

SCOMM

#21:2

RESOURCESPACIFIC MARINE FISHERIES COMMISSION

- *Richard Eliason, Sitka, term expiring October 3, 1980
- *James Brooks, Juneau, term expiring October 3, 1980
- *Chuck Powell, Kodiak, term expiring October 3, 1980

ALASKA SOIL CONSERVATION BOARD

- Bruce Willard, Homer, term expiring, February 1, 1979
- Charles Forck, Delta Junction, term expiring February 1, 1980

ROYALTY OIL AND GAS DEVELOPMENT ADVISORY BOARD

- Andrew Warwick, Fairbanks, term expiring, March 14, 1979

The President stated that without objection the Senate would revert to reports of special committees. Without objection, the Senate reverted to:

SPECIAL COMMITTEE REPORTS

- SCR 3 The Special Committee to Consider the Sale of Royalty Gas has had SENATE CONCURRENT RESOLUTION NO. 3 (disposal to Tenneco Alaska, Inc., of royalty gas taken in-kind) under consideration and a majority of the committee recommends it do pass. The report was signed by Senator Rader, Chairman, and concurred in by Senators Colletta and Tillion. Senator Huber signed "no recommendation."

SENATE CONCURRENT RESOLUTION NO. 3 was referred to the Resources Committee..

- SCR 4 The Special Committee to Consider the Sale of Royalty Gas has had SENATE CONCURRENT RESOLUTION NO. 4 (disposal to El Paso Natural Gas Company of royalty natural gas taken in-kind under consideration and a majority of the committee recommends it do pass. The report was signed by Senator Rader, Chairman, and concurred in by Senators Colletta and Tillion. Senator Huber signed "no recommendation."

SENATE CONCURRENT RESOLUTION NO. 4 was referred to the Resources Committee.

The Special Committee to consider the Sale of Royalty Gas has had SENATE CONCURRENT RESOLUTION NO. 5 (disposal to Southern Natural Gas Company of royalty natural gas taken in-kind) under consideration and a majority of the committee recommends it do pass. The report was signed by Senator Rader, Chairman, and concurred in by Senators Colletta and Tillion. Senator Huber signed "no recommendation".

SCR
5

SENATE CONCURRENT RESOLUTION NO. 5 was referred to the Resources Committee.

ENGROSSMENT AND ENROLLMENT

The following has been engrossed, signed by the President and Secretary and transmitted to the House for consideration:

SENATE BILL NO. 89

SENATE CONCURRENT RESOLUTION NO. 11 has been enrolled, signed by the President and Secretary, Speaker and Chief Clerk and the engrossed and enrolled copies transmitted to the Office of the Governor at 3:10 p.m., February 10, 1977.

SCR
11

ANNOUNCEMENTS

Republican Caucus	Rm 207 Capitol	Upon adjourn.	2/11
HESSE SB46, 122	Rm 106 Assembly	2:00 p.m.	2/11
Judiciary SB 90, 91	647 Court	3:30 p.m.	2/11
State Affairs Highway Maintenance Hearing	Community Hall Palmer	6:30 p.m.	2/11
	Supreme Court Rm	9:00 a.m.	2/12
	Court House	9:00 a.m.	2/13
	Anchorage		
State Affairs Jt w/House New Capital Planning Comm. bills	Community Hall Palmer Supreme Court Rm Court House Anchorage	7:30 p.m. 10:00 a.m. 10:00 a.m.	2/11 2/12 2/13
Finance	Rm 423 Capitol	Cancelled	2/14
Judiciary SB 104	Rm 647 Court	3:30 p.m.	2/14

COMMITTEE REPORT

SENATE

1/11/77

Date _____

Mr. President:

The Committee on SPECIAL COMMITTEE TO CONSIDER THE SALE OF ROYALTY GAS has had SCR 5 disposal to Southern Natural Gas Co. of royalty natural gas tanken in-kind under consideration. A majority of the members of the Committee

- recommends it do pass
- recommends it do not pass
- recommends it do pass with attached amendment(s)
- recommends it be replaced with CS for _____ and that CS for _____ do pass
- (and) recommends it be referred to the _____ committee
- reports it back without recommendation
- AND attaches a report of its intent
- (other) _____

MEMBERS SIGNING THE MAJORITY REPORT:

J. DeLoach _____
Goldwater _____
Hill _____

MEMBERS NOT CONCURRING IN THE MAJORITY REPORT:

John Warner recommends: NO REC
 _____ recommends: _____
 _____ recommends: _____

Chairman

1

COMMITTEE REPORT
SENATE

1/11/77

Date

Mr. President:

The Committee on SPECIAL COMMITTEE TO CONSIDER THE SALE OF ROYALTY GAS has had LCR 3
2873 disposal to Tenneco Alaska, wnc., of royalty gas taken in-kind under consideration. A majority of the members of the Committee

- recommends it do pass
- recommends it do not pass
- recommends it do pass with attached amendment(s)
- recommends it be replaced with CS for _____ and that CS for _____ do pass
- (and) recommends it be referred to the _____ committee
- reports it back without recommendation
- AND attaches a report of its intent
- (other) _____

MEMBERS SIGNING THE MAJORITY REPORT:

<u>John H. ...</u>		
<u>Collette</u>	<u>...</u>	
<u>Hillion</u>		
_____	_____	_____

MEMBERS NOT CONCURRING IN THE MAJORITY REPORT:

<u>John Huser</u>	recommends: <u>NO REC</u>	
_____	recommends: _____	
_____	recommends: _____	

Chairman

File
for

COMMITTEE REPORT

SENATE

1/11/77

Date _____

Mr. President:

SPECIAL COMMITTEE TO CONSIDER

The Committee on THE SALE OF ROYALTY GAS has had SCR 4 disposal to El Paso Natural Gas Company of royalty natural gas taken in-kind under consideration. A majority of the members of the Committee

- recommends it do pass
- recommends it do not pass
- recommends it do pass with attached amendment(s)
- recommends it be replaced with CS for _____ and that CS for _____ do pass
- (and) recommends it be referred to the _____ committee
- reports it back without recommendation
- AND attaches a report of its intent
- (other) _____

MEMBERS SIGNING THE MAJORITY REPORT:

<i>John Wood</i>		
<i>Collette</i>	<i>DeBorja</i>	
<i>Phillips</i>		
_____	_____	_____

MEMBERS NOT CONCURRING IN THE MAJORITY REPORT:

<i>John Hines</i>	recommends: <i>NO REC</i>	
_____	recommends: _____	_____
_____	recommends: _____	_____

Chairman

Alaska State Legislature

*Final
as amended*

SPECIAL COMMITTEE ON
THE SALE OF
ROYALTY GAS

(907) 465-3873

POUCH V

JUNEAU, ALASKA 99811



MEMBERS

REP. CLARK GRUENING, CHMN.
REP. C. V. CHATTERTON
REP. JOE L. HAYES
REP. JOSEPH H. MCKINNON
REP. CHARLES H. PARR

House of Representatives

February 21, 1977

SPECIAL COMMITTEE REPORT

on House Concurrent Resolutions 11, 12 and 13

Legislative approval of the Administration's proposed sale of the state's 1/8 royalty share from the Prudhoe Bay field should rest on a clear finding that a sale at this time would serve the best interests of present and future generations of Alaskans.

A threshold legal question must first be resolved as to whether the three contracts for which approval is sought in House Concurrent Resolutions 11, 12 and 13* are before the Legislature in compliance with all applicable statutes. This question requires examination of whether, under AS 38.05.183, competitive bidding was properly waived, whether there was a proper determination of what gas was surplus to the "present and projected intrastate domestic and industrial needs" of the state, and whether the required reporting of such needs was made in proper fashion to the Legislature.

*Identical to Senate Concurrent Resolutions 3, 4, and 5.

AS 38.05.183(d) requires the publication of a report to the Legislature. While a report was issued pursuant to the statute,* the report does not by itself squarely address the issue to be answered under subsection (d).** The Commissioner of Natural Resources, in explanation, stated that the report incorporated by reference a number of other publications which allegedly contain the required information. The information included by reference is, however, conflicting and does not make the report responsive to the statute.

The inadequacy of the report under AS 38.05.183(d) is also significant in view of the ambiguity of the contracts in establishing what future role this report will have in determining what is surplus gas when the state attempts to take back gas for in-state use.

* O'Connor, Kristina M., and Dobey, Patrick L., "Analysis of Prudhoe Bay Royalty Natural Gas Demand and the Proposed Royalty Natural Gas Sale," State of Alaska Department of Natural Resources, Division of Minerals and Energy Management, January, 1977.

** Sec. 38.05.183. SALE OF ROYALTY.

"(d) Oil or gas taken in kind by the state as its royalty share may not be sold or otherwise disposed of for export from the state until the commissioner with the approval of the Alaska Royalty Oil and Gas Development Advisory Board determines that the royalty-in-kind oil or gas is surplus to the present and projected intrastate domestic and industrial needs. The commissioner shall make public, in writing, the specific findings and reasons on which his determination is based and shall, within 10 days of the convening of a regular session of the legislature, submit a report showing the immediate and long-range domestic and industrial needs of the state for oil and gas and an analysis of how these needs are to be met."
[emphasis added.]

Regardless of any procedural problems with the presentation of these contracts to the Legislature, it is incumbent on this committee to consider the provisions and purpose of these contracts on the merits.

Hearings were held by this committee on January 27, 1977 and joint hearings were held on January 31, February 1, 2, 3, 4, and 7, 1977. Throughout the varied and sometimes conflicting testimony of some 31 witnesses, there was no doubt what the primary purpose of these contracts is. The stated and singular purpose for selling the state's royalty share of natural gas from the Prudhoe Bay field at this time is to help secure a decision by the President and Congress for the all-Alaska pipeline route.

In the opinion of the committee, there has not yet appeared any other compelling reason for the sale of royalty gas at this time. There was testimony by the Administration and others that these contracts met other objectives, namely, flexible provisions for taking back royalty gas for in-state use and favorable pricing terms. Provisions for a good price and for taking back the gas are more correctly viewed as prerequisites to any sale of royalty gas of this magnitude, rather than as objectives of these contracts.

The policy question for the committee is, therefore, what is the likelihood that approval of these contracts will favorably affect the ultimate decision on gas pipeline routing and what does the state give up by entering into

these contracts. If in the opinion of individual legislators, the costs of the contracts or the uncertainty of the costs to the state of these contracts outweighs the likelihood of having the contracts win certification of the desired pipeline route, the contracts should not be approved.

There is clear agreement among nearly all witnesses before the committee and the stated views of Alaska's congressional delegation, that the internal problems of Canada in certifying and financing a pipeline route and resolving Canadian native land claims questions (before certification, financing or construction of a gas pipeline) are major impediments to timely Canadian certification of the Arctic Gas pipeline. Regardless of whether the State of Alaska enters into these proposed contracts at this time, these problems will continue to be substantial roadblocks to the construction of a Canadian gas pipeline to transport Prudhoe Bay gas. It is inconceivable that if the arguments of the congressional delegation, Dr. Tussing and the El Paso proponents are sound, that the President and the Congress will not give these internal Canadian problems just consideration in their decision on the gas pipeline route.

Nothing in the Alaska Natural Gas Transportation Act of 1976 (which sets out the timetable for F.P.C., Presidential and Congressional decisions on the gas pipeline route)

precludes the serious consideration of all of the above-mentioned Canadian route impediments. In fact, the Act of 1976 mandates the President, in making his decision, to "...inform himself ... of the views and objectives of the government of Canada and other governments with respect to those aspects of [his] decision that may involve inter-governmental and international cooperation among the government of the United States, the States, the government of Canada, and any other government." The factor of delay of pipeline completion is a critical one in the decision-making process by the President and Congress.

Obviously, the probability of delay works in favor of selection of the El Paso route and, to a lesser degree, the Alcan route. If these problems are to be given any consideration, they will be given weight regardless of what action Alaska's Legislature takes on the proposed gas sale. In the event these international considerations are determinative, commitment of the state's gas to the El Paso route is superfluous to the route decision.

At no time during the hearings was the nature or type of the lobbying activities of the three buyers (before federal agencies, the President and the Congress) made clear. However, the committee was informed by the Administration and representatives of the three buyers that in return for the sale of the state's royalty gas, El Paso, Tenneco and

Southern Natural Gas would mount effective lobbying efforts on behalf of the all-Alaska gas pipeline route. The same witnesses also indicated that the conditional promise of delivery of the royalty gas would help to build "constituencies" favorable to the state's cause.

In regard to "lobbying efforts", no standard exists in the contracts to measure suitable performance by the buyers. The contracts state only that the buyers must "actively support" an all-Alaska route or the route chosen by the State. Despite extensive questioning, no statement of projected lobbying expenditures or activities was ever provided. Even assuming that conditional commitment of the gas would provide sufficient incentive to Tenneco (buyer of 50 per cent of the state's royalty share) and Southern (buyer of 25 per cent) to pull all stops on behalf of the all-Alaska line, there is no basis for assuming that El Paso needs the additional incentive of 25 per cent of Alaska's royalty gas in order to work on behalf of its own proposal.

Moreover, the committee believes there is some risk that the political mood of the country towards the petroleum industry, of which our buyers are considered by the public to be a part, will make the "lobbying efforts" of the buyers more of a liability than an asset to the state's cause. In securing lobbying efforts, the committee is of the opinion that the better method by far is to support direct lobbying

efforts by Alaskans for an Alaskan cause, as was done during the Statehood battle and in securing passage of the Alaska Native Claims Settlement Act.

In weighing the claim of the buyers that conditional commitment of our royalty gas will build meaningful constituencies in 42 states, the committee compared the relative magnitude of the quantities of royalty gas sold to the respective buyers to the total 1975 annual gas consumption by the 42 states. Alaska's royalty share accounts for a miniscule percentage of the total needs of these 42 states. For example, Tenneco's annual share of Alaska's royalty gas would amount to only 3.5 per cent of Tenneco's total 1975 sales, and only 0.35 per cent of total 1975 consumption in Tenneco's 25-state market area.

Moreover, in view of the fact that federal legislation will control where gas flows in a time of gas shortage (as is the case presently in the gas-short areas of the United States), there is no reason to believe that commitment under these contracts will have anything to do with where gas flows in the event of future shortages.

In determining what the state gets for sure under these contracts, it is the opinion of the committee that at best,

the state receives an absentee lobbying effort having minimal impact, and at worst, a scheme which engenders general disfavor. Testimony before the committee suggested that the threat of withholding royalty gas will not be viewed as credible, but to the extent such a threat is taken seriously, it may prove harmful to our cause on this issue, and perhaps on others of equal or greater importance before Congress.

Legislators must in the final analysis draw their own conclusions as to the political impact of these contracts. Each legislator should, however, be aware of the costs of the contracts to the state.

One principal cost of these contracts to the state is the risk of not being able to take back our own royalty gas for in-state use once gas is flowing out of the state. Despite the artful drafting of the contracts, there is, in the opinion of the committee, a substantial ambiguity as to how surplus will be determined at the time the state desires to use the gas. An opinion by Legislative counsel (attached hereto) states that "... an argument could be made that the determination [of surplus] made to support this sale is the sole determination allowed." While this argument would probably not prevail, according to the opinion, "the con-

tract is not fully clear on this point leaving room for substantial disagreement at a future time." This ambiguity would not exist if the state were given sole discretion to determine at any time in the future what gas is surplus.

Under one provision of the contracts, the state is given sole discretion in determining whether the buyer can recoup from other Alaskan gas fields one-and-one-half times the amount of natural gas the state takes back for in-state use. The committee suggests that this same standard should also clearly apply to the initial decision by the state to take back its gas for in-state use.

At the very minimum, it should be made clear in these sales agreements that surplus must be determined solely on circumstances which exist at the time the state wishes to take the gas back and not by any estimates of state needs contained in state reports issued before the sale. As trustees of resources belonging to the people of Alaska, public officials should not take the chance of committing gas which is not surplus to the future needs of the state.

Another cost to the state is the loss of flexibility in dealing with other potential buyers of the state's royalty gas. Several other companies and the State of California submitted interesting offers, but were unwilling to include a provision for support of an all-Alaska gas pipeline. The state also loses the opportunity to secure future siting of

petrochemical industries based on present commitments of gas.

Recent F.P.C. decisions have disapproved the practice of charging gas customers for advance payments to gas producers for gas not yet produced. Nothing in these decisions rules out a cash advance payment made at the time of initial delivery from being charged to gas users. Moreover, advance payments made from surplus or borrowed capital would be chargeable to the end users of the gas at the time of delivery. The present contracts, however, rule out such cash advances.

In committing 100 per cent of the daily production of the state's royalty gas for up to 20 years, the state could lose the ability to leverage a higher price under these present contract provisions by sales to other buyers. Further, it has been calculated by assigning the state a discount factor of 10 per cent per year that the most profitable production period for the gas is from 1991 to 2010.*

Consultants Carl Swanson and Rush Moody conceded in their testimony that there is a possibility that under continued regulation by the F.P.C., contracts entered into at this time might be given unfavorable gas price treatment

* Interim Report and Testimony Submitted to Joint Gas Pipeline Committee, Public Hearings February 17 - 20, 1976, p. 79.

by the F.P.C. or Congress under a contract vintaging price regulation. This was one concern expressed by the producers of the 7/8's of the Prudhoe field and one of the reasons given by the producers to the F.P.C. for not entering into firm contracts for sale of their 7/8's share.

Another concern of the producers is that the gas bring a sufficient price under either regulation or deregulation to justify an early sale. If projected costs of whatever gas pipeline is certified were only half as inaccurate as those for the oil pipeline, a situation could evolve in which the well-head value of the gas would be so adversely affected that the state would derive little benefit from the interstate sale of its gas under these contracts.

The uncertainty of the well-head price of the gas at the time of completion of the delivery system is predicted is probably a primary reason for reluctance of the producers to enter into contracts at this time. The contracts do allow the state the best price obtainable by the producers for the sale of their Prudhoe gas, but the strong possibility must be considered that the most economic use of the state's gas (and that of the producers) may be to continue, after completion of a gas line, to re-inject the gas into the reservoir to maximize recovery and daily flow of oil.

Recognizing that although there is reason to believe that under present conditions, some of the above-mentioned

~~contracts benefits were difficult to obtain, a future con-~~
tract which does not have political support as its principal goal could contain some of these benefits.

The assumption that only the El Paso or Alcan proposals would give the state an opportunity for in-state use of the gas may be questionable. Present or future market prices may not reflect the full economic cost to the state of not having the gas. A line to carry the state's royalty share (and later perhaps a portion of producer gas) to Fairbanks or to tidewater has not yet been given the serious consideration it deserves.

The question of the effect of 2.0 to 2.4 billion cubic feet per day production of gas on the oil reservoir is one to which no satisfactory answer has been given. The committee does foresee some risk in committing on a daily flow basis 100 per cent of the state's royalty gas to a pipeline which even now is economic only under a daily flow of at least 2.0 billion cubic feet. If, after the financing and construction of that pipeline, the state must defend the decision of the Conservation Committee to curb or end gas production, these contracts may weaken the state's power to restrict the flow of gas from the state. It should be recognized, therefore, that the legal and political challenges to the Conservation Committee's decision by gas purchasers, transmission companies and the American consumer will be

~~formidable.* The commitment of gas under these contracts~~
may prejudice the state's defense.

All of the foregoing cost considerations cast doubt on the advisability of committing gas for export from the state in order to gain marginal political leverage in the gas pipeline routing decision. If in the opinion of individual legislators, these cost considerations are outweighed by the likelihood that commitment of the gas will have some favorable effect, the committee strongly recommends that 100 per cent of the state's daily production of royalty gas not be committed. The sale of 25 per cent of the royalty share to El Paso makes little sense even under the political objectives of building "constituencies" and "lobbying efforts" for the El Paso line. In addition, approval of any or all of the proposed contracts should be done only after the method of determining what is surplus to the intra-state domestic and industrial needs of the State of Alaska is clarified in the contracts.

The entire basis for a sale under these contracts is the belief of the buyers and of the people these buyers are to lobby that the state really will have no significant in-state use for its gas. Despite the take-back provisions and protestations to the contrary, the state has weakened its case for taking back its royalty gas by committing all of

* The committee strongly urges revision of the conservation statutes to anticipate future challenges by defining economic as well as physical waste and assuring that procedural due process and accountability of the committee members are provided for.

it.

Dr. Tussing, Mr. Jefferson Barry and others have testified that regardless of the primary political objective of these contracts, it is advisable not to commit what amounts to 100 per cent of the production of royalty gas for at least 20 years. Reduction of the amount of production of royalty gas for export can be accomplished by amending the contracts or by ~~disapproving one~~ of the sales agreements.

The foregoing report does not attempt to list all possible costs of the gas sales agreements, but only those costs which are now apparent. Each legislator must make his or her own determination as to whether political support gained by these conditional sales constitutes a wise use of the state's natural resources.

Rep. Clark Gruening, Chairman
House Special Committee on the
Sale of Royalty Gas

STATE OF ALASKA
THE LEGISLATURE

LEGISLATIVE AFFAIRS AGENCY

POUCH Y - STATE CAPITOL

JUNEAU, ALASKA 99801

907-465-3800

MEMORANDUM

February 15, 1977

SUBJECT: Gas Sales Agreement
TO: Representative Clark Gruening
FROM: Billy G. Berrier *BGB*
Director, Legal Services Division

You have requested that I review the Royalty Gas Sales Agreement for legal form and freedom from ambiguity. There are major areas that appear to be problems from this limited approach.

The pricing problem has been extensively dealt with in the opinion of Rush Moody, Jr. of the firm Vinson, Elkins, Searls, Connally & Smith.

I do find a substantial ambiguity in the gas reduction clauses. The material clause reads:

"3.5 The reservation of gas by Seller by way of its exercising its rights of gas reductions pursuant to Sections 3.3 and 3.4 hereof shall be for the sole purpose of Seller meeting the intrastate domestic and industrial needs of the State of Alaska including the right to exchange reserved gas for other natural gas produced or delivered into Alaska, provided such exchanged gas is used for the sole purpose of meeting the intrastate domestic and industrial needs of the State of Alaska. However, this provision shall not limit the right to export from the State any products manufactured from said gas." (emphasis added)

This clause is controlled by Sec. 1.11 of definitions which reads:

"1.11 The term "domestic and industrial needs of the State of Alaska" shall mean those present and projected residential, commercial and industrial uses for gas within Alaska as determined by the Alaska Royalty Oil and Gas Development Advisory Board in accordance with AS 38.05.183(d)."

However, in Sec. 3.7(a) relating to the buy-back rights of the Buyer a broader reference is apparently made. This section, in material part reads:

"3.7(a) Should Seller, through the exercise of its rights under Sections 3.3 and 3.4, in fact diminish the volume of gas otherwise available to Buyer hereunder and should Seller during the term of this Agreement and five (5) years thereafter have additional royalty gas which in Seller's sole discretion is surplus to the intrastate domestic and industrial needs of the State of Alaska, and will be transported by the Pipeline, Seller shall offer to sell to Buyer under the provisions of this Agreement, except as to price and term, ratably with other eligible purchasers of Seller's royalty gas from the leases identified in Exhibit A such additional royalty gas equivalent to Seller's prior reductions under Sections 3.3 and 3.4." (emphasis added).

This language is also used in Sec. 3.7(b) with only a slight variant, that section reading:

"3.7(b) In addition to the right granted Buyer under Subsection 3.7(a) and after all eligible purchasers of royalty gas from the leases identified in Exhibit A have had an opportunity to exercise such right, Seller grants to Buyer the right of first refusal to purchase additional royalty gas from Seller to the extent of one-half (1/2) times the volume that Seller's exercise of its rights under Sections 3.3 and 3.4 in fact diminishes the amount of gas Buyer otherwise would have purchased and received hereunder. Such right is granted during ~~the term of this agreement and five (5) years thereafter.~~ This right of first refusal shall apply to royalty gas which becomes available to Seller and which in Seller's sole discretion is determined to be surplus to the intrastate domestic and industrial needs of the State of Alaska. This right of first refusal applies only to gas which will be transported by the Pipeline." (emphasis added)

The net effect of Sec. 3.5 and definition 1.11 is that the gas reductions the state may order is that not found surplus to needs under AS 38.05.183(d) which reads:

"(d) Oil or gas taken in kind by the state as its royalty share may not be sold or otherwise disposed of for export from the state until the commissioner with the approval of the Alaska Royalty Oil and Gas Development Advisory Board determines that the royalty in kind

Representative Clark Gruening
February 16, 1977
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oil or gas is surplus to the present and projected intrastate domestic and industrial needs. The commissioner shall make public, in writing, the specific findings and reasons on which his determination is based and shall, within 10 days of the convening of a regular session of the legislature, submit a report showing the immediate and long-range domestic and industrial needs of the state for oil and gas and an analysis of how these needs are to be met."

It is my understanding that a determination required under this subsection has been made in connection with the sale.

Under Sec. 3.3 of the contract of the state is given the right to reduce the quantity of royalty gas available for sale and delivery by percentage varying with time but the reduction must be pursuant to the limitation in Sec. 3.5. I find the mechanics of this obscure.

Apparently a determination would be made that certain royalty in kind gas is surplus to the present and projected intrastate domestic and industrial need. All royalty gas remaining would be for domestic and industrial needs of the state and, subject to the percentages set out in the contract, the state would have the right to reduce the quantity of royalty gas available for sale and delivery by that amount.

This determination could apparently be made at least annually on a continuing basis but an argument could be made that the determination made to support this sale is the sole determination allowed. The argument would be that the reservation in Sec. 3.5 is deliberately narrow in order to limit the reservation of gas to that which the board initially determined to be not surplus to present and projected needs so that if the projected needs do in fact materialize a take-back can take place, while broader discretion was allowed in Sec. 3.7 to cover the possibility that projected needs may not materialize in the future.

In my opinion this argument even if fully developed would not prevail and that the contract would be construed to allow future determination since that interpretation is much more consistent with the entire contract. Unfortunately, the contract is not fully clear on this point leaving room for substantial disagreement at a future time.

BGB:smh

SENATE GAS SALE

NUMBER	ABBREVIATED TITLE		CURRENT STATUS	STATUS DATE	BILL ID.	JOURNAL PAGE	JOURNAL DATE	COMMITTEE RECOMMENDATIONS
	SPONSOR	REQUESTER						
SCR 3	GAS ROYALTY - TENNECO ALASKA INC	GOVERNOR	PASSD (H) ON RECONS	03/04/77		286	02/11/77	DP03, NR01.
SCR 4	GAS ROYALTY - EL PASO NATURAL GAS	GOVERNOR	PASSD (H) ON RECONS	03/04/77		286	02/11/77	DP03, NR01.
SCR 5	GAS ROYALTY - SOUTHERN NAT GAS CO	GOVERNOR	PASSD(H)-RECON.NTCE	03/03/77		287	02/11/77	DP03, NR01.

02/11/77

SUMMARY OF LEGISLATION REPORTED OUT OF COMMITTEE

SENATE GAS SALE

NUMBER	ABBREVIATED TITLE	SPONSOR	REQUESTER	CURRENT STATUS	STATUS DATE	BILL ID.	JOURNAL PAGE	JOURNAL DATE	COMMITTEE RECOMMENDATIONS
SCR 3	GAS ROYALTY - TENNECO ALASKA INC	GOVERNOR	IN (S)	RESOURCES	02/11/77		286	02/11/77	DP03, NR01.
SCR 4	GAS ROYALTY - EL PASO NATURAL GAS	GOVERNOR	IN (S)	RESOURCES	02/11/77		286	02/11/77	DP03, NR01.
SCR 5	GAS ROYALTY - SOUTHERN NAT GAS CO	GOVERNOR	IN (S)	RESOURCES	02/11/77		287	02/11/77	DP03, NR01.