

ALASKA LEGISLATURE COMMITTEE FILES, 2003-2004 80/2

10930 HOUSE LABOR & COMMERCE ()

this legislation currently pending, will not overturn any existing orders of the RCA relating to the existing tariff agreement, nor will it ratify that tariff agreement. But going forward into the future it's important, in a new tariff agreement, that we have the level of durability that I indicated and that it not be undone.

To continue, Second – Reconfiguration of TAPS: As you know, TAPS has served this State well for almost three decades. The pipeline is sound, and we are looking forward to the next 30 years of operation. But in order to be as efficient and competitive as possible, we need to invest hundreds of millions of dollars for new pump station technology over the next several years. These new investments will provide lower tariffs as early as 2005. House Bill 277 facilitates this effort by reducing duplicative agency oversight and enabling a more efficient and timely investment. Currently, the flawed APA language causes the Regulatory Commission of Alaska to exert its authority over areas already administered by the Dept. of Natural Resources and other Joint Pipeline Office agencies.

Third – An Alaska Natural Gas Pipeline project. For many months you have heard that this very big, very expensive, and very risky project -- that there are a number of things required as prerequisites for it to move ahead.

- * Capital cost reduction through new technologies;
- * US federal enabling legislation and fiscal incentives to lower risk;
- * Continued progress toward an efficient Canadian regulatory environment;
- and
- * **A CLEAR AND CERTAIN FISCAL AND REGULATORY REGIME
IN ALASKA.**

This last point is the single most important thing Alaska can do to support the delivery of an Alaska gas pipeline. This Legislature and the Administration delivered an important part of this when it passed the Stranded Gas Act several

weeks ago, which provides a framework for fiscal negotiations between project sponsors and the State.

That said, I will now move to some specifics on the Resources Committee Substitute for HB 277, which BP, like ConocoPhillips, generally supports.

At sections 1 and 2 the bill clarifies the role of the DNR and the RCA with regard to the State's oil and gas leases and right-of-way leases. It makes clear the RCA's jurisdiction is appropriately focused on intrastate issues.

At section 3, it also delineates the RCA's authority regarding DR&R issues. Earlier this evening we heard Chair Harbour comment on concern that, if this legislation is put in place, that the State could not consider DR&R collections that are achieved through interstate tariffs. I would refer the committee back to Assistant AG Jan Levy's testimony earlier today in this regard where Jan commented that, if the RCA should go down this road of considering interstate DR&R collections, it could put itself in a place where, let's assume that interstate DR&R collections are viewed as insufficient by the RCA. Then, if (..?) the RCA to that, well, we could increase the DR&R collections in the intra-state. If that's done what you have effected is an intra-state subsidy of inter-state oil movement. It's a path, from a policy standpoint, that should not be gone down. Again, I would refer you back to Jan Levy's comments of earlier this afternoon on this point. I would also add to Jan's comments on governmental oversight of the DR&R, that, in addition to the DNR, the Federal Bureau of Land Management will oversee DR&R. Under TAPS agreements with the Federal Bureau of Land Management, the BLM will oversee DR&R for the entirety of TAPS -- federal lands, state lands, and private lands -- as a matter of contract. In addition, as Jan referred to, you have Environmental Protection Agency oversight and Alaska

Dept. of Environmental Conservation oversight with regard to their environmental remit. There is a large amount of regulatory oversight of DR&R.

With regard to Rep. Guttenberg's question of Ms. Levy about financial security to cover the DR&R obligation, I would again add to Jan's comments that there are guarantees in place from each of the TAPS owners to, both to the BLM and to DNR, to cover the DR&R obligations and, under the recently renewed federal right-of-way, the federal government will be reviewing – I should say auditing - the financial wherewithal of those guarantors at least every three years over the next 30 year term. And, again, I would remind you that the federal right-of-way covers DR&R as to the entirety of the line.

At the same time as we generally support the substitute from the Administration, we do have some concerns with the legislation. We would like more around what it means to “permanently reduce capacity” as is referred to at Section 5.

Also, the bill has some ambiguous language that we would like to see corrected. I would refer the committee to Sec. 4. Frankly, it's the same language that was the subject of a lot of discussion, which pertains to allocation of costs between inter- or intra-state service. This is something that this committee grappled with for some time this afternoon and, frankly, we've grappled with it too. The explanation that Ms. Levy gave, I thought, was quite good. But I think the language could use a bit of work.

Finally, the interest rate on refunds at Sec. 6 should be the same rate that is applicable to judgments. There is the same thing that you've just heard from ConocoPhillips. There's no reason to differentiate an interest rate that would be ascribed to a refund from an interest rate that would be due on a judgment. There's also another technical point: The way the substitute legislation would

provide for an interest rate is by replicating, within the statute, interest language and I think that is not a good idea. I think the better way to do it is by referring to the statute elsewhere in the law outside of the Alaska Pipeline Act, which provides for interest; by doing that, we will have the use of case law behind that statute in an Alaska Pipeline Act context. Otherwise, if you replicate interest rate provisions directly in the statute, you're going to cut yourself – the legislature and those who are regulated under the Alaska Pipeline Act could be cut off from that authority.

That's all I have to say and thank you for the opportunity to appear before this committee and I will remain here through the proceedings this evening.

[Chair asks Mr. Decker to submit his testimony in writing (agreed) and again asks for questions to be held until all testimony has been given. Announces next to testify.]

Mark Hanley: [Questions chair as to those potentially waiting on-line to talk; offers to go later if need be but is told to continue]. For the record, Mr. Chair, my name is Mark Hanley. I'm the public affairs manager in Alaska for Anadarko Petroleum which is a large independent which has a lot of acreage and one of the other bills that you have might help us but ... I'll leave that for now.

This may be a little longer than I had originally planned based on some information I got from previous testimony but I will be brief and I will be available Friday to answer any questions. I appreciate the opportunity to testify today.

The big issue for Anadarko is reasonable rates. We really want to have reasonable rates. The cost of shipping oil down a pipeline impacts the economics of our prospects. We want to look for oil. The more it costs us, the less economic our

prospects are. So, I just want to make that clear as one of our key points. We see the RCA as the agency that guarantees that shippers and ratepayers have reasonable rates, so we look at them as someone who protects that ability and evaluates the issues that are out there to ensure those rates are reasonable.

I would also say that access is a very big issue for us. Some of you have heard me talk about access to a gas line that may be built. I would say access even to an oil line is very important to us. In many respects, if you look through the statutes, the RCA has the authority and the responsibility to make interconnection policies and decisions on those kind of issues so for us, again, as a non-pipeline owner, getting access to those facilities is very important and the RCA has an important role to play.

As you heard earlier, we are partners with some of the companies who've testified here and, in fact, I would say ConocoPhillips is a very good partner of ours. We're very happy about their generally very aggressive approach to exploration, which matches ours. We are exploring with them in NPRA and so I would say, that is absolutely true; we think we are good partners. But there comes a difference -- we're partners in exploration, we are not partners in the pipeline. We do have part of the Alpine but largely the Trans-Alaska Pipeline is no -- we're not an owner of that. So in this case, we're different from them. We do not own the pipeline. We do not have the ability, for instance, if the costs are shifted to the transportation sector in excess of rates, we don't get to recoup it through increased transportation recoveries, as would our partner ConocoPhillips.

In fact, as I pointed out in other testimony, there's a bit of an incentive to have excessive transportation rates. Because, the way the State's royalty is paid -- is based on -- the way you get back to wellhead is to deduct those transportation costs. So essentially, in rough terms, out of every dollar in transportation costs that

is above just and reasonable, the state is paying 25-cents on the dollar. So not only can someone make an immediate 25% profit on excessive rates, but they get a competitive advantage over companies that can't collect those monies through those transportation costs because we're not pipeline owners.

In December of last year the RCA ruled that transportation costs on the Trans-Alaska Pipeline for intrastate rates were excessive – 57 to 70% too high; a dollar to a dollar-fifty per barrel too high. Those kinds of dollars make a significant impact to companies like us. If we're paying those rates and they're too high, it really affects the economics of our field. So, for us, it is critical that the RCA have the ability to review those rates and determine if they're just and reasonable.

There were comments made earlier about how this bill will create an atmosphere where companies big and small will have certainty. We're one of the other companies. We're a new company and I'm telling you, we have very much concern about this bill. We think it creates uncertainty. In fact, I would almost like to mimic Mr. Harbour's comments. You heard him go through the testimony. I mean, this is a new person that you've recently confirmed to the RCA. He represents the RCA and understands what they do. And, as you heard him say, this may create fiscal certainty for some at the expense of others. So it isn't just our view – it's being professed by others like Mr. Harbour. And I'd say we would go right down the line on a lot of his comments about how this un-streamlines the process; how it does create fiscal certainty for some at the expense of others; and I would suggest that may be us. We're on the bottom end of this. It doesn't create fiscal certainty for us – I think it creates fiscal uncertainty. Anything that removes the RCA's authority to review those rates is a concern to us, because we see them as protecting not only ratepayers and the State, but shippers like us.

Before I go into -- just a couple of comments and I'm going to leave the specifics -- and I know Mr. Chairman you had suggested that Mr. Brenna who is also working for Anadarko could go section by section and I'm not going to do that, but I want to go hit a couple of key points. One thing I wasn't going to talk to but I think I will is the suggestion that a portion of the original bill was taken out in the Oil and Gas version and is still out in this particular version of the Resources Committee talking about fiscal certainty. I think that particular section was presented as creating fiscal certainty and not creating the ability to overturn a deal that was created...

[Chair interrupts Mr. Hanley to say that a Mr. Burden is on-line from a cell phone at an airport and wishing to testify. Hanley offers to continue his testimony later.]

Mr. Burdin: I'm Gene Burdin, senior vice president for government relations for Tesoro Corporation and I'm happy to have the opportunity just to comment on a couple of points. Tesoro, Williams, and Anadarko oppose this bill and have made that known throughout the process. It's interesting when you take a look at common denominators in Alaska's development strategy and interest in developing the State, its infrastructure, creating jobs, and a balanced future for the State, that a couple of things always come out. This has come out in economic reports and reviews for years. One is that Alaska really needs to stimulate value-added businesses, and two, we need to attract independent exploration and production activities to pick up production in fields that may no longer be of interest to the larger oil companies. It's ironic that the two largest, successful illustrations of value-added who probably, combined, employ over 1200 Alaskans, continue to attempt to convey our serious concerns about this legislation; about what it does to diminish the independent authority of the RCA; what it does to raise the prospect of tariffs and issues vital to our businesses and to the State of Alaska; and tender those over to the State and owners of TAPS to come up with

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STATE OF ALASKA

THE REGULATORY COMMISSION OF ALASKA

Before Commissioners:

G. Nanette Thompson, Chair
Bernie Smith
Patricia M. DeMarco
Will Abbott
James S. Strandberg

In the Matter of the Correct Calculation and Use of Acceptable Input Data To Calculate the 1997, 1998, 1999, 2000, 2001, and 2002 Tariff Rates for the Intrastate Transportation of Petroleum over the Trans Alaska Pipeline System Filed by AMERADA HESS PIPELINE CORPORATION; ARCO TRANSPORTATION ALASKA, INC.; BP PIPELINES (ALASKA) INC.; EXXON PIPELINE COMPANY; MOBIL ALASKA PIPELINE COMPANY; EXXONMOBIL PIPELINE COMPANY; PHILLIPS ALASKA PIPELINE CORPORATION; UNOCAL PIPELINE COMPANY; PHILLIPS TRANSPORTATION ALASKA, INC.; and WILLIAMS ALASKA PIPELINE COMPANY, L.L.C., and the Protest by TESORO ALASKA PETROLEUM COMPANY of the 1997 and 1999 Tariff Rates

P-97-4

ORDER NO. 151

In the Matter of the Petition of TESORO ALASKA PETROLEUM COMPANY for an Investigation into the Amounts Collected by AMERADA HESS PIPELINE CORPORATION; ARCO TRANSPORTATION ALASKA, INC.; BP PIPELINES (ALASKA) INC.; EXXON PIPELINE COMPANY; MOBIL ALASKA PIPELINE COMPANY; PHILLIPS ALASKA PIPELINE CORPORATION; and UNOCAL PIPELINE COMPANY for Dismantling, Removal, and Restoration of the Trans Alaska Pipeline System

P-97-7

ORDER NO. 110

**ORDER REJECTING 1997, 1998, 1999 AND 2000 FILED TAPS RATES:
SETTING JUST AND REASONABLE RATES; REQUIRING REFUNDS
AND FILINGS; AND OUTLINING PHASE II ISSUES**

BY THE COMMISSION:

Regulatory Commission of Alaska
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1 development of the state's oil resources and insuring that Alaskans have the opportunity
2 to benefit from development of their natural resources.⁷

3 After prolonged litigation about the appropriate rates for shipments on the
4 TAPS, the TAPS Carriers signed interstate and intrastate settlements with the State of
5 Alaska. Our predecessor agency⁸ accepted⁹ the Intrastate Settlement¹⁰ (the
6 Settlement) because all affected parties supported it; the Commission did not decide
7 that the Settlement produced just and reasonable rates. Since 1986, the TAPS Carriers
8 calculated intrastate rates using the TAPS Settlement Methodology (TSM).¹¹ The
9 Alaska Public Utilities Commission (APUC) deferred the issue of whether TSM
10 produced just and reasonable rates until a shipper protested the rates. The 1997
11 Tesoro and Williams protests put that issue before us for the first time in this pipeline's
12 twenty-year history. Under the Alaska Pipeline Act, the Carriers have the burden of
13 proving that the rates calculated and filed using TSM are just and reasonable.

14 The Carriers did not support their rates with evidence showing that they
15 reflect the costs of providing service. Instead, they assert that because the rates set by
16 TSM are below a benchmark, the filed rates are just and reasonable. The Carriers do

17
18 ⁷Alaska Const. art. VIII. The Carriers argue that a decrease in intrastate rates
19 will result in an increase in interstate rates and the effect on the State of Alaska will be a
20 net loss. We note that the TSM Settlement provision allowing Carriers to collect their
21 revenue requirement from the combination of interstate and intrastate rates affords
22 Carriers the *option* of raising interstate rates if intrastate rates decrease. The TSM
23 Settlement agreement does not require Carriers to recover costs disallowed as unjust
24 and unreasonable by state regulators from the federal jurisdiction.

25 ⁸The Regulatory Commission of Alaska assumed the duties of the Alaska Public
26 Utilities Commission on July 1, 1999. Ch. 25 SLA 1999.

27 ⁹*Re Amerada Hess Pipeline Corp.*, 13 APUC 448 (1993).

28 ¹⁰BWF-2, *Intrastate Settlement Agreement* (the Settlement). Endnote 1
29 describes record designations. A review of TAPS litigation history can be found at
30 Endnote 2.

31 ¹¹See Endnote 3 for a detailed description of TSM.

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STATE OF ALASKA
REGULATORY COMMISSION OF ALASKA

Brena, Bell & Clarkson, P.C.

Before Commissioners:

G. Nanette Thompson, Chair
Will Abbott
Dave Harbour
Bernie Smith
James S. Strandberg

In the Matter of the Correct Calculation and Use
of Acceptable Input Data to Calculate the 1997,
1998, 1999, 2000 and 2001 Tariff Rates for the Intrastate
Transportation of Petroleum Over the Trans Alaska
Pipeline System Filed by AMERADA HESS PIPELINE
CORPORATION; ARCO TRANSPORTATION
ALASKA, INC.; BP PIPELINES (ALASKA) INC.;
EXXON PIPELINE COMPANY; MOBIL
ALASKA PIPELINE COMPANY; PHILLIPS
ALASKA PIPELINE CORPORATION; and
UNOCAL PIPELINE COMPANY; PHILLIPS
TRANSPORTATION ALASKA, INC.; and
WILLIAMS ALASKA PIPELINE COMPANY, L.L.C.,
and the Protest by TESORO ALASKA PETROLEUM
COMPANY of the 1997 and 1999 Tariff Rates

P-97-4

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In the Matter of the Petition of TESORO
ALASKA PETROLEUM COMPANY for an
Investigation into the Amounts Collected by
AMERADA HESS PIPELINE CORPORATION;
ARCO TRANSPORTATION ALASKA, INC.;
BP PIPELINES (ALASKA) INC.; EXXON
PIPELINE COMPANY; MOBIL ALASKA
PIPELINE COMPANY; PHILLIPS ALASKA
PIPELINE CORPORATION; and UNOCAL
PIPELINE COMPANY for Dismantling,
Removal, and Restoration of the Trans Alaska
Pipeline System

P-97-7

CALENDAR:
OTHER:

INDICATED TAPS CARRIERS' INITIAL BRIEF ON INTEREST RATE

APP. 4-E
2/19

INTRODUCTION

As directed by Order No. 154,¹ the Indicated TAPS Carriers² hereby file their initial brief on "what rate of interest that should be awarded for refunds owing for 1997-2000,"³ that the Commission ordered to be calculated pursuant to Order No. 151,⁴ assuming that the refund award is upheld following judicial review. As discussed below, the applicable rate of interest is the statutory rate applicable to interest on judgments and decrees for the payment of money.

¹ Order Setting Procedural Schedule for Briefing on Interest Due on Refunds and Requiring Filing, P-97-4 (154)/P-97-7 (113), January 29, 2003 ("Order No. 154").

² The Indicated TAPS Carriers are Amerada Hess Pipeline Corporation, BP Pipelines (Alaska) Inc., ExxonMobil Pipeline Company, Mobil Alaska Pipeline Company, Phillips Transportation Alaska, Inc., and Unocal Pipeline Company.

³ Order No. 154 at 2. The Commission's Order assumes that the Commission has authority under the Pipeline Act to award interest in this procedural context and accordingly directs the parties to file briefs on "what rate of interest should be awarded . . .". Order No. 154 at 2. The Indicated TAPS Carriers' initial brief proceeds on that assumption and addresses the issue that the Commission has directed the parties to brief. AS 42.06.400(b), which addresses the suspension and adjudication of initial tariffs, is the only provision of the Pipeline Act that expressly confers authority to award interest on refunds. AS 42.06.400(c), which addresses the suspension and adjudication of revised, increased tariffs, contains no similar provision that expressly authorizes the Commission to award interest on refunds. Thus, if the Indicated TAPS Carriers' intrastate rates for 1997-2000 are viewed as revised rates rather than initial rates, there could be a question as to whether interest may be awarded in this procedural context. Therefore, while the Indicated TAPS Carriers address herein "what rate of interest should be awarded for refunds," as directed by Order No. 154, they do not concede that the Commission has statutory authority to award interest in this procedural context.

⁴ See Order P-97-4 (151)/P-97-7 (110) at 161, 167, November 27, 2002.

DISCUSSION

1. If the Commission Has Statutory Authority to Award Interest, the Applicable Rate of Interest on Refunds Is the Rate Applicable to Interest on Judgments and Decrees for the Payment of Money.

The Commission's order to pay refunds was a "judgment or decree for the payment of money" within the meaning of AS 09.30.070(a). That statute states:

Notwithstanding AS 45.45.010, the rate of interest on judgments and decrees for the payment of money, including prejudgment interest, is three percentage points above the 12th Federal Reserve District discount rate in effect on January 2 of the year in which the judgment or decree is entered, except that a judgment or decree founded on a contract in writing, providing for the payment of interest until paid at a specified rate not exceeding the legal rate of interest for that type of contract, bears interest at the rate specified in the contract if the interest rate is set out in the judgment or decree.

(Emphasis added). This statute was amended in 1997 and is applicable to all judgments and decrees for the payment of money, "notwithstanding AS 45.45.010."

Concerning interest on refunds under the Pipeline Act, AS 42.06.400(b) states, in relevant part,

The amount, if any, by which the permanent tariff exceeds the temporary tariff, shall be paid by the shipper to the carrier, or, if the temporary tariff exceeds the permanent tariff, the difference shall be paid by the carrier to the shipper, and in either event such payment shall be made with interest calculated on the balance due at the end of each calendar month at the legal rate, as defined in AS 45.45.010(a).

(Emphasis added). Thus, the Pipeline Act does not prescribe an interest rate directly, but rather makes reference to AS 45.45.010(a).⁵ However, the language referring to AS 45.45.010(a) was incorporated by statutory amendment in 1978, nineteen years prior to the statutory amendment to AS 09.30.070(a). See § 1, ch. 22 SLA 1978. The more recent amendment to AS 09.30.070(a) expressly supersedes the 1978 reference to AS 45.45.010(a) ("Notwithstanding AS 45.45.010(a) ...").

The reference to AS 45.45.010(a) in AS 42.06.400(b) must be considered within a proper historical context. It is important to note that during the historical period when AS 45.45.010(a) applied to prejudgment interest, the legislature maintained continuity between the rates of interest provided for by AS 09.30.070(a) and AS 45.45.010(a). In 1978, when the legislature provided for interest on refunds by including reference in the Pipeline Act to AS 45.45.010(a), both that statute and AS 09.30.070(a) specified the same rate of interest. This is readily seen by a comparison of the two statutes as they appeared in 1978. See Appendix A (1976 version of AS 45.45.010(a), which remained in effect until 1980) and Appendix B (1969 version of AS 09.30.070(a), which remained in effect until 1980) (both specifying an interest rate of 8 percent per year). In 1980, both statutes were amended to provide for an interest rate of 10.5 percent per year.⁶ See Appendix C (chapter 107 SLA 1980, amending both AS 45.45.010(a) and

⁵ AS 45.45.010(a) states, "[t]he rate of interest in the state is 10.5 percent a year and no more on money after it is due except as provided in (b) of this section." AS 45.45.010(b) addresses the permissible maximum rate of interest on contracts or loan commitments of \$25,000 or less, and is not relevant to this discussion.

⁶ In 1980, when the legislature raised the interest rate to 10.5 percent in both statutes, interest rates were quite high. In 1980, the prime rate was more than 15 percent and in 1981 it was nearly 19 percent, according to Federal Reserve System data. See Appendix E. Interest rates in 1980 and 1981 were higher than at any other time during the past fifty years. Id.

AS 09.30.070(a) to provide for a rate of 10.5 percent per year in both statutes). Thus, at all times since 1978 the legislature has conformed the applicable rate of interest on judgments and decrees for the payment of money to the rate applicable to refunds under the Pipeline Act. From 1978 to 1997, that was accomplished by providing for the same interest rate in both AS 09.30.070(a) and AS 45.45.010(a). Beginning in 1997, it was accomplished by stating that the annual rate set forth in AS 09.30.070(a) would thereafter apply to judgments and decrees for the payment of money, "notwithstanding AS 45.45.010," and by making clear that AS 09.30.070(a) applies to prejudgment as well as postjudgment interest.⁷

The legislative change to AS 09.30.070(a), providing for an annually fluctuating rate of interest tied to the prevailing rate in the 12th Federal Reserve District, was a sensible recognition of the reality that interest rates fluctuate significantly over time. The purpose of Alaska statutes and case law providing for prejudgment and post-judgment interest has always been to compensate fairly the party who has been deprived of the use of money. See McConkey v. Hart, 930 P.2d 402, 405 (Alaska 1996) (compensatory purpose of prejudgment interest); Farnsworth v. Steiner, 638 P.2d 181, 185 (Alaska 1981) (compensatory purpose of post-judgment interest). However, the purpose of permitting the recovery of interest has never been

⁷ In 1978, when the legislature amended AS 42.06.400(b) to incorporate by reference AS 45.45.010(a), AS 09.30.070(a) applied only to post-judgment interest, and AS 45.45.010(a) applied to prejudgment interest. See State v. Phillips, 470 P.2d 226, 272-73 (Alaska 1970) (applying AS 45.45.010 to prejudgment interest); City and Borough of Juneau v. Commercial Union Ins. Co., 598 P.2d 957, 958 (Alaska 1979) ("the rate of prejudgment interest in Alaska is determined by AS 45.45.010(a).") (footnote omitted, citing State v. Phillips, *supra*). This distinction was unimportant at that time, however, because the interest rates specified in those two statutory provisions were the same. The clear intent of the 1997 statutory revision was to apply a market-determined interest rate to both pre- and post-judgment interest under AS 09.30.070(a).

**UNITED STATES OF AMERICA
FEDERAL ENERGY REGULATORY COMMISSION**

TRANS ALASKA PIPELINE SYSTEM

Docket No. OR 78-1

BP PIPELINES INC.

Docket No. IS83-29-000

**EXPLANATORY STATEMENT OF THE STATE OF ALASKA
AND THE UNITED STATES DEPARTMENT OF JUSTICE
IN SUPPORT OF SETTLEMENT OFFER**

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UNITED STATES OF AMERICA
FEDERAL ENERGY REGULATORY COMMISSION

TRANS ALASKA PIPELINE SYSTEM	}	Docket No. OR78-1
BP PIPELINES INC.	}	Docket No. IS83-29-000

EXPLANATORY STATEMENT OF THE STATE OF ALASKA
AND THE UNITED STATES DEPARTMENT OF JUSTICE
IN SUPPORT OF SETTLEMENT OFFER

The State of Alaska ("Alaska"), the United States Department of Justice ("DOJ"), ARCO Pipe Line Company ("ARCO"), and BP Pipelines Inc. ("BP") have jointly filed a Stipulation, two Settlement Agreements, and a Proposed Order, which together constitute a settlement offer in the above-captioned proceedings. In accordance with Rule 602 of the FERC Rules of Practice and Procedure, Alaska and DOJ hereby submit this explanatory statement in support of the Settlement Offer. ARCO and BP will file separate statements in support of the settlement.

INTRODUCTION

ARCO and BP have entered into an Agreement with Alaska to settle the long-standing litigation before the Federal Energy Regulatory Commission ("Commission") concerning the tariffs filed by the owners of the Trans Alaska Pipeline System ("TAPS") for the interstate transportation

of petroleum.^{1/} DOJ has stipulated to the entry of an order by the Commission adopting that Agreement as the complete and final resolution of the protests against the tariffs of the settling carriers.^{2/} The Agreement embodies a cost-based methodology -- the "TAPS Settlement Methodology" or "TSM" -- that serves as the basis for calculating the tariffs and the refund obligations of the TAPS owners through 1985, and provides a mechanism for determining the maximum tariffs that the TAPS owners may charge over the stipulated life of the pipeline.

The Settlement Agreement is the product of months of intense negotiation among the parties and represents a fair and reasonable compromise of their respective litigation positions. The parties entered into the negotiations with varying objectives. The agreement that emerged from these negotiations is designed to achieve,

1/ See Settlement Agreement signed by the State of Alaska and ARCO Pipe Line Company dated February 8, 1985, Settlement Agreement signed by State and BP Pipelines Inc. dated April 24, 1985, and Technical Amendments to the ARCO and BPP Settlement Agreements dated April 29, 1985 (collectively, "Settlement Agreement"), each of which are attached to the Stipulation signed by State, DOJ, ARCO and BP dated April 30, 1985. Hereafter, all references to "Sections" are references to Sections in the ARCO Settlement Agreement.

2/ Because the Agreement between Alaska, ARCO and BP is intended to survive any possible extinction of FERC jurisdiction over TAPS, i.e., to be separately enforceable as a contract, DOJ did not become a direct signatory to the Agreement. However, by virtue of the Stipulation, DOJ regards itself as a party to the Agreement for purposes of settling the TAPS proceeding pending before the Commission, Docket No. OR78-1, and BP Pipelines Inc., Docket No. IS83-29-000, the separate proceeding covering BP's existing TAPS tariff.

inter alia, the following goals: the establishment of a cost-based system of ratemaking that will provide a rational and predictable basis for the determination of TAPS rates; overall rate levels that are acceptable for settlement purposes; a declining tariff profile over the life of TAPS to encourage exploration and development of North Slope petroleum resources;^{3/} recognition of Alaska's position on the various Phase II issues; the recovery of the TAPS owners' out-of-pocket costs; compensation for the owners' capital investment; and, an incentive to operate TAPS after its initial investment has been substantially depreciated.

While the elements of the TSM are drawn from general ratemaking principles, the methodology was tailored for TAPS and to accommodate the objectives of the parties. Indeed, the elements of the TSM were negotiated as a package, and, therefore, the modification of one aspect of the methodology generally required the modification of a number of other interrelated aspects of the methodology. Consequently, no single element of the TSM should be evaluated independently. To do so, as the Commission has recognized, "would likely nullify [an] Agreement which was negotiated as a package." Southern Natural Gas Company, 27 FERC (CCH) ¶ 61,477, at 61,921 (June 28, 1984).

^{3/} For purposes of this Memorandum, North Slope refers to that area north of the Brooks Range, including the offshore Beaufort Sea, that contains petroleum resources that are likely to be shipped through TAPS if produced.

It bears emphasis that the overall settlement in general, and the TSM in particular, have been crafted specifically for TAPS and the objectives of the parties. It is neither the intent nor the position of the parties to the settlement that the settlement methodology should be applied to any petroleum pipeline other than TAPS.^{4/}

The purpose of this statement is to explain the various elements of the TAPS Settlement Agreement in the context in which they were negotiated -- not as independent terms, but as parts of an integrated whole. Section I summarizes the primary terms of the Settlement Agreement. Section II gives a brief history of TAPS and the proceedings before the Commission. Section III provides a detailed description of the settlement and the methodology it employs. Section IV describes the information provisions of the Agreement. Finally, Section V provides a preliminary overview of some of the reasons why Alaska and DOJ believe that the Settlement Offer is in the public interest and consistent with the Commission's statutory mandate.^{5/}

^{4/} See Introduction to the Settlement Agreement.

^{5/} Alaska and DOJ believe that the current administrative record in the TAPS litigation provides an adequate basis for the Commission to approve the Settlement Offer under its Rules of Practice and Procedure. Nevertheless, if it is deemed necessary, the record will be supplemented.

House Oil & Gas Committee Hearing

on HB 277

Thursday, May 1, 2003

Chairman Vic Kohring (Chair) calls meeting to order 3:26 pm. Introduces members Holm and Fate (awaiting other members).

I'd like to call the sponsor of HB 277, which is the small innocuous bill we have before us today. And I say that facetiously – good to have you here Representative Dahlstrom.

Sponsor Rep. Nancy Dahlstrom: Thank you Mr. Speaker. Mr. Chair; Members of the Committee. I'd like to start by thanking the O&G Committee for your indulgence over the last 7 days I've asked the stakeholders to meet with me on the issues that are addressed in HB 277. That has taken place and I believe we have shaped the legislation into something that we can now get down to business with and to work with for an acceptable end to all parties. That is my goal. I have drafted an amendment that is offered this afternoon to remove some of the sections of this bill that were more contentious. I believe you have copies of that amendment in front of you. *[It was not; brief pause to put before members]*.

CHAIR: Representative, why don't you continue with your presentation and then we'll get the amendment after that.

Dahlstrom: Thank you. As you can see the amendment basically removes sections 5 and 9 and I'd like to briefly go through those. I have at the table with me Rex Shattuck who is my chief of staff and he's available to answer any other questions as he's been working diligently on this with me.

Page 1, lines 5-8 would be deleted, and the words to be deleted would be "allowing the commission to accept rates set in conformity with the settlement agreement between the State and with one or more pipeline carriers and to enforce the terms of a settlement agreement in regard to interstate rates; and providing for an effective date".

On Page 4, lines 11-24, delete the entire Sec. 5 which reads, "Rates agreed to or rates set in conformity with a rate methodology agreed to by a pipeline carrier, or by any two or more

pipeline carriers jointly, in a settlement agreement with the State are considered to be in the public interest and are conclusively considered just and reasonable under (a) of this section and not unduly discriminatory under AS 42.06.380(a) during the term of the settlement agreement. However, the commission is not prohibited from hearing a protest or petition by the State regarding an intrastate rate charged by a pipeline carrier, or by any two or more pipeline carriers jointly, to the extent that the protest or petition is based on an allegation that the rate does not conform to the terms of a settlement agreement entered into by the carrier or carriers and the State with respect to the intrastate rate. In a hearing under this subsection, the commission is limited to determining whether the challenged intrastate rate conforms to the agreed-upon rate or rate methodology set out in the settlement agreement". You'll see line 10 on the amendment says to renumber subsequent bill sections accordingly.

Page 6, line 7 of the bill would delete, "Sections 1-7 and 9 of this Act apply" and insert "this Act applies". And then on page 6, line 9 delete "of secs. 1-7 and 9"; page 6, lines 10-19 delete all material which is "The uncodified law of the State of Alaska is amended by adding a new section to read: RETROACTIVITY. Section 6 of this Act is retroactive to August 7, 1997. Sec. 10. The uncodified law of the State of Alaska is amended by adding a new section to read: CONDITIONAL EFFECT OF SECTION 5. AS 42.06.370(d), enacted by sec. 5 of this Act, takes effect only if Executive Order No. 111 takes effect. Sec. 11. If, under sec. 10 of this Act, sec. 5 of this Act takes effect, it takes effect immediately under AS 01.10.070(c) or on the effective date of Executive Order No. 111, whichever is later."

Rep. Fate: Excuse me, are you just reading from that which is deleted.

Dahlstrom: That is correct. That is the summary of the amendment that I wish to offer to you at this time.

CHAIR: I think what might be prudent as this bill obviously opened a can of worms, got a lot of interest going, and I think it may have generated a whole pot of comments through the public hearing process and to kind of speed up that process, not that I would want anybody not to speak – you're obviously welcome – but it might help to adopt these and then we'd know exactly where we stand and then go with the public hearing from there.

Dahlstrom: I would agree with you Mr. Chairman.

Rep. Fate: Mr. Chairman, I move Amendment #1.

CHAIR: We have a motion to move Amendment #1. Is there any objection? Any discussion? Seeing no objection, Amendment #1 has passed. Do you have any further comments Rep. Dahlstrom before we go into our public hearing?

Dahlstrom: I don't. I'll stay for questions but will leave it to the experts for their testimony.

CHAIR: Thank you. OK we'll open up the public hearing and go to the first person on my list here and that would be Al Bolea. Al.

Al Bolea: Thank you Mr. Chairman for the opportunity to testify today on behalf of this very important bill and for the record my name is Al Bolea and I'm the president of BP Pipelines and I'm also the performance unit leader for BP's mid-stream assets in Alaska which includes all of our interests in the trans-Alaska pipeline and the ships that carry Alaska's crude to West Coast markets.

I would also like to thank you and the other committee members for making the time to meet with me during the past couple of weeks to discuss this bill.

As you know, BP strongly supports HB 277, and encourages this committee to facilitate its movement through the legislative process.

We support this bill because it helps to correct many serious flaws that currently exist in the Alaska Pipeline Act. These flaws create uncertainty for current and potential future investments, and must be rectified to help ensure a healthy oil and gas industry in Alaska.

In fact, these flaws are so significant they need to be addressed to ensure investment in risky projects like the Alaska Natural Gas Pipeline.

While I will not cover all of the deficiencies nor all of the recommended changes to the APA, I would like to touch on several key points.

The current language in the Pipeline Act creates uncertainty over jurisdictional issues, creating unnecessary overlap between regulatory agencies. This has allowed special interests to push the Regulatory Commission of Alaska (RCA) onto a path of what I call, "jurisdictional creep" into areas for which other agencies are responsible. This "creep" has created an awkward situation, it seems to us, in which the RCA is creating public policy by undoing the actions of other agencies that are implementing their regulatory responsibilities. We had always operated on the assumption that the Legislature and Administration create public policy, not the regulators.

HB 277 goes a long way toward fixing such problems in that it:

- 1st – It clarifies that RCA jurisdiction is limited to intrastate transportation, with the FERC having jurisdiction over all interstate matters, including interstate dismantlement, removal, and restoration (DR&R) expenditures.
- 2nd – It eliminates the RCA's jurisdiction over State right-of-way leases and oil and gas leases and clarifies their authority over DR&R. DNR has jurisdiction in these matters, and serves to protect public interest. If I understand the amendment that was just offered and adopted, sec. 5 adjustments that were originally proposed were removed so I will remove my comments on sec. 5 and step into the last couple of changes that are being proposed. The third of which is to clarify that the interest rate applicable to RCA-ordered refunds is consistent with the main body of Alaska law, and not the punitive rate of 10.5% being sought by Tesoro and Williams.
- Finally, the Act, as amended, clarifies that the RCA has jurisdiction over intra-State transportation services; other regulatory bodies have jurisdiction over physical components of a pipeline system.

Together, the amended Act helps to reduce uncertainty in a way that will encourage, rather than reduce investment in Alaska. You will, no doubt, hear negative testimony that encourages you to maintain the existing language. Those special interest voices are not the ones spending hundreds of millions of dollars on capital projects every year. But BP is. \$750 million this year on capital alone.

They are not the largest private industry investor in Alaska. BP is.

We invest in Alaska because it makes sense for our business, and it has been done in a way that has had mutual benefits for the residents of this State and our shareholders.

In closing my testimony, we believe those mutual benefits can and should continue.

Your support of HB 277 will help the State move forward in a very positive way. It is a bill vital to the future of this State; a bill that is one of the essential ingredients that can support an Alaska Gas pipeline becoming a reality.

Thank you again for allowing me to testify before this committee. I will try my best to answer questions at this time.

Please be aware that because of litigation currently underway on pipeline issues, I have asked our attorney, Jim Decker, to join me in handling any questions.

(Chairman thanks Bolea and invites questions of the committee).

Rep. Crawford: I heard you say that 10-1/2 percent would be punitive and I realize that 10-1/2 percent is not the interest rate of today. How would you suggest we correct that in that these things go back over several years when interest rates were higher? How do we adjust it to make it fair and equitable?

Bolea: Rep. Crawford through the chair: My recommendation is that the APA adopt the same rates that all the other main body of the Alaska legislation adopted in 1997 which is a floating rate and those floating rates are public information.

[No further questions; Chair invites next to testify.]

Mark Hanley: Thank you. For the record my name is Mark Hanley. I represent a special interest called Anadarko Petroleum and I'm the public affairs manager for them here in Alaska. We're one of the world's largest independent exploration companies and we are very interested in the exploration potential in Alaska. We're investing more all the time. We do not invest the kind of dollars yet that BP and others do. We're actually partners with some of the people and actually ConocoPhillips is one of our good partners in exploring for oil and gas in Alaska but at times you

have differences with your partners. Mr. Chairman, with your permission, I would like to read into the record the 486 page RCA decision that was issued last December. (laughter). I'm being facetious Mr. Chairman. It's a complicated decision. It was 486 pages. There were tens of millions of dollars spent on this in 5 years trying to determine what a just and reasonable rate for shipping oil down this pipeline is. And let me just summarize what they found and what the real issue here is. And the real issue is that rates in Alaska are too high – substantially too high. And according to the RCA, the carriers in this State have collected from the shippers almost 10-billion dollars in excess of what is a reasonable rate of return. That allows them to collect their capital investment, their operating costs, and a reasonable rate of return, and on top of that, they've got another 10-billion dollars. That's what this is about – it's a lot of money. And people are trying to protect that money and I can't say as I blame them. On the other hand, companies like ours, if we're forced to pay a dollar or dollar-fifty a barrel too much in transportation costs, it really affects the economics of our projects. Now, companies that are integrated – that own both the exploration side and the transportation side – they can take the profit on either side. And in fact, every dollar in excess of transportation costs above a reasonable rate costs the State 25-cents. They get to deduct their transportation costs before they have to pay royalties and severances. So there is an incentive for companies who are carriers to shift costs to a pipeline. The way we are protected, both in-state refiners, exploration companies – both independents and majors that do not own part of the pipeline – are through the regulation of that pipeline. And for the first time since 1977 someone, the FERC or the RCA and in this case the RCA made a judgment call that those rates were excessive. So, to be very clear, that's exactly what this bill is about in most cases. I want to thank Rep. Dahlstrom for her amendment because I do think it improves the bill. There were some very onerous sections from our prospective and they were removed. I would say we have significant problems with the rest of the bill as well. It continually pecks away at the authority of the RCA to effectively determine whether or not rates are just and reasonable. And I think for people that come in the future, exploration companies and others, it's critical that they have that authority. And I would say, Mr. Chairman, I don't know if Mr. Harbour is going to testify today... but he's got some great testimony here [referring to submitted written testimony from Dave Harbour, chair of the Regulatory Commission of Alaska]. He goes through section by section, not just the sections that were removed, and explains the problems or concerns, if guess, from his perspective, with the bill suggesting that it does undo several recent RCA decisions and makes significant changes to the RCA's role in regulating all pipelines in response to one or two he calls "special interest parties" attempting to reverse an RCA order only affecting TAPS. So I just want to say that we would agree with a lot

of the things that he has said here. I will say that there are people following me who have a lot of expertise in these fields. It's very complex; there are integrated pieces of this program; there's a report out by a professor of law from the University of Texas who helped write the pipeline act, and it talks about the major and constitutional basis and explanation of the proposed pipeline legislation. And as you go through here, this is from 1972, it's the basis for how this was put together. In they are very linked pieces. Some people – we're hearing this duplicative regulation issue – and I would suggest to you that you might want to read this because it describes exactly why this was put together the way it was and I would suggest that they would not claim it's duplicative – it protects the State's rights in many instances, and I will just tell you, it's kind of interesting because the reason the pipeline act was put together and I'll just read if I may just this one quote on this page that talks about – it's from a book "The Politics of Oil" in 1967 and this is part of what they put together here and it says, "the independent producers oil is frequently discriminated against through a range of practices and in effect flows only at the direction of the pipeline company. The pipelines serve to limit the marketability of crude oil produced by non-integrated companies forcing them to sell at the wellhead. They also block the purchases of independent refiners located away from the fields while giving advantage to the integrated company that may build its refiners near consumer centers." That report was written in 1967 and this 86-page document actually goes through and anticipates what will happen in the future, both for the carriers and for the exploration folks, and for _____ refiners both in the future on a gas line, and we hope that there will be one built, but the pieces you take away from the RCA that were put together as part of this package in a comprehensive fashion, I think you've got to be very careful about it. You've got to evaluate it to make sure you understand exactly what you're doing. And I would suggest that we feel pretty strongly that some of the pieces being pulled out of here are going to make it more difficult; they're going create more uncertainty for us. They may create more certainty for some of the other players but I can tell you for people like us that don't own the pipe, it's going to create more uncertainty. So Mr. Chairman, I would encourage you to spend some time and review the issues in this and frankly, listen to some of the experts that are coming after me because they do have a very good handle on the issues and can talk to some of the specifics if you would like on some of the other sections in here. Thank you.

[Chair invites questions]

CHAIR: Mark, I've got something here for you. You repeatedly noted how we have to make the oil and gas industry a just and reasonable process here and you're suggesting that RCA plays a

very important role in that regard. The concern that I have is that perhaps RCA over the years has gotten too onerous and too controlling of the market place. Personally, and I know we've got varying opinions here even on this committee as far as to what extent the RCA should be involved in that market place, but I think it ought to be as little as possible and should not be an entity – I'm not trying to be on a soapbox – but I think it should not be an entity there to basically guarantee any kind of a market share out there. That's a strong word and don't be offended if I – don't take that wrong, but I think it ought to be more of a market-based approach out there and, if anything, government ought to remove the obstacles and not use a regulatory agency to provide any special considerations for players out there. You're welcome to respond to that if you'd like.

Hanley: Sure Mr. Chairman. I would just say that, when you have a monopoly, there's a reason for regulation, and I would agree that you want the minimal regulation that you can have – our company would agree with that. We're not asking for excessive regulation. We're asking for understand that ratemaking. The bill, as it existed, and I appreciate the fact that some of the sections taken out would make us unique in the United States I believe in how rates would have been set, and I don't know, we like being unique up here but I'm not sure we want to be known as the one that has the inability to review rates to review whether they're just and reasonable. There's a process – I mean, there's lost of case law and I'd agree with you, when you have a monopoly, and there is some ability that they get their costs back, they're able to shift their rates up and down, so that they have this ability to get those costs back, so I would just say, we're just looking for reasonable rates. That's a standard process around the country. The interesting thing is, I haven't heard the other companies suggest the decision has been wrong that was made out there - that suggested that the rates were excessive. I mean the State is losing potentially billions of dollars. Companies like ours are being affected and future exploration is being affected. So, I would agree with you, we're not looking for excessive regulation but at some point, you need somebody on a regulated monopoly to determine what a fair rate is.

CHAIR: I disagree on a large part but I do appreciate your opinion and respect it. Any further questions from the committee? Rep. Holm.

Rep. Jim Holm: I guess my question is, getting back to what the chairman said, Mr. Hanley, are you intimating that without RCA in place, there would therefore be very little regulation as to what was charged on the pipeline with regards to transportation costs?

Hanley: That is their job. I mean, their job is to set rates on the intrastate portion. I mean, that's how this is set up. I mean, they are the regulating agency of this particular intrastate.. - so they evaluate the costs that need to be recovered as well the operating costs, the capital costs that were invested, and amounts for DR&R.

Rep Holm: I realize that, but is it your testimony then, that without RCA in its position that it is right now, we could not have this process? In other words, is RCA a necessity to the State of Alaska.

Hanley: Oh, I would say so. Unless you want to replace it and call it something different. But yes, absolutely, I think it is a necessity.

Rep Holm: And wherein do you feel FERC plays into this role? In other words, where does FERC stop and RCA take over and how would you like to see it happen so it was more fair, if you will, to folks who don't own the pipeline with regards to developing the rates.

Hanley: How would I like to see this bill or...?

Rep Holm: No, the process.

Hanley: Frankly, I think the basic process that exists is appropriate. If we see an unjust rate we are able to go to the RCA for intrastate rates and appeal it on that basis. If we feel there's an inappropriate rate on an interstate rate we can go to the FERC and appeal it at that place. So I would say the system, as it exists, gives us the ability and gives those agencies the ability and the authority to review rates and determine if they are just and reasonable and I think that's what we would support.

Rep. Holm: I'm not sure I would agree with you but I appreciate your testimony. Thank you.

[Chair gives thanks and moves to next on list]

Gene Burdin: My name is Gene Burdin and I'm with Tesoro Petroleum Corporation and, with your permission, I'd like to have Robin Brenna also join us so you'll get two for the time of one

hopefully here. I wanted just to express Tesoro's position with regards to this bill and with the provisions that have been taken out as the preceding speaker Mark has indicated, we're glad to see those taken out but we still have significant issues with what's left in the bill. Tesoro is an operator of a refinery, small pipeline, and service stations in Alaska – about 600 employees in the State and we are very much dependent on the intrastate shipment of crude oil from both the north slope and the Cook Inlet area to our refinery, that's what we operate with. And over the years, going back to the early days, transportation of crude oil on the trans-Alaska pipeline, we bought a considerable amount of royalty crude oil and oil from some of the producers on the slope. Over those same years we became increasingly concerned that the rates that were being charged on the line were worthy of investigation because as was previously indicated, there never had been a determination of what a just and reasonable rate is for the trans-Alaska pipeline until this decision that recently was issued by RCA. In respect of everybody's time, I'm not going to cover the points that Mark just covered – I think he did a great job – but I think a couple of points I'd like to relay before I turn it over to Robin, this issue has tremendous financial implications for independent refiners and for independent exploration and production companies in the State. And, just as importantly, it's got tremendous economic implications to the State of Alaska. Even taking section 5 out, the issues dealing with DR&R are enormous potential to the coffers of the State of Alaska as well as to the future of the operation of that line. One other comment is that I have gone around and spoken with some of the members of the legislature and I've got an impression that there's been somewhat of a misunderstanding and perhaps this is a forum to try to clear that up. A lot of the incentive towards moving forward initially with this bill was based on a comment in a letter dated March 26, 2003 from Mr. Gallagher of ConocoPhillips to Rep. Anderson seeking rate certainty for all shippers and that essentially indicating that the RCA had overturned a 1986 agreement with the State that ended seven years of litigation and that's just not the case. The decision of RCA did not overturn the agreement between the State and the TAPS owners. The decision was exactly within the provisions that the TAPS owners expressly acknowledged at the time that settlement was reached. Just a couple of points that I want to raise – I've gone back and looked at the record both written and testimony from both the State of Alaska at the time of that agreement and also from the TAPS owners and the record is abundant with occasions with statements such as Alaska (this is a statement made in a brief from the State of Alaska in support of commission approval of the TAPS settlement agreement), "Alaska and the TAPS carriers have explicitly asked the commission to approve the settlement on the basis that Petrostar, AEC and future shippers not be bound by the agreement's terms." The TAPS carriers repeatedly expressed the same thing both in writing and in testimony

before the commission as this was being approved. Counsel for the TAPS carriers, "nothing in the agreement deprives the commission of its jurisdiction to look in the future at whether the TSM rates are unreasonably high." That's exactly what took place. When we talk about deals, this was part of a deal and in retrospect, we can look back and be critical of the deal the State reached and say the State left a lot of money on the table. That's for somebody else to determine. But that was part of the deal. The fact is, having the ability of shippers, that were not signatories to the deal, raise questions as to the just and reasonable rates, was also part of the deal. And so we have taken exception to the last few weeks as we have heard representations to the fact that this is something needed in reaction to a decision by RCA that interfered with or reversed the deal – it just didn't do that. So, with that Mr. Chairman, I'd be happy to take any questions and/or, at your discretion, have Mr. Brenna make a few comments.

[CHAIR first acknowledges presence of member Rep's Crawford, Kerttula and McGuire who came in right after meeting began. Then requests questions of Burdin. None. Invites Brenna to testify]

Robin Brenna: My name is Robin Brenna and I earlier distributed copies of some testimony and bullet points. Let me begin where I think we would all agree. Where I think we would all agree is that Alaska's natural resources should be developed efficiently and fairly. I don't think anybody would disagree with that. I think we'd all agree that the refinery infrastructure should be viable within the State. In order to accomplish those goals the transportation rates from the TAPS system have to be fair. If they're not fair, then independent producers will be forced off the slope because they have to pay too much money to transport their crude oil off the slope. It wasn't that many years ago, members of the committee will remember, when Conoco was explaining why they left Milne Point and sold it and their explanation was simple: the transportation rates on TAPS were too high for them to develop the Milne Point field. Conoco was an independent producer at that time and had no interest in the trans-Alaska pipeline system and they were forced out of Alaska because the TAPS rates were too high. If the TAPS rates are too high, the State doesn't get its fair share of revenue. As other parties have mentioned, for every dollar that the transportation rate is too high, there's 25% of that that's royalty and severance taxes due the State, so the State doesn't get its fair share if the TAPS rates are too high. And in fact, the current rates on TAPS are costing the State of Alaska between 120 and 150 million dollars each year because of the current settlement that the State is in. So, if the rates are too high, it's not fair to the State. Finally, if the rates are too high it's not fair to the refiners

and the shippers who are the rate payers on this system. We pay these rates. I am the person who filed the protest on behalf of Tesoro to get a fair rate for my client in late 1996. We protested the 1997 rates. For the 5-years prior to that protest, the TAPS carriers had recovered between 102 and 134 percent return on their investment per year. Their entire remaining investment on the trans-Alaska pipeline system was recovered every year for the five years before we filed our protest. The commission, the RCA in Order 151 in what I consider to be a historic decision because it's the first time that standard rate-making practices have been applied to TAPS in 25-years of operation, and they determined that the TAPS carriers had over collected to date about \$10-billion. That has cost the State 2-1/2 billion dollars to date. If it goes on for another 10 years it will cost the State another 2-1/2 billion dollars. Transportation rates are a real issue. The commission in Order 151 set a just and reasonable rate. To respond to a question that the Chair asked earlier, no, I do not believe that the RCA was too onerous. It's the first time that a fair rate got set on this line in 25-years. It's what its statutory authority was to do. And what did it do? It allowed the TAPS carriers to collect 100% of their investment without any reduction whatsoever, 100% of every penny of their operating costs, and allowed them a 14% return. And the amount that they collected above that was \$10 billion. That is what a just and reasonable rate is. The rates on this line are way excessive. They hurt production on the slope. They hurt the State's revenues. They hurt the viability of the refining industry within the State of Alaska. Without regulation, there's nothing preventing them from charging \$100 a barrel and completely eliminating all revenue from royalty and severance taxes. They would have the complete authority and ability without a rate-setting process to force every independent off the slope and to close down the viability of the refining industry in Alaska. These are very important issues. What this bill is about, HB 277, is that they lost a rate case and a rate got set that was fair. And they don't like that. And so they're here to try to undo that and that's what this bill is really about.

I'd like to address a few specific questions that have come up with regard to individual provisions. First of all, facilities regulation and whether they're duplicative or not. Now let me say that what the entire debate over facilities regulation truly is is the fact that they have over-collect DR&R by over \$10 billion today. Why should the RCA have authority over DR&R? Because it's paid by the ratepayer's money. And so what this attempts to do – what they're attempting to do through this legislation – is, after they've over-collected \$10 billion from the rate-payer, they're trying to foreclose the rate-payer from receiving refunds of any of those over-collections and the vehicle that they're using is this bill. Facilities regulation – if you eliminate it

from this line, you eliminate access. The RCA economically regulates the line. That isn't duplicative with what DNR does with regard with what you can do with pumps, what the right-of-way terms are, etc. It's economic regulation of the facilities and carriers. If somebody wants to connect to this line, that is an issue for economic regulation and without facilities regulation, someone can be denied access to a common carrier line. It goes to if the capacity is insufficient to provide the service, with facilities regulation today the TAPS carriers can be ordered to expand capacity to meet the service that's necessary. And abandonment – you can't shut the line down until there's a determination that it's in the public interest to do so. What they're effectively proposing is the federal regulatory regime with the Alaska Pipeline Act with regard to facilities – which is to say, FERC has no authority over facilities. They can't say who comes into business. They can't say who connects. They can't force the TAPS carriers to expand and whenever they want to go out of business they can go out of business and the FERC has no authority whatsoever to have a public interest hearing to determine whether or not to permit that. So please don't take the word "facilities" out of the Alaska Pipeline Act. I have a memo I'll make available to the committee done by Professor Witherspoon, he was a professor of law at the University of Texas. He drafted both the Right-of-Way Leasing Act and the Alaska Pipeline Act. He drafted them so that the State would maximize its power over common carrier facilities. It's an 80 page report and it explains in this report that the basis for this authority is what's necessary and in a large part why the pipeline Act is written the way it is, is to solve the failure of the federal regime. So you've got a good Act here that's better than the federal Act; you've got the person who drafted it that made it stronger, that gave this State more options and you're now talking about taking those options away from the State. Please don't do that.

The interest – there's been some conversation about this issue. We looked at this issue. I had a rate-of-return person take a look at a 10-year period to see what the internal rate of return on capital for the TAPS owners was. It was 16-1/2% interest. Bear in mind that the only reason that they'll only have to pay a penny of interest is if they file a rate that they can't support. If they file a rate they can't support and they over collect from their rate-payers and they have to pay the money back, they make 16-1/2% on that money that they take that they can't support, and they have to pay it back currently at 10-1/2%. To make them pay it back at four gives them an opportunity to file whatever rate they want, collect it, and in the three years that it takes to resolve it, make 16-1/2% on our money and then pay it back at four. The interest rate in the statute today is too low and creates an incentive for the TAPS owners to charge rates they can't support.

I would ask this committee to be very careful with regard to these issues. Also, a provision in the bill provides – and frankly the bill is a little confusing as it stands with the amendment – I didn't have time to analyze it – but it didn't change that orders go forward, prospective only. That isn't even what the FERC does. Let me give a hypothetical. Let's say they come in tomorrow and raise their rate a thousand percent and they completely eliminate the economic viability of the refining industry in Alaska. And they collect that rate. And we go ask the commission to set a fair rate and they do five years from now. We don't get any refund. We don't get any money back. I believe this is read, they get to keep all that money. They have complete authority over what they charge and if they overcharge a tremendous amount then, as I read – and perhaps the sponsor of this bill if she'd clarify this – if that's the intention of the language that's contained on page 6, lines 1-4, and what that provides now is if you determine a rate's unjust and unreasonable, you determine a just and reasonable by order. But in the future language that's added, it eliminates the opportunity to go back and get the money back. And then finally, the process is working before the RCA. I understand the RCA isn't the favorite agency all the time with the legislature and I appreciate the legislature's attempt to make it run more efficiently, but when they finally start doing something right and set fair rates on TAPS for the first time in 25-years, that's not the time to take their authority away to do what they're supposed to be doing, so I would ask you not to do that. And then finally, I would like to ask the sponsor of the bill to clarify, is this bill intended to determine all the pending litigation before the commission currently because, you know, what's going on here is we won a rate case and got a fair rate and we're entitled to some refunds. And their rates are open for a while and if what they're trying to do is keep the money that they weren't entitled to collect from us through his legislature [legislation], I'd like that clearly stated. I'd be happy to respond to questions and to be available as a resource. I've done rate litigation for 20 years before FERC, before the RCA and before other State agencies.

[Chair thanks the speaker. Calls for questions]

Rep. McGuire: Thank you Mr. Brenna. You made reference to a letter from a professor in Texas and I understand it's very large.

Brenna: His memorandum in which he explains the constitutional (tape ends; some language of response lost). ...If I could just paraphrase since you won't have time to go through it in time to

ask the next question, he just explains the way he set things up and all the good reasons for doing it and all those reasons are contradicted by this bill.

Rep. Holm: Thank you Mr. Chair. Thanks for coming down and for your testimony. I'm just curious about something because I'm not sure I quite understand why the rate is wrong or was wrong for 25 years and then all of a sudden the rate is right. I know when I contract and want rates with my oil company, I pay them based on the dollars per gallon that I pay and when I make a deal with them they have to inform me when it changes and so forth and so on. Where was RCA in the past 25 years. And to go along with that, why did it take you five years to file a complaint when you knew there was a problem?

Brenna: Thank you for the question. First, to the degree there is blame to an agency it would be APUC. The RCA is relatively new and since the RCA has been there, to its credit, it's taken this issue on and set a fair rate. Let me explain that, in just trying to explain this one rate, the TAPS owners spent \$15 million in litigation expenses against us. So, it's not something done lightly. Tesoro's crude supply is by some of these people. The regulatory system doesn't work very well if the regulator isn't engaged in protecting the rights of the rate-payer. If it relies on the rate-payers who have business relationships with others, it just doesn't work very well. But let me say that, depending on your perspective perhaps and I won't ask the people that pay the bill, but they had to file cost reports against us and when BP and ConocoPhillips and Exxon decide they do not want to be subject to economic regulation by this State, this State spent \$35 million trying to get a just and reasonable rate before FERC and was unable to do so and settled on rates that are \$150 million higher than standard rate-making practices would allow. So your question is, and the State has the hugest interest in these issues, so why does a small guy – you know there's a million barrels a day going through and there's not very many of them that are ours and they put huge resources to avoid the economic regulation and they've done it for years so, we were the first to challenge this rate and it didn't come lightly. The decision didn't come lightly.

Rep. Kerttula: Thanks Robin. Can you walk me through just a little bit – the State's settlement of the TSM combined the State and the carriers and what's happened is that you've come in and challenged the intrastate rates before the RCA so now, I'm still getting a little confused by the bill taking the intra-inter – it's that that's confusing me. And from the other side, I think that's what I keep hearing is bothering them as well, we're seeing the mixture of the two. Can you help clear that up?

Brenna: I believe there's probably three questions in there. If I can take them one at a time. First, where should the RCA authority end and the FERC begin? Under the current law, the State regulatory agency has all authority that isn't preempted by federal law. It's a clear line. If there's federal preemption, the commission doesn't have authority; if there's not, they do have authority. I absolutely know where that line is. There is no federal preemption with regards to facilities regulation. There is no federal preemption with regards to abandonment. There is no federal preemption with regard to many DR&R issues. The federal regime fails in all of those areas. So the State authority is quite broad in those areas. I know where that line is and it needs to be drawn between intra-state and inter-state. If you change the jurisdictional provisions of the Alaska Pipeline Act, I do not know where the jurisdictional line will be drawn, but I can guarantee it will be drawn after millions of dollars of effort to try to find the line that's being redrawn in a couple of days that got drawn by a professor after months of research. That's one question.

I believe the other question went to the State's TAPS settlement agreement. So let me paraphrase that entire settlement agreement in a sentence. (Kerttula: Can you do this?) Yes, I can. It's simple. The TAPS carriers agreed to charge rates at or below a ceiling rate in exchange for the State of Alaska's agreement not to protest rates set at the ceiling or lower rate. That's it. You could get into the methodology of determining that ceiling rate but it doesn't matter – that is the whole deal. The deal was also that it only bound them, and Gene's comments earlier about section 5, what section 5 does is force the ceiling rate in this deal on non-signatory parties – it forces us to pay rates – and the deal at the time was, I offered testimony in support of the TAPS settlement in 1986 when it was offered, so Tesoro supported that. But it only bound the State and TAPS owners and they told us in return that if Tesoro disagreed with the ceiling rate that's set or any rate that's set, they can go to the RCA set a fair rate. We've done that. And now they're coming at us with HB 277 to try and take back what they offered us but still keep the benefit of the deal. They have the benefit of their deal because the State's not protesting their rates; the State has the benefits of its deal because TAPS carriers are filing at or below the ceiling rate; we're the ones being left out in the cold here.

Kerttula: In section 5, I know you haven't had time reanalyze how that affects it, can you also talk to me about DR&R and, to see if I'm understanding it right – for just a second – the RCA has a right to deal with the rates, but isn't it up to DNR and possibly DEC to be sure that the

clean-up, the removal, the dismantling happens and, is that correct? And can you explain to me how DR&R is impacted by this bill?

Brenna: In talking about DR&R – let's break it into two categories. The money that's collected from the shippers that needs to be collected through rate regulation from either jurisdiction. And then, DNR's authority, my understanding of it is exactly how you stated it – they have a right-of-lease, they say what needs to come out. Let me give you an example. Let's say they collect \$20 billion of DR&R. They collect and earn. They have collected from the ratepayers \$1.6 billion of DR&R and they've earned an average of 16-1/2% return on that fund ever since – starting in 1977 and forward. OK. The economic regulation is not duplicative. What about over-charges? What about refunds? What about if they charge too much? That, the economic regulation aspect, has nothing to do with DNR. And the reason this bill has provisions in it that takes DR&R authority away from the commission is because it is in the middle of a docket addressing what to do, how to calculate the total amount that's been collected to date, and what to do to be sure that those funds are available to conduct the work.

Kerttula: Follow up just on that point, does the settlement though actually envision setting up a fund? I mean, doesn't the RCA's ability really go more toward the rate itself? Now, I'm not saying that was a great idea or plan, it's just that the way I've always understood it was that it was the rate, and that fortunate or unfortunate for the State, there doesn't have to be any fund. That there has to be the absolute clean-up and that it absolutely has to be taken care of, but there's sort of that missing piece in the middle which, the State may be bound by, I'm not exactly sure of the effect on you.

Brenna: The settlement is silent on the most important DR&R term, which is whether over-collections are or are not refundable. If they are refundable, then the State will recover another \$3 billion as of today and that amount rose substantially. The settlement doesn't address the issue either way. I understand the State's position to be that they are refundable and the TAPS owners to be they're not refundable. With regard to the separate fund, again, this is a ceiling rate methodology. The RCA has not ordered a separate fund. Either way, if they do order a separate fund, -- I mean, the problem is, where's the money going to come from to conduct the DR&R, and from the State's perspective, they have two problems: Where's the money going to come from and their answer's apparent guarantee, but then Where are the over-collections going to come from because apparent guarantees only cover the work and don't ever cover the refund of

over-collections. So, let's fast forward, we're at the end of the line, the TAPS has been out of service for four years, there's \$10 billion of DR&R that's been done, there's \$10 billion left over – how can the State get that money? The guarantees don't cover it. It's not in the fund. But, to answer your question as directly as I can, the settlement's silent on these terms and they're within the regulatory authority of the commission to address them and they're in the process of addressing them and I would encourage you to allow that process to go forward and see what comes out of it and see to what degree the State's interest is preserved.

[Chair thanks the speakers.]

CHAIR: I just wanted to point out a couple of things here and that's kind of an extension of my previous comments – I just have concerns about your position that RCA should be used as a tool for players in the industry to gain access to the pipeline to get the rates that you would like to see. I think things of that nature – and that just kind of concerns me, it's a concept and to say that it's a socialistic concept might be a stretch but that's kind of the direction I'm going with that one. I, as a legislator, would like to work with you and others in the industry to try to encourage a much more inviting market place – not through government controlling that market place, but one that has less regulation, one where it's easier to get your permits to operate, things of that nature. So that would be the direction I would personally like to see us move in. I had one question for you, having said all that on my soapbox, say if you're concerned about the rates being too high and there ought to be a refund to you, what happens if the rates go in the opposite direction and there's those in the industry that feel the rates are low? I mean, should not the owners of the pipeline, the "big boys" of the market if you would, go to the RCA and demand a refund from you? I mean, doesn't it cut both ways?

Brenna: Two comments: First, I agree, government should be efficient. I'm not here saying anything different. Secondly, they monitor their rates. And this is the same with your electric utility, your water and sewer utility, with everybody else. If they under-collect the amount that they think they're entitled to, they're entitled to go in and ask for a rate increase. So it does work both ways – they can. And I would love to be in a situation where they had a viable case that they were under-recovered on this line when they're in fact recovering 100% a year. I'd love to have that. But, if that were the scenario, it does work both ways and they can go file a rate case in a heartbeat and get back every penny they're entitled to. And they get the money. And if we get to escrow it, if we get a temporary rate that's ultimately deemed to be fair, then it is. And, if

I may just make one brief comment: we didn't get the rate we wanted to see. We got a rate higher than we thought we wanted to see. But the commission issued the order. I mean, how much more should someone be entitled to than 100% of their investment, 100% of their costs, and a 14% return. I mean, your telephone company doesn't get that; your electric utility doesn't get that; your water and sewer doesn't get that. That's a fair rate, if you're going to set rates.

CHAIR: What I'd just say in closing, I'm not trying to monopolize the conversation, but I appreciate your investment in Alaska and willingness to be here. I'm not trying to discourage that at all. I want to help – I don't want to hurt you. I'm just concerned about excesses in government is all.

[Chair again thanks the speakers and invites next to testify]

Gregg Renkes: Thank you Mr. Chair. This is a fascinating subject and I won't take a lot of your time. I was asked by the Governor kind of at the last minute to come down. Mr. Irwin [DNR Commissioner] is in Anchorage on a habitat mission so I'm here to speak for DNR, and Department of Revenue and Department of Law, and the Governor and Administration just to give you our position on this bill. It's been difficult; the agencies have worked hard over the last week to look at this from a number of different directions. We think that there's a lot of positive things and a lot of positive concepts in this bill and we'd like to see it move forward. We do recognize, however, that there are concerns with sections 5 and 9 – those are particularly controversial, and we would support the amendment that's been offered here today and moving this bill forward in the legislative process. We think there may be some ideas in section 5 or the concept that has merit and we'd like to take a look, over time, we may not be able to do it for this legislative session because it is complicated, but we'd like to take a hard look at how we can work with the concept in section 5 which is to provide some regulatory certainty for the future on rates. We'd like to see that done in a way that allows all parties, Tesoro as you just heard from and other parties interests to be heard and considered but in a way that we can achieve more finality than traditional rate-making provides with respect to tariffs now. Section 9 would make the interest provision retroactive to 1997. Some have said that the provision is unconstitutional. We don't think that's correct but we do believe at this time we can't support it as a matter of fairness. We think the place to address the Order 151 is in the appeal process and not through this legislation. With the amendment today on sections 5 and 9, we think that maybe we can make some further improvements in the language during the legislative process, but we do think

the bill could help the State with some improvements in three important areas, and I hope the committee will keep these areas in mind as you consider this. One is the strategic reconfiguration of the trans-Alaska pipeline system that Alyeska is involved in. It's a \$400 million investment. It's going to upgrade 20-year old technology. It's going to improve efficiency and safety and reduce costs of the transportation of oil in the pipeline. Very, very important. The estimate that we've been briefed on it suggest that it will reduce the cost of transporting oil in the pipeline 60-cents a barrel – that's a significant reduction in the cost of transporting oil. This could help us develop our heavy oil fields on the North Slope. So anything we can do to streamline the permitting process, reduce the amount of time and cost involved in reconfiguring the trans-Alaska pipeline, updating it, making it modern, reducing the cost of the transportation of our oil is in the interest of the State of Alaska. I think there are elements of this bill that could help with that process – could reduce the time, regulation and cost of reconfiguration of the TAPS line and that's something to look closely at – it's an important objective for the Administration.

The second thing I want to address is the Stranded Gas Act you passed – a very important piece of legislation. We want to start the process to negotiate, and we're working with the legislature closely in that regard, and negotiated the Stranded Gas Act fiscal package. We think there are elements of this legislation that could help us in those negotiations and provide fiscal certainty, which is the objective of the Stranded Gas Act negotiations. So we want to look at this legislation with that in mind. How can we improve the process and strengthen the ability of the State to work with the project sponsors for the pipeline to produce a fiscal package that provides fiscal certainty for those people who are going to invest up to \$20 billion in the project and the State in the future.

And then the third thing I have on my mind when I look at this legislation is our current effort to renegotiate the TAPS settlement agreement. We've heard a lot of testimony about the tariffs too high. Listening to Mr. Brenna's testimony he thinks the State negotiated just a terribly rotten deal in 1986 – I don't think necessarily they see it that way, I think it's in the eye of the beholder. You know, some people would say we saved ourselves \$23 billion in the settlement, others think we cost ourselves \$10 billion. We certainly ended 10 years of litigation. I think it was probably an important settlement. You can always Monday morning quarterback these things but what is important is that we're going to have 30 more years of pipeline use, we've got new rights-of-way agreements in place, we're going to put more oil through the pipeline than was anticipated in 1986, we're going to get a longer life out of the pipeline than we anticipated in 1986. Conditions

have changed and we think it's appropriate to renegotiate the TAPS settlement agreement. Perhaps we can achieve lower tariffs. I think we should be able to. But, under the agreement, there's no responsibility to renegotiate until the call to renegotiate which is 2006, that can be completed in 2009, and the agreement's in place until 2011. So, if we want to have earlier renegotiations to know what the tariff's going to look like in 2011 or beyond or maybe, and of course no one's agreed to this, but maybe even implement tariffs at an earlier date, we're going to have to be able to provide some certainty as part of that agreement. So elements of this bill that will help us and give the State more leverage, give the State more tools to work with in renegotiating; help bring the owners of the pipeline to the table to create an interest for them in renegotiating the TAPS settlement are important policy objectives for the State.

So I think those three things, which I think are legacy issues, reconfiguration of the TAPS line after 20 years, renegotiating the TAPS settlement agreement, and negotiating a Stranded Gas fiscal package – these are very, very important items for the State. I think this legislation bears on those efforts that are currently underway and we think this legislation can help in that regard. There are some ambiguities in existing statutes regarding who has jurisdiction over DR&R – we've heard a lot about DR&R today – and whether the RCA has jurisdiction beyond intrastate transportation services, I think clarity in these areas – what is the responsibility of the Dept. of Natural Resources, the Commissioner of Natural Resources, under the right-of-way lease terms, what is the responsibility of the RCA, providing some clarity in those areas I think would be very beneficial. And the same thing with the interstate and intrastate jurisdiction – I think there was a question about that, Representative Kerttula, I think clarifying just what is the jurisdiction of the RCA and that it is limited to the intrastate matters is also very important, even when it comes to DR&R. What that, I think I'll conclude and take any questions that you have.

Rep. Fate: Clear at the beginning of these hearings I picked up that there was never any ruling or review as to whether the tariffs – the rates were reasonable or just. And then I'm hearing you, the Attorney General, say that they were negotiated – is that correct?

Renkes: Yes, it was a settlement agreement.

Rep. Fate: So the tariffs were negotiated?

Renkes: Settlement, in 1986, negotiated.

Rep. Fate: Was there ever a review of that negotiation that took place? A review?

Renkes: Yes, with FERC.

Rep. Fate: Was that negotiated with FERC or the old APUC?

Renkes: The settlement agreement deals with interstate tariffs.

Rep. Fate: I was just talking about the intra-state portion.

Renkes: There is no settlement agreement with respect to the intra-state shipment of oil.

Rep. Fate: OK. Thanks

Rep. Kerttula: Mr. Brenna mentioned a ruling and not having any retrospective effect and I just wondered if you had any comment on that? It's section 7 and it may just be a drafting glitch but that concerns me too. The last sentence on line 4 says an order may not be retrospective in its application and I wondered if you thought maybe that might be better stated to say, you know, prior to whatever it is being challenged. Because that language looks like it's a bar to me, possibly, to being able to property recover under an order.

Renkes: Yes, you could read that language to suggest that companies could keep over-collections accrued during the time of a proceeding.

Rep. Kerttula: Right. You might have a proper order that might not be able to be implemented.

Renkes: I'm not sure that was the intent and when I said we could work with the language to improve it in sections, that's one area we flagged for improvement.

CHAIR: Mr. Renkes, the legislation, as written, as amended, is acceptable to the Administration right now then? Did I understand that correctly?

Renkes: Yes, as amended.

CHAIR: I thought I heard you say, correct me if I'm wrong, that there might be a need to make a few little tweaks here and there as we go through the process.

Renkes: Yes. We'd like to reserve the opportunity in the legislative process to make some tweaks on this for issues like technical issues that we can improve the language.

CHAIR: And you don't see this legislation in any way in its currently amended form as being a hindrance to the negotiation process with the Stranded Gas Act that is now a law do you?

Renkes: No, I don't.

[Rep. Rokeberg's presence noted; Renkes thanked for testifying; 5PM meeting mentioned]

Dave Harbour : I like, if I may to open up, to ask you to put on the record a response to House Bill 277 which I provided earlier, I believe your staff has a copy, and, since that was prepared last week and being a wordsmith I always seek improvement and would ask that, for the record, on page 1 and page 4 when we refer to the phrase "TAPS between 1996 and 2000" to be more specific we should say "TAPS between year-end 1996 and 2000". Those are the only changes that I'd recommend to that testimony. Mr. Chairman, I know that you're sensitive to the fact that I represent a party that is appointed by you and the Governor to be an unbiased rate-making entity to look after the just and reasonable rates that pipelines and utilities operate under and to care equally for the consumers, rate-payers, as well as for the good health of the utilities. And I join the chairman and members in being obviously supportive of private enterprise. I just have to say after listening to the articulate speakers that precede me, Mr. Chairman, welcome to my world. You are listening, as we do on a weekly basis, to some of the most well schooled, well thought, well spoken advocates for their companies that are seen in Alaska. And oft times they are joined by their colleagues, that is attorneys from around the country, to present their cases to the commission. I'm appreciative of that opportunity as well. The job that we have is to carefully analyze all of the input that's given. After reading thousands of pages of testimony and expert witness material, listening to oral arguments, questions, cross examinations, and then, based on the merit of the case by statute, are led to make a decision based on that record. And, frequently, there is at least one unhappy party. The legislature wisely set us apart from political influence and directed that we protect ratepayers while giving companies the opportunity to

make a fair return on their investments. And I will tell you Mr. Chairman and members, that after only about three months on the job, I am absolutely delighted to report to you that the commission is executing its appointed tasks in a way that would make you proud and will be happy at any time to give you the details that fill in behind that broad statement.

Now, this year, some companies in various industries have chosen to come before the legislature and use code words like "fiscal clarity" and "improved investment climate" to justify circumventing the regulatory decisions that you've set us up to do. And up close and personal. I've seen these companies argue their best cases before the commission as you've seen a little bit of that argument today. And I have also seen and heard arguments as some have referred to earlier in the day's testimony to you as using arguments that I think their advocates would be embarrassed to be using in front of our more objective legal forum.

Chairman Kohring and I share another concept which is minimal regulation. I think oft times legislators who are charged also with analyzing a vast amount of information frequently are accosted by citizens who say, "why didn't you do such-and-such" and it takes some time to explain the details so they'll gain an understanding. But, going back just briefly – at the end of the 19th century, early 20th century when utilities were in their infancy, - I mean you've heard of water being carried in wood pipelines and you've heard about the infancy of electricity and how it began to grow slowly and, in the early days of those utilities the complaints from customers as well as the entreties from the utilities themselves, went to their State legislatures. After they began to grow in complexity and sophistication and their arguments began to grow more voluminous, state by state by state until by now all 50 states concluded that they needed regulatory commissions to handle the very difficult, quasi-judicial, quasi-legislative adjudication that accompanied all these myriad requests to the legislature. And here we are today.

I am going to suggest to you that all the people appearing before you today are representing their companies well. I will also suggest to you the old theme of "follow the money". You know, you've set us up to be unbiased, you've built statutes up to assure the regulatory commission will not take consideration from the people it regulates. And, when you think about it, the only incentive we have for doing a good job is to make you proud and also to survive appeals from the courts and we do very well at that – of 2,000 orders over the last three years only 16 have even been appealed. So, I do suggest that we look at incentives and, I'm not going to get into detail and I think you don't want me to over open issues that we have before the regulated

companies that we do our best to understand and make wise decisions about, but I will suggest that you follow the money. I will suggest when it is claimed that "we are a big company and therefore the amendments we propose are valid and those who oppose them are special interests", at the end of the session if such legislation is passed, follow the money. I would suggest that if those same interests say that the justification is to correct flaws but the only flaws that were corrected result in a flow of money to that advocate, that that be seriously questioned.

Mr. Chairman, I believe it was Rep. Holm asked about why so long. The Regulatory Commission and its predecessor did not set out to hear these matters. The Regulatory Commission as is the role you gave to it, was available when rate-payers wished to have a forum for requesting investigation. And that was done responsibly and as you know there's not been an outpouring of compliments for taking on the tough jobs which this agency does and does right per the incentives I discussed with you a minute ago.

I believe it was Rep. Chenault talking about the difference between the regulatory jurisdiction of FERC and this State commission. I will remind you that when the Alaska Pipeline Act was being created in committee with us, some of us have an old friend named Senator Cliff Groh who was serving on that committee he said, on the record, that the objective, basically, should be to fill the regulatory void between the federal and state jurisdiction in these matters. The FERC, I think you would find, would accept uncontested settlements but does not set intrastate rates and only deals with interstate issues. I think that, as far as my distinguished colleagues in the State would agree, there is a natural tension among State departments. You have me here today as your, hopefully, most unbiased counselor because the RCA is set out to hear the record on these issues. The State of Alaska represented by the distinguished Attorney General today represents one party in the issues that we've been discussing. And it has an interest in that, a valid interest. I'm going to suggest to you that over a period of time legislators who hear from different departments know that there's always a natural flowing tension between departments like Natural Resources, seeking to maximize use of the land under certain conditions including protection of the environment and the Department of Revenue which may seek other objectives. Today the Attorney General spoke on behalf of them all. I'm not so sure that all the departments of state would reflect the same opinion if asked to give them independently. But that's the prerogative of an Administration to form a position and advocate it. If as the Attorney General said that this legislation moves forward, I'll tell you that within a week or two of the good intent that Rep. Dahlstrom had, within a week or two a long period of legislative consideration of a

regulatory regime that properly represents Alaska and also fills the void between state and federal regulation would be seriously eroded. Within a week's consideration. And I'm not sure that the legislature in its wisdom, once it reflects on that matter alone, will think that rapid passage is in the interest of the people. At the end of the day, I will just offer to you that because of the incentives that I've just discussed, the RCA is your last forum for independent council to you.

[Chairman thanks the witness]

CHAIR: Dave, I know you're kind of in the frying pan there and you're part of a group that some of us here love to hate, but you are there because of legislative statutes that have been put into place and we appreciate what you're doing...

Harbour: Thank you for getting to know us better and I'm convinced that to know us, as you are becoming to do, will be to love us.

CHAIR: I'm not sure about that. I think I would love if you did a few less tasks than a few more tasks. ...

[Chair introduces next witness]

Jeff Cook: My name is Jeff Cook of 1150 H&H Lane, North Pole, AK and I'm Vice President of External Affairs for Williams Alaska. We operate the State's largest refinery at North Pole refining some 70,000 barrels per day of Alaska North Slope crude into products consumed by businesses, industry and individuals in Alaska. We employ 500 people in our refinery, at our two product terminals – one in Anchorage and one in Fairbanks, and at our 29 convenience stores. We also own a 3% interest in the trans-Alaska pipeline system that was purchased in June of 2000 which is probably a significant date and the significant also – or insignificant as the case may be.

I am at a disadvantage in not having the amendments at hand. The amendments certainly do help however, as others have said, there are remaining concerns with the bill. Our main concern is that we have an ability to appeal rates including issues such as DR&R that impact those rates.

As the major shipper other than the producers, we feel our interests in rates parallel those of the State of Alaska and Alaska consumers.

I don't know if Randy Jones is still on line – our counsel who's been dealing with these issues for over 20 years... he's not there so I'll conclude my testimony. We certainly think there's been significant improvements in the bill but we have the concerns that have been expressed by the other refiners and the independents. Thank you...

[Chair thanks the witness; asks for questions from the committee]

Rep. Rokeberg: I just wanted to make sure I caught any declarative opinions about the bill from Mr. Cook regarding Williams' position.

Cook: We still do have concerns with the other provisions of the bill. They parallel much along the lines discussed by Tesoro as well as by Mr. Hanley. So, anything that impacts the rates for us as a shipper we need an ability to have an input and impact on and through the appeal process. And certainly, the issues with DR&R impact rates so we still have some remaining concerns that parallel those already discussed. I was just trying to shorten up the time.

[Chair invites last to testify – ConocoPhillips Randall Buckindorf and Meg Yeage]

Meg Yeage: I am ConocoPhillips Alaska's Vice President for Prudhoe Bay and also the President of our pipeline company so I have responsibility for our interest in all pipelines in Alaska as well as some other important assets.

In the interest of time I want to make just a couple of quick points and then I want to hand the remainder of my time to Mr. Bukindorf because he'll go into more detail.

Contrary to much of the testimony you've heard, we do not believe this is about the recent decision that was made. This is not about undoing Order 151. This is not about asking for legislative approval of TSM. And it's not about eliminating the RCA. And it's not about eliminating rate regulation. None of those things are what we're about here today. What we're about here is certainty and the future. We need certainty in rate regulation just as we need certainty in all of the areas that you've heard us talk about with regard to fiscal certainty. We are

investing a lot of money in the State of Alaska. We are going to continue investing a lot of money in the State of Alaska. And our appetite for investment is linked to the certainty of the environment in which we operate and it's very important to us that we get clarity from the legislature about these issues that we believe are vague in the Pipeline Act and that we believe the RCA has been interpreting much more broadly than the legislature intended; much more broadly than we read or the Department of Law reads the current Pipeline Act. So with that, I'd like to pass the rest of my time to Mr. Buckindorf so we can be sure all of his points are heard.

Randall Buckindorf: I am an attorney in Anchorage for ConocoPhillips. In that capacity I handle our environmental legal work and our pipeline regulatory legal work. As Ms. Yeage has explained, and as the Attorney General opined upon, the changes we have advocated for and as put forth by the bill's sponsor are important for future certainty.

You have heard testimony that this bill was designed to and intended to overturn recent RCA decisions. As Ms. Yeage explained that was not the intent and, especially with the elimination of Section 5, although I'll discuss that a little bit further, a lot of the testimony and discussion you heard about that agreement are fine from a historical prospective, but they're not at issue in this bill. Instead, as Ms. Yeage pointed out

[TAPE END; SOME TESTIMONY LOST]

...exploring for new fields and building new pipelines. To that end we have worked diligently in the last week at the request of the sponsor to work with other companies toward some compromise language. We're pleased that the sponsor's come forward with two amendments. We're also pleased with Attorney General Gregg Renkes who did speak on behalf of the Administration, the departments of Law, Natural Resources and Revenue, not just for the Attorney General's office, that they're also interested in further clarification amendments. And Rep. Kerttula mentioned one of those that we also think is critical. I was prepared to walk through the entirety of the bill and basically do a sectional analysis -- I think that's important. However, we're advocating this bill move on and out of committee so I would be happy to do so at some future point in time. Essentially, sections 1 and 3 provide clarity of jurisdiction; sections 1 and 2 provide clarity of jurisdiction with respect to the Dept. of Natural Resources and right-of-ways. In contradiction to [RCA] Chairman Harbour's statement in his letter of last week, the changes to 1 and 2 would not remove RCA authority to oversee money collected on intrastate rates for DR&R. What it does is clarify what jurisdiction -- as Rep. Kerttula pointed to -- what

jurisdiction the RCA property has with respect to pipeline right-of-way leases. Pipeline right-of-way leases are contractual arrangements between each pipeline owner and either the Dept. of Natural Resources, the Bureau of Land Management, or, in some case, private parties. Any implication that the RCA can attempt to insert itself into these leases almost as if they were a signatory party when clearly they are not, is unacceptable both from a contractual and a regulatory point of view. The jurisdiction is a fundamental premise of being a regulated entity and it needs to be clear. The Administration, through Attorney General Renkes, also believes that to be the case. HB 277 provides that clarity in sections 1, 2 and 3. Equal treatment in section 6: The same interest rate that applies to judgments under the Pipeline Act has always been the same interest rate that applies to other judgments. That was the legislative intent in 1978 when it wrote this section of the Act and we believe the 1997 tort reform amendments that pulled it back from what was termed the usury statute to a market-based rate, in response to Rep. Crawford's question, that is based upon a market-based rate, the 12th circuit rate, plus 3% interest. It fluxuates with the market. We believe that the legislature intended that to apply to the Pipeline Act but it has been questioned as to whether or not that is correct. As Chair Harbour pointed out in his testimony, this is a decision that the legislature can, and we believe should make. The removal of section 9 would apply this decision point forward. We also agree with the Attorney General's analysis that it can make that retroactive back to 1997 – it would not be a constitutional violation. That's a decision for the legislature to make. Third, retroactive ratemaking in Section 7 which also addresses a question that Rep. Kerttula had, it's a common principal of regulated utilities that an agency like the commission cannot bypass a term that's call the rule against retroactive ratemaking. Essentially, section 7 was intended to make was intended to make this clear however, just as Chair Harbour pointed out in his testimony and sectional analysis, our suggested change to this section was mutated by legislative drafting to say the least. Essentially, we suggested a change to this section that would make it clear that an order setting rates shall not affect rates in effect before the date of the protest, complaint, or commission action that initiated the investigation or hearing. Essentially, this is the same as Chair Harbour pointed out in his sectional analysis. And that's the way the commission, the APUC and the RCA have always interpreted that. However, they have been questioned recently to reinterpret that in a different manner. We believe that there should be clarification made to the bill in its current form because it does not do what was intended.

Finally, business certainty. As we've explained, we're neither asking you to overturn the recent RCA decision in Order 151 on TAPS rates nor to legislatively validate the TAPS settlement agreement.

There were three questions I would like to address. Rep. Fate asked about inter-state vs. intra-state agreement. There technically is an intra-state agreement. It is essentially to close out multiple years of litigation – 8 years of litigation and to cease what was anticipated to be 10 years of additional litigation; the State of Alaska through the office of the Attorney General in coordination with the U.S. Dept. of Justice (Justice wasn't a signatory; they agreed with it) entered into the inter-state agreement. That agreement was in fact brought into and is in effect a nearly identical agreement in intra-state rates. I want to make that clarification. Regarding that agreement, and a question from Rep. Holm – where was the RCA for the past 25 years – the response to that question was, “if there was any blame” (and I use the term again “blame”) “it was to the APUC”. The blame that was stated was incorrect. Where was the APUC? In 1986 the APUC approved that agreement for rates in effect prior to 1986. Again, in 1993, they approved that agreement for years prior to that time. They did not set just and reasonable rates under it, that is correct, but they did approve it. In 1993, that approval was subject to a correct calculation and evaluation of the input – that was in 1993; that has yet to be done. But technically, even though the APUC approved those rates at that time, they are still open. And, it is being argued that the recent order should be applied back to those rates -- in the words of the State of Alaska in a recent briefing, applied back in time 17 years back into the past century. Finally, a question that Rep. McGuire asked about the Witherspoon memorandum. Professor Witherspoon was a brilliant oil and gas attorney and he was hired for a reason. He came in and looked at statutory authority and created two acts. Since that time the right-of-way leasing Act has been amended many, many times. Amendments need to happen. And it's the legislature that should decide the policy about when those should be made. It's also interesting to note the quote that Mr. Hanley made regarding Mr. Witherspoon at the time, wanted a futuristic look – and it's that same look regarding protection of rates in the future that ultimately led to the State of Alaska and the Dept. of Justice looking at, when they were entering into the settlement agreement, what they wanted. They knew that - the owners of Prudhoe Bay – there was going to be a lot of oil coming through, and they knew that it was going to be a very profitable point in time, so what they wanted was to front-end load those rates; front-end load as many costs as possible to the profitable time frame. Because essentially if you have a flat rate base, you recover for a flat period of time, that's allocated out amongst the barrels that are shipped; the more barrels, the lower the rate. But what

would happen in the future; what would happen now or in 2011? If they have to share the same costs the rate per barrel goes up. And the reason they did that was based on Professor Witherspoons' analysis. They front-end loaded it so that explorers currently, or the latecomers, for example Anadarco, coming in now it would be more profitable in the future to explore for and seek natural resources in this State. Thank you for your time... We would like to see this bill moved out of committee.

[Chair thanks testifiers; requests comments or questions; none; brief at ease]

Rep. Holm: Moves HB 277, as amended, with attached fiscal note and individual recommendations.

Rep. Kerttula objects to moving the bill to offer additional amendment: "In section 7, in the second to last sentence, delete the words "in the future" and change the last sentence to read, "An order setting rates under this section shall not affect rates in effect before the date of the protest, complaint, or commission action that initiated the investigation and hearing." That would be the normal process. I think that's in line with what courts and regulatory agencies would order and it wouldn't preclude, if you win a case, from being able to get a recovery. So, with that, I move the amendment.

Amendment is adopted.

[Chair apologizes to Rep. Crawford for not recognizing him earlier to ask a question of a participant regarding a \$3 billion DR&R overcharge dispute and how would that be adjudicated if it was removed from RCA oversight. Says since the participant had left the hearing, he will request a written response. Instead, he requests Gene Burdin to give a response.]

Burdin: Our concern is that it would take it out of the jurisdiction of RCA and presumably, if it moved over to DNR or some other area – I don't think I'm going to be able to answer. It's really one of the question marks there. If you take it out of the independent review of RCA, how do those matters get handled? Taking with it the jurisdictional gas on the TAP on the FERC side – about half the line, as I understand it, is on State lands even though it only carries about 10% of the oil, that you've got a jurisdictional gap if you implement this provision over State lands and over the components of the tariff related to DR&R. One of the issues you run into is that with

about 10% of the oil being intra-state and 90% being inter-state, that you'd think the DR&R issue is a 10 and 90% issues as well but it doesn't really work out that way. I don't know that we're prepared to go into details that Mr. Brenna could if he were still here.

Harbour: One of the policy decisions that's being made now is to that point. In addition to interests of the State of Alaska and federal lands, also the legislature is mindful of the interests of Native Alaskans and therefore Native lands and private lands that pipelines cross so that is a policy consideration that this legislation is undertaking.

Rep. Kerttula: Mr. Harbour, in your letter to us, the section-by-section analysis, what you said about this and something that I had a concern about too, you said that "removal of RCA authority over DR&R would mean that there would be no regulatory authority over portions of a pipeline that did not cross State land" and I think maybe that's what was troublesome.

Mr. Harbour: Recall back in the Pipeline Act, I think I stated in its formation that the objective was to have State jurisdiction where there was not federal. I'm not going to get too much into the detail of this because these are current issues, I just think if you ask legal advisors to analyze that sectional I did, you'll get the advice you need.

Rep. Holm: Moves the committee substitute as amended.

Rep. Fate: Reminds the committee the bill will come to Resources next and says he will hear the bill and clarify any questions on the amendments at that time.

Meeting adjourned.

Testimony Before the House Oil and Gas Committee (April 29, 2003)

My name is Robin O. Brena. I am an attorney with the firm of Brena, Bell & Clarkson in Anchorage, Alaska. I represent Tesoro Alaska Company with regard to its regulatory matters before the Regulatory Commission of Alaska ("RCA") and the Federal Energy Regulatory Commission ("FERC"). I am here today on behalf of Tesoro to testify in opposition to House Bill 277. Aside from a copy of my testimony, I have two additional handouts. The first has summary bullet points of my testimony. The second is a summary of the representations made at the time the owners of the Trans Alaska Pipeline System ("TAPS") entered into the existing TAPS Settlement with the State.

Tesoro employs over 500 Alaskans who operate a refinery and distribution system that supplies almost 50 percent of the petroleum products used in Alaska. Tesoro has been a good corporate citizen within Alaska for 35 years. As part of its Alaskan operations, Tesoro purchases crude oil from the Alaska North Slope ("ANS") and transports that crude oil through TAPS for processing in its refinery in Nikiski, Alaska.

It is of vital importance to Tesoro and the other value added Alaskan refiners as well as to independent producers exploring and developing the oil and gas resources in Alaska that the tariff rates they are required to pay to transport ANS crude oil be both fair and predictable. Tesoro and other value added refiners as well as independent producers have and are investing hundreds of millions of dollars within the State of Alaska creating jobs and adding value to the oil resources of Alaska. Companies investing in Alaska's future rely in large part upon the Regulatory Commission of Alaska ("RCA") to set rates that are both fair and predictable.

Recently, in a historic, well reasoned, and comprehensive decision, Order P-97-4(151) ("Order 151"), the RCA applied standard ratemaking principles and practices and set just and reasonable rates for TAPS. The RCA decision was the first time in 25 years of operation just and reasonable rates had been set for TAPS. In Order 151, the RCA properly pointed out that the TAPS owners had overcharged their shippers \$9.9 billion from 1977 through 1996. The RCA held that Tesoro has paid tariff rates 70 percent greater than can be justified under standard ratemaking practices and procedures. To offer perspective, for the five years prior to Tesoro's 1997 protest of the TAPS rates, the TAPS owners had received a return on their remaining investment in excess of 100 percent per year.

These overcharges have been a tremendous burden on the viability, development, and continuing operation of the entire refining infrastructure in Alaska and have had a huge and negative impact on Tesoro's Alaskan operations.

House Bill 277 eliminates Tesoro's, and every other Alaskan ratepayers', right to contest the rates they are required to pay. If it passes, an oil pipeline in Alaska will be the only common carrier or utility in the United State in which the ratepayers have no legal right to contest the rates they are required to pay. Please imagine for a moment, your electric or water and sewer bill has been raised by 70 percent, the utility is realizing returns in excess of 100 percent per year, and your right to contest that rate and have the RCA set a just and reasonable rate has been eliminated.

Instead, House Bill 277 would have the State negotiate rates with the TAPS owners that the RCA would have to accept and Tesoro and other ratepayers would have to pay. It seems fundamental to any concept of due process that the person required to pay the rate be allowed the right to participate in the process of setting the price. It also seems fundamental to any concept of due process that rates would be set through an open process before a fair and impartial regulatory agency with knowledge and experience in ratemaking.

Moreover, Tesoro is concerned because the TAPS Settlement the State reached on TAPS established ceiling rates that are 70 percent higher than may be justified under standard ratemaking principles and practices. In fact, if the State had negotiated federal rates on TAPS that were consistent with the standard ratemaking practices and procedures adopted by the RCA in Order 151, the State's permanent fund would have at least \$10 billion more and the future for the continued development of Alaska's natural resources would be far brighter

House Bill 277 eliminates all regulatory certainty that rates in Alaska will be just and reasonable. Just and reasonable rates mean rates that allow the pipeline owner an opportunity to recover its prudently incurred investment, to recover its prudently incurred operating costs, and to receive a reasonable return on its unrecovered investment. From any public policy or fundamental fairness perspective, Alaskan ratepayers should not be required to pay rates that are higher than just and reasonable rates. The Legislature should ensure that Alaskans' rates are just and reasonable by allowing the RCA the regulatory authority necessary to determine and set just and reasonable rates.

House Bill 277 violates both the spirit and intention of the TAPS owners existing TAPS Settlement with the State. The existing TAPS Settlement sets ceiling rates on TAPS. If the TAPS owners set their rates at or below those ceiling rates, the State has agreed not to protest their rates. Nothing in the existing TAPS Settlement sets the actual rates to be charged from the date of the settlement in 1986 forward. Nothing in the existing TAPS Settlement binds ratepayers or nonsignatory parties. Nothing in the TAPS Settlement restricts the ratepayers' right to protest excessive rates or the FERC's or the RCA's authority to set just and reasonable rates lower than the ceiling rates determined by the TAPS Settlement.

When presenting the TAPS Settlement to the FERC and the APUC for approval, both the TAPS owners and the State represented that ratepayers could protest future rates and, if there were a protest, the FERC and the RCA could set just and reasonable rates as though the TAPS Settlement were never approved. When approving the TAPS Settlement, the FERC and the APUC made clear that ratepayers could protest future rates and they could set just and reasonable rates as through the TAPS Settlement were never approved. Please refer to the second handout with regard to the hearing at which the TAPS Settlement was approved by the APUC. The Legislature should not be party to extending a bad deal to the nonsignatory parties it was never intended to apply to in the first place.

House Bill 277 eliminates the carefully constructed jurisdictional authority of the RCA to regulate common carriers in Alaska. The Joint Pipeline Impact Committee was a joint committee of the House and Senate formed to propose legislation for the regulation of common carrier pipelines in Alaska. The Joint Committee retained a nationally recognized regulatory expert, Professor Witherspoon, to review existing state and federal laws and to propose legislation for the regulation of common carrier pipelines in Alaska. Professor Witherspoon prepared the initial draft of both the Alaska Pipeline Act and the Right-of-Way Leasing Act. In drafting these sister acts, he ensured that the RCA's authority to regulate common carriers in Alaska would be based on both the inherent police powers of the State and the inherent power of the State to manage its own proprietary affairs. The Legislature made very clear it intended for the State to regulate to the degree jurisdiction was not preempted by federal law. House Bill 277 compromises the regulatory authority of the RCA to properly regulate and upsets the deliberate and well considered intention of the Legislature to maximize the State's ability to manage its own affairs. The Legislature should not compromise the basis for the RCA's jurisdictional authority and the State's own ability to manage its own affairs

Finally, House Bill 277 seeks to influence or determine the outcome of ongoing rate proceedings pending before the RCA and the Alaskan courts. The issues raised by the proposed changes to the Alaska Pipeline Act are pending before the RCA or the Alaskan courts. To cite a few examples:

(1) The TAPS owners have sought through litigation to extend their existing settlement agreement (and future settlement agreements) to ratepayers. Both the APUC and the RCA properly found such claims meritless. This issue is pending before the Alaskan courts on appeal.

(2) The TAPS owners have sought to have the lower interest rate approved by the Legislature through tort reform applied to their excessive over collections of common carrier rates. (As a side matter, the existing interest rate is too low and encourages the TAPS owners to file unsupportable rates.) Interestingly, before the RCA they argued that the lower interest rate was required by existing law while before this Legislature they take the position that the lower interest rate is not required by existing law and the existing law should be changed. Regardless, this issue is currently pending before the RCA.

(3) The TAPS owners have sought to avoid the RCA's full jurisdiction over DR&R. This issue is pending before the RCA.

In effect, every proposed change to the Alaska Pipeline Act seems designed to politically change or legally strengthen the TAPS owners' losing positions in ongoing rate proceedings pending before the RCA and the Alaskan Courts. Just and reasonable rates should not be set through a political process in Juneau but through a ratemaking process before the RCA. The Legislature should allow these issues to be fully and fairly considered in the pending rate proceedings by the RCA and the Alaskan courts. There is no reason for Alaska to be the first state to allow just and reasonable rates to be set behind closed doors in negotiations in which the ratepayers may not even participate. Similarly, there is no reason for Alaska to compromise the jurisdictional authority of the regulatory agency charged with the responsibility regulating common carrier pipelines. Please vote against passing House Bill 277 out of committee. I would be happy to respond to any questions you may have. Thank you for your consideration.

III. State of Alaska's Representations as to the TAPS Agreement.

The State approached the FERC and the APUC with the TAPS Agreement and asserted that it would be in the public interest to allow the State and the TAPS Carriers to resolve their dispute by way of the proposed settlement rather than continue time-consuming and expensive litigation. The State asked the FERC and the APUC not to consider whether the TSM ceiling rates were "just and reasonable" rates, but instead requested the TAPS Agreement be approved as a settlement that was in the public interest. The State explained to the FERC and the APUC that the TAPS Agreement only bound the signatory parties, and that the Commissions should consider the "justness and reasonableness" of future rates as though the TAPS Agreement never existed.

To cite a few examples, the State made the following representations to the APUC when the Agreement was submitted for approval:

[T]he Commission retains full jurisdiction over intrastate TAPS tariffs; any non-signatory to the agreement (who has the requisite standing) may seek to challenge a tariff filed pursuant to the settlement regardless of whether the tariff complies with the terms of the settlement.

Brief of the State of Alaska in Support of Commission Approval of the Offer of Settlement, August 7, 1986, at 3, n.1 (emphasis added).

The State also made numerous similar representations in its reply brief submitted to the APUC:

Alaska and the TAPS Carriers have explicitly asked the Commission to approve the settlement on the basis that Petro Star, AEC and future shippers not be bound by the agreement's terms.

* * *

[T]his *Commission is absolutely free* – as it should be – *to establish whatever TAPS tariff rates* it finds are consistent with the statutory requirement.

* * *

*Alaska and the TAPS Carriers have not urged the Commission to approve the settlement agreement as an adjudication of "just and reasonable" rates.*² Instead, they have urged the Commission to approve the agreement as a fair and reasonable resolution of the conflicting claims of the parties who have actively participated in this litigation for the last ten years and who will be bound by its terms.

* * *

By approving the settlement on these terms, the Commission gives those parties the benefit of their bargain, while *fully preserving the*

² In contrast to their position in 1987, the State is now asking the RCA to treat the TSM-based rates set forth in the settlement agreement as "just and reasonable."

Q. [H]ave you formed an opinion as to whether the TAPS Settlement tariffs are just and reasonable?

A. Yes.

Q. What is the basis for your conclusion?

A. Based on my experience and knowledge, I believe the tariff rates arising from the TSM were and continue to be just and reasonable. I recommend that the Commission find them so.

Prepared Direct Testimony of Jerome E. Hass, December 10, 1998, P-97-4, at 9. See also, Motion for Leave to File Pre-Hearing Submission of the State of Alaska and Pre-Hearing Submission of the State of Alaska, P-97-4, October 8, 1998, at 3. ("The Settlement Agreements have also provided a ceiling for TAPS tariffs that ensures that such tariffs are just and reasonable.")

rights of Petro Star, AEC and future shippers to seek even lower tariffs if they desire.

* * *

[T]here is no way for the Commission to evaluate today whether future TSM rates will be "just and reasonable." The Commission, of course, retains the authority to review future settlement tariffs at the time they are filed, and make "just and reasonableness" determinations at that time.

Reply Brief of the State of Alaska in Support of Commission Approval of the Offer of Settlement, January 15, 1987, at 4-5, 11, 15, 19-20 (emphasis added).

The APUC Commissioners were somewhat surprised to learn that the TAPS Agreement did not settle the issue of all tariffs for all parties.³ Specifically, the Commissioners questioned the State's lawyers about the rights of shippers who were not parties to the TAPS Agreement. The State's lawyers clarified that the State had no intention of imposing the TAPS Agreement on shippers such as Tesoro who were not parties to it.

Commissioner Knowles: Do you believe then that – let's say if a shipper were to protest the application of the settlement in five or ten years from now that it would be conceivable that the ceiling rates could be reduced at that time on the basis that they were not just and reasonable, looking at them at that single point in time?

³ The State represented to the Commission that intrastate rates for nonsignatory shippers would continue to be determined under the terms of the Alaska Pipeline Act just as it told FERC that interstate rates for nonsignatory shippers would continue to be determined under the terms of the Interstate Commerce Act. "The Settlement Agreement does not restrict the rights of any nonsignatory to challenge tariffs under the Interstate Commerce Act, *nor could it.*" Reply Comments of the State of Alaska, April 11, 1986, FERC Docket Nos. OR 78-1-041, 042, 043, and Docket No. IS84-13-000 at 18 (emphasis added).

Mr. Loeffler: Here I come. The answer is *yes*. . . . With respect to future tariffs, I think the State has consistently said that the Settlement Agreement is, in effect, a contractual mechanism for putting a cap on future tariffs. But if, for example, Petro Star thought in 1995 that the tariff filed according to the settlement cap was not just and reasonable in that particular year, then yes, Petro Star could challenge it on that basis, and indeed, if the Commission found validity in Petro Star's complaint, could lower the tariff at that time.

* * *

Commissioner Agi: But there's still a very subtle point involved here. *There is nothing in this Agreement that binds any shipper to this proceeding*, and you just told us they're at liberty to pursue, and there is nothing here that presumably binds the Commission itself, acting through its Staff, to litigate the propriety of the proposed tariff. I would think you would have to agree with that. If not...

Mr. Maynard: *We believe that's correct.*

Voir Dire Examination of Dr. Horst (State of Alaska's expert witness) by Commissioners Knowles and Agi and Responses by State of Alaska outside counsel Robert Loeffler and Assistant Attorney General Robert Maynard, January 28, 1987, at 226-30 (emphasis added).

IV. TAPS Carriers' Representations as to the TAPS Agreement.

It is worth noting, that the State and the TAPS Carriers were in agreement regarding the scope and nature of the TAPS Agreement. The TAPS Carriers told the Commissions much the same thing as did the State. In their Initial Post-Hearing Brief in Support of the Offer of Settlement, the TAPS Carriers said,

The Commission is not being asked to determine that TSM generates rates – either for the past or the future – that are “just and reasonable” in and of themselves.

Initial Post-Hearing Brief of the TAPS Carriers in Support of the Offer of Settlement, March 13, 1987, at 3 (emphasis added). Similarly, the TAPS Carriers wrote,

The settling parties are not asking the Commission to approve at this time the rates to be charged in 1990 and later years. To the contrary, as the settling parties have repeatedly stated, TSM simply sets forth voluntary rate ceilings that the TAPS Carriers have agreed not to exceed in filing their future tariffs. If the Staff finds that the rates set under TSM in 1995 are too high, that issue can be addressed at that time.

Reply Brief of the TAPS Carriers in Support of Offer of Settlement, January 16, 1987, at 23 (emphasis added). Finally,

While the Commission’s legislative mandate speaks of “just and reasonable” rates, [citation] that standard must be met by the parties only when litigation results in a formal Commission decision on the merits. Where all settling parties agree on a rate structure, requiring full-scale proof would not only be unnecessary, but destructive of the settlement process.

Brief of the TAPS Carriers in Support of the Offer of Settlement, July 31, 1986, P-86-2, at 6 (citation omitted). Clearly, not even the TAPS Carriers asked the Commission to determine that TSM rates are “just and reasonable.” Rather, the parties to the TAPS Agreement simply asked the Commission to let them cease litigating on the basis of their private agreement.

With regard to future rates, counsel for the TAPS Carriers, Steven Brose, told the APUC specifically that the TAPS Agreement does not prevent any nonsignatory party from challenging

TSM rates nor does it deprive the Commission of its duty and responsibility to determine just and reasonable rates. For example, Mr. Brose told the Commission,

Nothing in the agreement deprives the Commission of its jurisdiction to look in the future at whether the TSM rates are unreasonably high, nor does anything prevent any non-signor, Petro Star or Arctic Energy or whomever, from challenging those rates at any point in the future. In fact, the agreement requires that the Carriers file with the Commission every year revised tariff sheets and to provide the Commission with data sufficient to analyze the filings.

Opening Statement of Steven Brose on Behalf of the TAPS Carriers, January 27, 1987, P-86-2, at 47

(emphasis added). The TAPS Carriers also wrote in support of the offer of settlement:

This agreement does not supplant this Commission's jurisdiction over intrastate rates.

* * *

Other than the signatories of the agreement, no person is precluded from invoking the Commission's jurisdiction over TAPS intrastate rates to whatever extent that jurisdiction would exist absent the settlement. The Commission is thus not being asked to impose the settlement on unwilling parties with significant interests in the litigation.

Brief of the TAPS Carriers in Support of the Offer of Settlement, July 31, 1986, P-86-2, at 14

(emphasis added).

The TAPS Carriers also told the Commission that approving the TAPS Agreement between the State and the TAPS Carriers would not eliminate future TAPS tariff disputes. The TAPS Carriers made the following representations to this Commission.

No other party is any worse off as a result of settlement than it would have been had the State never pursued this action in the first

place. Nor will any non-settling party be less able to invoke the Commission's remedial processes simply because the State and the TAPS Carriers have reached an agreement.

Reply Brief of the TAPS Carriers in Support of Offer of Settlement, January 16, 1987, P-86-2, at 11

(emphasis added).

If any non-signatory objects to the level of a future tariff rate, whether set within the confines of TSM or not, this Commission's processes remain available for the examination of that rate.

Brief of the TAPS Carriers in Support of the Offer of Settlement, July 31, 1986, P-86-2, at 4.

For the future, the intrastate settlement in essence limits the TAPS Carriers' discretion in setting tariff rates. So long as rates are set at or below ceilings calculated in accordance with TSM, the State of Alaska agrees not to challenge the rates. . . . Moreover, *other than the signatories of the agreement, no person is precluded from invoking Commission jurisdiction over TAPS intrastate rates to whatever extent that jurisdiction would exist absent the settlement.* The future TSM rate ceilings are the quid pro quo for the establishment of a fixed refund obligation for the past and the termination of the present litigation.

* * *

[B]ecause nothing in the agreement diminishes the Commission's jurisdiction, these [non-affiliated in-state] shippers *are free to contest future rates and invoke the Commission's processes.*

Initial Post-Hearing Brief of the TAPS Carriers in Support of the Offer of Settlement, March 13,

1987, P-86-2, at 3 & 9 (emphasis added).

The attack on the return allowance is based principally on the argument that it is not "cost-based" and therefore may result in excessive returns to the carriers in some years. This attack is both premature and misguided. It must be kept firmly in mind that *the settling parties are not asking the Commission to approve the rates*

to be charged in 1990 and later years. To the contrary, as the settling parties have repeatedly stated, TSM simply sets forth voluntary rate ceilings that the TAPS Carriers have agreed not to exceed in filing their future tariffs. If a party finds in [1995] that the rates set under TSM are too high, that issue can be addressed at that time.

Post-Hearing Reply Brief of the TAPS Carriers in Support of the Offer of Settlement, April 3, 1987,
P-86-2, at 19-20 (emphasis added).

The settling parties are not asking this Commission definitively to endorse the future rate ceilings embodied in TSM. All the Commission is being asked to do, in order to permit implementation of the settlement, is to provide that the TAPS Carriers owe no further refunds beyond those provided in the Settlement Agreement, and therefore that the litigation regarding past TAPS tariff rates is terminated as to them.

* * *

With respect to non-settling parties, the settlement is structured to preserve in full any rights they may have to challenge TAPS rates, even if those rates are set in conformity with TSM. There is thus a theoretical possibility that a non-settling party might seek to institute new litigation in the future.

* * *

No party – or non-party – is one penny worse off as a result of this settlement than it was before the settlement. TSM merely sets ceilings on the rates it is permissible for the TAPS carriers to file in the future. Within those ceilings, the rates still remain subject to Commission jurisdiction. Any party (other than the State) believing a rate is too high remains free to seek such relief as is available under governing law. Thus, while this settlement is primarily intended to be for the benefit of the parties to it, non-parties get the best of both worlds. They are the beneficiaries of the TSM ceilings, which limit the rates the TAPS carriers can set, while they sacrifice none of their rights that otherwise exist.

Prepared Direct Testimony of Richard Hildahl on behalf of the TAPS Carriers, July 31, 1986, P-86-2, at 6, 10, 12-13 (emphasis added).

[O]ne of the things that could indeed happen is that you agree to the Settlement, that the day you accept the Settlement, that a small shipper, or one of the participants here, files a complaint and says, "We do not believe that the tariffs currently are just and reasonable and we're into that process," but that's there whether or not you accept the Settlement. . . . [Y]our job does not go away. I personally believe it will be made easier if you accept the settlement. But *there could be substantial proceedings in the future in front of this Commission with respect to disputes on the just and reasonableness of the tariffs on the pipeline.*

Response of Mr. Richard Hildahl (the TAPS Carriers' expert witness) to Voir Dire by Commissioner Knowles, January 29, 1987, P-86-2, at 391-92 (emphasis added).

V. **By its Terms, The TAPS Agreement may not be Applied to Intrastate Shippers or Their Interstate Rates.**

By its own terms, the TAPS Agreement may not be applied to nonsignatory parties.

Section III-4 of the TAPS Agreement provides:

Parties in Interest: This Intrastate Agreement shall be binding upon and inure solely to the benefit of the parties and their respective successors and assigns, including lessees. No obligation under this Intrastate Agreement shall be for the benefit of or be enforceable by any third party.

Intrastate Settlement Agreement at 19. Such an Agreement by its terms should not be applied to prevent this Commission or Tesoro, who is not a signatory, from exercising its rights under the Alaska Pipeline Act.

VI. APUC's Understanding of the State's and the TAPS Carriers' Representations.

In its 1987 approval of the TAPS Agreement, the Commission specifically reserved its right to adjudicate future TAPS rates. The Commission wrote:

The settlement as explained by its proponents at the hearing and in their written submissions is acceptable because it is the Commission's understanding that it allows for continued adjudication of TSM as a basis for deriving current and prospective rates; permits finalization of past period rates with liquidation of related refund obligations; and establishes ceilings on future rates which are specifically enforceable by this Commission.

APUC Order No. P-86-2(14) at 2 (emphasis added). In other words, the Commission resolved TAPS tariff issues for the past by terminating the proceeding but left open all TAPS rate issues since 1986.⁴

Further, in light of Petro Star's protest of intrastate TAPS tariffs, the Commission expressed its intention to investigate and take whatever action it deemed necessary to adjudicate just and reasonable rates.

The Commission will first complete its investigation of the acceptability of using TSM to derive present and future rates. . . . If the Commission determines that TSM does not produce just and reasonable results or is not otherwise an appropriate methodology to be used in the calculation of intrastate TAPS rates, the Commission will proceed to fully adjudicate rates from July 11, 1986, forward. With respect to that adjudication, the Commission is entirely free to set just and reasonable rates according to whatever methodology the Commission finds to be appropriate for the regulation of TAPS.

APUC Order No. P-86-2(14) at 5 (emphasis added).

⁴ According to the Commission, "The signatories have stipulated that the Commission is free to adjudicate the acceptability of TSM rates prospectively." APUC Order No. P-86-2(14) at 2 (emphasis added).

When the TAPS Carriers settled with Petro Star in 1993, the Commission noted its intention to terminate the investigation under 3 AAC 48.090(d)(2). Even then, the Commission was careful to note, however, that all rates since 1986 would remain suspended subject to refund, that each annual rate is considered a new tariff filing, and that all issues remain to be adjudicated despite the Commission's acceptance of the TAPS Agreement.

Notwithstanding the acceptance of the TAPS Settlement, the suspension of 1986, 1987, 1988, 1989, 1990, 1991, 1992, and 1993 TSM rates will not be vacated until the Commission determines that those filed rates were correctly calculated under the TSM and include acceptable input data.

Each new rate filed by the TAPS Carriers under the Intrastate Settlement Agreement is considered to be a revised tariff filing under AS 42.06.400. The filing is subject to the same standards and procedures to which it would have been subject if the Intrastate Settlement Agreement had not been accepted. However, in the absence of a protest, the TAPS Carriers need not file the supporting material required by 3 AAC 48.275(a). Instead, the TAPS Carriers should file the TSM computer disk used in calculating the rate filed and a hard-copy printout of the rate calculation.

The Commission's acceptance of the TAPS Settlement should not be construed as determining any issue which was raised in Docket P-86-2 or in the underlying TAPS litigation Dockets.

APUC Order P-86-2(41) at 20-21 (emphasis added).

As can be seen, then, the Commission did not "approve" the TSM for resolving intrastate rates issues or "approve" the TSM to be used as a methodology to set just and reasonable rates under the Alaska Pipeline Act. To the contrary, it allowed the signatory parties to resolve their disputes and terminated the investigation into rates prior to 1986 and nothing more. Finally, reflecting a clear

understanding of the terms of the Agreement, the APUC approved the deal precisely because it allowed for continued adjudication of rates as to non-parties.

The settlement as explained by its proponents at the hearing and in their written submissions is acceptable because it is the *Commission's understanding that it allows for continued adjudication of TSM as a basis for deriving current and prospective rates*; permits finalization of past period rates with liquidation of related refund obligations; and establishes ceilings on future rates which are specifically enforceable by this Commission.

APUC Order No. P-86-2(14) at 2 (emphasis added).

**Overall and Sectional Analysis of CS For House Bill 277(RES)(5/6/2003)
As Amended and Referred From the House Special Committee
on Oil and Gas Prepared by Robin O. Brena**

1. Executive Summary.

As a general matter, House Bill 277 reduces the Regulatory Commission of Alaska's ("RCA") authority to ensure the proper economic regulation of pipeline carriers and pipeline facilities in Alaska. More specifically:

- House Bill 277 was initially drafted by pipeline carriers engaged in current rate litigation. It has not been proposed to what has failed in the Alaska Pipeline Act ("Act") but to change what has worked.
- House Bill 277 impacts the RCA's regulatory authority through vague and poorly drafted amendments to the Alaska Pipeline Act ("Act"). The meaning and scope of these amendments would be subject to extensive litigation.
- House Bill 277 would compromise the RCA's regulatory authority to ensure the efficient development of Alaska's natural resources.
- House Bill 277 would negatively impact a producer's and a ratepayer's access to efficient and low-cost pipeline facilities with sufficient capacity to transport oil.
- House Bill 277 would violate the Alaska Constitution's bar against the passage of ex post facto laws by retrospectively changing the substantive rights of Alaska ratepayers in pending rate proceedings through the passage of a subsequently enacted statute.
- House Bill 277 would negatively impact the regulatory certainty associated with the economic regulation of pipeline carriers and pipeline facilities by attempting to change the substantive rules associated with ratemaking and then by applying those new rules retroactively to diminish the substantive rights of ratepayers in pending proceedings.
- House Bill 277 would make the continued collection of excessive intrastate rates more likely and the investment in pipeline facilities less likely.
- Finally, House Bill 277 will encourage pipeline carriers to file unsupported rate increases by lowering the interest rate to be paid when unjust and unreasonable rates are charged and collected.

2. General Comments.

a. Vague and Inconsistent Drafting.

Any precise description of the broad range of likely impacts of House Bill 277, as currently amended and referred out of the House Special Committee on Oil and Gas, is difficult. House Bill 277 is not well drafted and is not consistent with the remaining and unamended provisions of the Act or with the basic principles of regulation. If House Bill 277 were to be passed, the precise impacts would only be known after extensive litigation before both the RCA and the Alaska courts. Detailed below are several comments as to the potential impact of House Bill 277. Given the vague and inconsistent drafting proposed in House Bill 277, no potential impact may be stated with any certainty.

[Jurisdictional Changes to HB 277 Handout]

Much of the inconsistency in the language reflects the inconsistency between the stated purposes and the actual purposes for House Bill 277. In essence, many of the current provision in House Bill 277 were conceived to foreclose the RCA's regulatory authority to require all DR&R funds to be escrowed.

Given the vague and inconsistent drafting, House Bill 277 should not be hurried through the Legislature in the past few weeks of the session. Even the public policy goals articulated by the proponents of House Bill 277 are not supported by the vague and inconsistent language proposed.

b. Ambiguous Limits on the RCA's Authority to Regulate.

House Bill 277 would create great ambiguity over the proper scope and authority of the RCA over pipeline carriers and pipeline facilities in Alaska. The existing Act is simple and clear, the RCA has regulatory authority over pipeline carriers and pipeline facilities to the extent not preempted by federal law.

House Bill 277 deletes the State's leases as a basis for the exercise of regulatory authority, deletes a reference to abandonment authority of facilities, restricts the scope of the RCA's authority over the economic regulation of dismantlement, removal, and restoration ("DR&R"), and appears to limit the authority of the RCA to "intrastate transportation services."

These new limits would provide ambiguous new restrictions to the RCA's regulatory authority to provide reasoned economic regulation of pipeline carriers and pipeline facilities. These new limits would inhibit or eliminate the authority of the RCA to ensure ratepayers have future access to pipeline facilities, to ensure there is adequate pipeline capacity for independent producers to transport the crude oil, to ensure facilities are not abandoned absent a finding such an abandonment is in the "public interest," to ensure there are sufficient funds available to conduct proper DR&R at the lowest cost to the intrastate ratepayers, or to ensure there are funds available to refund overcollections of federal DR&R should the Federal Energy Regulatory Commission

("FERC") order such refunds. These new limits could inhibit the RCA's regulatory authority to ensure the future availability of natural gas for Alaskans.

[Jurisdictional Gap Handout]

Importantly, House Bill 277 creates a "gap" between federal and state jurisdiction. Federal authority over pipeline carriers is quite limited and does not include jurisdiction over facilities, abandonment, and other matters interstate matters otherwise necessary to ensure the proper development of the State's natural resources. The failings of the federal regulatory regime are a major reason why the Act was drafted to include greater jurisdictional authority for the State. Such greater jurisdictional authority is critical for the proper development of the State's natural resources. Accordingly, the Act currently allows the State, through the RCA, to have the necessary jurisdictional authority to ensure there are adequate pipeline facilities in place to compliment the proper development of the State's natural resources. Limiting the RCA's jurisdiction in the manner contemplated by House Bill 277 would limit the State's own right to ensure the proper development of its own natural resources by eliminating the regulatory authority of the RCA to matters relating to "intrastate transportation services." Such a sever limitation to the RCA's jurisdiction would foreclose the State's right, through the RCA to ensure that adequate facilities are available for the interstate transportation of oil.

The potential impact of House Bill 277 on the development of the State's natural resources as the result of the jurisdictional changes is perhaps best illustrated by a few simple examples.

Example 1: A producer requests a connection to or an expansion of a pipeline to transport its newly discovered oil interstate. The pipeline carrier denies the producer the right to connect or refuses to expand its capacity to transport the additional oil in interstate commerce. Under federal law, there is no effective recourse. Under the existing Act, the producer may file a complaint with the RCA and request a connection to or the expansion of a pipeline facility. The connection or expansion could be required by the RCA. Upon passage of House Bill 277, the producer may have no recourse under either federal or state law.

Example 2: A pipeline carrier abandons the pipeline facilities necessary to transport a producer's oil in interstate commerce. Under federal law, there is no effective recourse. Under the existing Act, the pipeline carrier would have to apply to the RCA for authority to abandon its facilities, and the producer would have the opportunity to oppose the abandonment. A producer, the State, or a ratepayer would have the right to argue against abandonment. The application would be granted or denied by the RCA. Upon passage of House Bill 277, the pipeline carrier may be able to abandon pipeline facilities without either federal or state regulatory review.

Example 3: A pipeline carrier refuses to invest additional capital necessary to increase the efficiencies of its pipeline facilities and decrease the costs of transportation for the interstate transportation of oil. Under federal law, there is no effective recourse. Under the existing Act, a producer, the State, or a ratepayer may

request the RCA require such improvements. The efficiency improvements could be required by the RCA. Upon passage of House Bill 277, the efficiency improvements may not be required under either federal or state law.

Example 4: TAPS is out of service and the DR&R is completed. The TAPS Carriers have overcollected their DR&R expenses by \$30 billion. The State and federal ratepayers successfully argue before the FERC that overcollections of DR&R under the federal rates should be refunded to ratepayers. Federal ratepayers would be entitled to \$30 billion in refunds, and the State would stand to gain 25 percent of the \$30 billion or \$7.5 billion due to the retroactive increase in royalty and severance taxes. Unfortunately, neither the federal ratepayers nor the State would have a legal mechanism to ensure funds are available to pay the refunds. Under federal law, the FERC's jurisdictional authority does not extend to the abandonment issues. Moreover, the TAPS Carriers would be out of business with no funds or assets after abandonment. The guaranties provided by their parent companies to ensure DR&R is completed do not extend to refunds for ratepayers. Under the existing Act, the State may request the RCA to require all DR&R funds be placed in an escrow, bonded against, or guarantied by owner companies. Upon passage of House Bill 277, the RCA may no longer have the jurisdictional authority to grant such a request by the State.

There was some suggestion during testimony before the House Special Committee on Oil and Gas that jurisdictional changes to the Act were necessary to avoid duplicative jurisdiction between the RCA and the Department of Natural Resources ("DNR"). The RCA is charged with the primary responsibility of providing economic regulation of pipeline carriers and pipeline facilities, while DNR is charged with the primary responsibility of managing and developing State lands. These are quite different functions with very little overlap. The RCA's jurisdictional authority is enhanced by the provisions in the Act relating to State lands, and the DNR's jurisdictional authority and legal options to properly manage State lands is enhanced by having another agency of the State, the RCA, with broad authority over the economic regulation of pipeline carriers and pipeline facilities. Thus, the functions of both the RCA and the DNR are complimented by the scope of jurisdictional authority granted the RCA under the Act.

Moreover, the proposed amendments to the Act would reduce the RCA's jurisdictional authority in those areas in which DNR has no concurrent jurisdictional authority. DNR does not economically regulate pipeline carriers or pipeline facilities. DNR does not set rates for the use of pipeline facilities. DNR may not order connections or access to existing pipeline facilities. DNR may not order the expansion of existing pipeline facilities. DNR may not prevent the abandonment of existing pipeline facilities. DNR may not ensure funds are available to repay ratepayers for overpayments of federal DR&R. DNR may not order that efficiency improvements be made to pipeline facilities. In sum, House Bill 277 would compromise the jurisdictional authority of the RCA to economically regulate pipeline carriers and pipeline facilities primarily in areas in which there is no overlapping jurisdictional authority with DNR whatsoever.

c. Limitations on RCA Orders.

House Bill 277 may be interpreted to prohibit the RCA from issuing orders to correct unjust and unreasonable rates even when those rates are temporary and refundable rates. Under the existing Act, when a pipeline carrier files a rate increase and there is "good cause" to suspend the revised rate, the RCA suspends the revised rate and typically allows the filed revised rate to be collected as a temporary rate subject to refund. At the end of its investigation, the RCA establishes a "just and reasonable" final rate and orders the difference between the filed rate and the "just and reasonable" rate to be refunded to the ratepayer from the date the filed rate was initially suspended.

Section 7 of House Bill 277 amends the Act by adding that orders may not correct unjust and unreasonable rates under certain ill-defined circumstances. There was some suggestion during testimony before the House Special Committee on Oil and Gas that this language was intended to prevent retroactive ratemaking. Retroactive ratemaking is the process of adjusting a final rate retroactively and is prohibited under the RCA's interpretation of the existing Act. Moreover, the language proposed in House Bill 277 is not consistent with the principle of retroactive ratemaking. Accordingly, House Bill 277 may redefine the well-established principle of retroactive ratemaking in Section 7 and then apply the new principle retroactively to pending proceedings in Section 8.

Section 7 of House Bill 277 redefines retroactive ratemaking to make it more likely that pipeline carriers would be able to keep overcollections of DR&R. DR&R is unique within ratemaking. DR&R is allowed to be collected from ratepayers decades before the expense may actually be incurred. Under these circumstances, regulators usually provide that overcollected amounts are the ratepayers' funds and, if unused, are refunded back to the ratepayers. In the case of TAPS, the TAPS Carriers have collected DR&R from 1977 but will not incur any substantial DR&R expense until 2031-54 years after the collection of DR&R was permitted to be included in rates. In the case of the TAPS Carriers, they have substantially overcollected their likely DR&R expense. The TAPS Carriers have overcollected DR&R by \$10 billion currently and may have overcollected over \$30 billion by the time DR&R becomes necessary on TAPS in 2031. Section 7 of House Bill 277 may be interpreted to redefine the concept of retroactive ratemaking in a manner that does not take into consideration the unique nature of DR&R expenses.

Moreover, Section 7 of House Bill 277 seems to adopt the regulatory principle that a pipeline carrier may keep the benefit from improper rates or improper practices that occurred prior to a protest or an investigation. In principle, a pipeline carrier should not be permitted to benefit from improper rates or improper practices prior to an investigation being initiated.

The potential impact of House Bill 277 on prior rates is perhaps best illustrated by a few simple examples.

Example 5: A pipeline carrier charges and collects higher rates than its tariff provides from nonaffiliated ratepayers. After two years, the RCA initiates an investigation and requires the pipeline carrier to charge the proper tariff rate and to refund the overcharges to nonaffiliated ratepayers. Under the existing Act, the Commission could order such refunds. Upon the passage of House Bill 277, the

pipeline carrier may be entitled to keep the excessive charges from the nonaffiliated ratepayers merely because the overcharges occurred prior to the initiation of the investigation.

Example 6: A pipeline carrier files a revised rate that is suspended but allowed to be collected as a temporary rate subject to refund. In the supporting information for the revised rate, the pipeline carrier indicates the ratepayers pay accelerated depreciation. Two years later, the pipeline carrier files a second revised rate that is also suspended but allowed to be collected as a temporary rate subject to refund. In the supporting information for the second revised rate, the pipeline carrier indicates that the ratepayers previously paid straight-line depreciation and not accelerated depreciation and includes the accelerated depreciation previously paid by ratepayers in the rates to be paid by ratepayers a second time. Thus, the ratepayers are being asked to pay twice for the recovery of the same investment. Under the existing Act, the ratepayers may intervene and protest in both open proceedings to ensure they are not required to pay twice for the pipeline carrier's investment, and the RCA may consider the arguments in both open proceedings to ensure consistency. Upon passage of House Bill 277, it is less clear, and the ratepayer may be put at risk of having to pay twice for the same investment.

Example 7: A pipeline carrier files a rate increase from \$1 per barrel to \$2 per barrel—a 100 percent increase. The revised rate, \$2 per barrel, is suspended for "good cause" but allowed to be collected as a temporary rate subject to refund while the RCA investigates the revised rate. The investigation takes two years to complete, and the pipeline carrier transports 400 million barrels under the \$2 per barrel revised rate during the period of investigation. There is no protest by a ratepayer. At the end of the investigation, the RCA sets a "just and reasonable" rate at \$1.50 per barrel. Under the existing Act, the pipeline carrier would have to refund its ratepayers the principal amount of \$200 million [(\$2 per barrel temporary and refundable rate charged and collected during the investigation - \$1.50 per barrel "just and reasonable rate") * 400 million barrels]. Thus, under the existing Act, excessive collections of temporary and refundable rates are refunded to the ratepayers. Upon passage of House Bill 277, the result is made less clear and highly technical. What does seem certain is that House Bill 277 may be interpreted to allow pipeline carriers to charge and collect unjust and unreasonable rates even if those rates were temporary and refundable rates.

Example 8: A pipeline carrier files a revised rate that is suspended but allowed to be collected as a temporary rate subject to refund. The pipeline carrier does not file the supporting information required by the RCA's regulations for a revised rate, but, instead, files limited supporting information as confidential so it may not be reviewed by ratepayers. The rate is suspended and allowed to be collected as a temporary rate subject to refund. Two years later, in a subsequent docket, the ratepayers learn of the nature of the supporting information and protest the prior rate. Under the existing Act, the Commission may consider that protest so long as the prior rate is temporary

and refundable. Upon passage of House Bill 277, excessive collections would be less likely to be returned to the ratepayers, even if the ratepayers had no opportunity previously to review the basis for the rate they were required to pay and the rate was still under investigation by the RCA.

Example 9: A pipeline carrier files for DR&R and represents that it should be permitted to recover 40 percent over and above its DR&R as an allowance for income taxes because DR&R is not currently deductible from income taxes. In contradiction to its representations to the RCA, the pipeline company petitions the IRS for a ruling and it is allowed to currently deduct DR&R from income taxes, making its representations to the RCA and the basis for its collection of an income tax allowance now false. The pipeline company does not disclose that it is currently deducting DR&R and continues to collect the income tax allowance from its ratepayers for five years. In a subsequent rate case, the truth comes forward. Under the existing Act, the RCA may require the income tax allowance improperly collected to be refunded. Upon passage of House Bill 277, it is less clear, and the pipeline carrier may be permitted to keep its collections of an income tax allowance even though based on false representations and even though the rates under which the tax allowance was permitted to be collected continue to be temporary and refundable.

Example 10: A pipeline carrier overcollects DR&R. Under the existing Act, the RCA may order refunds. Upon passage of House Bill 277, it is less clear, and the pipeline carrier may be permitted to keep excessive DR&R collections.

d. Retroactive Application Without Any Analysis of the Impact On the Substantive Rights of Ratepayers in the Pending Proceedings.

The RCA may investigate the revised rates and practices of pipeline carriers for "good cause." The RCA has 40 open proceedings under the Act in which it has found there is "good cause" to conduct an investigation. House Bill 277, Section 9 (Applicability) applies the terms of House Bill 277 to "any matters pending before" the RCA. There has been no analysis whatsoever as to the impact of House Bill 277 on the substantive rights of ratepayers in those pending proceedings. Similarly, there has been no analysis whatsoever as to the impact of these open investigations on the future rates and practices of pipeline carriers or pipeline facilities in Alaska.

House Bill 277 was initially drafted by pipeline carriers engaged in current rate litigation. It seems specifically designed to support their litigation positions in those rate proceedings and to forfeit the ratepayers' existing substantive rights in those proceedings. For the most part, the positions reflected in House Bill 277 have been or are currently under the careful consideration of the RCA or the Alaska courts. As a matter of fundamental fairness, the Alaska Legislature should not change the Act to accommodate the losing legal positions of those pipeline carriers and sacrifice the Alaska ratepayers' substantive rights in pending rate proceedings.

Article 1, Section 15 of the Alaska Constitution limits the power of the State to enact "ex post facto laws, and laws impairing contractual rights." An ex post facto law is a law passed after an event that retrospectively changes the legal consequences of the event. Substantive rights cannot be determined by subsequently enacted statutes, particularly while a case is pending. Section 7 of House Bill 277 may violate the bar against the passage of ex post facto laws.

Finally, House Bill 277 would negatively impact the regulatory certainty associated with the economic regulation of pipeline carriers and pipeline facilities by attempting to change the substantive rules associated with ratemaking and then by applying those new rules retroactively to diminish the substantive rights of ratepayers in pending proceedings. Such legislation undermines the very integrity of the ratemaking process.

e. **Arbitrage of Ratepayers' Funds.**

By lowering the interest due on excessive rates, Section 6 of House Bill 277 would create an incentive for pipeline carriers to file unsupported rate increases and may diminish the substantive rights of existing ratepayers in pending proceedings. The TAPS Carriers' owner companies' internal rate of return averaged approximately 16.5 percent over a ten-year period. If a pipeline carrier earns more on overcollections from its ratepayers than it will be required to repay, the pipeline carrier will have an incentive to file unsupported and excessive rates. Under the existing Act, a pipeline carrier is required to pay 10.5 percent interest on refunds due to excess rates. Upon passage of House Bill 277, the interest rate due on overcollections would be reduced to approximately 8.5 percent. If any change is justified to the existing Act, it should be to require pipeline companies to repay interest equal to their earnings on the overcollections. Regardless, a pipeline carrier should not have an opportunity to arbitrage the ratemaking process by earning 8 percent (16.5 percent less 8.5 percent) more on overcollections from its rate payers than it is required to pay.

3. **Sectional Analysis.**

a. **Section 1 (AS 38.05.020(b)(9)):**

The commissioner may lead and coordinate the investigation of the performance of obligations under and compliance with the terms of leases issues by the state under this title, including obligations with respect to the dismantlement, removal, and restoration of a pipeline or pipeline facility.

Comment: This amendment does not make clear the relative responsibilities of the RCA and the DNR. This amendment does not define "obligations" and does not refer to the State's leases at all. It may be interpreted to diminish the RCA's authority to economically regulate pipeline carriers and pipeline facilities without changing the DNR's current authority. Thus, rather than a clarification of existing practice, it may be used to undermine the RCA's regulatory authority.

b. Section 2 (AS 42.06.140(a)(1)):

The commission shall regulate pipelines and pipeline carriers in the state, but only to the extent applicable to the delivery of intrastate transportation services.

Comment: This amendment may be interpreted to diminish the power of the State, through the RCA, to economically regulate pipeline carriers and pipeline facilities. The existing Act grants the RCA broad and implied powers that are necessary to economically regulate pipeline carriers and pipeline facilities in order to ensure the development of the State's natural resources. The State should not restrict its own power to ensure a transportation infrastructure for the development of its natural resources. Please review Paragraph 2(b) of this Sectional Analysis above.

c. Section 2 (AS 42.06.140(a)(2)):

The commission may investigate, upon complaint or its own motion, the rates, classifications, rules, regulations, prices, services, practices, and facilities of pipeline carriers [, AND THE PERFORMANCE OF OBLIGATIONS UNDER AND COMPLIANCE WITH THE TERMS OF LEASES ISSUED BY THE STATE];

Comment: This amendment would diminish the power of the State, through the RCA, to economically regulate pipeline carriers and pipeline facilities and may deprive the RCA of an independent and effective source for the exercise of its regulatory authority—the contractual power of the State to ensure the development of its own natural resources. Please review Paragraph 2(b) of this Sectional Analysis above.

d. Section 2 (AS 42.06.140(a)(8)):

The commission shall require permits for the construction, enlargement in size or operating capacity, extension, connection and interconnection, or operation [OR ABANDONMENT] of any oil or gas pipeline facility or facilities, subject to necessary and reasonable terms, conditions, and limitations;

Comment: This amendment would diminish the power of the State, through the RCA, to economically regulate the abandonment of pipeline facilities. Since there is no similar federal or state economic regulation in this area, this provision would diminish the only available authority to economically manage the issues associated with the abandonment of pipeline facilities. Please review Paragraph 2(b) of this Sectional Analysis above.

e. Section 3 (AS 42.06.230(c)):

(c) Notwithstanding any other provision of this chapter, the commission does not have jurisdiction over a pipeline carrier with respect to the dismantlement, removal, and restoration of any part of a pipeline facility, or over any amount collected or held by a pipeline carrier for performing dismantlement, removal, and restoration except amounts included in a pipeline carrier's intrastate rates.

Comment: This new subsection would further diminish the regulatory power of the State, through the RCA, to manage all DR&R matters and funds. This may have a major and negative impact on the State's ability to ensure the recovery of overcollected DR&R under the federal rates. Please review Paragraph 2(b) and Paragraph 3(d) of this Sectional Analysis above.

f. **Section 4 (AS 42.06.245):**

Sec. 42.06.245. Federally regulated carriers. The requirements of this chapter pertaining to permits and certificates of public convenience and necessity do not apply to the construction of a pipeline facility exclusively subject to federal jurisdiction or to the interstate portion of the business of a pipeline or pipeline carrier [EXCLUSIVELY] subject to federal jurisdiction, including rates, tariffs, charges, classification, rules, regulations, terms, and conditions pertaining to the interstate portion of the business subject to federal jurisdiction. However, the requirements of this chapter for permits and certificates of public convenience and necessity do apply to [ALL] the intrastate portion of the business of a pipeline or pipeline carrier subject to federal jurisdiction to the extent the pipeline or pipeline carrier is engaged [WHENEVER IT ENGAGES] in intrastate commerce, including rates, tariffs, charges, classification, rules, regulations, terms, and conditions pertaining solely to the intrastate portion of the business. The commission may not consider revenue collected on interstate transportation when evaluating intrastate rates or tariffs [HOWEVER, NOTHING LIMITS THE POWERS OF THE COMMISSION SET OUT IN THIS CHAPTER EXCEPT TO THE EXTENT THEY ARE PREEMPTED BY FEDERAL LAW].

Comment: These amendments create a confusing set of jurisdictional limits that are sure to be extensively litigated. They seem to further diminish the regulatory power of the State, through the RCA, to regulate pipeline carriers and pipeline facilities and create a regulatory "gap" between the federal and State regulatory regimes. The testimony of Assistant Attorney General Janice Levy suggests these changes do not create such a jurisdictional "gap." If, after these amendments, the power of the State continues to be to the degree not preempted by federal law, then there is no reason to make these amendments at all. In particular there would be no reason to delete the language suggesting the RCA has jurisdiction to the "extent they are preempted by federal law." Please review Paragraph 2(b) of this Sectional Analysis above.

g. **Section 5 (AS 42.06.290(a)):**

(a) A pipeline carrier may not abandon, [OR] permanently reduce capacity, [DISCONTINUE USE OF ALL OR ANY PORTION OF A PIPELINE OR ABANDON] or discontinue any service rendered by means of a pipeline that is the subject of a certificate of convenience and necessity [,] without the permission and approval of the commission, after due notice and hearing, and a finding by the commission that continued service is not required by public convenience and necessity. Any interested person may file with the commission a protest or memorandum of opposition to or in support of discontinuance, [OR] or abandonment, or reduction in transportation services. The commission may authorize temporary suspension of a service or of part of a service.

Comment: This amendment is unclear as to what needs to be abandoned. Moreover, any reduction in capacity may have a direct impact on ratepayers. In the past, the TAPS Carriers have taken the position that closing pump stations and substantially reducing capacity was not a permanent abandonment. The State should be careful to maintain its regulatory authority over abandonment issues. Please review Paragraph 2(b) of this Sectional Analysis above.

h. Section 6 (AS 42.06.400(b)):

(b) . . . The person owing shall pay the person owed to the satisfaction of the commission within 30 days after the commission order allowing or setting a permanent tariff. The amount, if any, by which the permanent tariff exceeds the temporary tariff shall be paid by the shipper to the carrier, or, if the temporary tariff exceeds the permanent tariff, the difference shall be paid by the carrier to the shipper, and, in either event such payment shall be made with interest calculated on the balance due at the end of each calendar month [AT THE LEGAL RATE, AS DEFINED IN AS 45.45.010(a)]. The applicable rate of interest is five percentage points above the 12th Federal Reserve District discount rate in effect on January 2 of each year for which payments are due and for which the interest is being computed, unless the parties have agreed in writing that another rate of interest applies. The commission may allow the shipper, at the shipper's expense, to substitute a bond or letter of credit in place of the escrow requirement.

Comment: This amendment creates a financial incentive for a pipeline carrier to file unjust and unreasonable rates and provides an economic opportunity for pipeline carriers to arbitrage their ratepayers' funds. In effect, pipeline carriers would be rewarded for filing unsupported rate increases because they would have the opportunity to earn their internal rate of return on equity while only being required to pay back a far lesser rate of interest. Please review Paragraph 2(e) of this Sectional Analysis above.

i. Section 7 (AS 42.06.410(a)).

(a) . . . An order setting rates under this subsection may not affect rates in effect before the date the protest or complaint was filed, or the date of the commission action that initiated the investigation or hearing, whichever is earliest.

Comment: This new sentence would redefine the well-established principle of retroactive ratemaking and then, through Section 9 of House Bill 277, apply that new definition retroactively to foreclose or diminish the substantive rights of ratepayers in pending rate proceedings. Further, this redefinition of retroactive ratemaking is highly technical and inconsistent with the underlying fairness that has developed within the well-established principle of retroactive ratemaking. Please review Paragraph 2(c) of this Sectional Analysis above.

j. Section 8 (AS 44.23.020(b)(10)).

The attorney general shall consult with affected parties regarding pipeline tariff matters, and participate in a pipeline tariff proceeding on behalf of the state when, in the attorney general's discretion, it is in the interests of the state or the public interest to do so.

Comment: With Executive Order 111, this amendment helps further confuse the State's right to participate in a rate proceeding when representing its own proprietary interest with the RCA's right to have its staff participate in a rate proceeding when representing the public interest as defined under the Act. The State should have every right to fully participate in rate proceedings. Similarly, the RCA should have every right to request its staff to participate when it believes the "public interest" as defined under the Act requires such participation. This has been the existing practice for over 30 years.

k. Section 9 (Applicability).

APPLICABILITY. This Act applies to any matters pending before the Regulatory Commission of Alaska involving pipelines or a pipeline carrier on the effective date of this Act.

Comment: The applicability provisions apply the terms of House Bill 277 to "any matters pending" before the RCA. These applicability provisions may diminish or foreclose the substantive rights of ratepayers in pending rate proceedings. There has been no analysis of the potential impact to the State or to the ratepayers of applying the terms of House Bill 277 to the RCA's 40 pending proceedings. These applicability provisions violate the bar on ex post facto laws in the Alaska Constitution and undermine the integrity of the ratemaking process. Please review Paragraph 2(d) of this Sectional Analysis above.

l. Section 10 (Effective Date). No comment.

Jurisdictional Changes in HB277

RCA's Exercise of its Existing Jurisdiction in Order P-97-7(116) (03/06/03)	HB277's Attempt to Restrict the RCA's Existing Jurisdiction	Impact of HB277
<p>“We are charged with the regulation of intrastate pipelines. With respect to interstate DRR funds collected, we may assert our authority to the extent not preempted by federal law or in conflict with federal regulation or order. AS 42.06.245; AS 42.06.230(a). No federal law, federal regulation or federal order exists addressing post-collection treatment of interstate DR&R allowances on TAPS.” (p. 8, ll. 10-15)</p> <p>“AS 42.06 grants us the authority to regulate intrastate oil pipelines and intrastate operations of interstate oil pipelines, including certification and rate regulation, to the maximum extent possible considering interstate pipelines are also regulated at the federal level.” (p. 6, ll. 10-12)</p>	<ul style="list-style-type: none"> • Section 2. AS 42.06.140(a)(1) is amended to restrict the RCA's jurisdiction to “only . . . intrastate transportation services.” • Section 3. AS 42.06.230 is amended to restrict the RCA's jurisdiction to intrastate DR&R only. • Section 4. AS 42.06.245 is amended to restrict the RCA's jurisdiction to “solely” intrastate matters and deletes the RCA's jurisdiction to regulate to the extent not “preempted by federal law.” 	<p>HB277 diminishes the power of the State, through the RCA, to regulate to the maximum extent possible and forecloses the regulation of interstate matters which are not subject to federal regulation.</p>
<p>Although, we have no authority over how much is collected from interstate shippers for DR&R on TSM or how much, if any, of the interstate DR&R amounts collected should be refunded to interstate shippers after DR&R is complete, we do have a responsibility to make sure that funds are available to do required DR&R when pipeline is dismantled.” (p. 14, ll. 17-19)</p>	<p>See above.</p>	<p>HB277 eliminates the power of the State, through the RCA, to manage all DR&R funds collected, including requiring an escrow for such funds.</p>
<p>We have authority under AS 42.06.140(a)(2) to investigate the TAPS Carriers' practices with regard to DR&R, which is required by the TAPS Carriers' state-of-way leases.” (p. 8, l. 21-p.9, l. 1)</p>	<p>Section 2. AS 42.06.140(a)(2) is amended to eliminate the RCA's authority under the State's power to contract.</p>	<p>HB277 eliminates the power of the State, through the RCA, to regulate pursuant to the State's power to contract.</p>

JURISDICTIONAL GAP

EXISTING ALASKA PIPELINE ACT

State of
Alaska
Jurisdiction

Federal
Jurisdiction

VS.

JURISDICTION AFTER HB277

State of
Alaska
Jurisdiction

All interstate matters not subject to federal regulation

Access to pipeline facilities

Expansion of pipeline capacity

Efficiency improvements

Management and/or escrow for all DR&R funds

Interstate abandonment issues

Federal
Jurisdiction



ConocoPhillips
Alaska, Inc.

Representative Tom Anderson
Chairman, House Labor and Commerce Committee
Alaska State Capitol, Room 432
Juneau, Alaska 99801

March 26, 2003

Dear Representative Anderson:

As we discussed last week, attached is suggested legislation that ConocoPhillips believes will address the significant problems that have resulted from recent orders issued by the Regulatory Commission of Alaska.

The Regulatory Commission of Alaska (RCA) has overturned a 1986 agreement with the State that ended 7 years of litigation, established TAPS tariff rate certainty for all shippers until 2011, and was approved by the Federal Energy Regulatory Commission as "fair, reasonable and in the public interest."

ConocoPhillips, other TAPS owners and the State have challenged the RCA decision in Superior Court. We are not asking the legislature to overturn that decision.

However, in order to encourage both existing and new companies to invest and have certainty about future pipeline tariffs, create a business environment that supports a fair return on any pipeline owners investment, and provide the confidence that an agreement with the State will be honored by all parties, ConocoPhillips supports the following changes to the Pipeline Act in AS 42.06:

- Clarify that the jurisdiction of the RCA over rates is limited to intrastate tariffs;
- Eliminate the RCA's jurisdiction over State Right-of-Way leases and clarify their authority over dismantlement, removal and restoration;
- Add a new section that ensures RCA support of rate methodologies agreed to in settlement agreements with the State;
- Change the applicable interest rate charged under RCA orders so that it conforms with the interest rate applied in other similar matters.