ALASKA STATE LEGISLATURE

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REPRESENTATIVE NANCY DAHLSTROM

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Sponsor Statement

CSHB 277 (Oil & Gas)

"An Act relating to the powers of the Regulatory Commission of Alaska in regard to intrastate pipeline transportation services and pipeline facilities, to the rate of interest for funds to be paid by pipeline shippers or carriers at the end of a suspension of tariff filing, and to the prospective application of increased standards on regulated pipeline utilities; allowing the commission to accept rates set in conformity with a settlement agreement between the state and one or more pipeline carriers and to enforce the terms of a settlement agreement in regard to intrastate rates; and providing for an effective date."

HB 277 will clarify what jurisdiction the RCA has over state rates as they pertain to interstate and intrastate tariffs; it addresses the RCA's jurisdiction over State Right-Of-Way leases and will clarify their authority over dismantlement, removal, and restoration; it changes the applicable interest rate charged under RCA orders so that it conforms with the interest rate applied in other similar matters.

HB 277 will provide an environment that encourages both new and existing companies to continue investment and have certainty over future pipeline tariffs, the bill creates a business environment that supports a fair return of any pipeline owners investment, and provide the confidence that agreement with the state will be honored by all parties, while safeguarding the best interests of Alaskans.

Frank H. Murkowski, Governor

Alaska Department of Community and Economic Development

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April 25, 2003

Honorable Nancy Dahlstrom
Alaska State House of Representatives
State Capital
Juneau, Alaska

Dear Representative Dahlstrom:

Yesterday, I joined others at the Anchorage LIO for a hearing on House Bill 277. You and the Chairman agreed to take the bill up next week, giving Members a few more days to consider amendments to the original.

Since the bill would have such far-reaching impact on the Alaska Pipeline Act and on its administration, I thought you might wish to have the Commission's analysis now, while final wording is being considered.

Having received so many queries from other legislative offices on the impact of this legislation, I am taking the liberty of copying Members with the same information.

Best wishes,

Dave Harbour
Chairman

cc: Members, Alaska State Legislature

RCA CHAIR COMMENTS

Response to House Bill 277: April 24, 2003

Good afternoon Mr. Chairman and Members. I am Dave Harbour, Chairman of the Regulatory Commission of Alaska. I appreciate the opportunity to testify.

My duty and goal today is to describe for you how the bill will change current law and affect the public interest.

House Bill 277 amends the Pipeline Act; undoing several recent RCA decisions on TAPS tariff rates and dismantlement issues, and preventing any future commission from resolving similar disputes. In November 2002 the RCA issued an order finding that the rates charged for intrastate shipments on the Trans Alaska pipeline from 1997 to 2000 were an average of 57% more than the reasonable costs that the carriers incurred to transport the oil. The Carriers were ordered to pay refunds, and to make additional filings so that cost based rates could be set prospectively. The estimated refunds owing to shippers who used TAPS between 1996 and 2000 are more than $80 million, plus interest. The Carriers have appealed that ruling. This draft legislation greatly limits the RCA's jurisdiction over the Trans Alaska Pipeline and all other pipelines in the state, both in the past and in the future. It undoes parts of the RCA's decision that was based on an extensive record that the parties have spent more than $18 million creating. The November order, which is available on our commission's website (http://www.state.ak.us/rca/orders/2002/P97004_151.pdf), exhaustively details the review of the evidence filed by the parties and the reasons for the decision that the industry sponsor(s) of this bill seek to reverse. You should be aware that HB 277 makes significant changes to the RCA's role in regulating all pipelines in response to one or two special interest parties attempting to reverse an RCA Order only affecting TAPS.

My ability to comment specifically about the provisions of this bill is limited by the fact that it addresses issues that are still pending before the RCA for decision. Major advocates of this bill are aware of that because they are party to those cases. I cannot comment in detail on the merits of their proposals without impairing my ability and commitment to sit as an impartial decision-maker on those important cases. I can discuss the broader policy implications of what this bill proposes.

Passage of this bill would allow the pipeline owners (who are also the major producers on the North Slope) to set intrastate rates with no input from shippers other than the state. To the extent the Legislature seeks to improve Alaska's investment climate, it could make the climate for future development by small-scale producers less secure; thus possibly reducing the state's future revenue stream. The bill would allow the pipeline owners to set rates without oversight from the RCA, and could have a significant impact on the state's ability to recover royalty revenues from future producers of its resources.

What is being represented in this bill as a simplification of the pipeline rate setting process is likely to be more complex and litigious in its implementation than the current system. What is being presented as increasing investment clarity for producers and affiliated carriers could be later seen as decreased investment clarity for other players: explorationists, current and future shippers.

Allowing rates to be set by affiliated producers/carriers without input from the shippers who will be expected to pay them would violate their due process rights. Therefore, if passed in this form, the bill invites litigation in the Courts rather than regulatory treatment. The bill puts the state, presumably through the Department of Natural Resources that has statutory responsibility for managing the state's resource interests, in the position of protecting the public interest on pipeline tariffs. However, the state's economic interests in production and shipment of its oil may not always be consistent with all other current and future shippers. Being saddled with the responsibility to protect the interests of all shippers naturally conflicts with the state's ability to act to further its own economic interests, or may preclude other intrastate shippers seeking reasonable pipeline rates, from being represented.

The section of the bill that addresses the interest owing on refunds is properly within the Legislature's province to decide prospectively. Section 6 seeks to clarify the interest rate on refunds. However, Section 10 of the current version of this bill makes the interest rate changes effective retroactively, a change that could raise constitutional challenges from parties to the current TAPS litigation. As the Legislature considers changing the historical interest rate on refunds, it should evaluate its authority to do so retroactively, and what litigation an attempt to do so might spawn. The refunds owing

under the TAPS order are estimated to exceed $80 million. These funds were collected from shippers between 1996 and 2000; therefore, accrued interest is significant.

This bill would limit the Commission's jurisdiction, which is clearly defined in AS 42.06 and conforms to that of other state regulatory agencies. The Legislature intended that the Alaska Pipeline Act allow an objective, non-political commission to have broad regulatory responsibility. AS 42.06.245 states "nothing limits the powers of the commission set out in this chapter except to the extent they are preempted by Federal law." When considering the passage of AS 42.06.245, my dear friend, Senator Cliff Groh, who was the chairman of the legislative Committee that proposed the Pipeline Act, said, "The State attempted to regulate to the maximum extent possible, but would have neither the power nor the ability if preempted by federal law."[1] When considering the scope of the RCA's jurisdiction, the Legislature might be wise to explore to what extent Federal law preempts the Commission's jurisdiction. If the Legislature wants to further shape or limit the our jurisdiction, it would be essential to identify and look at the areas in which Federal law does not govern and consciously decide where jurisdiction should lie and where the Legislature consciously wishes to create a regulatory void.

This bill will also affect how the Commission regulates gas pipelines. We had previously responded to legislators' concerns that we could protect the public interest even when Contract Carriage language is included in the Alaska Pipeline Act. We must now inform the Legislature that we would be unable to act, under HB277, where pipeline owners reach a separate agreement with the State of Alaska. In recent hearings on HB204/SB151 we affirmed we could still regulate intrastate gas pipelines in the public interest where pipeline owners are allowed to employ contract carriage in their tariffs. With the proposed statutory language in HB 277, when the State reaches a settlement with a pipeline owner on its rates, the rates are considered to be just and reasonable. This effectively removes our ability to act on any protests from shippers who are not part of the settlement. Such settlements are likely to be similar to contract carriage agreements that were discussed during the HB204/SB151 hearings. We believe you will agree that the effect of this legislation is to move rate making from RCA public proceedings, into private negotiations between the State DNR/DOL and the Pipeline Owner, excluding other shippers.

We counsel the Legislature that while HB 277 addresses the interests of at least one TAPS owner at the expense of non-owners and future parties, it may also undermine the Legislature's intent to insure that future pipeline tariff rates are fair and reasonable. Attached is a section-by-section analysis of HB 277, which we hope you will find useful.

Thank you for this opportunity.

Section-by-Section: HB 277

Section 1

The proposed change to AS 42.06.140(a)(1) limits the RCA's authority over pipeline carriers that carry interstate and intrastate shipments. This limitation represents a major policy shift in the State's regulation of pipelines. Such a policy shift should only be considered after a comprehensive analysis of all the provisions of AS 42.06 as well as the provisions of AS 38.35, the Right-of-Way Leasing Act, which was passed as a companion act to the Pipeline Act in 1972.

Under AS 42.06.140(a)(2) the RCA now has jurisdiction concurrently with DNR concerning compliance with state pipeline right-of-way leases. The proposed change to that section would leave that authority solely with DNR.

The proposed changes would delete the word "facilities" from AS 42.06.140(a)(2) and (3), removing the RCA's authority to investigate pipeline facilities and order changes to facilities. The proposed change to AS 42.06.140(a)(8) would remove the RCA's authority to require a pipeline carrier to obtain a certificate to abandon a pipeline facility.

The RCA's authority over pipelines is in some ways more comprehensive than its authority over utilities. For example, no person can begin construction of a jurisdictional pipeline without a certificate from the RCA. Utilities do not require permission to construct facilities, only to operate them. The Legislature has given the RCA authority to act in the public interest to oversee pipeline facilities. As a practical matter, the RCA and APUC have not used that authority to affect pipeline location and routing because the pipelines that have been built in Alaska cross state land and DNR has taken the lead in such matters.

The proposed language in this section creates confusion because there are other provisions of AS 42.06 not subject to proposed amendments, which give the RCA explicit authority over facilities. AS 42.06.310 gives the RCA authority to require safe and adequate facilities and to order enlargement of pipeline facilities. AS 42.06.340 gives the RCA authority to order interconnection of pipeline facilities and physical changes to pipeline facilities.

Section 2

The proposed new subsection would remove RCA authority to oversee dismantling, removal and restoration (DR&R) of a pipeline and to oversee money collected for DR&R. Removal of RCA authority over DR&R would mean that there would be no regulatory authority over portions of a pipeline that do not cross state land. Portions of a pipeline that do cross state land would of course be subject to DNR's authority under the state pipeline right-of-way lease. In the case of pipelines that cross both state and federal lands, coordination and consistency to insure that the pipeline is adequately cleaned up before it is abandoned, could be lost.

Section 3

The proposed changes in this section clarify RCA jurisdiction over carriers that are subject to federal regulation. The amended language reflects current RCA practice except the proposed last sentence of AS 42.06.245. That sentence would prohibit the RCA from considering interstate revenues in setting intrastate rates. In order to insure that adequate funds are available to complete DR & R on state lands, the Commission needs to know how much has been collected through interstate rates. A flat prohibition on consideration of those revenues may result in higher intrastate rates. For example, on TAPS, intrastate shipments have historically been less than five percent of the volumes, but more than 50% of TAPS crosses state lands. Without the ability to consider interstate revenues, the intrastate rates may need to be increased to cover more of the DR & R responsibility. The last sentence of the current section, which HB 277 proposes to delete, is in the current statute to give the RCA the authority necessary to protect the interests of the state and intrastate shippers.

Section 4

The RCA has comprehensive authority over the construction of a pipeline. Removing the RCA's authority over abandonment of physical pipeline facilities would mean that the RCA would not have similar authority over the deconstruction phase of a pipeline. That change represents a major policy shift. While DNR would have authority over the deconstruction of portions of a pipeline on state land, there would be a regulatory void concerning Alaska portions of pipelines not on state land.

Section 5

The proposed new subsection would remove all RCA authority over intrastate rates for the entire term of any settlement reached by the State and a pipeline carrier. The State, which has not often chosen to include shippers in the process, whether interstate or intrastate, has negotiated past pipeline settlements. The pipeline settlements reached by the State in the past have been for very long terms, typically the expected life of the pipeline. If this subsection is enacted in its current form, intrastate shippers would be deprived of any input into the setting of intrastate rates they will pay for many years into the future. Interstate shippers will still be able to give their input to the FERC before the FERC makes a decision on the settlement.

Section 6

The proposed language in this section would change the rate of interest to be paid on refunds. This is an appropriate matter for legislative decision provided the new language applies to future periods. Applying it to past periods could raise constitutional questions.

Section 7

This proposed change is ambiguous. The RCA and APUC have consistently interpreted the present language of AS 42.06 to provide for two types of rate proceedings, one initiated by the pipeline carrier as a tariff filing and the other initiated either by the RCA or by complaint of a third party.

In a proceeding initiated by tariff filing, the tariff rate is suspended (does not become a permanent rate). Following the ad judicatory proceeding, the rate adopted by the RCA is put into effect as of the date the pipeline carrier proposed for its tariff filing. That is a historic date, sometimes several years in the past, depending on the length of the proceeding. However, putting such a rate into effect as of that date is not retroactive because there has not been a permanent rate during the suspension period.

In a Commission-initiated or complaint proceeding there is a permanent rate already in effect for the pipeline carrier, a rate that the pipeline carrier has not proposed to change. That permanent rate remains in effect until the RCA determines that it is not just and reasonable and sets a new rate. The new rate does not go into effect until at least the date of the RCA order setting the new rate.

If this proposed change to AS 42.06.410(a) is intended to apply to a proceeding initiated by tariff filing, the language is in conflict with the refund language in AS 42.06.400. If the proposed change is intended to apply to a Commission-initiated or complaint proceeding, the additional language is unnecessary.

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[i] Minutes of Senate Finance Committee, 8th Leg., 1st Sess. (Nov. 1, 1973 meeting).

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 pr prietary 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 n.anage 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.

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Brena, Bell & Clarkson, P.C.

STATE OF ALASKA

REGULATORY COMMISSION OF ALASKA

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
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

FILE: 10-115
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INDICATED TAPS CARRIERS' INITIAL BRIEF ON INTEREST RATE

App. A-E

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INTRODUCTION

As directed by Order No. 154,[1] the Indicated TAPS Carriers[2] 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.

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[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.

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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).

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(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.

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to provide the prevailing party with a windfall. See Farnsworth, supra, 638 P.2d at 184 ("an award of interest is not penalty, but compensation. . ."); see also Haskins v. Shelden, 558 P.2d 487, 494-95 (Alaska 1976) (holding prejudgment interest inappropriate on punitive damage award where jury likely assessed punitive damages defendant should pay at time of trial, not at time of injury); Sebring v. Colver, 649 P.2d 932, 936 (Alaska 1982) (holding award of prejudgment interest on nondiscounted award of future damages constitutes an impermissible double recovery); Bevins v. Peoples Bank & Trust Co., 671 P.2d 875, 881 (Alaska 1983) (purpose of awarding interest is to compensate, not penalize); Liimatta v. Vest, 45 P.3d 310, 322 (Alaska 2002) (prejudgment interest should not be awarded on funds previously advanced to compensate plaintiff). By changing AS 09.30.070(a) in 1997 to conform more closely to prevailing interest rates, the legislature cured a problem that otherwise exists when a fixed rate of interest in such a statutory provision no longer conforms to economic reality. The legislature addressed the problem in 1997 so that the rate of interest applied to judgments and decrees for the payment of money would no longer be out of step with economic reality. Because the legislature intended interest on refunds under the Pipeline Act to conform to the interest rate applicable to judgments and decrees for the payment of money, the 1997 amendments to the Code of Civil Procedure must be applied in this instance to conform to the intent of the legislature.

AS 45.45.010(a) is not a prescriptive statute, and never has been. It has long been held that AS 45.45.010 is not a law prescribing interest on anything, but rather one that simply fixes the maximum limit on the rate that may be charged in certain instances. See State v. American Can Co., 362 P2d 291, 296 (Alaska 1961) (refusing to rely on earlier version of AS 45.45.010(a) as basis for awarding interest because it "is not a law prescribing interest on

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anything."). Accordingly, AS 45.45.010 is properly addressed to concerns about usury rather than being prescriptive. See American Can, supra, 362 P.2d at 296; see also Metcalf v. Bartland, 491 P.2d 747, 749 (Alaska 1971) (describing AS 45.45.010 as "the usury statute"). Moreover, by its own terms, if the limitations on interest provided for in AS 45.45.010 are "inconsistent with the provisions of any other statute covering maximum interest . . . then the provisions of the other statute prevail." AS 45.45.010(h) (emphasis added). The legislature made it clear in 1997 that AS 09.30.070(a), not AS 45.45.010, now governs the maximum rate of interest on all "judgments and decrees for the payment of money." Because the rates now contained in the two statutes are inconsistent, pursuant to AS 45.45.010(h), the rate prescribed by AS 09.30.070(a) prevails.

The reference to AS 45.45.010(a) that was inserted into AS 42.06.400(b) in 1978 must not only be read in its proper historical context, but also must be construed harmoniously with other provisions of the Pipeline Act. See City of Anchorage v. Scavenius, 539 P.2d 1169, 1174 (Alaska 1975) ("each part or section [of a statute] should be construed with every other part or section so as to produce a harmonious whole."); see also Rydwell v. Anchorage School District, 864 P.2d 526, 528 (Alaska 1993).

A refund order issued by this Commission is a judgment or decree for the payment of money that is capable of being enforced only by court order or judgment. See AS 42.06.480.[8] An order of the Commission to pay refunds is also a final, appealable order,

[8] AS 42.06.480 states:

> **Sec. 42.06.480. Review and enforcement.** (a) All final orders of the commission are subject to judicial review under AS 44.62.560 - AS 44.62.570. (b) If an appeal is not taken from a final order of the commission within 10 calendar days, the commission may

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which in this case has been appealed.[9] If the requirement to pay refunds contained in Order No. 151 is upheld on appeal, the refund requirement will at that point have been reduced to a court order or judgment, to which AS 09.30.070(a) will be directly applicable. Because the legislature did not give the Commission the power to enforce its own orders, but rather provided that Commission Orders would be enforceable by the Superior Court, see AS 42.06.480, it is clear that the legislature has never intended to provide for a different rate of interest applicable to refunds under the Pipeline Act than is applicable to judgments or decrees for the payment of money under AS 09.30.070(a). AS 42.06.480 is additional evidence of the statutory imperative that requires consistency between the rate of interest applicable to refunds and to judgments or decrees for the payment of money.

The Pipeline Act requires just and reasonable rates. AS 42.06.370(a) ("[a]ll rates demanded or received by a pipeline carrier, or by two or more pipeline carriers jointly, for a service furnished or to be furnished shall be just and reasonable."). This requirement applies both from the standpoint of shippers and from that of pipeline carriers. If refunds which may depending upon the circumstances be paid either by carriers or by shippers are calculated using an interest rate that is far in excess of the prevailing cost of money, the inevitable result will be that rates fixed for past periods will not be just and reasonable. The net effect of applying an interest rate that bears no relationship to current economic reality is that shippers will pay either too much or too little. Applying the 10.5 percent interest rate in this instance would be unfair to

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> apply to the superior court for enforcement of this chapter, the regulations adopted under it, and the orders of the commission. The court shall enforce the order by injunction or other process.

[9] See Indicated TAPS Carriers' Notice of Appeal, Superior Court for the State of Alaska, Third Judicial District at Anchorage, Case No. 3AN-02-13511 CI, December 6, 2002.

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the Indicated TAPS Carriers, but applying the same rate in differing circumstances could be equally unfair to shippers. Applying the rate prescribed by AS 09.30.070(a), which is designed to conform more closely to current economic reality, is consistent with the statutory imperative that rates be just and reasonable.

2. If There Is Any Ambiguity About Which Interest Rate Should Apply Here, That Ambiguity Must Be Resolved in Favor of the Market-Based Rate Contained in AS 09.30.070(a) Because Application of the Usury Rate Contained in AS 45.45.010(a) Would Raise Serious Constitutional Issues.

As set forth above, the intent of the legislature is clear that AS 09.30.070(a) should govern the interest rate on judgments and decrees for the payment of money, including refunds under the Pipeline Act. However, to the extent there is any ambiguity on that question, the Commission must resolve that ambiguity in favor of the interpretation that most closely supports the constitutionality of the applicable statutes. "A statute must be construed, if fairly possible, so as to avoid not only the conclusion that it is unconstitutional but also grave doubts upon that score."[10] Here, requiring the Indicated TAPS Carriers to pay a 10.5 percent rate of interest under AS 45.45.010(a) would create substantial constitutional doubts in at least two significant ways.

[10] Almendarez-Torres v. United States, 523 U.S. 224, 237-38 (1998) (quotations and citation omitted); see also Public Citizen v. Dep't of Justice, 491 U.S. 440, 466 (1989) ("where an otherwise acceptable construction of a statute would raise serious constitutional problems, the Court will construe the statute to avoid such problems unless such construction is plainly contrary to the intent of Congress."); NLRB v. Jones & Laughlin Steel Corp., 301 U.S. 1, 30 (1937) ("The cardinal principle of statutory construction is to save and not to destroy."); Chenega Corp. v. Exxon Corp., 991 P.2d 769, 785 (Alaska 1999) ("Where it is reasonable to do so, we will construe a statute to avoid constitutional problems."); Bonjour v. Bonjour, 592 P.2d 1233, 1237 (Alaska 1979) ("If constitutional issues are raised, we have a duty to construe the statute, where it is reasonable to do so, to avoid dangers of unconstitutionality.").

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First, if applied here, the 10.5 percent interest rate would result in a "taking" of the property of the Indicated TAPS Carriers because it is clearly excessive in relation to its purpose. See U.S. Const. amend. V, XIV; Alaska Const. art. I, § 18.[11] The purpose of prejudgment interest is to compensate the prevailing party, not to overcompensate that party or to punish the losing party.[12] Here, the 10.5 percent interest rate would not only overcompensate the parties entitled to refunds, but it would generate a windfall unrelated to compensation for the use of money. Through AS 09.30.070(a), the legislature has indicated what it believes the appropriate market rate of interest is for "decrees for the payment of money" during the period in question. At no time during that period has the market-based interest rate been as high as 10.5 percent.[13] In fact, in 2002 and 2003 the market-based interest rates of 4.25 percent and 3.75 percent, respectively, are less than half of the fixed 10.5 percent rate contained in AS 45.45.010(a), resulting in a significantly greater disparity than existed in 1997, when the legislature amended AS 09.30.070(a). Such a gross disparity as now exists between the 10.5

[11] Webb's Fabulous Pharmacies, Inc. v. Beckwith, 449 U.S. 155, 164 (1980) (Takings "Clause stands as a shield against the arbitrary use of governmental power.").

[12] See Bevins v. Peoples Bank & Trust Co., 671 P.2d 875, 881 (Alaska 1983) ("The purpose of awarding prejudgment interest is not to penalize the losing party, but rather to compensate the successful claimant for losing the use of the money between the date he or she was entitled to it and the date of judgment."); see also Osterneck v. Ernst & Whinney, 489 U.S. 169, 174 (1989) ("prejudgment interest traditionally has been considered part of the compensation due plaintiff"); West Virginia v. United States, 479 U.S. 305, 311 n.2 (1987) (purpose of prejudgment interest is "to compensate for the loss of use of money due as damages from the time the claim accrues until judgment is entered, thereby achieving full compensation for the injury those damages are intended to redress.").

[13] See Appendix D (Alaska Court System website memorandum, entitled "How to Determine Pre- and Post-Judgment Interest Rates -- 2003").

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percent rate contained in AS 45.45.010(a) and the rate prescribed by AS 09.30.070(a) is in no way consistent with the requirement that, in order to avoid a "taking," the deprivation of property must result in "a fair approximation of the costs of benefits supplied." United States v. Sperry Corp., 493 U.S. 52, 60 (1989).[14] The application of the 10.5 percent rate would be excessive by any reasonable measure.

Second, applying AS 45.45.010 here would violate both due process and equal protection because it would create an arbitrary distinction between similar groups of people. While legislatures have broad discretion in structuring classifications, such classifications must satisfy rational basis scrutiny. See e.g., Nordlinger v. Hahn, 505 U.S. 1, 11-12 (1992); Zobel v. Williams, 457 U.S. 55, 61-65 (1982) (invalidating system for distribution of Alaska dividend payments based on length of residency in the state). As an utterly arbitrary assessment, the 10.5 percent rate of interest could not survive even a minimal level of rational basis scrutiny. There is no justification or regulatory purpose for forcing the Indicated TAPS Carriers to pay a substantially higher interest rate than the one applicable to other industry groups and individual defendants under AS 09.30.070(a). Even if such a distinction had been intended by the legislature (and there is no evidence that it was), the distinction would be purely arbitrary and therefore invalid under both the federal and state constitutions.[15]

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[14] See also Webb's Fabulous Pharmacies, Inc. v. Beckwith, 449 U.S. 155, 163 (1980) (holding government could not confiscate interest from accounts held by court clerks because it was "not reasonably related to the costs of using the courts").

[15] Compare Turner Construction Co., Inc. v. Scales, 752 P.2d 467 (Alaska 1988) (six-year statute of repose on suits against design professionals discriminated irrationally against all others involved in a construction project; statute declared unconstitutional), and Gilman v. Martin, 662 P.2d 120 (Alaska 1983) (residency requirement for participating in a land sale lottery was unreasonable; ordinance invalid under equal protection clause), with McConkey v.

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In sum, application of the 10.5 percent interest rate here would raise substantial doubts about the constitutionality of the statutory scheme for interest on refunds. Under well-established precedent, the Commission should therefore construe the relevant statutory provisions to avoid raising those serious constitutional issues.

3. The Rate of Interest Prescribed by AS 09.30.070(a), as Amended, Should Be Applied to All Refund Amounts That Accrued on or After August 7, 1997.

The 1997 revisions to AS 09.30.070(a) apply to "causes of action accruing on or after August 7, 1997." Section 55, ch. 26 SLA 1997. The Pipeline Act prescribes the calculation of refund amounts on a calendar month-by-month basis. See AS 42.06.400(b) (directing that the difference between temporary and permanent tariffs be determined and "such payment shall be made with interest calculated on the balance due at the end of each calendar month . . . .") (emphasis added). Thus, amounts due as refunds under Section 400 of the Pipeline Act must be considered to accrue on a calendar monthly basis.

In Hanson v. Kake Tribal Corp., 939 P.2d 1320 (Alaska 1997), the Alaska Supreme Court considered monthly payments made by an Alaska Native Claims Settlement Act corporation to some of its shareholders. The monthly payments were life insurance benefits that the native corporation had purchased on behalf of its elderly shareholders. Other shareholders sued, claiming discrimination among shareholders. The Alaska Supreme Court held that a separate cause of action accrued with each monthly payment. See Hanson, supra, 939 P.2d at 1325. See also Bibo v. Jeffery's Restaurant, 770 P.2d 290, 294 (Alaska 1989) ("each excessive

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Hart, 930 P.2d 402 (Alaska 1996) (upholding constitutionality of statutory limitation on the accrual of prejudgment interest for victims of particular torts where there were explicit legislative findings that the classification was designed to advance tort reform objectives).

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payment is a separate wrongful act"). Cf. Trustees of Alaska Laborers v. Ferrell, 812 F.2d 512, 517 (9th Cir. 1987) ("a failure to make monthly payments in a contract which requires continuing performance results in a new breach every month"). Under the Pipeline Act, a balance is due at the end of each calendar month. Each payment is therefore a separate act for purposes of determining when a cause of action accrues.

In addition, the intrastate rates at issue for three of the four years in question all went into effect after August 7, 1997. Causes of action concerning those rates therefore could have accrued only after August 7, 1997. Therefore, AS 09.30.070(a) applies to all refunds that accrued on or after August 7, 1997.

Prior to August 7, 1997 the applicable rate of interest was 10.5 percent per year. However, refunds that accrued on or after that date must be considered new causes of action that accrued on a monthly basis. Accordingly, all refunds that accrued after August 7, 1997 are governed by the interest rate specified in AS 09.30.070(a). AS 09.30.070(a) specifies that rate as "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 . . ." (emphasis added). The Commission's order to pay refunds was entered on November 27, 2002. Therefore, the interest rate in effect on January 2, 2002 applies to the refund order. That rate is 4.25 percent per year. See Appendix D. (Alaska Court System website memorandum entitled, "How to Determine Pre- and Post-Judgment Interest Rates -- 2003.)"

CONCLUSION

For refunds that accrued prior to August 7, 1997, the applicable rate of interest is 10.5 percent, the rate then applicable to judgments and decrees for the payment of money. For

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refunds that accrued on or after August 7, 1997, the applicable rate of interest is 4.25 percent, the rate specified by AS 09.30.070(a) for decrees for the payment of money entered in 2002.

DATED at Anchorage, Alaska, this 19th day of February, 2003.

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CERTIFICATE OF SERVICE

This is to certify that on the 19th day of February, 2003, a true and correct copy of the foregoing was faxed and hand-delivered to the persons identified on the attached service list.

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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?

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[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).

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[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).

Alaska State Legislature

House and Senate Democratic Caucus

Official Business, State Capitol, Juneau, Alaska, 99801

March 17, 2003

Dear Governor Murkowski,

We, the Democratic members of the 23rd Alaska Legislature, write this open letter urging you to consider reducing the tariff charged on the TAPS pipeline as an alternative to the taxes you have proposed. A tariff reduction will not only significantly close the fiscal gap, it is a critical incentive for future oil and gas exploration in Alaska.

On November 27, 2002, the Regulatory Commission of Alaska determined that tariff rates charged by the owners of TAPS for shipment of oil through the pipeline had "provided the Carriers an opportunity to earn over $9.9 billion more than the cost of providing service" since the opening of the pipeline (Petition of Tesoro Alaska Petroleum Company, Combined Orders No. 151 & 110, page 8 (Regulatory Commission of Alaska) (SP"RCA ruling"). Because TAPS has had a considerably longer useful life than originally expected, the RCA determined new cost-based rates that take this into consideration and still provide margin for the Carriers to recover a reasonable return on their investment. Calculations using these rates for the period from 1997-2000 show that the Carriers were charging the State of Alaska and other shippers of oil through TAPS a tariff that was 57% above cost-based rates. The TAPS settlement requires that the tariffs be "just and reasonable." A charge of 57% above the cost-based rate is not just and reasonable.

The RCA ruling directly applies only to the 10% of oil that is processed within the state. The other 90 percent of TAPS oil is governed by the Federal Energy Regulatory Commission (FERC) and no case has been filed before the FERC asking for a review of these rates. Because the RCA quoted extensively from FERC precedents and methodologies, there is reason to believe that the FERC would reach a conclusion similar to the RCA.

If the RCA decision applied to the FERC oil, the state would save between $85 million and $105 million per year. This is close to the total amount raised by the taxes and user fees you proposed in your State of the Budget speech, but does not take money from hard working Alaska families. We hope that you agree with us that the State of Alaska deserves to be charged a fair rate for transporting its oil, and we should make sure these rates are fair.

Even more important than the additional revenue, a reduction in the TAPS tariff encourages economic development in the oil industry. We believe that economic development should come before and hopefully make unnecessary any new taxes. In the January, 2003 issue of the

Petroleum News, representatives of the Alaska oil industry were polled on the most important things that government could do to encourage oil development. The result was a tie between "Lower TAPS tariff by $1.50 per barrel" and "Reduce permitting time, complexity" (Petroleum News, Vol. 8, No. 3).

The conclusion that lowering the TAPS tariff is important to the new independent producers of oil is a logical one. Currently, an independent oil company that strikes oil on the North Slope must use a transportation system owned by competitors to bring the oil to market. The only protection the independent company has is vigorous regulatory oversight of the tariff rates. If the tariff is allowed to stay unreasonably high, competition suffers, exploration declines and the state treasury suffers.

We recognize the practical challenges in lowering this tariff. The owners of TAPS have considerable political power and will argue that changing the tariff rate structure now is unfair. The RCA opinion specifically concluded that changing the tariff calculation as of 1996 would not deprive the TAPS carriers of a reasonable rate of return (RCA ruling, page 23). The provision in the TAPS settlement agreement attempting to force the state to defend this unfair rate structure also poses a difficulty.

Working together in a bipartisan manner, we can obtain a fair tariff for the oil we hold in trust for the people of Alaska. If we succeed together, then the people win. We avoid painful new taxes, take steps to closing the fiscal gap, and we remove a major hurdle to oil development.

We look forward to working with you on this issue.

Sincerely,

Senate Minority Leader Johnny Ellis

House Minority Leader Ethan Berkowitz

HB 277
Testimony by Al Bolea
Before the House Oil & Gas Committee

May 1, 2003

Thank you Mr. Chairman, for the opportunity to testify today on this important bill. For the record, my name is Al Bolea, and I am President of BP Pipelines and Performance Unit Leader for BP's mid-stream assets in Alaska, which include our interests in the Trans Alaska Pipeline System and the ships that carry Alaskan crude to West Coast markets.

I would also like to thank you and the other committee members for making the time to discuss this bill with me over the past week or so.

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 business 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 APA creates uncertainty over jurisdictional issues, creating unnecessary overlap between regulatory agencies. This has allowed

HB277 will have no effect on the existing agreement with the State, known as the TSM agreement. Tesoro and Williams are free to continue their challenge to TSM in the courts. Yet, you may have heard a lot about the assertedly exorbitant profits of the TAPS carriers under TSM. In order to put the record straight I feel compelled to explain a bit about the financial mechanics of TSM. But I'm not asking you to pass judgment today on TSM ... rather, we will defend TSM in the courts. For this purpose I would ask that you turn to Figures 1 and 2, attached to the end of my testimony.

It's important to note that actual rates charged by the carriers have been well below the originally projected TSM rates. Thus we find ourselves where TSM has performed better than expected from the shippers' perspective in every year since the contract was signed, but Tesoro and Williams are seeking to maximize their profits by "cherry picking" the original TSM deal. In fact, in its appeal of the RCA Order 151 the State's Attorney General stated, "the RCA ignored its own precedent, abused its discretion, and erred in fact and law." Moreover, when TSM was approved by the Department of Justice, they warned, and I paraphrase, *TSM was negotiated as a package... No single element of TSM should be evaluated independently... To do so would likely nullify the agreement.*

It is hard to believe how opinions can do an about-face based on self-interest. Remember, at the time TSM was agreed to, Tesoro's counsel said, The settlement "will provide certainty to the operating costs into the future." MAPCO's counsel Randy Jones said, "MAPCO Petroleum believes the settlement is fair and equitable and that it warrants the Commission's approval...". And the Dept. of Justice termed TSM a "comprehensive cost-

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 at the table to ensure I stay on point.

Thank you, Mr. Chairman.

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

THE STATE OF ALASKA

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Antitrust Division

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U.S. Department of Justice
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Washington, D.C. 20530

Attorneys for the
U.S. Department of Justice

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,

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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.

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.

FIG. 1: NORMAL HOME MORTGAGE

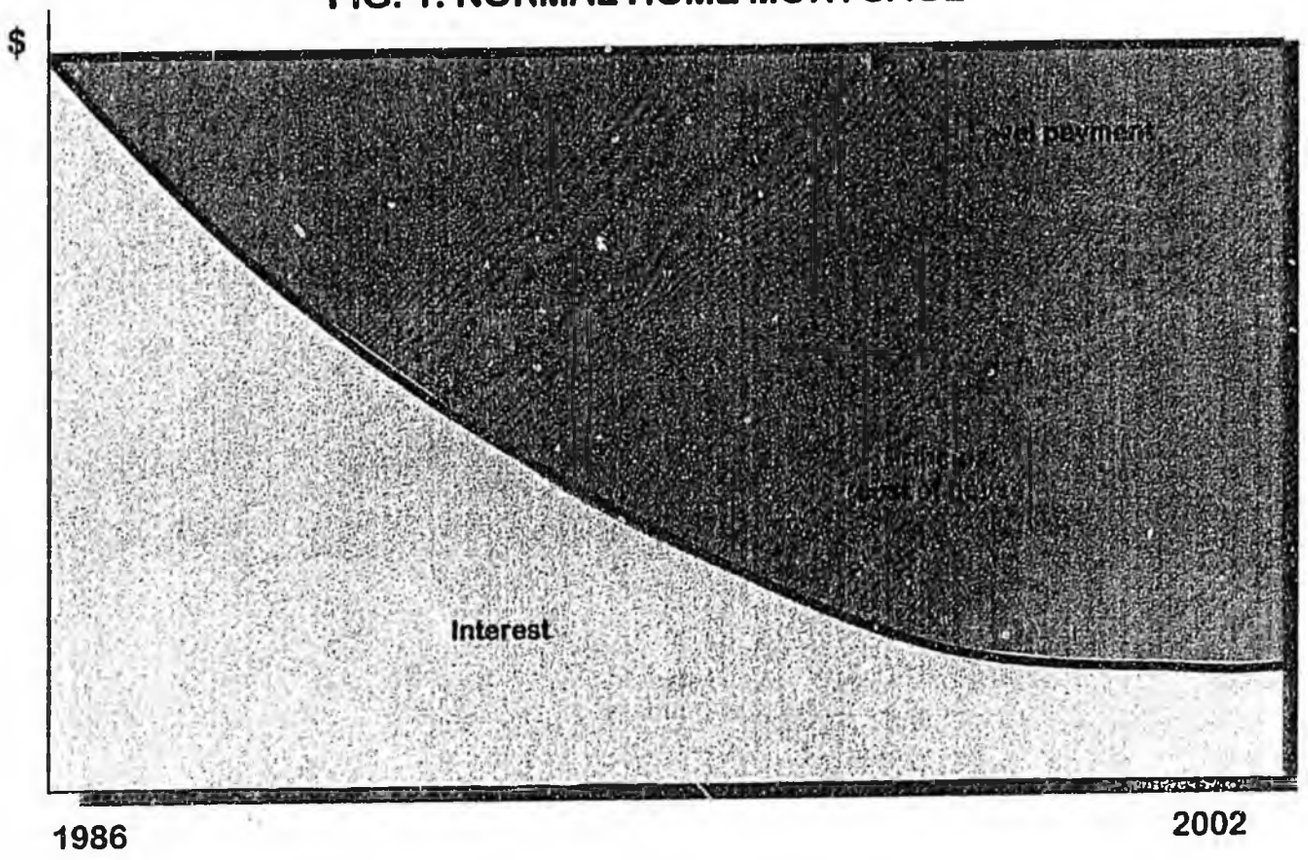
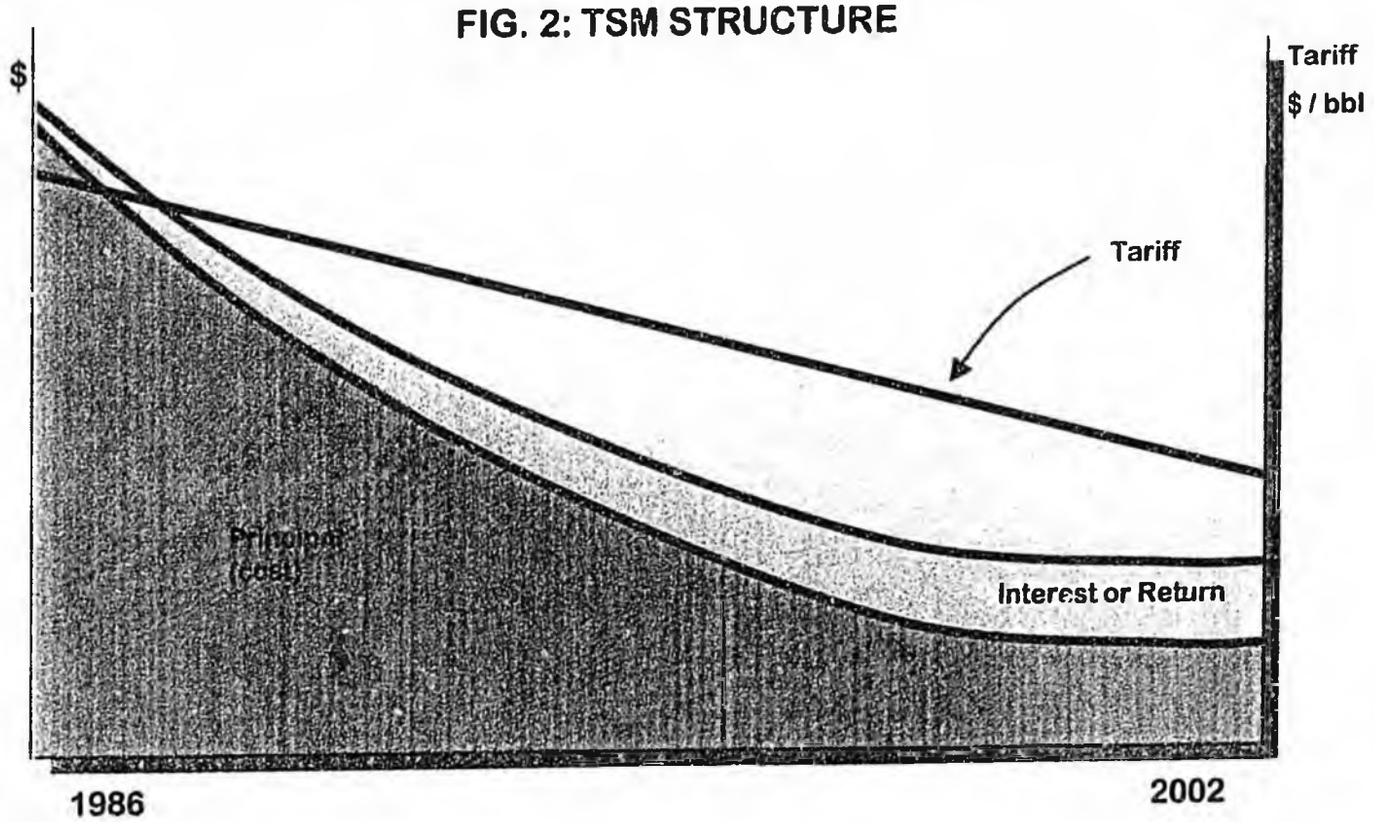


FIG. 2: TSM STRUCTURE



Anadarko Testimony Opposing HB 277

House Oil & Gas

Thursday, April 24, 2003, 3:15 p.m.

Mark Hanley, Alaska Public Affairs Manager, Anadarko Petroleum Corporation

Anadarko is one of the world's largest independent oil & gas exploration and production companies. At Anadarko we are explorers, using quality people and technology to find new reserves around the globe. We have a large acreage position in Alaska and are excited about the potential for oil and gas exploration in Alaska.

If you want to encourage Anadarko, other independents, and even majors who don't own part of the pipeline to come to Alaska and explore for oil and gas- then this bill is a bad idea. If you want to encourage the jobs and added value that comes from instate processing and instate use of Alaska's oil and gas- then this bill is a bad idea. If you want to help ensure that the state gets full value for its royalty oil and gas- then this bill is a bad idea.

Let's be clear what this bill is all about. The Regulatory Commission of Alaska found that the rates charged by TAPS carriers were excessively high -- by an average of 57% between 1997 and 2000. The settlement agreement between the state and the TAPS carriers insulates the TAPS carriers from claims the state could otherwise have made for the recovery of the billions of dollars the state potentially lost as a result. The agreement does not -- nor could it -- insulate the TAPS owners from overcharge claims other shippers were to make on the basis of the same rates the RCA found were excessive. But having shielded themselves by agreement from overcharge claims the State would otherwise have been able to pursue, the TAPS owners now want the legislature to insulate them against the legitimate claims of other shippers. We think that would be a mistake.

It's challenging enough exploring for oil and gas in Alaska, without having to worry about <u>not</u> being able to appeal excessive transportation charges for shipping your product down a pipeline. But that's what this bill would prohibit. Without public process, legislative review, regulatory

commission review or even participation by affected shippers, a deal could be negotiated with pipeline owners and the intrastate rates established by that deal could not be challenged.

This bill, without ever seeing the details of an agreement, predetermines that any negotiated pipeline tariff settlement, is in the public interest. It also predetermines, without ever actually seeing the shipping rates and rates of return and regardless of how high they might be, that those rates are "just and reasonable". The agreed upon rate or rate methodology cannot be challenged. Shippers who are not pipeline owners can't even appeal rates that are above those agreed to in the settlement.

While all companies want the best rate of return they can get, companies that ship oil & gas down pipelines and who also own those pipelines, have an incentive to shift as much profit as possible to the pipelines through high transportation rates. State royalties and taxes are based on well head value. Higher transportation costs lower the well head value and mean less paid in state royalties and taxes. This is one reason why pipelines are regulated and why they work on a cost plus type system, allowing them the opportunity to recover their costs, plus a reasonable rate of return. Pipelines are generally regulated to prevent artificially high transportation costs which could stymie competition in exploration.

Under this bill, if higher than reasonable rates were negotiated, the state would lose money and companies like Anadarko would be discouraged from Alaskan exploration, because those higher transportation costs would decrease the economics of our prospects. Contrary to the TAPS settlement agreement from 1986, this bill would prohibit the evaluation of rates to determine if they were excessive.

Now often, when reviewing legislation, you have to envision hypothetical situations to judge the potential effects of a bill. In this circumstance, we have a real life example to use as a case study and ironically, it seems that both the promoters of this bill and those of us who oppose it are using the same example to justify our positions. It's pretty clear that if this legislation had been in effect in 1986, Tesoro and Williams would not have been able to challenge the intrastate rates as excessive. The RCA would not have been able to review the rates and find that shippers were

paying 57% too much and that the state was losing billions of dollars in revenue because of high transportation costs. Despite the fact that a lot of things change during a 30 year deal (with no re-openers) no one would have been able to review the rates to see if they were excessive.

I suspect that you have seen the letter to Representative Tom Anderson where ConocoPhillips suggests that the Regulatory Commission of Alaska overturned an approved deal that was made back in 1986. "The Regulatory Commission of Alaska (RCA) has overturned a 1986 agreement with the State...". The agreement, "was approved by the Federal Energy Regulatory Commission as "fair, reasonable and in the public interest."" They go on to suggest that the 1986 agreement has not been honored, because this legislation will, "provide the confidence that an agreement with the State will be honored by all parties...".

A BP spokesman in a Dec. 31, 2002 Anchorage Daily News article stated, "The (method)under which the question arose was previously approved by the state of Alaska and FERC."

Inferences that the APUC (RCA) and/or FERC approved rates as reasonable, that the 1986 agreement was overturned by the RCA's consideration of a rate appeal, or that the 1986 agreement has not been honored, are incorrect.

The "rest of the story" is that at the time of the settlement, neither the Alaska Public Utilities Commission nor the Federal Energy Regulatory Commission ever reviewed and approved the rates as just and reasonable. Both the APUC and the FERC refused to impose the settlement terms on nonparticipating parties and both anticipated potential rate appeals in the future. The "deal" was that the rates could be challenged as excessive by someone other than the settling parties, and now ConocoPhillips and BP are trying to change the deal because they don't like the RCA ruling in response to a rate appeal.

Let me read a couple of statements from the recent RCA ruling. "Our predecessor agency accepted the Intrastate Settlement (the Settlement) because all affected parties supported it; the Commission did not decide that the Settlement produced just and reasonable rates." "The Alaska Public Utilities Commission (APUC) deferred the issue of whether TSM produced just and reasonable rates until a

shipper protested the rates." "Under the Alaska Pipeline Act, the Carriers have the burden of proving that the rates calculated and filed using TSM are just and reasonable."

Here are statements made by the TAPS Carriers in 1986 and 1987 in support of the offer of settlement. "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." "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.

The following FERC statements are from the June 27, 1986 order approving the settlement. "In response to numerous allegations, we categorically state that our approval of this settlement is not a precedent as to future TAPS' rates." "The carriers cannot rely on the approved settlements to establish the justness of these filed rate changes, since the settlement rates were never adjudicated to be just and reasonable." "The burden of showing that the new rate is just and reasonable will be on the TAPS carriers,...". "...the Commission is not at this time imposing the terms of the Settlement Agreement on any nonsettling party."

It seems quite clear that the "deal" agreed to in 1986 allowed and anticipated future appeals to determine just and reasonable rates. Now, ConocoPhillips and BP want to change the deal and take away the ability to review intrastate rates that have been determined through a settlement agreement. This puts non-pipeline owner shippers at a disadvantage and could discourage exploration.

According to the RCA ruling, the maximum TAPS intrastate filed rates for the years 1997 through 2000 were too high by an average of 57 percent. The RCA also states that "the rates charged between 1977 and 1996 provided the TAPS Carriers with the opportunity to recover $9.9 billion more than the reasonable cost of providing service." If this is true, the state has potentially lost

billions of dollars in revenue because the high transportation costs reduce the well head value of the state's royalty oil.

Lower transportation costs will encourage new exploration in Alaska. The ability to appeal potentially excessive transportation rates discourages the filing of high rates and provides certainty to shippers that rates will be reasonable. Prohibiting the appeal of potentially excessive rates, as HB 277 would do, will discourage exploration.

Pipeline companies should have the opportunity to recover costs and earn a reasonable rate of return. They should not be entitled to excessive rates of return that diminish competition, discourage instate investment and cost the state money.

The state is about to begin negotiating a long term fiscal package on a proposed Alaska natural gas line and the TSM will also have to be eventually negotiated. Don't remove negotiating tools from the state's table before the negotiations even begin. And don't prohibit folks in the future from reviewing rates to ensure that they are just and reasonable.

Anadarko is strongly opposed to this bill. It's bad for explorers, it's bad for refiners, it's bad for the state and at a time when the goal is to encourage new companies to invest and explore in Alaska, this would be the wrong message to send.

Thank you for the opportunity to testify.

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.

We look forward to working with you on this issue.

Sincerely,

Jerry Gallagher
Manager, Government Relations

TESTIMONY REGARDING WHY CHANGES TO THE PIPELINE ACT ARE NEEDED

Mr. Chairman, members of the Committee, thank you for this opportunity for ConocoPhillips to speak on this important issue. My name is Randal Buckendorf. I am an attorney in Anchorage for ConocoPhillips. I handle our environmental legal work and our pipelines legal work.

As Ms. Yaege has already explained, the changes we have advocated for are important for future certainty. You will hear testimony that this bill overturns recent RCA decisions. You will also hear a lot of testimony about the 1985 TAPS Settlement Agreement, how we are trying to advocate for the legislature through this bill to approve it, and also overturn a recent RCA ruling. This is all patently false and designed to raise red flags of dissension and controversy.

Instead, as Ms. Yaege as pointed out the bill is about regulatory clarity and certainty, and creating an atmosphere for the future where explorers like ConocoPhillips want to continue investing, exploring for new fields, and building 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 remain willing to work with you and other interested parties on modifying the original bill.

With that in mind, I would like to walk you through the bill, what those suggested changes are designed to do and then we will make ourselves available for any questions you may have. However, I may not be able to speak to questions if they relate to the recent RCA ruling or other topics which are the subject of ongoing litigation. But, as I have already advised, this bill is not in any event overturning that ruling.

First, clarity of jurisdiction. Jurisdiction on pipelines in Alaska is shared. The Federal Energy Regulatory Commission (FERC) has jurisdiction over all of the oil produced in the state that ends up being placed on a tanker in Valdez and shipped to the West Coast.... this is slightly more than 90 percent of the oil transported on TAPS. The RCA on the other hand has jurisdiction over that oil that stays "in-state". It is this basic difference that creates the terminology "intrastate" (RCA regulated) and "interstate" (FERC regulated). The changes recommended in Sections 1 and 3 provide absolute clarity surrounding this intrastate jurisdiction and correct the jurisdictional creep that is evident in several recent orders.

Another area of jurisdictional overlap and discontinuity is between the RCA and the Department of Natural Resources, and potentially the RCA and the Federal Bureau of Land Management – for federal leases. The changes recommended in Sections 1 and 2 make it clear that it is the same agencies that granted our rights-of-way (and not the RCA) that oversee these leases and the requirements within those leases for dismantlement, removal, and restoration.

In contradiction to Chairman Harbour's statement in his letter from last week, the bill would not remove RCA authority to oversee money collected on intrastate rates for DR&R. What it does is clarify what jurisdiction the RCA properly has with respect to pipeline ROW leases. Pipeline ROW leases are contractual arrangements between each pipeline owner and either the Department of Natural Resources, the Bureau of Land Management, or in some instances a private party. Any implication that the RCA can attempt to insert itself into these leases almost like a signatory party when clearly they are not a party, is unacceptable both from a contractual, and regulatory point of view. Jurisdiction is the fundamental principle surrounding all regulatory agencies and it needs to be clear. HB 277 provides that clarity in Sections 1, 2 and 3.

Second, equal treatment and Section 6. Sometimes we are going to end up in litigation. A pipeline act refund order is a "judgment" issued by an administrative agency as part of an administrative proceeding and it is treated as a judgment by the Alaska Supreme Courts rules of Appellate Procedure. The same interest rate that applies to judgments under the Pipeline Act has always been the same interest rate that applied to other judgments. That was the legislative intent in 1978 when it wrote this section of the act and we believe that the 1997 tort reform amendments also changed the applicable interest rate on Pipeline Act judgments. However, it is being argued that was not the case. The amendment in Section 6 makes it clear that the legislature did not intend to single out pipeline companies from every other business entity. As Chair Harbour pointed out, this is a decision the legislature can and should make. We believe that at a minimum it needs to be changed point forward. If however, the legislature agrees with us that the change was intended to be made in 1997 then the legislature can also decide that this clarification can be made retroactively back to the effective date of the 1997 amendments. Section 9 would do that.

Third, retroactive ratemaking and Section 7. It is a common principle of regulated utilities that an agency like the commission cannot bypass the rule against retroactive ratemaking. That rule is a fundamental aspect of regulated utility law and it is simply stated that an agency cannot retroactively apply a requirement for periods prior in time to when a complaint, protest, or commission action initiated the investigation or hearing that led up to that requirement. Section 7 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 broadened into something that was not intended. Essentially we suggested a change to this section that would make it clear that 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 or hearing. We look forward to working with you and the other parties, including the administration and the commission, to modify this section.

Finally, business certainty. As we have already explained, we are neither asking you to overturn the recent RCA decision on TAPS rates nor to legislatively validate the TAPS settlement agreement itself. I am confident though that the testimony that will soon follow would have you believe Section 5 would do just that. That is incorrect. Section 5 does not look at current agreements. It looks only to the future. The TAPS settlement agreement will expire in a few years. That agreement requires us to begin negotiation of a new agreement with the administration. Section 5 creates certainty for doing that.

When the State of Alaska through the Office of the Attorney General acts, it acts in the best interests of the state and the best interests of the public. The Alaska Supreme Court recognizes this principle, the Governor recently recognized it in Executive Order No. 111 and the concurrent amendment to AS 44.23.020, and so should the legislature.

Notwithstanding these valid reasons for section 5, we have no objection to removing it. We do hope that we will be able to work with you and the other parties to somehow recognize this principle, either now or in the future.

Thank you again for your time. We are pleased to try and answer any questions you may have about the bill itself. Again, because we are in litigation we may not be able to address certain questions you may have.

HB

296

REPRESENTATIVE ERIC CROFT

Sponsor Statement HB 296
Funding the Alaska Natural Gas Development Authority

In the 2002 election, 62 percent of Alaskan voters voted to create the Alaska Natural Gas Development Authority as a public corporation of the state to facilitate the creation of an Alaskan natural gas pipeline. The Authority would have a seven-member board of directors appointed by the governor to design, construct, operate and maintain a natural gas pipeline system.

With all of the public support and political rhetoric in favor of the project, the only thing missing is the financial support. HB 296 asks the Legislature to supply the seed money to get this vital economic stimulus started. Corporate investors need to see that Alaska is willing to commit to this project, and the best way to do this is to follow the public's lead and fund the Alaska Natural Gas Development Authority.

Alaskans know how valuable a natural gas pipeline would be to the citizens of this state in terms of jobs and economic growth. With oil production declining and vast amounts of natural gas going unused for lack of a viable means of transporting it to market, a natural gas pipeline is the most direct means of increasing the state's resource revenues.

HB 296 appropriates $1.3 million based on a draft budget for the Alaska Natural Gas Development Authority that was prepared in November 2002 by Scott Heyworth, the chief sponsor of Ballot Measure 3. The draft budget requested $2 million, but considering Alaska's current fiscal situation and proposed budget cuts, HB 296 proposes a more slim version that would lessen the Executive Director's salary, and cut some travel and miscellaneous funds. The $1.3 million appropriation would still provide adequate resources to research and lay the groundwork for the project.

As of the end of April, the governor has appointed no members to the board and allocated only $150,000 to the Authority. Alaska has waited long enough for a trans-Alaska natural gas pipeline. The people have spoken loudly in favor of pursuing the project, and now is the time for the Legislature and the Governor to listen.

January-May: State Capitol • Juneau, Alaska 99801-1182 • (907) 465-4998 • (800) 689-4998 • Fax (907) 465-4419
June-December: 716 W. 4th Avenue • Anchorage, Alaska 99501 • (907) 258-8162

ALASKA'S STRATEGIC INTERESTS IN NORTH SLOPE GAS DEVELOPMENT

By Paul Fuhs for Backbone 2

WHO IS BACKBONE 2?

Backbone 2 is an Alaskan citizen organization that supports the expeditious development of Alaska's North Slope gas reserves in a manner that provides maximum benefits to the people of Alaska. Backbone recognizes that there could be significant benefits from a publicly owned gas pipeline including jobs for Alaskans, state and municipal revenues and access to gas for Southcentral and coastal Alaska. And since the All-Alaskan LNG project is already permitted, it could be built years earlier than a pipeline through Canada.

In 2002 138,000 Alaskan voters (62%) voted to create the Alaska Natural Gas Development Authority (ANGDA) to build a publicly owned gasline paralleling the trans Alaska oil line to Valdez. Backbone 2 was established to demand that our elected and appointed officials respect the will of Alaska's citizens. We support adequate funding for ANGDA and call on the Governor to provide leadership in securing a gas supply for the project. We also call on our congressional delegation to treat the All-Alaskan project equally in federal energy legislation.

WHAT WAS THE PURPOSE OF BACKBONE 1?

Backbone 1 was formed three years ago to fight the efforts of British Petroleum to take over all of ARCO's assets on Alaska's North Slope through a merger. The issues were monopolistic control of contracting on the North Slope, concentrated political influence in Alaska and continued stonewalling on development of Alaska's North Slope gas reserves. The efforts of Backbone 1 and others led to the Federal Trade Commission's rejection of their acquisition of ARCO's Alaska assets. A copy of the FTD order is available on Backbone 2's website: Backbone2.org ARCO's Alaska holdings were purchased by Conoco-Phillips and that is how they became one of Alaska's oil and gas producers. The reference to backbone was encouraging Alaska's political leaders to have one against the merger.

IS THE ALL-ALASKAN LNG PROJECT ECONOMIC?

According to the base case LNG project adopted by ANGDA (available at backbone2.org website) an LNG project which costs approximately $12 billion to build including a gas conditioning plant, pipeline, liquefaction facilities, marine terminals and tankers, and which can produce 2.2 billion cubic feet per day (bcf/day), is economic if the gas can be sold for $3.50 to $3.70 per million BTU. That price is right in the middle range of long term LNG contracts currently being negotiated in Asia and the US West Coast.

While the major oil companies say the project is uneconomic, they studied it several years ago at a production rate of only 1 billion cubic feet per day because it was thought that you couldn't place more than that amount at one time into the Asian market. With the opening of US West Coast markets to LNG, that restriction is no longer the case.

When you produce over 2 billion cubic feet per day, you reach sufficient economies of scale to pay the debt service and make a reasonable rate of return to the owner of the project. At a 12% rate of return, the project owner (in this case ANGDA) would earn about $1 billion per year. The oil companies have consistently state(d) that they need a much higher rate of return before they will do a project.

Well, a billion dollars a year might not be enough for the oil companies, but for Alaska it equals the budget deficit Alaska is facing which otherwise can only be made up by massive budget cuts, heavy taxes, losing your permanent fund dividend or all the above.

The bottom line is that ANGDA must perform its own analysis of this base case so that it can negotiate throughput agreements and gas purchase and sales agreements with confidence. This is why Backbone 2 strongly supports the proposed funding of $2.15 million contained in SB241 by Senate President Gene Therriault.

CAN ALASKA COMPETE?

The oil companies have also intentionally misinformed people by repeating over and over that Alaska can't compete because all the other projects have gas right(s) at tidewater and Alaska requires an 800 mile pipeline. In fact, other projects do have pipelines and other development costs that Prudhoe bay does not have. For instance, many of the competing projects have field development costs that Alaska does not have. At Prudhoe Bay, we are producing 8.5 bcf/day as part of the oil development and all that would have to be done to provide gas there is to turn a valve on.

Here are some of the pipeline distances associated with other LNG projects: Malaysia Tiga pipeline 300 miles, Yemen pipeline 200 miles, Darwin LNG pipeline 310 miles, Sakhalin II pipeline 390 miles of 48 inch pipe and 110 miles of gathering pipe, Bolivia 280 miles plus expansion of (a) 1100 mile pipeline.

Alaskan LNG has a number of other advantages. Alaska is much closer to US west coast markets which represents far lower shipping costs. For example, Alaska is 2245 miles from LA, Sakhalin is 4964 miles away, Darwin, Australia is 7916 miles, Natuna is 8951 miles away, Abu Dhabi is 11,565 miles away and Yemen is 12,050 miles away. LNG tankers constitute a substantial expense of an LNG project, up to $200 million apiece. If the shipping distance is twice as far, you need twice as many tankers. The tankers required to ship LNG from Quatar to the US West Coast is equal to the costs of the Alaskan pipeline.

The real bottom line on comparing projects to each other is contained in the term 'Cost of Service'. This term is used in the industry to identify all the costs associated with shipping the gas and is usually stated in terms of dollars per million btu ($/mmbtu). Listed below are comparative cost of service numbers for representative projects around the world. The source of these numbers is Conoco Phillips:

$/mmmbtu cost of service to US West Coast

$2.32 Malaysia LNG 3
$2.57 Rasgas expansion
$2.27 Tangguh, Indonesia
$2.29 Northwest Shelf
$2.51 Sakhalin 2
$2.49 Australia Gorgon
$2.80 Alaska LNG

$2.20 Alaska LNG tax exempt (estimate by ANGDA)

While the cost of service numbers for Alaska are higher, they are based on a private commercial pipeline structure rather than a publicly owned pipeline as represented by ANGDA. ***When you apply ANGDA's income tax exemption to these numbers, Alaska's cost of service is $2.20 per mmbtu, lower than any other source of supply in the pacific rim.*** Conoco Phillips also notes that additional field development costs (which Alaska does not have) are not included in their numbers.

IS THE PROJECT FINANCABLE?

Two investment banking firms have analyzed the data in the base case for the All-Alaskan LNG project and have found that the project is financable if the estimated project costs are correct and long term sales contracts can be obtained. These companies are George K. Baum and Taylor DeYoung. An executive summary of George K Baum's analysis is accessible under the facts and reports section of Backbone 2's website.

The loan guarantee provisions put into the omnibus bill by Senator Lisa Murkowski would also help in the financing of the project. Although the omnibus bill recently passed, the energy bill would also have to pass to make the provisions active. The future of the energy bill is uncertain.

Pipeline projects are typically financed primarily through debt. Even the Trans Alaska oil pipeline was financed with only 25% equity. The remaining 75% was financed through the sale of taxable bonds, with the exception of the marine terminal which was financed by the municipality of Valdez. If long term contracts for LNG can be obtained, the project could be financed with 100% debt.

WHAT ARE THE MARKETS FOR ALASKA'S LNG?

Asia has always been seen as a market for Alaskan LNG. They have purchased LNG from the LNG plant in Nikiski for the past 30 years and see Alaska as a more stable source of supply than Indonesia, Russia or the Middle East. Development of West coast markets for LNG would provide the economies of scale needed to make Alaska's LNG project economic. The states that have expressed an interest in Alaskan LNG are California, Oregon and Hawaii.

Japan, Korea and Taiwan have all expressed an interest in Alaskan LNG. They have also stated that they prefer Alaskan LNG due to security of supply compared to less stable sources in the world. Buying American gas from Alaska will also help reduce the balance of payments deficit with our Asian trading partners.

It should also be noted that North Slope gas is a rich gas that contains more than methane. North Slope gas contains propane which commands a premium price in the Asian market. It also contains ethane and butane which can be used as a feedstock for value(-)added hydrocarbon products such as plastics and rubber.

Alaska communities are also an important market for North Slope gas. Although small in scale compared to West Coast or Asian markets, providing affordably priced gas to Alaskans is an important component of this project.

WHY WON'T THE OIL COMPANIES BUILD THE LNG PROJECT?

In representing the interests of their shareholders, the oil companies look at their worldwide leases and operations, not just their Alaska holdings. Oil and gas consultant Pedro Van Meurs testified to the legislature 3 years ago that the companies were pursuing projects overseas that had worse economics than the Alaska project because those leases contained requirements that the companies develop them within a certain time period, often as little as five years or they would lose the leases.

Alaska's leases lump oil and gas together so as long as the oil is being produced, the lease terms are being met. Alaska gas is like a gallon of milk on the shelf with no pull date on it. That milk will never make it to the front of the shelf. The field the oil companies have not developed at all and which is probably in default is Point Thomson which has not been developed for 20 years. The State of Alaska needs to take a strong position regarding this field and to take it back if necessary. It could provide a valuable source of gas for the gasline project.

Another problem with the 3 oil companies on the North Slope building an LNG project or any gas project is that they all have different agendas and in many cases are dysfunctional as a unit. Part of this was caused by the fact that because of the way the Prudhoe Bay oil reservoir and gas cap are situated, the companies owned different percentages of oil and gas. When the Oil and Gas Conservation Commission threatened to unitize the field, which is standard practice for almost any field in the world, Attorney Bruce Botelho, at

the request of Governor Tony Knowles, wrote them a letter and told them that they had no jurisdiction over economic matters on the slope. The response disagreeing with that letter from Commission member Tuckerman Babcock is available in the fact and reports section of Backbone 2's website.

A fascinating insight into the dysfunction and different agendas between the companies on the North Slope is contained in the Module 880 ruling by the Department of Natural Resources which is also available on the website.

When ARCO was bought by Cononco-Phillips as part of the BP merger, the companies finally realigned their oil and gas interests so they are equal so this should no longer be an impediment to the project going forward.

However, it does raise one more concern. Since the companies own roughly one third of the gas each, if any of the Alaska projects go forward, they will get to market their one third but they will be giving up two thirds of their market share to their competitors. This causes them to favor their overseas projects which they do not have to share with other companies.

WHAT ARE THE COMPARATIVE BENEFITS OF THE ALL-ALASKAN AND CANADIAN HIGHWAY PROJECT?

It is difficult to compare the projects because the oil companies won't release any of their numbers and the Murkowski administration hasn't presented any of their own analysis. However, some things are clear:

JOBS: Alaskan employment on the All-Alaskan LNG project will be at least double the Canadian Highway project. Building a pipeline to the Canadian border will take only 2 years compared to at least 4 years of construction employment on the LNG project due to the construction of the liquefaction plant and marine terminal in Valdez. There will be many more jobs building the pipeline through Canada, but that will all be done with Canadian workers Why would we surrender our future to a foreign country and lose our Alaskan jobs?

REVENUES: State revenues would be higher with the All-Alaskan LNG project because we would own all or a significant part of it. It has been estimated that the state owned pipeline would generate up to $1 billion per year to the State of Alaska. (George K. Baum analysis) This could minimize the need for taxes on Alaskan citizens and protect the permanent fund dividend. For a privately owned Canadian Highway project, Alaska would only receive severance, production and property taxes which would be far lower than a publicly owned project. The law that established ANGDA also requires them to negotiate revenue sharing with local governments. This could provide tax relief on a local level. Part of the state revenues would also go into the permanent fund and will increase dividends in the future.

GAS TO ALASKANS:

Shortages of gas in Cook Inlet are already causing price increases for consumers and businesses in Southcentral Alaska. Within 5 years the price of gas could double. This is causing extreme problems for the Agrium plant in Kenai and will also affect other businesses. The most efficient way to get North Slope gas to Southcentral Alaska is through a spurline from Glenallen to Palmer off the LNG project mainline. The North Slope to Valdez pipeline can be expanded from 2.2 bcf/day to 3.0 bcf/day by adding more compressor stations at a minimal cost. It is 137 miles from Glenallen to Palmer where it is possible to tie into Enstar's 20" distribution line which connects all the way from West Cook Inlet, through Anchorage and down to Kenai. A spurline off the Canadian Highway project from Fairbanks or Delta would be more than twice as long and require higher prices to gas consumers.

Gas can be delivered easily anywhere along the line since methane is the lightest gas in the mix and will separate out with the application of heat. The remaining heavier gases are just pumped back into the pipeline. A major advantage of the All-Alaskan LNG project is that when you have gas at tidewater, it can be delivered by barge to coastal communities and provide stable priced, affordable energy to coastal Alaskans. The Alaska Intrastate Gas Company has certificates to provide gas to 17 Alaska coastal communities. Their plan is to obtain their gas from Canada by rail barge initially and then switch over to Alaskan gas when it is available at tidewater.

WHICH PROJECT CAN BE BUILT SOONER?

The All-Alaska project has already been permitted by Yukon Pacific Corporation which is currently negotiating with ANGDA to provide the permits for the project. On the other hand, the Canadian Highway project will require major permitting, settlement of their native land claims, modification of the Alaska Natural Gas Treaty by both the United States and Canada, etc. Pedro Van Meurs, an oil and gas consultant for Alaska has estimated that the Canadian Highway project would not come on line before 2015.

WHICH PROJECT IS BETTER FOR THE ENVIRONMENT?

The All-Alaska LNG project is permitted within the existing congressionally designated pipeline corridor. A new industrial corridor would be required for the Canadian Highway project If a spurline was built from Fairbanks to Cook inlet, it would have to go through Denali Park, the Minto Flats wildlife preserve and subsistence area, and would also have to cross the Susitna Flat Wildlife preserve.

WHICH PROJECT HAS THE GREATEST POTENTIAL FOR VALUE ADDED PROCESSING?

A project to tidewater which connects with international shipping vessels is clearly superior to an inland pipeline project. Ethane and butane can be used as feedstock for

manufacturing of plastics, etc. The province of Alberta has stated that the price they will exact for the Canadian Highway project is that they will strip out all the hydrocarbons for value added manufacturing in Alberta. Alberta has a $6 billion per year industry based on processing these hydrocarbons and they directly employ 3400 people. Those jobs should be in Alaska since it is our gas.

WHICH PROJECT CREATES THE MOST OIL LOSS?

When gas is removed from an oil field a certain amount of oil production is lost. This has not yet been calculated for the Prudhoe Bay field. In ANGDA's base case, 60% of the miscible injectant is maintained on the slope for enhanced oil recovery. The base case for the All-Alaska LNG project is 2.2 bcf/day. The Canadian Highway project is 4.5 bcf/day which is removing more than twice as much gas as the LNG project and would result in much higher oil loss. The Alaska Oil and Gas Conservation Commission should investigate this issue and make an estimate for both projects of oil loss and subsequent revenue loss to the State of Alaska.

WHICH PROJECT IS BEST FOR ENCOURAGING INDEPENDENT OIL COMPANIES TO EXPLORE AND PRODUCE GAS IN ALASKA?

To answer this question, it is very instructive to look at the current situation with the Alaska oil line. It is privately owned by the major producers on the North Slope. It is in their best interest to charge the highest price possible for shipping oil through the line. This allows them to write off the charge against the wellhead price and reduce their taxes to Alaska. The higher tariffs also make it difficult for independent oil companies to bid against the majors on oil leases. The oil companies don't mind paying the higher tariffs because they own the pipeline and the money just goes from the left pocket to the right pocket.

In a recent ruling, the Regulatory Commission of Alaska (RCA) ruled the the(delete second "the") oil companies were overcharging on the pipeline by 53%. A copy of their ruling is available on the Backbone 2 website.

ANGDA would have no similar incentive to overcharge for their pipeline tariffs. Quite the opposite, as an Alaskan organization they would have a stake in maximizing oil exploration and development in Alaska.

WHICH PROJECT PROVIDES BENEFITS TO NON PROFIT ORGANIZATIONS IN ALASKA?

When Wally Hickel was Governor of Alaska, he divested himself of his holdings (10%) in Yukon Pacific and dedicated any proceeds Yukon Pacific may earn from the project to charities in Alaska. These proceeds will be distributed on an annual basis by a three member board which will decide who gets the money. There are no similar provisions for the Canadian Highway project.

WHAT IS THE PROCESS THAT ANGDA WILL FOLLOW TO DEVELOP THE ALL-ALASKAN PROJECT?

LNG projects around the world follow a similar pattern in their development. ANGDA will be no different.

1. The first step is to identify the quantity of the resource available. For Alaska this is easy, We are producing 8.5 bcf/day on the North Slope as part of oil production.
2. The next step is to do preliminary engineering to show that the project is technically feasible and to identify approximate costs. Much of this work has already been done by Yukon Pacific Corporation and has been turned over to ANGDA. ANGDA must confirm these numbers for themselves and that is the purpose of the proposed $2.15 million appropriation to the Authority.
3. Utilizing the preliminary numbers, ANGDA will seek letters of intent from gas producers and gas buyers. These letters typically state that if the preliminary numbers are verified by detailed engineering and the gas can be supplied at the prices quoted, that the purchase agreements will be formalized. ANGDA may also seek throughput agreements with the producers if they want to market their own gas. These agreements make commitment for capacity of the line at quoted cost of service fees.
4. Once letters of intent are in hand, detailed engineering and financing for the project must be completed. This will cost approximately $200 million. Based on the letters of intent this money is often funded by bond anticipation notes.
5. Once detailed engineering and financing verify the economic and engineering models, the gas purchase and sales contracts are finalized, the bonds are sold for the project and construction proceeds.

IS GOVERNMENT PARTICIPATION IN A PROJECT SUCH AS THIS UNUSUAL?

Around the world, it is actually the norm for governments to participate financially in oil and gas development projects when the resources are owned in common by the people. Substantial profits can be made in the transportation and sale of oil and gas products and ownership in transportation infrastructure is seen as a key method for insuring that the citizens receive a fair rate of return on their resources.

For instance, two deals recently announced by Conoco-Phillips and Exxon in Quatar have the Quatar government owning 70% of the project and the companies owning the rest. Although the oil companies are against Alaska owning any part of an Alaska gasline, it is interesting that they are willing to deal with middle eastern, African and Indonesian governments that own a majority of their projects, but are unwilling to deal with a state that is part of the United States.

It is not even unusual for states to own pipelines. Two states, Wyoming and Georgia have formed authorities to build their own gas pipelines because the private sector is unwilling to build them, just like they are in Alaska.

IS THIS JUST ANOTHER DELTA BARLEY FARM OR ALASKA SEAFOOD INTERNATIONAL BOONDOGGLE?

If the delta barley project or the Seward grain terminal would have had to meet the same financing requirements of this project, they would never have been built.

The language in the proposition 3 initiative states that the faith and credit of the State of Alaska is not pledged to this project. Other than the initial funding for the Authority to complete the necessary due diligence on the project, all other funding will be provided by private equity partners or by non-recourse revenue bonds.

There are two important third party checks on this project which set it apart from previously state funded projects that were not very well thought through before they were funded. First, if the project is not feasible, the markets will not sign purchase agreements for the gas. Second, in order for the bond market to feel comfortable buying the bonds, they will have to see the sales or throughput contracts and have reviewed all the economic models. When they buy the bonds for this project, they are assuming the risk for the project. If congress passes the loan guarantee provisions for the All-Alaskan LNG project which were included in federal energy legislation by Senator Lisa Murkowski, it will make it easier to sell the bonds because the full faith and credit of the US Government will be behind (80% of)the bonds.

At no time can the assets of the permanent fund be put at risk by this financing. If the permanent fund chooses to consider investing in bonds for the project, they should compare it with other investment opportunities they have and only invest if the Alaska project provides superior returns to the fund.

HOW CAN A GAS SUPPLY BE SECURED FOR THE ALL-ALASKAN LNG PROJECT?

There are voluntary and involuntary methods and all voluntary methods should be fully explored before taking stronger actions. Typically, the project sponsor would declare a cost of service figure for shipping gas through their pipeline. Then an open season is announced to seek contracts for throughput agreements with gas holders to ship their gas. The next step would be to offer to buy the gas from the producers for the project at a certain wellhead value. If the offer is reasonable and if the producers refuse to sell their gas for the project, it may be a breach of their lease requirements and may open the door for the State to take legal action to secure a gas supply.

The most extreme measure would be the use of eminent domain which the state uses regularly to secure properties and materials for other projects such as highways, airports, etc. It is required to pay fair market value for any properties or materials taken. The

companies would not be able to stop the state or ANGDA, which also independently has the powers of eminent domain, from taking the gas. However, state law would allow them to argue in the courts over what is fair market value. It would be interesting to see what value the courts would place on stranded gas on the North Slope which has very little value without a pipeline to move it to market.

Although eminent domain is a strong action, it would financially benefit the oil companies also. If they were paid the amount in ANGDA's base case model, ($.94 per mmbtu) the oil companies would receive about $720 million per year, after taxes, for doing nothing more than just turning on a valve and providing the gas.

The legislature has also considered gas reserves taxes in the past in which the companies would pay higher taxes the longer they leave the gas in the ground. These taxes have not passed in the past, but perhaps the legislature will look on them differently in the context of a proposed gasline and a spreading budget deficit.

HOW DOES THE JONES ACT AFFECT THE PROJECT?

For LNG entering the US West Coasts or Hawaiian gas markets, the Jones Act will apply requiring vessels with US built hulls and US crews. These vessels will be more expensive to build and operate. Does this make the All-Alaskan LNG project uncompetitive? It appears that the costs of the Jones Act requirements are small compared to other costs of this or any other LNG project.

The Jones Act requirements also raise the question of the ability of US shipyards to physically produce enough vessels in time for the All-Alaskan LNG project. In discussions with US shipyards, they point to a number of factors that could allow the All-Alaskan LNG project to go forward now while minimizing the economic impact.

In the 1970's 13 LNG tankers were built in US shipyards utilizing federal shipyard construction subsidies (CDS) to equalize the cost of construction with foreign shipyards. When the expected LNG terminals in the US were not built, these vessels went in to service transporting LNG from Indonesia to Korea and Japan. Because of the construction subsidies, they were required to maintain their US. With the same costs Alaska would have to pay to move its LNG, these tankers have been able to operate economically for over 20 years.

The typical life of these tankers is 40 years so they could be reflagged into the US fleet and used to transport Alaskan LNG to the US west coast. Even if you had to buy a new foreign built LNG tanker to replace them for their foreign work, the cost of acquiring these tankers would be equal to foreign built tankers.

In the long, term, US shipyards could replace these vessels with new US built vessels, built over time instead of all at once, which the shipyards also prefer. The Jones Act is not a major impediment to the All-Alaska LNG project.

WHAT ABOUT A MAINLINE ROUTE TO KENAI?

Backbone 2 does not take a position between competing communities for LNG facilities. However, we are concerned about a potential several year delay for permitting a different project outside the already permitted route within the congressionally designated,Trans Alaska Pipeline corridor. As we noted earlier, there is a way to economically move North Slope gas to Southcentral Alaska by a spurline from Glenallen to Palmer where it would tie into the existing Enstar pipeline infrastructure.

IS BACKBONE 2 AGAINST THE CANADIAN HIGHWAY PROJECT?

No. Backbone 2 believes that it will take several years for the Canadian Highway project to get permitted and financed. Even with the recent applications submitted to the state under the Stranded Gas Act, there is no reason for Alaska to wait on developing the All-Alaska LNG project. If the Canadian Highway project is built later, that would be great. At least Alaska would have the project that provides gas and other substantial benefits to the people of Alaska.

The worst possible outcome would be if these applications were used as a justification for slowing down the efforts to expeditiously develop the All-Alaska project.

After reviewing the stranded gas act applications recently submitted,(available in full text on backbone2.org website) it appears that the application from Mid America in conjunction with the Alaskan company Pacific Star Energy is a serious proposal. It is great to finally see Alaskan ownership in a North Slope development project.

Mid America is offering to move the gas of any North Slope producer for a fee. If they do not get contractual agreements to move the gas, it is doubtful they can receive the financing for the project.

In their application to the state they declare that "Of necessity, commercialization of the project will require concurrent contractual arrangements by shippers for transportation of gas involving both the Alaska pipeline and the downstream Canadian line." They also reference the need for "long term contracts for firm transportation service." "Mid America will not hold title to any of the gas supplies transported by the proposed pipeline."

So Mid America is dependent on the producers for their project. When Foothills Pipeline group made a similar proposal 3 years ago, they were told by the producers that they weren't interested. Given the fact the producers have proposed their own pipeline under the stranded gas act (including the over the top route) it is doubtful that they will agree to give up the profits of a gasline to someone else. The Mid America proposal says they will make a go/no go decision by 2007.

Even if we assume that Mid America can be successful, there is no reason for Alaska to slow down on development of its own project which was mandated by Alaskan voters. Perhaps there is a way for ANGDA to work with Mid America on a development which would move the Alaska project forward and also help them with their Canadian project.

The stranded gas application from the producers contains no timelines or commitments to actually build the project. It is more of a place holder and delay mechanism than anything else. They are asking the state to give them tax and royalty relief without making any real commitment to the project.

They clearly state: **"Nothing in this application or any communications between the parties should be construed as a commitment by the Sponsor Group to complete fiscal contract negotiations, or to initiate engineering design, permitting, procurement, or construction of a qualified project or are deemed to create any obligation or liability of the sponsor Group to proceed with a Qualified Project.**

They have also openly stated that without price subsidies from the Federal taxpayers, the project is uneconomic. It is clear now that those subsidies will not be available, even if an energy bill passes. The reason those subsidies are necessary for them is that they are demanding a high rate of return and the pipeline is just too long.

According to Bill Hauhe, manager of global liquefied natural gas (LNG) for Chevron Texaco, speaking at a recent LNG workshop at the second annual Africa Oil and Gas Conference sponsored by the Corporate Council on Africa in Houston, Texas, "For distances up to about 2,000 kilometers (approximately 1000 miles), pipelines are usually the most economical way to move gas to market. For longer distances, such as between West Africa and North America, special double-hulled LNG ships are the preferred option."

The Canadian Highway route is about 2200 miles to Alberta and 3600 miles to Chicago.

Again, the main point here is that regardless of the stranded gas act applications, Alaska should continue to move forward on its own project which can provide maximum benefits to Alaska in State revenues, municipal revenue sharing, and access to gas for Alaskans. Eventually, both projects could be built and that would be the best case scenario for Alaska.

The stranded gas act applications open the way for the Murkowski administration and the legislature to negotiate provisions that would allow the All-Alaska project to go forward. If the oil companies are asking for tax and royalty breaks, the state should demand either a gas supply for the All-Alaska project or some other commercial agreement that would help facilitate the project such as a joint venture agreement. To do any less would be to abandon the strategic interests of the people of Alaska in North Slope gas development.

VISIT BackBone2.ORG TO ACCESS THE DOCUMENTS REFERENCED IN THIS PAPER. To comment contact paulfuhs@earthlink.net

February 13, 2004

To:

Mr. Joe Marushack
Vice President
ANS Gas Development
ConocoPhlips Alaska

Mr. Ken Konrad
Sr. Vice President
Alaska Gas
BP Exploration Alaska

Mr. R. D. Schilhab
Vice President
ExxonMobil Alaska
Production

Dear Sirs:

The Board of Directors of the Alaska Natural Gas Development Authority (ANGDA) takes note of your recent application to the State of Alaska under the Stranded Gas Act.

As a public corporation of the State, ANGDA's interest is in the timely delivery of Alaska gas to the market in a way that provides the maximum benefits to Alaska and Alaskans. ANGDA was created by public initiative and directed to pursue a gasline to Valdez, LNG export, and a spur line from Glennallen to the Cook Inlet area. Obviously this project has a number of common aspects to one of your proposed gasline route alternatives following the AlCan highway and we would welcome the opportunity to work with you in a mutually beneficial way. Your Beaufort Sea alternative route might become possible if North Slope gas was available to Alaskans as provided for in our project and we would also welcome the opportunity to discuss your co-operation towards that objective.

Additionally, ANGDA has undertaken several work projects (i.e., a "benefits analysis" model) that may be of interest in your project definition and discussions with the State. We also are currently defining our business structure to assure that the leverage of being an Alaskan public agency contributes to the lowest cost-of-service possible in North Slope gas transportation.

In all of these areas we are anxious to contribute positively towards your determination of an economic project and we would welcome the earliest opportunity to interact directly at a Board level.

Harold Heinze
CEO, Alaska Natural Gas Development Authority

February 12, 2004

Mr. David L. Sokol
Chairman and Chief Executive Officer
MidAmerican Energy Holdings Company
P. O. Box 657
Des Moines, IA 50303-0657

Dear Mr. Sokol:

The Board of Directors of the Alaska Natural Gas Development Authority (ANGDA) and I welcome you and your company to Alaska and your sponsor group interest in bringing North Slope gas to market. As a public corporation of the State, ANGDA's interest is in the timely delivery of Alaska gas to the market in a way that provides the maximum benefits to Alaska and Alaskans.

ANGDA was created by public initiative and directed to pursue a gasline to Valdez, LNG export, and a spur line from Glennallen to the Cook Inlet area. Obviously this project has a number of common aspects to your proposed AlCan highway gas project and we would welcome the opportunity to work with you in a mutually beneficial way.

Additionally, ANGDA has undertaken several work projects (i.e., a "benefits analysis" model) that may be of interest in your project definition and discussions with the State. We also are currently defining our business structure to assure that the leverage of being an Alaskan public agency contributes to the lowest cost-of-service possible in North Slope gas transportation.

In all of these areas we are anxious to contribute to your project's success and would welcome the earliest opportunity to interact directly in Alaska or at your headquarters.

Harold Heinze
CEO, Alaska Natural Gas Development Authority

Copied To: Mr. Robert Sluder, MEHC Alaska Gas Transmission Company, LLC
Mr. Ken Thompson, Pacific Star Energy
Mr. Carl Marrs, CIRI

HB 296 (Sponsor is Rep. Croft)
ANGDA supplementary funding request ($2.15 million)

(Heinze on 2/16/04)

Covers major work areas related to:

- business structure for the lowest cost-of-service
- integrated analysis of the benefits to Alaska and Alaskans
- verification of key project design, cost, and schedule elements

Addresses all eleven elements listed in Ballot Measure 3 that must be included in the development plan

Interactions with State's consideration of Stranded Gas applications:

- Help with the work (ie, benefits analysis, spur line)
- Provide a lower cost-of-service business alternative that help gas marketability
- Augment sponsors ability to provide gas and benefits to Alaskans
- Provides an alternative project for comparison (fall-back)

ANGDA is working with the Administration team to define and contract for most important ANGDA and Stranded Gas work efforts. Total funding requirement seems consistent with several alternative work emphasis scenarios. Timeline may slip depending on involvement with SGA applicants.

Resolution of the ANGDA Board passed unanimously on Feb 9, 2004 in support of the Administration's proposal to combine efforts of State resources working on North Slope gas issues.

> "The Board of the Alaska Natural Gas Development Authority supports the appropriation of $3,000,000. in the remainder of FY 04 to the Department of Revenue for work related to bringing North Slope gas to market."

SARDFA
Southeast Alaska Regional Dive Fisheries Association
Compiled by Julie Decker, Executive Director
February 16, 2004

Dive Fisheries Fact Sheet - Corrected

1) **SARDFA Supports HB 341:** SARDFA requested Rep. Williams introduce HB 341, which is basically a housekeeping measure to allow divers to tax themselves at 2, 4, or 6 % in addition to 1, 3, 5, or 7% already allowed.

2) **Creation of SARDFA:** SARDFA was created through legislation passed in 1997. This legislation allows for the creation of regional dive fishing organizations and their ability to vote to assess (tax) themselves to help fund the development and management of the dive fisheries. At that time, the agreement between the Legislature, ADF&G & SARDFA was to continue putting the same level of General Funds into the dive fisheries as in the past, and to pay for increased quotas and management through use of the assessment.

3) **Three Dive Fisheries in SE:** Currently, there are three commercial dive fisheries in Southeast Alaska – sea cucumbers, sea urchins and geoducks.

4) **Number of Participants:** The following are numbers of permit holders and active permits in each of the dive fisheries: sea cucumbers 367 (220), sea urchins 80 (20), geoducks 75 (45).

5) **Value of Fisheries:** The ex-vessel values for each of the fisheries for the past three years are listed below, with FY04 as a projection:

	FY2002	FY2003	FY2004
Sea Cucumbers	$2,597,780	$2,040,000	$2,600,000
Sea Urchins	$ 784,800	$1,020,000	$1,071,429
Geoducks	$ 145,700	$ 612,000	$1,800,000
Total	$3,528,280	$3,672,000	$5,471,429

6) **Value of Assessments:** The assessments for the past three years are listed below, with FY04 as a projection:

	FY2002	FY2003	FY2004
Sea Cucumbers	$129,889	$102,000	$130,000
Sea Urchins	$ 54,936	$ 71,400	$ 75,000
Geoducks	$ 7,285	$ 30,600	$ 90,000
Total	$192,110	$204,000	$295,000

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North America's Source for Oil and Gas News
February 2004

Vol. 9, No. 7 Week of February 15, 2004

Alaska gas authority work could shift

Administration says it's time to stop planning stand-alone LNG project

Larry Persily

Petroleum News Government Affairs Editor

The Murkowski administration believes it's time the Alaska Natural Gas Development Authority stopped looking at building a state-owned pipeline from the North Slope to Valdez and instead shifted its focus to seeing what value it might add by building on to a proposed gas line to mid-America.

That could include spur lines from the main trunk to serve Interior communities, bringing gas to Southcentral Alaska to supplement declining Cook Inlet supplies, and a smaller line to tidewater at Valdez for a liquefied natural gas project.

And to accompany that change in direction, the administration is asking the

Want to know more?

If you'd like to read more about the Alaska Natural Gas Development Authority, go to Petroleum News' web site and search for these articles published in the last few months. There are several more articles not listed that mention the gas authority or deal with LNG terminals in the continental United States and Mexico.

Web site: www.PetroleumNews.com

2004

- Feb. 8 Senate committee recommends state gas authority funding
- Feb. 1 Alaska's other gasline group may have buyer for LNG
- Feb. 1 Bill expands Alaska gas authority's options
- Feb. 1 Natural gas pipeline plans not the same
- Jan. 25 LNG bills get first hearing

Legislature to increase the state gas authority's $2.15 million funding request to $3 million, but to give the money to the Department of Revenue to allocate as needed for all of the state's efforts to promote construction of a privately built North Slope gas pipeline and in-state gas distribution.

"We're not talking about ANGDA (the gas authority) doing its own thing anymore," Steve Porter, deputy commissioner at Revenue, told the authority's board of directors Feb. 9. "We see the authority as part of a team."

Gas authority would share funding

That team would include the departments of Revenue, Law and Natural Resources, which have started negotiations with two applicants for a fiscal contract covering the proposed North Slope natural gas pipeline across Alaska, through Canada and into Lower 48 markets.

The negotiations, under the state's Stranded Gas Act, could lead to a contract for scheduled payments by either developer in lieu of all state and municipal taxes on the project. The intent is to gain a measure of fiscal certainty for the project developer and the state, while also allowing the state to negotiate other conditions into the contract — such as in-state access to the gas, resident hire and local contractor preferences.

Revenue, Law and Natural Resources may need more money for research and analysis work during contract negotiations, particularly pipeline tariff issues, financing and in-state benefits, Porter said. The $3 million allocation would be shared by all of the agencies and the authority to collect whatever information could most help the state toward its goal of moving its gas to market, putting billions of dollars into the

• Jan. 18 Natural gas authority counts LNG votes

• Jan. 18 Gas authority drops lobbyist idea

• Jan. 18 State of Alaska investment in gas pipeline under discussion

• Jan. 18 State gas authority sees competition

• Jan. 18 Too much LNG a possibility

• Jan. 11 Bills address state natural gas authorit

2003

• Dec. 28 Alaska natural gas board sees problems

• Dec. 28 Sempra Energy taps Indonesia LNG for U.S.

• Dec. 21 State natural gas authority thinks bigger

• Dec. 21 State gas authority wants lobbyist

• Dec. 14 Alaska gas authority delays funding request

• Dec. 7 Federal loan guarantee extended to LNG

• Nov. 30 Gas authority wants more money

• Nov. 30 Alaska LNG backers see hope in project

state treasury over the next several decades and making North Slope gas available to as many communities as possible.

Administration calls it a partnership

Pipeline operator MidAmerican Energy Holdings Co., of Des Moines, Iowa, and a consortium of the three major North Slope producers last month submitted Stranded Gas Act applications to the state, and Porter said that's where the gas authority could be most helpful.

"The state is offering you an opportunity to partner with us," he told the board. "We think that is consistent with what the people of Alaska voted for."

Voters created the authority when they approved a citizens' initiative in November 2002, giving the authority the job of planning a state owned-and-operated pipeline to Valdez where the gas would be chilled and shipped worldwide as LNG in search of buyers. The job also includes looking at bringing North Slope gas to Southcentral Alaska, where residents, businesses and industry worry they may run short of Cook Inlet gas within the next 10 years.

The administration's recommendation is not to spend any more money trying to build a stand-alone line from Prudhoe Bay that's probably not economic when the authority could instead negotiate to tap into the main line as it runs south, Porter said.

That assumes either MidAmerican or the producers build the main line, and that the gas authority could prove to the administration, the Legislature and investors that any spur lines would be economic.

Board members unhappy at losing budget control

Several gas authority board members were not happy with Porter's partnership message.

"Will this delay what we're supposed to do or will it lead down some rabbit trails?" asked John Kelsey of Valdez. He objected to "backing away from what 138,000 people told us we should do," referring to 3-to-2 victory margin for the ballot initiative.

"I want to know what our budget is, it has to be specific for me," said board member Dan Sullivan of Anchorage, asking Porter how much of the $3 million the gas authority would get.

"I can't define the future," Porter said, later adding, "The Legislature will move with or without you."

After an executive session and further discussion in public, the board voted unanimously to support the $3 million funding request, with Revenue to share the money between all of the state offices involved.

"This could be a very weak position for us to take," said board member David Cuddy of Anchorage. "Money is power and control."

The funding question came up the next day before the House Oil and Gas Committee, at which Rep. Cheryll Heinze, R-Anchorage, said to gas authority CEO Harold Heinze: "I'm trying to pin down what assurances you have that the money is going to go to the authority." Neither Porter nor Rep. Heinze's spouse provided any assurances that the authority would get all of the $2.15 million it originally requested this session.

Funding request to go to Legislature

To tell us where the $ goes

"I can't define the future".

Who is it that we the legislature are supposed to trust - is it you - your boss - the governor?

Who is acting as to do this.

& who is accountable to the 138,000 people who voted for the Gas Auth.

What is the timeline?

What is the fall back

what if ~~none~~ of the application follow

then we become a fall back

What is the ~~plan~~ fall back plan?

138,000 vote

Legislation to appropriate $2.15 million directly to the gas authority is before the Senate Finance Committee (Senate Bill 241) and House Resources Committee (House Bill 296), and Porter said the administration will present the new $3 million request to both chambers.

The funding, if approved, would be available immediately and would extend past the end of the fiscal year on June 30, Porter said, to ensure the money remains available even if the state cannot finish its Stranded Gas Act negotiations as it hopes this spring. The law allows the state to request reimbursement of up to $1.5 million from each applicant for the cost of consultants to assist in the negotiations, but Porter said the state needs contingency money to avoid any delays in its work.

Also, the reimbursement provision is limited to work done specifically for the contracts and does not apply to other efforts the state might want to undertake outside of the negotiations.

The gas authority has its own deadline, too. It faces a mid-June deadline to submit its LNG project plan to the Legislature, but some legislators have talked of extending the date if necessary.

Cancelled sales trip an issue, too

Several board members Feb. 9 also discussed their displeasure that the governor's office cancelled an LNG marketing trip planned by CEO Heinze and board member Scott Heyworth to Japan earlier this month. Heinze said Jim Clark, chief of staff to Gov. Frank Murkowski, told him just a few days before the trip that he needed to stay in Alaska to help with the state's gas line efforts.

"What happens when we butt heads and we decide our priority is a trip to Japan," but

the governor's office says otherwise, asked board member Cuddy.

The governor's ultimate authority is to hire and fire board members, said Leonard Herzog, an assistant attorney general and adviser to the authority.

At some point the board may need to think about autonomy, Cuddy said.

Alaska Natural Gas Authority Voter Approval by District

General Election Results by District					Ballot Proposition #3 Voter Statistics				
District	% Elected by: (General Election)	District		% Elected by: (General Election)	Registered Voters	Total Votes	Yes	No	Approval
AK Murkowski/Leman	55.85				460891	223035	138353	84682	62%
1 Rep Bill Williams	94.08	A	Sen Robin Taylor	N/A	11007	5092	3237	1855	63.6%
2 Rep Peggy Wilson	58.98				12124	5839	3434	2405	58.8%
3 Rep Beth Kerttula	64.96	B	Sen Kim Elton	51.26	12483	7620	3834	3786	50.3%
4 Rep Bruce Weyhrauch	54.83				12044	7389	4171	3218	56.4%
5 Rep Al Kookesh	56.72	C	Sen Georgianna Lincoln	57.35	11703	5625	3659	1966	65.0%
6 Rep Carl Morgan	96.96				10582	4923	3202	1721	65.0%
7 Rep Hugh 'Bud' Fate	56.99	D	Sen Ralph Seekins	52.07	13262	7783	4617	3166	59.3%
8 Rep David Guttenberg	51.51				12894	7307	4244	3063	58.1%
9 Rep Jim Holm	52.16	E	Sen Gary Wilken	69.77	12077	5352	3517	1835	65.7%
10 Rep Jim Whitaker	94.54				13199	3933	2654	1279	67.5%
11 Rep John Coghill	96.84	F	Sen Gene Therriault	81.81	13162	6273	4339	1934	69.2%
12 Rep John Harris	94.19				13551	5300	3795	1505	71.6%
13 Rep Carl Gatto	56.42	G	Sen Lyda Green	76.35	12142	6614	4533	2081	68.5%
14 Rep Vic Kohring	64.01				12122	5943	4312	1631	72.6%
15 Rep Beverly Masek	59.81	H	Sen Scott Ogan	92.34	12023	5980	4170	1810	69.7%
16 Rep Bill Stoltze	73.73				12058	6777	4509	2268	66.5%
17 Rep Pete Kott	80.9	I	SenFred Dyson	76.27	12860	6482	4182	2300	64.5%
18 Rep Nancy Dahlstrom	N/A				12016	2865	1976	889	69.0%
19 Rep Tom Anderson	61.86	J	Sen Gretchen Guess	50.19	10986	4915	3194	1721	65.0%
20 Rep Max Gruenberg	48.21				9310	3137	2084	1053	66.4%
21 Rep Harry Crawford	48.42	K	Sen Bettye Davis	N/A	11928	6200	3794	2406	61.2%
22 Rep Sharon Cissna	54.19				10621	4559	2769	1790	60.7%
23 Rep Les Gara	94.03	L	Sen Johnny Ellis	52.43	11607	4961	2801	2160	56.5%
24 Rep Chervll Heinze	48.83				11412	4990	3053	1937	61.2%
25 Rep Eric Croft	56.45	M	Sen Hollis French	57.03	11043	4755	2895	1860	60.9%
26 Rep Ethan Berkowitz	55.85				11992	6646	3569	3077	53.7%
27 Rep Norman Rokeberg	96.1	N	SenBen Stevens	96.4	10928	5769	3562	2207	61.7%
28 Rep Lesil McGuire	75.61				11737	6518	3750	2768	57.5%
29 Rep Ralph Samuels	61	O	Sen John Cowdery	59.34	10591	4595	3082	1513	67.1%
30 Rep Kevin Meyer	96.41				11343	6145	3725	2420	60.6%
31 Rep Bob Lynn	61.33	P	Sen Con Bunde	67.05	12590	7377	3959	3418	53.7%
32 Rep Mike Hawker	50.1				13292	8029	4267	3762	53.1%
33 Rep Kelly Wolf	52.5	Q	Sen Thomas Wagoner	46.07	12102	5935	3781	2154	63.7%
34 Rep Mike Chenault	71.12				12106	6208	3913	2295	63.0%
35 Rep Paul Seaton	94.37	R	Sen Gary Stevens	97.26	12681	6171	3887	2284	63.0%
36 Rep Dan Ogg	N/A				10862	4232	2601	1631	61.5%
37 Rep Carl Moses	96.2	S	Sen Lyman Hoffman	66.77	7843	3531	2493	1038	70.6%
38 Rep Mary Kapsner	97.28				7838	3593	2121	1472	59.0%
39 Rep Richard Foster	97.6	T	Sen Donny Olson	N/A	7994	4010	2640	1370	65.8%
40 Rep Reggie Joule	97.79				8776	3662	2028	1634	55.4%

Source: Alaska Division of Elections Website http://www.gov.state.ak.us/ltgov/elections/02genr/index.shtml
Statewide Official Results
District Level Official Results

Distributed by:
Representative
Jim Whitaker