

ALASKA LEGISLATURE COMMITTEE FILES 2007-2008 RES 12663

(a) A licensee that is awarded a certificate of public convenience and necessity for the project shall accept the certificate.

Subsections (b) and (c) read like additional grounds for abandonment to those listed in AS 43.90.120. It seems to me that a finding that the project is "uneconomic" for the purpose of AS 43.90.120 may at least be intertwined with the licensee who may fail to secure financing and sanction the project as required in AS 43.90.210(c). I suggested above that the abandonment provision be moved later in the chapter; perhaps the remedies for failure to sanction and abandonment could either be combined or placed together because both address the failure of a project and the ensuing consequences.

**Sec. 43.90.220.** Page 12, line 11: I suggest also inserting AS 43.90.130 in addition to AS 43.90.140, so that the project plan is consistent with the original solicitation.

**Sec. 43.90.230.** Look at AS 43.99.010 that (since 1949) requires a person subject to tax to keep tax records in the state. You may wish to require that the records subject to audit be available in the state. Although this may seem to be redundant to the requirement in AS 43.90.140(14) to "commit to establish a local headquarters in [the] state," you may wish to clearly require in-state recordkeeping so that an affiliate developing the project makes the records available here rather than at its parents' headquarters.

**Sec. 43.90.240.** In the situation of an unresolved violation that results in the revocation of the license, the follow-up for revocation could follow a similar course to that for abandonment under AS 43.90.120, and the failure to sanction in AS 43.90.210.

**Sec. 43.90.240(e).** Page 13, lines 27 - 28: The words, "under the Alaska Rules of Appellate Procedure," are unnecessary.

**Sec. 43.90.330 and Sec. 43.90.340.** It seems that AS 43.90.330 (Alaska Gasline Inducement Act coordinator) and AS 43.90.340 (Expedited review and action by state agencies) should either be placed here at the end of art. 1 or in among the miscellaneous provisions in art. 4. The reason for this suggestion is that these two sections primarily are directed at facilitating the gasline, not the shippers whose inducement is offered in art. 3. If the two sections are also intended to facilitate the inducements in art. 3 as well as art. 2, they may be better placed in art. 4, among the miscellaneous provisions.

**Sec. 43.90.310.** This section offers a shipper an election to change the calculation of its royalty obligation from that set out in an existing lease or unit agreement to the calculation provided in new regulations to be adopted by the commissioner of natural resources. Every two years the regulations are to be reviewed, and if amended, the producer may elect to return to the obligation under the lease or unit agreement or to be subject to the amended regulations. This approach seems to avoid an issue under the contracts clause in art. I, sec. 15 of the state constitution because it does not actually and unilaterally change the contractual obligations of a producer under the lease or unit agreement, and thus there is no impairment. The producer is given the opportunity to

compare royalty obligations under the regulations with those in the contractual agreements and elect to choose the most favorable.

I am not sure how this section is intended to work. Under AS 43.90.310(a), the regulations to be adopted must "establish terms under which the state will exercise its right to switch between taking its royalty in-value or in-kind." Is this a separate issue from the determination of the value of the state's royalty share or are they somehow intertwined? Paragraphs (b)(1) and (2) seem to be related to the value determination part of the mandated regulations and (b)(3) seems to be related to the switching terms. Is this correct? My impression is that how the state intends to exercise its switching rights will be a factor in a shipper's evaluation of how much of its production the state will take in-value rather than in-kind so that the shipper knows how much capacity to commit during the first open season. For example, if a shipper commits all of its own production to its share of pipeline capacity acquired during the first open season, to what extent could the shipper also commit a portion of the state's royalty production for which the shipper expects the state to take in-value? Would you want to include in the bill a limitation on how often the state may switch between taking royalty in kind or in value to give stability to a shipper? Is this even a factor?

Sec. 43.90.310(b)(2)(D) requires that regulations adopted under the section reflect the 1980 Royalty Settlement Agreement for Prudhoe Bay gas for the purpose of determining a fair market value. Is this agreement public? If the agreement is not already public, it may be helpful to have that agreement entered into the legislative record so that an interested person could evaluate whether the regulations are consistent with that agreement and consistent with the statutory directive.

Sec. 43.90.310(b)(4). You may wish to make this a subsection within this section rather than merely requiring the condition to be adopted as part of the regulations. As a separate subsection, (4) would become (c), and delete "require that in" and insert "In". This makes the requirement in this new subsection similar to the requirement for the tax exemption in AS 43.90.320(c). The following subsections would be relettered to reflect the addition of an additional subsection.

Sec. 43.90.310(e). If there are no new leases contemplated by DNR between now and the end of the first binding open season, then the only leases that may be in conflict with making the election are leases entered into before the effective date of the Act. However, do you want a new lease to disallow the election in (d)?

**Sec. 43.90.320.** Although written in terms of an exemption, this section actually provides a credit, a dollar for dollar reduction in tax obligation based on an increase in tax following a change in the production tax. While a credit reduces the amount of tax for which a person would otherwise be liable, an exemption removes a subject from the imposition of the tax. The use of the term "exemption" to describe the credit is probably intended to coincide with the exception in art. IX, sec. 4 to art. IX, sec. 1 of the state constitution.

Art. IX, sec. 4 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.

Sec. 43.90.320 could be rewritten to make the inducement an exemption rather than a tax credit by exempting from tax a percentage of the gas production committed to the pipeline during the first binding open season. An exemption like this would be more aligned with the examples of exemptions in art. IX, sec. 4, that exempt all or part of certain property from a tax.<sup>4</sup>

Whether AS 43.90.320 is amended or not, the section should clarify whether the tax obligation is the nominal obligation determined by the nominal or minimum tax determined under AS 43.55.011, or its successor, or after applying the credits authorized in AS 43.55.023, 43.55.024, and 43.55.025. If the section is amended to exempt part of the production committed to the pipeline from tax, you should address whether credits and allowable lease expenditures used to determine the taxable value of the gas should be allocated between taxable and non-taxable gas, or may be fully applied to the taxable portion of the gas.

**Sec. 43.90.330.** As noted above, I suggest moving this section into art. 2, the article that provides inducement for a pipeline project, or art. 4, if the coordinator is to benefit both shippers and the project licensee.

I suggest adding provisions for the coordinator to hire staff and to designate where the coordinator will be situated within state government for administrative purposes. Will the position be in the governor's office, the Department of Revenue, the Department of Natural Resources, or some other department? You may wish to authorize the coordinator to hire exempt or partially exempt staff or specify that administrative support will be provided by the department in which the position is placed.

Do you want to add minimum qualifications for this position? Besides coordinating state agency activity to expedite the project, the position must also be capable of gauging Alaska law against agency action for the purpose of determining whether the agency action is contrary to the prohibitions in AS 43.90.340(b) and (c).

**Sec. 43.90.340.** As noted earlier, this section could be moved to art. 2, if it is intended to relate to the pipeline project, or art. 4, if it is intended to relate to both the pipeline project and to shippers.

AS 43.90.340(b). The drafter used the phrase, "notwithstanding any contrary provision of law." If the drafter had particular provisions in mind that may interfere with the intent of this section, those provisions could be addressed directly.

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<sup>4</sup> It may be possible to include a tax increase as a basis for calculating an exemption. For example, if the tax increased four percent, then four percent of the production committed to the pipeline would be exempt from tax.

**Senator Charlie Huggins**

**March 14, 2007**

**Page 10**

**Sec. 43.90.400.** This provision establishes the fund in the general fund that holds the \$500,000,000 that will be appropriated for the gasline inducement.

I suggest adding additional language to state that the fund is not a dedicated fund and that money may be expended without further appropriation. See for example AS 26.05.265(d) and (e) (fund for service members group life insurance premiums).

**Sec. 43.90.410.** I suggest deleting "jointly" on page 18, line 6. Each commissioner could be authorized to adopt regulations necessary to implement the chapter. I expect that there will also be a need for regulations that relate to the Alaska Gasline Inducement Act coordinator and the operation of that office.

**Sec. 43.90.430.** An alternative to this interest provision would be to incorporate the interest due on delinquent taxes under AS 43.05.225.

**Sec. 43.90.440.** Although the section makes the licensee entitled to "an amount equal to three times the total of the reasonable costs that the licensee has incurred" the payment would be subject to appropriation. Note that the breach of the assurance by the state constitutes project abandonment under AS 43.90.120.

**Sec. 43.90.450(c).** As drafted, this subsection does not make sense. How does the phrase "include the firm transportation capacity contracts in the project" fit with the first part of the subsection? I think the intent was to require transfer of the capacity acquired during the first binding open season when the gas (and oil?) interests in the North Slope are transferred.

**Sec. 43.90.900.** A definition for "North Slope" should be added. For example, AS 43.55.011(f) uses the description "oil and gas produced north of 68 degrees North latitude" to refer to North Slope production.

On page 20, line 4, delete "and 'controlling'" as "controlling" is not used in the bill.

"Gas processing" is defined in AS 43.55.900 and that definition could be incorporated by reference.

"Lease" could be defined to mean "state lease" as that term is defined in AS 38.06.080.

I am not sure "under common control with" needs to be defined in this bill. The phrase is only used in the definition of "affiliate." If necessary, limit the term to "common control."

If I may be of further assistance, please advise.

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# LEGAL SERVICES

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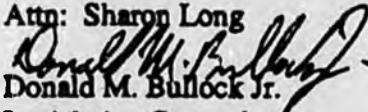
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## MEMORANDUM

March 7, 2007

**SUBJECT:** Analysis of SB 104 (SB 104; Work Order No. 25-GS1060B)

**TO:** Senator Charlie Huggins  
Attn: Sharon Long

**FROM:**   
Donald M. Bullock Jr.  
Legislative Counsel

You have requested a sectional analysis of the above-described bill.

As a preliminary matter, note that a sectional summary or analysis of a bill should not be considered an authoritative interpretation of the bill and the bill itself is the best statement of its contents. If you would like an interpretation of the bill as it may apply to a particular set of circumstances, please advise.

The following is a summary of the governor's Alaska Gasline Inducement Act. At your request, this analysis is more detailed than the usual sectional summaries we provide to you. However, the cautionary note in the paragraph above continues to apply, the bill itself is the best statement of its contents.

**Section 1.** Adds a new chapter, AS 43.90, to Title 43 that contains the following:

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

**Sec. 43.90.010. Purpose.** Explains that the purpose of the chapter is to encourage expedited construction of the gasline and sets four goals for the pipeline.

**Article 2. Alaska Gasline Inducement Act License.**

**Sec. 43.90.100. Gas project.** Authorizes the commissioner of the Department of Natural Resources and the commissioner of the Department of Revenue, acting jointly, to award an Alaska Gasline Inducement Act license that entitles the licensee to the inducement in AS 43.90.110.

**Sec. 43.90.110. Natural gas pipeline project construction inducement.** Lists the inducement a licensee is entitled to receive. Provides for

payments totalling up to a total of \$500,000,000 over 5 years as matching contributions for the licensee's qualified expenditures. Provides for the state to match the licensee's dollar-for-dollar cost through the close of the first binding open season, and provide up to 80 percent of the qualified expenditures after the close of the first binding open season. Defines qualified expenditures as costs that occur after the license is issued and that are related to obtaining a certificate of public convenience and necessity from the Federal Regulatory Commission or the Regulatory Commission of Alaska, as appropriate. Qualified expenditures may not include overhead costs, litigation costs, assets or work product predating the issuance of the license, or civil or criminal penalties or fines.<sup>1</sup> Other incentives include the benefit of an Alaska Gasline Inducement Act coordinator and a state program that provides training for employment in gas pipeline project management, construction, operations, maintenance, and other gas pipeline-related positions.

**Sec. 43.90.120. Abandonment of project.** Provides for the abandonment of a project if the commissioners and the licensee agree that the project is uneconomic and should be abandoned. If the licensee and the commissioners do not agree, provides for an impartial third party to take evidence and make a determination of whether the project is uneconomic and should be abandoned. Requires the commissioners to adopt regulations establishing the procedures for the third-party selection and review process. Also, provides for the abandonment of the project if the state violates the exclusivity enjoyed by the licensee by extending to another person preferential royalty, tax, or monetary treatment for purposes of facilitating the construction of a competing gasline. (See AS 43.90.440.)

**Sec. 43.90.130. Request for applications for the license.** Requires commissioners to commence public process to request applications for the license. Authorizes use of independent contractors to develop provisions in the application for a license and to evaluate applications received. States that the requests for applications are not subject to the procurement code (AS 36.30).

**Sec 43.90.140. Application requirements.** Lists requirements for the application and requires the application to be consistent with the terms established under AS 43.90.130. The application must:

- (1) be filed by the deadline established by the commissioners;

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<sup>1</sup> I think the drafter of the governor's bill may have intended to include the *costs* of assets or work product in this list of exclusions because this is a list of expenditures, i.e. money paid out.

(2) provide a detailed description for the proposed gasline project from the North Slope to market, including route, receipt and delivery points; size and design capacity; an analysis of the project's economic and technical viability; viable work plan, timeline, and budget; explain how applicable state, federal, and international requirements will be met; for a route through Canada, provide a description for obtaining rights-of-way; for a project using marine transportation, provide a description of transportation services to be provided by third parties, proposed access and tariff terms, a description of proposed schemes for liquefaction and marine transportation, and explain how the Federal Energy Regulatory Commission (FERC) and/or export requirements will be satisfied;

(3) for a project subject to FERC, commit to conclude an open season within 36 months after obtaining the license; commit to apply for FERC approval to use pre-filing procedures and to use the procedures before filing for a certificate of public convenience and necessity; commit to apply for a certificate of public convenience and necessity;

(4) for a project subject to the Regulatory Commission of Alaska (RCA), commit to conclude a binding open season within 36 months after receiving the license, and to apply for a certificate of public convenience and necessity to authorize construction;

(5) after first binding open season, provide for the assessment of market demand for additional gasline capacity every two years;

(6) commit to expand the proposed project in "reasonable engineering increments" and "commercially reasonable terms" that encourage exploration and development of gas resources;

(7) with regard to expansion, commit to recover costs through rolled-in or partially rolled-in rates that would increase shippers' rates by no more than 15 percent of the "initial maximum recourse rates" from the North Slope to the downstream terminus; the application may include a proposal for any combination of incremental or rolled-in rates for cost recovery that exceed the 15 percent level; agree not to enter into any negotiated rate agreement that would preclude the applicant from collecting the roll-in rates from any shipper;

(8) commit to seek certificate authority from FERC or RCA for a North Slope gas treatment plant owned all or in part by the applicant, and to use net book value for rate-making purposes;

(9) propose a percentage of state contribution for qualified expenditures (up to 80 percent) after the close of the first binding open season;

(10) commit to no less than 70 percent debt as a basis for rate setting for any North Slope gas treatment plant owned all or in part by the applicant;

(11) describe plans to manage and mitigate cost overruns, if any;

(12) commit to at least five in-state delivery points;

(13) commit to offer firm transportation service to in-state delivery points without regard to whether producers bid successfully for firm transportation service to in-state delivery points; commit to offer distance sensitive rates for in-state delivery points;

(14) commit to establish project headquarters in the state;

(15) commit to hire qualified state residents to the extent permitted by law; and

(16) demonstrate ability to perform the work described in the plan, within the plan's timeline and budget.

**Sec. 43.90.150. Initial application review; additional information requests; complete applications.** Requires commissioners to review a plan submitted for consistency with requirements in the request for applications as well as the specific requirements in AS 43.90.140. Authorizes commissioners to request additional information for a plan that is not rejected, and provides that a plan will be rejected if required additional information is not submitted. Requires commissioners to determine that an application is complete.

**Sec. 43.90.160. Proprietary information and trade secrets.** Allows proprietary and trade secret information to be confidential and not subject to disclosure as public records. Requires an applicant to identify and demonstrate information that is confidential under this section.

**Sec. 43.90.170. Application evaluation criteria.** Requires the commissioners to evaluate each application based upon the following criteria: the timing of proposed actions; the plan to manage cost overruns; transportation rates and minimization of the effect of cost overruns; initial design capacity and expandability; percentage of state's contribution after the first binding open season; reasonableness, specificity, and feasibility of work plan, timeline, and budget; applicant's financial resources, project history, ethics and integrity, business operation, and access to equipment for carrying out the project.

**Sec. 43.90.180. Notice, review, and comment.** Requires notice, public review, and comment on all complete applications. Classifies applications to not be public records until notice for public review is published. Requires commissioners to summarize proprietary and trade secret information that is not subject to public disclosure.

**Sec. 43.90.190. Notice to the legislature of intent to issue license; denial of license.** After commissioners determine an application will "sufficiently maximize the benefits to the people of the state and merits issuance of a license," requires commissioners to issue the determination with written findings, publish a notice of intent to issue a license, and

forward the intent to issue notice and supporting materials to the legislature. Requires the commissioners to make a written finding if no application "sufficiently maximizes the benefits to the people of the state and merits issuance of a license" and makes that finding a final determination for purposes of appealing the determination to the court.

**Sec. 43.90.200. Legislative action; issuance of license.** Makes the intent to issue a license a final agency determination, effective, and subject to court appeal "on the 30th legislative day" after the referral to the legislature, unless the notice of intent is disapproved by a joint resolution.<sup>2</sup> Authorizes the commissioners to proceed with a new request for application process if the legislature disapproves the intent to issue.

**Sec. 43.90.210. Certification by regulatory authority and project sanction.** Requires the licensee to accept a certificate of public convenience and necessity issued by FERC or RCA, as applicable. Requires the licensee to sanction the project within one year after the effective date of the certificate of public convenience and necessity if the licensee has credit support to finance construction, or within five years if the licensee does not have credit support on the effective date of the certificate. Sufficient credit support is to be determined by considering ownership of rights to produce and market gas resources, firm transportation commitments, or government financing. If the project is not timely sanctioned, requires the licensee to abandon and transfer the certificate to the state or state's designee, and assign to the state's designee all project data, engineering designs, and permits. Provides that the transfer is without cost to the state or the state's designee if the licensee fails to accept the certificate of public convenience and necessity or, having credit support on the effective date of the certificate, fails to sanction the project within one year. A transfer required if the licensee did not have sufficient credit support on the effective date of the certificate and fails to sanction the project within five years is at the licensee's "net cost." Sanction is defined in AS 43.90.900, to mean "procurement commitments to go forward with the project as evidenced by entering into procurement commitments of at least \$1,000,000,000 with third parties."

**Sec. 43.90.220. Amendment of or modification to the project plan.** Authorizes the commissioners to approve modifications or amendments to the project plan if consistent with the requirements of AS 43.90.140, were required by factors outside of the licensee's control, and were not reasonably foreseeable before the license was issued.

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<sup>2</sup> I do not know how this works if the legislature is not in session or if there are fewer than 30 days remaining in a regular or special session.

**Sec. 43.90.230. Records, reports, conditions, and audit requirements.** Requires the licensee to maintain records of all expenditures and commitments of state money received, and authorizes the commissioners to audit the records. Requires the licensee to retain all required records and reports for seven years. Requires the licensee to allow the commissioners to have the same access to information, receive all relevant reports, notices, and information sent to the governing body and equity holders of the licensee, and to allow the commissioners to have a representative at all meetings of the licensee's governing body and equity holders that relate to the project.

**Sec. 43.90.240. License violations; damages.** Identifies four acts that constitute a violation of the license: committing state money received under AS 43.90 for an unauthorized purpose, departing from the specifications in the application without state approval of an amendment or modification; violating a state or federal law material to the license; or violating a material term in the license. Provides for notice of violation and a period for informal resolution of the violation. Authorizes the commissioners to suspend disbursement of state matching contributions effective on the date of the notice of violation and to resume disbursement when the violation is cured. If the violation is not resolved within 90 days or after notice and hearing, requires the commissioners to make a final written determination of the violation that may be appealed to the court. Provides as remedies for an unresolved violation the discontinuance of state matching contributions, recoupment of state money received by the licensee plus interest, revocation of the license, and any other remedy provided in law or equity.

### **Article 3. Resource Inducement; Alaska Gasline Inducement Act Coordinator.**

**Sec. 43.90.300. Qualification for resource inducement.** Qualifies a person that has committed to acquire firm transportation capacity in the first binding open season of the project to receive a royalty inducement and a gas production tax exemption for gas shipped in the firm transportation capacity acquired in that first binding open season.

**Sec. 43.90.310. Royalty inducement.** Requires the commissioner of natural resources to adopt regulations establishing a method to determine the monthly value of the state's royalty share of gas production, and establish terms under which the state will exercise its right to switch between taking its royalty share in-kind or in-value. Requires the regulations to minimize retroactive adjustments, provide a means for establishing a fair market value for each component of the royalty gas

(taking into consideration reliable and available industry data), and for making appropriate adjustments based on transportation costs, location differentials, costs of gas processing, and deductions allowable under the 1980 Royalty Settlement Agreement for Prudhoe Bay gas. Requires the regulations to establish terms for the state to exercise its authority to switch between in-kind and in-value royalty without unreasonable impact on a lessee. Requires the regulations to require a person making an election under this section (including affiliates and subsequent interest holders) to agree not to protest or appeal a filing by the licensee to roll-in or partially roll-in expansion costs up to the level that is required in AS 43.90.140(7).<sup>3</sup> The regulations may not preclude the person or the person's affiliates from protesting a filing to roll in mainline expansion costs that the licensee is not required to propose and support under AS 43.90.140(7). Requires the commissioner of natural resources to review the regulations at least every two years and amend the regulations as necessary. If new regulations are adopted, authorizes a lessee qualified for the royalty inducement to elect to calculate its gas royalty obligation under the new regulations or use the methodology set out in the existing leases or unit agreements; the election continues until the regulations are subsequently amended. Prohibits the commissioner of natural resources or the interpretation of any provision in AS 43.90 from prohibiting the exercise of the election between the royalty inducement under new regulations adopted after review and the method in existing leases or unit agreements.

**Sec. 43.90.320. Gas production tax exemption.** Entitles a person that has committed to acquire firm transportation capacity in the first binding open season of the project to an annual exemption from the production tax on gas equal to the difference between the amount of the person's production tax obligation under the law in effect during that tax year and the tax obligation under the production tax in effect at the conclusion of the first binding open season. Provides that the exemption may not be less than zero. Limits the exemption to the 10 years immediately following the first commercial operation of the gasline and to production taxes that are

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<sup>3</sup> Although this agreement not to protest is included within the requirements for the regulations, I think the intent may have been to make it a condition precedent for receiving the inducement similar to the requirements for a tax exemption in AS 43.90.320. AS 43.90.320(c) requires the agreement before claiming the tax exemption. The roll-in level in AS 43.90.140(7) is 15 percent of the initial maximum recourse rates from the North Slope to the proposed projects downstream terminus. AS 43.90.140(7) requires an applicant for the license to propose and support mainline capacity expansion costs from all mainline system users through rolled-in or partially rolled-in rates that do not exceed the 15 percent level.

levied on North Slope gas shipped through firm transportation capacity the person qualifying for the exemption acquired during the first binding open season. Requires, as a condition of claiming the exemption, a person making an election under this section (including affiliates subsequent interest holders) to agree not to protest or appeal a filing by the licensee to roll-in or partially roll-in expansion costs up to the level that is required in AS 43.90.140(7).<sup>4</sup>

**Sec. 43.90.330. Alaska Gasline Inducement Act coordinator.** Establishes the position of Alaska Gasline Inducement Act coordinator, to be filled by a person appointed by the governor and approved by the legislature. Provides that the coordinator shall serve until one year after the commencement of commercial operations of the gasline. Requires the Alaska Gasline Inducement Act coordinator to coordinate action by all state agencies with respect to the project, ensure that state agencies comply with AS 43.90, and coordinate with the federal coordinator for natural gas transportation projects in the state.

**Sec. 43.90.340. Expedited review and action by state agencies.** Requires expedited review by state agencies relating to the project. Prohibits a state agency from including, in any certificate, right-of-way, permit, or other authorization, a term or condition, or an amendment to a condition or term that is not required by law if the Alaska Gasline Inducement Act coordinator determines the term or condition would prevent or significantly impair the "expeditious construction and operation or expansion of the project."

#### **Article 4. Miscellaneous Provisions.**

**Sec. 43.90.400. Alaska Gasline Inducement Act matching contribution fund; disbursements; audits.** Creates the Gasline Inducement Act matching contribution fund in the general fund and provides that appropriations to the fund do not lapse. Requires the Department of Revenue to manage the fund and authorizes investment of the fund. Requires the commissioners to adopt regulations for applying to

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<sup>4</sup> The level in AS 43.90.140(7) is 15 percent of the initial maximum recourse rates from the North Slope to the proposed projects downstream terminus. AS 43.90.140(7) requires an applicant for the license to propose and support mainline capacity expansion costs from all mainline system users through rolled-in or partially rolled-in rates that do not exceed the 15 percent level.

Although the tax break in this section is referred to as an "exemption," it operates more like a credit because it reduces the tax but does not exempt gas from taxation.

receive matching contributions for expenditures related to obtaining a certificate of public convenience and necessity, and regulations for the audit of the use of contributed funds. Requires the commissioners to report disbursements, justification for each disbursement, and projected amount of money needed for disbursements during the following three fiscal years.

**Sec. 43.90.410. Regulations.** Provides general authority for the commissioner of revenue and the commissioner of natural resources to adopt regulations for implementing AS 43.90.

**Sec. 43.90.420. Statute of limitations.** Limits to 90 days after the date a license is issued for a person to bring a judicial action challenging the constitutionality of the chapter or a license issued under the chapter.

**Sec. 43.90.430. Interest.** Provides an interest rate to be applied to a payment to the state when the payment is delinquent.

**Sec. 43.90.440. Licensed project assurances.** Provides the assurance by the state that the licensee "has exclusive enjoyment of the inducement provided under [AS 43.90]." Entitles a licensee that is in compliance with the requirements of the license and applicable law to a payment from the state equal to three times the licensee's reasonable costs in developing the project as of the date the state first extends preferential treatment to another person for facilitating the construction of a competing gasline. Requires the licensee receiving payment under the entitlement to assign to the state data, designs, contracts, and permits related to the project.

**Sec. 43.90.450. Assignments.** Allows the assignment of the license by the licensee if the transfer is approved by the commissioners and does not increase or diminish the obligations created by the license or diminish the value of the license to the state. Subjects the transferor to continued recordkeeping, reporting, conditions, and audit requirements for all state money received by the licensee/transferor before the effective date of the transfer. Limits the transfer of a persons' right to the royalty inducement to be done only in connection with a sale or merger that results in the transfer of all of the transferor's assets in the North Slope of the state. As written in the bill as introduced, AS 43.90.450(c) is unclear regarding the connection between the firm transportation capacity contract in the gasline and the transfer of the royalty inducement.<sup>5</sup>

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<sup>5</sup> It would make sense that the transfer of the firm transportation commitment would transfer with the royalty inducement and the assets capable of producing gas to take advantage of the capacity.

**Sec. 43.90.460. Conflicting laws.** States that nothing in the chapter shall be construed to repeal or abrogate procedures and functions under state or federal law governing the development and oversight of the gasline.

**Article 5. General Provisions.**

**Sec. 43.90.900. Definitions.** provides definitions of "affiliate," "Alaska Gasline Inducement coordinator," "commencement of commercial operations," "commissioners," "control" and "controlling," "equity holder," "gas processing," "governing body," "lease," "lessee," "license," "licensee," "project," "recourse rates," "sanction," "under common control with," and "unit agreement."

**Sec. 43.90.990. Short title.** The short title for the Act is the Alaska Gasline Inducement Act.

**Section 2.** AS 36.30.850(b) is amended to exclude certain contracts issued in conjunction with the Act from the state's procurement code.

**Section 3.** AS 39.25.110 is amended to make the Alaska Gasline Inducement Act coordinator an exempt position.

**Section 4.** AS 40.25.120(a) is amended to exclude records that are proprietary or are a trade secret under the Act, and applications submitted under the Act before a notice is published for soliciting public comment from public disclosure.

**Section 5.** Makes the Act effective immediately and will require a 2/3 majority vote in each house.

DMB:med  
07-156.med

# Greenberg Traurig

## Memorandum

**TO:** Antony Scott  
**FROM:** Donald C. Shepler  
**DATE:** March 10, 2007  
**RE:** Open Season postings in trade press for last 12 months

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As we have discussed, in my experience interstate gas pipelines are constantly searching for new business opportunities and expansions. Under FERC policy any expansion must be preceded by an open season to ensure that capacity is made available to all parties and potential shippers on a non-discriminatory basis.

As confirmation of this proposition I recently did a *Lexis* search of articles in *Gas Daily* (a widely-read industry trade publication) that turned up over 70 articles in the last year regarding open seasons by various interstate pipelines. The results are attached. Some of the articles relate to binding open seasons and some relate to non-binding open seasons. I believe this confirms the fact that pipelines are actively testing the markets for new capacity and confirms the appropriateness of the provisions in AGIA relating to solicitations of interest in new capacity every two years.

1. Gas Daily, February 16, 2007, Pg. 4, 97 words, Lodi Gas Storage seeks bids for future expansion capacity  
... a non-binding open season Friday for firm ...  
... May. Questions regarding the open season, which ends at 3 ...
2. Gas Daily, February 16, 2007, Pg. 4, 136 words, Enterprise launches open season for 10-Bcf Texas storage project, SGS  
... announced a binding open season for shipper support of ...  
... US, the company said. The open season will begin at ...
3. Gas Daily, February 14, 2007, Pg. 6, 146 words, Sempra takes bids for expansion capacity at Liberty Gas Storage, SGS  
... Storage have launched an open season to assess market interest ...  
... Bcf of capacity. During the open season that ends March 2, the ...
4. Gas Daily, February 5, 2007, Pg. 3, 261 words, LNG-linked pipeline in Oregon solicits shippers, SGS  
An open season for the \$850 ...  
... More information on the open season can be obtained from Hank ...
5. Gas Daily, February 2, 2007, Pg. 3, 157 words, Enstor launches open season for storage services at three sites, SGS  
... Thursday launched an open season for binding firm ...  
... conduct a separate open season for its Waha Storage ...
6. Gas Daily, January 22, 2007, Pg. 6, 202 words, Black Bayou seeks bids for service at planned Louisiana storage facility  
... in a binding open season for service at its ...  
... Sabine Lake. In the open season, customers will be offered ...
7. Gas Daily, January 18, 2007, Pg. 4, 172 words, Northern Natural solicits bids for pipeline capacity in Iowa  
... bids in two open seasons that run through 4 ...  
In the first open season, Northern Natural is soliciting ...  
... 2008. In the second open season, Northern Natural is accepting ...  
... amount of capacity available. The open seasons also include solicitations to turn ...
8. Gas Daily, January 4, 2007, Pg. 3, 307 words, Texas Gas solicits shippers, considers expansion, JB  
... launched a binding open season through January 24 ...  
... More information on the open season is available at [www.](http://www.) ...
9. Gas Daily, January 3, 2007. 341 words, Alabama storage project approved; open season planned for February, JK  
... a non-binding open season in February for ...

10. Gas Daily, December 20, 2006, Pg. 4, 249 words, Shippers snag 1.6 Bcf/d of capacity on two planned Boardwalk pipelines, BH

... said it was extending its open season on Gulf Crossing to ...

... 85. "The Gulf Crossing open season has generated significant interest from ...

... on the ultimate results of the open season, we may expand the design ...

11. Gas Daily, December 18, 2006, RETAIL REPORT ... a weekly supplement to Gas Daily; Pg. 8, 571 words, PUC approves firm access rights for Sempra pipelines, SGS

... Access to be granted through open season process Access rights ...

... a three-step open season process that would be held every ...

12. Gas Daily, December 15, 2006, Pg. 6, 205 words, Arcadia launches open season for Louisiana storage capacity, VJ

... a non-binding open season today for salt- ...

In the open season, which is set to close at ...

13. Gas Daily, December 14, 2006, Pg. 1, 371 words, With ETP aboard, Midcontinent pipe may expand, BH

... outcome of a second open season launched Wednesday.

... result of an initial open season held by Kinder ...

... conducting a binding open season until 3 pm ...

... information on the project and open season materials are available from David ...

14. Gas Daily, December 7, 2006, Pg. 1, 342 words, Duke plans multi-pronged storage expansion, SGS

... Market Hub Partners open season earlier this year (GD ...

15. Gas Daily, November 20, 2006, Pg. 6, 180 words, Boardwalk launches open season for Gulf Crossing pipeline capacity, SGS

... it has begun an open season for some 650,000 ...

... Choctaw County, Alabama. The open season runs through December ...

16. Gas Daily, November 17, 2006, Pg. 1, 700 words, FERC backs flexible rates for storage projects, CN

... capacity in an open season and its capacity was fully subscribed ...

17. Gas Daily, November 17, 2006, Pg. 4, 387 words, FERC approves Big Sandy pipeline to move gas from eastern Kentucky, CN

... million. During two open seasons conducted earlier this year, ...

18. Gas Daily, November 16, 2006, Pg. 7, 169 words, EPP to conduct open season for Texas gas storage capacity

... a non-binding open season on November 20 to ...

... Belvieu, Texas, facility. The open season will run through ...

19. Gas Daily, November 10, 2006, 178 words, Algonquin pipeline system expansion draws 'exceptional' shipper interest, RAW
  - ... during a recent open season, parent company Duke ...
  - ... completed the non-binding open season on October 27. ...
  
20. Gas Daily, November 9, 2006, Pg. 5, 169 words, Texas Gas plans third expansion of market-area storage capacity
  - ... area and has launched an open season for firm service.
  - ... conducted two successful open seasons that will boost the pipeline's ...
  - ... November 1, 2008. The open season ends at 5 ...
  
21. Gas Daily, November 2, 2006, Pg. 5, 254 words, NGS launches open season for Texas gas storage facility
  - ... Wednesday launched an open season for capacity at ...
  - ... Morgan County, Colorado. The open season for Tres Palacios ...
  
22. Gas Daily, October 31, 2006, Pg. 3, 227 words, Enterprise plans open season for up to 4 Bcf of storage capacity
  - ... hold a binding open season to gauge shipper interest ...
  - ... Pipeline. The company said the open season will begin at ...
  
23. Gas Daily, October 23, 2006, Pg. 1, 341 words, Two Mississippi gas storage projects advance
  - ... Friday launched an open season for storage services ...
  - ... Hub held an open season for the storage facility ...
  
24. Gas Daily, October 6, 2006, Pg. 1, 536 words, El Paso scraps its Continental Connector pipeline, JK
  - ... a non-binding open season attracted shipper requests ...
  - ... holding a binding open season and starting the pre-filing process ...
  
25. Gas Daily, October 6, 2006, Pg. 3, 246 words, Bay Gas holds open season for Alabama storage capacity, MT
  - ... a non-binding open season for 10 Bcf of ...
  - The open season is linked to the planned development of ...
  - ... 5 Bcf of capacity. The open season began Thursday and will ...
  
26. Gas Daily, October 2, 2006, Pg. 1, 355 words, Algonquin eyes LNG-linked mainline expansion, SGS
  - ... Friday launched an open season to gauge shipper interest ...
  - Depending on the response to the open season, which ends October 27, ...
  - ... so we will see what the open season brings," he said, adding that ...
  
27. Gas Daily, September 27, 2006, Pg. 3, 275 words, Southern Natural soliciting bids for Mississippi storage project, SGS
  - ... subsidiary launched an open season Tuesday for non- ...
  - ... will depend upon the open season results and initial engineering ...

28. Gas Daily, September 27, 2006, Pg. 4, 265 words, NW Natural, TransCanada ponder joint gas pipeline project in Oregon, RAW  
... pipeline are conducting an open season to determine customer interest ...
29. Gas Daily, September 15, 2006, Pg. 3, 196 words, Sabine Pipe Line plans to boost delivery capacity to Henry Hub  
In an open season announcement, the pipeline said the ...  
... acceptable bid in the open season is 50,000 Dt/d. ...
30. Gas Daily, September 14, 2006, Pg. 4, 124 words, Iroquois launches open season for 2008-2009 expansion project  
... launch-ed an open season for its 2008-2009 Expansion Project. The open season, which runs to October 6, is ...
31. Gas Daily, September 7, 2006, Pg. 6, 203 words, Sempra finalizing plans for Mexican LNG terminal expansion, CEO says, MT  
... strong response to an open season it held earlier this ...
32. Gas Daily, August 24, 2006, Pg. 5, 112 words, DTE offers firm gas storage services at Michigan facility  
... it has launched an open season for firm storage ...  
... term, the company said. The open season ends at 3 ...  
... hubs. To obtain an open season package, or for more ...
33. Gas Daily, August 24, 2006, Pg. 7, 311 words, Florida P&L to take 500,000 Mcf/d on planned Southeast Supply pipeline, JB  
... shippers that responded to an open season earlier this year. The 270- ...
34. Gas Daily, August 18, 2006, Pg. 1, 346 words, Northwest gets FERC nod for Piceance lateral ... ago. After an open season that ended last November, ...  
... Lateral. A subsequent open season in December did not ...
35. Gas Daily, July 27, 2006, Pg. 4, 268 words, Firms propose new pipeline from eastern Canada to Ohio, SGS  
... determined by an open season for the project scheduled ...  
... More information on the open season can be obtained from Tony ...
36. Gas Daily, July 21, 2006, Pg. 7, 116 words, Northwest holds open season for capacity on Colorado lateral  
... subsidiary is conducting an open season for long-term ...  
... commitment received during the open season, which ends at 5 ...
37. Gas Daily, July 20, 2006, Pg. 6, 240 words, Rockies Express garners interest in 1 Bcf/d of expansion capacity, MT  
A recent open season for the Oakford extension of the ...

- ... binding commitments during the open season, which ended July 14, " ...
38. Gas Daily, July 19, 2006, Pg. 1, 391 words, Transco files D.C.-area pipeline expansion plan, SGS  
... agreed after an open season last year to sign ...
39. Gas Daily, July 18, 2006, Pg. 6, 82 words, CIG pipeline seeks interest in North System capacity  
... Company is conducting an open season to solicit shipper interest ...  
... starting October 1. The open season runs until 3 ...
40. Gas Daily, July 17, 2006, Pg. 1, 624 words, Ethanol boom expected to increase gas demand, JMM  
... a non-binding open season to expand the Kinder Morgan ...
41. Gas Daily, July 7, 2006, Pg. 3, 223 words, Kinder Morgan eyes expansion of interstate line to Nebraska, BH  
... a non-binding open season Wednesday to determine shipper ...  
... Kansas, Missouri and Nebraska. The open season lasts through 5 ...
42. Gas Daily, July 6, 2006, Pg. 4, 365 words, TransColorado files 250,000 Dt/d expansion project with FERC, JK  
... pipeline stems from an open season held earlier this year ...
43. Gas Daily, June 28, 2006, Pg. 7, 272 words, AES announces open season for LNG-linked pipeline system, MT  
... Tuesday began an open season for firm transportation ...  
... depending on the results of the open season. Open season participants will be responsible ...  
... no later than 2010. The open season ends at 5 ...
44. Gas Daily, June 27, 2006, Pg. 6, 273 words, Texas Eastern holds open season for West-to-Northeast gas pipeline  
... Monday launched an open season to gauge interest in ...  
The non-binding open season for the proposed Texas ...
45. Gas Daily, June 26, 2006, Pg. 7, 119 words, Heartland Gas solicits interest in capacity on Indiana pipeline  
... launched a binding open season Friday to gauge shipper ...  
... date of October 1. The open season is slated to close at ...
46. Gas Daily, June 23, 2006, Pg. 3, 263 words, MoBay files FERC application for proposed Gulf storage facility  
... a non-binding open season held in March, ...
47. Gas Daily, June 23, 2006, Pg. 6, 240 words, Tennessee seeks interest in proposed expansion from Ohio to New York City

- ... a non-binding open season to gauge interest in ...  
 ... years," Tennessee said. The open season, scheduled to close at ...  
 ... a subsequent binding open season is necessary. If the project moves ...
48. Gas Daily, June 21, 2006, Pg. 6, 276 words, Rockies Express holds open season for Ohio-to-Pennsylvania extension, SGS  
 ... launched a binding open season to solicit interest in their ...  
 ... eastward from Ohio to Pennsylvania. The open season ends at 5 ...  
 ... Additional information related to the open season is available at www. ...
49. Gas Daily, June 8, 2006, Pg. 3, 588 words, Official: New England no longer constricted market, CC  
 ... week launched an open season for Mid-Continent ...
50. Gas Daily, June 2, 2006, Pg. 1, 640 words, CenterPoint, Duke plan 1,600-mile pipeline, RAW  
 ... a non-binding open season closes July 31. ...  
 ... said an initial open season for an 800- ...  
 ... jointly held an open season on a proposed ...  
 ... new 60-day open season to solicit interest from producers ...  
 ... Regulatory Commission after the open season closes. The non-binding open season began June 1.  
 ...
51. Gas Daily, June 2, 2006, Pg. 3, 746 words, Rockies Express files FERC application for first leg, JK  
 ... plans to begin an open season in about a ...
52. Gas Daily, May 24, 2006, Pg. 6, 121 words, El Paso extends its open season on Continental Connector project  
 ... June 8 the binding open season for a project ...  
 ... Connector Pipeline subsidiary. The open season originally was slated to end ...  
 ... information on the binding open season package and related items ...
53. Gas Daily, May 23, 2006, Pg. 4, 228 words, New Dominion 'hub' would serve fast-growing gas demand in East, MD  
 ... a non-binding open season beginning today and ending ...  
 ... More information on the open season can be obtained from Josh ...
54. Gas Daily, May 16, 2006, Pg. 6, 201 words, Sempra says it received strong interest in Mexico LNG expansion  
 ... launched the non-binding open season last month (GD 3/14). "This successful open season demonstrates the strategic significance" of the ...
55. Gas Daily, May 12, 2006, Pg. 6, 60 words, Transwestern holds open season for capacity at several locations
56. Gas Daily, May 9, 2006, Pg. 3, 744 words, Mackenzie gas pipeline dispute headed to NEB, GP

- ... MEG. A 2003 open season offering rights to book ...
57. Gas Daily, May 9, 2006, Pg. 3, 744 words, Mackenzie gas pipeline dispute headed to NEB, GP  
... MEG. A 2003 open season offering rights to book ...
58. Gas Daily, May 8, 2006, Pg. 5, 108 words, Mississippi Hub to hold storage open season beginning May 15  
... a non-binding open season for a proposed ...
59. Gas Daily, May 8, 2006, Pg. 1, 906 words, Kinder Morgan expands Express project eastward, BH  
... company received to its binding open season on Rockies Express where ...  
... a non-binding open season completed last week ...
60. Gas Daily, May 5, 2006, CORRECTION; Pg. 3, 41 words, Correction  
... on a binding open season El Paso is conducting ...
61. Gas Daily, May 4, 2006, Pg. 3, 115 words, Bobcat receives strong interest in proposed La. storage facility  
... recent non-binding open season for firm gas ...
62. Gas Daily, May 3, 2006, Pg. 4, 422 words, Marketing segment drives Sempra's earnings higher, MT  
... said. In addition, the open season for a possible ...
63. Gas Daily, May 2, 2006 Correction Appended, Pg. 4, 315 words, El Paso holds binding open season for Continental Connector pipeline, MT  
... begun a binding open season for its proposed Continental ...  
The open season, which began at 10 ...  
... a non-binding open season held late last ...  
... 713-823-4338. Open season documents can also be downloaded ...  
... on a binding open season El Paso is conducting ...
64. Gas Daily, May 1, 2006, Pg. 3, 329 words, Duke eyes storage capacity additions at three sites, RAW  
... a non-binding open season that begins today. The others ...  
... Interest expressed during the open season, which runs through May ...  
... more information about the open season should contact Janice Devers ...
65. Gas Daily, April 27, 2006, Pg. 7, 185 words, CenterPoint launches open season for next phase of Gulf Coast pipeline  
... binding, 30-day open season to gauge interest in ...
66. Gas Daily, April 25, 2006, Pg. 4, 728 words, Report: Alaska pipeline more cost-effective than LNG, MT  
... plans to participate in the open season being held by ...

67. Gas Daily, April 21, 2006, Pg. 3, 189 words, Caledonia begins open season for 1.7 Bcf of Mississippi storage, SGS  
... it has launched an open season for 1.7 Bcf of ...  
... Caledonia will administer the open season as well as manage nominations, ...  
... four cycles/year. The open season concludes at 5 ...
68. Gas Daily, April 17, 2006, Pg. 1, 455 words, Kinder Morgan proposes another major pipeline, BH  
... a non-binding open season Thursday for the MidContinent ...  
... GD 2/22). The open season for MidContinent Express ...
69. Gas Daily, April 12, 2006, Pg. 4, 213 words, KM holds binding open season for proposed expansion of NGPL  
... launched a binding open season to gauge interest in ...  
... Henry Hub. The binding open season concludes at 3 ...
70. Gas Daily, March 28, 2006, Pg. 1, 593 words, TransCanada expansion to serve US Northeast, MT  
... it held an open season last spring to gauge ...
71. Gas Daily, March 28, 2006, Pg. 3, 245 words, Bobcat launches open season for proposed Louisiana facility  
... a month-long open season offering service at its ...  
... Investments LLC, is conducting the open season for only the initial ...  
... Dt/d, respectively. The open season, which started Monday, will ...
72. Gas Daily, March 23, 2006, Pg. 1, 672 words, Storage increasingly seen as insurance policy, SGS  
... just conducted an open season for Mobile Bay- ...
73. Gas Daily, March 17, 2006, Pg. 1, 441 words, CenterPoint plans 1.25 Bcf/d Midwest pipeline, MT  
... Thursday launched an open season to gauge interest in ...  
... after the non-binding open season, CEGT said a ...  
... jointly held an open season on a proposed ...  
... 17). In the latest open season, which runs through 3 ...  
... in participating in the open season should contact Haynes at ...
74. Gas Daily, March 15, 2006, Pg. 3, 472 words, Charge causes Southern Union to report \$111.1 million Q4 loss, MT  
... Bond also noted that an open season held for Panhandle ...
75. Gas Daily, March 14, 2006, Pg. 5, 210 words, Sempra plans open season for Mexican LNG terminal, MT  
... a non-binding open season to seek shipper interest ...

... response received" during the open season. The open season is set to begin at ...  
... Commission. "The proposed expansion and open-season process represent a ...

76. Gas Daily, March 10, 2006, Pg. 1, 374 words, Merrill Lynch, Sempra sign LNG capacity deal,  
MT

... preparations for an open season related to a possible ...

77. Gas Daily, March 9, 2006, Pg. 4, 145 words, Equitrans holds open season for firm capacity in  
Kentucky

... a non-binding open season to solicit interest in ...

# ALASKA STATE LEGISLATURE

Sen. Charlie Huggins, Chair  
Sen. Bert Stedman, Vice Chair  
Sen. Lyda Green  
Sen. Gary Stevens  
Sen. Lesil McGuire  
Sen. Bill Wielechowski  
Sen. Thomas Wagoner



State Capitol, Room 119  
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## Senate Resources Committee

Friday, March 16, 2007  
3:30 p.m. - 5:30 p.m.

### AGENDA

- **SB 104 - Natural Gas Pipeline Project**  
"An Act relating to the Alaska Gasline Inducement Act; establishing the Alaska Gasline Inducement Act matching contribution fund; providing for an Alaska Gasline Inducement Act coordinator; making conforming amendments; and providing for an effective date."

#### Presentation by Administration:

Pat Galvin, Commissioner, DOR

Kevin Banks, Acting Director, Division of Oil & Gas, DNR

Marcia Davis, Deputy Commissioner, DOR

Bonnie Harris, Senior Asst. AG; Oil, Gas & Mining Section, DOL (available for questions)

Don Schepler, Greenberg Taurig Consultants (available for questions)

#### By Teleconference:

Larry Ostrovski, Chief Asst. AG; Oil, Gas & Mining Section, DOL

Michael Williams, Chief Economist, Tax Division, DOR

Antony Scott, Division of Oil & Gas, Commercial Section, DNR

**The Palin-Parnell Administration presents**

# AGIA

**The Alaska Gasline Inducement Act**

**Part two**

Last Updated: March 13<sup>th</sup>, 2008

## Introduction

**State value for the \$500M (Part 2)**  
**Evaluation Criteria and Process**  
**Increasing Predictability for Producers**  
**Getting Gas for the Pipeline**

# **AGIA**

The Alaska Gasline Inducement Act

## **State Value for \$500 million**

### **Part 1:**

- Project moves forward faster**
- Lower tariffs**
- Expansion Commitments**
- Rolled-in rates**

### **Part 2:**

- In-State Use**

**Value for \$500 million**

**AGIA**

The Alaska Gasline Inducement Act

## **In-State Use**

- **5 off-take points**
- **Distance sensitive rates**
- **Expansion provisions**

## Hypothetical: Gas Off-take in Fairbanks

- Off-take volume to meet heating needs only
  - Main pipeline sized at 4.3 BCF/D delivered to Alberta
  - Main pipeline cost \$20.5B
  - Main Pipeline has 70% debt financing at 14% ROE
- 

**Full Tariff from NS to AK/Canada border = 72¢**

**Mileage-based rate from NS to Fairbanks = 46¢**

Distance sensitive rates

**AGIA**

The Alaska Gasline Inducement Act

## Fairbanks Gas Prices if capacity acquired at initial or subsequent Open Season

### With distance sensitive rates:

\$5.50 Alberta Gas price  
minus \$2.14 pipeline (Alaskan + Canadian) and GTP costs  
= \$3.36 North Slope netback value  
+ 49¢ GTP fee  
+ 47¢ tariff to Fairbanks  
= **\$4.32 Fairbanks price**

### Without distance sensitive rates:

\$3.35 North Slope netback value  
+ 49¢ GTP fee  
+ 72¢ tariff to Fairbanks  
= **\$4.62 Fairbanks price**

## Fairbanks Gas Prices if no capacity available through expansion

If in-state entities are not ready to subscribe for capacity in the initial open season, and if there are no expansions, then benefits of distance sensitive rates are not enjoyed.

### Illustration:

\$5.50 Alberta Gas price  
- \$2.14 pipeline and GTP costs  
= \$3.36 North Slope netback value  
+ \$2.14 pipeline and GTP costs  
= \$5.50 Fairbanks gas price

## Value to State:

- Timing
- Cost overrun mitigation
- Favorable tariffs
- Initial capacity and expansion
- State match after open season

## Likelihood of Success:

- Feasibility of work plan and budget
- Financial strength
- Technical expertise
- Track Record

**1) Applications made public**

**2) Public review and comment - 60 days**

**3) Commissioners select licensee and make findings.**

**4) Legislative review, opportunity to disapprove**

- **Review of published applications**
- **Review of Commissioners' finding- 30 days,**

## **Increasing Predictability for Producers**

### **1. Royalty predictability**

- **“Higher-of” Provision**
- **RIV vs. RIK**

### **2. Production tax exemption**

- **Description of tax exemption structure**
- **Constitutionality**

## **Royalty Predictability**

- **Minimize retroactive adjustments**
- **Use public price indices**
- **RIK/RIV switching**

# Production tax exemption

- **Tax Exemption = gas production tax obligation (current year) minus gas production tax obligation (open season year)**
- **Available only on gas shipped in capacity acquired in first binding open season**
- **Available first ten years of gas flow**

**AGIA**

The Alaska Gasline Inducement Act

# **Production tax exemption**

## **Constitutionality**

## **Constitution of Alaska**

### **Article 9 - Finance and Taxation**

#### **§ 1. 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.**

## **Constitution of Alaska**

### **Article 9 - § 4. Exemptions**

**The real and personal property of the State or its political subdivisions shall be exempt from taxation .... [P]roperty used exclusively for non-profit religious, charitable, cemetery, or educational purposes, ... 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.**

## Getting Gas for the Pipeline

- **How Much is Needed?**
- **Prudhoe Bay**
  - **AOGCC off-take study**
- **Point Thomson**
- **New exploration**

# Summary

# AGIA

The Alaska Gasline Inducement Act

- **Get project built, quickly**
  - **Significant cost of delay**
  - **Need timelines, benchmarks**
- **Open the North Slope gas basin**
  - **Mandatory Expansion**
  - **Rolled in Tariffs**
- **Open and competitive process**
  - **Evaluation Criteria**
- **Low tariffs**
  - **State Contribution**
  - **Debt to Equity Ratio**
- **Gas for Alaska**
  - **Distance Sensitive Rates**
- **Jobs for Alaska**
  - **Training Program**
- **Increase Predictability for Producers**

# Greenberg Traurig

## Memorandum

**TO:** Antony Scott

**FROM:** Kenneth M. Mincsinger **cc:** Donald C. Shepler

**DATE:** March 14, 2007

**RE:** Examples of Approved Capital Structure and Return on Equity ("ROE") for Major New/Expansion Projects (Initial Rates)

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The attached table -- which, as requested, contains more detail than the one we sent you on March 10 -- lists several major new pipelines and expansion projects, and the capital structure and return on equity ("ROE") approved by the Federal Energy Regulatory Commission ("FERC") for each project as part of the initial rates approved in the pipeline's certificate proceeding. The table reflects an average capital structure for these projects of approximately 66 percent debt and 34 percent equity. The table also indicates that a 70/30 debt/equity ratio, with a ROE of 13-14 percent, is fairly common for new/expansion projects. There are some notable exceptions, however, such as Rockies Express, which has a capital structure of 45 percent debt and 55 percent equity.

In addition, this table provides: (1) a short description of each project; (2) the project's length, diameter, and capacity; and (3) the project's cost. Of course, none of the listed projects is as large as the anticipated size of an Alaska natural gas pipeline project, either in terms of capacity or cost. Nevertheless, the table provides a reasonable sample of recent major new or expansion projects in the Lower 48 states, including some that have a capacity greater than 1 billion cubic feet per day ("Bcf/day"), along with several projects with a capacity significantly less than 1 Bcf/day.

### FERC Certificate Orders

#### Examples of Approved Capital Structure and Return on Equity ("ROE") for Major New/Expansion Projects (Initial Rates)

Pipeline	Project Description <sup>1</sup>	Capital Structure (Debt/Equity)	ROE	Length, Diameter and Capacity <sup>2</sup>	Project Cost (estimate from application; older projects not in 2007 dollars)
<b><i>Millennium Pipeline Co., LLC, 117 FERC ¶ 61,319 (2006)</i></b>	Proposal to construct new pipeline in New York state to serve increased demand in the New York City area	70/30	14.00%	181.7 miles of 30-inch pipeline  Approx. 525,400 Dth/d	\$664 million
<b><i>North Baja Pipeline, LLC, 117 FERC ¶ 61,022 (2006)</i></b>	Expansion of existing natural gas pipeline running from the Arizona/California border into Southern California, and then into Mexico, to accommodate anticipated LNG supplies; also modification of the pipeline to accommodate bi-directional gas flow	70/30	14.00%	New loop of 68.1 miles of 48-inch pipeline and 11.2 miles of 42-inch pipeline, and smaller lateral facilities  Expansion from approx. 512,500 Dth/d to 2.7 Bcf/d	\$291 million
<b><i>Entrega Gas Pipeline, Inc., 112 FERC ¶ 61,177 (2005)</i></b>	New pipeline for Rockies gas extending from the Piceance Basin in Colorado to the Cheyenne, Wyoming Hub (Note: this pipeline has since been consolidated into Rockies Express -- see next entry)	35/65	12.00%	136 miles of 36-inch pipeline and 191 miles of 42-inch pipeline  Approx. 1.5 Bcf/d	\$664 million
<b><i>Rockies Express Pipeline, LLC, 116 FERC ¶ 61,272 (2006)</i></b>	An extension of the former Entrega pipeline, which ultimately will ship Rockies gas to Ohio; this is the "REX-West" portion, which primarily involves new pipeline facilities extending from the Cheyenne Hub to an interconnection with Panhandle Eastern Pipe Line Company located in Missouri	45/55	13.00%	Primarily 713 miles of 42-inch pipeline  Approx. 1.5 Bcf/d	\$1.6 billion

<sup>1</sup> All of the information contained in this chart was derived from the orders cited in the "Pipeline" column.

<sup>2</sup> Compression associated with these facilities has not been specifically discussed on this chart, although it is reflected in the capacity figures that are listed.

<b>Colorado Interstate Gas Co. and Cheyenne Plains Gas Pipeline Co., 105 FERC ¶ 61,095 (2003)</b>	A new interstate natural gas pipeline receiving Rockies supplies at the Cheyenne Hub and extending southeastward across Colorado and Kansas to a terminus in southwestern Kansas	69/31	14.00%	380 miles of 30-inch diameter pipeline \$60,000 Dth/d	\$332 million
<b>Islander East Pipeline Co., LLC, 97 FERC ¶ 61,363 (2001)</b>	A proposed new pipeline extending from an interconnection with Algonquin near North Haven, Connecticut, across Long Island Sound and terminating on Long Island	70/30	14.00%	Approximately 50 miles of 24-inch pipeline 285,000 Dth/d	\$149.6 million
<b>Iroquois Gas Transmission System, LP, 100 FERC ¶ 61,275 (2002)</b>	Named the Eastern Long Island Expansion Project (ELI Project), this project was designed to provide service to eastern Long Island, New York	75/25	12.38%	29.1 miles of 20-inch pipeline 175,000 Dth/d	\$105 million
<b>Guardian Pipeline, LLC, 91 FERC ¶ 61,285 (2000)</b>	A new natural gas pipeline serving Wisconsin, extending from the Chicago Hub to a terminus in Wisconsin, together with a lateral off of its mainline to another point in Wisconsin	70/30	14.00%	140.3 miles of new 36-inch pipeline 750,000 Dth/d	\$224.3 million
<b>Gulfstream Natural Gas System, LLC, 91 FERC ¶ 61,119 (2000)</b>	New natural gas transmission facility designed to transport up to 1.13 Bcf per day from supply areas in Alabama and Mississippi across the Gulf of Mexico to load centers in central and eastern Florida	70/30	14.00%	744 miles of pipeline of diameters ranging from 36-inch to 24-inch 1.13 Bcf/d	\$1.654 billion
<b>Vector Pipeline LP, 85 FERC ¶ 61,083 (1998)</b>	New pipeline extending from near Chicago through Indiana and Michigan to the U.S.-Canada border near St. Clair, Michigan	70/30	14.00%	270 miles of 42-inch pipeline 1 MMDth/d	\$447 million
<b>Alliance Pipeline LP, 80 FERC ¶ 61,149 (1997)</b>	New pipeline from British Columbia to the U.S./Canada border near Sherwood, North Dakota, to an interconnection with Peoples Gas Light and Coke Company near Chicago (figures are for U.S. portion only)	70/30	14.00%	887 miles of 36-inch pipeline 1.325 Bcf/d	\$1.34 billion
<b>Nautilus Pipeline Co., LLC, 78 FERC ¶ 61,325 (1997)</b>	Facilities that transport natural gas from offshore Louisiana onshore Louisiana	50/50	13.25%	101 miles of 30-inch diameter pipeline 600 MMc/d	\$121 million

<b><i>Maritime &amp; Northeast Pipeline, LLC, 76 FERC ¶ 61,124 (1996)</i></b>	New pipeline extending from a point of interconnection with Tennessee Gas Pipeline in Massachusetts to a point of interconnection with Granite State Gas Transmission in Maine	75/25	14.00%	64 miles of 24-inch pipeline 60,000 MMBtu/d	\$82 million
<b><i>Portland Natural Gas Transmission System, 76 FERC ¶ 61,123 (1996)</i></b>	New pipeline extending from an interconnection with TransCanada at the Canadian border near North Troy, Vermont to points in Maine, New Hampshire, and Massachusetts	75/25	14.00%	242 miles of 20-inch pipeline 178 MMcf/d	\$271 million
<b><i>Kern River Gas Transmission Co., 98 FERC ¶ 61,205 (2002)</i></b>	2003 Expansion of Kern River's system, which ships Rockies gas from points in Wyoming to delivery points located primarily in California	70/30	13.25%	634.3 miles of 36-inch pipeline and 82.4 miles of 42-inch pipeline 885.6 MMcf/d	\$1.27 billion

**Average Debt = 66 percent; High = 75 percent; Low = 35 percent**

# ALASKA STATE LEGISLATURE

Sen. Charlie Huggins, Chair  
Sen. Bert Steedman, Vice Chair  
Sen. Lyda Green  
Sen. Gary Stevens  
Sen. Lesil McGuire  
Sen. Bill Wielechowski  
Sen. Thomas Wagoner



State Capitol, Room 119  
Juneau AK 99801-1182  
907-465-3878  
Fax: 907-465-3265  
800-862-3878

## Senate Resources Committee

Monday, March 19, 2007  
3:30 p.m. - 7:30 p.m.

### AGENDA

- **SB 104 - Natural Gas Pipeline Project**  
An Act relating to the Alaska Gasline Inducement Act; establishing the Alaska Gasline Inducement Act matching contribution fund; providing for an Alaska Gasline Inducement Act coordinator; making conforming amendments; and providing for an effective date."

- **Governor's Gas Team**

**Walk through with question & answer session:**

Tom Irwin, Commissioner, Dept. of Natural Resources

Pat Galvin, Commissioner, Dept. of Revenue

Marcia Davis, Deputy Commissioner, Dept. of Revenue

Kevin Banks, Acting Director, Division of Oil & Gas, DNR

Antony Scott, Div. Oil and Gas, Commercial Section, DNR

**By Teleconference from the O & G Conference Rm. in Anchorage:**

Bonnie Harris, Sr. Asst. AG; Oil, Gas & Mining Sect., DOL (available for questions)

Don Schepler, Greenberg Taurig Consultants (available for questions)

# ALASKA STATE LEGISLATURE

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## Senate Resources Committee

March 19, 2007

Mr. Patrick Galvin, Commissioner  
Alaska Department of Revenue  
P.O. Box 110400  
Juneau, Alaska 99811-0400

Dear Commissioner Galvin,

The governor's Alaska Gasline Inducement Act proposal contemplates providing for "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."

In discussion with the governor's gasline team they acknowledged that the gas tax was probably too high and should be changed. Implied in the above provision is the governor's intent that the legislature take that task on and change the tax prior to the open season. This would provide certainty for the producers and explorers; and if the tax was lower, comparable to gas tax rates in other regions, it would provide an incentive for explorers to look for new gas reserves in Alaska.

Prior to the passage of the PPT legislation, oil and gas were taxed differently, recognizing the difference in economics in marketing oil and gas. Currently the PPT taxes oil and gas at the same level. We are trying to determine, were we to change the tax to be more competitive with North America and/or International markets, what that tax might look like.

If we changed the tax on gas from 22 ½% to some lesser amount, what percent would make us competitive in the North American markets? In the international markets?

What would a progressivity factor look like to be consistent with the intent of the progressivity factor for oil?

Last year during the PPT discussions an exclusion of a certain percentage of gas was considered as an alternative to changing the gas tax. What percent of capacity would we need to exempt from our 22.5% tax in order to bring the tax, averaged over total capacity, into alignment with North American markets, and with international markets?

If we change the tax on gas or exclude a portion of the gas from tax, are there other things we need to consider as we approach this issue, e.g., auditing facilities that are partially used for oil production and for gas production?

Please feel free to contact me if you have questions regarding this request.

Sincerely,

Charlie Huggins, Chair

Cc: DNR Commissioner  
Chief of Staff  
Governor's legislative liaison

# ALASKA STATE LEGISLATURE

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## Senate Resources Committee

Senate finance Room 532

Wednesday, March 21, 2007

## AGENDA

- **SB 104 – Natural Gas Pipeline Project**  
"An Act relating to the Alaska Gasline Inducement Act; establishing the Alaska Gasline Inducement Act matching contribution fund; providing for an Alaska Gasline Inducement Act coordinator; making conforming amendments; and providing for an effective date."

3:30 p.m. – 5:00 p.m.

### Presentation & Dialog with Producers

#### BG

David N. Keane, Vice President Policy and Corporate Affairs

#### Chevron

Vince LeMieux, New Ventures Alaska, Manager  
Kevin Tabler, Land Manager & Government Affairs  
Tim Houston, Commercial Manager Alaska

Testimony By Invitation

5:30 pm – 7:30 pm

**Joint Senate Resources and House Special Committee on Oil & Gas**

**Public Testimony**

Time Limit May Be Set

**Sharon Long**

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**From:** Sharon Long

**Sent:** Wednesday, March 21, 2007 8:53 PM

**To:** Ann Krekelberg; Barry, Timothy M (DFG); Cheryl Sutton; Clark, Christopher G (GOV); Darwin Peterson; Deborah Grundmann; George Ascott; Hay, Linda J (DEC); Ian Laing; Jane Kasberg; Jerry McCune UFA; Jody Simpson; Lesh, Melanie G (DNR); Marit Carlson Van Dort; Mary Jackson; Michelle Sydeman; Peg Warren; Portia Babcock; Sen. Bill Wielechowski; Sen. Charlie Huggins; Sen. Gary Stevens; Sen. Lesil McGuire; Sen. Lyda Green; Sen. Stedman; Sen. Tom Wagoner; Shalon Szymanski; Sharon Long; Steve Porter; Peg Warren; Ann Krekelberg; Susan Warner; Sue Gullufsen; Cheryl Sutton; Rep. Vic Kohring; Rep. Kurt Olson; Rep. Nancy Dahlstrom; Rep. Jay Ramras; Rep. Ralph Samuels; Rep. Mike Doogan; Rep. Scott Kawasaki; Jim Pound; Judith Erickson; Jeff Turner; Konrad Jackson; Kelly Huber; Barbara Cotting; Ken Alper; Graham Siebe; Brodie Anderson; Deborah Grundmann; Jody Simpson; Karen Sawyer; Melanie Lesh; Burnett, Jerry D (DOR); Gary Stambaugh; Kirsten Waid; Martha Hopson

**Subject:** AGIA SRES Meeting carryover to 3/22/07

Greetings all,

Luckily! The Fahrenkamp room is booked tomorrow afternoon for **Senate Resources Cmte.** Our captivating discussion with the Producers was cut short this afternoon before we concluded our colloquy. **Senator Huggins recessed the meeting, to be continued tomorrow (Thursday, March 22) @ 4 PM.** The Chevron USA representatives, Vincent LeMieux and Tim Houston (pronounced how.stun) will return to the meeting via teleconference at that time.

The House Special Committee on Oil & Gas is again, most welcome. Please bring your questions and join us in this compelling and frank discussion.

I would appreciate knowing ahead of time who will be attending.  
Thank you very much,

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Sharon J. Long, Staff  
Senate Resources Committee  
(907) 465-4907