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Mitchell: But the problem with that is that in the caribou situation you are down so far below just what the villages need that you're down literally to that level, and I don't think anybody either in the native community or most thought that people could have looked at it and said that when you get down to that level and there's that little amount of resource left, sure, that's a legitimate way to do it. I think that the policy debate is if you're in a situation where's there's eno gh for the villages that there isn't enough for all of us who live in town and the villages. Do you really want to put all of us, all the people, all the thousands of people that live in town, and then all the people that live in the villages, do you want to spend state money. Do you think its a good expenditure of money that could be going to the intertie, or money that could be going to do something else to put up a state bureaucracy that's going to door to door with a clipboard to figure out whether people that live in the villages should be eligible at that point. Now most knowledgeable people would say that's ridicules. That's not a good expenditure of money because if you go out there with that clipboard and you spend a million dollars, you're going to find that everybody that lives in the village, maybe with the exception of a school teacher, is going to qualify. So, why do it.

Taylor: Well aren't you addressing the word "users" at this point?

Mitchell: Well that's what I'm getting at.

Taylor: Users could be any of us.

Mitchell: Right. And the point is that while uses is attractive as a concept, alterationally it doesn't get you very far. The Nelchina caribou herd, I don't know what the numbers are but I'll make some up that I think are reasonable, you can probably take, the biologists say, about oh let's say 5,000

animals out of that herd without doing any biological harm. If you would pull up everyone who wanted to engage in that use - the use of going out and shooting a caribou and eating it, you would probably have between the people that live in the villages and Copper River and all of us that live in Anchorage or Fairbanks - I think the statistics are 20-30,000 people. So now you have at that point, government has two choices. Either you can all those people go hunting, in which case rather than taking 5,000 animals, you're taking 30,000. Or, somehow you've got to pick 5,000 people out of the 30,000 - take 5,000 users out of the 30,000 that would like to engage in the activity, and figure out who gets to be part of that 5,000. Now you can either do that with - Ms. Jacobus and her crowd would tell you is let's give everybody an equal chance. We'll get Donald Trump up here and he can put a wheel up and everybody bets on a number and whoosh and the people will have an equal chance to win and lose and what the heck.

_____: I don't think that's what they're saying.

Mitchell: That's exactly what they have said in the past. That's exactly how that hunt works. We have a lottery now on that hunt for everyone except the people that live in the surrounding villages because the subsistence law says that that's an irrational way to allocate access for them. For me, hey, you know put my name in a hopper, what the heck. Maybe one year I get to go hunting, maybe one year I don't. But for people that live out in the villages that's pretty irresponsible, and that's the way the system has worked until the McDowell case. Now what's going to happen and this is the one thing that I think that you should think about in your deliberations that we haven't hear from yet, is that Judge Cutler is sitting out in Palmer at this very moment, at least its my understanding, working on an opinion about whether or not the state subsistence laws what's

called severable, as a the result of the McDowell case. Now, if in fact, and this is one of the great ironies of this whole thing, is that if Judge Cutler decides that the subsistence law is severable, then it means that everyone - all the people who have been in that lottery in the past, plus all the people that live out in those Copper River villages - are all going to be subsistence people entitled to the priority. Now since you still have to get down to that 5,000 cutoff, under the subsistence law as some of you may remember from 1985 when we went through all of this, we're going to take all 20,000 of those people and we're going to line them up and we're going to do exactly what you and Rep. Barnes suggest, we're going to take a clipboard and we're going to house to house and we're going to see which of them have the greatest dependence upon those resources. And you know what's going to happen based on the 1985 experience? Nobody in Anchorage or Fairbanks in August and September of 1990 is going to hunt the Nelchina caribou herd if that's what Judge Cutler does. Now people in Anchorage think that they're getting a free vote on this issue, that this is the Bush issue. If that happens, you're going to hear from a lot of people in Anchorage who are going to have a legitimate bitch, frankly. I mean all the subsistence law did was to give a reasonable allocation to people that lived out in the villages, and then let all the people that live in Anchorage have at it. But if they're going to prioritize everybody as part of the subsistence law based on 1985, there is nobody in Anchorage who is going to turn out to be more dependent for those 5,000 animals for people that live out in the villages.

Navarre: We have to wrap this meeting up by about 10 minutes to 5 and I want to give Mr. Starkey and Mr. Wallery an opportunity. And then if we don't have a chance to answer, get our questions answered, I'd like to also to invite anyone who can come back tomorrow afternoon to please be here as a

resource because the morning from 10 till noon is taken up. My intention is to start at 1:00 again and do some more question and answer and then get into some of the option discussion. Rep. Barnes.

Barnes: I don't think I said anything about a clipboard, although I may have. I wanted to clear that up. And secondly I would like to point out that the largest native community in the state lives here in the area that I represent and under this law makes no difference how poor they are. They are precluded unless they happen to be moved in with one of their relatives for a period time, from going hunting or fishing, and I think its just as unfair for the urban Native as it is to the urban non-native.

Mitchell: Mr. Chairman, I would suggest that proves the fairness of the system, that's it not a racial system.

Starkey: Thank you Mr. Chair. Mr. name is Sky Starkey. I represent the Association of Village Council Presidents. The Association of Village Council Rresidents or AVCP represents 56 native villages out in the Yukon Kuskokwim Delta. This is the area where, which is most dependent upon subsistence resources, and as we speak in almost virtually every village people are in fish camps now harvesting fish for their winter supply and have no idea that you're sitting here making a judgment about their future, which is exactly what's happening. For some reason this debate has gotten carried to the point where people are talking about whether or not the federal government should be pushing the state government around, and has ignored the fact that all the federal government requires is that you treat subsistence users and give them a priority, which they deserve. If you can find something wrong with the principles and policies behind that, then the debate should focus on that. But if you're going to talk about just your fundamental principle

of not liking to be pushed around by the federal government, I suggest that that's not a worthy place to begin or carry this debate.

I have something prepared, but I feel compelled to respond to Ms. Jacobus at some length. I was the attorney that handled the Kwiethluk caribou case and I wish Rep. Barnes were here, because she seems to have some misunderstandings as well. Ms. Jacobus inferred that Kwiethluk just jumped into court. Well Kwiethluk tried to work through the Board of Game all throughout the fall and the winter of last year, and their proposals were deferred and turned down. Sydney Huntington, who she holds in such high esteem, voted for Kwiethluk and would have allowed them a hunt of those caribou, as did Ben Nagiak. The only two subsistence users on that board. If the rest of the board would have went along with that decision there would have never been a Kwiethluk case. But as it turns out, even the Board found out there was a dire emergency out there, that the fish had spoiled and the people needed that meet to get by, the Board turned down their request. The Board heard this issue over two days. At the end of the first day the board was talking about granting the priority, about granting permits. On the second day two biologists from the Department of Game came in and testified that they shouldn't allow the hunt because they were afraid that other villages would come in and would want to have emergency hunts as well and they didn't want to deal with that administratively, and also because they did not trust the other villages in the area and thought that there would be wide spread poaching. It had nothing to do with the harvestable surplus, and it had nothing to do with the health of that herd. The only two biologists who work in Bethel and work for the Dept. of Game told people out there that there was a harvestable surplus. On those facts, Judge Holland found that they should be allowed to hunt 50 animals. They only took 37. There was no poaching. There

were no further requests for further emergencies. And its all on the record, and if you go ask any biologists throughout the state now whether there was any harm done to that herd because of that hunt, I suggest that the answer will be "no." There wasn't an option to go hunt the Mulchatna herd, which is another nearby caribou herd. Ms. Jacobus makes it sound like some irresponsible village decision to go hunt a herd that's smaller in favor of hunting an 80,000 strong herd. I suggest Ms. Jacobus doesn't know anything about the YK delta and the conditions in February. And that she doesn't know where the Multchatna herd is. Its about a 2-day snow machine ride across country that people that don't know. And if you read the papers you know that people get lost out there. Lost for days, and people die when they go out in those circumstances. The Board was aware of that. Sydney Huntington was aware of that. So it wasn't an irresponsible decision. The other thing that should be pointed about Ms. Jacobus' testimony is that she complains at length about the rights of subsistence users to go into court and enforce their rights, when the reason we're here today is because Ms. Jacobus went into court and reversed the decision of this legislature to allow a subsistence priority. She's the one that's managing fish and game through her court decision. And its hypocritical for her to come in here and make the big spiel that she goes through about management of fish and game through the courts, when we're here because of her court case. Ms. Jacobus, sports fishermen and the commercial fishermen all sat up here and wondered why we were here and gave alternatives. But did you hear any of them mention the needs of subsistence users out in Rural Alaska. That's why we're here and that's why Congress passed ANILCA. Our subsistence rights are protected through ANILCA and we're not here asking for them. But certainly you should all realize that you do have a responsibility to represent those constituents out there and those Alaskans and that they

depend on these resources. And by leaving this issue open as you do, you jeopardize those rights. I will stop my comments here due to lack of time and take questions if there are any.

Navarre: Ms. Jacobus before you get into your comments, I want to just say I appreciate all the variety of interests that have been here today and the different opinions that have been expressed, so...

Jacobus: I'm just going to make my comments real quick. I won't engage in personal attacks such as some of the other people have done. I don't think it really benefits anybody and I don't think that its appropriate for this body. But I would like to point out the reason the Kwiethluk case is an important case for your consideration. Its not because of the fact of the, what the individual members decided for the Fish & Game Board. What it dies, is an important precedent that we need to consider, and that is where a federal judge comes in and overrules and overrules the decision on the fish and game board - a fish and game board decision, which according to the fish and game board, was made because of biological principles. I'm not going to get into how many hours away a particular herd was or any of these other things. The issue here is where you have a fish board or a game board, looking at an issue and making a determination which they say is based on a biological decision. Not me, but what they have decided is based on a biological principle. That principle should be upheld. And the normal rule, and Mr. Mitchell talked about this, and said well what difference does it make whether they go to the federal court or the state court. It makes a big difference because if you are talking about going to state court, they give deference to the decisions of the administrative body. That's one of the normal rules of review when you look at an administrative body. In this case the judge decided to not

give deference to the decisions of the fish and game board. That is what is a concern to me and what should be a concern to anyone who is concerned about the resource. Not whether the Fish & Game Board was right, but normally they look to see was there some evidence to support the decision of the Fish & Game Board. If there was some evidence, then they should uphold the decision of the Game Board. And that's really the issue that needs to be talked about here and that's the thing that causes concern for me. And by the way it wasn't my court decision that caused all these problems. In my opinion, i was the decision of the federal government to place some of these onerous decisions on the state in the way in which it managed Fish & Game that has caused the majority of the problems. And I think that's what we need to keep focused on is whether or not we want to solve the subsistence issue within the state and solve it in a way which is best for the resource, best for the people, and fairest, or whether we want to continue to work under the onerous requirement of ANILCA. And that's the real issue.

Hoffman: I represent the community of Kwiethluk and I think the Kwiethluk decision is _____ too, and I think the Board of Game should take it as such. They should take special notice of subsistence needs, and the decisions that they make aren't sanctimonious, they are should be looking at the real needs and the real intent of the law, and I hope the Board of Game takes notice of this decision and weighs that subsistence needs more heavily in the future.

Navarre: Mr. Wallery I want to give you an opportunity to make your comments if you'd like now, or if you want you can defer them until tomorrow afternoon.

Wallery: Coming from Fairbanks, we're used to having hearings where nobody's at them, so...I would prefer to do it tomorrow if we could do that.

Navarre: I will do that. We'll begin tomorrow afternoon. Mr. Mitchell..

Mitchell: Mr. Chairman, just for the record, I think because there's been a lot of discussion about it it might be helpful knowing some _____, but I was wondering if Ms. Jacobus could say for the record whether she even attended the Board meeting at which the board debated the caribou case, or whether she's had a chance to read the transcript of the board proceedings.

Jacobus: Well in the first place, Mr. Mitchell, I don't know why you have to be so personal about all your attacks, but I would like to say I have reviewed the decision of the judge, in fact I have a copy of his preliminary decision. I have a copy of the hearings that were before the Fish & Game board and I still stand by my remarks which are the decision is a very bad precedent for Fish & Game management. Not whether the Fish & Game board was right, but the weight the federal judge gave to the biological findings of the board. Right or wrong is not the issue. The issue is what weight was given and it is a terrible precedent for Fish & Game management, and I stand by my remarks.

Mitchell: Mr. Chairman, the reason I bring that up Ms. Jacobus is not because its a personal attack on you, its because you're the person that has represented repeatedly all afternoon to this committee what the board and what the board didn't do. And I don't to pin you down on it, its really a minor point except to the extent that its preoccupied the committee's time. If you do not have personal knowledge about what in fact the Board did, and what factors the board considered, and you were sitting here through the whole thing - with all due respect I think its not helpful to give information about factual circumstance to this committee about which you don't know anything.

Jacobus: Well I have a copy of the transcript of the proceedings.

Mitchell: I asked whether you read them.

Jacobus: I have read them and said that twice, Mr. Mitchell.

Mitchell: You did not indicate that in your first response.

Jacobus: I didn't have to.

Starkey: Ms. Jacobus is in my opinion misinformed about the stated law and the amount of discretion that the board is given. If she will read and the legislators will ask their staffs or get legal opinions about - there's the Bobby decision, and also the Katy John decision in which Judge Holland makes it clear that when the record supports the board's findings, they will be deferred to. Just as they would statecourt. In the Kwiethluk decision there was no management plan. There were two biologists that were saying there was a harvestable surplus. And then two biologists came in who didn't have any direct knowledge, and said that there wasn't. Judge Holland merely found that the board's findings were not supported by the evidence on the record. And that's the same standard that a state court would use. And its not a dangerous precedent. In fact Ms. Jacobus's clients in the Outdoor Council will be before this committee harping about the only thing that we need to do is create management plans and increase Fish & Game _____ so that we will won't have and user conflicts. And if that would have been in the Kwiethluk case and the state would have lived up to their responsibilities, then there would never have been a case.

Castner: Ken Castner from United Fishermen. I just wanted to reply to one thing from Mr. Starkey where he said he didn't hear anything from the commercial fishermen about the needs of

subsistence users. I believe that Mr. Matthews was pretty thorough in his description of what our constituency is. And we well recognize that this issue effects the lives, and I mean the fundamental lives of many people. The people that you represent Sky, and the people that Julie represents, and of the other users that are here. It affects our lives. Where we depart is in coming to some decision on the size of the class. and we have always asked for some sort of definition: who are these rural people? I noticed that Mitchell very carefully never used the word rural. In his entire testimony he kept referring to the folks in the villages. If that's what you mean by rural, then all we're asking for is a definition. Who is the class that we're protecting? Who are the people that we're aiming these laws too. And that's entirely where we depart. We have tremendous empathy for the subsistence needs of the people in the villages. And I don't think that that's an issue. If that's an issue then I'd like to put it to rest. We simply want to know what the size of class is that we're discussing and come up with a decision and that is something that is not in ANILCA.

Elias: Tom Elias, Alaska Sportfishing Assoc. I agree with Ken. I'd like to expound on that just a little bit. I don't think anyone here has said today that we don not recognize the need for subsistence and a subsistence lifestyle in some parts of the State of Alaska. I think what this thing is boiling down to is an allocative issue. Who gets what? The "I Want" syndrome. I want this, one group says I want this, the other group says I want this. Where do we draw the line? In other words - I guess I'm directing this to Julie more than anybody - are we, is this what we're talking about? If we all agree that there should be subsistence - at this table we all agree that there is a need for subsistence in the State of Alaska - are we then now talking about who gets that subsistence priority or preference and

how much they get? Is that the basic deal that we're getting down there.

Kitka: I think that the fundamental issue that the legislator has got to focus on next week is what exactly is broken. You know I think that if you try to solve all the problems in the world in regard to hunting and fishing issues. I mean you could spend years doing it. But I think you really need to finely foc...very finitely focus on what exactly is broken and what is exactly broken is the supreme court justices interpreted the constitution, in our judgment, in a very narrow view in which state legislature isn't able to fulfill any responsibility to have a statute which could comply with existing law. And their choices are very clear on that. How do you resolve that problem. And like I said, one view is to expand and make the constitutional more flexible so the legislature can pass a law to come into compliance. The second one is to go down the direction of changing the federal level. AFN is not supportive of going down that direction because we see a lot of risks that are out there. But clearly that's one option that the state legislature can explore and look at the pros and cons and the risks and the likelihood of success on that. But in our judgment what's broken is the narrowness of the constitution versus the federal law. And what are the limited options that are available to the legislature if the people in this state want to resolve that in the state versus kicking it back to Congress and what can be done in the short timeframe that is allowed as far as the stay which expires July 1st. Are people willing to live with a period of federal management of fish & game no matter how wide or how narrow the jurisdiction for whatever period of time it takes to go down these other paths. And I think that if you look at in terms of not trying to solve all the problems in regard to subsistence and hunting, and fishing, and just narrow it down on what is broken? What are the ranges of options that

could be done to fix that? And what is the best judgment in your opinion would accomplish that in a doable political way on that. I think you'll go a long way to coming up with a resolution next week. I wish I could tell you that there was a whole lot more options that were available. In fact that's one of the frustrating parts, is the limited options and the very tight frames on doing something, and that frustrates us as well, I'm sure, frustrates you. Our recommendation anyway.

Elias: Julie, what is broken? Subsistence is not broken, is that correct? The subsistence concept is not broken.

Mitchell: Let me try that. I think that what's broken is part of what Ken sort of alluded to. But I think you have to take them as separate parts. The first thing that's broken is the ability of you and other members of the legislature to enact a statute that limits the subsistence priority just to people that live in Rural Alaska. Now even if we could all agree on where rural Alaska was, you don't have any authority to come up with a statute based on the McDowell case that would be able to implement our agreement. Now if the constitutional amendment is passed, then we'll get back the authority to enact that kind of a statute. Now certainly everyone here understands that with the Kenaitze case and whole variety of other things going on that the technical ability to describe with specificity where rural Alaska begins and ends. Where that line is. Is something about which there's going to have to be ongoing discussion and debate and changes. And I think at the end of the legislature we indicated that we were more than happy to sit down and talk about that. But that is separate from getting the legislature back in the game of having the constitutional authority.....

SYNOPSIS OF MEASURES RELATING TO OIL AND GAS REVENUE DISPUTES

Synopsis of Measures Relating to Oil and Gas Revenue Disputes (House Resources Committee 3/21/90)

HB 519 (Gruenberg): The major provisions of this proposal:

— establish an Administrative Law Judge within the Department of Administration with Superior Court Judge status to hear outstanding oil tax and royalty disputes.

— raise interest rates on outstanding tax and royalty disputes to 20%.

— require companies to prepay disputed taxes and royalties in order to bid on oil and gas leases .

HB 541 (Cotten): To ensure that major settlement sof the State's royalty and tax dispute are in the public interest, this measure requires the Commissioner of Natural Resources (royalty) or Revenue (tax) to conduct an independent review of the proposed settlement before settling any dispute involving amounts greater than $10 million in a tax year five years or more prior to the current year. The review will specify objectives, indicate how these objectives are met and evaluate how the settlement affects other outstanding disputes. Additionally, there shall be a minimum of 14 days between the time the Commissioner receives a final settlement offer and the date s/he approves the settlement.

HB 554 (Koponen): AS 09.25.100 and AS 43.05.230 establish taxpayer confidentiality as one of approximately 100 statutory exceptions to Alaska's sunshine laws. This measure adds new subsections to both statutes allowing the Commissioner of Revenue to prepare and issue summaries of information relating to income and tax paid by a producer of oil or gas in Alaska. Disclosure is at the Commissioner's discretion and is not required.

HB 572 (Resources): This bill amends AS 42.06.140 to give the Department of Natural Resources (DNR), which is currently expanding its pipeline monitoring role, direct control of the inter-state pipeline tariff management. To make sure that revenue and environmental consequences of pipeline tariffs receive due weight, this measure requires DNR to coordinate its effort closely with the Departments of Revenue, Environmental Conservation and Law.

HB 573 (Resources): This measure:

— allows disclosure of the names of corporations with an assessment balance larger than $5 million for any tax year five or more years before the current date, and the amounts of the outstanding balances. However, the corporation is allowed one year from assessment to settle the claim before disclosure is permitted. Release of taxpayer information under statute currently applies only to delinquent taxes;

— requires escrow one-half of assessed tax balances larger than $10 million for a tax year five years prior to the current year when the assessment is older than one year. (In other words, one-half of a 1985 tax year assessment, including interest, could be escrowed in 1990, if the assessment had been on the books for one year.)

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Establishes Administrative Law Judge for Oil Tax and Royalty Disputes (Secs. 1-3, 6-8 and 10-13)

These sections establish an Administrative Law Judge within the Department of Administration with Superior Court Judge status to hear outstanding oil tax and royalty disputes.

— [Principal Statute References: AS 44.21.480-492; AS 38.05; AS 43.05.]

Raises Interest Rates on Outstanding Royalty and Tax Amounts (Sections 4, 9)

To reduce possible corporate incentives to delay resolution of tax and royalty cases, this portion of the bill raises interest rates on outstanding tax and royalty disputes to 20%.

— [Statute Reference: AS 43.05.225; AS 38.05.145]
— [See Fineberg Report: recommendation #1 (Chapter II, p. 16)]

Prohibits Companies with Outstanding Tax Disputes from Bidding on Oil and Gas Leases (Sections 5)

To increase corporate incentives to speed resolution of tax and royalty cases, this portion of the bill requires companies to prepay disputed taxes and royalties in order to bid on oil and gas leases .

— [Statute Reference: AS 38.05.180(f)]

STATE OF ALASKA
THE LEGISLATURE

LEGISLATIVE AFFAIRS AGENCY

POUCH Y STATE CAPITOL
JUNEAU ALASKA 99811
907 465 3800

M E M O R A N D U M March 9, 1990

SUBJECT: House Bill 519 - sectional analysis

TO: Representative Cliff Davidson, Co-Chair
House Resources Committee

FROM: Jack Chenoweth
Legislative Counsel

The measure

-- makes substantial changes in the manner in which appeals of determinations of oil and gas-related taxes and royalty payments are addressed, principally through the establishment of an "office of administrative adjudication" that includes one "administrative law judge" and other personnel;

-- amends provisions generally applicable to royalty and tax payments, intended to foster or encourage an early tender of those payments to the state even if the party obligated to pay disputes the amount due;

-- sets limitations on what parties satisfy the criteria of a "qualified bidder" for purposes of obtaining future oil and gas leases involving state lands.

Bill section 1 establishes in the Department of Administration the "Office of Administrative Adjudication." The office is established and is to operate as follows:

AS 44.21.480 authorizes appointment of one administrative law judge and necessary assistants and clerical personnel, all of whom serve in the state's exempt service.

AS 44.21.483 sets out the qualifications necessary for a person to hold appointment as an administrative law judge.

AS 44.21.486 prescribes the manner of appointment of the administrative law judge. As with the appointment members of the judiciary, the judicial council is to screen

applicants and the governor is to appoint from persons recommended from the position. The person appointed is subject to applicable laws governing conflict of interest. The section sets a term of eight years for the judge, authorizes the judge's reappointment, and indicates how the position is to be filled in the event of vacancy. The section also permits removal of the judge for cause, defines "cause," and sets out procedures applicable to a removal of a judge for cause.

AS 44.21.489 sets the compensation of the administrative law judge (equal to the salary of a superior court judge for Juneau).

AS 44.21.492 addresses the employment of other personnel by the office of administrative adjudication, and prescribes the benefits they are due. The section authorizes issuance of contracts for other personnel.

The duties of the office of administrative adjudication are set out in AS 44.21.495. Essentially, the statute contemplates that the office would adopt necessary procedural regulations, and thereafter hear and determine proceedings involving taxes, insofar as authorized by AS 43.05.285, and oil and gas royalty payments, insofar as authorized by AS 38.05.880.

The powers necessary for an administrative law judge to fulfill duties prescribed are set out in AS 44.21.498. Enforcement of powers through order of the superior court is contemplated.

Bill section 2 authorizes direct appeals of final tax and royalty decisions of the administrative law judge to the state supreme court.

Bill section 7 adds the administrative law judge and the office of administrative adjudication to the state's exempt service.

Bill section 8 adds the administrative law judge to the long list of state officials who are covered by the state's conflict of interest law.

*

The amendments and additions made by bill sections 3 - 6 clarify the handling of royalty payments due the state.

Bill section 6, establishing a new section, AS 38.05.880, creates a right in a person aggrieved by a determination of the Department of Natural Resources in fixing a state oil or gas royalty payment to challenge that determination before the office of administrative adjudication. The same section authorizes a trial de novo of that challenge under applicable procedures of the office of administrative adjudication.

Bill section 3 excepts the handling of oil and gas royalty challenges under AS 38.05.880 from the administrative appeal decisions of royalty determinations routinely appealable to the department commissioner.

The changes made by bill section 4 serve to clarify and to tighten the collection of the royalty and any penalty and interest on a range of state resources.

The amendment made by bill section 5 sets out a definition of "qualified bidder" for purposes of eligibility to bid and obtain future state oil and gas leases. In essence, a bidder is qualified if the bidder has remitted payment of all related taxes due the state, whether or not those payments are subject to dispute.

*

The amendments and additions made by bill sections 9 - 13 clarify tax collection practices of the state in substantially the same manner as set out above for royalties.

Bill section 13, establishing a new section, AS 43.05.285, directs separate procedures for appeals of taxes, penalties, and interest under the corporate income and oil-industry-related levies. As with the treatment of royalties discussed above with reference to bill section 6, those appeals would be referred to the office of administrative adjudication for trial de novo.

The amendments made to bill sections 10, 11, and 12 incorporate changes made necessary by the addition of AS 43.05.285 in bill section 13. Sections 10 and 11 also incorporate technical additions to cover the denial of a request for a refund.

Bill section 9 increases to 20 percent (from the general rate of 12 percent) the interest rate on delinquent taxes related to levy on oil-producing properties and income if the levy exceeds $100,000.

*

The remaining section of the bill, bill section 14, indicates the manner in which royalty and tax grievances in effect on the effective date of the Act are to be transitionally handled.

JBC:lmb
L10/005

STATE OF ALASKA
1990 LEGISLATIVE SESSION

Bill Version: HB 519
Publish Date:

FISCAL NOTE

REQUEST:

Revision Date:
Title: An Act relating to collection and payment of certain State taxes*
Sponsor: Gruenberg
Requestor:

Agency Affected: Department of Administration
BRU: Office of Administrative Adjudication
Components:

* and roylaties from State revenues

EXPENDITURES/REVENUES: (Thousands of Dollars)

OPERATING	FY 91	FY 92	FY 93	FY 94	FY 95	FY 96
PERSONAL SERVICES	275.1	289.2	294.1	299.5	305.2	311.3
TRAVEL	25.0	25.8	26.5	27.3	28.1	29.0
CONTRACTUAL	159.8	164.5	169.3	174.4	179.5	184.8
SUPPLIES	4.0	4.1	4.2	4.4	4.5	4.6
EQUIPMENT	47.9	0	0	0	0	0
LAND & STRUCTURES						
GRANTS, CLAIMS						
MISCELLANEOUS						
TOTAL OPERATING	511.8	483.6	494.1	505.6	517.3	529.7
CAPITAL						
REVENUE						

FUNDING: (Thousands of Dollars)

GENERAL FUND	511.8	483.6	494.1	505.6	517.3	529.7
FEDERAL FUNDS						
OTHER						
TOTAL	511.8	483.6	494.1	505.6	517.3	529.7

POSITIONS:

FULL-TIME	5	5	5	5	5	5
PART-TIME						
TEMPORARY						

ANALYSIS: (Attach a separate page if necessary)

It is assumed the office will be located in Juneau.

Due to the complexities of the legislation it is not possible to accruately assess the cost of the "Office of Administrative Adjudication." The exact number of staff needed is unknown but it is estimated that a four-person office would be required as well as a full-time accounting

(CONTINUED)

Prepared by: Mike Maher
Division: Administrative Services
Phone: 465-2277
Date: 03-21-90

Approved by Commissioner: Frank S. Baxter
Agency: Department of Administration
Date: 3/21/90

Distribution (by preparer):
- Legislative Finance
- Legislative Sponsor
- Requestor
- Office of Management and Budget
- Impacted Agency(ies)

4/1K1/032101-0/1&2

Rev: 11/89

clerk position to be located within the Division of Administrative Services. For purposes of analysis the specific positions required would be: one Judge, salary range 28E (set by statute); one Law Clerk, salary range 21A; one Secretary II, salary range 12B; one Clerk III, salary range 8B, one Accounting Clerk III, salary range 10B. It is also anticipated that specialized personnel may be required and would be contracted for on an as needed basis. It is further assumed that office space outside of existing office space (in the State Office Building) will be required, configured to the specialized needs of this office. The office will also require computer support as well as the purchase of a sophisticated recording system for hearings.

The office would require budgetary, accounting, contracting, and word processing support which will be provided by the Division of Administrative Services at additional cost.

Travel costs are unknown at this time but it is estimated that research, etc., will involve substantial cost.

One time costs for equipment include the purchase of a telephone system, a facsimile machine, office furniture, computer and recording equipment.

Some of these services and costs may be a duplication of costs and functions already being performed by the Department of Revenue and other departments, but until further meetings with these departments take place, these costs cannot be extrapolated.

This fiscal note assumes a 3 percent annual escalation factor for additional costs and cost increases due to inflation.

STATE OF ALASKA
1990 LEGISLATIVE SESSION

BILL VERSION : HB 519
PUBLISH DATE :

FISCAL NOTE

REQUEST:

Revision Date:
Title : "An Act relating to... state taxes and royalties from state resources."
Sponsor : Repr. Gruenberg
Requestor : House Resources

Agency Affected : Department of Law
BRU : Oil and Gas Special Projects
Components : Operations

EXPENDITURES/REVENUES: (Thousands of Dollars)

OPERATING	FY 91	FY 92	FY 93	FY 94	FY 95	FY 96
PERSONAL SERVICES						
TRAVEL						
CONTRACTUAL						
SUPPLIES						
EQUIPMENT						
LAND & STRUCTURES						
GRANTS, CLAIMS						
MISCELLANEOUS						
TOTAL OPERATING	-0-	-0-	-0-	-0-	-0-	-0-
CAPITAL						
REVENUE						

FUNDING: (Thousands of Dollars)

GENERAL FUND	-0-	-0-	-0-	-0-	-0-	-0-
FEDERAL FUNDS						
OTHER						
TOTAL						

POSITIONS:

FULL-TIME	-0-	-0-	-0-	-0-	-0-	-0-
PART-TIME						
TEMPORARY						

ANALYSIS : (Attach a separate page if necessary)

Please see the attached analysis.

Richard L. Pegues

Prepared by : Richard L. Pegues, Director — Phone : 465-3672
Division : Administrative Services — Date : March 20, 1990

Richard L. Pegues /FAX

Approved by Commissioner : Douglas B. Baily, Attorney General — Date : March 20, 1990
Agency : Department of Law

Distribution (by preparer) :
Legislative Finance
Legislative Sponsor
Requestor
Office of Management and Budget
Impacted Agency(ies)

CONTINUATION of FISCAL NOTE ANALYSIS

For Bill/Resolution No. HB 519

This bill amends AS 44.21 to establish an office of administrative adjudication within the Department of Administration. The new office would hear and determine proceedings involving the levy and collection of oil and gas taxes, and involving payment to the state of oil and gas royalty payments. Currently, oil and gas tax cases are heard by hearing officers within the Department of Revenue, and oil and gas royalty disputes are heard in the superior court. Consequently, the bill would have the effect of changing the forum in which these cases are heard.

The bill also amends AS 38.05.180(f) to provide that a person is not a qualified bidder, for state oil and gas leases, unless the person has paid to the state all taxes assessed under AS 43.55, AS 43.56, AS 43.57, and former AS 43.21 and all royalties due under AS 38.05, whether or not the person disputes the tax assessment or determinations of the amount of royalty due.

The Department of Law already represents the Department of Revenue and the Department of Natural Resources in legal proceedings that arise from oil and gas tax and oil and gas royalty disputes, as provided by AS 44.23.020. Although there may be some additional cost, because of the time it may take for a new adjudicative staff to become familiar with these highly complex cases, this cost cannot be determined at this time.

If a transition to the proposed office of administrative adjudication is trouble-free, any cost could be borne by reallocating existing resources. However, if the transition is not smooth, there could be considerable delay resulting in higher costs. There is simply no way for the Department of Law to accurately predict the outcome of such an event and, as a consequence, we have not requested fiscal note costs.

STATE OF ALASKA
1990 LEGISLATIVE SESSION

BILL VERSION: HB519
PUBLISH DATE: Feb. 12, 1990

FISCAL NOTE

REQUEST:

Revision Date:
Title: An act relating to collection & payment of State taxes & royalties.
Sponsor: Gruenberg, Kapsner, Ellis
Requestor:

Agency Affected:
BRU:
Components:

EXPENDITURES/REVENUES: (Thousands of Dollars)

OPERATING	FY 91	FY 92	FY 93	FY 94	FY 95	FY 96
PERSONAL SERVICES						
TRAVEL						
CONTRACTUAL						
SUPPLIES						
EQUIPMENT						
LAND & STRUCTURES						
GRANTS, CLAIMS						
MISCELLANEOUS						
TOTAL OPERATING						
CAPITAL						
REVENUE	See analysis.					

FUNDING: (Thousands of Dollars)

GENERAL FUND						
FEDERAL FUNDS						
OTHER						
TOTAL						

POSITIONS:

FULL-TIME						
PART-TIME						
TEMPORARY						

ANALYSIS: (Attach a separate page if necessary)

See attached.

Prepared by: Charles L. Logsdon
Phone: 277-5627
Division: Oil and Gas Audit
Date: March 22, 1990

Approved by Commissioner:
Date: 3/26/90
Agency:

Distribution (by preparer):
Legislative Finance
Legislative Sponsor
Requestor
Office of Management and Budget
Impacted Agency(ies)

page ___ of ___

Fiscal Note
HB 519,
March 22, 199

Analysis

This bill would establish an office of administrative adjudication comprised of an administrative law judge and support staff. Various administrative procedures are discussed in the bill. The bill also contains two provisions which will have revenue consequences for the State.

The first revenue impacting provision is one which establishes an interest penalty of 20% per year for underpayment of royalties and oil and gas taxes. This provision could work to the disadvantage of the State in the event of overpayment since the State is restricted to less risky investments i.e. we would be guaranteeing above market rates of interest on overpayment amounts assuming that interest rates remain in their current range.

The second revenue impacting provision restricts the ability of firms to bid in State oil and gas lease sales if they have outstanding royalty assessments. The effect of this restriction could be to reduce the number of potential lease bidders and reduce the expected price of the leases. Qualified purchasers could in fact capture the State's lost value by reselling the leases to those firms excluded from the original sale.

Internal Independent Settlement Review Procedures for Royalty Settlements (Section 1)

To ensure that any major settlement of the State's royalty litigation is in the public interest -- and to assure the public that this is the case -- this measure requires the Commissioner of Natural Resources, before settling any dispute involving amounts greater than $10 million in a tax year five years or more prior to the current year, to conduct an independent review of the proposed settlement.

The review will specify objectives, indicate how these objectives are met and evaluate how the settlement affects other outstanding disputes. Additionally, there shall be a minimum of 14 days between the time the Commissioner receives a final settlement offer and the date s/he approves the settlement.

With settlement offers increasingly likely as trial date approaches, there are no procedures in place to ensure that settlement review will be thorough and deliberate.

— [Statute Reference: AS 38.05.035]
— [See Fineberg Report: Recommendation #8, pp. 23-24)

Tax Settlement Internal Independent Review Procedures (Sections 2-4)

The remaining three sections of HB 541 contain language similar to Section 1 for insertion at three places in the tax statutes:

Sec. 2: Adds new subsections to AS 43.05.060 (on closing agreements) requiring settlement review for settlements over $10,000.000.

Sec. 3: Adds new subsections to AS 43.05.070 (on compromises) requiring settlement review for settlements over $10,000.000.

Sec. 4: Adds new subsections to AS 43.05.260 (on assessment revisions) requiring settlement review in settlements over $10,000,000.

— [Statute Reference: AS 43.05.060, .070, .260]
— [See Fineberg Report : Recommendation #15 (pp. 30-31)

STATE OF ALASKA
THE LEGISLATURE

LEGISLATIVE AFFAIRS AGENCY

POUCH Y STATE CAPITOL
JUNEAU ALASKA 99811
907 465 3800

MEMORANDUM March 9, 1990

SUBJECT: House Bill 541 -- sectional analysis

TO: Representative Cliff Davidson, Co-Chair
House Resources Committee

FROM: Jack Chenoweth
Legislative Counsel

The measure sets out statutory guidelines applicable to the handling and disposition of agreements, compromises, and settlements relating to certain royalty and net profit payments payable under AS 38.05 and to certain tax disputes arising under AS 43.

The handling of royalty and net profit payments involving claims totalling, with applicable penalty and interest, $10,000,000 or more, is addressed by the new subsection added to AS 38.05.035 by bill section 1. In that change:

-- at the time the Department of Natural Resources commenced negotiations with an eye toward compromise or settlement, the department would be required, within 14 days, to advise the commissioner of revenue and the attorney general;

-- while negotiations were in progress, the commissioner of natural resources would be required to give notice to the other two state officers at least every 30 days;

-- the commissioner of natural resources would not be permitted to enter into a compromise or settlement agreement unless (1) the commissioner first obtained and reviewed an independent appraisal of the effects of the proposed compromise or settlement, and (2) unless 14 days passed between the commissioner's receipt of the proposed compromise or settlement agreement and the date of the commissioner's execution of the proposed agreement.

The bill also contains [page 1, line 27 - page 2, line 9] provisions indicating who may prepare the required independent appraisal of the proposed compromise or settlement and what that appraisal must contain.

*

Substantially similar procedures, time limitations, and guidelines would apply to tax settlements under the additions made by bill sections 2 - 4. In those instances, negotiations would be undertaken by the commissioner of revenue, who must regularly advise the commissioner of natural resources and the attorney general. Otherwise, the same general parameters and limitations attach to tax disputes as are described above for resolutions involving royalties and net profit payments.

In these sections,

-- the additional materials added by bill section 2 address negotiations to resolve a tax dispute by means of agreements respecting the taxpayer's tax liability;

-- the additional materials added by bill section 3 involve the authority of the Department of Revenue to compromise a tax or penalty in the event of doubt as to the taxpayer's tax liability; and

-- the additional materials added by bill section 4 are incorporated to govern redeterminations or revisions of tax liability (i.e. redetermination of tax liability through department-initiated tax assessme).

JBC:lmb
L10/006

STATE OF ALASKA
1990 LEGISLATIVE SESSION

BILL VERSION: HB 541
PUBLISH DATE: _____

FISCAL NOTE

REQUEST:

Revision Date: _____
Title: "An Act relating to... agreements, compromises... Natural Resources and Revenue."
Sponsor: Repr. Cotten
Requestor: House Resources

Agency Affected: Department of Law
BRU: Oil and Gas Special Projects
Components: Operations

EXPENDITURES/REVENUES: (Thousands of Dollars)

OPERATING	FY 91	FY 92	FY 93	FY 94	FY 95	FY 96
PERSONAL SERVICES						
TRAVEL						
CONTRACTUAL						
SUPPLIES						
EQUIPMENT						
LAND & STRUCTURES						
GRANTS, CLAIMS						
MISCELLANEOUS						
TOTAL OPERATING	-0-	-0-	-0-	-0-	-0-	-0-
CAPITAL						
REVENUE						

FUNDING: (Thousands of Dollars)

GENERAL FUND	-0-	-0-	-0-	-0-	-0-	-0-
FEDERAL FUNDS						
OTHER						
TOTAL						

POSITIONS:

FULL-TIME	-0-	-0-	-0-	-0-	-0-	-0-
PART-TIME						
TEMPORARY						

ANALYSIS: (Attach a separate page if necessary)

Please see the attached analysis.

Richard L. Pegues

Prepared by: Richard L. Pegues, Director
Phone: 465-3672
Division: Administrative Services
Date: March 21, 1990

Richard L. Pegues /FAX/

Approved by Commissioner: Douglas B. Baily, Attorney General
Date: March 21, 1990
Agency: Department of Law

Distribution (by preparer):
Legislative Finance
Legislative Sponsor
Requestor
Office of Management and Budget
Impacted Agency(ies)

CONTINUATION of FISCAL NOTE ANALYSIS

For Bill/Resolution No. HB 541

This bill amends AS 38.05.035 to require that if the commissioner of natural resources enters into negotiations to compromise or settle a dispute between the department and a person as to a royalty or net profit payment involving a claim that totals, with applicable penalty and interest, $10,000,000 or more, the commissioner shall advise the commissioner of revenue and the attorney general that negotiations have commenced, not later than 14 days after the commencement of negotiations.

This bill also amends AS 43.05.070 to require that if the Department of Revenue enters into negotiations to compromise or settle a tax dispute between the department and a taxpayer involving a claim that totals, with applicable penalty and interest, $10,000,000 or more, the commissioner of revenue shall advise the commissioner of natural resources and the attorney general that negotiations have commenced, not later than 14 days after the negotiations commenced.

In effect, the bill institutionalizes the notification process to be followed whenever the Departments of Natural Resources or Revenue seek to settle major royalty or tax claims. Inasmuch as notification is a normal part of business, there should not be a fiscal impact for the Department of Law.

STATE OF ALASKA
1990 LEGISLATIVE SESSION

BILL VERSION: HB541
PUBLISH DATE: 2-12-90

FISCAL NOTE

REQUEST:

Revision Date:
Title: An Act relating to certain agreements & settlements by DNR & DOR
Sponsor: Cotten, Navarre
Requester:

Agency Affected:
BRU:
Components:

EXPENDITURES/REVENUES: (Thousands of Dollars)

OPERATING	FY 91	FY 92	FY 93	FY 94	FY 95	FY 96
PERSONAL SERVICES						
TRAVEL						
CONTRACTUAL						
SUPPLIES						
EQUIPMENT						
LAND & STRUCTURES						
GRANTS, CLAIMS						
MISCELLANEOUS						
TOTAL OPERATING						
CAPITAL						
REVENUE	See analysis.					

FUNDING: (Thousands of Dollars)

GENERAL FUND						
FEDERAL FUNDS						
OTHER						
TOTAL						

POSITIONS:

FULL-TIME						
PART-TIME						
TEMPORARY						

ANALYSIS: (Attach a separate page if necessary)

See attached.

Prepared by: Charles J. Logsdon
Division: Oil and Gas Audit
Phone: 277-5627
Date: March 22, 1990

Approved by Commissioner: [signature]
Agency:
Date: 3/26/90

Distribution (by preparer):
Legislative Finance
Legislative Sponsor
Requestor
Office of Management and Budget
Impacted Agency(ies)

page ___ of ___

Fiscal Note
HB 541
March 22, 199

Analysis

This bill would establish a review and or a 14 day cooling off period for agreements and settlements of tax and royalty disputes in excess of $10 million entered into by the Department of Revenue or the Department of Resources.

The aim of this bill is to provide additional assurance that the State receives the maximum expected value from oil and gas tax and royalty revenue.

Assessment Total Disclosure (Secs. 1, 2, 4):

Release of taxpayer information under statute currently applies only to delinquent taxes. HB 573 permits disclosure of (1) the names of corporations with an assessment balance larger than $5 million for any tax year five or more years before the current date, and (2) the amounts of the outstanding balances. However, the corporation is allowed one year from assessment to settle the claim before disclosure is permitted.

Sections 1 and 2 contain legislative findings and purpose; section 4 adds a new AS 43.05.230(e).

— [Statute Reference: AS 43.05.230(e)]

— [See Fineberg Report, Recommendation #3 (Chapter 2, pp. 18-19)]

50% Escrow Requirement for Large Aging Assessments Secs. 3, 5, 6:

To reduce possible corporate incentive to delay tax payments in order to retain the funds, this legislation would escrow one-half of assessed tax balances larger than $10 million for a tax year five years prior to the current year when the assessment is older than one year. (In other words, one-half of a 1985 tax year assessment, including interest, could be escrowed in 1990, if the assessment had been on the books for one year.)

The escrow proposal might be subject to challenge as confiscatory and arbitrary. Under th circumstances specified here, however, escrow does not seem arbitrary. This provision: (1) applies only to assessment amounts larger than $10 million; (2) does not apply to individuals, but only to corporations; and (3) does not apply to any tax paid within five years of the tax year in question. Additionally, it should be noted that the State is not seeking the funds directly, but merely to have those funds escrowed to reduce corporate incentives to delay payment.

— [Statute Reference: AS 43.05.240 (and new AS 43.05.100)]

— [See Fineberg Report, Recommendation #2 (Chapter 2, pp. 17-18)]

STATE OF ALASKA
THE LEGISLATURE

LEGISLATIVE AFFAIRS AGENCY

POUCH Y STATE CAPITOL
JUNEAU ALASKA 99811
907 465 3800

MEMORANDUM March 9, 1990

SUBJECT: House Bill 573 - sectional analysis

TO: Representative Cliff Davidson, Co-Chair
House Resources Committee

FROM: Jack Chenoweth
Legislative Counsel

To assist in the collection of delinquent tax payments claimed by the state, the measure makes amendments to state laws applicable to the Department of Revenue's procedures for collection of revenue from certain taxpayers, and authorizes public disclosure by the department of information about the taxes payable by certain corporate taxpayers.

Bill sections 1 and 2 enunciate statements of findings and purposes applicable to the measure.

The addition of AS 43.05.100(c) by bill section 3 explicitly authorizes the commissioner of revenue to engage the services of banks located in the state to perform escrow services for tax payments received by the department under AS 43.05.240(e), added in the measure by bill section 6. The escrow arrangement is intended to serve as a mechanism for collection and handling certain tax revenue that is in dispute. The provision describes the essential mechanics of entering into escrow agreements, the deposit of money into the account(s) established, and the release of money on the occurrence of any of several contingencies.

If the department determines in an assessment that, for any year that is five or more years earlier, the taxpayer owes $10,000,000 in taxes, penalties, and interest, bill section 6 directs the taxpayer to remit payment of at least one-half the amount assessed. The amount is to be remitted within one year of the taxpayer's receiving the assessment, and the deposit is a requisite to the taxpayer's opportunity for obtaining a hearing under existing provisions of the

section. It is that payment that is to be made the subject of an escrow deposit under bill section 3.

The amendment made by bill section 5 addresses the taxpayer's opportunity for a hearing by directing that payment of the amount required by AS 43.05.240(b), if any, to the department for deposit into the escrow account is a requisite to securing a formal hearing to review the department's tax assessment.

Bill section 4 addresses a related situation. The principal amendment made in that section [page 3, lines 17 - 24] makes another exception to the current law governing non-disclosure of tax return information. It would permit the department to disclose information as to assessments made by the department against corporate taxpayers for tax years that are at least five years old if the amount of assessment exceeds $5,000,000 and at least one year has passed since the department served its notice of assessment and demand for payment.

JBC:lmb
L10/009

STATE OF ALASKA
1990 LEGISLATIVE SESSION

BILL VERSION : HB 573
PUBLISH DATE :

FISCAL NOTE

REQUEST:

Revision Date:
Title :"...relating to assessment, collection and payment of taxes..."
Sponsor : House Resources
Requestor : House Resources

Agency Affected : Department of Law
BRU : Oil and Gas Special Projects
Components : Operations

EXPENDITURES/REVENUES: (Thousands of Dollars)

OPERATING	FY 91	FY 92	FY 93	FY 94	FY 95	FY 96
PERSONAL SERVICES						
TRAVEL						
CONTRACTUAL						
SUPPLIES						
EQUIPMENT						
LAND & STRUCTURES						
GRANTS, CLAIMS						
MISCELLANEOUS						
TOTAL OPERATING	-0-	-0-	-0-	-0-	-0-	-0-
CAPITAL						
REVENUE						

FUNDING: (Thousands of Dollars)

GENERAL FUND	-0-	-0-	-0-	-0-	-0-	-0-
FEDERAL FUNDS						
OTHER						
TOTAL						

POSITIONS:

FULL-TIME	-0-	-0-	-0-	-0-	-0-	-0-
PART-TIME						
TEMPORARY						

ANALYSIS : (Attach a seperate page if necessary)

Please see the attached analysis.

Richard L. Pegues

Prepared by : Richard I. Pegues, Director
Phone : 465-3672
Division : Administrative Services
Date : March 21, 1990

Richard L. Pegues /FOR/

Approved by Commissioner : Douglas B. Baily, Attorney General
Date : March 21, 1990
Agency : Department of Law

Distribution (by preparer) :
Legislative Finance
Legislative Sponsor
Requestor
Office of Management and Budget
Impacted Agency(ies)

CONTINUATION of FISCAL NOTE ANALYSIS

For Bill/Resolution No. HB 573

This bill amends AS 43.05 in two important respects. First, it changes AS 43.05.230(e) to allow the commissioner of revenue to publish the amount of an assessment made by the Department of Revenue against a corporate taxpayer relating to a tax year that is five or more years before the year in which it is made. Such publication could take place if the amount of the assessment is more than $5,000,000, and if at least one year has passed since the department served notice of assessment and a demand for payment under AS 43.05.245.

Second, the bill amends AS 43.05.240 to provide that a person aggrieved by the action of the Department of Revenue in fixing the amount of a tax or imposing a penalty may request a hearing on the matter, but in certain cases the person must pay a part of the amount imposed, before a hearing would be granted. In these cases the taxpayer would be required to pay at least one-half of the amount of the assessment within one year after the department serves notice of assessment and a demand for payment under AS 43.05.245, if the tax year is five or more years before the year in which the amount of tax is fixed and it the total amount of the assessment exceeds $10,000,000. Current statute does not require a partial payment of an assessment before an aggrieved taxpayer initiates the hearing process.

In any event, the Department of Law would continue to represent the Department of Revenue's audit staff in bringing tax collection cases, whether or not a partial payment requirement is involved. Consequently, there will not be a fiscal impact for the Department of Law.

STATE OF ALASKA
1990 LEGISLATIVE SESSION

BILL VERSION: HB573
PUBLISH DATE: 2-12-90

FISCAL NOTE

REQUEST:

Revision Date:
Title: An act relating to the assessment collection & payment of taxes and other matters
Sponsor: Resources Committee
Requestor:

Agency Affected:
BRU:
Components:

EXPENDITURES/REVENUES: (Thousands of Dollars)

OPERATING	FY 91	FY 92	FY 93	FY 94	FY 95	FY 96
PERSONAL SERVICES						
TRAVEL						
CONTRACTUAL						
SUPPLIES						
EQUIPMENT						
LAND & STRUCTURES						
GRANTS, CLAIMS						
MISCELLANEOUS						
TOTAL OPERATING						
CAPITAL						
REVENUE	See analysis.					

FUNDING: (Thousands of Dollars)

GENERAL FUND						
FEDERAL FUNDS						
OTHER						
TOTAL						

POSITIONS:

FULL-TIME						
PART-TIME						
TEMPORARY						

ANALYSIS: (Attach a separate page if necessary)

See attached.

Prepared by: Charles L. Logsdon
Phone: 277-5627
Division: Oil and Gas Audit
Date: March 22, 1990

Approved by Commissioner: [signature]
Date: 3/26/90
Agency:

Distribution (by preparer):
Legislative Finance
Legislative Sponsor
Requestor
Office of Management and Budget
Impacted Agency(ies)

page ____ of ____

Fiscal Note
HB 573
March 23, 1990

Analysis

The bill aims to maximize the expected value of Alaska's taxes. The bill would require that disputed tax amounts would be deposited in an Alaska bank escrow account invested in time deposits guaranteed by the United States. Further, if an assessment is for more than $10 million and the disputed amount is for a tax year 5 years prior to the year of the assessment the taxpayer would be required to pay one-half of the assessment.

The attempt to acquire part of the outstanding assessment may or may not maximize the State's expected revenue share. Because the rate of interest payable for over and under payments exceeds the rate established by this bill for the escrow account, it is possible that the State would, if it did not prevail on a significant portion of the disputed amount, suffer a revenue loss.

Appendices

1. Outline of TAPS Settlement (c. January 10, 1985)
2. Briefing Materials for the Alaska State Legislature Regarding the TAPS Settlement Agreement (March 18, 1985)
3. The October 23 / November 14, 1985 Exemplary Tables

Appendices

1. Outline of TAPS Settlement (c. January 10, 1985)

2. Briefing Materials for the Alaska State Legislature Regarding the TAPS Settlement Agreement (March 18, 1985)

3. The October 23 / November 14, 1985 Exemplary Tables

Appendix 1. Outline of TAPS Settlement (c. January 10, 1985)

Alaska State Legislature

...ILEWSKI Chairman
...KAMP Vice Chairman
...
...
...
...

POUCH V
JUNEAU ALASKA 99811
(907) 465 4907

Senate
Committee on Resources March 14, 1985

TO: All Members
Senate Resources Committee
Senate Finance Committee
House Special Committee on Oil and Gas

FROM: Senate Resources Committee Staff

RE: TAPS Tariff Settlement

Enclosed in this packet is a series of documents that are helpful in understanding the proposed TAPS tariff settlement. I have listed the documents below and commented briefly upon each.

1) Immediately under this page is a March 14th memo that outlines the proposed schedule for the March 18th, 1:30 PM, overview hearing in the Butrovich Room.

2) A historical overview of the TAPS tariff issue. This document was prepared by Gretchen Keiser, of the House Research Agency, at the request of the House Special Committee on Oil and Gas. A knowledge of the history of this issue is very useful in understanding the goals that the proposed settlement tries to achieve.

3) A short summary of the settlement prepared by the Department of Law in early January. The summary sets out the financial implications of the settlement and compares them against other possible scenarios.

4) The actual settlement contract that is currently proposed between the state and ARCO.

5) A February 22, 1985 memo from Commissioner Nordale of the Department of Revenue to Attorney General Norm Gorsuch listing some concerns about the proposed settlement.

6) A February 22, 1985 reply to Commissioner Nordale from the Attorney General by Bob Maynard.

7) A report prepared by Connie Barlow of ARTA Inc., under a contract with the Senate Resources Committee to provide an analysis of the proposed settlement.

If time is not available to read all the documents, I would recommend as a priority: the Department of Law's Summary (3), and the summary of Ms. Barlow's work (7). I would then proceed to Ms. Keiser's history (2) and the remainder of Ms. Barlow's report (7). There are blue sheets between each section.

Dept. of Law
1/10/85

OUTLINE OF TAPS SETTLEMENT

HAVE REACHED AN AGREEMENT WITH ARCO

Final document in next 3-4 weeks
Not all companies on board
Numbers are if all join up

TAPS TARIFF DIRECTLY AFFECTS ANS WELLHEAD PRICE

Severance tax and royalty on wellhead
No market at wellhead
Decrease in tariff directly increases wellhead
We get 25-30% of wellhead increase from state lands

REVENUE CONSEQUENCES TO STATE - CHART I AND GRAPH

$2.9 billion more than currently forecast ($2.14 billion in 1985$)
Annual amounts gained (millions)

	Calendar	Fiscal
1985	$233.0	
1986	$153.6	$309.8
1987	$200.4	$177.0
1988	$232.3	$216.4
1989	$256.2	$244.3
1990	$261.7	$259.0
1991	$235.7	$248.7

Effective date of settlement would be January 1, 1986
Tariffs would drop in 1985 by 72 cents, and continue to drop in later years, both in real and nominal terms CHARTS II AND III AND GRAPHS

PRINCIPLES OF SETTLEMENT

1) State wants to defer revenues to 1990's
   - A constant dollar in the 1990's is worth the same to the state as that same dollar today
2) Encourage development of ANS reserves in 1990's
   - Prudhoe and Kuparuk already on stream with present tariffs
   - Low 1990s tariffs will encourage places like Beaufort, native lands and other fields where production might not otherwise be economic
   - Certainty now aids economic planning for 90's - litigation makes planning uncertain

CORRECTION

THIS DOCUMENT
HAS BEEN REPHOTOGRAPHED
TO ASSURE LEGIBILITY

Appendix 1. Outline of TAPS Settlement (c. January 10, 1985)

These principles approved before started negotiations.
Expressed by legislature in 1982, by Governor, and reaffirmed in continued conversations with legislators during course of settlement
If principles were different, then settlement not as attractive

COMPARED TO CONTINUED LITIGATION - CHARTS IV - VII AND GRAPHS

If don't settle, then will continue to litigate until about 1990
For those years, would see the present tariff of $6.01
In 1990 (approximately), might see end of case, generally three possible outcomes
1) DOC - Depreciated original cost - state's position

$3.113 billion more to state ($2.641 billion in 1985$) than settlement
Mostly gets state more money in 1990 - 1993
From 1994 - 2011, not a great deal of difference

2) TOC - Trended original cost - court's apparent favorite position

$9.18 billion worse for state than settlement ($2.5 billion in 1985$)
Most of difference is in 1990 - 2011, about $200 million annually in 1985$

3) MODERN VALUATION - companies' position

$11.8 billion worse for state than settlement ($4.3 billion in 1985$)
Like TOC, difference in years after 1990

Under TOC and Modern Valuation, not only is state worse off than settlement in overall dollars, but difference occurs in years state can least afford, after 1993, and when development is most sensitive to low tariffs
And, although DOC is better overall result, not much better in years state is most concerned about
Overall, is a bit better than midway between bad and good litigation outcomes in 1985$
We get what we want from 1990 on, companies get most of what they want from 1977 - 1984, a "draw" from 1985 to 1990
Compared to Spring '82, this settlement is $3.6 billion better ($1.6 billion in 1985$) - CHART VII
Between best and worst case, $15 billion at stake ($7 billion in 1985$)
Settlement gets state $11.9 billion of that amount ($4.5 billion of 1985$ at stake)

TERMS OF SETTLEMENT

Through year 2011, although can get out by 2008
Get operating costs, taxes, DR&R, etc. (out of pocket expenses)
Normal regulatory principles
"Profit" element is a hybrid method through 1988, then switches to a 35 cent (1983$) per barrel profit, escalated for inflation
Replaces depreciation allowance, rate of return on rate base, etc.
Other feature
$450 million reduction in rate base
Separate profit element for large capital additions
A common tariff ceiling (that will probably produce same tariffs for all)

SUMMARY

FACTORS IN FAVOR OF SETTLEMENT

1) REPRESENTS A MIDWAY COMPROMISE OF LITIGATION

2) MEETS POLICY GOALS OF DEFERRING REVENUE TO 1990'S AND ENCOURAGING NORTH SLOPE PRODUCTION

3) GIVES CERTAINTY WELL BEFORE LITIGATION WOULD

4) INSULATES THE STATE FROM MUCH WORSE POTENTIAL OUTCOMES

5) ENDS WHAT IS, TO OUR KNOWLEDGE, THE MOST COSTLY AND COMPLICATED LITIGATION IN U.S. HISTORY
If didn't settle, case would probably go on for 5 years or more before state saw any real money

6) STATE WOULD SEE AN IMMEDIATE INCREASE IN REVENUES FROM PRESENT TARIFFS
$233 million by January 1, 1986, comparable gains thereafter

7) STATE WOULD NOT HAVE PROBLEM OF COLLECTING ITS SHARE OF REFUNDS IN PAST SEVERANCE TAXES AND ROYALTIES
If won litigation, would have to chase down past royalty-in-kind buyers
for refunds, plus

Alaska State Legislature

...LEWSKI Chairman
...AMP Vice Chairman
...
...
...
...

POUCH V
JUNEAU ALASKA 99811
(907) 465 4907

Senate
Committee on Resources March 18, 1985

TO: All Members
Senate Resources Committee
Senate Finance Committee
House Special Committee on Oil and Gas

FROM: Senate Resources Committee Staff

RE: TAPS Tariff Settlement

Enclosed in this packet is a series of documents that are helpful in understanding the proposed TAPS tariff settlement. I have listed the documents below and commented briefly upon each.

1) Immediately under this page is a March 14th memo that outlines the proposed schedule for the March 18th, 1:30 PM, overview hearing in the Butrovich Room.

2) A historical overview of the TAPS tariff issue. This document was prepared by Gretchen Keiser, of the House Research Agency, at the request of the House Special Committee on Oil and Gas. A knowledge of the history of this issue is very useful in understanding the goals that the proposed settlement tries to achieve.

3) A short summary of the settlement prepared by the Department of Law in early January. The summary sets out the financial implications of the settlement and compares them against other possible scenarios.

4) The actual settlement contract that is currently proposed between the state and ARCO.

5) A February 22, 1985 memo from Commissioner Nordale of the Department of Revenue to Attorney General Norm Gorsuch listing some concerns about the proposed settlement.

6) A February 22, 1985 reply to Commissioner Nordale from the Attorney General by Bob Maynard.

7) A report prepared by Connie Barlow of ARTA Inc., under a contract with the Senate Resources Committee to provide an analysis of the proposed settlement.

If time is not available to read all the documents, I would recommend as a priority; the Department of Law's Summary (3), and the summary of Ms. Barlow's work (7). I would then proceed to Ms. Keiser's history (2) and the remainder of Ms. Barlow's report (7). There are blue sheets between each section.

Dept. of Law
1/10/85

OUTLINE OF TAPS SETTLEMENT

HAVE REACHED AN AGREEMENT WITH ARCO

Final document in next 3-4 weeks
Not all companies on board
Numbers are if all join up

TAPS TARIFF DIRECTLY AFFECTS ANS WELLHEAD PRICE

Severance tax and royalty on wellhead
No market at wellhead
Decrease in tariff directly increases wellhead
We get 25-30% of wellhead increase from state lands

REVENUE CONSEQUENCES TO STATE - CHART I AND GRAPH

$2.9 billion more than currently forecast ($2.14 billion in 1985$)
Annual amounts gained (millions)

	Calendar	Fiscal
1985	$233.0	
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1) State wants to defer revenues to 1990's
   A constant dollar in the 1990's is worth the same to the state as that same dollar today
2) Encourage development of ANS reserves in 1990's
   Prudhoe and Kuparuk already on stream with present tariffs
   Low 1990s tariffs will encourage places like Beaufort, native lands and other fields where production might not otherwise be economic
   Certainty now aids economic planning for 90's - litigation makes planning uncertain

Appendix 2. Briefing Materials for the Alaska State Legislature Regarding the TAPS Settlement Agreement (March 18, 1985)

retroactively assess the producers for increased severance tax and royalties. Resistance on all fronts is likely

8) IS MOST FAVORABLE SETTLEMENT WE CAN GET - MORE FAVORABLE RESULTS CAN BE REACHED ONLY BY LITIGATION
   This settlement has taken 1-1/2 years, is limit companies can offer
   In fact, unlikely all companies will join
   Only reason we could get this good a deal was that we are interested in deferring revenues, while companies want money up front. But if we change our policy and want more money up front, then clash with their interests more directly

9) IF LITIGATE, AND EVEN IF WIN, WON'T SEE ANY REVENUES FOR AT LEAST 5 YEARS, BUT HAVE IMMEDIATE GAINS UNDER SETTLEMENT

RISKS OF SETTLEMENT

1) GIVING UP THE CHANCE OF A BIG VICTORY - $2.6 BILLION MORE (1985$)
   Although chance of losing more, have chance of winning

2) IF UNDERLYING POLICY HAS CHANGED (DEFERRING REVENUES AND ENCOURAGING POST 1990 ANS PRODUCTION), THEN SETTLEMENT IS LESS ATTRACTIVE

3) SETTLEMENT IS ALSO A DIFFICULT PATH
   Right now only have Arco, no guarantee that other companies will join
   May have to get F.E.R.C. to impose on parties, or go to Congress
   May take some months to secure
   Long process involved

TABLE OF CONTENTS

SUMMARY OF EXHIBITS

1. Letter from Alaska State Legislature to Attorney General Condon
   - Letter from Chairmen of House Special Gas Pipeline Committee and Senate Resources Committee stating that the State should not proceed with the proposed settlement with BP Pipelines.
2. Letter to U.S. Department of Justice to Attorney General Gorsuch and Francis X. McCormack
   - Letter from Assistant Attorney General for Antitrust approving TAPS settlement.
3. Key Events in the TAPS Case
   - Chronological summary of key events in the TAPS case.
4. Key Events in the Williams Case
   - Chronological summary of key events in the Williams case.
5. Federal Energy Regulatory Commission
   - Shows the relationship among the Federal Energy Regulatory Commission (FERC), the Administrative Law Judge (ALJ), and the FERC Staff Counsel.
   - Phases I and II of the TAPS case were tried before an ALJ. Phase I was appealed to FERC in 1980 and is still pending.
   - FERC Staff Counsel was a participant in both the Phase I and Phase II hearings. In its role as a participant in the proceedings, Staff Counsel reports only to the Assistant General Counsel. Neither the Assistant General Counsel nor the Staff Counsel is permitted to communicate with, or receive directions from, the Commission concerning a pending proceeding such as the TAPS case.
6. TSM Tariff*/
   - Tariff profile of TAPS Settlement Methodology (TSM).
   - Based upon State's median throughput scenario.

Sen. Res.
3/10/05

BRIEFING MATERIALS FOR

THE ALASKA STATE LEGISLATURE

REGARDING

THE TAPS SETTLEMENT AGREEMENT

Alaska State Legislature

Official Business

Pouch V
State Capitol
Juneau, Alaska 99811

May 17, 1982

RECEIVED
Department of Law
Juneau, Alaska

MAY 18 1982

AM PM
7 8 9 10 11 12 1 2 3 4 5 6

Wilson L. Condon
Attorney General
Department of Law
Pouch K
Juneau, AK 99811

Dear Wil:

The members of the House Special Gas Pipeline Committee and the Senate Resources Committee would like to thank you for your presentation on the TAPS settlement. Your attempted settlement of this long standing litigation is to be commended and certainly appreciated. Although a difficult decision, we do not believe that the state should proceed with the settlement.

We believe that the state should continue with the Phase I litigation in order to establish a methodology necessary for long term stability. Although the proposed settlement may be a reasonable compromise of the state monetary interests through this decade, we believe that it is only through litigation that we can establish a principle that may last through this century. The development of future North Slope reserves will be directly affected by pipeline tariffs. The present litigation is the best chance the state has of establishing a favorable methodology that will materially aid the development of these reserves. Although the matter is complex, it is our view that the policy of developing the future reserves of the state outweighs the present certainty of the revenues that the settlement would secure.

Even though we would not now accept a settlement of the Phase I issues, the committee would still consider a Phase II rate base deduction settlement as long as that consideration has no adverse impact on either the timing or the overall outcome of the Phase I tariff methodology decision.

Sincerely,

Rick Halford

Rep. Rick Halford, Chairman
House Special Gas Pipeline Committee

Bettye Fahrenkamp

Sen. Bettye Fahrenkamp, Chairman
Senate Resources Committee

RH/BF/ls

7. TSM Tariff v. Spring '82 Tariff*/

- Compares tariff profile produced by TSM to tariff profile produced by proposed State - BP settlement in Spring 1982.
- Spring '82 tariff profile projected beyond the term of the settlement (10 years) for comparison purposes.

8. TSM Tariff v. DOC Tariff*/

- Compares tariff profile produced by TSM to tariff profile produced by Depreciated Original Cost (DOC) methodology.
- DOC generally represents the most favorable methodological outcome for the State.

9. TSM Tariff v. TOC and Modern Valuation Tariffs*/

- Compares tariff profile produced by TSM to tariff profiles produced by Trended Original Cost (TOC) methodology and Modern Valuation methodology.
- TOC and Modern Valuation represent the least favorable methodological outcomes for the State.

10. TSM Tariffs Under Alternative Throughput Scenarios*/

- Compares tariff profiles produced by TSM under alternative State Department of Natural Resources throughput scenarios.

11. TSM Tariff v. Conventional TSM Tariff*/

- Compares tariff profile produced by TSM with tariff profile that would be produced by the TSM with the following changes:
  (1) No $.655 per barrel allowance after 1988 (i.e., continuation of 6.4% return on rate base after 1988);
  (2) Conventional straight line depreciation factors (which is consistent with the State's litigation position); and
  (3) Conventional straight line dismantling, removal and restoration provision (which is consistent with the State's litigation position).

12. Composition of TSM Tariffs (constant 1984 dollars)

- Breaks the tariffs produced by TSM into four basic components and shows how the relative magnitudes of those components change over time.
- Operating Expenses are net of de minimis non-transportation revenues.
- Depreciation also includes recovery of deferred return; an amount for the dismantling, removal and restoration of TAPS; and the amortization of the $450 million excluded from the rate base.

13. Composition of TSM Tariffs (nominal dollars)

- Breaks the tariffs produced by TSM into four basic components and shows how the relative magnitudes of those components change over time.
- Operating Expenses are net of de minimis non-transportation revenues.
- Deprecation also includes recovery of deferred return; an amount for the dismantling, removal and restoration of TAPS; and the amortization of the $450 million excluded from the rate base.

14. Beaufort Sea Oil Production Under Alternative Tariffs, 1993-2018

- Compares Beaufort Sea oil production under DOC, TSM and Modern Valuation tariffs.
- Uses State Department of Natural Resources oil price forecast for 1993, escalated thereafter at the real rate of 1% per year.

15. Beaufort Sea Oil Production Under Alternative Tariffs, 1993-2018

- Compares Beaufort Sea oil production under DOC, TSM, Spring '82, TOC and Modern Valuation tariffs.
- Uses State Department of Natural Resources oil price forecast for 1993, escalated thereafter at the real rate of 1% per year.

---

*/ Tariff projections are based on assumptions concerning rate of return on rate base, throughput, operating expenses and other amounts. Tariffs are expressed in constant 1984 dollars.

U.S. Department of Justice

Antitrust Division

Office of the Assistant Attorney General

Washington, D.C. 20530

December 27, 1984

Honorable Norman C. Gorsuch, Esquire
Attorney General
State of Alaska
Department of Law
Pouch K, State Capitol
Juneau, Alaska 99811

Francis X. McCormack, Esquire
Senior Vice President and
General Counsel
Atlantic Richfield Company
Room 5001
515 South Flower Street
Los Angeles, California 90071

Re: Trans Alaska Pipeline System,
FERC Docket No. OR78-1

Dear Attorney General Gorsuch and Mr. McCormack:

I am writing in response to Robert H. Loeffler's letter to me of December 7, 1984, in which the State of Alaska and ARCO Pipe Line Company request that the Department of Justice approve an agreement in principle to a proposed life-of-the-pipeline settlement of all aspects of the Trans Alaska Pipeline System (TAPS) litigation pending before the Federal Energy Regulatory Commission (FERC).

We have been giving careful consideration to the statement you provided of the essential features of the proposed settlement and the supporting technical memoranda and computer programs that embody its details. In addition, the Antitrust Division staff has engaged in a number of discussions with Alaska's and ARCO's representatives regarding the methodology and economic consequences of the proposed settlement and the manner in which it would be presented to the Federal Energy Regulatory Commission. It is our understanding that you are currently in the process of drafting a formal settlement agreement and the appropriate supporting documents that must be prepared before the settlement proposal can be submitted to the FERC and that these documents are scheduled to be completed by the end of January 1985.

Based upon the material the Department has reviewed and the extensive discussions between the Department's representatives and those of Alaska and ARCO, the Department agrees in principle that the proposed settlement is an acceptable resolution of the TAPS litigation. The Department's formal agreement, of course, is subject to its review and approval of the final settlement documents. It is subject also to adoption of the proposed settlement by the FERC as the basis upon which the rates of all of the undivided interest owners of TAPS will be set. Subject to the conditions set forth above, we support your continuing efforts to broaden the proposed settlement to include other parties in the proceeding, to complete the process of documenting the settlement, and to obtain its approval from the FERC.

Of course, the Department's views regarding the settlement proposal are confined solely to the TAPS litigation and do not represent or affect in any way the position of the Department regarding pipeline regulation in general, Williams Pipe Line Company, FERC Docket No. OR79-1 in particular, or any other proceeding pending before the FERC. Nonetheless, given the overall economic impact of the proposed settlement on the transportation, production and marketing of Alaska North Slope crude oil, the Department believes that the proposed settlement should be a fair and appropriate vehicle for concluding the TAPS litigation and for freeing the public and private resources that its continuance would otherwise consume.

Sincerely,

J. Paul McGrath
Assistant Attorney General
Antitrust Division

cc: Robert H. Loeffler, Esquire
Morrison & Foerster
1920 N. Street, N. W.
Suite 800
Washington, D. C. 20036

Robert E. Jordan, Esquire
Steptoe & Johnson
Chartered
1250 Connecticut Avenue, N. W.
7th Floor
Washington, D. C. 20036

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(3)

KEY EVENTS IN THE TAPS CASE

Date	Event
June 1977	TAPS Carriers file tariffs with Interstate Commerce Commission (ICC). State of Alaska, Department of Justice, Arctic Slope Regional Corporation (ASRC) file protests.
October 1977	ICC's jurisdiction over oil pipelines transferred to the newly-created Federal Energy Regulatory Commission (FERC). TAPS case is divided into Phase I (general ratemaking methodology) and Phase II (specific ratemaking issues).
February 1978 - March 1979	Administrative Law Judge (ALJ) holds hearings in Phase I.
March 1979	ALJ proposes settlement of Phase I.
February 1980	ALJ issues 138-page opinion in Phase I that finds TAPS Carriers' rates are too high.
July 1980	Appeal of Phase I is argued before the FERC.
November 1980 - January 1982	State engages in settlement talks with ARCO, BP, Exxon, and Sohio. BP takes primary role in negotiations.
February 1981	State, Justice, and ASRC file a motion with FERC requesting FERC to decide Phase I. FERC denies the motion.
July 1981	State rejects offers of settlement.
February 1982 - December 1984	ALJ holds hearings in Phase II.
March 1982	State receives settlement offer from BP.
April 1982	Governor Hammond recommends to the legislature that the State accept the BP offer. Justice proposes alternative settlement framework.
May 1982	Legislature informs Governor Hammond that it believes the State should continue the Phase I litigation because of concerns over developmental effects and the length of the settlement.
	State and Justice file motion with FERC requesting expedited decision in Phase I.
July 1982	FERC denies motion for expedited decision saying order in Williams will be accompanied by order in TAPS.
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April 1983 - February 1984	State engages in settlement talks with ARCO, BP and Exxon and also has contacts with Sohio.
January 1984 - February 1984	ALJ holds Phase I Remand hearings.
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September 1984	State engages in settlement talks with ARCO and BP and also has contacts with Sohio and Exxon.
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(M)

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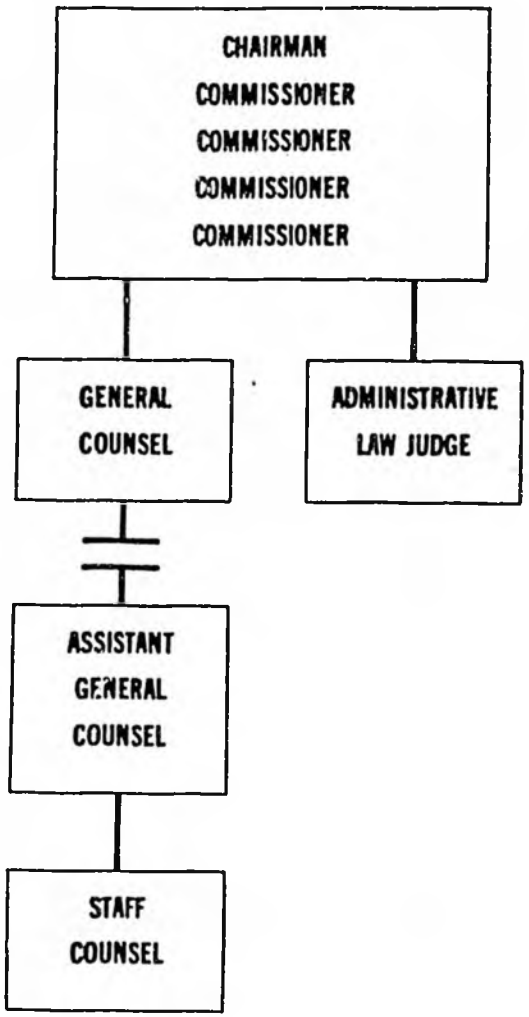
FEDERAL ENERGY REGULATORY COMMISSION (FERC)

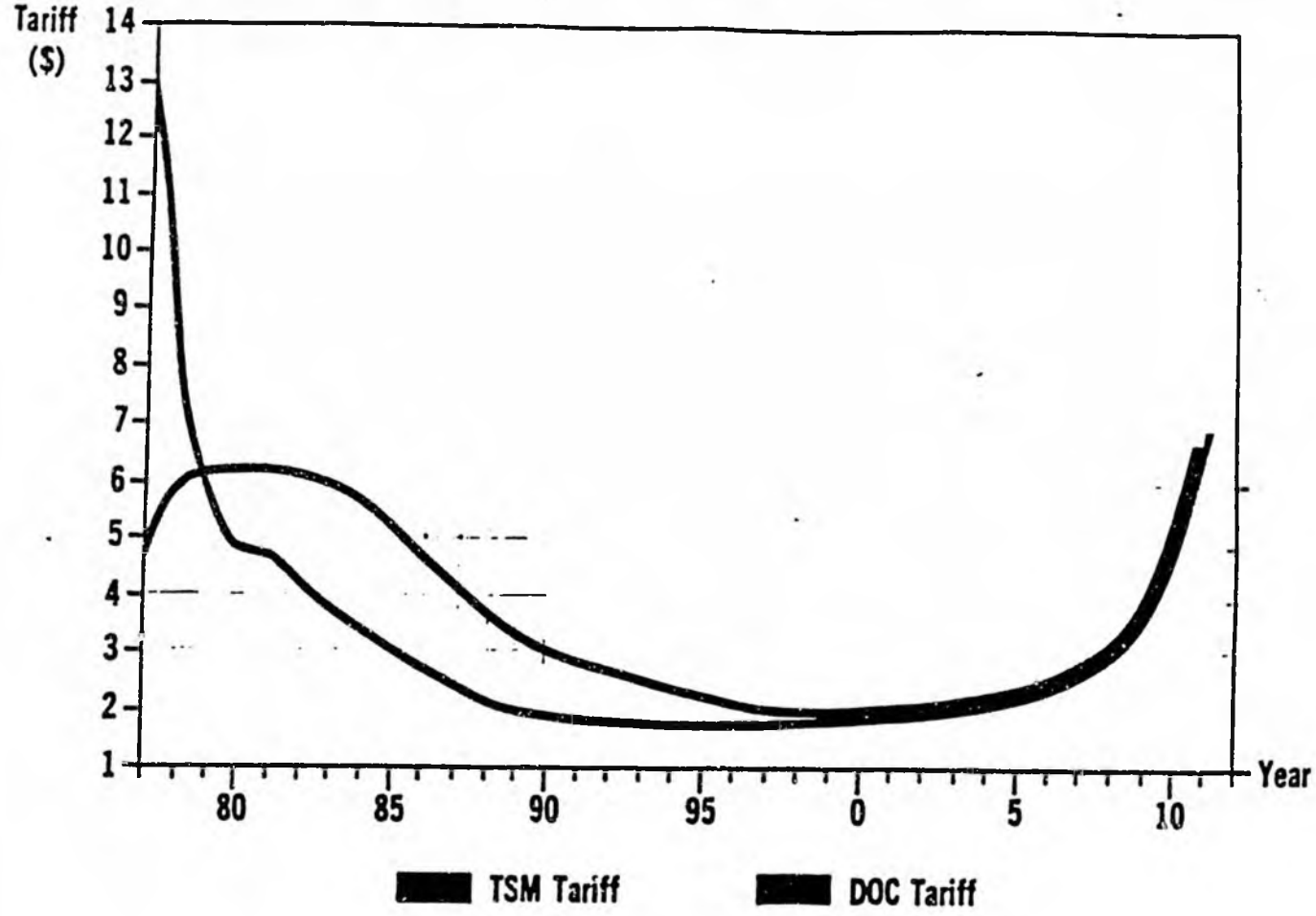


(4)

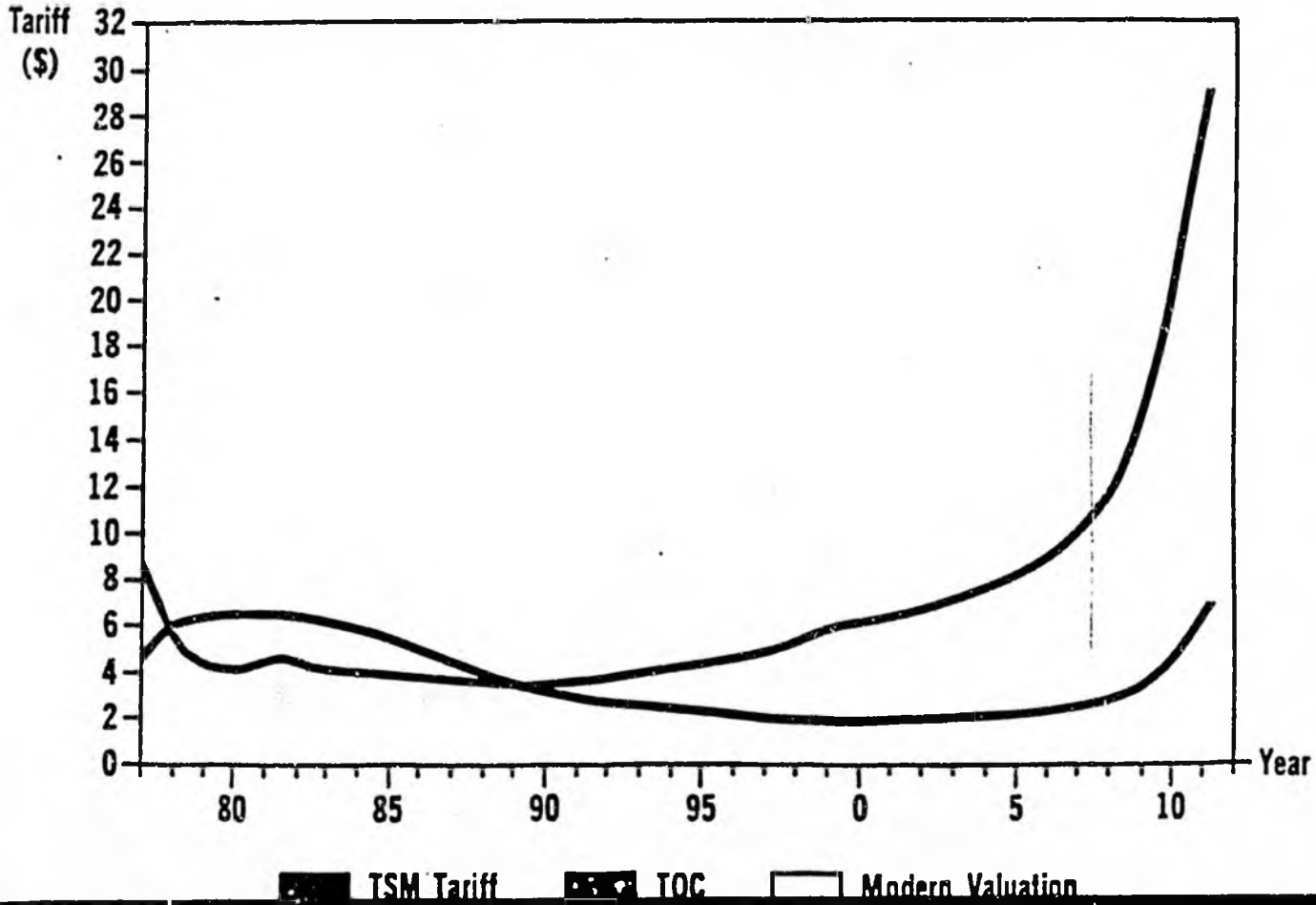
KEY EVENTS IN THE WILLIAMS CASE

Date	Event
December 1971	Shippers file protests against Williams rates with Interstate Commerce Commission (ICC).
June 1974	Administrative Law Judge (ALJ) issues opinion upholding Williams rates.
November 1975	ICC issues decision affirming ALJ's decision.
October 1977	ICC's jurisdiction over oil pipelines transferred to newly-created Federal Energy Regulatory Commission (FERC).
June 1978	Court of Appeals for the D.C. Circuit remands ICC's Williams decision to FERC, and orders it to develop a viable precedent for oil pipeline ratemaking.
February 1979	FERC consolidates all Williams proceedings; divides the case into Phase I (general ratemaking methodology) and Phase II (specific ratemaking issues).
July 1979 - December 1979	ALJ holds Phase I hearings.
January 1980	FERC orders ALJ to omit a decision in Phase I, stating that "timely execution of our functions" requires FERC to decide the case in the first instance.
June 1981	Shippers ask the Court of Appeals for the D.C. Circuit to order FERC to decide Phase I. FERC pledges to decide Phase I by fall, 1981. Shippers' court action dismissed.
August 1982	Seeing no FERC action, shippers sue FERC in D.C. District Court; Court orders FERC to decide Phase I within 60 days.
November 1982	FERC issues Phase I decision (Opinion No. 154).
March 1984	Court of Appeals for the D.C. Circuit remands FERC's Phase I decision; states that FERC should issue a new decision within 12 months.
January 1985	Parties submit settlement of Phase II to FERC.
February 1985	Court of Appeals for the D.C. Circuit orders FERC to report to it by March 8, 1985 (i.e., exactly 12 months after it remanded FERC's Phase I decision) on any steps FERC has taken regarding the Phase II settlement. The Court stated that it would not interfere with the schedule it had set in Phase I.
March 1985	FERC approves Phase II settlement; states that it will issue Phase I decision "in the near future."

TSM TARIFF V. DOC TARIFF



TSM TARIFF V. TOC AND MODERN VALUATION TARIFFS



TSM TARIFF

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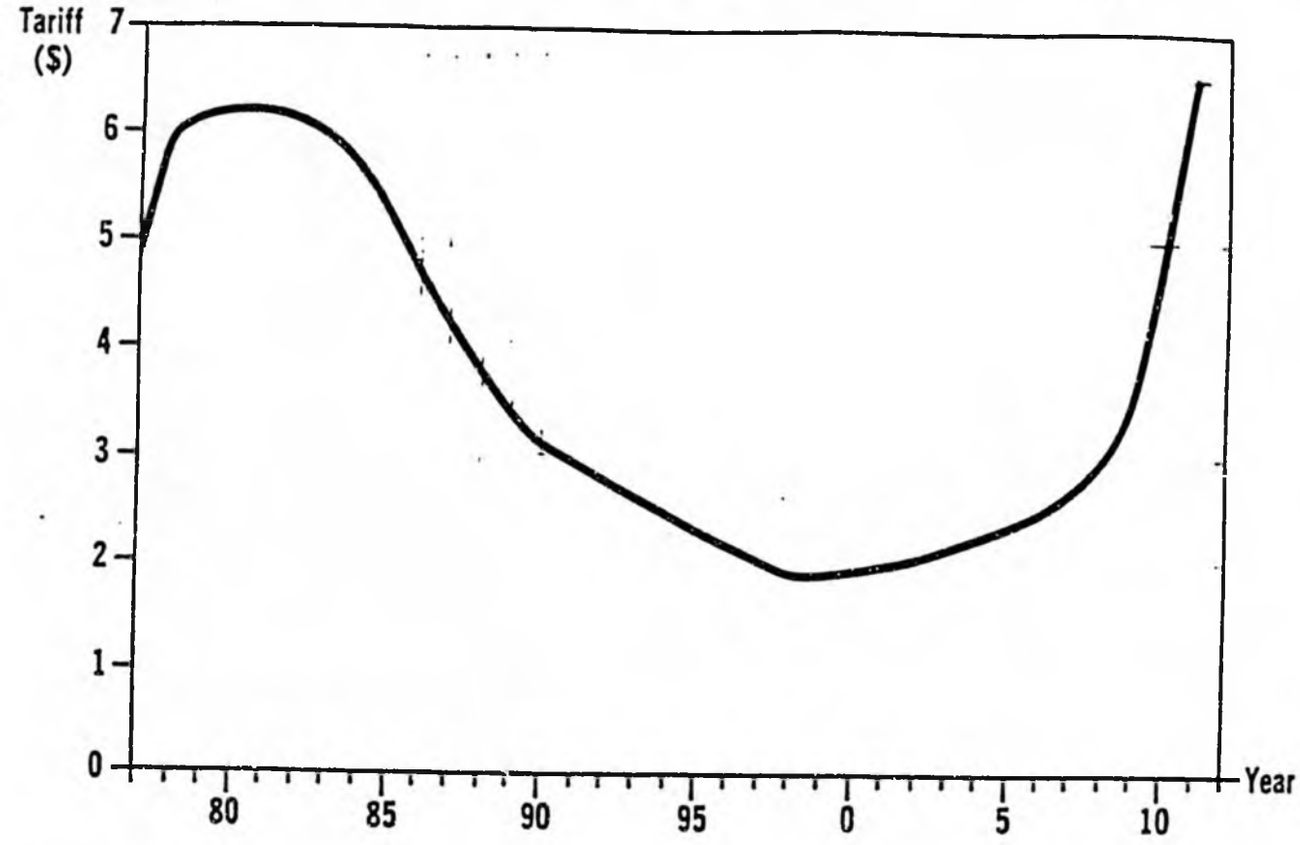
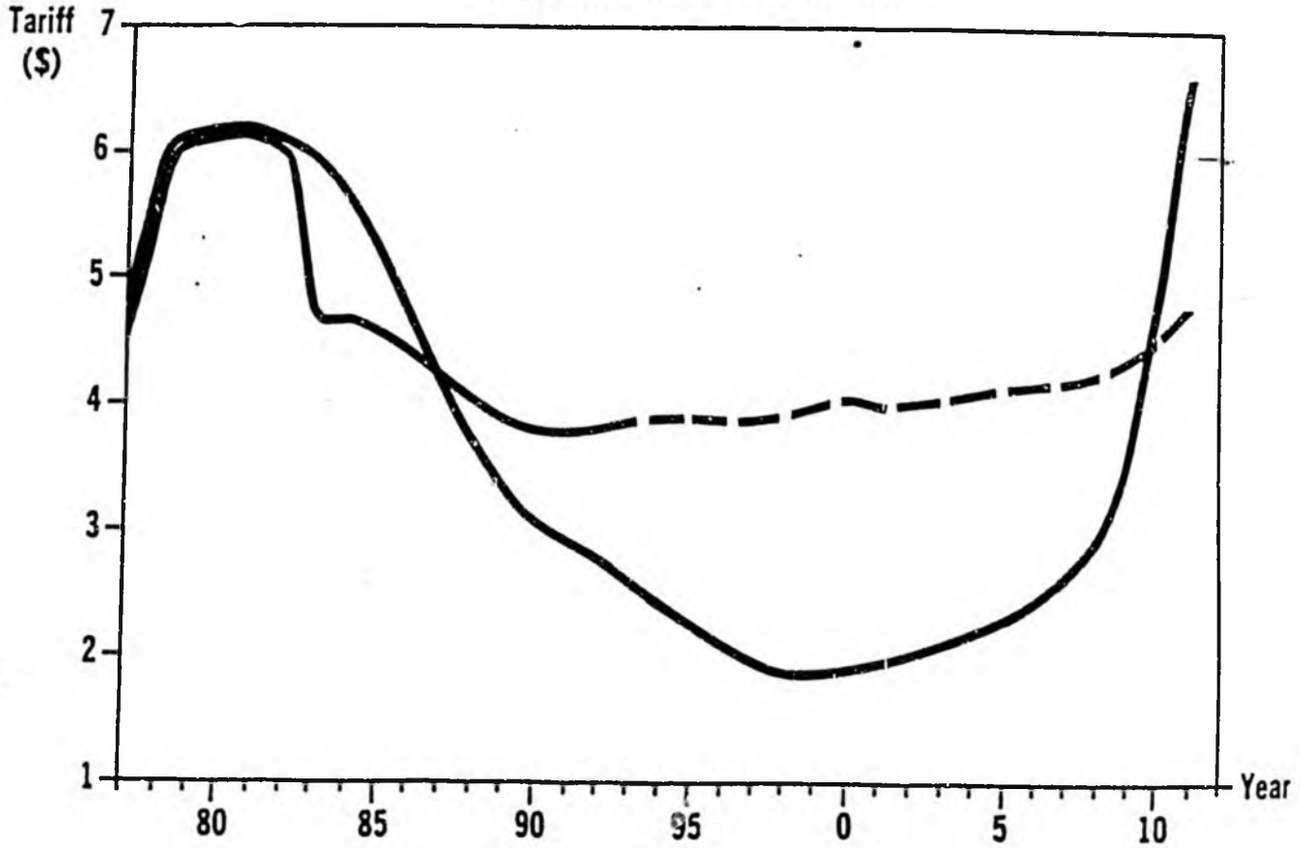
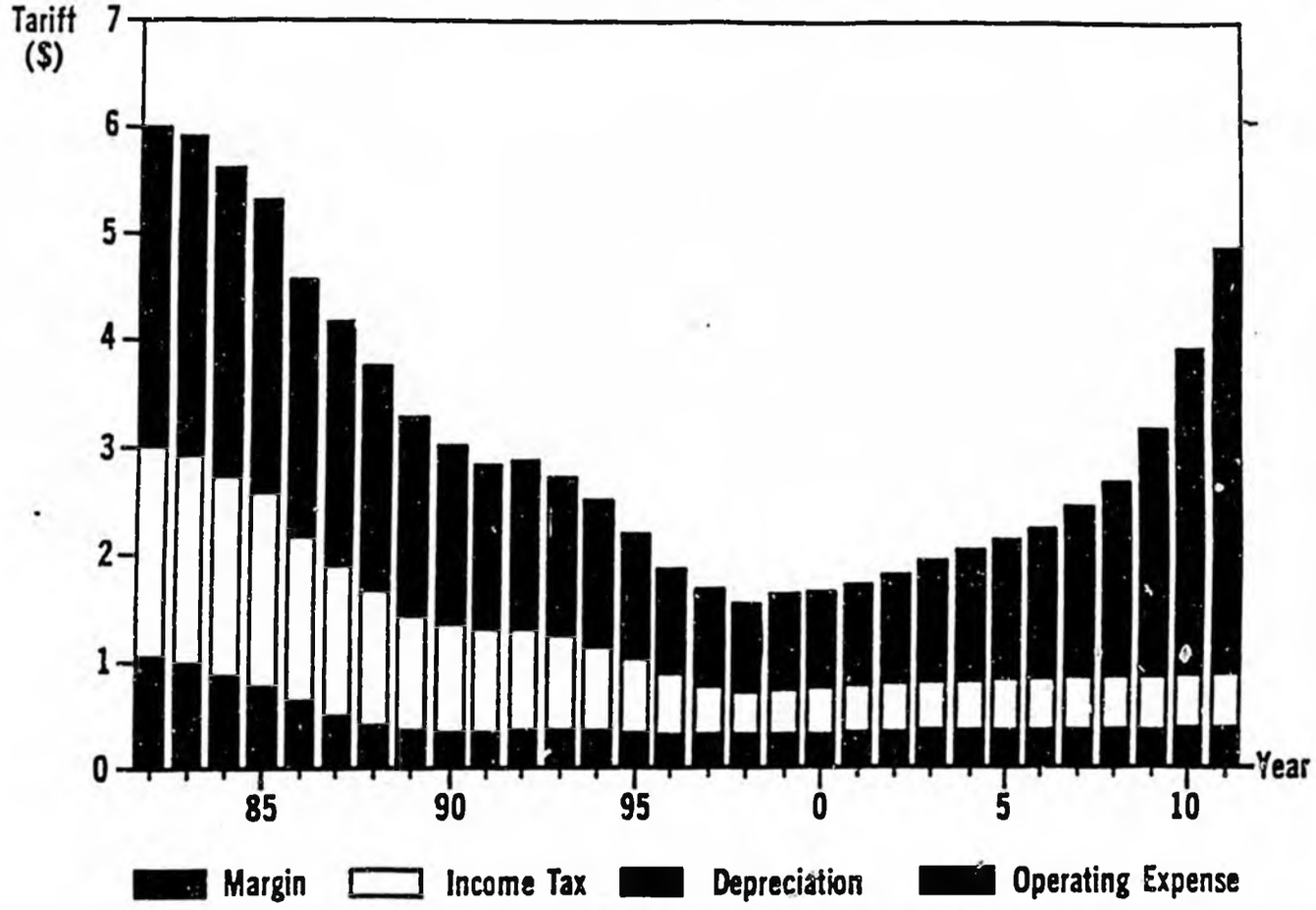


TSM TARIFF V. SPRING '82 TARIFF

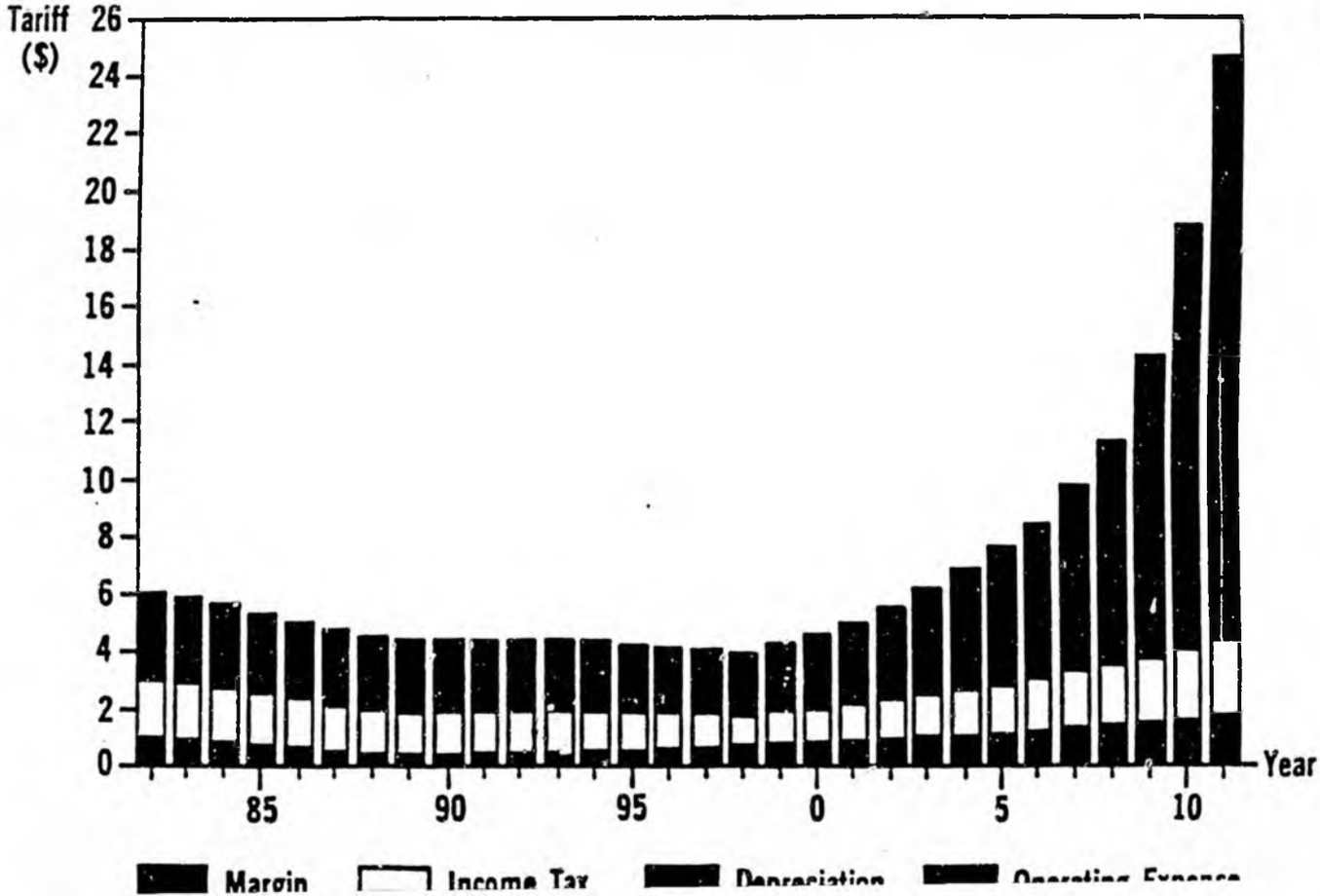
(7)



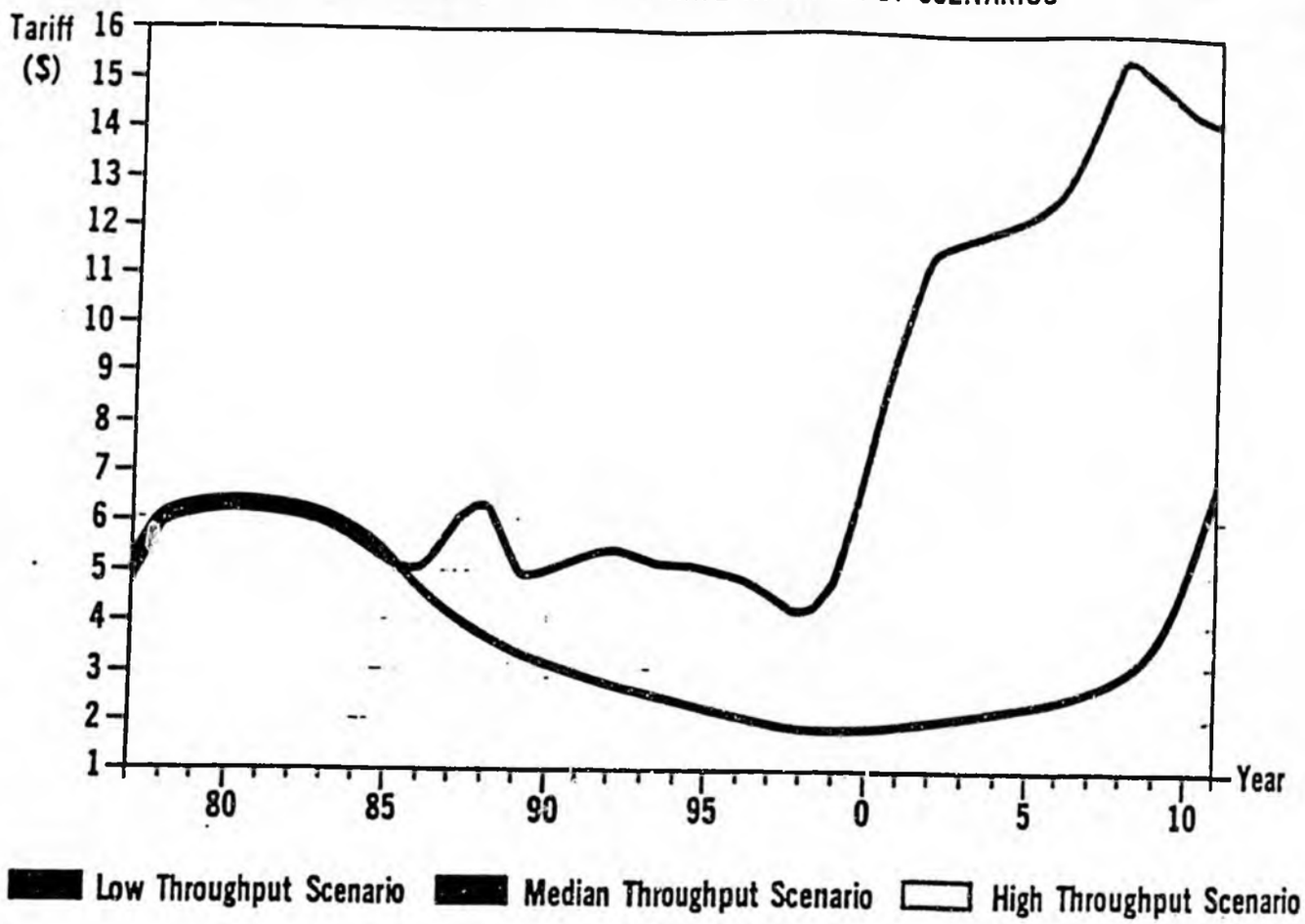
COMPOSITION OF TSM TARIFFS
(constant 1984 dollars)



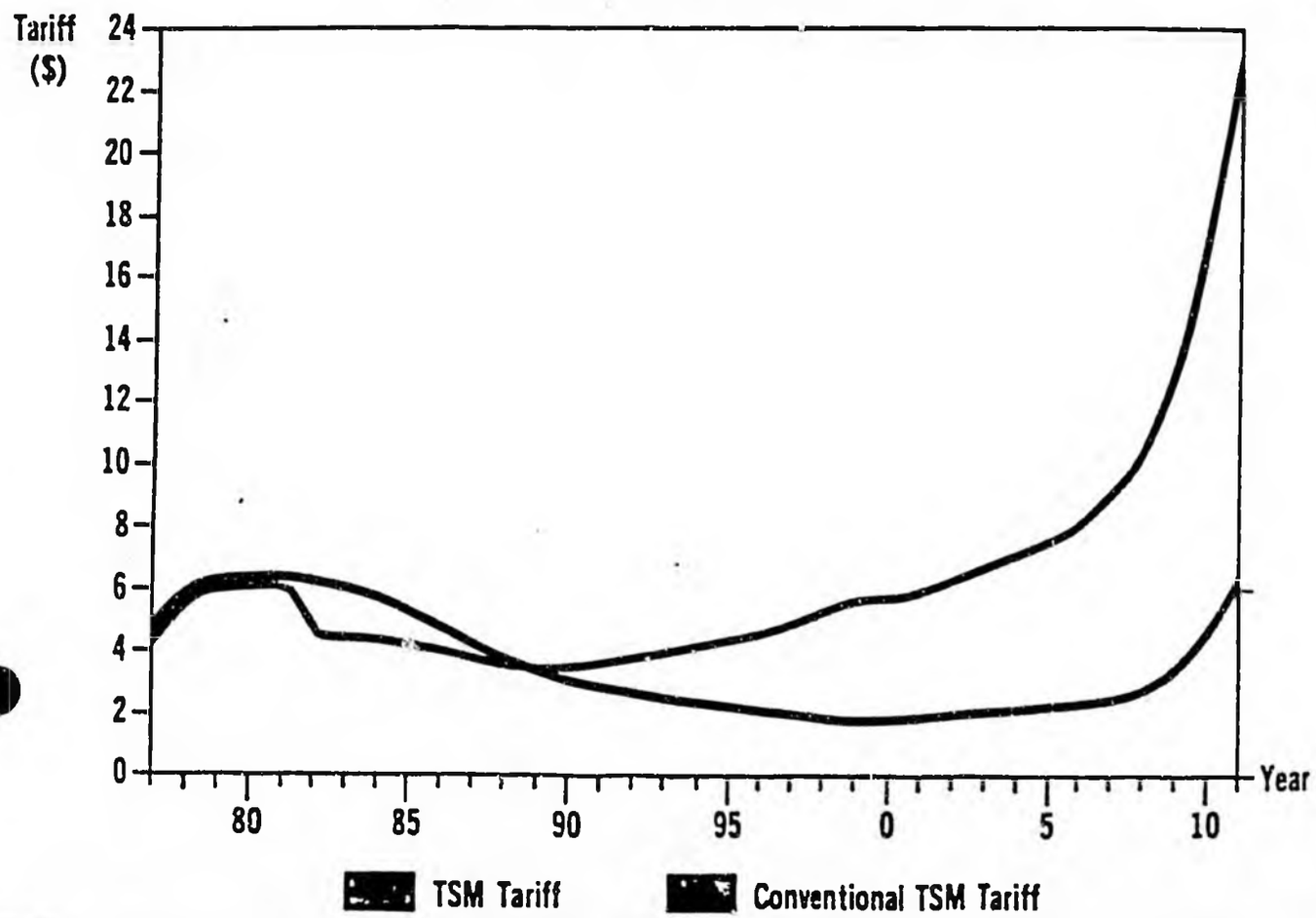
COMPOSITION OF TSM TARIFFS
(nominal dollars)



TSM TARIFFS UNDER ALTERNATE THROUGHPUT SCENARIOS



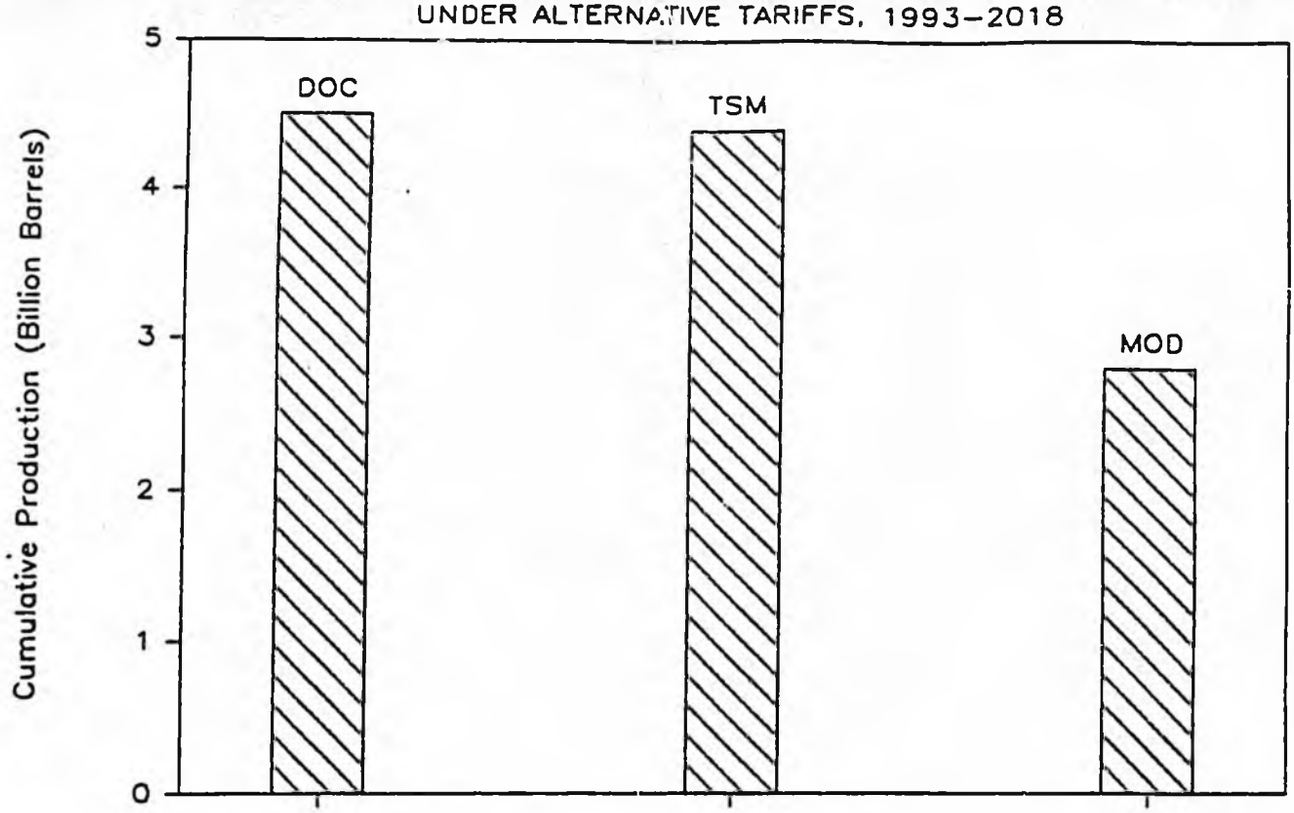
TSM TARIFF V. CONVENTIONAL TSM TARIFF



Appendix 3. The October 23 and November 14, 1985 Exemplary Tables
(from "TAPS" memoranda of October 23 and Nov. 14, 1985)

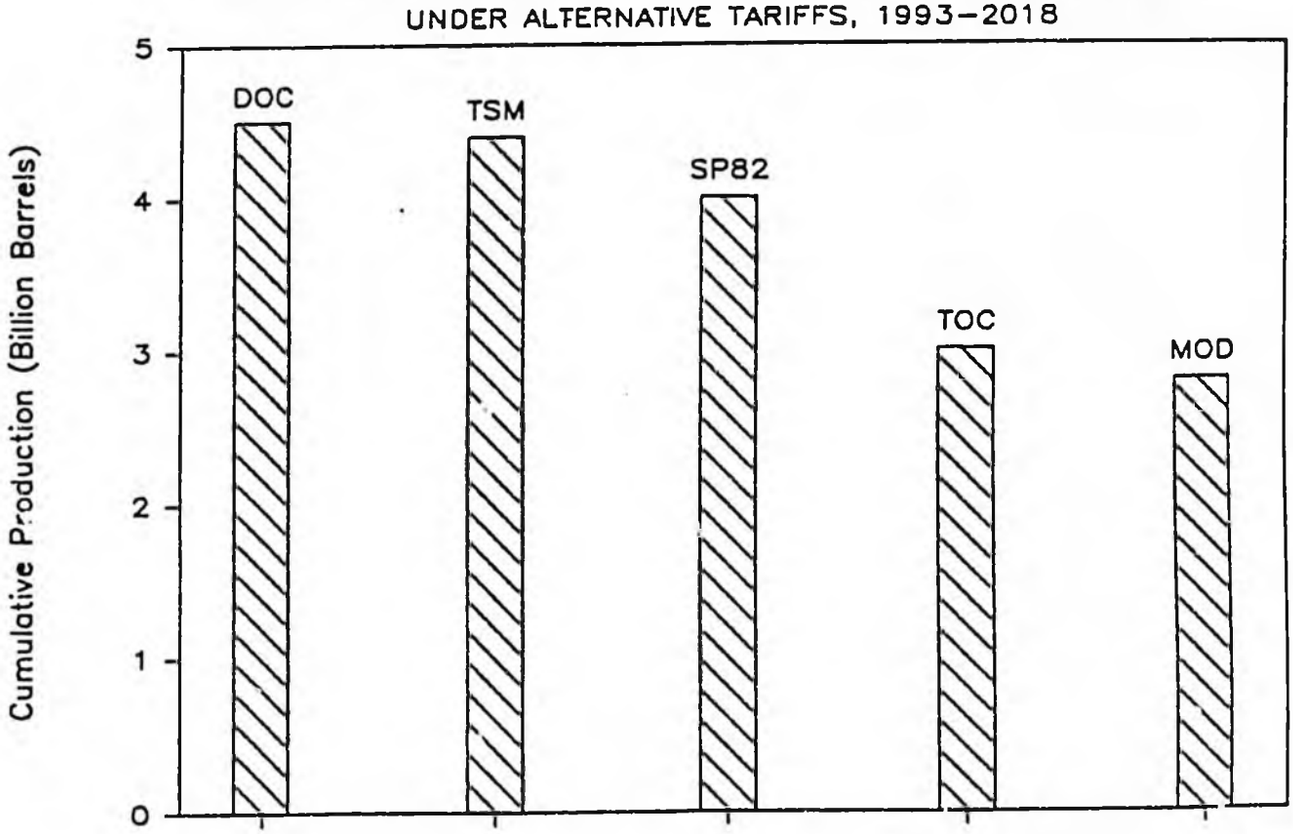
BEAUFORT SEA OIL PRODUCTION

UNDER ALTERNATIVE TARIFFS, 1993–2018



BEAUFORT SEA OIL PRODUCTION

UNDER ALTERNATIVE TARIFFS, 1993–2018



Note that at a real discount rate of 0 the total revenues remain unchanged (column 6 compared with 15 and 9 compared with 18). However, once a real discount rate is applied the value of monies received farther in the future begins to fall. Thus if the decisionmaker believes a quick decision will be forthcoming the litigation alternative is relatively more attractive than if the decisionmaker expects a litigated outcome to take a long time.

2.3 Debt/Equity Ratio

The debt/equity ratio makes a difference because the treatment of debt and equity differ in rate making methodologies. In Williams II FERC ruled "...that a pipeline which has issued no long-term debt or which issues long term debt to its parent or <u>which issues long term debt guaranteed by its parent</u> to outside investors should use its parent's actual capital structure"[3/] (emphasis added). This seems to imply that FERC has ruled on the appropriate debt/equity ratio for use by oil pipelines. However, clearly this can be changed on appeal and equally clearly the State may still argue for a more favorable (to the State) outcome. Since TAPS was built with 90% debt financing there is potentially a lot at stake in this argument.

APPENDIX 3.
EXEMPLARY TABLES
10/23/85

10 years or 20 years. Table 2 gives an example of the potential impact on state revenues of a delay of 3 years versus a delay of 12 years in reaching a litigated decision (note that all other variables are held constant to develope this table).

Table 2

Oct. 23

3 Year Delay

$ 1985 (000,000)

	GAIN TSM VS CURRENT PROJECTION			GAIN WILLIAMS VS CURRENT PROJECTION			GAIN DOC VS CURRENT PROJECTION		
	(1)	(2)	(3)	(4)	(5)	(6)	(7)	(8)	(9)
DISCOUNT RATE	REFUNDS	CASH FLOW	TOTAL	REFUNDS	CASH FLOW	TOTAL	REFUNDS	CASH FLOW	TOTAL
0.0%	209	1143	1352	2925	-937	1988	3474	835	4309
2.0%	209	1069	1278	2702	-590	2112	3210	927	4137
4.0%	209	991	1200	2500	-365	2135	2970	930	3900
6.0%	209	916	1125	2317	-218	2099	2752	889	3641
8.0%	209	846	1055	2150	-121	2029	2554	826	3380
10.0%	209	782	991	1998	-57	1941	2373	756	3129
12.0%	209	724	933	1859	-15	1844	2208	685	2893

12 Year Delay

$ 1985 (000,000)

	GAIN TSM VS CURRENT PROJECTION			GAIN WILLIAMS VS CURRENT PROJECTION			GAIN DOC VS CURRENT PROJECTION		
	(10)	(11)	(12)	(13)	(14)	(15)	(16)	(17)	(18)
DISCOUNT RATE	REFUNDS	CASH FLOW	TOTAL	REFUNDS	CASH FLOW	TOTAL	REFUNDS	CASH FLOW	TOTAL
0.0%	209	1143	1352	3018	-1031	1988	5217	-907	4310
2.0%	209	1069	1278	2333	-693	1640	4033	-570	3463
4.0%	209	991	1200	1813	-473	1340	3133	-361	2772
6.0%	209	916	1125	1415	-326	1089	2446	-231	2215
8.0%	209	846	1055	1110	-228	882	1918	-150	1768
10.0%	209	782	992	874	-161	713	1511	-97	1414
12.0%	209	724	933	692	-115	577	1196	-64	1132

2.4 Return on Equity

The Williams II decision discussion on rate of return is quoted in its entirety below:

> "The Commission has concluded that the equity rate of return should be determined on a case-specific basis with reference to the risks and corresponding cost of capital associated with the oil pipeline whose rates are in issue.[48/] Of course, one factor which may be included in any risk analysis is the competition faced by the pipeline.[49/] Any pipeline may try to prove that it is entitled to additional compensation to reflect increased risk or other non-cost factors such as incentives to investment.[50/] This endeavor will yield a nominal rate of return on equity which will then be translated into a real rate by the extraction of inflation pursuant to an index determined in the particular case.[51/] The Commission observed again that rate base and rate of return must "operate together to produce a just and reasonable rate," consequently, the Commission will pay particular attention to the operation of the two elements together in each case.
>
> 48/ The Commission expects the cost of equity capital for oil pipelines will be determined by the use of either or both of the market-oriented or comparable earnings standards. Both focus on investor expectations and requirements with respect to earnings.
>
> 49/ See Farmers at 1508 n.50.
>
> 50/ See Id. at 1495 n. 27, 1503 and 1530.
>
> 51/ Moreover, on a case-specific basis, a pipeline will be permitted to argue that its parent company is entitled to compensation for any guarantees of the pipeline's debt. Id. at 1521."

It is worth noting that, while TAPS faces no competition, its initial construction was, as Judge Kane observed, surrounded by an aura of risk.

Table 4 shows the impact of a change from an 8% rate of return on equity to an 11.5% rate of return on equity.

Table 3

65% Debt 35% Equity

$ 1985 (000,000)

Oct. 23

	GAIN TEM VS CURRENT PROJECTION			GAIN WILLIAMS VS CURRENT PROJECTION			GAIN DOC VS CURRENT PROJECTION		
	(1)	(2)	(3)	(4)	(5)	(6)	(7)	(8)	(9)
DISCOUNT RATE	REFUNDS	CASH FLOW	TOTAL	REFUNDS	CASH FLOW	TOTAL	REFUNDS	CASH FLOW	TOTAL
0.0%	209	1225	1434	4102	-783	3319	5664	-722	5162
2.0%	209	1136	1345	3171	-522	2649	4548	-446	4102
4.0%	209	1046	1255	2463	-352	2111	3554	-278	3276
6.0%	209	962	1171	1923	-241	1682	2758	-174	2584
8.0%	209	885	1094	1508	-167	1341	2163	-110	2053
10.0%	209	815	1024	1188	-117	1071	1704	-70	1634
12.0%	209	753	962	940	-83	857	1348	-44	1304

35% Debt 65% Equity

$ 1985 (000,000)

	GAIN TEM VS CURRENT PROJECTION			GAIN WILLIAMS VS CURRENT PROJECTION			GAIN DOC VS CURRENT PROJECTION		
	(10)	(11)	(12)	(13)	(14)	(15)	(16)	(17)	(18)
DISCOUNT RATE	REFUNDS	CASH FLOW	TOTAL	REFUNDS	CASH FLOW	TOTAL	REFUNDS	CASH FLOW	TOTAL
0.0%	209	1225	1434	2357	-1305	1052	4861	-800	4061
2.0%	209	1136	1345	1622	-880	942	3758	-501	3257
4.0%	209	1046	1255	1416	-601	815	2919	-317	2602
6.0%	209	962	1171	1105	-416	689	2279	-202	2077
8.0%	209	885	1094	867	-291	576	1787	-130	1657
10.0%	209	815	1025	683	-206	477	1408	-84	1324
12.0%	209	753	962	540	-147	393	1114	-55	1059

Table 3 shows the potential impact of a change from 65/35 debt/equity to 35/65 debt equity with all other variables held constant.

3/ Id. Page 11

accelerated depreciation such as unit of throughput is desirable. The primary problem with using unit of throughput is that some schedule of deemed through put must be determined and the advantages to the State will depend upon the nature of this schedule. Table 5 shows the impact of a switch from straight line to unit of throughput. The throughput schedule used is a combination of the Department of Revenue and Department of Natural Resources Production estimates as of June 1985.

Oct. 23

Table 5

Straight Line Depreciation

$ 1985 (000,000)

	GAIN TSM VS CURRENT PROJECTION			GAIN WILLIAMS VS CURRENT PROJECTION			GAIN DOC VS CURRENT PROJECTION		
	(1)	(2)	(3)	(4)	(5)	(6)	(7)	(8)	
DISCOUNT RATE	REFUNDS	CASH FLOW	TOTAL	REFUNDS	CASH FLOW	TOTAL	REFUNDS	CASH FLOW	TOTAL
0.0%	209	1225	1434	2684	-1103	1581	5038	-789	4249
2.0%	209	1136	1345	2075	-742	1333	3895	-493	3402
4.0%	209	1046	1255	1612	-506	1106	3026	-312	2714
6.0%	209	962	1171	1258	-350	908	2362	-198	2164
8.0%	209	885	1094	987	-244	743	1853	-127	1726
10.0%	209	815	1024	777	-173	604	1459	-82	1377
12.0%	209	753	962	615	-123	492	1155	-54	1101

Unit of Throughput Depreciation

$ 1985 (000,000)

	GAIN TSM VS CURRENT PROJECTION			GAIN WILLIAMS VS CURRENT PROJECTION			GAIN DOC VS CURRENT PROJECTIC		
	(10)	(11)	(12)	(13)	(14)	(15)	(16)	(17)	(18)
DISCOUNT RATE	REFUNDS	CASH FLOW	TOTAL	REFUNDS	CASH FLOW	TOTAL	REFUNDS	CASH FLOW	TOTAL
0.0%	209	1225	1434	2416	-271	2145	5070	123	5193
2.0%	209	1136	1345	1868	-179	1689	3920	126	4046
4.0%	209	1046	1255	1451	-120	1331	3045	114	3159
6.0%	209	962	1171	1133	-81	1052	2377	98	2475
8.0%	209	885	1094	888	-55	833	1864	81	1946
10.0%	209	815	1025	700	-38	662	1469	66	1535
12.0%	209	753	962	554	-27	527	1162	53	1215

Table 4

8% Return on Equity

$ 1985 (000,000)

Oct. 23

	GAIN TSH VS CURRENT PROJECTION			GAIN WILLIAMS VS CURRENT PROJECTION			GAIN DOC VS CURRENT PROJECTION		
	(1)	(2)	(3)	(4)	(5)	(6)	(7)	(8)	(9)
DISCOUNT RATE	REFUNDS	CASH FLOW	TOTAL	REFUNDS	CASH FLOW	TOTAL	REFUNDS	CASH FLOW	TOTAL
0.0%	209	1225	1434	3915	-972	2943	5818	-723	5095
2.0%	209	1136	1345	3026	-650	2376	4498	-447	4051
4.0%	209	1046	1255	2351	-440	1911	3494	-279	3215
6.0%	209	962	1171	1836	-302	1534	2728	-175	2553
8.0%	209	885	1094	1440	-210	1230	2139	-110	2029
10.0%	209	815	1024	1134	-147	987	1685	-70	1615
12.0%	209	753	962	897	-105	792	1333	-44	1289

11.5% Return on Equity

$ 1985 (000,000)

	GAIN TSH VS CURRENT PROJECTION			GAIN WILLIAMS VS CURRENT PROJECTION			GAIN DOC VS CURRENT PROJECTION		
	(10)	(11)	(12)	(13)	(14)	(15)	(16)	(17)	(18)
DISCOUNT RATE	REFUNDS	CASH FLOW	TOTAL	REFUNDS	CASH FLOW	TOTAL	REFUNDS	CASH FLOW	TOTAL
0.0%	209	1225	1434	2684	-1103	1581	5038	-789	4249
2.0%	209	1136	1345	2075	-742	1333	3895	-493	3402
4.0%	209	1046	1255	1612	-506	1106	3026	-312	2714
6.0%	209	962	1171	1258	-350	908	2362	-198	2164
8.0%	209	885	1094	987	-244	742	1853	-127	1726
10.0%	209	815	1025	777	-173	604	1459	-82	1377
12.0%	209	753	962	615	-123	492	1155	-54	1101

2.5 Depreciation Method

Early on in the TAPS litigation the parties agreed, by stipulation, to use of straight line depreciation. However, it is entirely possible to reopen this issue. Thus the State may determine that some form of

2.7 Debt Refinancing

It may seem strange that the State should care whether the TAPS owners pay off their outstanding debt and convert to all equity. The reason is the way Williams II treats the tax consequences of interest in the rate making methodology. FERC says that "The usual method is to multiply the company's weighted cost of debt times its rate base. This will not work for oil pipelines. This is so because under the TOC methodology adopted in this opinion the rate base includes an equity write-up. The Commission holds, therefore, that oil pipelines should use their actual interest expense."[4/]

Thus the shippers and therefore the State receive some of the benefit of the interest deduction. Table 7 shows that the potential impact on state revenues is large.

Oct. 23

Table 7

No Refinancing of Debt

$ 1985 (000,000)

	GAIN TSH VS CURRENT PROJECTION			GAIN WILLIAMS VS CURRENT PROJECTION			GAIN OCC VS CURRENT PROJECTION		
	(1)	(2)	(3)	(4)	(5)	(6)	(7)	(8)	(9)
DISCOUNT RATE	REFUNDS	CASH FLOW	TOTAL	REFUNDS	CASH FLOW	TOTAL	REFUNDS	CASH FLOW	TOTAL
0.0%	209	1225	1434	2184	-1193	1581	5038	-789	4249
2.0%	209	1136	1345	2075	-742	1333	3875	-493	3402
4.0%	209	1046	1255	1612	-506	1106	3026	-312	2714
6.0%	209	962	1171	1258	-350	908	2362	-198	2164
8.0%	209	885	1094	987	-244	743	1853	-127	1726
10.0%	209	815	1024	777	-173	604	1459	-82	1377
12.0%	209	753	962	615	-123	492	1155	-54	1101

Full Refinancing of Debt

$ 1985 (000,000)

	GAIN TSH VS CURRENT PROJECTION			GAIN WILLIAMS VS CURRENT PROJECTION			GAIN OCC VS CURRENT PROJECTION		
	(10)	(11)	(12)	(13)	(14)	(15)	(16)	(17)	(18)
DISCOUNT RATE	REFUNDS	CASH FLOW	TOTAL	REFUNDS	CASH FLOW	TOTAL	REFUNDS	CASH FLOW	TOTAL
0.0%	209	1225	1434	2178	-1137	1041	6398	-871	5527
2.0%	209	1136	1345	1683	-767	916	3400	-552	2848
4.0%	209	1046	1255	1348	-526	784	2641	-353	2288
6.0%	209	962	1171	1071	-343	658	2362	-229	1853

2.6 Suretyship Premium

This issue arises from footnote 51 (see 2.4 above) of the Williams decision as well as the Williams II treatment of debt financing. In footnote 51 FERC went out of its way to point out the availability of return on guaranteed debt. This seems to make little real sense until you realize that the Williams II decision allows NO return on debt. Thus a company that borrows money to finance a regulated pipeline cannot earn any return on the portion financed with debt. The company is in the position of simply collecting money to pay its bond holders. Table 6 shows the impact of a change from 0 to 2% suretyship premium

Oct. 23

Table 6

0 Suretyship Premium

$ 1985 (000,000)

	GAIN TSM VS CURRENT PROJECTION			GAIN WILLIAMS VS CURRENT PROJECTION			GAIN DOC VS CURRENT PROJECTION		
	(1)	(2)	(3)	(4)	(5)	(6)	(7)	(8)	(9)
DISCOUNT RATE	REFUNDS	CASH FLOW	TOTAL	REFUNDS	CASH FLOW	TOTAL	REFUNDS	CASH FLOW	TOTAL
0.0%	209	1472	1681	3049	-1103	1946	5776	-789	4987
2.0%	209	1372	1581	2357	-742	1615	4465	-493	3972
4.0%	209	1273	1482	1831	-506	1325	3469	-312	3157
6.0%	209	1179	1388	1430	-350	1080	2708	-198	2510
8.0%	209	1094	1303	1121	-244	877	2124	-127	1997
10.0%	209	1016	1225	883	-173	710	1673	-82	1591
12.0%	209	946	1155	699	-123	576	1324	-54	1270

2% Suretyship Premium

$ 1985 (000,000)

	GAIN TSM VS CURRENT PROJECTION			GAIN WILLIAMS VS CURRENT PROJECTION			GAIN DOC VS CURRENT PROJECTION		
	(10)	(11)	(12)	(13)	(14)	(15)	(16)	(17)	(18)
DISCOUNT RATE	REFUNDS	CASH FLOW	TOTAL	REFUNDS	CASH FLOW	TOTAL	REFUNDS	CASH FLOW	TOTAL
0.0%	209	1472	1681	2632	-1113	1514	5776	-789	4987
2.0%	209	1372	1581	2035	-753	1282	4465	-493	3972
4.0%	209	1273	1482	1581	-514	1067	3469	-312	3157
6.0%	209	1179	1388	1234	-355	879	2708	-198	2510
8.0%	209	1094	1303	968	-248	720	2124	-127	1997
					-174		1673	-82	1591

up its rights to retroactive adjustments. In some contracts the State has specifically retained these rights. In some contracts the language is unclear or mute on the subject.

The problem with severance taxes exists on two levels. First there is a question in some cases of who owes the taxes. Refunds go to shippers, severance taxes are levied on producers. To the extent that shippers and producers differ a problem may exist. Of course, when the shipper and producer are different divisions of the same parent the State can argue that the shipper must pay for the benefit of the producer. At the second level the severance tax issue results from the Alaska statute of limitation for tax matters (AS 43.05.260). This limitation is arguably offset by Regulation 15 AAC 55.200, which the memo concludes is very probably enforceable. However, the memorandum further concludes that it is unlikely the State will prevail in an attempt to obtain severance tax increases based upon any interest increases awarded by FERC to shippers.

Table 8 shows the difference in State revenues resulting from complete refunds vs. no refunds. This table assumes that if there is a

2.8 Collectability of Refunds

This is perhaps the most frustrating of all the issues surrounding the settle or litigate question. It is frustrating not because it is particularly complex, but because it exists as an issue at all. The State began the TAPS litigation because we felt the tariffs filed in 1977 were unjustly high. Since 1977 TAPS tariffs have been collected subject to refunds. If the collected tariffs are determined to be unjust and unreasonable and the final tariffs are lower, the refunds will go to those who paid the tariffs. In a memorandum on the collectability question dated November 7, 1984 the State's Outside Council outlines the State's position on those refunds as follows:

> The State will contend that a tariff refund causes a commensurate retroactive increase in the wellhead value of Alaskan oil. The State will argue that: (1) as to non-royalty oil, it is entitled to assess a severance tax on the amount refunded because it represents a retroactive increase in the value of previously extracted oil; and (2) as to royalty oil, it is entitled to the entire refund paid to royalty oil purchasers because the refund represents the increased value of royalty oil retroactive to the time of purchase.

The November 7 memorandum examines the relevant issues, statutes, regulations and royalty oil contracts and concludes "It should be clear from this memorandum, however, that the correctness of the State's claims to additional severance taxes and royalty oil payments, plus interest thereon can face a number of substantial obstacles in many circumstances." This memo is included as Appendix F. The problem with royalty oil centers around the language of the individual royalty oil contracts. In some contracts the State has specifically agreed to give

2.10 Exclusion from Rate Base

This is the primary issue of Phase II of the TAPS rate case. The question is how much, if any, of the cost of construction should be excluded from the rate base because it was incurred imprudently. The state contends that nearly 2 billion dollars falls into this category. Table 10 shows the impact on state revenues of a change from 0 exclusion to a $1 billion exclusion.

Oct. 23

Table 10

0 Phase II Exclusion

$ 1985 (000,000)

	GAIN TSH VS CURRENT PROJECTION			GAIN WILLIAMS VS CURRENT PROJECTION			GAIN DOC VS CURRENT PROJECTION		
	(1)	(2)	(3)	(4)	(5)	(6)	(7)	(8)	(9)
DISCOUNT RATE	REFUNDS	CASH FLOW	TOTAL	REFUNDS	CASH FLOW	TOTAL	REFUNDS	CASH FLOW	TOTAL
0.0%	209	1472	1681	2501	-1217	1284	5251	-929	4322
2.0%	209	1372	1581	1933	-820	1113	4059	-589	3470
4.0%	209	1273	1482	1502	-560	942	3154	-377	2777
6.0%	209	1179	1388	1172	-388	784	2462	-244	2218
8.0%	209	1094	1303	919	-271	648	1931	-160	1771
10.0%	209	1016	1225	724	-192	532	1521	-106	1415
12.0%	209	946	1155	573	-137	436	1203	-70	1133

$ 1 Billion Phase II Exclusion

$ 1985 (000,000)

	GAIN TSH VS CURRENT PROJECTION			GAIN WILLIAMS VS CURRENT PROJECTION			GAIN DOC VS CURRENT PROJECTION		
	(10)	(11)	(12)	(13)	(14)	(15)	(16)	(17)	(18)
DISCOUNT RATE	REFUNDS	CASH FLOW	TOTAL	REFUNDS	CASH FLOW	TOTAL	REFUNDS	CASH FLOW	TOTAL
0.0%	209	1472	1681	3700	-967	2733	6417	-618	5799
2.0%	209	1372	1581	2860	-650	2210	4960	-377	4583
4.0%	209	1273	1482	2222	-442	1780	3854	-231	3623
6.0%	209	1179	1388	1735	-304	1431	3008	-142	2866
8.0%	209	1094	1303	1361	-212	1149	2359	-88	2271
10.0%	209	1016	1225	1072	-150	922	1859	-54	1805
12.0%	209	946	1155	848	-107	741	1471	-33	1438

2.9 Interest on Refunds

A separate issue revolves around whether the State has the ability to collect interest on any refunds we may obtain. To an extent this question hinges upon when any increased severance taxes become legally due. If they are due as of the date of the final decision then at best interest only begins accruing as of that date. If, on the other hand, they are due in the year the crude was first produced interest may begin accruing as of that year. This, however, once again raises the spector of statute of limitation arguments.

Table 9 shows the difference in state revenue between full interest from the year of production (without regarding to statute of limitations considerations) and no interest on monies prior to 1985.

Oct. 23

Table 9

Full Interest

$ 1985 (000,000)

	GAIN TEN VS CURRENT PROJECTION			GAIN WILLIAMS VS CURRENT PROJECTION			GAIN OCC VS CURRENT PROJECTION		
	(1)	(2)	(3)	(4)	(5)	(6)	(7)	(8)	(9)
DISCOUNT RATE	REFUNDS	CASH FLOW	TOTAL	REFUNDS	CASH FLOW	TOTAL	REFUNDS	CASH FLOW	TOTAL
0.0%	819	1005	1824	3049	-1103	1946	5776	-759	4937
2.0%	819	1076	1895	2557	-742	1815	4455	-483	3972
4.0%	819	1046	1865	1931	-516	1415	3469	-312	3157
6.0%	819	962	1781	1439	-350	1089	2758	-148	2610
8.0%	819	885	1704	1121	-244	877	2251	-127	1997
10.0%	819	815	1633	883	-173	710	1973	-82	1891
12.0%	819	753	1572	699	-122	576	1824	-54	1770

0 Interest

$ 1985 (000,000)

	GAIN TEN VS CURRENT PROJECTION			GAIN WILLIAMS VS CURRENT PROJECTION			GAIN OCC VS CURRENT PROJECTION		
	(1)	(2)	(3)	(4)	(5)	(6)	(7)	(8)	(9)
DISCOUNT RATE	REFUNDS	CASH FLOW	TOTAL	REFUNDS	CASH FLOW	TOTAL	REFUNDS	CASH FLOW	TOTAL
0.0%	819	1005	1824	2584	-1103	1481	5003	-759	4244
2.0%	819	1076	1895	2075	-742	1333	3892	-483	3409
4.0%	819	1046	1865	1612	-516	1096	3026	-312	2714
6.0%	819	962	1781	1253	-350	903	2382	-188	2194
8.0%	819	885	1704	997	-244	753	1853	-127	1726
10.0%	819	815	1634	777	-173	604	1459	-82	1377
12.0%	819	753	1572	615	-122	492	1155	-54	1101

10 years or 20 years. Table 2 gives an example of the potential impact on state revenues of a delay of 3 years versus a delay of 12 years in reaching a litigated decision (note that all other variables are held constant to develope this table).

Table 2

Nov. 14

3 Year Delay

$ 1985 (000,000)

	GAIN TSM VS CURRENT PROJECTION			GAIN WILLIAMS VS CURRENT PROJECTION			GAIN DOC VS CURRENT PROJECTIO		
	(1)	(2)	(3)	(4)	(5)	(6)	(7)	(8)	(9)
DISCOUNT RATE	REFUNDS	CASH FLOW	TOTAL	REFUNDS	CASH FLOW	TOTAL	REFUNDS	CASH FLOW	TOTAL
0.0%	209	1225	1434	2940	-986	1954	3293	1011	4304
2.0%	209	1136	1345	2716	-619	2097	3043	926	[illegible]
4.0%	209	1046	1255	2513	-381	2132	2815	636	[illegible]
6.0%	209	962	1171	2329	-226	2103	2609	748	3357
8.0%	209	885	1094	2161	-124	2037	2421	667	3088
10.0%	209	815	1024	2008	-57	1951	2249	594	2843
12.0%	209	753	962	1868	-14	1854	2093	529	2622

12 Year Delay

$ 1985 (000,000)

	GAIN TSM VS CURRENT PROJECTION			GAIN WILLIAMS VS CURRENT PROJECTION			GAIN DOC VS CURRENT PROJECTION		
	(10)	(11)	(12)	(13)	(14)	(15)	(16)	(17)	(18)
DISCOUNT RATE	REFUNDS	CASH FLOW	TOTAL	REFUNDS	CASH FLOW	TOTAL	REFUNDS	CASH FLOW	TOTAL
0.0%	209	1225	1434	3049	-1096	1953	4527	-223	4304
2.0%	209	1136	1345	2357	-737	1620	3500	-139	3361
4.0%	209	1046	1255	1831	-501	1330	2719	-87	2632
6.0%	209	962	1171	1450	-346	1084	2122	-55	2067
8.0%	209	885	1094	1121	-241	880	1665	-35	[illegible]
10.0%	209	815	992	883	-170	713	1311	-22	[illegible]
12.0%	209	753	962	699	-121	578	1037	-14	1023

of the actual calculations are automatic. Regulated companies may file for a new allowed earnings (and tariff) and request a return whenever economic conditions warrant a change. However rate changes have historically tended to lag behind actual economic changes. Further the regulatory process is not immune to the pressures that are brought to bear. Shippers or consumers will always oppose rate increases while the regulated company will always attempt to minimize rate decreases. Therefore, the choice of a rate making methodology does tend to make a difference. Further, the choice of methodology affects the yearly cash flow to the companies (and consequently to the State). Under OOC allowed earnings (and therefore tariffs) are higher in the early years than under TOC and this situation reverses itself in the sixth year when earnings (and tariffs) become lower.

2.2 Time Before Decision

The second variable that affects the settle/litigate question is the time lag before completion of the rate making case. Estimates of time to completion under the litigation option range from a low of 5 to 6 years to a high of 14 or more years . Under the settlement option revenues (in the form of refunds and increased severance taxes and royalties from lower tariffs and wellheads) begin to flow to the State in 1986. Clearly, the longer the State has to wait for the revenue stream to begin, the less valuable that income stream becomes. Thus under the litigation option it makes a difference whether the decision maker believes a final decision (FERC plus all appeals) will come in 3 years,

It is worth noting that, while TAPS faces no competition Judge Kane observed that its initial construction was surrounded by an aura of risk.

Table 3 shows the impact of a change from an 8% rate of return on equity to an 11.5% rate of return on equity.

Table 3

8% Return on Equity

$ 1985 (000,000)

Nov. 14

	GAIN TSM VS CURRENT PROJECTION			GAIN WILLIAMS VS CURRENT PROJECTION			GAIN DOC VS CURRENT PROJECTION		
	(1)	(2)	(3)	(4)	(5)	(6)	(7)	(8)	(9)
DISCOUNT RATE	REFUNDS	CASH FLOW	TOTAL	REFUNDS	CASH FLOW	TOTAL	REFUNDS	CASH FLOW	TOTAL
0.0%	209	1225	1434	3963	-1010	2953	4539	400	4939
2.0%	209	1136	1345	3450	-672	2778	3951	372	4323
4.0%	209	1046	1255	3012	-452	2560	3449	334	3783
6.0%	209	962	1171	2636	-307	2329	3019	295	3314
8.0%	209	885	1094	2313	-210	2103	2648	256	2904
10.0%	209	815	1024	2034	-145	1889	2329	222	2551
12.0%	209	753	962	1793	-100	1693	2053	191	2244

11.5% Return on Equity

$ 1985 (000,000)

	GAIN TSM VS CURRENT PROJECTION			GAIN WILLIAMS VS CURRENT PROJECTION			GAIN DOC VS CURRENT PROJECTION		
	(10)	(11)	(12)	(13)	(14)	(15)	(16)	(17)	(18)
DISCOUNT RATE	REFUNDS	CASH FLOW	TOTAL	REFUNDS	CASH FLOW	TOTAL	REFUNDS	CASH FLOW	TOTAL
0.0%	209	1225	1434	2593	-1496	1097	3570	242	3812
2.0%	209	1136	1345	2257	-1047	1210	3108	248	3356
4.0%	209	1046	1255	1970	-744	1226	2713	237	2950
6.0%	209	962	1171	1724	-537	1187	2374	216	2590
8.0%	209	885	1094	1513	-394	1119	2083	193	2276
10.0%	209	815	992	1331	-292	1039	1832	170	2002
12.0%	209	753	962	1173	-220	953	1615	149	1764

Note that at a real discount rate of 0 the total revenues remain unchanged (column 6 compared with 15 and 9 compared with 18). However, once a real discount rate is applied the value of monies received farther in the future begins to fall. Thus if the decisionmaker believes a quick decision will be forthcoming the litigation alternative is relatively more attractive than if the decisionmaker expects a litigated outcome to take a long time.

2.3 Return on Equity

The Williams II decision discussion on rate of return is quoted in its entirety below:

> "The Commission has concluded that the equity rate of return should be determined on a case-specific basis with reference to the risks and corresponding cost of capital associated with the oil pipeline whose rates are in issue.[48/] Of course, one factor which may be included in any risk analysis is the competition faced by the pipeline.[49/] Any pipeline may try to prove that it is entitled to additional compensation to reflect increased risk or other non-cost factors such as incentives to investment.[50/] This endeavor will yield a nominal rate of return on equity which will then be translated into a real rate by the extraction of inflation pursuant to an index determined in the particular case.[51/] The Commission observed again that rate base and rate of return must "operate together to produce a just and reasonable rate," consequently, the Commission will pay particular attention to the operation of the two elements together in each case.
>
> 48/ The Commission expects the cost of equity capital for oil pipelines will be determined by the use of either or both of the market-oriented or comparable earnings standards. Both focus on investor expectations and requirements with respect to earnings.
>
> 49/ See Farmers at 1508 n.50.
>
> 50/ See id. at 1495 n. 27, 1503 and 1530.
>
> 51/ Moreover, on a case-specific basis, a pipeline will be permitted to argue that its parent company is entitled to compensation for any guarantees of the pipeline's debt. Id. at 1521."

2.5 Debt/Equity Ratio

The debt/equity ratio makes a difference because the treatment of debt and equity differs in rate making methodologies. In Williams II FERC ruled "...that a pipeline which has issued no long-term debt or which issues long term debt to its parent or which issues long term debt guaranteed by its parent to outside investors should use its parent's actual capital structure"[3/] (emphasis added). This seems to imply that FERC has ruled on the appropriate debt/equity ratio for use by oil pipelines. However, clearly this can be changed on appeal and equally clearly the State may still argue for a more favorable (to the State) outcome. Since TAPS was built with 90% debt financing there is potentially a lot at stake in this argument.