

ALASKA LEGISLATURE SPECIAL COMMITTEE / SUBJECT FILES 8672
1480 SCOMM 55: JNT. SPEC. COMM. ON STATE TAX POLICY, 1986-1987 1280

Senior
Citizen
Motor
Vehicle
Registration
Tax
Payment

SENIOR CITIZEN MOTOR VEHICLE TAX EXEMPTION
AS 29.45.030(j)

October 15, 1978 - the law requiring senior citizen motor vehicle registration tax payments was enacted (Chapter 178, SLA 1978).

January 1, 1979 - the Division of Motor Vehicles began to administer this program.

"The Department of Community and Regional Affairs shall pay to the borough or city in which a person who is granted an exemption under (c) of this section resides, an amount equal to the tax levied under section 431(b) of this chapter regardless of whether the borough or city is eligible for the tax levied under that section."

The law provides for exemption from the locally imposed, state collected registration tax on a motor vehicle owned by a Senior Citizen. The Senior Citizen completes an exemption form at the time of registration and is exempt from the tax. That form is then forwarded to the Department of Community and Regional Affairs and the appropriate municipality is reimbursed.

A summary of program payments by municipalities for Fiscal Year 1985 is provided on the following page.

The five-year program performance summary is outlined below:

<u>FISCAL YEAR</u>	<u>NUMBER OF AFFIDAVITS</u>	<u>MUNICIPAL REIMBURSEMENT</u>	<u>AVERAGE PER AFFIDAVIT</u>
FY 81	5,127	\$ 88,156	\$17.19
FY 82	5,141	\$ 93,089	\$18.10
FY 83	6,053	\$110,839	\$18.31
FY 84	6,220	\$115,748	\$18.60
FY 85	6,964	\$133,957	\$19.24

SENIOR CITIZEN MOTOR VEHICLE REGISTRATION TAX
FY 85 PROGRAM

MUNICIPALITY	NO. OF AFFIDAVITS	\$ MVRT	TOTAL		% OF TOTAL	
			NO. OF AFFIDAVITS	\$ MVRT	NO. OF AFFIDAVITS	\$ MVRT
<u>EXEMPT SENIORS</u>						
ANCHORAGE, MUNICIPALITY OF	2,967	61,649				
BRISTOL BAY BOROUGH	6	80				
KETCHIKAN GATEWAY BOROUGH	349	6,650				
KODIAK ISLAND BOROUGH	106	2,265				
MATANUSKA-SUSITNA BOROUGH	765	15,935				
NORTH SLOPE BOROUGH	2	45				
PETERSBURG, CITY OF	104	2,130	#4,299	\$88,754	61.73%	66.25%
<u>NO TAX ON VEHICLES</u>						
FAIRBANKS NORTH STAR BOROUGH	980	13,685				
JUNEAU, CITY & BOROUGH OF	456	10,665				
CORDOVA, CITY OF	52	890				
CRAIG, CITY OF	12	125				
EAGLE, CITY OF	5	40				
HOONAH, CITY OF	2	35				
VALDEZ, CITY OF	25	395				
WRANGELL, CITY OF	63	995				
YAKUTAT, CITY OF	2	90	#1,597	\$26,920	22.93%	20.09%
<u>SENIORS NOT EXEMPT</u>						
HAINES BOROUGH	117	2,255				
KENAI PENINSULA BOROUGH	714	11,785				
SITKA, CITY & BOROUGH	138	2,743				
DILLINGHAM, CITY OF	16	395				
NENANA, CITY OF	13	160				
NOME, CITY OF	24	295				
PELICAN, CITY OF	2	15				
SKAGWAY, CITY OF	31	355				
UNALASKA, CITY OF	2	40				
WHITTIER, CITY OF	11	240	#1,068	\$18,283	15.34%	13.65%
TOTAL REIMBURSED			#6,964	\$133,957		

ALASKA STATUTES TITLE 29
MUNICIPAL GOVERNMENT CHAPTER 45
MUNICIPAL TAXATION
MOTOR VEHICLE TAX EXEMPTION

* AS 29.45.030(j)

(j) One motor vehicle per household owned by a resident 65 years of age or older on January 1 of the assessment year is exempt either from taxation on its assessed value or from the registration tax under AS 28.10.431. An exemption may be granted under this subsection only upon written application on a form prescribed by the Department of Public Safety. The state shall reimburse a municipality for tax revenues lost to it because of the exemption required by this subsection. Reimbursement to a municipality equals the amount of registration tax authorized under AS 28.10.431(b) for each vehicle exempted under this subsection.

* Amended effective 1/1/86 (Chapter 74, SLA 85)

Appendix F

Legal Authority For Taxation

POWER OF LEVY

Title 29 - Municipal Government

Department of community & Regional Affairs

Sec. 29.45.550. Assessment and tax collection. Home rule and first class cities outside boroughs may assess, levy, and collect a general property tax. A property tax, if levied, must be assessed, levied, and collected as provided by ch 53 of this title for boroughs. Cities outside boroughs may levy and collect sales and use taxes as provided by ch 53 of this title for boroughs. (sec 2 ch 118 SLA 1972)

Sec. 29.45.010. General property tax. Home rule and general law boroughs may levy (1) an areawide property tax for areawide functions, and (2) a property tax limited to the area outside cities for functions limited to the areas outside cities. A property tax, if levied, must be assessed, levied, and collected on real and personal property as provided in this chapter. (sec 2 ch 118 SLA 1972)

Sec. 29.45.560 Power of levy. Home rule and first class cities within boroughs may levy a general property tax. A property tax, if levied, shall be levied in the manner provided for borough levies in Sec 170(a) of this chapter and is subject to Secs. 10-25, 50-55, and 310-350 of this chapter. The council shall, by June 15 of each year, present to the borough assembly a statement of the city's rate of levy, unless a different date is agreed upon by the borough and city. (sec 2 ch 118 SLA 1972)

Sec. 29.45.580. Differential tax zones. Cities may by ordinance establish, alter, and abolish differential tax zones to provide and levy property taxes for service not provided generally within the city or a different level of service than that provided generally within the city. (sec 2 ch 118 SLA 1972)

Sec. 29.45.650. (a) A borough may levy and collect a sales tax not exceeding six percent on sales or rents, and on services made within the borough. The sales tax may apply to any or all of these services. Exemptions may be granted by ordinance. (sec 2 ch 118 SLA 1972)

(NOTE: Sales tax rate is not included in AS 29.13.100, Limitation of home rule powers.)

Sec. 29.45.700. Cities within the borough which do not levy and collect sales or use taxes for areawide borough functions may levy and collect sales or use taxes in the manner provided for boroughs. (sec 2 ch 118 SLA 1972)

POWER OF LEVY

Title 43 - Oil and Gas Property Taxes, Department of Revenue

Sec. 43.56.010. Levy of tax. (a) An annual tax of 20 mills is levied each tax year beginning January 1, 1974, on the full and true value of taxable property taxable under this chapter. (sec 1 ch 1 FSSLA 1973) (b) A municipality may levy and collect a tax under AS 29.53.045 at the rate of taxation that applies to other property taxed by the municipality. The tax shall be levied at a rate no higher than the rate applicable to other property taxable by the municipality. No municipality may exempt from taxation property authorized to be taxed under this chapter. Exemptions shall be limited to those in AS 29.53.020 and 29.53.025 and section 20 of this chapter.

Sec. 43.56.040. State Assessment Review Board. The State Assessment Review Board is created within the Department of Revenue. The board consists of five persons appointed by the governor to serve at his pleasure, each of whom must be knowledgeable of assessment procedures. Each board member is subject to confirmation by a majority of the members of the legislature in joint session. (sec 1 ch 1 FSSLA 1973)

Sec. 43.56.200. Regulations. The board and the department may adopt regulations in accordance with the Administrative Procedure Act (AS 44.62) as appropriate to carry out their respective duties under this chapter. (sec 1 ch 1 FSSLA 1973)

DEFINITIONS OF PROPERTY

Title 29 - Municipal Government, Department of Community & Regional Affairs

Sec. 29.71.800. Definitions...

(10) "personal property" means tangible property other than real property, such as merchandise and stock in trade, machinery and equipment, furniture and fixtures, motor vehicles and vehicles, boats and vessels and aircraft; (sec 2 ch 118 SLA 1972)

(11) "property" means real and personal property;

(13) "real property" means land and improvements and all possessory rights and privileges appurtenant to the property, and includes personal property affixed to the land or improvements;

Title 43 - Oil and Gas Property Taxes, Department of Revenue

Sec. 43.56.210. Definitions. (6) "taxable property" means real and tangible personal property used or committed by contract or other agreement for use within this state primarily in the exploration for, production of, or pipeline transportation of gas or unrefined oil (except for property used solely for the retail distribution of liquefaction of natural gas), or in the operation or maintenance of facilities used in the exploration for, production of, or pipeline transportation of gas or unrefined oil, including machinery, appliances, supplies, equipment, drilling rigs, wells (whether producing or not), gathering lines and transmission lines, pumping stations, compressor stations, power plants, topping plants, processing units, roads, tank farms, tanker terminals, docks and other port facilities, air strips and communication equipment and facilities, maintenance equipment and facilities, and maintenance camps and other related facilities; "taxable property" does not include permanent residences, office buildings requiring substantial local government services, or gas pipeline systems owned and operated by a certificated public utility regulated by the Alaska Public Utilities Commission; (sec 1 ch 1 FSSLA 1973; am sec 27 ch 208 SLA 1975; am sec 8 ch 8 SLA 1977)

STANDARD OF VALUE

Title 29 - Municipal Government, Department of Community & Regional Affairs

Sec. 29.45.110. Full and true value. (a) The assessor of a municipality shall assess property at its full and true value as of January 1 of the assessment year, except as provided in this section and sections 30, 35 and 160 of this chapter. The full and true value is the estimated price which the property would bring in an open market and under the then prevailing market conditions in a sale between a willing seller and a willing buyer, both conversant with the property and with prevailing general price levels. (am sec 45 ch 53 SLA 1973; am sec 1 ch 46 SLA 1974)

Title 43 - Oil and Gas Property Taxes, Department of Revenue

Sec. 43.56.060. Assessment. (a) The department shall assess property for the tax levied under Sec. 10(b) of this chapter and AS 29.53.045 on property used or committed by contract or other agreement for use for the pipeline transportation of gas or unrefined oil or for the production of gas or unrefined oil at its full and true value as of January 1 of the assessment year.

METHOD OF VALUATION

Title 29 - Municipal Government, Department of Community & Regional Affairs

A borough has discretion to appraise by whatever recognized method of valuation it chooses, so long as there is no fraud or clear adoption of a fundamentally wrong principle of valuation. *Hoblitt v. Greater Anchorage Area Borough*, Sup. Ct. Op. No 636 (File No. 1214), 473 P.2d 630 (1970)

Sec. 29.45.060. Farm or agricultural lands. (a) Farm use lands included in a farm unit and not dedicated to or being used for nonfarm purposes shall be assessed on the basis of full and true value for farm use, and shall not be assessed as if subdivided or used for some other nonfarm purpose. The assessor shall maintain records valuing the farm use land for both full and true value and farm use value. Should the farm use land be sold, leased, or otherwise disposed of for uses incompatible with farm use or be converted to a use incompatible with farm use by the owner, the owner shall be liable to pay an amount equal to the additional tax at the current mill levy together with eight percent interest for the preceding seven years, as though the land had not been assessed for farm use purposes. Payment by the owner shall be made to the state to the extent of its reimbursement for revenue loss under (e) of this section for the preceding seven years. The balance of the payment shall be made to the city or borough. (sec 3 ch 229 SLA 1976)

(b) An owner of farm use land must, to secure the assessment, make application to the assessor before February 1 of each year in which the assessment is desired. The application shall be made upon forms prescribed by the state assessor for the use of the local assessor and shall include information which may reasonably be required to determine the entitlement of the applicant. If the farm use land is leased for farm use purposes, the applicant shall furnish to the assessor a copy of the lease bearing the signatures of both lessee and lessor along with the completed application. The applicant shall furnish the assessor with a copy of the lease covering the period for which the exemption is requested. (am sec 1 ch 66 SLA 1978) (am ch SLA 85)

LEGISLATIVE RESOLVE NO. 49

Whereas in 1972 the legislature enacted AS 29.53.020(e), making my real property owned and occupied as a permanent place of abode by a qualifying resident 65 years of age or over exempt from municipal property tax; and

Whereas the legislature intended that the entire parcel of land owned by a resident 65 years of age or over be exempted from municipal property taxation, regardless of size;

Be It Resolved by the Alaska State Legislature that real property owned and occupied as a permanent place of abode by a qualifying resident 65 years of age or over shall be exempt from municipal property tax in its entirety regardless of size.

Copies of this resolution shall be sent to the governor, the commissioner of community and regional affairs, and each municipality in Alaska.

METHOD OF VALUATION

(c) In this section "farm use" means the use of land for raising and harvesting crops or for the feeding, breeding and management of livestock or for dairying or another agricultural use for profit or any combination thereof. To be farm use land, the owner or the lessee must be actively engaged in farming the land, and derive at least 10 percent of his yearly gross income from the farm use land. The provisions of this section do not apply to land respecting which the owner has granted, and has outstanding, a lease or option to buy the surface rights. A property owner wishing to file for farm use classification having no history of farm-related income may submit a declaration of intent at the time of filing the application with the assessor setting out the intended use of the land and the anticipated percentage of income. An applicant using this procedure shall file with the assessor before February 1 of the following year a notarized statement of the percentage of gross income attributable to the farm use land. Failure to make the filing required in this subsection forfeits the exemption.

(d) In the event of a crop failure by an act of God the previous year, the owner or lessee may submit an affidavit affirming that 10 percent of his gross income for the past three years was from farming.

(e) Subject to legislative appropriations for the purpose, the state shall reimburse a borough or city, as appropriate, for the real property tax revenues lost to it by the operation of this section. (sec 2 ch 118 SLA 1972; am sec 1 ch 90 SLA 1974)

Sec. 29.45.070. Mobile homes. Mobile homes, trailers, house trailers, trailer coaches and similar property used or intended to be used for residential, office or commercial purposes and attached to the land or connected to water, gas, electric or sewage facilities are classed as real property for tax purposes except where expressly classified as personal property by ordinance. This section does not apply to house trailers and mobile homes which are unoccupied and held for sale by persons engaged in the business of selling mobile homes. (sec 2 ch 118 SLA 1972) (am ch SLA 1985)

Sec. 29.45.110. Full and true value. (b) Assessment of business inventories may be based on the average monthly method of assessment rather than the value existing on January 1. The method used to assess business inventories shall be prescribed by the borough assembly. (sec 2 ch 118 SLA 1972) (am ch SLA 85)

(c) In the case of cessation of business during the tax year, the assembly may provide for reassessment of business inventories using the average monthly method of assessment for the tax year rather than the value existing on January 1 of the tax year, and for reduction and refund of taxes. In enacting an ordinance authorized by this section, the assembly may prescribe procedures, restrictions, and conditions of assessing or reassessing business inventories and remitting or refunding taxes. (am sec 45 ch 53 SLA 1973) (am sec 1 ch 46 SLA 1974)

METHOD OF VALUATION

Title 43 - Oil and Gas Property Taxes, Department of Revenue

Sec. 43.56.060. Assessment. (b) The department shall assess property for the taxes levied under Sec. 10(a) of this chapter at its full and true value as of January 1 of the assessment year except that in the case of taxable property used or committed by contract or other agreement for the pipeline transportation of gas or unrefined oil or for the production of gas or unrefined oil to be transported by that pipeline, the first assessment date shall be the construction commencement date. If the construction commencement date is used as the assessment date, the tax payable shall be prorated on the basis of the assessment year remaining.

(c) The full and true value of taxable property used or committed by contract or other agreement for use in the exploration for gas or unrefined oil, or in the operation or maintenance of facilities for the exploration for gas is the estimated price which the property would bring in an open market and under the then prevailing market conditions in a sale between a willing seller and a willing buyer both conversant with the property and with prevailing general price levels.

(d) The full and true value of taxable property used or committed by contract or other agreement for the production of gas or unrefined oil or in the operation or maintenance of facilities for the production of gas or unrefined oil is:

- 1) on the construction commencement date the actual cost incurred or accrued with respect to the property as of the date of assessment;
- 2) determined on each January 1 thereafter on the basis of replacement cost less depreciation based on the economic life of proven reserves.

(e) The full and true value of taxable property used or committed by contract or other agreement for pipeline transportation of gas or unrefined oil or in the operation or maintenance of facilities for the pipeline transportation of oil or unrefined oil is:

- 1) on the construction commencement date and until January 1 following the date the pipeline begins to transport gas or unrefined oil, the actual cost incurred or accrued with respect to the property as of the date of assessment.

METHOD OF VALUATION

2) determined on each January 1 thereafter with due regard to the economic value of the property based on the estimated life of the proven reserves of gas or unrefined oil then technically, economically

and legally deliverable into the transportation facility; however, if the proven reserves of gas or unrefined oil then technically, economically and legally deliverable indicate an economic life materially shorter than the estimated physical life of the transportation facility, the full and true value is the actual cost reduced by an annual allowance for depreciation on a straight line basis over an economic life based on the actual elapsed life from the commencement of full operation to the date of assessment plus the estimated remaining life of the proven reserves of gas and unrefined oil then technically, economically and legally deliverable into the transportation facility as of the date of the assessment;

3) on the assessment date next following inability to use or construct all or a substantial part of the facility for a period of 90 or more consecutive days because of natural disaster or legal prohibition, or other events beyond the control of a person having ownership or control of the property, adjusted to take into account any diminution in value.

(f) For purposes of this section, "actual cost" and "replacement cost" do not include interest capitalized before or during the period of construction nor the value of intangible drilling expenses. In the case of taxable property under construction, "actual cost" for purposes of this section means the costs incurred or accrued with respect to the property as of the date of assessment.

(g) The department may enter into agreements with a municipality for the cooperative or joint administration of the assessing authority conferred on the department by this section. (sec 1 ch 1 FSSLA 1973)

Title 28 - Motor Vehicles, Department of Public Safety

Sec. 28.10.431. Annual Motor Vehicle Registration Tax. (a) There is levied a motor vehicle registration tax within each municipality which is elects, by passage of an appropriate ordinance, to come under this section. A municipality shall file a written notice of election with the department and may not rescind the notice for a subsequent fiscal year. The notice must be filed on or before January 1 of the year preceding the year election under this section is to become effective. If a municipality has, before the effective date of this Act, levied a motor vehicle registration or ad valorem tax which has been repealed by a vote of the people at any regular or special municipal election, then the election provided for in this subsection is not effective until the ordinance passed by the local governing body has been approved by the people at the next regularly scheduled general or special municipal election.

METHOD OF VALUATION

(b) The tax is levied upon motor vehicles subject to the license tax under secs. 411 and 421 of this chapter, not including mobile homes, and is based upon the age of the vehicles as determined by model year according to the following schedule:

Tax According to the Age of Vehicle Since Model Year:

	1st	2nd	3rd	4th	5th	6th	7th	8th or over
Motor Vehicles (1) motorcycle				\$ 8	\$ 7	\$ 6	\$ 5	\$ 4
3 \$ 2 \$ 2 (2) vehicles								\$
specified								
in sec.								
421(b)(1)								
of this								
chapter								
	60	50	40	30	20	15	10	5
(3) vehicles								
specified								
in sec.								
421(b)(3)								
of this								
chapter								
	60	50	40	30	20	15	10	5
(4) vehicles								
specified								
in sec.								
421(c)(1) -								
(4) of this								
chapter								
5,000								
pounds								
or less	60	50	40	30	20	15	10	5
5,001-								
12,000								
pounds	100	80	60	50	40	30	20	10
12,001-								
18,000								
pounds	150	120	100	80	60	40	30	20
18,001								
pounds								
or over	200	160	130	100	80	60	40	20 (5)
vehicles								
specified								
in sec.								
421(b)(4)								
of this								
chapter								
	100	80	60	50	40	30	20	10

METHOD OF VALUATION

(6) vehicles specified in sec. 421(b)(6) of this chapter	8	7	6	5	4	3	2	2 (7)
vehicles specified in sec. 421(d)(9) of this chapter	60	50	40	30	20	15	10	5 (8)
vehicles specified in sec. 421(b)(2) of this chapter		60	50	40	30	20	15	10 5
(9) vehicles specified in sec. 421(d)(10) of this chapter	40							

(c) The registration tax shall be levied, collected, enforced and otherwise administered in the same manner as provided for the registration fees in this chapter. Only one registration tax may be collected with respect to the same motor vehicle in the year for which the tax is paid.

(d) If a person has paid both the registration fee levied in secs. 411 and 421 of this chapter and the registration tax levied in this section, and the department determines that the payor is entitled to a refund in whole or part of the registration tax, the department shall make the refund to which the person is entitled. No refund may be made unless application for a refund is filed with the department by December 31 of the year following the year for which the refund is claimed.

(e) The department shall refund money collected under this section, less five per cent as collection costs, to a municipality for which the money was collected, as determined by (1) the address of the residence of an individual required to pay the tax, or (2) the situs of the vehicle if the vehicle is not owned by an individual; the tax situs is the location at which the motor vehicle is usually, normally, or regularly kept or used. For the first year in which the tax is levied within a municipality, the department may retain actual costs of collection of the tax within the municipality as determined by the department.

(f) Money received by an organized borough under this section shall be allocated by the borough by ordinance for city, area outside city, and service area purposes within the borough.

METHOD OF VALUATION

(g) Payment of the registration tax is in lieu of all local use taxes and ad valorem taxes on motor vehicles subject to the tax. No municipality which elects to come under the provision of this section may levy use or ad valorem taxes on motor vehicles subject to the registration tax during a fiscal year in which the election is in effect.

Sec. 28.10.650. Definitions. (22) "mobile home" means a trailer in excess of either 28 feet in length or 8 feet in width that is designed, constructed and equipped for use as a dwelling or as a place of business, storage or other off-highway purpose. (sec 6 ch 20 SLA 1977)

REQUIRED EXEMPTIONS

Title 29 - Municipal Government, Department of Community & Regional Affairs

Sec. 29.45.030. Required exemptions. (a) The following property is exempt from general taxation:

- (1) municipal, state or federally owned property, except that private leaseholds, contracts or other interest in the property shall be taxable to the extent of those interests;
- (2) household furniture of the head of a family or a householder not exceeding \$500 in value;
- (3) property used exclusively for nonprofit religious, charitable, cemetery, hospital or educational purposes;
- (4) property of a nonbusiness organization composed entirely of persons with 90 days or more of active service in the armed forces of the United States whose conditions of service and separation were other than dishonorable, or the property of the auxiliary of such organization;
- (5) money on deposit;
- (6) the real property of certain residents of the state to the extent and subject to the conditions provided in (e) of this section.
- (7) real property to the extent and subject to the conditions provided in (j) of this section.

(b) "Property used exclusively for religious purposes" includes the following property owned by a religious organization:

- (1) the residence of a bishop, pastor, priest, rabbi, minister or religious order of a recognized religious organization; (sec 1 ch 191 SLA 1976)
- (2) a structure, its furniture and its fixtures used solely for public worship, charitable purposes, religious administrative offices, religious education or a nonprofit hospital; (sec 1 ch 191 SLA 1976)
- (3) lots supporting and adjacent to a structure or residence mentioned in (1) or (2) of this subsection which are necessary to convenient use;
- (4) lots required by local ordinance for parking near a structure defined in (2) of this subsection.

REQUIRED EXEMPTIONS

(c) Property described in (a) or (b) of this section from which income is derived is exempt only if that income is solely from use of the property by non-profit religious, charitable, hospital, or educational groups for classroom space.

(d) Laws exempting certain property from execution under the Code of Civil Procedures (AS 09) do not exempt the property from taxes levied and collected by municipalities. (sec 1 ch 97 SLA 1972)

(e) The real property owned and occupied as a permanent place of abode by a resident 65 years of age or over is exempt from taxation of the assessed value of the real property. Only one exemption may be granted with respect to the same property and, if two or more persons are eligible for an exemption with respect to the same property, the parties shall decide between or among themselves which shall receive the benefit of the exemption. No real property may be exempted under this subsection which the assessor determines, after notice and hearing to the parties concerned, has been conveyed to the applicant primarily for the purpose of obtaining the exemption. The determination of the assessor is appealable under AS 44.62.560-44.62.570. (am 1 ch 97 SLA 1977)

(f) No exemption may be granted except upon written application for the exemption on a form prescribed by the state assessor for use by local assessors. The claimant must file the application no later than January 15 of the assessment year for which the exemption is sought, but during the same year the governing body of the municipality for good cause shown may waive the claimant's failure to make timely application for the exemption for that year and authorize the assessor to accept the application as if timely filed. The claimant must file a separate application for each assessment year in which the exemption is sought. If an application is filed within the required time and is approved by the assessor, he shall allow an exemption in accordance with the provisions of this section. If a claimant whose failure to file by January 15 of the assessment year has been waived as provided in this subsection and the application for exemption is approved, the amount of 110 which the claimant may have already paid for the assessment year with respect to the property exempted shall be refunded to him. The assessor may at any time require proof in the form he considers necessary of the right and amount of an exemption claimed under this section. (am sec 1 ch 65 SLA 1975)

(g) The state shall reimburse a borough or city, as appropriate, for the real property tax revenues lost to it by the operation of (e) of this section. However, reimbursement will be made to a borough or city for revenue lost to it only to the extent that the loss exceeds an exemption which was granted by the borough or city, or which upon proper application by an individual would have been granted by the borough or city, under sec. 25(a) of this chapter. (sec 1 ch 229 SLA 1976)

REQUIRED EXEMPTIONS

(h) Except as provided in (g) of this section, nothing in (e)-(i) of this section affects similar exemptions from property taxes granted by municipalities on September 20, 1972 or prevents municipalities from granting similar exemptions by ordinance as provided in Sec. 25 of this chapter. (sec 1 ch 229 SLA 1976)

(i) In (e)-(i) of this section the term "real property" includes but is not limited to mobile homes, whether classified as real or personal property for municipal tax purposes. (sec 2 ch 118 SLA 1972)

(j) Two percent of the assessed value of a structure is exempt from taxation if the structure contains a fire protection system approved under AS 18.70.081, in operation condition, and incorporated as a fixture or part of the structure. The exemption granted by this subsection is limited to:

(1) An amount equal to two percent of the value of a structure based on the assessment for 1983, if the fire protection system is a fixture of the structure on January 1, 1981; or

(2) An amount equal to two percent of the value of the structure based on the assessment as of January 1 of the year immediately following the installation of the fire protection system if the fire protection system becomes a fixture of the structure after January 1, 1983.

REQUIRED EXEMPTIONS

Sec. 29.46.090. Exemption. (a) The real property owned and occupied by a resident 65 years of age or over, or the spouse, widow, widower, or minor heir of the original applicant, on which is located only his permanent abode which is a single-family residence, is exempt from (1) special sewer assessments levied by a home rule or general law municipality after September 2, 1975 and (2) special water assessments levied by a home rule or general law municipality after September 2, 1975. Only one exemption may be granted with respect to the same property, and, if two or more persons are eligible for an exemption with respect to the same property, the parties shall divide between or among themselves which shall receive the benefit of the exemption. No real property may be exempted under this subsection which the municipality determines, after notice and hearing to the parties concerned, has been conveyed to the applicant primarily for the purpose of obtaining the exemption. The determination of the municipality is appealable under AS 44.62.560-44.62.570.

(b) No exemption may be granted under this section except upon written application for the exemption on a form prescribed by the state assessor for use by local assessors and in accordance with the following requirements:

(1) the claimant must file the initial application during the period of time between the date the assessment roll is certified and the time of payment fixed by the assembly or council. Within one year of the date the assessment roll is certified the assembly or council for good cause shown may waive the claimant's failure to make timely initial application for the exemption and authorize the assessor to accept the application as if timely filed.

(2) a claimant receiving the exemption must file with the department by March 15 of each subsequent year a separate application proving eligibility as of January 1 in order to retain the exemption. Within the same year the department for good cause shown may waive the claimant's failure to make timely application and approve the application as if timely filed.

(3) if an application is filed within the required time under this subsection and is approved by the assembly or council, the exemption shall be allowed in accordance with the provisions of this section. If a waiver under this subsection is granted and the application for exemption approved, the amount of any assessment, penalty or interest which the claimant may have already paid on the assessment shall be refunded to him. The municipality may at any time require proof in the form considered necessary of the right and amount of an exemption claimed under this section.

(c) The state shall reimburse a home rule or general law municipality for the sewer and water assessment revenues which it would receive but for the operation of this section. Reimbursement under this subsection is a lien in favor of the state against the property exempted to the

REQUIRED EXEMPTIONS

extent of the assessment against the property exempted. Upon recordation in the recording office of the district in which the property exempted is located the lien is prior and superior to other liens against the property except for general taxes or other special assessments and may be enforced by lien foreclosure as provided in AS 34.10.070- 34.10.220. The lien becomes immediately due and payable:

- (1) upon sale or other transfer of the property except to a spouse, widow, widower, or minor heir; however, if the property is transferred to a minor heir the lien becomes due and payable on the date the minor heir reaches the age of 25 years; or
- (2) when property exempted under (a) (1) or (2) of this section receives more than one sewer connection or more than one water connection; or
- (3) when the claimant fails to prove eligibility under (b) (2) of this section.

(d) In this section

- (1) "resident" means a person who for 30 consecutive days has maintained his permanent place of abode in the state;
- (2) "real property" includes, but is not limited to, mobile homes, whether classified as real or personal property for municipal tax purposes.
- (3) "minor heir" means a person who, at the time of transfer of the property, has not attained the age of 19 years or who, if he has not attained the age of 22 years, is a full-time student at an educational institution or a member of the armed forces of the United States. (sec 1 ch 114 SLA 1975; am sec 1 ch 215 SLA 1976)

Title 43 - Oil and Gas Property Taxes,
Department of Revenue

(Chapter 56, Oil and Gas Exploration, Production and Pipeline Transportation Property Taxes.)

Sec. 43.56.020. Exemptions. (a) The following are exempt from local taxes levied or authorized under Sec. 10(b) of this chapter:

- (1) property rights attached to or inherent in the right to explore for or produce oil or gas;
- (2) oil or gas leases or properties, whether producing or not;
- (3) oil or gas in place;
- (4) oil or gas produced or extracted in the state;
- (5) the value of intangible drilling expenses and exploration expenses;

REQUIRED EXEMPTIONS

(6) an interest in property described in AS 43.55.010(b).

(7) (deleted)

(8) (deleted)

(b) There is exempt from state taxes levied or authorized under Sec. 10(a) of this chapter, before the construction commencement date, property which is committed by contract or other agreement for use in this state primarily for the production or pipeline transportation of gas or unrefined oil, or in the operation or maintenance of facilities for the production or pipeline transportation of gas or unrefined oil.

(c) In (a)(2) of this section, "properties" means mineral interests in oil and gas and working interests, royalty interests, and overriding royalty interests in oil and gas leases. (sec 1 ch 1 FSSLA 1973; am sec 26 ch 208 SLA 1975)

Sec. 43.56.030. In place of other taxes. Except for those taxes imposed under ch 55 and ch 57 of this title, the taxes levied or authorized under Sec. 10(b) of this chapter are in place of:

(1) all other ad valorem taxes or other taxes imposed by a municipality on property subject to tax under this chapter or exempted from taxation by Sec. 20 of this chapter, and

(2) all other taxes imposed by a municipality on or with respect to the property subject to tax under this chapter or exempted from taxation by Sec. 20 of this chapter, including, but not limited to,

(A) taxes on the retail sale or use of the property except for the retail sales tax on the first \$1,000 of each sale;

(B) taxes on the sale or use of gas or unrefined oil;

(C) taxes on the sale or use of services used in or associated with the property or in its maintenance or operation except for the sales tax on the first \$1,000 of each sale;

(D) taxes on or measured by gross or net income from the property, including income from the exploration for, production of, or pipeline transportation of gas or unrefined oil or property; and

(E) any license, excise, fee, charge or other tax on or pertaining to the property or services. (sec 1 ch 1 FSSLA 1973; am sec 55 ch 127 SLA 1974)

REQUIRED EXEMPTION

Title 10 - Corporations and Associations, Department of Commerce & Economic Development

Sec. 10.25.540. Taxation of cooperatives. Cooperatives under this chapter shall apply for a business license and pay the initial license fee as provided by the Alaska Business License Act (AS 43.70), as amended. Before March 1, 1961, and before March 1 of each year thereafter, each cooperative shall pay to the state, instead of state and local ad valorem, income and excise taxes which may be assessed or levied on or after January 1, 1960, a percentage of its gross revenue earned during the preceding calendar year. (sec 33 ch 93 SLA 1959; am sec 1 ch 66 SLA 1960)

Sec. 10.30.060. Power to acquire and dispose of lands, and exemption from execution, taxation and public appropriation. A cemetery association may buy or take by gift or devise, and hold, land not exceeding 80 acres, for the sole purpose of a cemetery. The land is exempt from execution, and from any appropriation to public purposes, and from taxation if intended to be used exclusively for burial purposes and in no way for the profit of the members of the association. (sec 36-5-5 ACLA 1949)

CONSTITUTION OF THE STATE OF ALASKA

Article XII. General Provisions. Section 12. Disclaimer and Agreement. The State of Alaska and its people forever disclaim all right and title in or to any property belonging to the United States, or subject to its disposition, and not granted or confirmed to the State or its political subdivisions, by or under the act admitting Alaska to the Union. The State and its people further disclaim all right or title in or to any property, including fishing rights, the right or title to which may be held by or for any Indian, Eskimo, or Aleut, or community thereof, as that right or title is defined in the act of admission. The State and its people agree that, unless otherwise provided by Congress, the property, as described in this section, shall remain subject to the absolute disposition of the United States. They further agree that no taxes will be imposed upon any such property, until otherwise provided by the Congress. This tax exemption shall not apply to property held by individuals in fee without restrictions on alienation.

ALASKA NATIVE LAND CLAIMS SETTLEMENT ACT

Public Law 92-203, 92nd Congress, First Session. Section 21. Taxation. (d) Real property interests conveyed, pursuant to this Act, to a Native individual, Native group, or Village, or Regional Corporation which are not developed or leased to third parties, shall be exempt from State and local real property taxes for a period of twenty years after the date of enactment of this Act: Provided, That municipal taxes, local real property taxes, or local assessments may be imposed upon leased or developed real property within the jurisdiction of any governmental unit under the laws of the State: Provided further, That easements, rights-of-way, leaseholds, and similar interests in such real property may be taxed in accordance with State or local law. All rents, royalties, profits, and other revenues or proceeds derived from such property interests shall be taxable to the same extent as such revenues or proceeds are taxable when received by a non-Native individual or corporation.

REQUIRED EXEMPTION

(e) Real property interests conveyed pursuant to this Act to a Native individual, Native group, or Village, or Regional Corporation shall, so long as the fee therein remains not subject to State or local taxes on real estate, continue to be regarded as public lands for the purpose of computing the Federal share of any highway project pursuant to Title 23 of the United States Code, as amended and supplemented, for the purpose of the Johnson O. Malley Act of April 16, 1934, as amended (25 U.S.C. 452), for the purpose of Public Laws 815 and 874, 81st Congress (64 Stat. 967, 1100), and so long as there are also no substantial revenues from such lands, continue to receive forest fire protection services from the United States at no cost.

OPTIONAL EXEMPTIONS

Title 29 - Municipal Government, Department of Community and Regional Affairs

Sec. 29.45.050. Optional exemptions and exclusions. (a) Municipalities may exclude or exempt or partially exempt residential property from taxation by ordinance ratified by the voters at a regular or special election. An exclusion or exemption authorized by this section may not exceed \$10,000 for any one residence. (am sec 2 ch 1 FSSLA 1973)

(b) Municipalities may by ordinance:

(1) classify boats and vessels for purposes of taxation and may establish the assessed valuation of boats and vessels on the basis of their registered or certificated net tonnage; a tax based upon a tonnage valuation shall not exceed \$5 a year for a boat or vessel of less than five net tons and shall not exceed \$15 a year for a boat or vessel of more than five net tons;

(2) classify and exempt from taxation:

(A) the household furniture over \$500 in value and the effects of the head of a family or a householder; and

(B) the property of an organization not organized for business or profit-making purposes and used exclusively for community purposes, provided that income derived from rental of such property does not exceed the actual cost to the owner of the use by the renter; and

(C) historic sites, buildings and monuments. (sec 2 ch 118 SLA 1972)

(D) land of a nonprofit organization used for agricultural purposes if rights to subdivide the land are conveyed to the state and the conveyance includes a covenant restricting use of the land to agricultural purposes only; rights conveyed to the state under this subparagraph may be conveyed by the state only in accordance with AS 35.05.069(c).

(c) The provisions of (a) of this section notwithstanding,

(1) a home rule or first or second class borough may, by ordinance adopted without weighted voting, adjust its property tax structure in whole or in part to the property tax structure of a city within it, including but not limited to, excluding personal property from taxation, establishing exemptions, and extending the redemption period;

(2) a home rule or first class city shall have the same power to grant exemptions or exclude property from borough taxes that it has as to city taxes, provided that the exemptions or exclusions have been adopted as to city taxes and further provided that the city appropriate to the borough sufficient money to equal revenues lost by the borough because of the exemptions or exclusions, the amount to be determined annually by the assembly without weighted voting;

OPTIONAL EXEMPTIONS

(3) a home rule or general law city within an organized borough may, by ordinance adjust its property tax structure in whole or in part to the property tax structure of the borough, including but not limited to exempting or partially exempting property from taxation. (sec 1 ch 111 SLA 1976)

(d) Exemptions or exclusions from property tax which have been granted by home rule municipalities in addition to exemptions authorized or required by law, and which are in effect on September 10, 1972, and not later withdrawn, are not affected by this Act. (sec 2 ch 118 SLA 1972)

(e) Municipalities may by ordinance classify and exempt to partially exempt from taxation privately owned land, wet land and water areas for which a scenic, conservation, or public recreation use easement is granted to a governmental body. To be eligible for a tax exemption, or partial exemption, the easement must be in perpetuity. However, the easement is automatically terminated before an eminent domain taking of fee simple title or less than fee simple title to the property so that the property owner is compensated at a rate which does not reflect the easement grant. (am sec 1 ch 33 SLA 1975)

(f) A municipality may by ordinance exempt from taxation all or any part of the increase in assessed value of improvements to real property if an increase in assessed value is directly attributable to alteration of the natural features of the land or new maintenance, repair or renovation of an existing structure and if the alteration, maintenance, repair, or renovation, when completed, enhances the exterior appearance or aesthetic quality of the land or structure. No exemption may be allowed under this subsection for the construction of an improvement to a structure if the principal purpose of the improvement is to increase the amount of space for occupancy or nonresidential use within the structure or for the alteration of land as a consequence of construction activity. An exemption provided in this subsection may continue for up to four years from the date the improvement is completed or from the date of approval for the exemption by the local assessor, whichever is later. (am sec 1 ch 95 SLA 1977)

(g) A municipality may by ordinance exempt from taxation all or any part of the increase in assessed value of improvements to a single family dwelling if the principal purpose of the improvement is to increase the amount of space for occupancy. An exemption provided in this subsection may continue for up to two years from the date the improvement is completed or from the date of approval of an application for the exemption by the local assessor, whichever is later. (am sec 1 ch 95 SLA 1977)

Sec. 29.45.230. Tax adjustments on property affected by a natural disaster. (a) The assembly may provide for reassessment and reduction of taxes for property destroyed, damaged, or otherwise reduced in value as a result of a natural disaster.

OPTIONAL EXEMPTIONS

(b) A reassessment may be made by the assessor only upon the receipt of a sworn statement of the taxpayer that his losses exceed \$1,000. A reduction of taxes may be made only on losses in excess of \$1,000 for the remainder of the year following the disaster. Upon reassessment, the borough shall recompute this tax and refund taxes which have already been paid.

(c) The borough shall make notice of assessment or reassessment and shall hold an equalization hearing as provided in this chapter, except that a notice of appeal is filed with the board of equalization within 10 days after notice of assessment is given to the person appealing. Otherwise, the right of appeal ceases unless the board finds that the taxpayer is unable to comply.

(d) In enacting an ordinance or resolution authorized by this section, the assembly may, consistent with this section, prescribe procedures, restrictions and conditions of assessing or reassessing property and of remitting, refunding or forgiving taxes.

(e) In this section "disaster" means a major disaster declared by the President of the United States under the provisions of the Federal Disaster Act of 1950, Title 42, United States Code, Sec. 1855-1855g, or other federal law. (sec 2 ch 118 SLA 1972)

TAX LIMITATIONS

Title 29 - Municipal Government, Department of Community & Regional Affairs

Sec. 29.45.590. Limited property taxing power for second class cities: A second class city may by referendum levy real and personal property taxes as provided for first class cities. However, levy by a second class city may not exceed one-half of one percent of the assessed valuation of the property taxes, except that the limit does not apply to a levy necessary to avoid a default upon payment of principal and interest of bonded or other indebtedness which is secured by a pledge to levy ad valorem or other taxes without limit to meet debt payments. (sec 2 ch 118 SLA 1972) (am ch SLA 85)

Sec. 29.45.080. Tax on oil and gas production and pipeline property. (a) A municipality may levy and collect taxes on taxable property taxable under AS 43.56 only by using one of the methods set out in (b) or (c) of this section.

(b) A municipality may levy and collect a tax on the full and true value of taxable property taxable under AS 43.56 as valued by the Department of Revenue at a rate not to exceed that which produces an amount of revenue from the total municipal property tax equivalent to \$1,500 a year for each person residing within its boundaries. (sec 8 ch 107 SLA 1976)

(c) A municipality may levy and collect a tax on the full and true value of that portion of taxable property taxable under AS 43.56 as assessed by the Department of Revenue which value, when combined with the value of property otherwise taxable by the municipality, does not exceed the product of 225 percent of the average per capita assessed full and true value of property in the state multiplied by the number of residents of the taxing municipality. For purposes of this subsection the average per capita assessed full and true value of property in the state shall be calculated without regard to the assessed value of taxable property under AS 43.58.

(d) By February 1 of each assessment year a taxing municipality must inform the Department of Revenue which method of taxation the municipality will use.

(e) For purposes of this section, population shall be determined by the Commissioner of Community and Regional Affairs based on the latest statistics of the United States Bureau of the Census or on other reliable population data, and shall advise each municipality of its population as so determined by January 15 of each year. (sec 3 ch 1 FSSLA 1973; am sec 6 ch 159 SLA 1975)

Sec. 29.45.090. Tax limitation. (a) No municipality may levy and tax for any purpose in excess of the three percent of the assessed valuation of property within the municipality in any one year.

TAX LIMITATIONS

(b) No municipality, or any combination of municipalities occupying the same geographical area, in whole or in part, may levy taxes (1) which will result in tax revenues from all sources exceeding \$1,000 a year for each person residing within their boundaries or (2) upon values which, when combined with the value of property otherwise taxable by the municipality, exceed the product of 225 percent of the average per capita assessed full and true value of property in the state multiplied by the number of residents of the taxing municipality. If two or more municipalities occupying the same geographical area, in whole or in part, attempt to levy a tax (1) the combined levy of which would result in tax revenues from all sources exceeding \$1,000 a year for each person residing within their boundaries or (2) upon value which, when combined with the value of property otherwise taxable by the municipality, exceed the product of 225 percent of the average per capita assessed full and true value of property in the state multiplied by the number of residents of the taxing municipality. The commissioner of community and regional affairs shall apportion the lawful levy and equitably divide these revenues on the basis of need, services performed and other considerations in the public interest. For the purpose of this subsection, population shall be determined by the commissioner of community and regional affairs based on the latest statistics of the United States Bureau of the Census or on other reliable population data. For purposes of this subsection the average per capita assessed full and true value of property in the state shall be calculated without regard to the assessed value of taxable property under AS 43.58. (sec 2 ch 118 SLA 1972; am sec 4 ch 1 FSSLA 1973; am sec 5 ch 159 SLA 1975)

Sec. 29.45.100. No limitation on taxes to pay bonds. The limitations provided for in Secs. 45 or 50 of this chapter do not apply to taxes levied or pledged to pay or secure the payment of the principal and interest on bonds. Taxes to pay or secure the payment of principal and interest on bonds may be levied without limitation as to rate or amount. (sec 2 ch 118 SLA 1972; am sec 5 ch 1 FSSLA 1973)

Title 43 - Oil and Gas Property Taxes, Department of Revenue

Sec. 43.56.010. (b) A municipality may levy and collect a tax under AS 29.53.045 at the rate of taxation that applies to other property taxed by the municipality. The tax shall be levied at a rate no higher than the rate applicable to other property taxable by the municipality. No municipality may exempt from taxation property authorized to be taxed under this chapter. Exemptions shall be limited to those in AS 29.53.020 and 29.53.025 and sec. 20 of this chapter. (sec 1 ch 107 SLA 1976)

(c) If the total value of assessed property of a municipality taxing under AS 29.53.045(c) exceeds the product of 225 percent of the average per capita assessed full and true value of property in the state (to be determined by the department and reported to each municipality by January 15 of each year) multiplied by the number of residents of the taxing municipality, the department shall designate the portion of the tax base against which the local tax may be applied. For purpose of this subsection the average per capita assessed full and true value of property in the state shall be calculated without regard to the assessed value of taxable property under ch 58 of this title. (am sec 7 ch 159 SLA 1975)

TAX LIMITATIONS

(d) A tax paid to a municipality under AS 29.53.045 on or before June 30 of the tax year shall be credited against the tax levied under (a) of this section for the tax year. If, however, a tax is not paid to a municipality until after June 30 of the taxable year, the department upon application shall refund to the taxpayer the amount of tax paid to the municipality under AS 29.53.045. The credit or refund of taxes paid to the municipality may not exceed the total amount of tax levied by the department upon the taxpayer for the tax year, under (a) of this section. (sec 2 ch 107 SLA 1976)

Sec. 43.56.135. Certification. No later than June 1 of each year, the department shall certify the final assessment roll and mail to the owner of the taxable property or his authorized agent a statement of the amount of tax due. (sec 4 ch 107 SLA 1976)

Sec. 43.56.150. (a) The tax levied by section 10(a) of this chapter is payable to the department on or before June 30 of the taxable year.

Appendix G

Alaskan Taxing Jurisdictions Mailing List

APPENDIX H

ALASKA PROPERTY TAXING JURISDICTIONS MAILING LIST

STATE OIL AND GAS

Alaska Department of Revenue
Petroleum Revenue Division
201 E. 9th Avenue
Anchorage, Alaska 99501
(Statewide oil and gas
property tax only)

BOROUGHES

Bill Olson, Acting Assistant Director
Property Appraisal Division
Municipality of Anchorage
Pouch 6-650
Anchorage, Alaska 99502

Marie Westfall
Director of Assessments
Ketchikan Gateway Borough
344 Front Street
Ketchikan, Alaska 99901

George Castaneda, Finance Officer
Bristol Bay Borough
P.O. Box 189
Naknek, Alaska 99633

Wayne Haerer, Assessor
Kodiak Island Borough
P.O. Box 1246
Kodiak, Alaska 99615

Karl MacManus, Assessor
Fairbanks North Star Borough
P.O. Box 1267
Fairbanks, Alaska 99707

Gary Lewis, Assessor
Matanuska-Susitna Borough
P.O. Box B
Palmer, Alaska 99645

Ken Bryant, Assessor
Haines Borough
Box 1209
Haines, Alaska 99827

Charles Hopson, Assessor
North Slope Borough
P.O. Box 69
Barrow, Alaska 99723

Chris Follis, Assessor
City and Borough of Juneau
155 South Seward Street
Juneau, Alaska 99801

Steve Reuter, Assessor
City and Borough of Sitka
P.O. Box 79
Sitka, Alaska 99835

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

ALASKA TAXABLE 1985

**State of Alaska
Department of Community & Regional Affairs
Division of Municipal & Regional Assistance
Office of the State Assessor
Pouch BH
Juneau, Alaska 99811**

TAPS

Is TAPS settlement the best deal the state could get?

By CHANCY CROFT

The proposed agreement on the rate the owners of the trans-Alaska oil pipeline (TAPS) can charge for shipping oil from Prudhoe Bay to Valdez will play a major role in determining future state revenues. A change of one penny per barrel in the shipping price (called a "tariff") can result in \$1.5 million per year in revenues to the state. Despite its magnitude, the TAPS tariff issue is so complicated that few people seem to understand the significance — or the effects — of the agreement the state recently signed with two major owners of the pipeline.

The Department of Law, the architect and major proponent of the settlement, claims its handiwork will give the state \$12 billion out of a potential \$15 billion (the maximum that continued litigation might produce) over the life of the settlement, which runs through 2011. But these figures have little meaning. The state's own documents reveal that the bargain the state has struck with the oil industry may produce far less revenue than settlement advocates claim.

An analysis prepared by another state agency, the Department of Revenue, converts the Department of Law figures into 1985 dollars. These figures indicate that between now and the year 2000, the settlement should produce \$2.1 billion more revenue for the state than the existing pipeline tariffs. By comparison, the Department of Revenue estimates indicate a victory in court would produce \$4.6 billion between now and the year 2000.

In other words, over the next 15 years the state would really get about \$150 million per



year — far less than the Department of Law figures seem to indicate. And what the state has settled for amounts to less than half the total sought in litigation — a far cry from the 80 percent victory touted by the Department of Law.

Moreover, there is no real down-side risk to continued litigation: Even a complete defeat (which is considered highly unlikely) would not result in the state receiving less than it is now, while a more likely "losing" scenario would still net the state \$1.5 billion in constant 1985 dollars.

The TAPS tariff vitally affects state revenues because pipeline costs are subtracted from the market before the state's royalties and taxes from Prudhoe Bay are calculated. The higher the tariff, the lower the base on which state revenues are calculated — and the fewer the revenues for the state.

Back in 1977 when the owners of the Prudhoe Bay oil field put their \$9 billion pipeline into operation to carry their bonanza to tankers at Valdez, the owner-shippers instituted an excessive tariff of more than \$6 per barrel (more than half the price of a barrel

of oil at that time). The U.S. Justice Department's anti-trust division, other federal energy agencies, the state, the Arctic Slope Regional Corporation and the Alaska Public Interest Research Group (AkPIRG) protested, launching a marathon case.

As a result of the protest, the Inter-State Commerce Commission (now part of the Federal Energy Regulation Commission, or FERC) suspended the oil company tariffs and imposed a much lower temporary tariff. Before the first oil left Valdez, the oil companies went to court, claiming that ICC/FERC did not have the authority to impose lower tariffs, or to impose refunds if a lower tariff was subsequently found valid.

After seven months at a lower tariff (the maximum time allowed the statute) the oil companies went back to their \$6 tariffs. In 1978 in a unanimous decision, the U.S. Supreme Court ruled that ICC/FERC could require refunds if lower tariffs were found to be justified. The decision was a major victory for the State of Alaska.

Since that time, the FERC rate-making proceeding has been generating paperwork and lawyers fees (estimated at \$100 million for the industry and \$35 million for the state).

Late in 1984 the Sheffield administration announced it had found a way out of the legal quagmire: Stripped to its essence, the settlement allows the oil companies to keep the revenues extracted from excessive past tariffs (estimated in excess of \$1 billion in 1982; higher now) in exchange for lower tariffs and somewhat higher state revenues in the future.

The state claims it will gain from lower

tariffs in the future, when lower pipeline costs might encourage continued production or development of marginal fields. This rationale has some validity, but the benefit we get is too small for the price we are paying. This general approach could have been used without forfeiting potential refunds, the legality of which is already guaranteed by U.S. Supreme Court decision.

Why did the state give up the refunds? The best explanation the Department of Law can offer is that it's just too complicated to collect funds retroactively. That doesn't make sense: The companies that charge and collect the tariff (essentially from themselves) are the same companies with which we are negotiating. With billions of dollars at stake, there's nothing too complicated about demanding that they live up to their obligation.

In 1981 proponents of the oil industry pushed through a change of oil tax laws at the end of the legislative session. Oil industry and state officials assured the legislature and the public that the little-understood change would not adversely affect state revenues. But it turned out that the state has already lost hundreds of millions of dollars as a result of the 1981 tax changes.

Are we doing it again with the TAPS settlement?

□ Chancy Croft, an Anchorage attorney, is former president of the Alaska State Senate and a former Democratic gubernatorial nominee. Also contributing to this article were Anchorage attorney Hugh Fleischer, RuralCAP director Bob Lohr and former Anchorage legislator Bill Parker.

Anchorage Daily News 6/21/05

Alyeska president criticizes editorial, newspaper's coverage

I write in reply to your lead editorial of Saturday, June 15, criticizing Alyeska Pipeline Service Company's supposed "imperial demeanor" in dealing with critics and asserting the need for Alyeska to develop a "better approach."

The subject was a meeting between representatives of Alyeska and members of the Cordova District Fishermen United.

dent that they will confirm that the plant is and has been operating in accordance with all government permits.

Unfortunately, the coverage of these allegations by the Daily News has aggravated the problem and done a disservice to legitimately interested parties.

The allegations come from Mr. Charles Hamel, characterized in your

qualified crews employed by a well known and reputable contractor in this field, using protective safety gear in accordance with industry and governmental standards.

The Cordova District Fishermen United, apparently concerned about the allegations which have appeared in the press, are considering joining Mr. Hamel in potential future

ed those people who have the greatest knowledge about the Ballast Water Treatment Plant and its operation. After the fishermen have identified further specific concerns, we will involve additional people if necessary to address those concerns.

Your editorial also was critical of the fact that Alyeska requested the social security

Synopsis of APUC Staff Brief and Expert Testimony

The APUC staff characterized its opposition to the settlement as "reluctant." According to its brief, the results of the settlement are so divergent from traditional regulatory approaches that the offer must be rejected as unjust, unreasonable and inconsistent with the public interest. The brief and its supporting analysis identify six elements of TSM that lead to tariffs which are as much as \$3.00 per barrel too high in certain years. According to the brief, the major causes of excessive tariffs are:

1. The settlement makes no adjustment for excess tariffs collected from 1978 through 1981, eliminating any refund obligation for those years.

2. The hyper-accelerated depreciation schedule that allows the companies to front-load the tariff (and therefore to pay little in the way of refunds) does not match costs and benefits to shippers.

3. Because the accelerated depreciation ensures that line is 80% depreciated by 1990, it was necessary to introduce non-cost-related profits in later years through the fixed, \$0.35-per-barrel return provision.

4. TSM allows the shippers to earn income on a 100% equity capital structure. This aspect of TSM is contrary to Commission practice and results in unjust rates; by comparison, a 1985 APUC pipeline proceeding set up a 50/50 debt/equity structure, with debt gradually retired to reach 100% equity in 2011.

5. TSM's \$450 million reduction from rate-base for cost over-runs (the so-called "Phase II" issues) is inadequate; APUC staff contends that the treatment of this item effectively removes only \$177 million from the rate-base, compared to \$1.8 billion sought by the State in litigation.

6. TSM's Dismantling, Removal and Restoration (DR&R) provision allows the TAPS owners to earn what the APUC staff describes as "an unconscionable windfall" of \$7.6 billion in 1987 dollars; according to the testimony, this profit, is "hidden" from the tariff proceeding and the rate-base and is additional to the \$5.0 billion in excess tariffs resulting from items 1 through 5, above.

Additionally, the Staff believes that provisions of the TSM such as the "pumpability factor" and "cost allocation provisions" are discriminatory and anti-competitive.

The APUC staff believes the APUC should reject TSM for in-state shipments to Alaska refiners because the settlement's results are unjust, unreasonable and not in the public interest.

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Dec. 17, 1986

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I. INTRODUCTION

The Staff opposes the Offer of Settlement proposed by the TAPS Owners and the State. It does so reluctantly. Under proper circumstances, settlement of these protracted proceedings would serve several worthwhile purposes. Unfortunately the results of this Settlement Offer are so divergent from those results produced by traditional regulatory approaches that the Settlement Offer must be rejected as unjust and unreasonable and inconsistent with the public interest.

As demonstrated by the testimony of Staff Witness Rudolph Bertschi, the TAPS Settlement Methodology ("TSM") produces tariffs which are as much as \$3.00 too high in certain years. As a result of those excessive tariffs, over the life of the proposed settlement the TAPS Owners will receive more than \$20 billion in excess revenues over and above what traditional regulatory methodologies would permit. Consequently, the State will lose more than \$5 billion in revenues over the life of the settlement.

Mr. Bertschi identifies six elements of TSM, in particular, that lead to TSM's unjust and unreasonable results. First, the carriers are allowed to collect their filed tariffs for the years 1978-1981. This collection completely eliminates any refund obligation for those years. Second, a hyper-accelerated depreciation schedule prevents any reasonable matching of costs and benefits to shippers. Third, the TSM implements a \$0.35 per barrel real return provision which has no identifiable relationship to costs and which produces extraordinarily high returns for the TAPS Owners in later years. Fourth, the TSM utilizes a 100% equity capital structure, which is contrary to Commission practice and policy and which produces unjust rates and revenues. Fifth, the TSM's \$450 million reduction from rate base establishes an illusory adjustment which inadequately accounts for necessary reductions for Phase II issues. Sixth, the Dismantling, Removal and Restoration ("DR&R") provision is not cost-based and allows the TAPS Owners to earn an unconscionable windfall of billions of dollars of return over and above the \$20 billion in excess revenues discussed above.

CORRECTION

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In addition to Mr. Bertschi's testimony concerning these factors, the Staff has analyzed assorted provisions of the TSM, such as the "Pumpability Factor" and the "Cost Allocation Provisions" which render the Settlement Offer discriminatory and anti-competitive. Such provisions are violative of various statutory prohibitions including AS 42.06.380(a).

These findings have led the Staff ineluctably to its opposition to the Offer of Settlement. Indeed, the results of this Settlement so contradict the traditional regulatory approaches required by both statute and common law and regularly ascribed to and implemented by this Commission, that the Offer of Settlement must be deemed inconsistent with the public interest. Accordingly, while the Staff applauds the State's and TAPS Owners' laudable efforts to resolve these proceedings without further litigation, it is constrained to report and oppose TSM's inequities and anomalies. In the final analysis TSM's divergence from the established norm is too stark to be justified by the "benefits" of ending litigation. And, as discussed below, even the public interest "benefits" of the Settlement Offer prove, under close scrutiny, to be illusory or suspect.

This prehearing submittal addresses various issues raised by the Settlement Offer. First, the Staff demonstrates that the appropriate standard to be applied by the Commission in considering this contested settlement offer is that established by the provisions of AS 42.06.370(a). That statute constrains the Commission to consider the TSM against the strictures of the "just and reasonable" standard.

The lesser measures proffered by the settling parties, such as whether the rates produced are "fair and reasonable and in the public interest," are unworkable constructs without authority or merit in the context of this proceeding. But even if the Commission were to treat the Settlement Offer as uncontested or otherwise elevate its consideration of public interest factors, it would be constrained to reject the TSM. The Settlement Offer produces results so divergent in nature and scope from traditional regulatory approaches as to render this settlement inconsistent with the public interest.

Second, the Staff's brief demonstrates how the prefilled testimony of Rudolph Bertschi establishes that the TSM rates and procedures are unjust and unreasonable.

Third, the Staff contests the settling parties' claims that the Settlement Offer is in the public interest. As discussed below, the excessive revenues to be earned by the TAPS Owners and the disparity between reasonable and TSM rates belie the value of this settlement to both the public and intrastate shippers. Moreover, there is reason to question whether future tariffs set by TSM will provide as much enticement to exploration and development as would prices set according to traditional ratemaking methodology.

There is even reason to doubt the TAPS Owners' claims that this settlement will end litigation. Of course, if the TAPS Owners' predictions are accurate, local interest shippers such as Petro Star, Inc. ("Petro Star") will not be able to afford the cost of challenging the TSM's past, present or future rates. Accordingly, the TAPS Owners' lofty promises that non-settling parties can have their cake (i.e., lower tariffs) and eat it too (i.e., rate challenges) prove to be so much pie-in-the-sky rhetoric.

Similarly, the TAPS Owners' protestations about consistency with interstate rates prove on closer look to be based on empty fears. These thinly veiled threats about Federal Energy Regulatory Commission ("FERC") invocation of Section 13(4) of the Interstate Commerce Act are without substance. In the last analysis this argument says more about the TAPS Owners' tactics than it does about the true likelihood of a successful Section 13(4) action in this matter.

The excesses and exorbitancies of this settlement should not be the price tag for putting an end to TAPS litigation. It is respectfully submitted that the Commission's duties require settlements such as this to meet higher standards than those suggested by the settling parties. The record in this case does not establish a "reasonable basis" for not proceeding with litigation. *Cf. Jager v. State*, 537 P.2d 1100, 1107 (Alaska 1975). Accordingly, the Commission is urged to reject the Offer of Settlement.

II. STANDARDS TO BE APPLIED IN REVIEWING THE OFFER OF SETTLEMENT

A. The Commission Should Consider Several Traditional Factors In The Context Of The "Just and Reasonable" Standard

Alaska Statute 42.06.370(a) sets forth the standard that must be applied in assessing the Offer of Settlement. That statute mandates that "[a]ll rates demanded or received by a pipeline carrier, or by any two or more pipeline carriers jointly, for a service furnished or to be furnished shall be just and reasonable." (Emphasis added). There are no Alaska statutes or Commission regulations that allow the Commission to use some other, lesser standard in assessing the reasonableness of the Offer of Settlement.

1. The Zone of Reasonableness

In order to determine if the rates that result from the Offer of Settlement are just and reasonable, the Commission must examine several factors. First, while questioned rates need not be set with mathematical precision in order for them to be just and reasonable, they must fall within a zone of reasonableness. *FERC v. Pennzoil Producing Co.*, 439 U.S. 508, 517, 99 S.Ct. 765, 771 (1979); *Farmers Union Cent. Exchange, Inc. v. F.E.R.C.*, 734 F.2d 1486, 1502 (D.C. Cir.), *cert. den.*, ___ U.S. ___ (1984). Moreover, the revenues and returns produced by the questioned rates must also fall within a zone of reasonableness.

Both the TAPS Owners and the Staff agree that the Commission must determine whether the settlement produces results that are within a zone of reasonableness. (See: Hildahl Testimony, pp. 15-20). The testimony of Mr. Bertshi supplies the proper guidance in establishing an appropriate zone of reasonableness and determining whether the Offer of Settlement produces results that are within that zone.

2. Assessment On An Annual Basis

Second, the results produced by the Offer of Settlement should be judged on an annual basis. Thus, the tariffs, revenues, and returns that result from TSM must be within a zone of reasonableness

for each year of the TAPS operations. The settling parties erroneously assert that the Commission should analyze the results of TSM as a whole, rather than looking at annual results (Hildahl Testimony, p. 16). The State argues that if the total results are reasonable, the Offer of Settlement can be approved even if tariffs in certain years of the settlement are excessive [Explanatory Statement of the State of Alaska and the United States Department of Justice In Support of Settlement Offer ("Explanatory Statement"), p. 21].

This "totality of results" approach is contrary to standard regulatory practice before this Commission. The Commission's analysis of cost-of-service issues is consistently done on an annual basis. For example, the Commission's regulations require that utilities and pipeline carriers justify their tariffs with data compiled on an annual basis (3 AAC 48.275(a)). In addition, the TAPS Owners file annual reports to the Commission, to allow the Commission to analyze pipeline operations on an annual basis. The Commission is urged not to deviate from its standard procedure in analyzing the Offer of Settlement.

The "totality of results" approach is also inconsistent with standard regulatory practice elsewhere. During the TAPS evidentiary proceedings before the Commission and FERC, the TAPS Owners argued that the tariffs for the years 1977-1981 should be evaluated on a "composite period" approach rather than on an annual basis. FERC Staff, in its Phase II Non Cost of Construction ("NCC") brief before FERC, criticized this argument on the grounds that tariffs are typically computed on an annual basis in all rate proceedings before FERC. FERC Staff argued that comparing costs and revenues on an annual basis is the standard ratemaking custom. [See: FERC Staff Phase II NCC Brief, pp. 287-289.]

The settling parties' position is also contrary to the State's position during the TAPS evidentiary proceedings. In their Phase II NCC Brief before FERC, the State rejected the TAPS Owners' "composite approach" and argued that tariffs must be assessed on an annual basis, rather than being averaged out over several years. As the State pointed out, the "... use of annual data is likewise part

of the language of American finance, and should continue to be used in this proceeding." [State's Phase II NCC Brief before FERC, p. 299.]

Mr. Bertschi demonstrates how analyzing the results of the Offer of Settlement as a totality can be misleading (Bertschi Testimony, pp. 7-10). Tariff streams resulting from two different methodologies could have identical present value, and yet the first could have just and reasonable tariffs every year while the second's tariffs were unjust and unreasonable every year. Under normal, annual rate analysis, the second tariff methodology would have to be rejected by the Commission.

Clearly, it is not appropriate for this Commission to look solely to the total results of TSM and disregard the results in individual years. Effecting the parties' bargain and ending litigation cannot properly justify unjust and unreasonable rates for any individual shippers. To permit such anomalies would be contrary to the Commission's regulations and standard rate review procedure (3 AAC 48.275(a)). A tariff methodology must yield results that are lawful at all times.

3. Unreasonable Prejudice Or Disadvantage

Third, the Commission must analyze the Offer of Settlement to ensure that it does not unreasonably prejudice or disadvantage any person or customer. If it does, then it must be rejected. [See: Alaska Statute 42.06.320, 380.] As discussed more fully below, at least one procedure established by the TSM, i.e., the "pumpability provision," violates the strictures of AS 42.06.320, 380.

4. Cost-Based Principles

Fourth, the Commission should determine whether the Offer of Settlement is a cost-based methodology by which the tariffs match the carriers' costs of providing service. It is a fundamental tenet of regulatory ratemaking that rates should be cost-based. As Professor Bonbright has said, ". . . the basic principle of rate making . . . is that of service at cost." [Bonbright, James C., *Principles of Public Utility Rates* (1961), p. 240; see also: Kahn, Alfred E., *The Economics*

of Regulation: Principles and Institutions, Vol. 1 (1970), p. 26.]

The courts too have recognized that in order to determine whether rates are within an appropriate zone of reasonableness, "... the most useful and reliable starting point for rate regulation is an inquiry into costs." *Farmers Union Central Exchange, Inc. v. FERC*, supra, at 1502.

This Commission's regulations recognize the importance of cost-based rates, as well. The provisions of 3 AAC 48.275 require that any proposed rate change must be supported by actual cost data. This Commission regularly relies on the actual cost of service as the basis for establishing just and reasonable rates.

As discussed below, the TSM is composed of several non-cost-based elements. The use of such factors in the TSM renders the Offer of Settlement inherently suspect. Thus, if the Commission finds that the Offer of Settlement is not completely cost-based, a heightened scrutiny is required to ensure that any non-cost-based factors are justified and justify the resulting rates. As Mr. Bertschi's testimony demonstrates, these non-cost-based elements produce unjust and unreasonable rates.

5. Assessment Of Essential Elements

Fifth, the Commission is urged to analyze TSM's individual elements and not just accept the settlement as an agreed-upon "end result." It is suggested that each of the essential elements of TSM must be supported by substantial record evidence. As discussed below, this is consistent with the Commission's general ratemaking practices. The settling parties assert, on the other hand, that TSM must be evaluated as a "whole package." (Explanatory Statement, pp. 3-4.) In essence they suggest that the end result justifies the methodology used to reach it. [Explanatory Statement, pp. 3-4.]

The Commission's regulations require that the Staff analyze the methodology used in every pipeline carrier's rate filing. 3 AAC 48.275(j). In addition, 3 AAC 48.275, in general, requires pipeline carriers to supply supporting data with every rate filing sufficient to allow the Commission to analyze each element of the proposed

methodology.

This Commission and its predecessor, the Alaska Pipeline Commission ("APC"), have consistently set rates by analyzing each operative ratemaking element. Moreover, each commission has required record evidence to support its findings as to individual elements. See: *Order Prescribing Regulatory Methodology and Directing Cook Inlet Pipeline Company To File Revised Revenue Requirement*, Docket P-82-1, Order No. 12, January 14, 1985 ("*Cook Inlet Decision*"); *Order Adopting Ratemaking Methodology*, Docket No. P-78-5, Order No. 25, September 17, 1980.

This approach is consistent with accepted regulatory ratemaking practices. As discussed by Mr. Bertschi, the normal procedure used to analyze the end results is to investigate the elements that go into calculating the tariffs. [Bertschi Testimony, p. 13.] As the court noted in *City of Charlottesville, Virginia v. FERC*, 661 F.2d 945, 950 (D.C. Cir. 1981),

Experience has taught that a determination of whether the result reached is just and reasonable requires an examination of the method employed in reaching that result.

And each essential element must have substantial evidentiary support. *Permian Basin Area Cases*, 390 U.S. 747, 791-792, 88 S.Ct. 1344, 1373 (1968).

Thus, the Commission, consistent with its own practices and regulations, must assess the TSM methodology on an element-by-element basis. As noted by our Supreme Court, "[O]ne indication of whether an agency has proceeded in the manner required by law is compliance with its own regulations." *Jager v. State*, 537 P.2d 1100, 1108 (Alaska 1975).

B. The Commission's Standards Should Not Be Lowered In This Case Merely To Accommodate Settlement Or The Parties' Sense of Public Interest

There is apparent agreement that the Commission's legislative mandate is to protect the public interest of Alaska and its citizens

(See: *Brief of the TAPS Carriers In Support of the Offer of Settlement ("Carriers' Brief")* p. 5). But the settling parties cite no authority for the proposition that that mandate is separate and apart from the Commission's duties to set just and reasonable rates. As discussed above, the standard by which the Commission is bound to act on the Offer of Settlement is whether or not it produces results which are just and reasonable. This standard was established by the Legislature and it is the Staff's position that the standard embodies the Legislature's determination that the public interest is best served when just and reasonable rates are set. The Commission is, therefore, bound to consider the merits of this settlement within the four corners of the "just and reasonable" standard. Factors involving the salutary effects of settlement, the extraneous benefits to be gleaned by the settling and non-settling parties, and the "consistency" of interstate and intrastate rates must be weighed in the context of whether TSM produces just and reasonable rates. The parties and the Commission are free to balance and weigh all relevant factors and set rates accordingly so long as the end result falls within the zone of reasonableness.

The settling parties erroneously suggest that a different, much lower standard than "just and reasonable" should be used in assessing the Offer of Settlement. See: *Brief of the State of Alaska In Support of Commission Approval of the Offer of Settlement ("State's Brief")*, p. 2; *Carriers' Brief*, pp. 6-8. Although the TAPS Owners never suggest how to apply the lower standard, they do use such euphemisms as "accept[ing] settlements without exhaustive verification and ". . . substantive evidence proving with precision the correctness of its specific result is unnecessary" (*Ibid*). The TAPS Owners' protestations notwithstanding (*cf.*, *Carriers' Brief*, p. 17), the essence of these arguments is that the Commission should "rubberstamp" TSM over the protest of "minor" parties such as Petro Star and Arctic Energy Co. ("Arctic Energy").

In regulatory ratemaking proceedings, commissions are not free to merely rubberstamp approvals to offers of settlement. In fact, a contested offer of settlement, such as the instant one, should

be analyzed in accordance with the standards of a fully litigated rate case. As FERC Administrative Law Judge Benkin has said:

When the Commission has before it a contested settlement proposal . . . its action on the proposal must be supported by substantial evidence

Is the 'substantial evidence' required to buttress the Commission's approval of a contested settlement proposal somehow less burdensome than the 'substantial evidence' which must support the Commission's disposition of a fully-litigated rate case where no settlement proposal has been submitted? I do not think so. Nor do I agree with Staff's concomitant thesis that, in a rate case where a contested settlement is before the Commission, considerable deference should be paid to the fact that the settlement rates were produced by the give-and-take of vigorous negotiations between parties having potentially adverse interests. *Northern Natural Gas Co.*, 3 F.E.R.C. (CCH) ¶65,286.

In prosecuting its responsibilities the level of Commission involvement and participation should not be lowered. The Commission is required to actively pursue each of its responsibilities, including protecting the public interest. As stated by the court in *Scenic Hudson Preservation Conf. v. FPC*, 354 F.2d 608, 620 (2d Cir. 1965):

The Commission [is] the representative of the public interest. This role does not permit it to act as an umpire blandly calling balls and strikes for adversaries appearing before it; the right of the public must receive active and affirmative protection at the hands of the Commission The Commission must see to it that the record is complete. The Commission has an affirmative duty to inquire into and consider all relevant facts. *Scenic Hudson Preservation Conf. v. FPC*, 354 F.2d 608, 620 (2d Cir. 1965), cert. denied, 384 U.S. 941 (1966).

Notwithstanding the clear directives of AS 42.06.370(a) the settling parties urge the Commission to apply the FERC standard for uncontested settlements (Carriers' Brief, pp. 3-8). The FERC standard, i.e., whether the settlement's results are "fair, reasonable and in the public interest," is inapposite for several reasons. First, FERC is authorized to use a lesser standard of review by specific regulation which sets out the standard of review for uncontested settlements before FERC. (See: 18 C.F.R. § 602(g)(3) (1985).) There are no such Commission rules articulating lesser standards for settlements before this Commission.

The TAPS Owners errantly argue that 3 AAC § 48.090(d)(4)

(1984) gives the Commission authority to adopt the lesser FERC standard in this proceeding. That section provides no support for the settling parties. Although Section 48.090(d)(4) allows the Commission to terminate a proceeding on its own motion, it establishes no standards for such termination. There is clearly nothing in the language of the regulation that allows the Commission to terminate a rate proceeding on its own motion and set tariffs in contravention of the statutory requirement that rates be just and reasonable. (AS 42.06.370 (a)(1983)).

Second, FERC's Rule 602 standard applies only to uncontested settlements. Even before the FERC, contested settlements must meet the just and reasonable standard. Petrostar, an intrastate shipper on TAPS, is contesting the Offer of Settlement and is urging the Commission to reject it. In addition, Arctic Energy, an Alaskan company that plans to have intrastate shipments on TAPS in the near future, has stated its interest in contesting the settlement, and has been granted intervention in this proceeding. Furthermore, through these Comments and Mr. Bertschi's testimony, the Staff is contesting the Offer of Settlement. Thus, even under the FERC rules articulated by the settling parties, the appropriate standard for settlement review is whether the settlement is just and reasonable.

The TAPS Owners seek to circumvent the contested nature of these hearings through the deft use of legal legerdemain. They suggest that the "just and reasonable" standard need not be met if the Commission labels the settlement as "uncontested" (Carriers' Brief, pp. 7-8). It is urged that the opposition of Petro Star, Arctic Energy and the Staff be "severed" so that the Commission might proceed

. . . to approve the settlement as to the consenting parties under the standard applicable to uncontested settlements (i.e., fair and reasonable and in the public interest). Carriers' Brief, p. 7-8.

The authority to effect this "severance" is supposedly "inherent" to the Commission's power as an administrative agency (*Ibid.*)

The TAPS Owners' proposal is pure Orwellian doublespeak. The effect of this strategy in the context of TAPS is chilling. By the waive of a magic wand the TAPS Owners would change a "contested

settlement" into an "uncontested" one. Such a tactic would effectively gut the active challenges to these rates. Not only will this procedure be unfair in the context of TAPS, but it also promises to establish unworkable precedent for other proceedings.

The TAPS Owners also suggest that the Commission is empowered to approve the Offer of Settlement without "exhaustive verification;" in other words without record proof that TSM rates are just and reasonable (See: *Carriers' Brief*, pp. 6-8). The TAPS Owners allude to "broad discretion granted . . . in other respects where a final adjudication is not in question" (See: *Carriers' Brief*, p. 6). These vague references offer no apposite authority for avoiding the mandate of AS 42.06.370(a). The "general power" to resolve disputes is not open-ended in the context of the Commission's obligation to set just and reasonable rates.

Even the TAPS Owners' reliance on *Jager v. State, supra*, gives limited support to their position. *Jager* merely defines the Commission's power to investigate and weigh competing factors before deciding whether it is in the public interest to proceed with litigation. The Staff does not suggest that the Commission's power is otherwise.

Jager does not, however, instruct the Commission as to how it should define what the public interest is or how to weigh competing public interests in the context of a settlement. As discussed above, it is the Staff's position that the Commission's assessment of public interest must be forged in reference to just and reasonable rates. In other words, so long as a settlement falls somewhere within a zone of reasonableness of such rates it will be in the public interest to approve the settlement. If the settling parties' proposed rates do not fall within a reasonable ambit of just and reasonable rates they must be rejected.

C. Even Should The Commission Apply A Lowered Standard Of Review The Offer Of Settlement Should Be Rejected As Inconsistent With The Public Interest

Even if the Commission were to lower its standard of review

the Offer of Settlement must be rejected. As the TAPS Owners readily acknowledge in their brief and through Mr. Hildahl's testimony, TSM must be shown to be

. . . not so far from more traditional regulatory approaches that this Commission would have to deem it inconsistent with the public interest. *Carriers' Brief*, p. 19.

As demonstrated by the testimony of Rudolph Bertschi, when measured against traditional regulatory approaches the results of the "bargain arrived at by the parties" are so divergent as to be unjust, unreasonable and inconsistent with the public interest.

Contrary to the TAPS Owners suggestion, Mr. Hildahl's presentation does not provide the Commission

with a reasonable basis for determining that the public interest does not require further litigation at this time as an alternative to accepting this settlement. *Carriers' Brief*, p. 19.

In fact, the failure of the Hildahl presentation graphically demonstrates the opposite -- further litigation is required. No matter how hard the settling parties might try they cannot dress this settlement up as a silk purse.

III. THE OFFER OF SETTLEMENT MUST BE REJECTED BECAUSE IT IS UNJUST AND UNREASONABLE.

The Staff's analysis shows that the Offer of Settlement must be rejected because it is not just and reasonable, and it is not in the public interest.

A. The Results of The Offer of Settlement Are Unjust And Unreasonable, And Not In The Public Interest.

The Staff's testimony presents conclusive evidence that the results of the Offer of Settlement are not just and reasonable and that the settlement is not in the public interest. The basis of the Staff's analysis of TSM is Mr. Bertschi's comparison of TSM with the results obtained from a traditional regulatory approach previously applied by the Commission. Since Mr. Hildahl utilized the same

approach in his attempt to justify TSM (See: Hildahl Testimony, pp. 15-20), the Staff and the TAPS Owners are apparently in agreement as to the manner of assessing the reasonableness of TSM. The Staff and the TAPS Owners also seem to agree that if the results of TSM are radically different from the results produced by more traditional regulatory approaches, then the Commission would have to deem the settlement inconsistent with the public interest. (See: Carriers' Brief, p. 19.)

1. The Staff's Tariff Methodology Demonstrates That TSM Is Neither Just Nor Reasonable Nor Consistent With The Public Interest

Mr. Bertschi has compared the results of TSM with the results of a tariff methodology which is primarily based on the more traditional regulatory approach adopted by this Commission in its *Cook Inlet* Decision. The Staff's methodology is referred to here as the Benchmark Tariff Methodology ("BTM"). In order to minimize disputes as to the accuracy of the Staff's benchmark analysis, BTM was designed to produce very conservative numbers. For example, BTM differs considerably from the Staff's litigation position in the TAPS proceedings. Because BTM takes into account the various litigation positions of all the parties, as well as the Phase I decisions, BTM results in substantially higher tariffs and revenues than those that would result from the Staff's recommended just and reasonable tariffs.

As demonstrated by Mr. Bertschi, TSM produces results that are so disparate from traditional regulatory approaches as to render TSM rates unjust, unreasonable and inconsistent with the public interest. This conclusion is underscored by the fact that the Staff's benchmark, BTM, produces results which are probably so high as to be unjust and unreasonable themselves. Yet, TSM produces tariffs that are as much as \$3.00 higher than BTM's tariffs in the same year [See e.g., 1982 (RLB-4), Schedule 1]. In comparison, Judge Kane, in his TAPS Initial Decision before FERC, established just and reasonable tariffs and decided that tariffs as little as \$0.14 above his tariffs were outside a zone of reasonableness and unjust and unreasonable

(See: Initial Decision Phase I Issues, pp. 119-120).

There are myriad indicia of the size of the disparity between TSM and reasonable rates. For instance, the present value in 1987 dollars of the excess revenues to be collected by the carriers as the result of TSM is \$20,055,274,000. Thus, of the total \$66.249 billion in present value revenues that will be collected by the carriers under TSM, \$20.055 billion will be excess. In fact, the present value of the carriers' collected revenues to date under TSM is almost as great as the present value of all the revenues that would be collected under a more traditional regulatory approach over the full life of the settlement.

Of the \$20 billion in excess revenues, the State will lose a present value of approximately \$5 billion in revenues (Bertschi, Testimony, pp. 34-35). As Mr. Bertschi points out, that amount today, if available to the State, would almost double the size of the Alaska Permanent Fund. If the State earned a return in 1987 on this amount, based on projections by the Alaska Department of Natural Resources, the State would earn a return equivalent to about \$671 for every man, woman, and child in the State of Alaska. (*Id.*)

The return on rate base earned by the carriers under TSM is higher than the return on rate base earned under BTM in each of the years of the settlement. And for the period 1990-2011 TSM rates of return become extraordinarily high. By the year 2000, for example, using the throughput assumptions found in the settlement, the carriers will be earning real returns of 43.87%. Those rates will continue to increase throughout the remaining life of the settlement.

2. Analysis Of The Specific Elements Of TSM Demonstrates The Basis Of The Staff's Conclusion That TSM Is Unjust, Unreasonable And Inconsistent With The Public Interest

Mr. Bertschi's testimony also identifies the specific elements of the Offer of Settlement which lead to such radically disparate results. These elements are discussed below.

a. Hyper-Accelerated Depreciation Schedule

Perhaps the most obvious divergence from traditional cost-based regulatory methodology concerns TSM's hyper-accelerated depreciation schedule. TSM depreciates TAPS assets at such an accelerated rate that by 1990 nearly 80 percent of the TAPS Owners' initial investment costs will be depreciated while nearly two-thirds of the economic life of the pipeline remains (Explanatory Statement, pp. 31-32). As a result, TSM does not correctly match shipper costs and benefits. This in turn has produced the need for non-cost-based and jerry-rigged ratemaking devices in TSM, such as the \$0.35 per barrel return provision.

This depreciation schedule is clearly a radical departure from traditional regulatory approaches. Neither the TAPS Owners nor the State attempt to justify this device on the basis of traditional ratemaking principles. Nor is there evidence in the record from which one can demonstrate either a reasonable basis for this depreciation schedule or how it results in rational, cost-based rates. In fact, Mr. Bertschi's analysis shows that it results in rates far outside a zone of reasonableness (Bertschi Testimony, pp. 45-51).

BTM, on the other hand, incorporates a more traditional straight-line, unit-of-time depreciation schedule used by the Commission in its *Cook Inlet* Decision. In addition, Mr. Bertschi has calculated BTM based on another reasonable depreciation technique, unit-of-throughput. Comparison of the BTM and the TSM demonstrates that the settling parties' hyper-accelerated depreciation schedule produces radically different results from those produced by more traditional approaches.

b. Capital Structure

The Offer of Settlement adopts the most extreme carrier litigation position for its capital structure. Consequently, TSM includes a 100 percent equity capital structure. This approach was expressly rejected by the Commission when proposed to it in *Cook Inlet* (See: *Cook Inlet Decision*, p. 18). It has also been rejected by the APC and the FERC ALJ in their respective TAPS Phase I decisions. BTM

adopts an initial capital structure of 50 percent equity/50 percent debt, based on the APC Phase I decision and the various litigation positions of the parties (Bertschi Testimony, pp. 21-23). Mr. Bertschi's BTM gradually retires debt until it is 100 percent equity in the year 2011. This approach conforms to the more traditional regulatory approach adopted by the Commission in *Cook Inlet* (*Cook Inlet Decision*, p. 21).

The use of a 100 percent equity capital structure leads to a substantially higher income tax component in TSM than is found in BTM. This in turn results in substantially higher TSM tariffs.

c. Rate Of Return

The rate of return component of the Offer of Settlement is perhaps the element of TSM that is the most radical departure from traditional regulatory approaches. Beginning in 1989, the carriers do not earn a return based on their costs but, instead, receive \$0.35 in 1983 dollars per each barrel shipped, regardless of their costs. One of the basic tenets of regulation is that tariffs be cost-based. This provision of the Offer of Settlement does not conform to that fundamental regulatory principle.

As is the case with other TSM elements, there is no evidence in the record that demonstrates that this non-cost-based return results in rational, cost-based rates. In fact, Mr. Bertschi's analysis shows that it results in rates outside a zone of reasonableness. In addition, Mr. Bertschi's analysis shows that the resulting returns are far greater than any returns in the evidentiary record, even those offered by the carriers. For example, the TSM return on rate base in the year 2000 is 43.87%, based on the throughput assumption in TSM.

It is important to note that because the return is non-cost-based and instead is a return per barrel, the carriers will receive even greater returns if the actual throughput is higher than that assumed in TSM. Present evidence suggests that higher than projected throughput is quite possible. This is particularly true after 1995, given the reserve potential in the Arctic National Wildlife Refuge.

d. DR&R

The DR&R component of the Offer of Settlement is also a radical departure from traditional regulatory approaches. As utilized in TSM it is non-cost-based and allows the carrier to earn extraordinary profits on an expense item.

As discussed by Mr. Bertschi, the settling parties have stipulated to amounts to be collected from the shippers for DR&R. As set forth in the Offer of Settlement, the TAPS Owners will continue to be paid the stipulated amounts for DR&R, regardless of any change in circumstances. Thus, notwithstanding Mr. Bertschi's calculation that the TAPS Owners will begin overcollecting for DR&R on January 1, 1987, as a result of the changes in the federal tax laws, the TAPS Owners will continue to collect the stipulated DR&R amounts. The DR&R component, therefore, clearly has no relation at all to the actual monies required for the ultimate DR&R work. As in other instances, there is no evidence in the record that demonstrates how the stipulated, non-cost-based DR&R amounts result in rational, cost-based rates.

As further discussed by Mr. Bertschi, the carriers and their parent companies will have unlimited use of the DR&R collections prior to the time when the DR&R work will actually be performed. In light of this unlimited use and the imputed rate of return used to compute the amount of DR&R collections, the carriers and their parents will earn extraordinary profits on their DR&R collections. In fact, Mr. Bertschi has calculated that the TAPS Owners will earn over \$46 billion in pure profit dollars on the DR&R collection supplied by the TAPS shippers. This is the equivalent of \$7 billion in 1987 dollars (Bertschi Testimony, pp. 65-70).

These excess billions are paid for by the TAPS shippers through tariffs which are higher than they otherwise should be. Thus, the DR&R component of the Offer of Settlement clearly violates the fundamental principle of regulatory ratemaking that regulated entities should not be allowed to earn a return on an expense item, such as DR&R. This Commission followed this principle in *Cook Inlet*, by requiring the carrier to maintain detailed records of the DR&R

collected in order to allow reimbursements to the shippers of overcollections of DR&R funds (*Cook Inlet Decision*, p. 40).

This \$7 billion profit does not appear in the \$20 billion present value difference between BTM and TSM revenues calculated by Mr. Bertschi. Thus, the carriers and their parents will collect a total present value of over \$27 billion in excess revenues when compared to a traditional cost-based methodology. Because the DR&R provision allows the carriers and their parents to reap the benefits of a completely unjustified gross windfall of \$46 billion in profits, the Staff believes that the DR&R provision alone renders the Offer of Settlement patently unjust and unreasonable and inconsistent with the public interest.

e. Phase II Issues

The Offer of Settlement is heavily weighted to the carriers' litigation position and thereby fails to properly account for the Phase II issues of cost of construction and the haul road. In fact, the amortized deduction of \$450 million from rate base is very close to the carriers' litigation position of no deduction from rate base. Mr. Bertschi, on the other hand, has taken a more reasonable position of splitting the difference between the carriers' and the protestants' litigation positions, even though the Staff believes that just and reasonable rates require a full deduction of \$1.6 billion from rate base.

f. 1978-1981 Tariffs

The Offer of Settlement allows the carriers to collect their filed tariffs from 1978-1981, thus disallowing any refunds for those years. Those tariffs are based solely on the litigation position of the carriers and do not consider the *Cook Inlet Decision*, the TAPS Phase I decisions, or the litigation positions of any of the other parties to the TAPS proceedings. In light of the fact that the filed tariffs for 1979-1981 are even higher than the tariffs calculated under TSM, it is patently clear that the settlement tariffs for 1978-1981 are unjust and unreasonable.

3. Additional Check Analyses Demonstrate The Accuracy Of The Staff's Conclusions

As noted above, Mr. Bertschi's BTM was formulated so that the tariffs and revenues that resulted from the BTM would probably be so high as to be outside a zone of reasonableness. This was done in order to ensure that any conclusions reached by the Staff regarding the level of TSM tariffs and revenues would be conservative. To further confirm the accuracy of his conclusions, Mr. Bertschi performed two additional analyses.

In the first of these checks, Mr. Bertschi altered BTM to incorporate certain extreme carrier litigation positions, such as 100% equity capital structure, no deductions for ADIT, no rate base deduction for Phase II issues, and an extremely high rate of return. That analysis demonstrates that clearly unacceptable carrier litigation positions would have to be incorporated into BTM in order to match the large tariffs and revenues generated by TSM (Bertschi Testimony, pp. 75-77).

In his second such analysis, Mr. Bertschi assumes a zone of reasonableness of \$0.50 above the already high BTM tariffs. The tariffs and revenues that result from TSM are still substantially higher than even that distended zone of reasonableness (Bertschi Testimony, pp. 77-79).

Mr. Bertschi has clearly shown that the results of TSM are unjust and unreasonable. TSM results are so radically different from the results of the more traditional regulatory approach adopted by this Commission in *Cook Inlet* that the Offer of Settlement is patently unreasonable and inconsistent with the public interest. The Bertschi analyses establish beyond peradventure that the Offer of Settlement should be rejected.

B. Other Elements of The Offer of Settlement Are Unlawful.

In addition to the unjust and unreasonable results produced by TSM, the Offer of Settlement contains specific features which are unlawful and consequently must be rejected by the Commission.

1. Pumpability Factor

Section II-2(c) of the Intrastate Settlement Agreement and Section II-10(f) of the Interstate Settlement Agreement contain provisions concerning the "Pumpability Factor."

The Pumpability Factor is designed to convert any barrel of non-Standard Petroleum to an equivalent amount of Standard Petroleum. The Pumpability Factor is the decimal fraction which expresses the relationship of the ability of TAPS to transport a particular type of petroleum relative to the ability of TAPS to transport Standard Petroleum, as measured under the TAPS Operating Agreement, as amended.

This provision is apparently derived from the arguments presented by two of the carriers, Exxon Pipeline Co. and British Petroleum Pipelines, Inc. during the TAPS evidentiary proceedings. Those carriers argued that the tariffs charged to ship Kuparuk oil should be higher than the tariffs for Sadlerochit oil because TAPS could transport more barrels of oil of low viscosity crude (Sadlerochit) than of high viscosity crude (Kuparuk). The two carriers argued that the shipments of Kuparuk crude reduced the pipeline capacity and the carriers needed to be compensated for the reduction. Consequently, a "surcharge" on Kuparuk shipments was advocated. In short, it was urged that the tariffs for Kuparuk petroleum would be higher than the tariffs for Sadlerochit oil.

In its Phase II NCC brief before FERC, the State strongly disagreed with this argument and urged that the additional charges for Kuparuk petroleum be disallowed (State's Phase II NCC Brief, pp. 284-292). The State argued that the justifications for the surcharge were based on a theoretical loss of capacity due to displacement of Sadlerochit barrels by Kuparuk barrels. The State argued further that Kuparuk oil has never displaced any Sadlerochit oil, and that the TAPS capacity will be sufficient to handle all of the Sadlerochit and Kuparuk crude that is tendered. The State concluded that the additional charges for Kuparuk petroleum should be disallowed. In addition, as the State pointed out, there is no record evidence that

it is more costly to the carriers to ship higher viscosity oil (See: State's Phase II NCC Brief, pp. 284-292).

Notwithstanding this, the Offer of Settlement allows the carriers to charge shippers of Kuparuk oil higher tariffs than shippers who ship Sadlerochit oil. The Staff supports the State's arguments in its Phase II NCC brief and opposes tariff adjustments based on the pumpability of various types of crude. If, in fact, TAPS was at capacity, and the higher viscosity crude was reducing the total carrying capacity, then perhaps the pumpability provision would be warranted. However, as the State has argued, that clearly has not been the case; nor is there any record evidence that TAPS is currently at capacity. Given the arguments presented by the settling parties as to the declining throughput on TAPS in the future, it appears highly unlikely that TAPS will ever reach its full capacity. As the State demonstrated, without a presumption of capacity, shippers should not have to pay a "pumpability surcharge" as is contained in the Settlement Agreement.

Consequently, for every year in which the settling parties cannot present proof that higher viscosity oil actually displaces lower viscosity oil, the Offer of Settlement results in unjustly discriminatory tariffs to those shippers who ship anything other than Standard Petroleum. This unjust discrimination is in violation of Alaska Statute 42.06.320, 380 in that the carriers will be subjecting shippers of higher viscosity crude to an unreasonable prejudice or disadvantage. Thus, the Commission must reject the Offer of Settlement, or, at the very least, reject the provision for pumpability factors in any years when no barrels of crude are preempted from shipment on TAPS.

2. Cost Allocation Provisions

The settling parties assert that the Offer of Settlement merely calculates rate ceilings above which the carriers cannot set their tariffs. The carriers are theoretically free to set tariffs that are lower than the calculated ceiling. However, Section II-2(f) of the Interstate Settlement Agreement contains provisions that create

tremendous disincentives for the carriers to reduce their tariffs below the ceiling amounts. These provisions restrain competition. As such, this section of the Settlement Agreement should be rejected by the Commission.

As explained by Dr. Horst, Section II-2(f) of the Interstate Settlement Agreement provides that: (1) fixed operating costs incurred by Alyeska; (2) ad valorem or other taxes imposed by the State of Alaska on the value of property; (3) the DR&R allowance; and (4) depreciation will be allocated among the TAPS Owners based on their Barrel-Mile Shares (Horst Testimony, p. 39). In other words, the Settlement converts unavoidable fixed costs into avoidable variable costs. Any carrier whose Barrel-Mile Share exceeds its composite ownership share in any particular year will save to pay for these new "additional variable costs" based on the additional throughput.

While the purpose of the provisions is apparently to "relieve perceived inequities of the Agreement" as applied to certain carriers (Horst Testimony, p. 36), the result of the provisions is to greatly reduce incentives among the TAPS Owners to compete for a larger share of TAPS transportation.

The Cost Allocation provisions will work a significant disincentive on the carriers to lower their tariffs to compete for available throughput. If any carrier lowers its tariffs and indeed is able to obtain a greater share of the throughput, that carrier is penalized by the Cost Allocation provisions by being forced to pay part of its revenue collections to the carriers' Agent for distribution to the other carriers.

In effect, the carrier that increases its throughput beyond its ownership share will actually incur a penalty charge for attempting to compete with the other TAPS owners. This will eliminate any incentive that a carrier may have to increase its throughput by reducing its tariff to attract more shipments.

The Cost Allocation provision of the Offer of Settlement eliminates all incentives for competition among the TAPS Owners. It accomplishes this by penalizing any carrier that attempts to lower its tariff to capture additional throughput. The result of these

provisions will be to maintain the TAPS tariffs at high levels, even if excess capacity occurs in the later years of TAPS operations. The Commission should not countenance such a blatant attempt to maintain high tariffs and to restrain competition.

IV. THE OFFER OF SETTLEMENT SHOULD NOT BE APPROVED ON PUBLIC POLICY GROUNDS

A. The Promise Of An End to Litigation Is Illusory And Provides Insufficient Benefit to Justify the Results of TSM.

The TAPS Owners place unwarranted stock in their public policy arguments. Their most enticing lure is the seductive promise of an end to TAPS litigation. The TAPS Owners promise to relieve the process of a "gargantuan drain on resources" and "years of additional controversy" (*Carrier's Brief*, p.12). These arguments are little more than attractive wrapping for an empty box.

Moreover, such arguments turn the Commission's regulatory role on its head. If settlement of protracted and costly litigation were as important to the regulatory process as the settling parties suggest, the Commission's statutory obligations to insure the setting of proper rates in such cases would be greatly minimized. Indeed, the settling parties arguments implicitly suggest that "the benefit of their bargain" should be accorded more weight in this case than the reasonableness (or lack of it) of their rates.

The Staff respectfully suggests that the promise of an early end to this protracted litigation should not deter the Commission from engaging in the scrutiny and analysis required by the Legislature. If settlement becomes that important, parties with the economic clout and/or staying power to force a settlement would secure favorable rates for reasons other than their reasonableness.

There is much to suggest that the Settlement Offer will, in fact, not put an end to this litigation. Petro Star and Arctic Energy have protested the reasonableness of the Settlement Offer. Those protests will require analysis and resolution of the same issues which the TAPS Owners have promised to resolve by this settlement.

It is also suggested that fair and complete litigation of

these issues can be resolved by the Commission expeditiously now that the Supreme Court has remanded the case to the Commission. Much of the record needed for Commission decisions is already assembled. Necessary supplementation of that record need not be protracted if appropriate direction is imposed on the parties.

The true value of an "end of litigation" can only be assessed by visualizing its attendant costs. It is suggested that the heaviest costs will be exorbitant rates and revenues, inadequate refunds, and unfair treatment of local shippers. It is respectfully urged that these costs are too high. Whatever the inherent value of ending litigation might be, in this case it simply is not enough to justify the inequities and shortcomings of TSM.

B. Non-Parties To The Settlement Are Unfairly Prejudiced By The Offer Of Settlement

The TAPS Owners somewhat disingenuously suggest that the rights of non-settling parties are "preserved," since the Offer of Settlement anticipates that non-settling parties will retain the right to pursue litigation before the Commission (*See: Carriers' Brief*, pp. 13-14, 16). Indeed, the TAPS Owners' footnoted reference to Petro Star (*See: Ibid.*, p. 14, footnote 19) illustrates the transparency of this position. As predicted by the TAPS Owners, once the Commission resolves the questions raised by the Offer of Settlement, Petro Star (and presumably Arctic Energy and any other small, intrastate entity interested in protesting the reasonableness of these rates) will eschew further litigation. The essence of this rather brazen suggestion is that the cost of litigation against the TAPS Owners will be so great that small, local entities could not afford the contest. The record of these proceedings gives much credence to the TAPS Owners' prediction.

The TAPS Owners' almost cavalier disdain for Petro Star sheds meaningful light on the Offer of Settlement. The TAPS Owners have asked the Commission to measure their settlement against significantly lower standards than are traditionally applied by the Commission. The TAPS Owners have sought this in great part on the grounds that most of

the parties to this proceeding have agreed to settle and that the non-settling parties have the right to continue should they wish to. The obvious catch to the TAPS Owners' strategy is that the non-settling parties and later intrastate shippers will not, as a practical matter, be able to challenge the rates established by TSM. Should the TAPS Owners' strategy prove successful the Offer of Settlement will never be judged against the just and reasonable standards established by the Legislature and will, accordingly, be imposed on non-settling parties and future intrastate shippers without the close Commission scrutiny required by law.

The practical result for non-settling intra-state shippers, such as Petro Star or Arctic Energy, who do not have the resources to either pursue the ongoing challenge to the TAPS Owners' filed rates or to file new challenges to future rates, is that, even with the promised rate reductions, intrastate shippers will be required to pay exorbitant rates which unjustly exceed levels this Commission would normally require. If the TAPS Owners' prediction is accurate, then it is respectfully suggested that public policy concerning the non-settling intrastate interests requires expeditious resolution of the existing challenges to the filed rates according to the Commission's traditional standards.

Continued litigation need not be at the expense of Tesoro and MAPCO. Tesoro has argued forcefully that the Commission has the power to set reduced, interim rates and otherwise require the payment of refunds to intrastate shippers pending resolution of existing challenges to the filed rates (See: Tesoro's Formal Complaint and Request to the APUC to Set an Interim Rate, Require Refund, and to Expedite the Proceedings to Establish a Permanent Tariff Rate, Docket No. P-78-5, pp. 5-11). Should the Commission adopt this course of action, MAPCO and Tesoro would not unfairly suffer from patently unreasonable rates while the Commission proceeds to set just and reasonable rates.

C. The Parties' "Strategic Goals" Cannot Justify Unjust And Unreasonable Rates

The TAPS Owners urge the Commission to accept their settlement because

. . . the parties were able to structure this settlement in a manner that conformed more closely to each sides overall strategic goals than a litigated decision likely would have done. *Carriers' Brief*, p. 14.

It is not explained how just and reasonable rates set in a manner consistent with the Commission's traditional regulatory approaches would not conform to each side's strategic goals. Presumably the TAPS Owners concluded that the rates set by the Commission would be too low and the State concluded that rates set by the Commission in outlying years would be too high to encourage continued development.

As demonstrated by the testimony of Mr. Bertschi, the rates set by TSM are in excess of those that would be allowed by the Commission's traditional regulatory approaches. This holds true even for the outlying years. Thus, the State's compromise does not necessarily serve its announced strategic goals as effectively as rates set by more traditional approaches.

It is also not so clear that TSM and its excesses are the necessary *quid pro quo* for encouraging future development. There is ample evidence of the existence of ready supplies of crude oil in the immediate environs of TAPS. Most recently, announcements concerning exploration and development of the Arctic National Wildlife Refuge have added to existing evidence that the level of TAPS rates will not hinder long-range development of Alaskan oil.

No matter how one views the effectiveness of TSM in relation to the State's goals, Mr. Bertschi has clearly demonstrated how successful the TAPS Owners have been at meeting their "strategic goals." TSM clearly provides the TAPS Owners with revenues which far exceed those that "are commensurate with the risks [the TAPS Owners] have borne" (*Cf. Carriers Brief*, p. 15). For this reason alone the "strategic goals" argument must fail. Nor can these "goals" justify the intertemporal discrimination produced by TSM at the expense of early shippers, or the "cost allocation provisions" which dampen

competition on the TAPS.

The Staff's opposition to the Offer of Settlement does not suggest that parties should be prevented from fashioning creative solutions to vexing differences. To the contrary, such settlements are to be encouraged; but only to the extent that they produce rates which fall somewhere in the permissible zone of reasonableness and otherwise meet the standards set by the Legislature for pipeline rules, regulations and rates. The State's efforts to meet its strategic goals are laudable and impressive. But they have come at too great a cost in terms of traditional regulatory principles. Indeed, the true irony of this settlement may be that in the long run traditional regulatory principles would probably serve the goals articulated by the State as well or better than TSM.

The implicit suggestion made by the settling parties is that their strategic goals outweigh the Commission's obligations to actively participate in the setting of just and reasonable rates. Rates which are not just and reasonable cannot be set merely to satisfy the parties' concept of public interest. As the court in *Michigan Consolidated Gas Co. v. Federal Power Commission*, 283 F.2d 204 (D.C. Cir. 1960) said,

In viewing the public interest, the Commission's vision is not to be limited to the horizons of the private parties to the proceeding. *Michigan Consolidated Gas Co. v. Federal Power Commission*, 283 F.2d 204, 226, cert. denied, 364 U.S. 913, 81 S.Ct. 276 (1960).

D. Approval Of The Offer Of Settlement On The Grounds Of
"Consistency To The Interstate Tariff Regime" Is Inconsistent
With The Commission's Statutory Duties

The TAPS Owners' argument that Section 13(4) of the Interstate Commerce Act might be invoked to undo the Commission's rejection of the Settlement Offer stretches credulity well past the breaking point. The TAPS Owners' appeals to the promotion of federal-state comity abuse any reasonable concept of "public policy" and constitute unfounded scare tactics.

This Commission has considered and rejected the concept that

it is required to follow FERC methodology in pipeline cases involving both interstate and intrastate service (*Cook Inlet Decision*, p. 14).

As the Commission stated in that case:

This Commission performs its obligations by setting a rate that is based on intrastate property and operations. A fair procedure to identify intrastate property and operations is all that is required. (*Ibid.*)

Here such a procedure not only exists, it has been in place since nearly the inception of the TAPS operations. Accordingly, the TAPS Owners' suggestion that approval of the TSM settlement "will virtually eliminate the possibility that [Section 13(4)] would need to be involved" (See: *Carriers Brief*, p. 17) is empty rhetoric apparently calculated to induce the Commission into passive acceptance of the Settlement Offer.

It should also be noted that Section 13(4) does not prohibit all disparities between interstate and intrastate rates. Its structures apply only to "undue burdens" on interstate commerce or rates that discriminate against the interstate shippers or carrier. *North Carolina v. United States*, 325 U.S. 507 (1945). There is no reason to believe that any disparity between interstate and intrastate rates will produce sufficient divergence to constitute "undue burden" on interstate commerce.

Of course, such concerns are clearly premature at this point in time. The FERC has never set "just and reasonable" rates for TAPS. FERC's actions to date involve findings based on the lower "fair and unreasonable and in the public interest" standard. It is very doubtful that rates set as just and reasonable by this Commission can be unduly burdensome on shippers and carriers who have agreed to pay higher interstate rates for reasons extraneous to whether the rates are just and reasonable. As the Supreme Court has said in *Georgia Public Service Commission v. United States*, 283 U.S. 765 (1931):

. . . when state rates are assailed on the ground that they result in undue prejudice to interstate shippers or discriminate against interstate commerce, the Commission must determine whether the existing interstate rates are reasonable, as it may not require intrastate rates to be raised above a reasonable level. *Georgia Public Service*

Commission, supra, at 770.

Finally, this Commission has yet to consider the merits of these rates. It is, therefore, impossible to know what, if any, discrepancy may result from the Commission's deliberations. In these circumstances the TAPS Owners entreaties concerning Section 13(4) are patent scare tactics. Should the Commission follow the logic proffered here by the TAPS Owners, the Commission's jurisdiction over any interstate-intrastate pipeline will effectively be abdicated to the FERC. Such a result is contrary to the Commission's legislative mandate, the provisions of the Interstate Commerce Act, including Section 13(4), and the Commission's own precedent.

V. CONCLUSION

The lesson of the Staff's evidence and comments is clear. The Offer of Settlement must be rejected. It must be rejected because it produces results which are not just and reasonable.

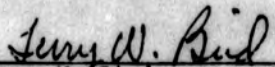
But even if the Commission does not adhere to the standard mandated by AS 42.06.370(a) and opts for some lesser standard as proposed by the settling parties, it must reject the Offer of Settlement. Initially, this is so because the public policy arguments made by the settling parties are either devoid of merit or otherwise critically suspect. Ultimately, however, the Offer of Settlement does not meet any of the lower standards urged by the settling parties. Since TSM produces results which are so radically divergent from those produced by traditional regulatory approaches it is inconsistent with the public interest.

Once the Offer of Settlement is rejected the Commission is urged to expedite its conclusion to these proceedings. The manner of that conclusion should be addressed in separate pleadings. On the other hand, should the Commission accept the Offer of Settlement as to the settling parties, it still must proceed to the conclusion of these proceedings. The objections of Petro Star and Arctic Energy require hearing and resolution. That can only be effected through full prosecution of the remand ordered by the Supreme Court and completion

of Phase II of the TAPS proceedings. Those tasks should be undertaken with alacrity.

DATED: December 17, 1986

Respectfully submitted,

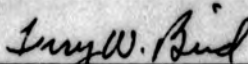


Terry W. Bird
Special Counsel to the Staff
of the Alaska Public Utilities
Commission

CERTIFICATE OF SERVICE

I hereby certify that I have this day served copies of the foregoing document upon all parties in Docket No. P-86-2.

Dated: December 17, 1986



Terry W. Bird

BEFORE THE

December 17, 1986

1 **PREFILED TESTIMONY OF RUDOLPH L. BERTSCHI**

2 **I. INTRODUCTION**

3 **Q. Please state your name and address.**

4
5 **A. My name is Rudolph L. Bertschi. My address is 616 38th**
6 **Avenue, Seattle, Washington.**

7
8 **Q. For whom are you offering testimony in this matter?**

9
10 **A. I am appearing on behalf of the Staff of the Alaska Public**
11 **Utilities Commission.**

12
13 **Q. What is the purpose of your testimony in this proceeding?**

14
15 **A. The purpose of my testimony is to provide some guidance to the**
16 **Commission in its determination as to whether the proposed**
17 **Offer of Settlement should be accepted as a resolution of the**
18 **TAPS proceedings. Specifically, I have developed a tariff**
19 **methodology which I use as a benchmark against which to**
20 **compare the TAPS Settlement Methodology ("TSM"), in order to**
21 **assess the reasonableness of the tariffs and revenues produced**
22 **by TSM.**

23
24 **Q. Briefly state your qualifications and experience relative to**
25 **your testimony and the matter before the Alaska Public**
26 **Utilities Commission (APUC or Commission).**

27
28 **///**

1 A. I am a consulting engineer/economist, providing services in
2 matters affecting price-regulated industries. I hold Master
3 of Science (M.S.) and Bachelor of Science (B.S.) degrees from
4 the University of Illinois at Urbana-Champaign. My Bachelor's
5 degree is in Teaching Engineering Technology, and my Master's
6 degree is in Mechanical Engineering with concentration in
7 thermal systems. I have also done post-M.S. studies in
8 engineering systems and economics. I am a registered
9 professional engineer in the State of Illinois. I have
10 testified before more than a dozen different state and federal
11 regulatory commissions on issues including power supply
12 planning, cost of service, rate design, and financial
13 planning.

14
15 From 1982 through 1985, I was employed by the Alaska Public
16 Utilities Commission (APUC) under the classification of
17 Utility Engineer IV. My work dealt primarily with matters
18 related to electric utilities and petroleum pipeline common
19 carriers. More specifically, I was responsible for conducting
20 analyses and studies of questions concerning cost allocations,
21 rate base valuations, and determinations of revenue
22 requirements for these entities.

23
24 From 1978 to 1982, I was employed by the Illinois Office of
25 Consumer Services. While working there, I conducted various
26 utility studies and offered expert testimony on various issues
27 of regulatory concern.

28 ///

1 My qualifications and background are more fully detailed in
2 Exhibit APUC Staff _____ (RLB-1).
3

4 Q. Describe the materials that you have reviewed in preparation
5 of your testimony.
6

7 A. I have reviewed (1) the Offer of Settlement and the
8 explanatory notes accompanying the Offer; (2) the prefiled
9 testimony of Messrs. Hildahl and Horst in this Docket; (3) the
10 briefs filed by the State and the carriers in this Docket; (4)
11 the APC Phase I orders for TAPS; (5) the Commission's Order
12 No. 12 in Docket P-82-1 (re Cook Inlet Pipeline Company); (6)
13 the FERC ALJ's (Judge Kane) Initial Decision in TAPS; (7) the
14 State's Phase II NCC brief in FERC; and (8) other material
15 cited herein.
16

17 II. SUMMARY OF CONCLUSIONS AND RECOMMENDATIONS

18

19 Q. Summarize your conclusions and recommendations.
20

21 A. I recommend that the Commission reject the Offer of
22 Settlement. This recommendation is based on the following
23 conclusions:
24

25 (1) TSM results in tariffs that are unjust and unreasonable
26 in most years of the settlement in that they are not within a
27 zone of reasonableness, as defined by traditional cost-based
28 regulatory approaches;

1 (2) The TSM results are so radically different from those
2 produced by more traditional regulatory approaches that TSM's
3 acceptance would not be in the public interest;
4

5 (3) Over the life of the settlement, the carriers will
6 receive more than \$20 billion (\$1987) in unjust and
7 unreasonable revenues;
8

9 (4) The State will lose more than \$5 billion in revenues as a
10 result of the unjust and unreasonable tariffs;
11

12 (5) The carriers will earn returns far in excess of any
13 returns supported by record evidence, and which are patently
14 unjust and unreasonable;
15

16 (6) TSM's hyper-accelerated depreciation schedule does not
17 match costs and benefits to the shippers, and there is no
18 record evidence to support its use;
19

20 (7) The \$0.35 per barrel return provision is unjust and
21 unreasonable in that it is not cost-based, has no support in
22 the record, results in excessive carrier returns, and results
23 in tariffs that are unjust and unreasonable;
24

25 (8) The 100% equity capital structure results in unjust and
26 unreasonable tariffs;
27

28 ///

1 (9) The amortized \$450 million deduction from rate base for
2 Phase II issues is too small and results in unjust and
3 unreasonable tariffs; and
4

5 (10) The Dismantling, Removal and Restoration ("DR&R")
6 provision is not cost-based and allows the carriers to earn
7 billions of dollars of return on an expense item, thus
8 allowing the carriers an unjust and unreasonable return.
9

10 Q. Explain how your testimony is organized.
11

12 A. The balance of my testimony is presented in six parts:
13

14 (III) Criteria for Consideration of Offer of Settlement

15 In that section, I discuss the criteria that the
16 Commission should use in assessing the Offer of
17 Settlement;
18

18 (IV) TSM

19 In that section, I briefly describe TSM and tabulate
20 the tariffs, revenues, and returns resulting from that
21 methodology;
22

22 (V) Benchmark Tariff Methodology ("BTM")

23 In that section, I present the model which is the
24 benchmark against which I assess the reasonableness of
25 TSM;
26

26 ///

27 ///

28 ///

1 (VI) Comparison of TSM and BTM

2 In that section, I compare the tariffs, revenues, and
3 returns resulting from those methodologies; and present
4 a number of analyses to make that comparison; and

5 (VII) Conclusions

6 In that section, I summarize my findings and
7 conclusions.

8 III. CRITERIA FOR CONSIDERATION OF OFFER OF SETTLEMENT

9 Q. Explain what you believe are the criteria that the Commission
10 should use in considering the Offer of Settlement.

11
12 A. I believe that the Commission should compare the results of
13 TSM with the results of a plausible tariff methodology based
14 on the more traditional regulatory approach used by the
15 Commission in its *Cook Inlet* decision, Docket P-82-1, Order
16 No. 12, January 14, 1985 ("*Cook Inlet* decision"), and on the
17 evidentiary record in the TAPS proceedings. This is the same
18 type of approach used by the settling parties in Mr. Hildahl's
19 testimony. A comparison of the results should be made as to
20 the annual tariffs, and the revenues and returns received by
21 the carriers. In this way, the Commission can determine if
22 TSM produces results that are within a zone of reasonableness.

23
24 Q. Why is it important that the Commission determine if the TSM
25 rates fall within a zone of reasonableness?

26
27 A. Generally, the regulatory standard for tariff rates is that in
28 order for them to be acceptable they must be within a zone of

1 reasonableness. Thus, the results produced by the Offer of
2 Settlement should be analyzed to determine if they fall within
3 a zone of reasonableness. Apparently, the settling parties
4 agree because Mr. Hildahl performed an analysis purporting to
5 determine whether the settlement produces results that are
6 within a zone of reasonableness.

7
8 Q. The settling parties assert that the Offer of Settlement
9 should be assessed as a whole rather than looking at the
10 tariffs that result in certain years. Do you agree with that
11 assertion?

12
13 A. No, I do not. The Commission should assess the results of TSM
14 primarily on an annual basis. The results of an acceptable
15 settlement should lie within a zone of reasonableness each
16 year.

17
18 The settling parties argue that the Offer of Settlement should
19 be assessed as a whole and that the Settlement can be approved
20 even if it results in tariffs that are too high in certain
21 years, as long as those high tariffs are compensated for by
22 lower tariffs in other years. For example, in describing the
23 results of TSM, the Explanatory Statement of the State of
24 Alaska and the Department of Justice submitted to the
25 Commission states that "[t]he resulting early year tariffs, if
26 judged alone, could be viewed as excessive; but when weighed
27 with tariffs in the later years and judged as a part of a
28 comprehensive and early settlement, they are acceptable."

1 [See, Explanatory Statement of the State of Alaska and the
2 United States Department of Justice in Support of Settlement
3 Offer ("Explanatory Statement") p. 21].
4

5 This is contrary to the State's position during the TAPS
6 evidentiary proceedings. During those proceedings, the
7 carriers argued that the tariffs for the years 1977-1981
8 should be evaluated on a "composite period" approach rather
9 than on an annual basis. The State disagreed and stated that
10 tariffs must be assessed on an annual basis, rather than
11 averaging several years. [See: State's Phase II NCC Brief
12 before FERC, pp. 298-299]. I agree with the approach used by
13 the State during litigation and believe that the Commission
14 should follow that approach in assessing the Offer of
15 Settlement.
16

17 The carriers have also argued that the Offer of Settlement
18 should be assessed by looking at the total results. Mr.
19 Hildahl compares what he argues is the present value of the
20 total TSM revenues with the present value of the total
21 revenues resulting from a depreciated original cost
22 methodology. The carriers state in their Brief in Support of
23 the Offer of Settlement ("carriers' brief") that even if the
24 tariff methodologies produce significantly different tariff
25 patterns, as long as they have roughly equivalent present
26 values, they have the same long-term value to both the
27 carriers and the shippers. (See Carriers Brief, p. 18).
28

///

1 I disagree with that way of assessing the Offer of
2 Settlement. While two different tariff streams that have the
3 same present value may have the same long-term value for the
4 TAPS carriers, that will be true only for shippers who ship
5 the same percentage of throughput each year over the entire
6 life of TAPS. It certainly will not be true for a shipper who
7 will only ship oil through TAPS for a portion of the TAPS
8 settlement life, or a shipper who ships different percentages
9 of the total throughput each year. For example, a shipper who
10 only has throughput on TAPS from 1986-2000 does not care about
11 the present value of the revenues for the entire TSM life.
12 That shipper is concerned only about the tariffs for the years
13 1986-2000. Tariff levels in one year cannot be used to
14 justify tariff levels in another year. As the State pointed
15 out in its Phase II brief, each year must be analyzed
16 individually.

17
18 I do agree, however, that in order to compare TSM to a more
19 traditional tariff methodology, it is helpful to compare the
20 present value of the revenues that result from the two
21 methodologies. If the present value revenue requirements of
22 the two methodologies are roughly equivalent, then we can
23 conclude that the carriers are earning reasonable returns and
24 revenues over the life of the system.

25
26 However, as I have already emphasized, the results should be
27 compared on an annual basis; consequently, a present value
28 analysis is not sufficient. TSM tariffs could be unreasonably