized capital investment, increased payroll, secondary development and other possible effects of the sale, exchange or other disposition of oil and gas or both;

(4) the projected social impacts of the transaction;

(5) the projected additional costs and responsibilities which could be imposed upon the state and affected political subdivisions by development related to the transaction;

(6) the existence of specific local or regional labor or consumption markets or both which should be met by the transaction;

(7) the projected positive and negative environmental effects related to the transaction; and

(8) the projected effects of the proposed transaction upon existing private commercial enterprise and patterns of investments.

(b) When it is economically feasible, the board may require, as a condition of the sale of oil or gas obtained by the state as royalty, that the oil or gas be refined or processed in the state and may, when it is feasible and in the best interests of the state to do so, provide for processing or refining of the oil or gas under a contract entered into by competitive bidding before the sale of the oil or gas. (§ 2 ch 9 SSSLA 1974)

Sec. 38.06.080. Definitions. In this chapter

(1) "board" means the Alaska Royalty Oil and Gas Development Advisory Board; and

(2) "state lease" means an oil and gas lease on state land. (§ 2 ch 9 SSSLA 1974)

Chapter 35. Right-of-Way Leasing Act.

Section	Section
10. Legislative declaration of policy	140. Payment of rental and costs
20. Grant of right-of-way lease	150 — 160. [Repealed]
30. Abandonment, reduction or impairment of service of pipeline	170. Forfeiture of lease
40. Temporary or emergency service or temporary abandonment, reduction or impairment of service by lessee	180. Suits to enjoin or recover damages for defaults
50. Applications for right-of-way leases	190. Application of the Administrative Procedure Act
60. [Repealed]	200. Judicial review of decisions of commissioner on application
70. Notice of application	205. Lease savings clause
80. Analysis and public hearing	210. Delegation of commissioner's authority
100. Decision on application	220. Continued operation of certain carriers
110. Term of lease	225. Binding effect of covenants
120. Covenants required to be included in lease	230. Definitions
130. Right-of-way easements or leases acquired from others	

Applied in Arco Pipeline Co. v. 3.60
Acres, More or Less, Sup. Ct. Op. No. 1177
(File No. 2419), 539 P.2d 64 (1975).

Sec. 38.35.010. Legislative declaration of policy. (a) The natural resources of this state in crude oil and natural gas and in its land for transportation of these resources and their products by pipeline toward markets both in and out of the state are capable of making a significant contribution to the general welfare of the people of this state. It is the policy of this state that the development, use, and control of a pipeline transportation system be directed to make the maximum contribution to the development of the human resources of this state, the increase in the standard of living for all of its residents, the advancement of existing and potential sectors of its economy, the strengthening of free competition in its private enterprise system, and the careful protection of its incomparable natural environment.

(b) The State of Alaska reserves unto itself all rights, powers, privileges and immunities not preempted by federal interstate commerce laws and regulations in the right-of-way leasing of any state lands for pipeline construction, transmission, or operation within its boundaries. (§ 1 ch 72 SLA 1972; am § 1 ch 3 FSSLA 1973)

Effect of amendment. — The 1973 amendment added subsection (b).

Sec. 38.35.020. Grant of right-of-way lease. (a) Rights-of-way on state land including rights-of-way over, under, along, across, or upon the right-of-way of a public road or highway or the right-of-way of a railroad or other public utility, or across, upon, over, or under a river or other body of water or land belonging to or administered by the state may be granted by noncompetitive lease by the commissioner for pipeline purposes for the transportation of oil, products or natural gas under those conditions prescribed by law or by administrative regulation. Except to the extent authorized by an oil and gas lease or unit agreement approved by the state, no person may engage in any construction or operation of any part of an oil, products, or natural gas pipeline, which in whole or in part is or is proposed to be on state land unless that person has obtained from the commissioner a right-of-way lease of the land under this chapter.

(b) The commissioner may by regulation exempt the construction or operation of field gathering lines or any reasonable classification of them from the requirement of a right-of-way lease under this chapter. (§ 1 ch 72 SLA 1972; am § 2 ch 3 FSSLA 1973)

Effect of amendment. — The 1973 amendment designated the provisions of this section as subsection (a), added the exception to the beginning of the second

sentence of that subsection, made such other changes in that subsection as to make a detailed comparison impracticable, and added subsection (b).

Sec. 38.35.030. Abandonment, reduction or impairment of service of pipeline. No lessee may abandon any portion of a pipeline that is subject to a lease granted under this chapter, or operation or transportation, service, or sale by it, or reduce or impair service, except in accordance with the terms of the lease or § 40 of this chapter. (§ 1 ch 72 SLA 1972; am § 3 ch 3 FSSLA 1973)

Effect of amendment. — The 1973 amendment deleted "carrier" following "lessee" and substituted "subject to a lease granted under this chapter" for "on state public land or subject to the lease" and

"except in accordance with the terms of the lease or § 40 of this chapter" for provisions requiring a certificate that the abandonment, reduction, or impairment is in accordance with the terms of the lease.

Sec. 38.35.040. Temporary or emergency service or temporary abandonment, reduction or impairment of service by lessee. The commissioner may, either upon a request made in the form he shall by regulation require, or upon his own motion without request, authorize or require temporary or emergency rendering of service or temporary or emergency abandonment, reduction or impairment of service by a pipeline of a lessee without compliance with §§ 50 — 100 of this chapter. Nothing in this section prevents a carrier from temporarily suspending operations in the event of an emergency which threatens public health or safety; however, notice shall be given the commissioner as soon as possible. (§ 1 ch 72 SLA 1972; am § 4 ch 3 FSSLA 1973)

Effect of amendment. — The 1973 amendment deleted "carrier" following "lessee" near the end of the first sentence.

Sec. 38.35.050. Applications for right-of-way leases. (a) A person or persons desiring to own a pipeline which is proposed to be located in whole or in part on state land, shall apply for a noncompetitive right-of-way lease of the state land.

(b) Applications under (a) of this section shall be made in a form and manner prescribed by regulation, and shall include any and all data, information, plans and exhibits which the commissioner determines are necessary to prepare the analysis required by § 80 of this chapter and to make a decision under § 100 of this chapter.

(c) Any amendment to an application filed under this section which constitutes a substantial change in the application is subject to all provisions of this chapter applying to an original application.

(d) All persons owning or planning to own an interest in a pipeline or proposed pipeline subject to a lease must join in the application under (a) of this section. Any person employed by the lessee in operating the

pipeline is bound by the covenants of the lease applicable to functions within the scope of his employment as if he were an applicant under the lease and the state may enforce any breach of a covenant directly against an operator who is not in compliance with the covenant. (§ 1 ch 72 SLA 1972; am § 5 ch 3 FSSLA 1973)

Effect of amendment. — The 1973 amendment rewrote this section.

Sec. 38.35.060. Application for certificate to abandon or diminish service.

Repealed by § 6 ch 3 FSSLA 1973.

Editor's note. — The repealed section derived from § 1, ch. 72, SLA 1972.

Sec. 38.35.070. Notice of application. Upon receiving an application under § 50 of this chapter, the commissioner shall

(1) cause notice of it to appear in a daily newspaper of general circulation published in the vicinity of the location of the proposed pipeline, the notice to include:

- (A) a general description of the land involved;
- (B) a summary of the substance of the application;
- (2) file copies of the application with each coordinate agency;
- (3) furnish at cost copies of a notice or application to persons requesting them; and

(4) provide other publication and notice he considers reasonable and appropriate to inform the public of the application. (§ 1 ch 72 SLA 1972; am § 7 ch 3 FSSLA 1973)

Effect of amendment. — The 1973 amendment deleted "or 60" following "§ 50" in the introductory language, substituted "a daily newspaper" for "the daily newspaper" and "in the vicinity of"

for "nearest" in the introductory language of paragraph (1), inserted "the notice to include" in that language, added paragraphs (1)(A) and (1)(B), and added paragraph (4).

Sec. 38.35.080. Analysis and public hearing. (a) The commissioner shall, within a reasonable time after receiving the application, prepare an analysis of the application or of the matter of which he was notified, including a proposal for action if feasible; a proposed lease and a general statement of his basis and purpose, if favorable action is proposed; or, when a proposal for action is not feasible before a hearing, a description of the subjects and issues involved.

(b) Upon completion of the analysis but not less than 30 days before the date set for hearing an application or a substantial amendment to an application, the commissioner shall publish notice, and make copies available as provided in § 70 of this chapter.

(c) The commissioner shall set all applications for public hearing as soon as practicable, if a public hearing on an application is requested by any person within 30 days of publication of notice under § 70(a) of this chapter or if the proposed action being considered involves a substantial public interest. The commissioner shall set the application for public hearing and publish notice of the time and place of the public hearing at least 30 days before the hearing.

(d) The provisions of the Administrative Procedure Act (AS 44.62) do not apply to hearings held under this section. (§ 1 ch 72 SLA 1972; am § 8 ch 3 FSSLA 1973)

Effect of amendment. — The 1973 amendment inserted "or of the matter of which he was notified" and deleted "or certificate or both" following "a proposed lease" in subsection (a), added the language beginning "if a public hearing on an application is requested" to the end of the first sentence of subsection (c), added the

second sentence of that subsection, and added subsection (d).

Editor's note. — The reference to § 70(a) of this chapter in the first sentence of subsection (c) should be to § 70(1) of this chapter. AS 38.35.070 contains no subsection designations.

Sec. 38.35.100. Decision on application. (a) The commissioner shall promptly determine, on an application filed with him under § 50 of this chapter, whether the applicant is fit, willing and able to perform the transportation or other acts proposed in a manner that will be required by the present or future public interest. In making a determination the commissioner shall consider whether or not

(1) the proposed use of the right-of-way will unreasonably conflict with existing uses of the land involving a superior public interest;

(2) the applicant has the technical and financial capability to protect state and private property interests;

(3) the applicant has the technical and financial capability to take action to the extent reasonably practical to

(A) prevent any significant adverse environmental impact, including but not limited to, erosion of the surface of the land and damage to fish and wildlife and their habitat;

(B) undertake any necessary restoration or revegetation; and

(C) protect the interests of individuals living in the general area of the right-of-way who rely on fish, wildlife and biotic resources of the area for subsistence purposes;

(4) the applicant has the financial capability to pay reasonably foreseeable damages for which he may become liable on claims arising from the construction, operation, maintenance or termination of the pipeline.

(b) If the commissioner makes these determinations favorably to the applicant, then he may grant the whole or part of the application. Otherwise, he shall deny the application. In order to grant the whole or part of the application the commissioner shall offer a lease to the applicant for its acceptance through signing of the lease and agreeing

to comply with its terms, conditions, and obligations. Only upon proper acceptance of offered lease by the applicant within 30 days after its having been presented is the grant of the application consummated. (§ 1 ch 72 SLA 1972; am § 9 ch 3 FSSLA 1973)

Effect of amendment. — The 1973 amendment rewrote this section.

Sec. 38.35.110. Term of lease. Each lease of state land for pipeline right-of-way purposes shall contain a provision that the lease shall run for a specified term of not greater than 30 years, and shall be renewable for additional periods of up to 10 years each, so long as the lessee is in commercial operation and is in full compliance with all state law, including but not limited to state law pertaining to regulation and taxation of the pipeline facility, and is in compliance with all terms of the lease. In making this determination he shall take into consideration the cost of the proposed pipeline, its useful life, and the probable financing requirement for the proposed pipeline. (§ 1 ch 72 SLA 1972; am § 10 ch 3 FSSLA 1973)

Effect of amendment. — The 1973 amendment substituted "30 years" for "25 years" and inserted "is in commercial operation and" in the first sentence and added the second sentence.

Sec. 38.35.120. Covenants required to be included in lease. (a) A noncompetitive lease of state land for a right-of-way for an oil or natural gas pipeline valued at \$1,000,000 or more may be granted only upon the condition that the lessee expressly covenants in the lease, in consideration of the rights acquired by it under the lease, that

(1) it assumes the status of and will perform all of its functions undertaken under the lease as a common carrier and will accept, convey, and transport without discrimination crude oil or natural gas, depending on the kind of pipeline involved, delivered to it for transportation from fields in the vicinity of the pipeline subject to the lease throughout its route both on state land obtained under the lease and on other land; however, a lessee who owns or operates a natural gas pipeline subject to regulation either (A) under the Natural Gas Act (15 U.S.C. 717 et seq.) of the United States, or (B) by the state or political subdivisions with respect to rates and charges for the sale of natural gas, is, to the extent of that regulation, exempt from the common carrier requirement in this paragraph; it will accept, convey, and transport crude oil or natural gas without unjust or unreasonable discrimination in favor of one producer or person, including itself, as against another but will take the crude oil or natural gas, depending on the kind of pipeline involved, delivered or offered, without unreasonable discrimination, that the Alaska Pipeline Commission shall, after a full hearing with due notice to the interested parties and a proper finding of facts, determine to be reasonable in the performance of its duties as a common carrier;

(2) it will interchange crude oil or natural gas, depending on the kind of pipeline involved, with each like common carrier and provide connections and facilities for the interchange of crude oil or natural gas at every locality reached by both pipelines when the necessity exists, subject to rates and regulations made by the appropriate state or federal regulatory agency;

(3) it will maintain and preserve books, accounts, and records and will make those reports that the state may prescribe by regulation or law as necessary and appropriate for purposes of administration of this chapter;

(4) it will accord at all reasonable times to the state and its authorized agents and auditors the right of access to its property and records, of inspection of its property, and of examination and copying of records;

(5) it will provide connections, as determined by the Alaska Pipeline Commission under AS 42.06.340, to facilities on the pipeline subject to the lease, both on state land and other land in the state, for the purpose of delivering crude oil or natural gas, depending on the kind of pipeline involved, to persons (including the state and its political subdivisions) contracting for the purchase at wholesale of crude oil or natural gas transported by the pipeline when required by the public interest;

(6) it shall, notwithstanding any other provision, provide connections and interchange facilities at state expense at such places the state considers necessary if the state determines to take a portion of its royalty or taxes in oil or natural gas;

(7) it will construct and operate the pipeline in accordance with applicable state laws and lawful regulations and orders of the Alaska Pipeline Commission;

(8) it will, at its own expense, during the term of the lease

(A) maintain the leasehold and pipeline in good repair;

(B) promptly repair or remedy any damage to the leasehold;

(C) promptly compensate for any damage to or destruction of property for which the lessee is liable resulting from damage to or destruction of the leasehold or pipeline;

(9) it will not transfer, assign, or dispose of in any manner, directly or indirectly, or by transfer of control of the carrier corporation, its interest in a right-of-way lease, or any rights under the lease or any pipeline subject to the lease to any person other than another owner of the pipeline (including subsidiaries, parents and affiliates of the owners), except to the extent that the commissioner, after consideration of the protection of the public interest (including whether the proposed transferee is fit, willing and able to perform the transportation or other acts proposed in a manner that will reasonably protect the lives, property and general welfare of the people of Alaska), authorizes; the commissioner shall not unreasonably withhold his consent to the transfer, assignment or disposal;

(10)

named

state a

of the

may b

filing

a copy

(11)

of int

(12)

condi

lease

dispo

agre

perm

occu

the

adm

(13)

stat

pipe

(14)

insu

othe

com

ass

for

ope

(15)

nat

eff

pro

rig

rec

an

lea

re

in

ne

s

b

f

(10) it will file with the commissioner a written appointment of a named permanent resident of the state to be its registered agent in the state and to receive service of notices, regulations, decisions and orders of the commissioner; if it fails to appoint an agent for service, service may be made by posting a copy in the office of the commissioner and filing a copy of it in the office of the lieutenant governor and by mailing a copy to the lessee's last known address;

(11) the applicable law of this state will be used in resolving questions of interpretation of the lease;

(12) the granting of the right-of-way lease is subject to the express condition that the exercise of the rights and privileges granted under the lease will not unduly interfere with the management, administration, or disposal by the state of the land affected by the lease, and that the lessee agrees and consents to the occupancy and use by the state, its grantees, permittees, or other lessees of any part of the right-of-way not actually occupied or required by the pipeline for the full and safe utilization of the pipeline, for necessary operations incident to land management, administration, or disposal;

(13) it will be liable to the state for damages or injury incurred by the state caused by the construction, operation or maintenance of the pipeline and it will indemnify the state for the liabilities or damages;

(14) it will procure and furnish liability and property damage insurance from a company licensed to do business in the state or furnish other security or undertaking upon the terms and conditions the commissioner considers necessary if the commissioner finds that the net assets of the lessee are insufficient to protect the public from damage for which the lessee may be liable arising out of the construction or operation of the pipeline.

(b) For a right-of-way lease granted under this chapter for an oil or natural gas pipeline valued at \$1,000,000 or more to be valid and of legal effect, it must contain the terms required to be inserted under the provisions of §§ 110 — 140 of this chapter. An oil or natural gas pipeline right-of-way lease granted under this chapter that does not contain the required terms is null and void and without legal effect and does not vest any interest in state land or any authority in the carrier granted the lease.

(c) The commissioner may insert in any right-of-way lease other reasonable provisions and conditions that he determines the public interest requires.

(d) The lease will also contain terms and conditions that are reasonably necessary to obligate the lessee, to the extent reasonably practicable, to

(1) prevent conflicts with other existing uses of the land involving a superior public interest;

(2) protect state and private property interests;

(3) prevent any significant adverse environmental impact, including but not limited to the erosion of the surface of the land, and damage to fish and wildlife and their habitat;

(4) restore and revegetate during the term and at termination of the lease; and

(5) protect the interests of individuals living in the general area of the right-of-way who rely on the fish, wildlife, and biotic resources of the area for subsistence purposes.

(e) In the event the commissioner proposes to offer a lease or leases to two or more lessees for the same pipeline, the commissioner may include terms in the lease or leases which establish the limit of the obligations and liabilities of each lessee arising under this chapter or under the lease or leases.

(f) The commissioner may, at his discretion, include any or all of the terms set out in this section in leases of state land for products pipeline right-of-way purposes. (§ 1 ch 72 SLA 1972; am § 11 ch 3 FSSLA 1973)

Effect of amendment. — The 1973 amendment rewrote this section.

Sec. 38.35.130. Right-of-way easements or leases acquired from others. (a) The lessee may, if the commissioner delegates the function to it, condemn, by declaration of taking, under AS 09.55.420 — 09.55.450, real property and acquire leases of or easements or rights-of-way on lands in the state required for right-of-way purposes for a pipeline subject to the lease on behalf of and as agent for the state in which title to or interest in the land shall vest.

(b) The lease shall contain a covenant that the land, right-of-way, or easement acquired under this section is or will form part of the land leased to the lessee. (§ 1 ch 72 SLA 1972; am § 12 ch 3 FSSLA 1973)

Effect of amendment. — The 1973 amendment rewrote subsection (a), deleting the paragraph designations and deleting the provisions of former paragraphs (1) and (2). The amendment also, in subsection (b), substituted "The lease shall contain a covenant" for "The

lease covenant required by this section shall be accompanied by a provision" and deleted "carrier" following "lessee."

Quoted in *Arco Pipeline Co. v. 3.60 Acres, More or Less*, Sup. Ct. Op. No. 1177 (File No. 2419), 539 P.2d 64 (1975).

Sec. 38.35.140. Payment of rental and costs. (a) The lease price for a right-of-way lease shall be the annual fair market rental of the state lands included in the right-of-way based on the appraised fair market value of the land. The lease price is payable annually in advance on or before the anniversary of the lease. The appraised fair market rental value shall be adjusted periodically under the provisions of AS 38.05.015. Rental may not be charged for any land acquired by the lessee under § 130(b) of this chapter and conveyed without cost to the state.

(b) The lessee shall reimburse the state for all reasonable costs incurred in monitoring the construction of the pipeline on the right-of-way. (§ 1 ch 72 SLA 1972; am § 13 ch 3 FSSLA 1973)

Effect of amendment. — The 1973 amendment rewrote this section.

Sec. 38.35.150. Additional provisions of lease.

Repealed by § 14 ch 3 FSSLA 1973.

Editor's note. — The repealed section derived from § 1, ch. 72, SLA 1972.

Sec. 38.35.160. Transfer of right-of-way lease, certificates, or pipeline.

Repealed by § 15 ch 3 FSSLA 1973.

Editor's note. — The repealed section derived from § 1, ch. 72, SLA 1972.

Sec. 38.35.170. Forfeiture of lease. Failure to begin construction of the pipeline facility within a reasonable time of the granting of a right-of-way lease under this chapter for reasons within the control of the lessee or failure of an owner of an interest in the granted right-of-way substantially to comply with the terms of the right-of-way shall be grounds for forfeiture of the right-of-way interest of the lessee or owner in an action brought by the commissioner in the superior court. Before the commencement of any action for forfeiture of an interest in a right-of-way under this section, the commissioner shall give the lessee or owner of the interest notice in writing of the alleged default and shall not commence the proceeding unless the lessee or owner of the interest has failed to initiate good faith efforts to cure the default within 60 days of the notice of the alleged default. (§ 1 ch 72 SLA 1972; am § 16 ch 3 FSSLA 1973)

Effect of amendment. — The 1973 amendment rewrote this section.

Sec. 38.35.180. Suits to enjoin or recover damages for defaults.

(c) Neither this section nor the state's obtaining an injunction or recovering penalties extinguishes any civil cause of action arising out of a violation of this chapter or the provisions of a right-of-way lease. (am § 17 ch 3 FSSLA 1973)

Effect of amendment. — The 1973 amendment, in subsection (c), deleted "or criminal responsibility" following "civil cause of action" and "or certificate under a lease" following "a right-of-way lease,"

inserted "or the provisions of," and deleted the former second sentence.

As the rest of the section was not affected by the amendment, it is not set out.

Sec. 38.35.190. Application of the Administrative Procedure Act.
(a) AS 44.62.010 — 44.62.320, 44.62.640 and 44.62.650 apply to

regulations adopted by the commissioner under the authority of this chapter.

(b) Repealed by § 18 ch 3 FSSLA 1973.

(c) Repealed by § 18 ch 3 FSSLA 1973.

(d) Repealed by § 18 ch 3 FSSLA 1973. (§ 1 ch 72 SLA 1972; am § 18 ch 3 FSSLA 1973)

Effect of amendment. — The 1973 amendment repealed subsections (b), (c), and (d).

Sec. 38.35.200. Judicial review of decisions of commissioner on application. (a) An applicant or competing applicant or a person who has a direct financial interest affected by the lease who raises objections within 60 days of the publication of notice under § 70 of this chapter are the only persons with standing to seek judicial review of a decision of the commissioner under § 100 of this chapter.

(b) The only grounds for judicial review of a decision of the commissioner are

(1) failure to follow the procedures set out in this chapter; or

(2) abuse of discretion so capricious, arbitrary or confiscatory as to constitute a denial of due process. (§ 1 ch 72 SLA 1972; am § 19 ch 3 FSSLA 1973)

Effect of amendment. — The 1973 amendment rewrote this section.

Sec. 38.35.205. Lease savings clause. A judicial finding that any term or condition of a right-of-way lease issued under this chapter is unlawful or invalid may not operate to invalidate the lease or any other term or condition of the lease. (§ 23 ch 3 FSSLA 1973)

Sec. 38.35.210. Delegation of commissioner's authority. The commissioner may delegate to an employee of the Department of Natural Resources or the Department of Law the authority granted under this chapter, except for the authority to execute leases. (§ 1 ch 72 SLA 1972; am § 20 ch 3 FSSLA 1973)

Effect of amendment. — The 1973 amendment deleted "and certificates" following "leases" at the end of the section.

Sec. 38.35.220. Continued operation of certain carriers.

(d) Repealed by § 21 ch 3 FSSLA 1973.

(am § 21 ch 3 FSSLA 1973)

Effect of amendment. — The 1973 amendment repealed subsection (d).

Sec. 38.35.225. Binding effect of covenants. By entering into a lease under this chapter, the lessee is bound by all the covenants provided for in the lease to the full extent of the power of the state to impose those covenants under its authority as owner of the land to be leased or under its police or regulatory powers or otherwise; provided that the right of the lessee to challenge the power of the state to require such a covenant as owner of the land to be leased or under its police or regulatory powers or otherwise is preserved until such time as action to enforce the covenant is taken by the state. (§ 23 ch 3 FSSLA 1973)

Sec. 38.35.230. Definitions. In this chapter

- (1) "commissioner" means the commissioner of natural resources;
- (2) "coordinate agencies" includes Department of Labor, Department of Highways, Department of Environmental Conservation, and the Alaska Pipeline Commission;
- (3) "lease" means the instrument or extension of an instrument issued under this chapter granting a leasehold interest in state land for pipeline right-of-way purposes to a person and authorizing the construction or operation of, or transportation, service or sale by a pipeline for crude oil, natural gas, or products;
- (4) "lessee" means a person or persons holding a valid lease issued by the commissioner;
- (5) "natural gas" includes all hydrocarbons produced at the wellhead not defined as oil;
- (6) "oil" includes crude petroleum oil and other hydrocarbons regardless of gravity which are produced at the wellhead in liquid form and the liquid hydrocarbons known as distillate or condensate recovered or extracted from gas, other than gas produced in association with oil and commonly known as casinghead gas;
- (7) "pipeline" or "pipeline facility" means all the facilities of a total system of pipe (whether owned or operated under a contract, agreement, or lease) used by a carrier for transportation of crude oil, natural gas, or products for delivery, for storage, or for further transportation, and including all pipe, pump or compressor stations, station equipment, tanks, valves, access roads, bridges, airfields, terminals and terminal facilities, including docks and tanker loading facilities, operations control center for both the upstream part of the pipeline and the terminal, tanker ballast treatment facilities, and fire protection system, communication system, and all other facilities used or necessary for an integral line of pipe, taken as a whole, to effectuate transportation, including an extension or enlargement of the line;
- (8) "product" means refined crude oil, crude tops, topped crude, processed crude petroleum, residue from crude petroleum, cracking stock, uncracked fuel oil, fuel oil, treated crude oil, residuum, gas oil, casinghead gasoline, natural gas gasoline, naphtha, distillate, gasoline, kerosene, benzine, wash oil, waste oil, blended gasoline, lubricating oil, blends or mixtures of petroleum and any liquid product or by-product derived from crude petroleum oil or natural gas;

(9) "state land" means

(A) "state lands" as defined in AS 38.05.365;

(B) public land of the United States selected by the state under sec. 6 of the Alaska Statehood Act of 1958 (PL 85-508; 72 Stat. 399), as amended, and real property of the United States transferred to the state under secs. 21, 35 and 45 of the Alaska Omnibus Act of 1959 (PL 86-70; 73 Stat. 141), as amended;

(C) any interest owned by the state in land;

(10) "transportation" means the shipment or carriage by a pipeline of crude oil, natural gas, or products from an upstream terminus in one or more fields or points of production or supply of the minerals to a downstream terminus in one or more points for delivery of the minerals to a purchaser or consignee, for storage, or for further carriage or shipment, including shipment or carriage within the state that may be classified as interstate or foreign transportation to the extent that the transportation may constitutionally be subjected to the provisions of this chapter, as well as all services necessary to effectuate shipment or carriage, including, among other things, the receipt, storage, processing, handling, transfer in transit, forwarding, and delivery of the minerals. (§ 1 ch 72 SLA 1972; am § 22 ch 3 FSSLA 1973)

Effect of amendment. — The 1973 amendment rewrote this section.

Chapter 40. Local Hire Under State Leases.

Section

30. Resident employment

40. Reporting provisions

60. Hearings and investigations

Section

70. Penalties

80. Injunctive relief

90. Definitions

Sec. 38.40.030. Resident employment. (a) In order to create, protect and preserve the right of Alaska residents to employment, the commissioner of natural resources shall incorporate into all oil and gas leases, easements or right-of-way permits for oil or gas pipeline purposes, unitization agreements, or any renegotiation of any of the preceding to which the state is a party, provisions requiring the lessee to comply with applicable laws and regulations with regard to the employment of Alaska residents, a provision requiring the employment of qualified Alaska residents, a provision prohibiting discrimination against Alaska residents and, when in the determination of the commissioner of natural resources it is practicable, a provision requiring compliance with the Alaska Plan, all in accordance with the provisions of this chapter.

(b) All employment falling within the purview of § 50 of this chapter shall be filled by Alaska residents if they are qualified and available. The commissioner of labor, whose decision is final as to residency, shall determine the resident status of individuals for purposes of this chapter

Sec. 38.05.321. Restriction on sale or lease or other disposal of agricultural land. No state land classified as agricultural land may be sold, leased or otherwise disposed of in a manner inconsistent with § 69 of this chapter. (§ 3 ch 71 SLA 1976)

Sec. 38.05.323. Tidelands seaward of public recreational sites. (a) Notwithstanding any other provision of law, a home rule or general law municipality which accepts by conveyance or other disposition from the state a public recreation area facility developed under the terms of P.L. 507 (70 Stat. 130), upon application, shall receive by conveyance from the director all land owned by the state seaward of the public recreation area facility which is between the mean high tide line and the mean low tide line. The director may promulgate necessary regulations providing for the conveyance of land under this section.

(b) Interests obtained by lease for shore fisheries development, sale, permit or lease for mineral exploration, development, or extraction, or for any other purpose, before August 13, 1974, are affected by this section only on the date of their expiration or termination. (§ 1 ch 108 SLA 1974)

Sec. 38.05.325. Homestead entry.

Cross reference. — As to reservation to properties or interest to state land are which contracts for sale, lease or grant of subject, see AS 38.05.125.
state land and deeds to state land,

Sec. 38.05.330. Permits. The director, without the prior approval of the commissioner, may issue permits, rights of way or easements on state land for roads, trails, ditches, field gathering lines or transmission and distribution pipelines not subject to AS 38.35, telephone and transmission lines, log storage, oil well drilling sites and production facilities for the purposes of recovering minerals from adjacent lands under valid lease, and other similar uses or improvements, or for the limited personal use of timber or materials. The commissioner, upon recommendation of the director, shall establish a reasonable rate or fee schedule to be charged for these uses. In the granting, suspension or revocation of a permit or easement of lands, the director shall give preference to that use of the land which will be of greatest economic benefit to the state and the development of its resources. However, first preference shall be granted to the upland owner for the use of a tract of tideland, or tideland and contiguous submerged land, which is seaward of the upland property of the upland owner and which is needed by the upland owner for any of the purposes for which the use may be granted. (§ 7 art III ch 169 SLA 1959; am § 7 ch 61 SLA 1960; am § 4 ch 72 SLA 1972; am § 28 ch 3 FSSLA 1973; am § 13 ch 257 SLA 1976)

APC



ALASKA PIPELINE COMPANY

General Offices Located at 3000 Spenard Road
P.O. Box 6288 Anchorage, Alaska 99502 / Phone (907) 277-5551
Telex 25-187

April 15, 1977

Mr. Don Wold, Executive Director
Alaska Oil and Gas Development Advisory Board
Department of Natural Resources
State Office Building
Juneau, AK 99811

Dear Don:

In response to your requests this week, we are writing to summarize and describe the essence and the effect of the contract(s) executed by the State and Phillips and Alaska Pipeline Company (APC) regarding the taking in kind of the State's royalty gas (1/8th) from the North Cook Inlet Gas Field.

By way of background, APC's supply until now has come entirely from the Kenai gas field, which is owned by Union and Marathon. We have had two supply contracts: one for Anchorage, in which delivery to us is at the Kenai gas field; and one for the North Kenai Road ("Nikiski") area, in which delivery to us is at or near the Kenai LNG plant.

The "Anchorage" contract is for a total of 550 BCF (billions of cubic feet) to be taken (take or pay for) at 26 BCF/year (which is 72,000 MCFD--72,000 thousand cubic feet per day) by December 31, 1992, but with deliverability of 160,000 MCFD on any day through December 31, 1985. The basic price for this gas is 24¢ per MCF until January 1, 1981, then 27¢ until January 1, 1986, and then the defined "area price" for the remainder of the contract term. In addition to this basic price we pay 19.5¢ per MCF for the extra deliverability described above, and the

** Phillips getting
compensation on change
to AGAS.
15% overall
rate of return is
appx. 11% APUC is
allowing AGAS on
all its
operations.
6/2-4/1977*



ALASKA PIPELINE COMPANY

General Offices Located at 3000 Spenard Road
P.O. Box 6288 / Anchorage, Alaska 99502

Mr. Wold

-2-

April 15, 1977

19.5¢ is adjusted each January 1 by the ratio of the published Wholesale Price Index (WPI) of the preceding November to the WPI of November, 1974. At present, the total cost for gas under this "Anchorage" contract is 45.1¢ per MCF.

The "Nikiski" contract was for 10 BCF to be delivered from May 1, 1967 to April 30, 1977, with deliverability of 10,000 MCFD, no take or pay, and priced at 1.5¢ higher than the basic price for "Anchorage" reserves as described above. We used the last of the 10 BCF under this contract in August of 1976, and thereafter we began taking "Anchorage" reserves at Nikiski, priced at the total price of "Anchorage" reserves plus 1.5¢ per MCF, temporarily (one year was agreed) pending resolution of a longer term supply. We had expected to be using North Cook Inlet royalty gas as the replacement for "Anchorage" reserves at Nikiski, and still expect to be doing so upon the implementation of the royalty gas contracts as revised this year.

We selected North Cook Inlet royalty gas because we believed, and still believe, this gas will be available to us and our customers at a lower price than any other "new" reserves. This gas is under contract (as LNG) to June 1, 1984 for export to Tokyo and its cost to us is approximately 75¢ per Mcf immediately, rising to 85¢ when compressors are installed, with certain escalation as described in the revised contracts. In comparison, Pacific Alaska LNG is offering \$1.45 for similar gas from Cook Inlet (without the same deliverability of our "Anchorage" reserves), with escalations. We do not have proof of the \$1.45 pricing, but it can be verified by the State. Thus, we see the royalty gas to be available

AGO 801603



ALASKA PIPELINE COMPANY

General Offices Located at 3000 Spenard Road
P.O. Box 6288 / Anchorage, Alaska 99502

Mr. Wold

-3-

April 15, 1977

to us at less than half the going price of "new" gas in the Cook Inlet area, delivered on the North Kenai Road.

Our alternative to competing at the \$1.45 price level is to continue to utilize "Anchorage" reserves at Nikiski, as we are now doing, but to pay the same price we would have paid for royalty gas. We have verbal assurance that we can operate on this basis at Nikiski while we install the facilities necessary to shift to royalty gas, and we are proceeding with preparations to do so at the earliest possible date following legislative approval of the royalty contracts as revised. We hope to begin taking royalty gas as early as June, 1977.

Several questions arose over the two years it has taken to reach agreement of the several parties as to our use of royalty gas, and I will try to comment as information for those who review the actions taken. First, the royalty gas contract signed last year, and approved by the legislature, was contingent on APC working out an arrangement with Phillips to obtain delivery of the royalty gas through their pipeline from the platform to the Kenai LNG plant, and it required "take or pay" of 100% of the royalty gas. These elements led to problems which had to be resolved as has been done in the revised contracts which were executed last week. The differences are (1) that the delivery to shore will be made by Phillips for the State, with APC paying Phillips for the account of the State, at prices negotiated by APC with Phillips, and (2) that there will be no "take or pay": Phillips will make a best effort to deliver at least 3 BCF per year (roughly 55% of the total royalty), and APC will make a best effort to take all of the royalty which Phillips

AGO 801604

ALASKA PIPELINE COMPANY



General Offices Located at 3000 Spenard Road
P.O. Box 6288 / Anchorage, Alaska 99502

Mr. Wold

-4-

April 15, 1977

can deliver, but neither party will be obligated to make extra investment or incur unreasonable extra operating cost.

Without obligation, APC expects Phillips to deliver essentially all the royalty and expects to take all the royalty, but only experience will tell the outcome of this expectation. Phillips may install one or more units of compression, and APC may install a pipeline to connect the royalty gas into its pipeline to Anchorage. Various factors outside the respective control of Phillips and APC have made it necessary to develop a best-efforts arrangement rather than the original "take or pay" of 100% of the royalty.

APC's royalty pipeline, if built, would provide several advantages:

1. It would essentially assure APC's ability to take all of the available royalty^{gas}, all of the time, and gain the maximum benefit from royalty gas.
2. It would provide "back-up" for APC's North Road customers while royalty gas may not be available due to downtime of the LNG plant, the platform, or the Phillips pipeline or compressors.
3. It would provide APC with access to other than royalty gas in the vicinity of the Kenai LNG plant, which is at the center of several streams of natural gas--supplies to Swanson River for repressurizing, ammonia/urea manufacture, Pacific Alaska LNG, etc. Thus, the pipeline could give APC additional options on "new" gas from various sources.

What would use "Various factors" be?

AGO 801605

ALASKA PIPELINE COMPANY



General Offices Located at 3000 Spenard Road
P.O. Box 6288 / Anchorage, Alaska 99502

Mr. Wold

-5-

April 15, 1977

4. It would provide an independent supply of gas to APC for emergency in the event of catastrophic failure of the Kenai gas field--well operations, dehydration, or compression--or of APC's pipeline from the field to Mile 16 of APC's pipeline to Anchorage.

Feasibility of the royalty pipeline depends on the possibility of exchanging royalty gas with Union-Marathon, final rate decisions of the Alaska Public Utilities Commission (APUC), final quantification of the amount of royalty gas to be delivered, flow through of the extra cost of royalty gas, and other factors including availability and cost of right of way. At present it appears that there is sufficient benefit from the royalty line to justify the investment by APC.

APC's experience with the APUC is such that royalty gas is particularly attractive: the flow through of its extra cost to end users has been authorized by the APUC, whereas no other purchase by APC can be made with flow through except by further hearings. This fact, plus the fact that it appears royalty gas will always be available (for the contract term) at less cost than any other likely "new" gas, make the royalty most advantageous to APC and its customers. Further, the precedent of this purchase of this royalty gas by APC should be helpful at a future date when other royalty gas may become available and feasible for purchase by APC.

It is clear that APC's action to purchase royalty gas is in the public interest. The price is the lowest available to APC and its

AGO 801606



ALASKA PIPELINE COMPANY

General Offices Located at 3000 Spenard Road
P.O. Box 6288 / Anchorage, Alaska 99502

Mr. Wold

-6-

April 15, 1977

customers; the price is qualified to be not less than the State would have received by its continued export to Japan or by any comparable sale during the contract term within 100 kilometers of the Phillips platform; and a relatively modest investment is required by APC even including the royalty pipeline. Other "new" gas could involve meeting the currently competitive price of Cook Inlet gas (\$1.45) and could involve pipeline costs or take or pay costs many times that for royalty gas. The quantity of this royalty gas is rather ideal for APC's present requirements. In 1976, APC's total purchases were 28.6 BCF *an average of 14.3 BCF* compared to the required take or pay quantity of 26 BCF per year at the Kenai gas field. As structured, the royalty gas contracts would allow APC (and Phillips) to match their investment to market developments and thus provide the optimum conditions for such investment. *only an average of 14.3 BCF*

Clearly, Phillips has been a reluctant party in these contracts but has acted responsibly and reasonably and consistent with the public interest. Phillips preference has always been to retain the royalty gas and increase its value by liquefaction for export to Japan. That contract was originally 52¢ FOB Tokyo, but now is \$1.95. Clearly the increase (\$1.43) contains a substantial increase of profit (which is shared by the State through its royalty price). Clearly the 20¢ revenue which Phillips will realize by bringing the royalty gas on shore does not compare with the revenue and income Phillips would realize by its export.



ALASKA PIPELINE COMPANY

General Offices Located at 3000 Spenard Road
P.O. Box 6288 / Anchorage, Alaska 99502

Mr. Wold

-7-

April 15, 1977

The 20¢ delivery/compression charge is obviously the most Phillips could charge, because it is the most APC would pay. The State is realizing the most it can from the royalty gas, because APC will not pay more for this gas. To suggestions, if any, that APC should not have accepted the delivery charge as contracted, APC would respond that it would be no more logical to require Phillips to accept less than their required price than for the State to accept less than it deems to be necessary for this gas.

APC will not increase its income by purchasing this royalty gas--it will simply recover most (not all) of its costs, by flow through. APC's objective in making this purchase is to prolong the life of its gas reserves and thus the availability of its "old" gas at "old gas pricing" for its customers.

APC firmly believes that the merit of its purchase of royalty gas

has been established already in various arenas.

1. The APUC considered the subject in extensive hearings in 1975 and its order clearly contemplates the purchase and in fact, deemed the matter to be of urgent importance.
2. The Royalty Board and the Commissioner of Natural Resources have reviewed this matter at great length and have approved and authorized its present form.
3. The Attorney General has reviewed jurisdictional aspects and agreed it is not contrary to the public interest or the laws of Alaska.

*proposed by
APC to increase
supply
and revenue
AZ-4/18/77*



ALASKA PIPELINE COMPANY

General Offices Located at 3000 Spenard Road
P.O. Box 6288 / Anchorage, Alaska 99502

Mr. Wold

-8-

April 15, 1977

4. The legislature, in its prior approval, has endorsed the concept and pricing of this purchase by APC.

Previously, support for this purchase by APC was given by the City of Anchorage, Chugach Electric Association, and Homer Electric Association. APC is not aware of any opposition to its purchase of this royalty gas (opposition by Pacific Alaska LNG was withdrawn in 1976, at the insistence of APC). When these various governmental and business approvals are considered, and when the alternative can only be that this gas would continue to be exported to Japan, APC believes that ample justification for the contracts has been made.

At present, APC has about 415 BCF of gas remaining under contract at the Kenai gas field. At 30 BCF per year, there would be 14 years of reserves now remaining. The royalty gas potentially available to June, 1984 is about 40 BCF, which is less than a 10% increase. APC is and has been attempting to reduce the growth rate of its gas sales through conservation measures such as waste heat recovery by power plants and by opposing and reducing the use of gas-generated electric heat. However, it is very likely that unavoidable growth will shorten APC's reserve life to 10 years or less. APC must look to the long term aspects of its gas supply in order to avoid future shortages and problems with the long-term (20 year) financing APC requires. Purchase of the royalty gas is a step, but only a step, in this direction. Royalty gas at 75¢ or 85¢ will be helpful to APC in its negotiations for additional "new" gas reserves, viewed in the context of competitive offerings at \$1.45 or possibly a price equivalent to oil in future years.

best estimate /
judgement
DT 4/18/77



ALASKA PIPELINE COMPANY

General Offices Located at 3000 Spenard Road
P.O. Box 6288 / Anchorage, Alaska 99502

Mr. Wold

-9-

April 15, 1977

Delays in obtaining royalty gas can only diminish its benefit to APC and its customers because of the quantity available as well as the timing and impact of the purchase.

Very truly yours,

Dale Teel
President

DT/pm

AGO 801610

Mr. Donald Wold, Executive Director
Oil and Gas Royalty Advisory Board
Department of Natural Resources
State of Alaska
Juneau, AK 99801

April 6, 1977

subject: the proposed contract between State of Alaska and Phillips
Petroleum Company for North Cook Inlet royalty gas

Dear Don:

After reading the draft contract attached to this letter, I am required to inform you that I believe this contract to be severely prejudicial to the natural gas consumers served by Alaskan Pipeline Company.

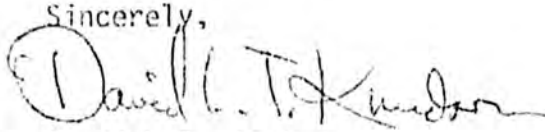
Specifically, I am troubled by Article 9.1, Article 9.2, and Article 11.1. These articles establish a basic cost of service, an escalation factor to be applied to this basic cost of service, a provision for higher costs of service due to compressor costs, and an exemption of this natural gas transmission system from Alaska Public Service Commission control.

I have seen no justification that a pipeline costing 10 to 12 million dollars perhaps 9 years ago (which is most probably highly depreciated) should have a cost of service of 10¢ per Mcf. Regarding the rate of escalation to be applied to the basic rate (i.e., 6 per cent per annum), I would like to point out that in all cost of service projections which I have made show declining transportation charges through time even given a general inflation rate of 6 per cent. I am unaware that future compression costs for State of Alaska royalty gas separate from net working interest gas will require payment on the basis of 10¢ per Mcf and inflated each year thereafter at 6 per cent. In short, the underlying economics of the above mentioned contract should be worked out prior to signing the contract. This is especially so given the fact that contract Article 11.1 frees Phillips from Alaska Public Service Commission supervision.

The delay required by this staff work should not be lengthy.

RECEIVED
APR 07 1977

ALASKA ROYALTY
OIL & GAS BOARD

Sincerely,

David L.T. Knudson
7510 Chad
Anchorage, AK 99502

AGO 801611

period extending back one-half of the time elapsed since the last previous test, not exceeding, however, fifteen (15) days.

8.5 If for any reason the State's or its designee's meter is out of service or is found registering inaccurately and the error is not determinable by ordinary test such that the volume of gas delivered through such meter cannot be ascertained or computed from the readings thereof, the volume of gas so delivered during the period the meter is out of service or registering inaccurately shall be estimated and agreed upon by the parties hereto upon the basis of the best available data, using the first of the following methods which is feasible:

- (a) by correcting the error if the percentage of error is ascertainable by calibration, special test, or mathematical calculation;
- (b) By using the registration of any check measuring equipment of Lessee if installed and registering accurately;
- (c) By estimating the volume by comparing it with deliveries during preceding periods under similar conditions when the meter was registering accurately.

✓ ARTICLE IX

⑨ GATHERING AND COMPRESSION CHARGES AND TAXES

9.1 For all gas delivered by Lessee to the State at the delivery point, the State or its designee shall pay

to Lessee a ^{a)} gathering charge of ten cents (10.0¢) per Mcf from the date of first delivery hereunder. The above-stated charge shall increase by six percent (6%) compounded annually, on each anniversary date of the date this Agreement.

9.2 It is recognized by the parties hereto that it may be necessary for Lessee to install compression facilities during the term of this Agreement. At the time the first compressor unit is installed and first used, the State or its designee shall pay Lessee in addition to the gathering charge set forth in Section 9.1, ^{a)} a compression charge of ten cents (10.0¢) per Mcf for all gas delivered by Lessee to the State at the delivery point. Such charge shall increase by six percent (6%) per year, compounded annually, commencing on the first anniversary of the date of such compression facilities are installed and first used.

9.3 In the event that Lessee installs or causes to be installed from time to time compression facilities in addition to the first compressor unit mentioned in Section 2, above, Lessee shall give the State and its designee written notice at least six (6) months prior to the time Lessee anticipates placing any additional unit or units in operation in order to maintain capacity in its gathering system. ^{b-)} Such notice shall also terminate this agreement at the end of such six (6) months period. If, within ninety (90) days of the date of such notice the parties shall agree upon a new compression charge to be applicable when such additional compression facilities go into operation, then this agreement shall not terminate but shall continue in full force and effect as amended to include the new compression charge.

for such month, Lessee shall determine the amount of royalty gas not taken by the State for such month and shall make payment therefor to the State together with said statement.

10.3 Each party hereto shall have, at its expense, the right to examine the books and records of the other party to the extent necessary to verify the accuracy of any statement or invoice made under or pursuant to this contract. Any statement shall be final as to both parties unless questioned in writing within two (2) years after payment thereof has been made.

ARTICLE XI

REPRESENTATION AND CONDITION PRECEDENT

11.1 It is expressly recognized and agreed that the gas gathering system utilized for deliveries hereunder is operated and maintained by Lessee for its own purpose and Lessee does not, by entering into this Agreement, dedicate any facilities or otherwise undertake to render any service to or for the public. This Agreement is being undertaken solely to effectuate the delivery of royalty gas to the State, and the State makes the material representation that neither this Agreement nor the State's use or disposition of the gas delivered hereunder will subject Lessee to regulation by the Federal Power Commission, the Alaska Public Utilities Commission, or the Alaska Pipeline Commission.

11.2 In the event that any governmental agency shall declare that Lessee's activities hereunder subject Lessee to regulation as a utility, then either party shall have the option to terminate this Agreement upon thirty (30)

TO: [Don Wold
Executive Director
Alaska Royalty Oil and Gas
Development Advisory Board

DATE: March 29, 1977

FILE NO:

TELEPHONE NO:

FROM: Wilson Condon
Deputy Attorney General

SUBJECT: Jurisdiction of the
Alaska Pipeline Commission
Over Phillips East Cook
Inlet Gas Line

This is in response to your memorandum of March 11, 1977 in which you ask if the Alaska Pipeline Commission (APC) would have jurisdiction over a pipeline operated by Phillips Petroleum if State-owned royalty gas is transported over that pipeline to North Kenai Road, where it would be sold by the State to Alaska Pipeline Company, a wholly owned subsidiary of Alaska Gas and Service. My conclusion is that the APC would not have jurisdiction over the Phillips Petroleum Company pipeline.

The Alaska Pipeline Commission has jurisdiction over "pipelines", "pipeline facilities" and "pipeline carriers". AS 42.06.630(10) defines "pipeline carrier" as:

. . . the owner, including corporations
. . . , of any pipeline, as the term is
defined in this section, or any interest
in it;

AS 42.06.630(9) defines "pipeline" or "pipeline facility" as:

. . . . all the facilities of a total system
of pipe . . . in this state used by a
pipeline carrier for transportation, for
hire and as a common carrier, of oil or
gas for delivery, storage, or further
transportation, and including all
pipe, pump and compressor stations,
station equipment, and all other facilities
used or necessary for an integral line of
pipe to effectuate the transportation from
point to point, excluding, however, gas
processing plant, heaters and separators;

March 29, 1977

The salient portion of the above definition is written in the conjunctive, i.e., to be a "pipeline" or "pipeline facility" under the Alaska Pipeline Commission Act, AS 42.06 et seq., a pipeline facility must be used ". . . for transportation, for hire and as a common carrier . . ." (emphasis added).

Cf course Phillips, in the arrangement described at the outset of this memorandum, will be using its pipeline for "transportation" of gas. However, since the subject pipeline is neither operated by Phillips "as a common carrier" nor is it subject to the "common carrier" covenant requirement of AS 38.35.120 due to the fact that the lease of state lands for the subject pipeline pre-dates the enactment of that statute, the subject pipeline would not fall within the jurisdiction of the APC were the proposed arrangement to be entered into by Phillips.

WLC:RMB:jec

STATE
of ALASKA

MEMORANDUM

DEPARTMENT OF NATURAL RESOURCES
OFFICE OF THE COMMISSIONER

TO: ☐

Wilson Condon
Deputy Attorney General

DATE : March 11, 1977

FROM:

Don Wold
Executive Director
Alaska Royalty Oil and Gas
Development Advisory Board

SUBJECT:

Jurisdiction of the Alaska
Pipeline Commission over the
Phillips Petroleum Company
pipeline.

Please refer to Commissioner Martin's memo to the Attorney General dated February 24, 1977 and your response dated March 7, 1977 regarding the same subject except as related to the Alaska Public Utilities Commission.

We would sincerely appreciate your review and opinion of the same matter except as related to the Alaska Pipeline Commission.

cc: Fred Boness

AGO 801617

150 3/17/77

Don

(u) John received the State - Illinois draft
by telecopy Friday afternoon. He
did not receive the State - Virginia

draft due to breakdown in our

Xerox Machine. In sending it,

per the AG opinion they by accident

gave the delivery. Have no idea when

they will get it, but couldn't do better
by telecopy or otherwise!

Wade

ALASKA PIPELINE COMPANY

Dale Teel
President

March 10, 1977

Dear Don:

I've managed to write three pages, giving my rationale regarding the charges by Phillips.

I also enclose for your personal information copies of the transmittal letter on Chugach's latest rate increase filing and an internal memo I wrote on that subject. While the Chugach's letter is public information, at the APUC, I believe it would be best not to publicize it out of your office and certainly my comments on that matter need to be restricted.

I hope this material will help you bring our negotiations to fruition.

Cordially,



cc: Mr. John Horn w/attachments

RECEIVED

ALASKA ROYALTY
OIL & GAS BOARD

RECEIVED
MAR 14 1977

ALASKA ROYALTY
OIL & GAS BOARD

AGO 801619

ALASKA PIPELINE COMPANY

General Offices Located at 3000 Spenard Road
P.O. Box 6288 / Anchorage, Alaska 99502

March 10, 1977

Memo to: File

Subject: Rationale for Accepting Gathering and Compression
Charges Proposed on North Cook Inlet Royalty Gas

By telephone March 10, 1977 Mr. Don Wold asked us to rationalize the acceptance of a 10¢/MCF charge for "gathering" and a 10¢/MCF charge for compressing royalty gas we have negotiated to purchase from the State of Alaska.

The State will escalate the price we pay for royalty gas to the highest price paid by other purchasers within 100 kilometers for similar quality and similar delivery conditions. We had offered to pay no more than the price the State would otherwise have received through the continued export of the royalty gas to Japan as LNG.

It thus is clear that the State places the State's interest above the interests of our ratepayers to the extent we have to pay more than would result from export of this gas. It does not follow that the Lessee who has made the investment required for production, gathering, and compression of royalty gas can be or should be held responsible to deliver the royalty gas at less cost than the Lessee determines to be necessary, fair, and reasonable. In fact, efforts by the State to do so will simply result in there being no agreement and no delivery of royalty gas by the Lessee.

The Lessee cannot be treated as a regulated operator under Alaska law, and the Lessee has the right to determine whether or not, and at what price, it is willing to share its facilities and install new facilities for the benefit of our ratepayers rather than for its shareholders. Clearly, the Lessee prefers not to share these facilities and will not do so if effort is made to assert that delivery of royalty gas onshore could have equal or greater priority than its contractual duty to deliver LNG to Tokyo, regardless of the revenue (price) received by Lessee.

The Lessee has provided (letter of 3-3-77) some cost estimates, reluctantly, to show the reasonableness of the prices accepted by us:

Table I: Pipeline (Gathering)

Annual cost is reported to be \$7,070,000. Assuming all this cost is carried by 43 BCF or 55 BCF, the average cost is 16.4¢ or 12.9¢. The selection of 10¢ as being appropriate for gathering

ALASKA PIPELINE COMPANY



General Offices Located at 3000 Spenard Road
P.O. Box 6288 / Anchorage, Alaska 99502

-2-

royalty gas is less than these average costs, but clearly more than the incremental cost, as it must be. There is no way for a third party to impose a different price on the Lessee, and the price of 10¢ is far below any alternative available to us. In fact, there is no such alternative except not to take royalty gas, and we are not obliged to do so. We bear all the risk that the cost of this gas will remain competitive and will be recoverable through our revenues.

Table II: Compressors (first unit)

Annual cost is reported to be \$2,010,000. Assuming all this cost is carried by 43 BCF or 55 BCF, the average cost is 4.67¢ or 3.65¢. While the compression is not required except to deliver royalty gas (but all the gas must be compressed), the incremental cost here would be 37.2¢ or 29.1¢. However, the Lessee recognizes that during the contract term compression will be required even if royalty gas is not being delivered to us. The selection of 10¢ as being appropriate for the compression is less than the short term incremental cost but well more than the average cost. Again, there is no way for a third party to impose a different price on the Lessee, and we bear all risk that the cost of this gas will remain competitive and will be recoverable through our revenues.

If the two components are combined, the results are:

\$9,030,000 annual cost @ 43 bcfy

21.12¢ average cost

versus 20.00¢ price requested

The price requested is below the reported average cost. Assuming no incremental cost for gathering (pipeline) however, the price requested is well above the incremental cost. In fact, there is an incremental cost for gathering (as to dehydration), and other down-hole expenses which are a function of production rate. We are not equipped to quantify these costs and there is no reason to do so. The essence of this matter is that the Lessee has offered us a price below average cost and above incremental cost which is acceptable to us and that we are the only party at risk.

AGO 801621

3/19/77

WHR

APC

2/14/77

Since they can
flow through this
cost to the consumer
without APC approval
See APC approval
memo 2/14/77



ALASKA PIPELINE COMPANY

General Offices Located at 3000 Spenard Road
P.O. Box 6288 / Anchorage, Alaska 99502

-3-

There are only two beneficiaries of this contract. We do not benefit, since we will simply recover our added costs from our rate payers. We believe Phillips will not benefit since they are reluctant and clearly prefer to process and ship the gas to Japan. We believe their profits in processing and selling the royalty gas to Japan would be much greater than the amount of income from the proposed compression and transmission charges net of incremental expenses. The State takes no risks and may benefit from a higher wellhead price. Our ratepayers benefit from the increased life of our committed reserves. If the transaction is not consummated then, the losers are the State and our ratepayers, which (through power distribution) include more than half of the State's population, from Homer and Seward to Talkeetna.

There is no way to require the Lessee to deliver royalty gas (at any price) and no way to disagree with the price(s) now offered. Clearly the end objective -- obtaining of royalty gas -- is in the public interest, and the State should place that interest foremost.

dh

cc: Fred Bones
Royalty Board



ALASKA PIPELINE COMPANY

General Offices Located at 3000 Spenard Road
P.O. Box 6288 Anchorage, Alaska 99502 / Phone (907) 277-5551
Telex 25-187

March 9, 1977

Mr. Don Wold, Executive Director
Royalty Oil & Gas Development
Advisory Board
Department of Natural Resources
Pouch M
Juneau, Alaska 99811

Dear Don:

As requested at the meeting of the Board on March 7, I enclose the pertinent extract (pages 1,8,9,10) from Order No. 3 in Docket U-75-68 dated 17 December, 1975.

You will note on page 10 that we were expected to be taking royalty gas prior to August 1, 1976. We explained the status of this matter by letter of September 29, in response to their inquiry. I surely hope that now, nearly 6 months later, we will be able soon to conclude the negotiations and proceed to begin taking royalty gas this year. Clearly, the Commission is convinced of our imperative need to obtain more reserves and has approved flow through of the cost. Copy of the complete order was mailed to the Attorney General, and to each legislator, by the Commission. I believe we will have no difficulty getting approval of the amended contract.

Very truly yours,


Dale Teel

dh

Enclosures: Pages 1,8,9,10 and Mailing List of Order No. 3,
U-75-68
Letter to APUC dated September 29, 1976

RECEIVED
MAR 14 1977

APUC
Does not speak
to the matter
of transportation
for oil, compensation,
etc.

RM/Ummer

STATE OF ALASKA

THE ALASKA PUBLIC UTILITIES COMMISSION

Before Commissioners: Gordon J. Zerbetz, Chairman
 B. Richard Edwards
 Marvin R. Weatherly
 Carolyn S. Guess (not participating)
 Susan M. Knowles

In the Matter of the Filing of a	)	
Tariff Revision, Designated as	)	U-75-68
TAL2-4, by ALASKA GAS AND SERVICE	)	
COMPANY to Adopt Purchased Gas and	)	ORDER NO. 3
Tax Adjustment Clauses	)	

ORDER MODIFYING PURCHASED GAS COST AND TAX FLOW
THROUGH CLAUSES AND ACCEPTING MODIFIED CLAUSES

On July 31, 1975, ALASKA GAS AND SERVICE COMPANY (AGAS), a division of Alaska Interstate Company, filed a tariff revision to reinstate in its natural gas utility tariff its tariff rules Nos. 708 and 709. These sections would allow AGAS to flow through to its customers, by means of a billing surcharge, any increase in its wellhead cost of gas above 41.5¢ per MCF occurring after July 1, 1975, and any new or increased tax or excise imposed by Federal, State, Borough, Municipal or other local taxing authority upon the production, transmission, or sale of gas, or levies of special taxes, license fees, or street or right-of-way levies or fees, above the amounts established on January 1, 1975.

Order No. 1 in this proceeding suspended the tariff revision until March 1, 1976. In Order No. 1 the Commission also established a hearing date of October 30, 1975. AGAS was to bear the burden of proof that the tariff revision requested was reasonable and proper in all respects.

will be tailored as much as possible to enable the gas cost increases based on the wholesale price index to be flowed through in a timely manner.

Where a flow through will not result in AGAS maintaining or receiving more than a reasonable rate of return on its investment it is the opinion of this Commission that the flow through should be permitted. The basic reason for flow through provisions is to insure that a short term windfall does not accrue to the customers of AGAS in rates which do not properly reflect the revenue requirements of AGAS. Such a windfall would result from short term regulatory lag. When designing flow through clauses or allowing the flow throughs pursuant to the clauses the Commission must insure that windfall profits do not accrue to AGAS. Each of the flow through clauses acceptable to the Commission should be applied by AGAS with this in mind. Conservative applications of these clauses should be the norm for AGAS. If the Commission determines that the flow through clauses set forth above in this order including the royalty gas clause are being applied to maintain or receive more than a reasonable rate of return or are otherwise being abused the Commission will commence an investigation to repeal these clauses and order appropriate refunds where applicable.

Royalty Gas

The evidence in this proceeding clearly demonstrates that if AGAS is able to purchase royalty gas from the State of Alaska it will be necessary that AGAS take the gas as it is produced and that the price of this royalty gas will be somewhat higher than the price of gas from other gas

supplies now committed to AGAS. The volume of gas from the State will not meet the entire demand on the system which results in commingling of high and low priced gas. This commingling raises several problems. The initial problem is a month to month change in rates to the consumers of AGAS. The month to month billings would vary directly in accordance with the royalty gas portion of the total gas volume consumed by the customers of AGAS. A higher proportion of royalty gas consumed would result in an increased average cost of gas. In order to prevent a windfall for either AGAS or the customers of AGAS that would result by setting a constant average price, it is the Commission's opinion that the royalty gas may be commingled with the cheaper gas and that the month to month rates of customers of AGAS may vary in accordance with the amount of royalty gas distributed to the customers. Another problem raised with the royalty gas variation involves the conditions under which the royalty gas flow through clause may be used. It is apparent to the Commission that monthly filings of comparative balance sheets, operating expense statements, rate of return calculations and rate base calculations is not practical for the implementation of this clause. It is the Commission's opinion, however, that a report should be filed by AGAS in a form acceptable to the staff of the Commission, that would allow the staff of the Commission to audit the fluctuation of the rates charged for gas to the customers of AGAS. These reports will be due on January 15, April 15, July 15 and October 15 of each year. The information in the report should at least show the total volume of gas consumed for each of the months involved in the report, the volume of

royalty gas purchased for each month, the price of the royalty gas at the point of purchase by AGAS, and the price and volume of the gas purchased by AGAS from other suppliers.

The method which should be used by AGAS to determine its average cost of gas per MCF is to multiply the amount of State royalty gas purchased in a month times the price of the State royalty gas and add to that product the product of the price and volume of gas purchased from other suppliers in the same month. The sum of the two products should then be divided by the total amount of gas purchased in the month to arrive at the average cost of gas per MCF. It is apparent to the Commission that by using this formula the additional cost of gas per MCF that the customers of AGAS will pay as a result of the commingling of royalty gas with other gas will fall generally in the range of 2 to 5¢ per MCF per month.

It is the Commission's opinion that it is imperative for AGAS to obtain additional reserves and gas supply to serve its customers. If the royalty clause is not used to reflect an average cost of gas on or before August 1, 1976, this Commission will commence an investigation to determine the reasons for the non-use and whether the clause should be deleted from the tariff of AGAS.

RESERVE TAX

The evidence in this proceeding shows that the gas company may become responsible for the payment to its suppliers of gas of the reserve tax that its suppliers are required to pay the State of Alaska pursuant to 159 SLA 1975. It is the opinion of the Commission that this tax should be treated as an expense of the utility recoupable

*Has this been
done?
See Sept 29, 1976
letter attached*

Paul F. Robison, Esquire
921 W. 6th Avenue
Anchorage, Alaska 99501

Mr. & Mrs. Roger Clyne
3011 Lexington Avenue
Anchorage, Alaska 99502

Roger R. Kempel, Attorney
Municipality of Anchorage
P. O. Box 400
Anchorage, Alaska 99510

Mr. & Mrs. Hostman
Whirlaway Rd. Box 100
Eagle River, Alaska 99577

COURTESY LIST

Alaska Gas & Service Company
P. O. Box 6288
Anchorage, Alaska 99502

City of Kenai
Box 580
Kenai, Alaska 99611

Chugach Electric Association, Inc.
P. O. Box 3518
Anchorage, Alaska 99501

Kenai Utility Service Company
P. O. Box 614
Kenai, Alaska 99611

Kenai Peninsula Borough
P. O. Box 850
Soldotna, Alaska 99669

Cook Inlet Region, Inc.
1211 West 27th Avenue
Anchorage, Alaska 99503

The Honorable Helen D. Beirne
Representative
Box 4-BB
Spenard, Alaska 99503

The Honorable Bob Bradley
Representative
601 North Bragaw
Anchorage, Alaska 99504

The Honorable Thelma Buchholdt
Representative
2607 Kona Lane
Anchorage, Alaska 99503

The Honorable Samuel R. Cotton
Representative
Box 296
Eagle River, Alaska 99577

The Honorable John L. Rader
Senator
Box 2068
Anchorage, Alaska 99501

The Honorable Patrick Rodey
Senator
3605 Lois Drive #611
Anchorage, Alaska 99503

The Honorable Clem V. Tillion
Senator
Box 373
Homer, Alaska 99603

The Honorable Edward C. Willis
Senator
Box 402
Eagle River, Alaska 99577

The Honorable Avrum Gross
Attorney General
Pouch K
Juneau, Alaska 99811

Anchorage Attorney General's
Office
Civil Section
368 E Street
Anchorage, Alaska 99501

Courtesy List (Cont.)

The Honorable Helen M. Fischer
Representative
2023 Wildwood Lane
Anchorage, Alaska 99503

The Honorable Clark Gruening
Representative
940 Tyonek
Anchorage, Alaska 99501

The Honorable H. M. "Mike" Hershberger
Representative
2906 Will Rogers Place
Anchorage, Alaska 99503

The Honorable Ramona M. Kelley
Representative
5214 East 24th Avenue
Anchorage, Alaska 99504

The Honorable Joseph H. McKinnon
Representative
2203 West 46th Avenue
Anchorage, Alaska 99503

The Honorable Hugh Malone
Representative
Box 9
Kenai, Alaska 99611

The Honorable Kathryn Ostrosky
Representative
423 E. 12th Avenue
Anchorage, Alaska 99501

The Honorable William K. Parker
Representative
337 East 10th Avenue
Anchorage, Alaska 99501

The Honorable Leo Rhode
Representative
Box 406
Homer, Alaska 99603

The Honorable Theodore G. Smith
Representative
2616 Sorbus Circle
Anchorage, Alaska 99504

The Honorable Susan Sullivan
Representative
7330 Marge Court
Anchorage, Alaska 99504

The Honorable Richard K. Urion
Representative
3239 Hiland Drive
Anchorage, Alaska 99504

The Honorable W. E. "Brad" Bradley
Senator
P. O. Drawer 8670
Anchorage, Alaska 99503

The Honorable Genie Chance
Senator
Box 2392
Anchorage, Alaska 99510

The Honorable Mike Colletta
Senator
Box 3188
Anchorage, Alaska 99501

The Honorable Chaney Croft
Senator
425 "C" Street, Suite 710
Anchorage, Alaska 99501

The Honorable Joseph L. Orsini
Senator
2912 Alder Drive
Anchorage, Alaska 99504



Alaska Gas and Service Company

GENERAL OFFICES LOCATED AT 3000 SPENARD ROAD
P. O. BOX 6288 ANCHORAGE, ALASKA 99502 / PHONE (907) 277-5551
TELEX 25-187

September 29, 1976

Alaska Public Utilities Commission
1100 MacKay Building
338 Denali Street
Anchorage, Alaska 99501

Dear Commissioners:

Order No. 5 of U-75-68 requires a report on the status of our purchasing royalty gas from the State of Alaska, by October 15. The matter of royalty gas availability was mentioned in Order No. 7 of U-75-95 as part explanation for setting a return on equity of only 14.25% for us, which in our opinion is inadequate.

Negotiations for royalty gas have had to be done intermittently because of the heavy attention required for U-75-95. We have had several meetings with Phillips and others regarding royalty gas, and still have some hope to reach a satisfactory conclusion. Our alternative would be to continue utilizing "Anchorage" reserves to supply our customers in the North Kenai Road area. This would avoid the need for further investment and the higher cost of gas.

If we can anticipate sufficient return and if we can obtain the necessary financing, we would of course want to proceed to obtain royalty gas as being a better, longer-term solution to this matter. But it became less feasible to us and less favorable to the public interest than we once envisioned because of three aspects of the contract with the State (copy which is enclosed):

- (1) The price is set to be equal to the highest of the defined area, whereas we hoped it would never be higher than the price of gas to be liquefied for Japan.
- (2) The state requires that we take 100% of the royalty gas although we do not have sales on the North Kenai Road for the full amount; we do not have facilities to interconnect with our pipeline to Anchorage; and we are not able to obtain an "exchange" agreement for gas at the Kenai field.

Alaska Gas and Service Company



GENERAL OFFICES LOCATED AT 3898 SPENARD ROAD
P. O. BOX 5188 ANCHORAGE, ALASKA 99502 / PHONE (907) 277-1311
TELEX 22-187

Alaska Public Utilities Commission
September 29, 1976
Page -2-

- (3) The contract term is limited to the term of the sale to Tokyo -- June 30 of 1984 -- which sharply limits the feasibility of investing for facilities. We had asked for this royalty for "the life of production."

Phillips has asked that we fund all of the first phase of a compressor station on their platform, estimated at \$5 million, as a condition for delivering the royalty to us onshore. We have countered with an offer to pay a pro-rata (volume) share for compression with a right to discontinue after one year's notice, and an offer to resell "excess" royalty gas back to Phillips at the price they would otherwise have paid to the State, and to forego taking royalty gas if (and while) pipeline capacity is a limitation. We will require a standby gas supply during such periods when royalty is not available. We have not been able to obtain such a supply and may have to build a pipeline from our existing line (to Anchorage) for this purpose. It is here that allowable rate of return and financing became essential to the decision.

We do not believe it is practical to develop "a complete record" of the negotiations for the Commission's files on this matter, but we would welcome an opportunity to discuss it informally at the convenience of the Commission. Clearly we do need to preserve the flow through provision in order to continue our negotiations, which apparently will require several more months.

Very truly yours,

Dale Teel
President

dh

Enclosure

TO: [

DATE: March 7, 1977

Guy Martin, Commissioner
Dept. of Natural Resources

FILE NO:

TELEPHONE NO:

FROM:

Wilson Condon
Deputy Attorney General

SUBJECT:

Jurisdiction of the APUC
over Phillips Petroleum
Pipeline

This is in response to your memorandum of February 24, 1977, in which you ask if the Alaska Public Utilities Commission would have jurisdiction over a pipeline operated by Phillips Petroleum if State-owned royalty gas is transported over that pipeline to North Kenai Road, where it would be sold by the State to Alaska Pipeline Company, a wholly owned subsidiary of Alaska Gas and Service. My conclusion is that the APUC would not have jurisdiction over the Phillips Petroleum Company pipeline.

The Alaska Public Utilities Commission has jurisdiction over "public utilities" which are defined by AS 42.05.70(2) as follows:

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

* * *

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

* * *

"Public" is defined by AS 42.05.701(5) as follows:

"public" or "general public" means

(A) any group of 10 or more customers that purchase the service or commodity furnished by a public utility as defined in (2) of this section; and

(B) any utility purchasing the product or service or paying for the transmission of electric energy, natural or manufactured gas, or petroleum products which are resold to a group included in (A) of this paragraph or which are used to produce the service or commodity sold to the public by the utility.

If Phillips delivers royalty natural gas to the State at the wellhead, and the State contracts with Phillips for transportation of that gas to North Kenai Road, Phillips will be rendering a utility-type service because it will be engaged in the transmission of natural gas. Phillips, however, will be neither a "utility" nor "public utility" within the meaning of the Public Utilities statute because it will not be furnishing transmission service to the "public" or the "Alaska public." Phillips would be furnishing transmission service to the State. This would make it a public utility if 1) the State is the 10th customer to purchase transmission service (our assumption is there are less than 10 purchasers of transmission service), or 2)if the State is a "utility. . . paying for the transmission of. . . natural. . . gas. . . which is resold to [any group of 10 or more customers that purchase the service or commodity furnished by a public utility. . .]." The State would not be a utility (because it does not fit within the definition of AS 42.05.701(2)), thus Phillips could not be a public utility subject to the jurisdiction of the APUC when it furnishes transmission service to the State.

WLC:FHB:bvd

cc: Frederick H. Boness
Assistant Attorney General

Robert E. Stoller
Assistant Attorney General



PHILLIPS PETROLEUM COMPANY

BARTLESVILLE, OKLAHOMA 74004

918 661-6500

NATURAL RESOURCES GROUP
Gas and Gas Liquids Division

March 3, 1977

Royalty Gas
North Cook Inlet Field

File: 1-Ho-115-77-G&GL

Mr. Donald G. Wold, Executive Director
Royalty Oil & Gas Development Advisory Board
Department of Natural Resources
Pouch M
Juneau, Alaska 99811

Dear Sir:

In your letter of February 25, 1977, you have requested certain information regarding whether Phillips could make the royalty gas from the North Cook Inlet Field available at an onshore location on the North Kenai Road, rather than in the field as provided in our lease with the State of Alaska. Information is listed by the numbers used in your letter:

2. Q. What charges would be made by Phillips for delivery of the gas to this point? What is the detailed justification of these charges?
 - A. Since we had previously negotiated a place differential of 10¢ per Mcf starting with the calendar year of 1977 and increasing 6% per year thereafter with Alaska Pipeline Co., Phillips would be willing to utilize this approach with the State. Although this is a negotiated figure, the data supporting same is shown on Table I.
3. Q. We understand that as the field pressure declines, compressors will be installed to maintain production rate. What cost will be incurred by the State and what is the detailed justification of these costs?
 - A. For the first compressor unit (approximately 3800hp) installed, compression charge would be 10¢ per Mcf increasing 6% per year from the year of installation. As later units are added, the compression charge will be agreed upon at that time. The above charge is the result of negotiations with Alaska Pipeline Company and is on the condition that Royalty gas would be handled only when there is surplus capacity in our gathering system and compressors. The above charge would be substantially higher if based on adding sufficient additional compressor capacity to assure the availability of capacity and would also entail a substantial minimum annual payment to cover these additional costs. Our calculations are attached as Table II.
4. Q. What is your best forecast of the dates of installation of the first and future compressors and how will the cost to the State change with installation of additional compressors?

AGO 801633

March 3, 1977

4. Continued.

- A. This is dependent on the amount of royalty gas taken by the State and also on other factors, such as, whether LNG in addition to current deliveries to Japan is sold to the south 48 states. Based on present information, we estimate that the first unit would be installed in 1978 or 1979.
5. Q. What is your best forecast of future production from this field? Will you share with the State your future production plans so that the State may plan accordingly to utilize its royalty gas?
- A. Production has averaged 43 to 45 Bcf annually over the last several years. We visualize that production could increase to 55 Bcf or more per year including royalty gas taken in kind.
6. Q. The State understands your need to maintain production of your LNG plant and that your ability to deliver royalty gas to the State will change as the field pressure changes. Would you please explain this procedure and give us your best forecast of your ability to make delivery in the future?
- A. Without compression, the volume available from North Cook Inlet Field will decline rather rapidly commencing in 1979. Producing at the 43 to 45 Bcf per year rate and with the installation of compressors, these rates are estimated to continue until 1986, after which the volume declines approximately 10% per year. If the higher rate of 55 Bcf per year is maintained, the volume will commence declining in 1984 at the rate of approximately 10% per year.

You will appreciate that, due to the number of unknown factors, the information provided above is based on our best estimates of the situation as it now exists. New developments could change these estimates.


John Horn

JH:jaw

cc: R. I. Swetnam

TABLE I

PIPELINE

Estimated Present-Day Replacement Cost at least \$25,000,000
Estimated Present-Day Replacement Cost Depreciated to 1977 17,300,000

ESTIMATED COSTS

	<u>\$/Year</u>
Depreciation (20 Years)	\$1,100,000
Rate of Return 15% on Depreciated Investment	1,520,000
Income Tax @ 52.9% (State & Federal)	1,700,000
Operating Expense	2,750,000
TOTAL	<u><u>\$7,070,000</u></u>

Cost/Mcf @ 43 Bcf/Year = 16.4¢

Cost/Mcf @ 55 Bcf/Year = 12.9¢

TABLE I ICOMPRESSORS
(FIRST UNIT)

To maintain capacity in the gathering system and compressors to handle the full 12.5% royalty gas volume, it will be necessary to install compressors at an earlier date. Also, it is estimated that to maintain this capacity it will be necessary to install an additional compressor unit over and above that required for maintaining deliveries without the State taking its royalty gas in kind. Estimated differential in compressor investment is \$5,000,000.

Cost of Compression

	<u>\$/Year</u>
Depreciation (10 Years)	\$ 500,000
Rate of Return 15% on Average Investment	375,000
Income Taxes @ 52.9% (State & Federal)	420,000
Operating Expense	715,000
TOTAL	<u><u>\$2,010,000</u></u>

Minimum Annual Payment	= \$2,010,000
Royalty Gas Volume @ 43 Bcf/Year	= 5.4 Bcf
Royalty Gas Volume @ 55 Bcf/Year	= 6.9 Bcf
Cost/Mcf @ 5.4 Bcf	= 37.2¢
Cost/Mcf @ 6.9 Bcf	= 29.1¢

Phillips agreed with Alaska Pipeline Company's request to a compressor charge of 10¢/Mcf on a space-available basis and no minimum annual charge.

TABLE I

PIPELINE

Estimated Present-Day Replacement Cost at least \$25,000,000
 Estimated Present-Day Replacement Cost Depreciated to 1977 17,300,000

ESTIMATED COSTS

	<u>\$/Year</u>
Depreciation (20 Years)	\$1,100,000
Rate of Return 15% on Depreciated Investment	1,520,000
Income Tax @ 52.5% (State & Federal)	1,700,000
Operating Expense	2,750,000
TOTAL	<u>\$7,070,000</u>

Cost/Mcf @ 43 Bcf/Year = 16.4¢ ✓ 10¢
 Cost/Mcf @ 55 Bcf/Year = 12.9¢

TABLE II

COMPRESSORS (FIRST UNIT)

To maintain capacity in the gathering system and compressors to handle the full 12.5% royalty gas volume, it will be necessary to install compressors at an earlier date. Also, it is estimated that to maintain this capacity it will be necessary to install an additional compressor unit over and above that required for maintaining deliveries without the State taking its royalty gas in kind. Estimated differential in compressor investment is \$5,000,000.

Cost of Compression

	<u>\$/Year</u>
Depreciation (10 Years)	\$ 500,000
Rate of Return 15% on Average Investment	375,000
Income Taxes @ 52.9% (State & Federal)	420,000
Operating Expense	715,000
TOTAL	<u>\$2,010,000</u>

Minimum Annual Payment	= \$2,010,000
Royalty Gas Volume @ 43 Bcf/Year	= 5.4 Bcf (12 1/2 %)
Royalty Gas Volume @ 55 Bcf/Year	= 6.9 Bcf (12 1/2 %)
Cost/Mcf @ 5.4 Bcf	= 37.2¢
Cost/Mcf @ 6.9 Bcf	= 29.1¢

Phillips agreed with Alaska Pipeline Company's request to a compressor charge of 10¢/Mcf on a space-available basis and no minimum annual charge.

What does this mean?

See DW 3/3/77 letter to Don Wold

How added compression

What does this mean? APC have to pay 10¢/Mcf only if we get royalty gas safety with a 12-9¢/Mcf. This is not make sense since 1/8 of product from well also.



PHILLIPS PETROLEUM COMPANY

BARTLESVILLE, OKLAHOMA 74004

918 651-6500

NATURAL RESOURCES GROUP
Gas and Gas Liquids Division

March 3, 1977

Royalty Gas
North Cook Inlet Field

File: 1-Ho-115-77-G&GL

Mr. Donald G. Wold, Executive Director
Royalty Oil & Gas Development Advisory Board
Department of Natural Resources
Pouch M
Juneau, Alaska 99811

Dear Sir:

In your letter of February 25, 1977, you have requested certain information regarding whether Phillips could make the royalty gas from the North Cook Inlet Field available at an onshore location on the North Kenai Road, rather than in the field as provided in our lease with the State of Alaska. Information is listed by the numbers used in your letter:

2. Q. What charges would be made by Phillips for delivery of the gas to this point? What is the detailed justification of these charges?
 - A. Since we had previously negotiated a place differential of 10¢ per Mcf starting with the calendar year of 1977 and increasing 6% per year thereafter with Alaska Pipeline Co., Phillips would be willing to utilize this approach with the State. Although this is a negotiated figure, the data supporting same is shown on Table I.
3. Q. We understand that as the field pressure declines, compressors will be installed to maintain production rate. What cost will be incurred by the State and what is the detailed justification of these costs?
 - A. For the first compressor unit (approximately 3800hp) installed, compression charge would be 10¢ per Mcf increasing 6% per year from the year of installation. As later units are added, the compression charge will be agreed upon at that time. The above charge is the result of negotiations with Alaska Pipeline Company and is on the condition that Royalty gas would be handled only when there is surplus capacity in our gathering system and compressors. The above charge would be substantially higher if based on adding sufficient additional compressor capacity to assure the availability of capacity and would also entail a substantial minimum annual payment to cover these additional costs. Our calculations are attached as Table II.
4. Q. What is your best forecast of the dates of installation of the first and future compressors and how will the cost to the State change with installation of additional compressors?

March 3, 1977

4. Continued.

A. This is dependent on the amount of royalty gas taken by the State and also on other factors, such as, whether LNG in addition to current deliveries to Japan is sold to the south 48 states. Based on present information, we estimate that the first unit would be installed in 1978 or 1979.

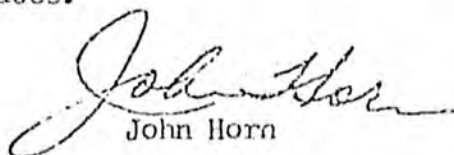
5. Q. What is your best forecast of future production from this field? Will you share with the State your future production plans so that the State may plan accordingly to utilize its royalty gas?

A. Production has averaged 43 to 45 Bcf annually over the last several years. We visualize that production could increase to 55 Bcf or more per year including royalty gas taken in kind.

6. Q. The State understands your need to maintain production of your LNG plant and that your ability to deliver royalty gas to the State will change as the field pressure changes. Would you please explain this procedure and give us your best forecast of your ability to make delivery in the future?

A. Without compression, the volume available from North Cook Inlet Field will decline rather rapidly commencing in 1979. Producing at the 43 to 45 Bcf per year rate and with the installation of compressors, these rates are estimated to continue until 1986, after which the volume declines approximately 10% per year. If the higher rate of 55 Bcf per year is maintained, the volume will commence declining in 1984 at the rate of approximately 10% per year.

You will appreciate that, due to the number of unknown factors, the information provided above is based on our best estimates of the situation as it now exists. New developments could change these estimates.


John Horn

JH:jaw

cc: R. I. Swetnam

TABLE I

PIPELINE

Estimated Present-Day Replacement Cost at least \$25,000,000
Estimated Present-Day Replacement Cost Depreciated to 1977 17,300,000

ESTIMATED COSTS

	<u>\$/Year</u>
Depreciation (20 Years)	\$1,100,000
Rate of Return 15% on Depreciated Investment	1,520,000
Income Tax @ 52.9% (State & Federal)	1,700,000
Operating Expense	2,750,000
TOTAL	<u><u>\$7,070,000</u></u>

Cost/Mcf @ 43 Bcf/Year = 16.4¢

Cost/Mcf @ 55 Bcf/Year = 12.9¢

TABLE II

COMPRESSORS
(FIRST UNIT)

To maintain capacity in the gathering system and compressors to handle the full 12.5% royalty gas volume, it will be necessary to install compressors at an earlier date. Also, it is estimated that to maintain this capacity it will be necessary to install an additional compressor unit over and above that required for maintaining deliveries without the State taking its royalty gas in kind. Estimated differential in compressor investment is \$5,000,000.

Cost of Compression

	<u>\$/Year</u>
Depreciation (10 Years)	\$ 500,000
Rate of Return 15% on Average Investment	375,000
Income Taxes @ 52.9% (State & Federal)	420,000
Operating Expense	715,000
TOTAL	<u>\$2,010,000</u>

Minimum Annual Payment	=	\$2,010,000
Royalty Gas Volume @ 43 Bcf/Year	=	5.4 Bcf
Royalty Gas Volume @ 55 Bcf/Year	=	6.9 Bcf
Cost/Mcf @ 5.4 Bcf	=	37.2¢
Cost/Mcf @ 6.9 Bcf	=	29.1¢

Phillips agreed with Alaska Pipeline Company's request to a compressor charge of 10¢/Mcf on a space-available basis and no minimum annual charge.

Phillips

See memo 3, 1977
reply

February 25, 1977

Mr. John Horn
Phillips Petroleum Company
Gas and Gas Liquids Division
Bartlesville, Oklahoma 74004

Dear Mr. Horn:

As you know, the State of Alaska entered into an agreement with the Alaska Pipeline Company on June 4, 1976 for the sale of the State's royalty gas produced from your company's North Cook Inlet Gas Field. The Alaska Pipeline Company and Phillips have been unable to work out a mutually satisfactory arrangement for delivery of the gas. The State of Alaska, through the Department of Natural Resources, is continuing to explore various ways this can be accomplished in the interest of all parties.

The Alaska Pipeline Company has proposed that the State enter into an agreement with your company to take delivery of royalty gas from your pipeline at a mutually agreeable point near the North Kenai Road. The State is presently exploring this possibility and your cooperation has been greatly appreciated. Several questions have been raised regarding this procedure. They are:

1. Will the Alaska Public Utilities Commission have jurisdiction over the Phillips pipeline if the State takes delivery at this point? The State's Attorney General has been asked for an opinion.
2. What charges would be made by Phillips for delivery of the gas to this point? What is the detailed justification of these charges?
3. We understand that as the field pressure declines, compressors will be installed to maintain production rate. What costs will be incurred by the State and what is the detailed justification of these costs?
4. What is your best forecast of the dates of installation of the first and future compressors and how will the cost to the State change with installation of additional compressors?

AGO 801643

PHILLIPS WILL BE ABLE TO INCUR ADDITIONAL COSTS IF

Page Two
Mr. John Horn
February 25, 1977

5. What is your best forecast of future production from this field? Will you share with the State your future production plans so that the State may plan accordingly to utilize its royalty gas?

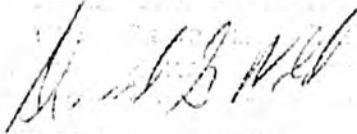
6. The State understands your need to maintain production of your LNG plant and that your ability to deliver royalty gas to the State will change as the field pressure changes. Would you please explain this procedure and give us your best forecast of your ability to make delivery in the future.

Your response to the above would be greatly appreciated together with any further information that you may feel to be pertinent to the solution of this problem.

Would you please review the draft agreement prepared by Alaska Pipeline Company between Phillips and the State and recommend changes that may be of interest to your company?

Thank you for your cooperation. Your early response to the above will be greatly appreciated.

Very truly yours,


Donald G. Wold
Executive Director

DCW/jl

AGO 801644

100-100000-100000
100-100000-100000
100-100000-100000

DEPARTMENT OF NATURAL RESOURCES
OFFICE OF THE COMMISSIONER

Readers
CC: F&S
CC: Roy Ed 225

TO:

Avrum Gross
Attorney General

DATE : February 24, 1977

FROM:

Guy Martin
Commissioner

SUBJECT:

Alaska Pipeline Company -
Gas Purchase Contract 76-1.

As you know, the State of Alaska entered into an agreement with the Alaska Pipeline Company on June 4, 1976 for the sale of the State's royalty gas being produced in the "upper Cook Inlet area" by Phillips Petroleum on the North Cook Inlet platform.

Paragraph 3.1 of this agreement provides "The point of delivery of all gas delivered hereunder shall be at the same point of delivery that Seller receives delivery of its royalty gas from its lessee in the North Cook Inlet Field". The producer, Phillips, was to make delivery, in accordance with the lease agreement, at the wellhead. Paragraph 3.2 of this agreement, states "Buyer, at its own expense, shall arrange to accept Sellers gas at the point of delivery". This point is, of course, offshore on the Phillips platform.

Phillips presently operates their own pipeline from the platform to transport the gas to their LNG plant located near the North Kenai Road. It is the responsibility of the Alaska Pipeline Company to work out an arrangement with Phillips to have the royalty gas transported to an agreeable point where they can take possession.

The Alaska Pipeline Company and Phillips were able to work out an agreement for Phillips to deliver the gas at a point near the terminus of the pipeline (see enclosed map) located near the North Kenai Road. However, to do so, Phillips would become subject to the jurisdiction of the Alaska Public Utilities Commission, which they refuse to do. Attempts have been made by Alaska Pipeline Company to obtain an exemption of jurisdiction for Phillips from the APUC. However, Phillips alone must obtain the exemption and to do so they must submit to the jurisdiction of the APUC. If this problem is not resolved, the State will be unable to take this gas in-kind to complete the sale.

The Alaska Pipeline Company has now proposed that the State accept delivery near the terminus of the Phillips pipeline located near the North Kenai Road and then deliver the gas at this point to the Alaska Pipeline Company. APC would pay any costs incurred in such a delivery.

AGO 801645

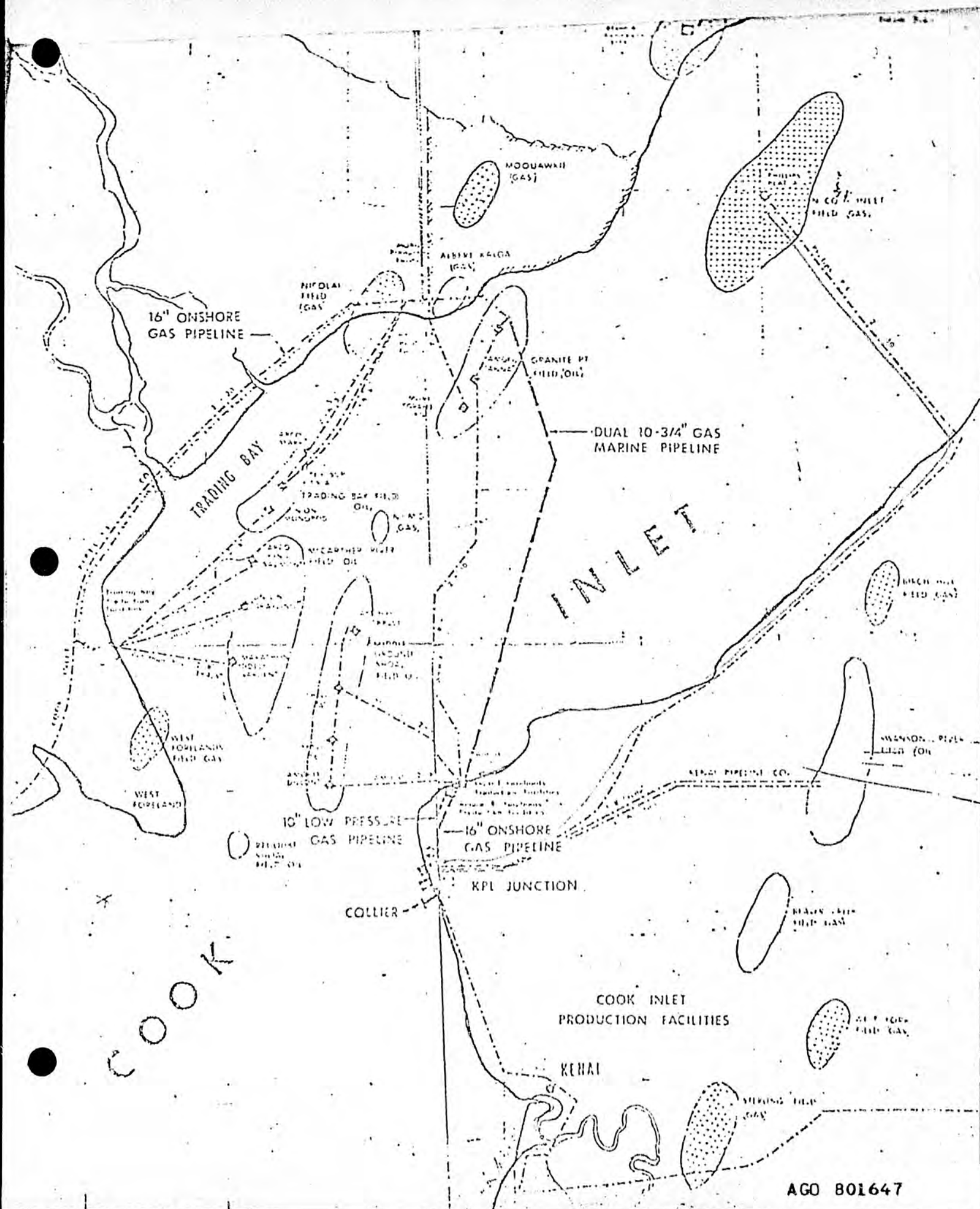
Page Two
Avrum Gross
February 24, 1977

It is presently believed that Phillips would be willing to enter into such an arrangement if the Attorney General renders a written opinion that delivery of the gas under this arrangement will not subject them (Phillips) to the jurisdiction of the APUC.

We would sincerely appreciate your review and opinion of this matter. Should you need any assistance or further information please do not hesitate to call upon us. We hope to bring a report and recommendation to the Royalty Oil and Gas Development Advisory Board on March 8, 1977.

cc: Don Wold
Fred Boness

GRM/DGW/jl



WALTON 10022
2215 210



ALASKA PIPELINE COMPANY
Department of Natural Resources

P. O. BOX 6554 • HOUSTON, TEXAS 77005

February 23, 1977

Commissioner Guy Martin
Department of Natural Resources
State of Alaska
Juneau, Alaska

Dear Mr. Martin:

My understanding of the Royalty Board's action of February 22 was that you would inquire of the Attorney General as to the propriety of the State's contracting to deliver North Cook Inlet royalty gas to us onshore, at the delivery charges we have negotiated with Phillips, while warranting to Phillips that their delivery to us for the account of the State (which we would underwrite and pay) would not result in regulatory jurisdiction by the Alaska Public Utilities Commission or the Alaska Pipeline Commission over Phillips.

We met with the Attorney General also on February 22 to apprise him of the matter at hand, but for only a very few minutes and without a full discussion. We are of course hopeful that all essential concurrences will be available, whether as a legal opinion or as an approval of the contracts for the proposed action. We do need to pursue this subject urgently in order to have an amended contract approved in the present legislative session and begin taking the royalty gas as soon as possible this year.

We appreciate your courtesy to us at the February 22 meeting and we hope to appear if necessary at the next meeting to answer any further questions. Meanwhile, except as to our paying Phillips for the account of the State, our previous drafts of proposed contract language would apply to the course we hope the State will follow.

Very truly yours,

Dale Teel
President

DT:t

cc: Mr. Don Wold, Executive Director
Oil and Gas Royalty Advisory Board
State of Alaska
Juneau, Alaska

Mr. Avrum Gross, Attorney General
State of Alaska
Juneau, Alaska

Mr. John Horn
Phillips Petroleum Company
Bartlesville, Oklahoma

Mr. Gordon Zerbetz, Chairman
Alaska Public Utilities Commission
11th Floor, MacKay Building
Anchorage, Alaska

AGO 801648

From - Dallwell

*No logged or copied
2-23-77*

Possible approach regarding transportation and compression charges:

The Lessor and the Lessee would have an agreement under which the Lessee will give the Lessor its royalty share of the gas at a point convenient to the Lessor. The Lessor will bear the costs associated with making the royalty share of the gas available to it. That agreement will provide that the State's obligation will be discharged by payment of those costs by APC and Phillips will agree that such a payment will satisfy the State's obligation.

In the Agreement between APC and the State, APC will covenant and undertake to discharge (or underwrite) the State's obligation to the State's Lessee by making payment of the transportation and costs directly to the State's Lessee.

RECEIVED
FEB 23 1977

ALASKA ROYALTY
OIL & GAS BOARD

Royalty Line 6 built

State contract is changed

* that's not
a take or pay
provision.

(a) article III - negotiable

(b) APC - take or pay for all that could be delivered,

(c) APC insurance: rate for dependent + delivery charges paid to Blue Cross

* forfeit the next

1. We take a pay for all royalty you delivered to the
plants. Phillips pay \$ royalty on production of product (to state).

2. Kullback Transport cost of the "Yr" is an immediate positive effect to the LNC plant. Let's pay the difference for -

(a) dehydration

(1) गतिमानः

(c) compressed

3. We pay the state for the ^{ingreded} ~~admission~~ plus the property
price with the total as one and $\frac{1}{3}$ of $\frac{1}{3}$. The state is
which

4. How does it vary?

7 (a) wir fassen die ersten 2 ~~Terme~~ für ϵ mit in

[illegible]

2. could it give *Pinus* *subulata* *capitata*.

(1) How open are "hotels" to women?

Dr. of the University of Cambridge, England

Adm. of Hon. Y. C. Chen, H. C. Chen, 1910

(c) $\frac{1}{2} \pi$ and $\frac{3}{2} \pi$ are the only values of θ for which $\sin \theta = 1$.

of the first case

6. Advantages APC

- (a) may gain (conserve) some reserves
- (b) take a pay liability is reduced
- (c) deal with only Phillips state
- (d) no premium for standbys
- (e) no exchange prices
- (f) all inclusive cost of gas
- (g) the several future benefits of the royalty line
- (h) the royalty line would provide a source of gas to cover in event future rules change

Disadvantages to APC

- (a) take a pay consideration
- (b) may have to take make-up gas out of 100 million acf
- (c) have to make major capital investments

7. Advantages to the State

- (a) get more royalty & income volume
- (b) get advanced royalty if agrees to loan
- (c) other more \$ for use due to higher price of natural gas

Disadvantages to the State

- (a) could lose out on gas if the reserves are not sufficient to meet demand for "peak" periods

Advantages to Bullitt

- (a) are in a no burden situation
- (b) get some benefit as a major power user
- (c) receive add'l \$ for add'l throughput to pay against hardware
- (d) would "recover" reserves in amount of "undelivered" royalty.
- (e) may be part of APUC feature

Disadvantages

- (a) may feel pressure to deliver
- (b) sheltered reserves if

APC notes

State & Phillips agree on N. Road delivery point

No royalty line is built

State contract is changed

(a) article III regards delivery point

(b) APC to take or pay for all that can be delivered

(c) APC to reimburse state for dehydration + delivery charges paid to Phillips

where is this reflected?

1. We take or pay for all royalty gas delivered to the plant. Phillips pays royalty in \$ for "undelivered" portion

2. Phillips transport all of "9" & as much as possible of it into the LNG plant. State pays Phillips for dehydration gathering compression

3. We reimburse state for these same charges as part of our cost of gas. The state is "whole".

exchange? 4. Marathon reduce their plant's feed share by a volume equal to the delivered royalty. The plant feed is "whole".

5. We take what we can sell [up to the delivered royalty volume] from Marathon through existing facilities.

6. If there is too much royalty

(a) we flow the excess to Anchorage via the Kevai field [Marathon share]

(b) or we bank the excess in the Kevai field as owned gas when we do need depend on take or pay treatment

7. If there is not enough royalty produced

(a) Phillips produces additional gas for our accounts
+ delivers if able

(b) or we take from Marathon out of our owned
Kenai "banked" gas

(c) or we take from Union/Marathon out of our ~~owned~~ regular
Kenai reserves

8. If there is not enough royalty delivered

(a) same as #7 except (a) option would be unavailable

(b) Phillips pay \$ royalty ^{in lieu of} ~~as a~~ undelivered royalty share

9. Advantages to APC/state payers

how's that? (a) "gain" additional reserves at current prices

Other than what you would have to pay Phillips (b) no additional hardware + associated costs

(c) dehydration, transportation + compression are included
in costs of gas

how? (d) take or pay liability is reduced

? How (e) have no owned gas in N. Cook with future declines problem

? How (f) cleaner APUC situation on waivers

(g) good flexibility

Disadvantages

(a) some take or pay liability with state

How? (b) may get into take or pay with Union/Marathon

✓ (c) APC costs if gas goes up

(d) tax questions on gas paid for but not taken

✓ (e) lose these "reserves" (royalty) forfeited to Phillips

10. Advantages to the state

how?

- (a) get more royalty \$ on same quantity of gas
- (b) would get "advance" royalty on "banked" gas
- (c) may realize more \$ on N. Gas due to federal matters
- (d) residents get benefit of gas usage

that's not really true! gas not really by APC would go to Phillips

low? They have prior to that time so what does it mean?

Disadvantages

- (a) some administrative effort required due to state/Phillips contract

11 Advantages to Phillips

What is "lost"?

- (a) are able to utilize some of the "lost" royalty in their plants

what does that mean?

what's so good about it? What does it mean?

- (b) provide royalty on no burden basis
- (c) would receive add'l \$ for add'l throughput of existing + future facilities.

low? would it not be accelerating field depletion ^{into} would slowed a bit

Disadvantages

- ✓ (a) may feel pressure to deliver royalty
- ✓ (b) APUC question may still exist

How? see (c) shortened plant's reserve life.
(d) above

12 Advantages to Marathon

- ✓ (a) would get add'l \$ for Kenda gas used as standby gas
- ? (b) would get add'l \$ for exchange service
- ✓ (c) if gas is bank in & exchanged for Kenda gas
It will result in more gas to receive in 1986

Disadvantages

- ? (a) could have deferred sales on Anchorage contract

13 Required

(a) State/Phillips contract for dehydration, transport & compression

what's that?

(b) balancing agreement with Phillips

(c) state contract change

what's that?

(d) balancing, exchange, standby agreement with Marathon

(e) APCC questions

(f) pre-determination of take or pay treatment for rate making
"cost of gas"

MEMORANDUM

DEPARTMENT OF NATURAL RESOURCES
OFFICE OF THE COMMISSIONER

*Alaska Pipeline
Readers
cc: Board*

TO: Guy Martin
Commissioner

DATE: February 14, 1977

FROM: Don Wold *[Signature]*

SUBJECT: Alaska Pipeline Company-
Gas Purchase contract 76-1

Alaska Pipeline Company has been unable to work out an arrangement with Phillips Petroleum Company to take delivery of the State Royalty gas contracted on June 4, 1976 between the State and subject company. There are two reasons why Alaska Pipeline Company has been unable to solve this problem. They are:

1. In accordance with the contract, buyer is to purchase all royalty gas to be used to meet the requirements of its customers within the State of Alaska. (They do not have customers to consume all of this gas all of the time. Phillips has agreed to take back any surplus at their purchase price, however, this violates the contract. Homer Electric is the primary customer and cannot consume all the gas available.)
2. Alaska Pipeline Company must take delivery from Phillips near the terminus of the Phillips pipeline located near the North Kenai Road. To do so, Phillips would be subject to the jurisdiction of the Alaska Public Utilities Commission, which they refuse to do. Phillips alone must obtain an exemption of jurisdiction for their pipeline from the APUC and to do so they must submit to jurisdiction by the APUC. One major purpose of the APUC is to consider the cost of such gas transmission and the cost of compression which would be passed on to the Alaska Pipeline Company and to the consumer by Phillips to accommodate delivery.

There is one further serious consideration relating to this contract. If the State does not cooperate in resolving this problem, the Alaska Pipeline Company will have control of this gas until 1984 whether or not they ever take delivery. This assumes that they will retain their rights under the contract. This means that Phillips will be able to take all royalty gas for their use and the State will be unable to use it for any other purposes or to deliver it to anyone else who could work out an arrangement to accept delivery.

Alaska Pipeline Company has now proposed that the State accept delivery near the terminus of the Phillips Petroleum Company pipeline located on the North Kenai road and then deliver

Memo to Guy Martin
Alaska Pipeline Company
February 15, 1977

Page 2

the gas at this point to Alaska Pipeline Company. To this end Alaska Pipeline Company had drafted two agreements. One agreement is a new gas purchase contract between Alaska Pipeline Company and the State of Alaska to replace the one previously entered into and another between the State and Phillips Petroleum Company for the taking of the royalty gas in-kind at the new delivery point. These agreements and the forwarding memo are appended.

The Alaska Pipeline Company, Phillips Petroleum Company and myself met in Bartlesville, Oklahoma to attempt to work out an arrangement whereby Phillips could cooperate. Attending this meeting were: Don Wold, John Horn, Phillips Petroleum Company, John L. Williford, Phillips Petroleum Company attorney, C. J. Silas, Vice President, Phillips Natural Gas Department and Dale Teel, President of Alaska Pipeline Company. Phillips has reviewed the enclosed agreements and are concerned about whether or not the taking of the gas at the North Kenai road will, in fact, exempt them from the jurisdiction of the Alaska Public Utilities Commission. They are not satisfied that by simply delivering the gas to a different party satisfies the problem of the APUC. Phillips will consider accepting such an agreement if the Attorney General renders an opinion that Phillips will not come under the jurisdiction of the APUC. Alaska Pipeline Company has retained the services of former Commissioner Tony Motley to assist them in bringing the issue to the attention of the Attorney General and to encourage an opinion. Should this effort be successful it seems that the Department of Natural Resources will in fact assume a portion of the responsibilities of the APUC in determining whether or not the pipeline tariff and compression charges are in the interest of the State.

The APUC would normally audit, in some detail, the delivery charges and the compression cost that would be passed on to the consumer. This situation has certain obvious political concerns that must be considered.

[In accordance with the proposed agreement, the Alaska Pipeline Company must agree to accept the charges identified by the State's and Phillips Petroleum Company's agreement, and the APUC must concur since they have rate setting authority.] It should be noted that the APUC has an apparent agreement with Alaska Pipeline Company to fold-in all royalty gas costs to their rate base and do not have to justify such increased costs to the APUC. Therefore, Alaska Pipeline Company does not need to justify these higher costs. All they must do is fold-in the costs and pass them through to the consumer. This is being confirmed by the PUC.

AGO 801658

Phillips will agree to the above, subject to the approval of their management. They have, however, asked why they should cooperate since they must go to considerable expense with no return and stand a chance of obtaining adverse publicity by having to appear before the Royalty Board and the Legislature to respond to questioning regarding the agreements. The State has the responsibility to acquire royalty gas for use within the State if needed and they would stand a potential of obtaining even greater adverse publicity should they refuse to cooperate and prevent the State from using such needed gas.

Phillips has agreed to supply the State with complete justification of the transportation costs and compression costs.

They will also supply a forecast of future production. They will also explain how production will decline and how the production's change will affect the deliverability to the State. They will also supply a detailed forecast of the installation of the compressors. They will also determine whether or not they could agree to the State's involvement in determining when the installation of the compressors is necessary.

The Alaska Pipeline Company desires to appear before the Royalty Board at an early date to explain their case and urgently request that this be considered at this session of the Legislature. Should they need to wait until next year, the term of the contract will be so short as to make it not worthwhile.