

ALASKA LEGISLATURE COMMITTEE FILES

2007-2008

SJUD

12

Taxing Power. The power of taxation shall never be surrendered. This power shall not be suspended or contracted away, except as provided in this article.

Article IX, sec. 4, is generally agreed to be the only section in art. IX that could fit within the phrase, "except as provided in this article." That section reads as follows:

Exemptions. The real and personal property of the State or its political subdivisions shall be exempt from taxation under conditions and exceptions which may be provided by law. All, or any portion of, property used exclusively for non-profit religious, charitable, cemetery, or educational purposes, as defined by law, shall be exempt from taxation. Other exemptions of like or different kind may be granted by general law. All valid existing exemptions shall be retained until otherwise provided by law.

The first two sentences in the above section create exemptions for certain property based on ownership or use. The third sentence is authority for the legislature to enact additional exemptions.

The third sentence specifically states that the exemption "may be granted by general law."¹ In other words, the exemption is "provided by law" not "authorized by law."

An example of a state tax exemption in current law is AS 43.65.010(a). That subsection reads:

(a) A person prosecuting or attempting to prosecute, or engaging in the business of mining in the state shall obtain a license from the department. *All new mining operations are exempt from the tax levied by this chapter for three and one-half years after production begins.* The tax exemption granted to new mining operations does not extend or apply to the mining of sand and gravel. [Emphasis added.]

¹ Note that art. IX, sec. 4, does not include the words, "or a contract authorized by general law." In *Stanek v. Kenai Peninsula Borough*, 81 P.3d 268, 274 (Alaska 2003), the court referred to "tax exemptions that are authorized by statute." Citing art. IX, sec. 4, the court wrote:

By requiring the equal assessment of property, AS 29.45.110 implies an equal taxation goal. Accepting that equal taxation is a goal of section .110, this goal is necessarily *subject to tax exemptions that are authorized by statute.* As we have seen, the exemption in this case is authorized by statute. [Emphasis added.]

Also, before the enactment of the petroleum production tax (PPT), new oil production after a certain date benefited from a lower tax rate during the first five years of production. AS 43.55.011(a) and (b) (repealed April 1, 2006) read as follows:

(a) There is levied upon the producer of oil a tax for all oil produced from each lease or property in the state, less any oil the ownership or right to which is exempt from taxation. The tax is equal to either the percentage-of-value amount calculated under (b) of this section or the cents-per-barrel amount calculated under (c) of this section, whichever is greater, multiplied by the economic limit factor determined for the oil production of the lease or property under AS 43.55.013. If the amounts calculated under (b) and (c) of this section are equal, the amount calculated under (b) of this section shall be treated as if it were the greater for purposes of this section.

(b) The percentage-of-value amount equals 12.25 percent of the gross value at the point of production of taxable oil produced on or before June 30, 1981, from the lease or property and 15 percent of the gross value at the point of production of taxable oil produced from the lease or property after June 30, 1981; *except that for a lease or property coming into commercial oil production after June 30, 1981, the percentage-of-value amount equals 12.25 percent of the gross value at the point of production of taxable oil produced from the lease or property in the first five years after the start of commercial oil production and equals 15 percent of the gross value at the point of production of taxable oil produced thereafter from the lease or property.*

Two things should be noticed from the excerpt immediately above. First, the reduced tax was authorized by a statute that was subsequently repealed. Second, the application of a lower tax in earlier years of production is similar to AS 43.90.320(a) in SB 104 as introduced by request of the governor, which provided for a lower tax rate during the first 10 years of project operation if the legislature subsequently enacted a higher rate. That subsection in the governor's bill reads as follows:

(a) If a person qualified for resource inducement under AS 43.90.300 agrees under (c) of this section, the person is entitled to an annual exemption from the state's gas production tax in an amount equal to the difference between the amount of the person's gas production tax obligation calculated under the gas production tax in effect during that tax year and the amount of the person's gas production tax obligation calculated under the gas production tax in effect at the conclusion of the first binding open season held under this chapter. If the difference is less than zero, the gas production tax exemption is zero.

Senator Hollis French

April 9, 2007

Page 4

The effect of this subsection is to shield the person receiving the inducement from tax increases. AS 43.90.320(b) in the same bill allows the inducement to apply during the first 10 years following the commencement of commercial operations.

If I may be of further assistance, please advise.

DMB:ljw

07-204

LEGAL SERVICES

DIVISION OF LEGAL AND RESEARCH SERVICES
LEGISLATIVE AFFAIRS AGENCY
STATE OF ALASKA

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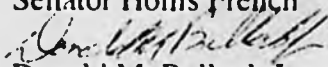
State Capitol
Juneau, Alaska 99801-1182
Deliveries to: 129 6th St., Rm. 329

MEMORANDUM

April 6, 2007

SUBJECT: Open season jurisdiction
(CSSB 104(RES), Work Order No. 25-GS1060\K.1)

TO: Senator Hollis French

FROM: 
Donald M. Bullock Jr.
Legislative Counsel

Enclosed is an amendment that prohibits a shipper from making a capacity commitment during the first binding open season subject to the condition that the Alaska Supreme Court does not find the tax inducement to be invalid.

The Federal Energy Regulatory Commission may have limitations on the consideration of a commitment made during open season that is subject to a condition precedent. If firm commitments are required to support a certificate of public convenience and necessity, a conditional commitment may not carry very much weight. I recommend that you discuss this issue with the administration.

If I may be of further assistance, please advise.

DMB:med
07-223.med

Enclosure

AMENDMENT

OFFERED IN THE SENATE

BY SENATOR FRENCH

TO: CSSB 104(RES)

1 Page 19, line 23:

2 Delete "will"

3 Insert "(1) may"

4

5 Page 19, line 27:

6 Delete ". The"

7 Insert "; the"

8

9 Page 19, line 28:

10 Delete "subsection"

11 Insert "paragraph"

12

13 Page 19, line 30, following "AS 43.90.140(7)":

14 Insert "; and

15 (2) may not make the commitment to acquire firm transportation

16 capacity in the first binding open season of the project subject to a determination by

17 the Alaska Supreme Court that this section is not invalid."

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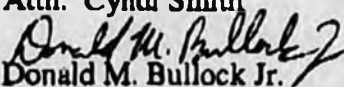
State Capitol
Juneau, Alaska 99801-1182
Deliveries to: 129 6th St., Rm. 329

MEMORANDUM

April 6, 2007

SUBJECT: Issues in CSSB 104(RES) (Work Order No. 25-GS1060K)

TO: Senator Hollis French
Chair of the Senate Judiciary Committee
Attn: Cyndi Smith

FROM: 
Donald M. Bullock Jr.
Legislative Counsel

Based on a request from Cyndi Smith, the following is a list of topics you may wish to consider during the review of SB 104 and CSSB 104(RES) by your committee.

Constitutional issues:***Separation of Powers*¹**

- Legislative approval of licensee recommended by the commissioners (AS 43.90.200).
- If the legislature has the power to approve or disapprove, whether a bill is required (AS 43.90.200). (See, *State v. A.L.I.V.E. Voluntary*, 606 P.2d 769, 773 (Alaska 1980) (when the legislature wishes to act in an advisory capacity it may act by resolution; however, when it means to take action having a binding effect on those outside the legislature it may do so only by following the enactment procedures)).
- Approval of appointment of Alaska Gasline Act Coordinator by the legislature (AS 43.90.400).

***Power of Taxation*²**

- Whether an assurance that certain gas will not be subject to an increase in tax rates amounts to a suspension or contracting away of the power to tax (AS 43.90.320).

¹ Art. II, sec. 1, and art. III, sec. 1, Constitution of the State of Alaska.

² Art. IX, secs. 1 and 4, Constitution of the State of Alaska.

Senator Hollis French

April 6, 2007

Page 2

- Whether a statute can establish a contractual relationship subject to art. I, sec. 15 (AS 43.90.300).
- Whether a general law that authorizes an exemption by contract is within the requirement that an exemption be granted by general law in art. IX, sec. 4 (AS 43.90.300).

Statute of Limitation

- Whether a statute of limitation may apply to the constitutionality of a provision in AS 43.90 (AS 43.90.520).
- Whether an actual controversy may exist within 90 days after the issuance of the license to allow the superior court to consider making a declaratory judgment (AS 43.90.520).³

Policy Issues⁴

- T How and when the state's contribution will be paid to the licensee (AS 43.90.110).⁵
- T What costs qualify for state contribution (AS 43.90.110(1)(C)).
- T If the commissioners and the licensee disagree on whether the project should be abandoned, how should the dispute be settled (AS 43.90.120).
- What procedures should be used for appeals that relate to the process for soliciting an application for and awarding the license (AS 43.90.130(c)).
- What commitments should an applicant be required to make in the application for the license, including requirements relating to a project labor agreement or a commitment not to appeal if an applicant does not receive the license (AS 43.90.140).

³ See AS 22.10.020(g). The court may be reluctant to consider the case until there is an actual controversy. If the tax protection offered in AS 43.90.320 is not actually exercised until there is an increase in the gas production tax, would the court consider that there is "an actual controversy"? Is the possibility that a tax may be limited at some future time enough to get a declaratory judgment?

⁴ These issues were addressed in revisions to the governor's bill or were discussed in committees in both houses that have considered the proposed legislation.

⁵ Neither CSSB 104(RES) nor the original bill address whether the state's contribution will be made in the form of reimbursement or paid as qualified expenditures accrue.

Senator Hollis French

April 1, 2007

Page 3

- Whether the costs of increasing capacity are subject to rolled-in or incremental rate treatment and the power of a person making a capacity commitment during the first binding open season to participate in a rate-making protest or appeal (AS 43.90.140(7); see also AS 43.90.310 and 43.90.320).

W⊙ How should the costs and operation of the gas treatment plant be described in the application (AS 43.90.140).

T⊙ The treatment of proprietary information and trade secrets; when and if information submitted to the commissioners is subject to public or restricted disclosure (AS 43.90.160 and 43.90.170).

W⊙ Criteria for evaluation and ranking, including evaluating the net present value of the cash flow from the project to the state and the likelihood that the applicant's project will succeed as planned (AS 43.90.180).

- Legislative approval, including who should receive the commissioners' recommendation for a licensee, whether the approval should be by resolution or a bill, whether the legislature should either affirmatively approve or disapprove, and who has the responsibility for introducing the bill or resolution (AS 43.90.190 and 43.90.200).

W⊙ The requirements for sanctioning a project by a licensee who either has or does not have the credit support to finance the project at the time the license is issued and what happens if the licensee fails to sanction the project (AS 43.90.210).

- The person subject to audit by the commissioners for the use of contributed state money received for the project (AS 43.90.240).

W⊙ The payment by the state, if any, to acquire engineering designs, contracts, permits, and other data related to the project that are acquired by the licensee if the project is abandoned, the licensee fails to sanction the project, or the licensee violates the terms and conditions of the license (AS 43.90.120, 43.90.210, and 43.90.240).

- Qualifications for and form of resource inducement, including inducements relating to royalties and taxes; for a tax inducement, whether the inducement may be fixed in contract or otherwise be in a form that prevents a future legislature from changing the tax applicable to gas production (AS 43.90.300, 43.90.310, and 43.90.320).

W⊙ Whether the inducements will actually bring a producer to the first binding open season (AS 43.90.300, 43.90.310, and 43.90.320).

Senator Hollis French

April 6, 2007

Page 4

- Issues relating to Alaska Gasline Inducement Act coordinator: whether the position may be subject to confirmation by the legislature; where the position should be placed in the executive branch; how the office should be staffed; salary and qualifications for the person nominated to the position (AS 43.90.400).

W (C) The form and responsibility for development of the state pipeline employment training program (AS 43.90.420).

- Whether the state should be subject to treble damages if the state violates the project assurances (AS 43.90.540).
- The standards for evaluating a proposal by the licensee to assign rights and responsibilities under the license and for the recipient of a resource inducement (royalty or tax) to assign the inducements (AS 43.90.550).

Structural and Drafting Issues

- Whether the abandonment provision should be placed at the end of Article 2 and near the provision relating to license violations (AS 43.90.120 and 43.90.240).
- Whether the provisions relating to the coordinator and expedited agency review should be moved to the end of Article 2 because those provisions relate directly to the licensee (AS 43.90.400 and 43.90.410).
- Whether the state pipeline employment development provision could be moved to the article containing miscellaneous provisions (AS 43.90.420).
- Whether the Alaska Gasline Inducement Act should be located in Title 31 (Oil and Gas) or Title 42 (Public Utilities and Carriers) rather than Title 43 (Revenue and Taxation).⁶

Please do not consider the above list exclusive. If I may be of further assistance, please advise.

DMB:med

07-224.med

⁶ The subject of tax is mentioned only in AS 43.90.320 (tax inducement), 43.90.540 (assurances), and 43.90.550 (assignments); the overriding subject of the act is the form and implementation of the gas pipeline project. The administration may provide insight into the placement in Title 43 (Revenue and Taxation).

Alaska State Legislature

Senator Hollis French, Chair
State Capitol, Room 417
Juneau, Alaska 99801
Phone: (907) 465-3892
Fax: (907) 465-6595



Committee Members:
Senator Charlie Huggins
Senator Bill Wielechowski
Senator Lesil McGuire
Senator Gene Therriault

Senate Judiciary Committee

SB104 Natural Gas Pipeline Project

Wednesday, April 11, 2007:
1:30 to 3 p.m.

Constitutionality of tax freeze provisions

Is it constitutional?	Larry Ostrovsky/Don Bullock
Is it necessary? The economics	Antony Scott

5:30 - 7 p.m.

Expedited Judicial Review
Point at which legal challenge may be brought
Legislative role in approving/disapproving the license

Thursday, April 12, 2007:
3:30 to 5 p.m.

AGIA treatment of royalties
Triple damages
Confidentiality of materials/public records
License transfer provisions
Arbitration process and definitions

5:30 - 7 p.m. PUBLIC testimony

Friday, April 13, 2007:

1:30 - 3:00 Pt. Thomson, and litigation in general
Leases and the duty to produce/unit operating agreements
Canadian right of way issues/first nation agreements

5:30 - 7:00 Anti-trust issues/AGPA complaint
AOGCC off-take ruling
FERC policy on tariffs vs. AGIA
PLA language and definitions

Saturday, April 14, 2007:

10:00 am Industry testimony on issues addressed

SUNDAY OFF

Drafting Issues:

1. We need a definition of a project labor agreement.
2. amend language on capacity commitment re:tax freeze
3. amend for judicial review/delayed vesting of rights?
4. Realign to match house version.
5. The whole issue of a resolution: not binding, no committees etc.

Committee

PLA definition

Therriault: can legislature see as soon as opened? House crafted amendment ..we should do something similar.

Pipeline coordinator: add word "position" and add a line that the person serves at the pleasure of the governor.

Expedited court review by some method...

Look at house bill on appeal rights provision that states that applicants cannot appeal outcome

Or - until "X" takes place, no final administrative action

Change "administrative" to "agency" on line 13 (or vice versa, the words should be the same)

Issue of ability to serve until confirmed for pipeline coordinator

A bill or a resolution??

43.90.440

In the triple damages section:

1. (house language) clarify what costs are eligible for reimbursement "qualified expenditures"
2. exempt current practices of royalty tax disputes/settlements
3. exempt current dnr royalty modifications, per existing statutes.
4. define monetary treatment
5. clarify that hiring another coordinator does not constitute a violation
6. clarify that gas in the smaller line must be delivered to a market, not to a GTP or back into the ground.
7. Triple damages subject to appropriation.

Other:

43.90.320 Tax rate freeze should begin at the start of the open season (house language)

CS FOR SENATE BILL NO. 104(JUD)

1 "An Act relating to the Alaska Gasline Inducement Act; establishing the Alaska Gasline
2 Inducement Act matching contribution fund; providing for an Alaska Gasline
3 Inducement Act coordinator; making conforming amendments; and providing for an
4 effective date."

5 BE IT ENACTED BY THE LEGISLATURE OF THE STATE OF ALASKA:

6 * Section 1. AS 43 is amended by adding a new chapter to read:

7 Chapter 90. Alaska Gasline Inducement Act.
8

9 Article 1. Inducement to Construction of a Natural Gas Pipeline in this State.
10

11 Sec. 43.90.010. Purpose.
12

13 Article 2. Alaska Gasline Inducement Act License.
14

15 Sec. 43.90.100. Gas project.

16 Sec. 43.90.110. Natural gas pipeline project construction inducement.

17 Sec. 43.90.120. Request for applications for the license.

18 Sec. 43.90.130. Application requirements.

19 Sec. 43.90.140. Initial application review; additional information requests; complete
20 applications.

21 Sec. 43.90.150. Proprietary information and trade secrets.

22 Sec. 43.90.160. Notice, review, and comment.

23 Sec. 43.90.170. Application evaluation and ranking.

24 Sec. 43.90.180. Notice to the legislature of intent to issue license; denial of license.

25 Sec. 43.90.190. Legislative approval; issuance of license.

26 Sec. 43.90.200. Certification by regulatory authority and project sanction.

27 Sec. 43.90.210. Amendment of or modification to the project plan.

- 1 **Sec. 43.90.220. Records, reports, conditions, and audit requirements.**
- 2 **Sec. 43.90.230. License violations; damages.**
- 3 **Sec. 43.90.240. Abandonment of project.**
- 4 **Sec. 43.90.250. Alaska Gasline Inducement Act coordinator.**
- 5 **Sec. 43.90.260. Expedited review and action by state agencies.**

Article 3. Resource Inducement.

- 9 **Sec. 43.90.300. Qualification for resource inducement.**
- 10 **Sec. 43.90.310. Royalty inducement.**
- 11 **Sec. 43.90.320. Gas production tax exemption.**
- 12 **Sec. 43.90.330. Inducement vouchers.**

Article 4. Miscellaneous Provisions.

- 16 **Sec. 43.90.400. Alaska Gasline Inducement Act matching contribution fund;**
- 17 **disbursements; audits.**
- 18 **Sec. 43.90.410. Regulations.**
- 19 **Sec. 43.90.420. Statute of limitations.**
- 20 **Sec. 43.90.430. Interest.**
- 21 **Sec. 43.90.440. Licensed project assurances.**
- 22 **Sec. 43.90.450. Assignments.**
- 23 **Sec. 43.90.460. Conflicting laws.**
- 24 **Sec. 43.90.470. State pipeline employment development.**

Article 5. General Provisions.

- 28 **Sec. 43.90.900. Definitions.**
- 29 **Sec. 43.90.990. Short title.**

31 * **Sec. 2. AS 36.30.850(b) is amended by adding a new paragraph to read:**

1 (45) contracts for an arbitration panel to determine whether a project is
 2 uneconomic under AS 43.90.240, and contracts for the development of application
 3 provisions for licensure and for the evaluation of those applications under AS 43.90.

4 * Sec. 3. AS 39.25.110 is amended by adding a new paragraph to read:

5 (41) the Alaska Gasline Inducement Act coordinator appointed under
 6 AS 43.90.250.

7 * Sec. 4. AS 40.25.120(a) is amended to read:

8 (a) Every person has a right to inspect a public record in the state, including
 9 public records in recorders' offices, except

10 ...

11 (12) records that are

12 (A) proprietary or a trade secret in accordance with
 13 AS 43.90.150:

14 (B) applications that are received under AS 43.90 until
 15 notice is published under AS 43.90.160.

16 * Sec. 5. The uncodified law of the State of Alaska is amended by adding a new section to
 17 read:

18 **FIRST REQUEST FOR APPLICATIONS FOR THE LICENSE.** It is the intent of the
 19 legislature that the first request for applications for the license by the commissioners under
 20 AS 43.90.120 as enacted in sec. 1 of this Act be issued within 90 days after the effective date
 21 of this Act.

22 * Sec. 6. The uncodified law of the State of Alaska is amended by adding a new section to
 23 read:

24 **EXPEDITED CONSIDERATION OF COURT CASES.** It is the intent of the
 25 legislature that the courts of the state, when considering a case related to the development and
 26 construction of a natural gas pipeline under this Act or to the commitment of a shipper to
 27 acquire firm transportation capacity during the first binding open season for a project
 28 developed under this Act, expedite the resolution of the case by giving the case priority over
 29 all other civil cases to the extent permitted under the Alaska Rules of Court.

30 * Sec. 7. The uncodified law of the State of Alaska is amended by adding a new section to
 31 read:

1 **SEVERABILITY.** Under AS 01.10.030, if any provision of this Act, or the application
2 of it to any person or circumstance, is held invalid, the remainder of this Act and the
3 application to other persons or circumstances are not affected.

4 * **Sec. 8.** This Act takes effect immediately under AS 01.10.070(c).

Sectional Analysis of CS for Senate Bill 104 (25-GS1060\K)

43.90.010. Purpose- States the purpose of AGIA as facilitating commercialization, promoting exploration and development, maximizing development benefits to Alaskans and encouraging lessees to commit gas to the pipeline.

43.90.100. Gas project- Empowers the commissioners of natural resources and revenue to award an AGIA license and clarifies that other gas pipelines are not precluded.

43.90.110. Natural gas pipeline project construction inducement- Defines the inducements to construction of a gas pipeline as: (1) a state matching contribution of no more than \$500,000 of qualified expenditures paid over five years, and (2) the appointment of a pipeline coordinator (coordinator duties defined in 43.90.400). The matching contribution is up to 50% before the first open season ends, and up to 80% thereafter. Qualified expenditures are costs related to obtaining a FERC or RCA certificate.

43.90.120. Abandonment of project- If the commissioners and licensee agree that the project is uneconomic, inducements terminate and the licensee is relieved from further obligations except audit and recordkeeping requirements. If the commissioners and licensee do not agree the issue is resolved by a panel of 3 arbitrators appointed under the American Arbitration Association procedures. If the project is abandoned all engineering design, contracts, permits and other data are assigned to the state.

43.90.130. Request for applications for the license- The commissioners begin a public application process by issuing a request for applications within 3 months after AGIA's effective date. They may use independent contractors to develop the license terms and shall adopt regulations describing protest and appeal procedures.

43.09.140. Application requirements-All AGIA applications must:

1. Be filed by deadline set by Commissioners;
2. Describe the proposed pipeline project, including
 - a. Pipeline route
 - b. receipt and delivery points and size and design capacity at those points
 - c. an economic and technical analysis of project viability

- d. a timeline, work plan and budget that includes detailed discussion of how any required Canadian permits will be obtained, and/or a detailed description of any marine transportation component and LNG plant.
3. For interstate pipeline proposals, commit to hold a binding open season within 36 months of after license award and apply for a FERC certificate;
4. For intrastate pipeline proposals, commit to hold a binding open season with 36 month after license award and apply for an RCA certificate;
5. Commit to assess market demand for additional pipeline capacity at least every two years after the first binding open season;
6. Commit to expand the pipeline in reasonable engineering increments and on commercially reasonable terms that encourage exploration and development of Alaska's gas resources;
7. Commit to recover expansion costs through rolled-in rates that would not exceed initial rates by more than 15%. If the costs exceed the cap, the pipeline owner can propose a combination of incremental and rolled-in rates. Negotiated rate agreements that make either of the previous terms impossible are prohibited;
8. Explain how the applicant will deal with a North Slope gas treatment plant;
9. Propose a percentage and total dollar amount for the state's matching contribution;
10. Commit to propose and support pipeline rates that are based on a capital structure of at least 70 percent debt;
11. Describe how cost overruns will be managed;
12. Commit to five delivery points in Alaska
13. Commit to distance sensitive rates to Alaska delivery points;
14. Commit to establish a local headquarters
15. Commit to hire qualified Alaskans to work on the project and contract with Alaskan businesses;
16. Commit to negotiate a project labor agreement;
17. Commit that the state matching fund will be applied to reduce pipeline tariffs

18. Demonstrate ability to perform.

43.09.150. Initial application review; additional information requests; complete applications-The commissioners review the applications to determine if they are complete and may ask for additional information if necessary.

43.90.160. Proprietary information and trade secrets- Applicants may request confidentiality for proprietary information or trade secrets. If the commissioners agree, the information is held confidential unless either the license is awarded to that applicant or that applicant protests the award. If the commissioners do not agree that the information should be held confidential, it is returned to the applicant.

43.09.170. Notice, review and comment- The commissioners will publish notice of the applications and seek public comment for 60 days. If parts of the application are confidential, the applicants must provide a summary that can be publically released.

43.90.180. Application evaluation and ranking-The commissioners will evaluate the applications and rank the applications based on the net present value of the anticipated cash flow to the state weighted by the project's likelihood of success. The bill directs the commissioners to use undiscounted value and to consider the project's timing, gas value, project overrun provisions, design and other relevant evaluative criteria. The bill lists factors the commissioners must use in evaluating likelihood of success, including ability to control cost overruns, financial resources and record on other projects.

43.90.190. Notice to legislature of intent to issue license; denial of license- The commissioners publish a notice of intent to award, if there is project that meets the AGIA criteria and sufficiently maximizes the benefits to the people of the state of Alaska.

43.90.200. Legislative approval; issuance of license-The commissioners may issue the license if both houses of the legislature pass a resolution so authorizing within 60 days of the commissioners' notice of intent. If a resolution is not passed in 60 days, the commissioners may request new applications.

43.90.210. Certification by regulatory authority and project sanction-Licensees must accept the certificates issued by FERC or the RCA, as appropriate and shall sanction the project within one year after the certificate is issued if sufficient credit support is available. If the licensee does not have sufficient credit support, the project must be sanctioned within 5 years or the certificate is assigned to the state.

43.90.220. Amendment or modification of the project plan- The licensee may amend the project plan with the commissioners' approval if necessary because of changed circumstances.

43.90.230. Records, reports, conditions, and audit requirements-The licensee must maintain complete records of its expenditures which are subject to audit. Records must be maintained for seven years from the date licensee receives state money. After the license has been issued and before commercial operations begin, the commissioners may have a representative attend all meetings of the licensee's governing body and equity holders.

43.90.240. License violations; damages-License violations are defined as substantial departure from the approved project plan, unauthorized use of state funds, or violation of law. The licensee has 90 days after the commissioners issue notice of a violation to cure it. Disbursement of state funds can be suspended after a notice of violation is issued. A process for resolving disputes over license violations and the remedies are described.

43.90.300. Qualification for resource inducement. Parties that commit gas to the pipeline project during the first binding open season are eligible for resource inducements.

43.90.310. Royalty Inducement-Before the first open season the commissioner of natural resources must adopt regulations that describe how the state will exercise its right to switch between royalty in kind and in value. The regulations must minimize retroactive adjustments and include a methodology for valuing the state's gas based on market data that includes deductions for transportation and processing costs, location differentials and deductions permitted under the 1980 Royalty Settlement Agreement for Prudhoe Bay gas. The terms for switching the state's royalty share may not interfere with long term marketing plans or cause a disproportionate shift of transportation costs. The leases from which gas was committed to the pipeline during the first open season may be amended consistently with this royalty inducement at the lessee's request provided the lessee agrees not to protest the rolled-in treatment of expansion costs mandated in AGIA. These regulations must be reviewed every two years to determine their effectiveness.

43.90.320. Gas production tax exemption-Anyone who commits gas to the first open season is entitled to claim an exemption in an amount equal to the difference between the gas production tax rate on the date of the first open season, and any subsequent higher rate for the ten years after the pipeline begins commercial operations. This exemption is contractual and the licensee must agree not to protest

the treatment of expansion costs mandated by AGIA if FERC does not have a rebuttable presumption of rolled-in rate treatment of expansion costs.

43.90.400. Alaska Gasline Inducement Act coordinator- The governor shall appoint, subject to legislative confirmation, a gas pipeline coordinator to coordinate amongst the jurisdictional state agencies and the federal pipeline coordinator.

43.90.420. State pipeline economic development-The commissioner of labor and workforce development shall develop a training program to prepare Alaskans for gas pipeline jobs.

43.09.500. Alaska Gasline Inducement Act matching fund: disbursements, audits-The AGIA matching funds shall be held in the general fund and managed by Department of Revenue. The commissioners shall adopt regulations describing the process for disbursement of these funds and audits. The commissioners shall report to the legislature within ten days of the beginning of each regular session on disbursements from this fund.

43.90.510. Regulations- The commissioners may jointly adopt regulations.

43.90.520. Statute of limitations-Lawsuits to challenge the constitutionality of an AGIA license must be filed within 90 days of its issuance.

43.90.530. Interest-The rate of 11%, or five points over the federal reserve rate, whichever is greater, shall apply to payments under AGIA.

43.90.540. Licensed Project Assurances- The inducements available before commercial operations begin are exclusive to the licensee. If the state, after awarding a license, but before commercial operations begin extends preferential royalty or tax treatment to a competing pipeline project the state will owe the licensee a penalty equal to three times what the licensee has spent on the project.

43.90.550. Assignments-The licensee may transfer the license with the commissioner's approval. Rights to the royalty inducement or the gas production tax exemption can only be transferred if all of the company's assets are sold.

43.90.560. Conflicting laws-AGIA does not abrogate state or federal regulatory authority.

43.90.570. Severability- If a court finds any portion of AGIA invalid, the remainder continues in effect.

43.90.900. Definitions- Many AGIA terms are defined.

SB 104

(FILE 2)

**WRITTEN
TESTIMONY/
PRESENT-
ATIONS**



UNITED ASSOCIATION

of Journeymen and Apprentices of the
Plumbing and Pipe Fitting Industry of
the United States and Canada

William P. Hite
General President

Patrick R. Perno
General Secretary-Treasurer

Stephen F. Kelly
Assistant General President

Founded 1889

Letters should
be confined to
one subject

Plumbers & Pipefitters UA Local Union 262
UA Local Union: 1751 Anka Street
Juneau, AK 99801

Subject:

April 12, 2007

Senator Hoilis French and Committee members
State Capitol
Juneau, AK 99801

RE: TESTIMONY FROM MAX MIELKE – A CLOSER LOOK AT PROJECT LABOR AGREEMENTS

Dear Mr. French:

If an idea has a proven track record of success, provides benefits for everyone involved and is a sound financial investment, why would anyone say no to such an idea? Good question, and it's one that gets asked every day all across America. The great idea is project labor agreements, and those saying no to it invariably come from the non-union sector – including contractors, owners and politicians. It seems they just don't like a good idea when they see it – or could it be that their anti-union bias has blinded them?

Project labor agreements, or PLAs as they are commonly known, have been around for many years and have worked well for everyone involved in them. Even the Supreme Court of the United States agrees PLAs are good for America, having unanimously upheld the project labor agreement on the massive Boston Harbor clean-up project.

In fact, Congress realized the value of PLAs 40 years ago, when such agreements were made legal under amendments to the Taft-Harley Act. While the terms of agreements vary from project to project, the goal is to bring together workers from different crafts under a common set of work rules, working conditions, hiring practices and methods for settling disputes. Often PLAs include a mutual agreement between labor and management that there will be no strikes and no lockouts.

In California, project labor agreements are making the state's energy system more secure and reliable, but PLAs are also at work in many other areas besides the utility industry. These agreements are in place in states from Maine to Washington, from New York to Alaska-and everywhere in between. PLAs are being used to build schools, airports, water treatment plants, pharmaceutical facilities, highways, housing and of course, utilities.

PLAs not only provide employment for the UA and other building trades unions, they also save taxpayer money by streamlining bidding on projects and preventing future hidden costs and keeping the project on schedule-something that everybody wants, including workers.

Contrary to the claims of the non-union sector, PLAs are not automatically 'union-only' agreements. For PLAs negotiated in the public sector, it is unlawful to have union-only agreements, with the result that on public projects union and non-union employers are often found working side-by-side. For example, on the Boston Harbor Project-the largest environmental cleanup in history-more than 30 percent of the contractors were non-union.

Moreover, smart corporations in the private sector frequently use PLAs. For example, Toyota has build all its facilities in the U.S. under PLAs, and is starting a new \$800 million plant in Texas under a PLA as well. In all, UA members and all building-trades people have worked 30 million man-hours for Toyota alone.

It just so happens that union contractors, by virtue of the superior skills of their union trades people, often take center stage whenever a success story is being told.

PLAs have many benefits besides creating a more efficient workplace. Such agreements can help local communities by encouraging better training and providing apprenticeship opportunities for local residents. PLAs also ensure that higher standards are met, making job sites safer and promoting quality work.

Another popular claim by anti-PLA forces is that these agreements drive up wages and therefore raise the cost of a project. In many areas of the country where PLAs are prevalent, the agreements are used on public projects. As members of the United Association of Plumbers and Pipefitters know, on publicly funded projects the wages are determined by provisions of the federal Davis-Bacon Act, or by state versions of this enduring and sensible law. In other words, wages are based on whatever the prevailing wage is for that region, ensuring that unscrupulous contractors don't have a chance to "low ball" the bids by paying less than what workers in that area earn already, or by importing low-wage (and low-skilled) workers from other regions. Thus, on a PLA project, the playing field is made more level, ensuring that realistic bids are submitted.

Contrary to arguments by PLA opponents, there is just no evidence to support claims that the agreements drive up construction costs. In fact, the use of PLAs is on the rise because they stabilize labor costs, increase productivity and keep projects on schedule. Why else would big companies like Toyota, Merck and others routinely use PLAs in their construction projects? In addition, many of the new baseball and football stadiums and airports all across the country are presently being build under PLAs.

Despite the efforts of anti-union groups like the Associated Builders and Contractors (ABC), there is a lot of bi-partisan support for PLAs. Both Republican and Democratic governors-past and present-have used PLAs, including Governor John Rowland of Connecticut, Governor Jim McGreevey of New Jersey, and Governor George Pataki. In fact, Governor Pataki is quoted as

saying that a properly structured PLA can save money, ensure labor harmony and permit large scale projects to be completed on expedited timetables.

If the arguments in favor of PLAs are so powerful, who are those who oppose these agreements?

As noted, the ABC is fanatical in its opposition to PLAs. This group is joined in its campaign against PLAs by the Associated General Contractors of America (AGC), which went so far as to publish a paper (put out by the AGC's own law firm) back in the 1990s that was, in the words of the Building and Construction Trades Department, "misleading, biased and untruthful." In response, the BCTD published its own paper, a much more objective and balanced view of the pros and cons of PLAs.

In that document, the BCTD countered virtually every claim of the AGC, proving once and for all, we would think, that PLAs make good business sense. Unfortunately, anti-union groups continue to use every tactic they can think of to fight the use of these agreements.

In California, the state Building and Construction Trades Council has had to mount a continuing public information program in order to counter the campaign launched against the use of PLAs in building the dozens of power plants proposed as part of the solution to that state's energy woes. However, the BCTD has had some powerful and influential allies in the effort to get the word out about the benefits of PLAs-and some of this support came from surprising sources.

In 2001, the *Construction Labor Report* (a publication of the Bureau of National Affairs) reported the results of two studies demonstrating the success and value of the PLAs in California. The Report indicated that "the studies...provide a boost for project labor proponents at a time when Governor Gray Davis is considering increasing spending on public works." The PLAs were reported as being "valued by owners and construction firms alike" because the agreements aid "in resolving disputes over roles contractors and subcontractors play in large and complex projects." The Report also noted that PLAs promote "local economic development, workforce training and employment goals for women and minorities."

Another study conducted by the University of California at Los Angeles found that PLAs did not increase labor costs, encouraged competition, promoted job stability, and cooperation and productivity.

Later in 2001 support for PLAs came from one of the nation's most respected news sources, the *Kiplinger California Letter*, which stated that "project agreements are alive and well in California," and the *Letter* also predicted that PLAs would also be used on water projects, city halls, local schools and, of course, power plants-all this despite the fact that President George Bush had issued an executive order eliminating the use of PLAs on federal projects.

Despite such widespread support and extraordinary evidence the PLAs are good for the workplace, for consumers, taxpayers, and for business owners, groups like the ABC show no signs of letting up in their attacks on these agreements.

Nevertheless, the truth will ultimately prevail. Building trades people will continue to prove that project labor agreements lead to successful construction jobs. Our best weapon in this ongoing

battle is still the superior skill that union trades people have. As long as we continue to do the job right, we will triumph again and again.

Sincerely,



**Max Mielke
UA Local 262
Business Manager**

**United Association of Plumbers & Pipefitters
UA Local 262
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THE ALLIANCE

...for responsible development of Alaska's Oil, Gas & Mineral Resources

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SENATE JUDICIARY TESTIMONY

On SB 104

April 12, 2007

Thank you for this opportunity to testify on Senate Bill 104, the Alaska Gasline Inducement Act. My name is Paul Laird, and I'm general manager and testifying on behalf of the Alaska Support Industry Alliance.

We're the companies that provide the goods and services that make Alaska's oil, gas and mining industries possible, and our 400-plus member companies generate more than 30,000 jobs for Alaskans.

We believe upstream fiscal issues need to be resolved first if Alaska truly wants North Slope producers to make commitments to space in a gas pipeline. The Alaska Gasline Inducement Act puts too much emphasis on mitigating the short-term financial risks incurred by pipeline builders and does too little to address the much longer-term risks of gas shippers.

With few exceptions, Mr. Chairman and members of the committee, we aren't lawyers or experts in constitutional law. We can't tell you what fixes are needed in order to provide prospective shippers in a gas line with the fiscal confidence they need in order make commitments exceeding \$100 billion over the next 30 years while still complying with Alaska's Constitution.

For the sake of Alaska's future, Chairman French, the Alliance urges you not only to determine what terms aren't constitutional, but also to find a mutually beneficial solution that is.

The Alaska Gasline Inducement Act may represent our last and best chance at making a North Slope gas project a reality. We urge you to fix it and pass it, and we pledge our full support of your efforts to craft a bill that acknowledges the interests of Alaskans, of the developer and transporter and of North Slope producers and shippers.

Thank you.

Mr. Chairman, and members of the committee. My name is David Gottstein, and I represent Backbone as Co-Chair with Former Governor Walter Hickel.

I come today to you in support of AGIA. It may not have come to you in perfect shape, but it is an excellent platform to work from for, among others, the following reasons:

- 1. It provides for a competitive and fair process for all bidders to show what they can do for the State and, therefore, the people of Alaska. The more vibrant the bidding pool, the more the winning bidder will have to offer. That is common sense and good business. There are rumors that the producers are arguing that it is exclusive in that a competitive process results in one winner. In the first case, most competitive processes pressure the participants to put forth their best offer and therefore achieves better results, and secondly, this process will likely result in more than one significant player in a development team.**
- 2. In addition, the inducements, including reimbursement for up to \$500 million for permitting and related costs, will reduce the risk of the project, increase its value, and gain more for the State through a more profitable pipeline. By making the project less risky, it will attract more bidders, and will allow them to offer more in economic terms.**
- 3. Contrary to what the North Slope oil producers want you to believe, they are NOT the only companies qualified to build a pipeline. Gaslines throughout the country are mostly built and owned by independent pipeline companies, not producers. Warren Buffet, for example, is one of several major investors ready to offer billions of dollars of equity to get the project going.**
- 4. Once the best project is chosen, the producers must commit the North Slope gas they have under lease to that project. Or risk forfeiture. That's required by the terms of their leases. Exxon, for one, wants you to believe that they are the only ones who can decide when to market our gas. But they are required by law to sell our gas when the market is ready to purchase it. We are in a game of chicken, and the producers hope we take the bait and veer off the road of maximum opportunity for the State. Don't be afraid of offering Pt. Thomson gas, even under a slight cloud**

of litigation loss. There is a very high likelihood that our Supreme Court will affirm the administrative decision to cancel the leases. If we hold back offering the gas to a market, the producers win. Sound business judgments dictate taking the probable course, and mitigate the small chance of failure. In the worst case, sufficient gas will likely be made available even for a smaller project that is economic, which we are told could be as little as 1 BCF. It is most likely the producers will fall in line and offer our gas once a line is approved, in order to avoid not being left behind. It would further risk their leases to hold back, and generate the wrath of Congress and the American people for doing so. If the courts strike down the canceling of the lease, then a break-up fee could be paid to a winning bidder as a consolation. But the potential benefits of proceeding, along with the likelihood of success, far in away outweighs the likelihood of failure and the associated cost. Let's not be chicken. Let's be bold, rational business-wise and strong. Not doing so would be like entering a negotiating room with a labor union and announcing that we can't afford a strike, turning them into the automatic winner.

- 5. Getting our gas to market so that it benefits all Alaskans is what AGIA is all about. Alaskans will control our destiny as opposed to abdicating it to Outside corporations.**

Thank you for offering us the opportunity to make our case, and we, along with all Alaskans, are eager to get going. Thank you for your time today.

COMMENTS TO LEGISLATURE
on GAS CONTRACT and FISCAL INTEREST FINDINGS

June 14, 2006

Alaska Project Rank with Other Investment Opportunities

Dr. Anthony Finizza
Consultant
Econ One Research, Inc.

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Sacramento, California 95814
916 449 2860

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Three Allen Center
333 Clay Street
Houston, Texas 77002
713 228 2700

Suite 230
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Austin, Texas 78701
512 476 3711

ONE

Methodology

- This analysis uses information from PFC's database of modeled projects with these criteria:
 - **Capex of at least \$ 1 billion**
 - **Production Start in 2006 or later**
 - **To make a level comparison, since projects starting prior to 2006 would have been advantaged by high prices of the last few years.**
 - Projects were split by type (Oil vs Gas)
 - Projects were split by country (OECD vs non-OECD)
- Analysis done in nominal dollar terms
- Financial metrics developed by PFC using Econ One assigned price decks at 2.5% inflation
- Projects are currently underway

Composition of PFC Database Used in Analysis

Projects Over \$1 Billion in CAPEX with Production Starting after 2005

	Total	of which OECD	of which Non-OECD
Total	55 (3 sponsors are in 32)	18 (10)	37 (22)
of which Oil	36 (21)	10 (6)	26 (15)
of which Gas	19 (11)	8 (4)	11 (7)

Some Issues with the PFC Analysis

- **Earlier work presented by P. Van Meurs in May 2006 using the same PFC database was done in real terms but discounted at 10%. This is equivalent to NPV 13.5 not NPV10 at 2.5% inflation. (This biases results against the Alaska gasline project since the comparisons were against NPV10 done in current dollars. This effect is not contained in Econ One's work.)**
- **For gas projects in the PFC database, transportation and regasification capital is excluded. (This biases the comparison of IRRs against the Alaska gasline project, which has pipeline capital in it.)**

Location of PFC Projects

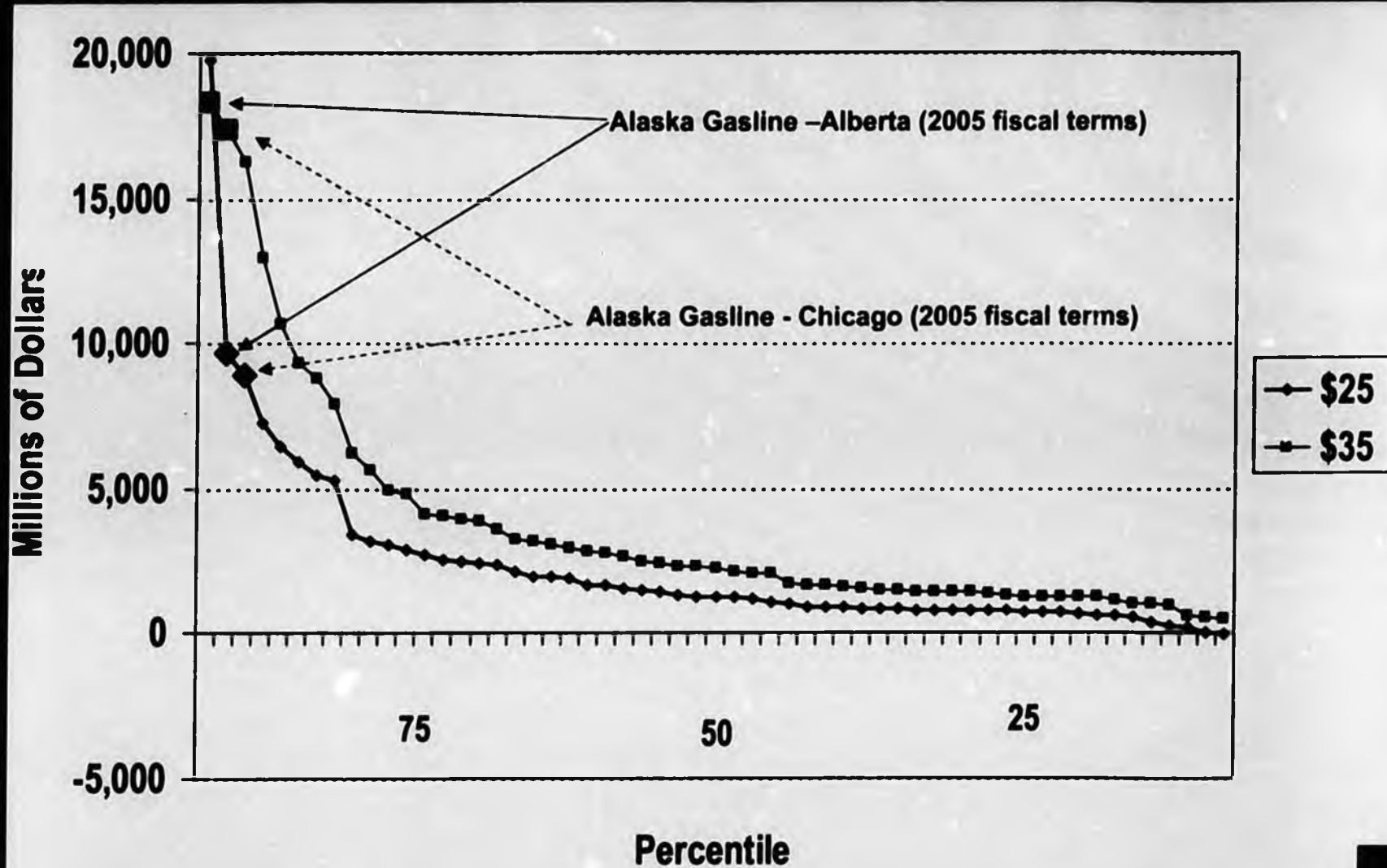


ALL PROJECTS

Project Comparison

Producer Net Cash Flow (NPV10)

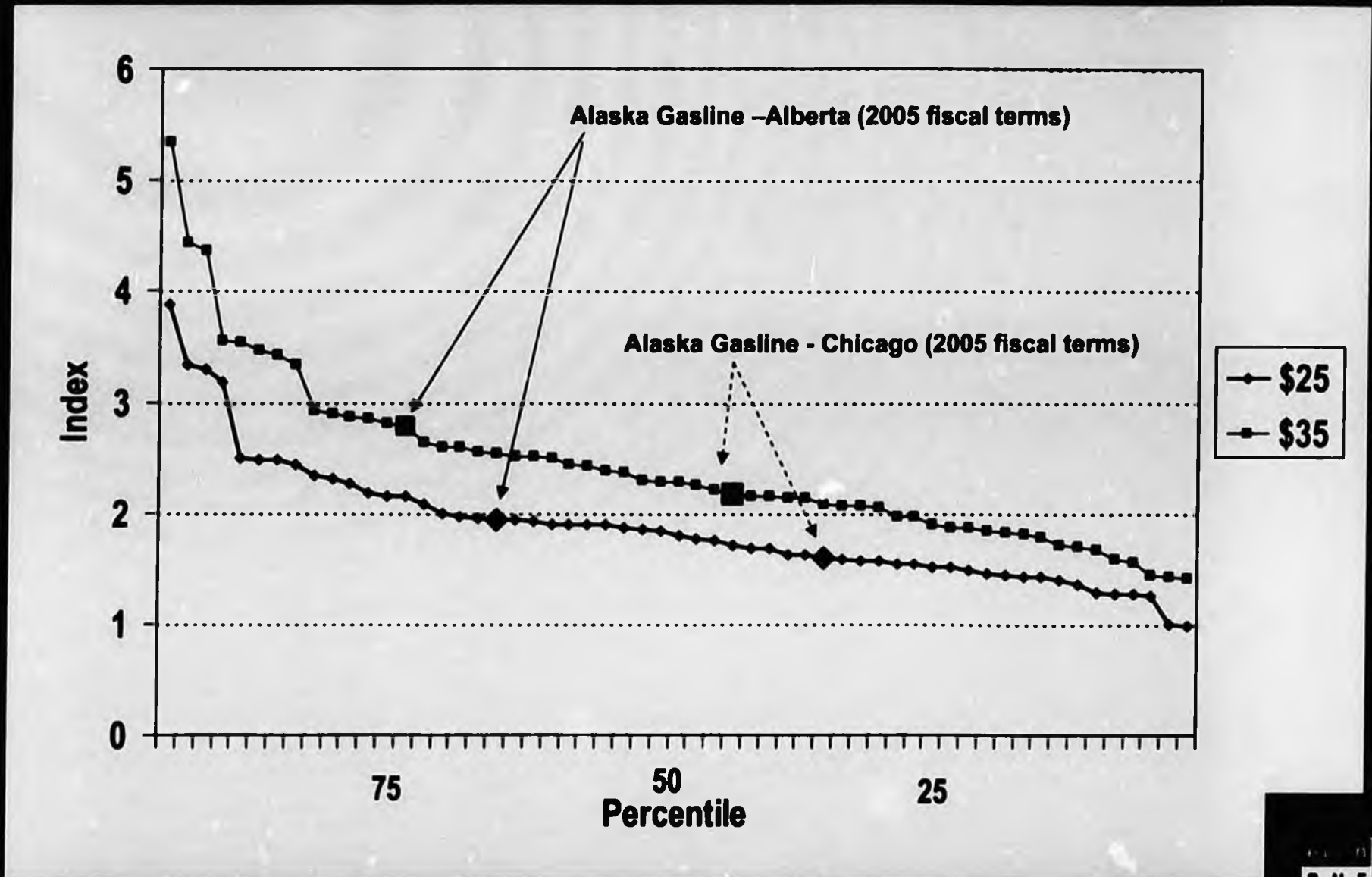
(\$35 and \$25 oil and 6-1 oil/gas price ratio)



Project Comparison

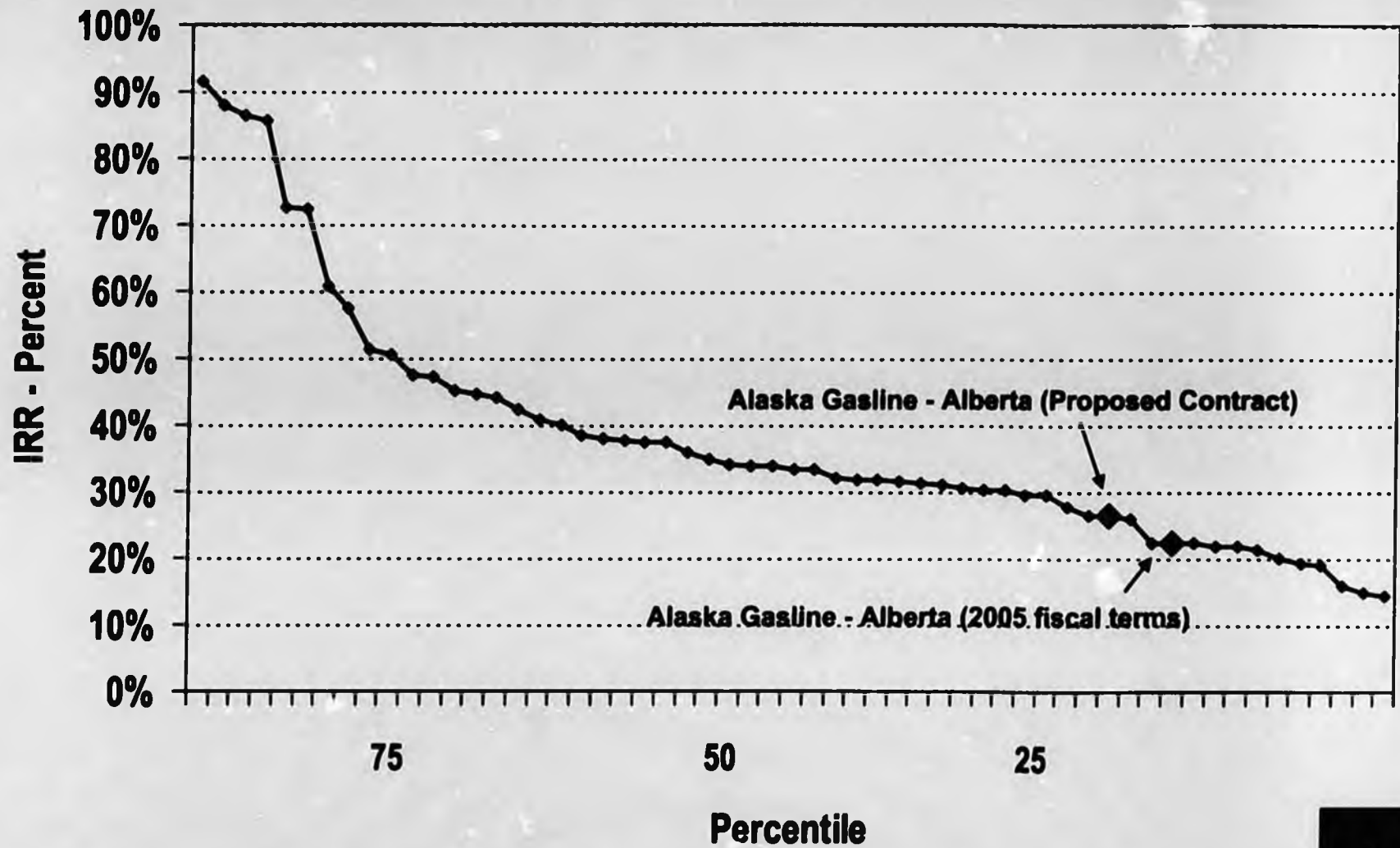
Profitability Index (PIR10)

(\$35 and \$25 oil and 6-1 oil/gas price ratio)



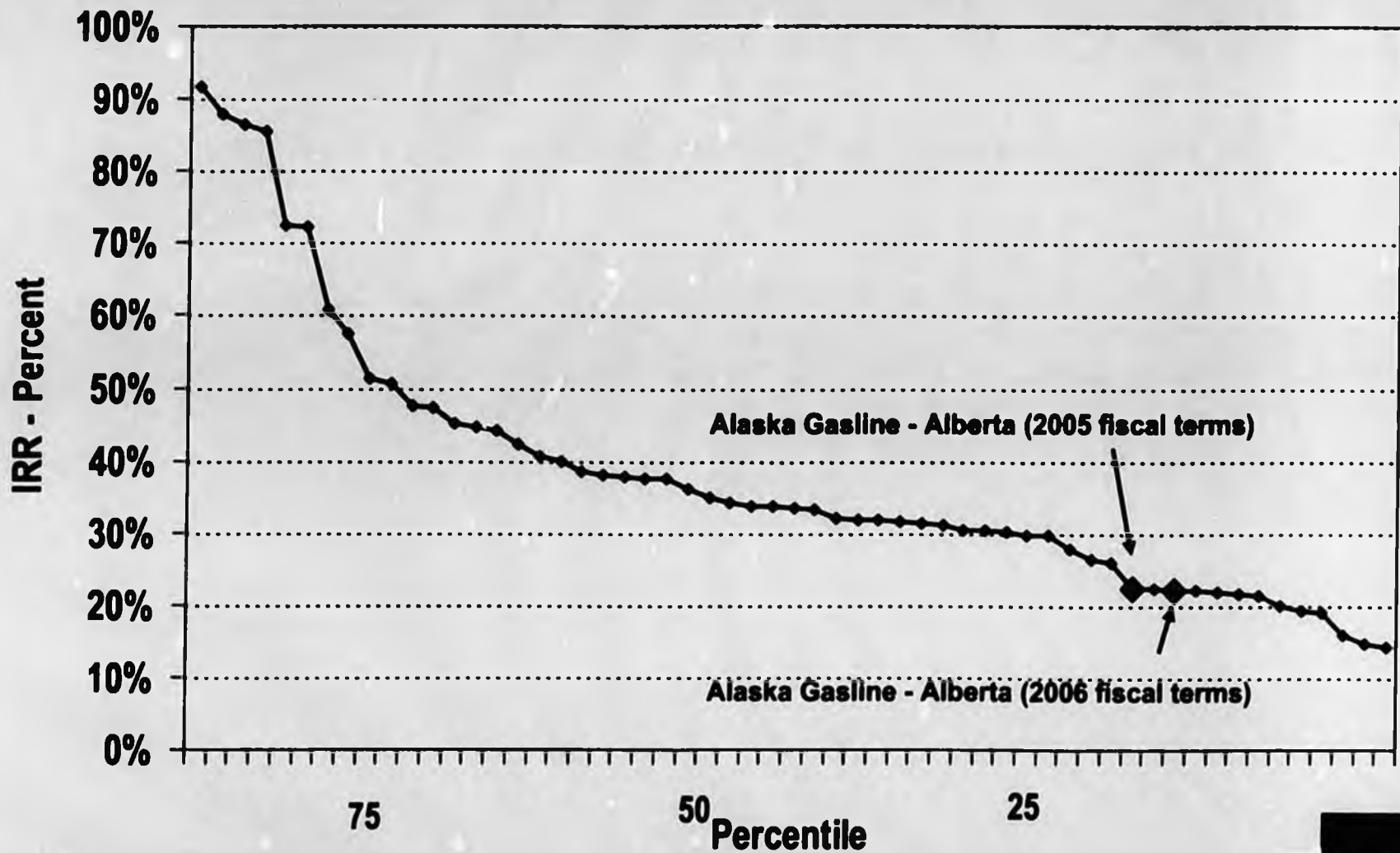
Effect of Proposed Contract on IRR

(\$35 oil and 6-1 oil/gas price ratio)



Effect of Fiscal Terms on IRR

(\$35 oil and 6-1 oil/gas price ratio)



Ranking of Alaska Gasline by Size Class

Gasline (Alberta) Ranking (\$35 oil and 6-1 oil/gas price ratio)

	Fiscal Terms	NPV10	PIR10	NPV10 per BOE	IRR
All Projects (including Alaska) (56)	2005 (ELF)	1/56	14/56	40/56	45/56
	2006 (PPT)	1/56	32/56	43/56	47/56
	Proposed Contract	1/56	8/56	35/56	43/56
Projects over \$3.5 Billion in CAPEX (16)	2005 (ELF)	1/16	5/16	8/16	11/16
	2006 (PPT)	1/16	5/16	9/16	12/16
	Proposed Contract	1/16	5/16	6/16	10/16

Project Ranking Summary

Ranking of Existing Projects (\$35 Oil and 6-1 Oil/Gas Price Ratio)

Category	Alaska Gasline Alberta 2005 Fiscal Terms	25%-tile	50%-tile (Median)	75%-tile	Ranking Quartile
Description					
Reserves (mmboe)	8,089	423	792	1852	4 th 3 rd 2 nd 1 st
CAPEX (\$mm)	28,123	1753	2806	3846	4 th 3 rd 2 nd 1 st
Financial Metrics					
NPV10 (\$M)	18,333	1404	2250	3865	4 th 3 rd 2 nd 1 st
NPV10/BOE	2.27	2.20	3.16	4.11	4 th 3 rd 2 nd 1 st
PIR10	2.78	1.90	2.28	2.63	4 th 3 rd 2 nd 1 st
IRR (%)	22.3	29.6	33.8	44.6	4 th 3 rd 2 nd 1 st

Source: PFC Energy and Econ One



Project Ranking Summary

Ranking of Existing Projects (\$25 Oil and 6-1 Oil/Gas Price Ratio)

Category	Alaska Gasline Alberta 2005 Fiscal Terms	25%-tile	50%-tile (Median)	75%-tile	Ranking Quartile
Description					
Reserves (mmboe)	8,089	423	792	1852	4 th 3 rd 2 nd 1 st
CAPEX (\$mm)	28,123	1753	2806	3846	4 th 3 rd 2 nd 1 st
Financial Metrics					
NPV10 (\$M)	9,667	435	1233	1635	4 th 3 rd 2 nd 1 st
NPV10/BOE	1.20	1.03	1.47	2.70	4 th 3 rd 2 nd 1 st
PIR10	1.94	1.51	1.83	2.16	4 th 3 rd 2 nd 1 st
IRR (%)	17.4	18.7	25.2	33.8	4 th 3 rd 2 nd 1 st

Source: PFC Energy and Econ One

PFC
ONE

Political Risk

- It is important to compare IRRs in relation to their risk-adjusted cost of capital.

IRR

(\$35 Oil and 6-1 Oil/Gas Price Ratio)

Project	IRR	Discount Rate?
Alaska Gasline (Alberta route)	22.3	10.0
Kashagan (Kazakhstan)	47.3	?
Shah Deniz (Azerbaijan)	21.7	?

Incorrect Ranking by IRR

- **Ranking projects on the basis of IRR in a capital constrained situation will often lead to suboptimal portfolio of projects**
- **This can be demonstrated in the PFC database**
- **Eliminated the top six projects and assumed a capital budget**
- **Ranked projects by PIR (preferred method) and by IRR (non-preferred method)**
 - **Used two examples for total capital available.**
- **The portfolio ranked by PIR provided higher NPV, monetized more Reserves, and used Less Capital**

Illustration of Incorrect Ranking by IRR

Projects Chosen from PFC List Excluding Largest Six

Project	Portfolio Sorted by PIR10					
	Capex	Capex NPV10	BOE	NPV10	PIR10	IRR
Gorgon	4,572	3,174	2,699	10,659	4.36	40.7%
Qatargas III	3,742	2,665	2,821	6,212	3.33	31.5%
Agbami	4,258	2,741	999	4,105	2.50	37.5%
Total	12,572	8,580	6,519	20,977		
	Portfolio Sorted by IRR					
Dalia	3,846	3,115	999	3,584	2.15	42.3%
Gorgon	4,572	3,174	2,699	10,659	4.36	40.7%
Agbami	4,258	2,741	999	4,105	2.50	37.5%
Total	12,676	9,030	4,697	18,348		

Illustration of Incorrect Ranking by IRR

Projects Chosen from PFC List Excluding Largest Six

Project	Portfolio Sorted by PIR10					
	Capex	Capex NPV10	BOE	NPV10	PIR10	IRR
Gorgon	4,572	3,174	2,699	10,659	4.36	40.7%
Qatargas III	3,742	2,665	2,821	6,212	3.33	31.5%
Agbami	4,258	2,741	999	4,105	2.50	37.5%
Ormen Lange	6,695	5,500	2,300	7,886	2.43	30.3%
Total	19,267	14,080	8,819	28,863		
	Portfolio Sorted by IRR					
Dalia	3,846	3,115	999	3,584	2.15	42.3%
Gorgon	4,572	3,174	2,699	10,659	4.36	40.7%
Agbami	4,258	2,741	999	4,105	2.50	37.5%
Greater Plutonia	4,318	3,025	1,195	3,189	2.05	31.8%
Qatargas III	3,742	2,665	2,821	6,212	3.33	31.5%
Total	20,737	14,720	8,713	27,749		

Conclusions

Among the projects in the PFC dataset used:

- **Alaska Gasline is LARGEST project in terms of CAPEX and Reserves added**
- **Gasline has BEST financial performance (NPV10) at “best estimate” prices and assumptions under 2005 fiscal terms**
 - **Gasline does NOT fall out of top quartile under lower price scenarios**
- **Gasline has PIR (“biggest bang for buck”) in top half of projects**
- **Gasline NPV10 per BOE is in third quartile under most price cases**
- **Gasline has low IRR, but as shown earlier, IRR is NOT USEFUL for comparison between projects that do not include all the capital, are of different scale, or of different risk. (All three conditions hold.)**