UNITED STATES OF AMERICA
DEPARTMENT OF ENERGY
OFFICE OF FOSSIL ENERGY

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In the matter of:	)	
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CONOCOPHILLIPS ALASKA	)	
NATURAL GAS CORPORATION	)	**Docket No. 07-02-LNG**
and	)	
MARATHON OIL COMPANY	)	

ANSWER OF CONOCOPHILLIPS ALASKA NATURAL GAS CORPORATION AND MARATHON OIL COMPANY TO CERTAIN MOTIONS TO INTERVENE, COMMENTS, PROTESTS AND/OR REQUESTS FOR ADDITIONAL PROCEDURES

Pursuant to Sections 590.303(e) and 590.304(f) of the Department of Energy's ("DOE") regulations,[1] ConocoPhillips Alaska Natural Gas Corporation ("CPANGC") and Marathon Oil Company ("Marathon") (collectively "Applicants") hereby answer (i) the April 9, 2007 "Motion to Intervene, Comments, and Protest of Agrium U.S. Inc.," (ii) the April 9, 2007 "Motion to Intervene of Chevron U.S.A. Inc. and Union Oil Company of California," (iii) the April 9, 2007 "Chugach Electric Association, Inc.'s Motion to Intervene," (iv) the April 9, 2007 "Motion to Intervene and Initial Comments of Enstar Natural Gas Company," (v) the April 9, 2007 "State of Alaska's Motion to Intervene and Request for Additional Procedures,"[2] and (vi) the April 9, 2007 "Comments, Protest, Motion to Intervene and Motion for Additional Procedures of Tesoro Corporation and Tesoro Alaska Company," all of which were filed in the above-captioned proceeding. In support of this Answer, Applicants state the following:

1 10 C.F.R. §§ 590.303(e), 590.304(f) (2007).

2 Although the filing is dated April 6, 2007, it was not officially filed with DOE until April 9, 2007.

I.
PROCEDURAL BACKGROUND

On January 10, 2007, Applicants filed an application with DOE's Office of Fossil Energy ("DOE/FE") for an order granting a blanket authorization to export on a short-term or spot market basis from their existing terminal in Kenai, Alaska, up to the equivalent of 99 Trillion British thermal units ("TBtus")[3] of liquefied natural gas ("LNG") on a cumulative basis during a two-year period commencing April 1, 2009 and terminating March 31, 2011.[4] Applicants seek the requested blanket export authorization pursuant to Section 3 of the Natural Gas Act ("NGA")[5] and Part 590 of DOE's regulations.[6] The commencement date proposed by Applicants for the blanket export authorization coincides with the March 31, 2009 termination of their currently-effective long-term authorization to export LNG.[7]

Notice of Applicants' export application was published in the *Federal Register* on March 8, 2007.[8] Among other things, the notice set forth the public comment procedures to be used by DOE/FE in this proceeding. The notice established April 9, 2007 as the deadline for any person to file a protest, motion to intervene or notice to intervene (as applicable) and written comments in this proceeding. On April 24, 2007, DOE/FE granted Applicants' request for a fourteen (14) day extension of time until May 8, 2007 to file this Answer for good cause shown. Accordingly,

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3 One TBtu is equivalent to approximately one billion cubic feet ("Bcf").

4 "Application for Blanket Authorization to Export Liquefied Natural Gas" [hereinafter "Export Application"].

5 15 U.S.C. § 717b, as amended by Section 201 of the Energy Policy Act of 1992, Pub. L. 102-486, and DOE Delegation Order No. 00-022.00G (Jan. 29, 2007) and DOE Redelegation Order No. 00-002.04C (Jan. 30, 2007).

6 10 C.F.R. Part 590 (2007).

7 *Phillips Alaska Natural Gas Corp. and Marathon Oil Co.*, DOE/FE Opinion and Order No. 1473, 2 FE ¶ 70,317 (Apr. 2, 1999) [hereinafter "DOE/FE Opinion and Order No. 1473"].

8 *ConocoPhillips Alaska Natural Gas Corp. and Marathon Oil Co.; Application for Blanket Authorization to Export Liquefied Natural Gas*, 72 Fed. Reg. 10507 (Mar. 8, 2007).

Applicants hereby submit this Answer in response to the six previously-identified motions to intervene, protests and/or comments filed in response to the March 8, 2007 notice.

II.
EXECUTIVE SUMMARY

The data filed by Applicants in support of their Export Application demonstrate that Cook Inlet natural gas supplies are more than adequate to satisfy both regional demand and the requested export volumes during the export term. No party has introduced – or suggested that it has any basis for introducing – any probative information to indicate otherwise.

Applicants have also shown that the requested blanket export authorization will provide tangible benefits to the Alaskan economy. No party has introduced evidence which contradicts the data filed by Applicants. Applicants have shown the vital role the LNG export facility plays in the energy security of the Cook Inlet region of Southcentral Alaska. The importance of the plant to the energy security of Southcentral Alaska is even acknowledged by several intervenors who oppose the blanket export authorization. Shutdown of Applicants' LNG export facility, as would occur were this application denied or fatally conditioned, would very likely produce irreversible harm to Alaskans. The blanket export authorization requested by Applicants has therefore not been shown to be inconsistent with the public interest.

Not surprisingly, the overwhelming majority of the filings received by DOE/FE in response to its notice of Applicants' blanket export application recognize the benefits provided by the continued operation of the LNG export facility and support continuation of export activities during the two-year extension period. Approximately 60 letters in support were filed by a wide-cross section of interested persons in the Cook Inlet region, including state and local elected officials, individual citizens, and trade associations, among others.[9] These interested persons express strong support for the blanket export authorization sought by Applicants.

In contrast, motions to intervene, comments and/or protests raising questions about the application were filed by a small number of entities. To a significant extent, those pleadings raise issues that are outside the scope of the required NGA Section 3 public interest analysis. Four of the five entities that filed substantive comments and/or protests opposing the blanket export application raise issues related to their own economic self-interest rather than public interest concerns regarding regional need for natural gas. These entities attempt to use this proceeding inappropriately to obtain commercial leverage under the guise of concerns regarding the adequacy of natural gas supplies. They each fail to overcome the statutory presumption in favor of granting the requested blanket export authorization. Applicants here ask DOE/FE to deny three motions to intervene due to the fact that their sponsors have not satisfied the basic requirement to demonstrate that they have or represent an interest which may be directly affected by the outcome of this proceeding as required by DOE regulations.

The fifth entity – the State – while presumably speaking for what it perceives to be the public welfare of the people of Alaska and stating its support for the application in principle – demands that DOE/FE impose conditions on the export which are unprecedented, impractical, and would place Applicants at an economic disadvantage to their competitors. First, the State requests that DOE/FE require CPANGC and Marathon – only two of many producers in Cook

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9 In addition to letters of support from approximately 45 citizens that live and work in the Cook Inlet region, letters of support were also filed by, among others, State Representatives Kurt Olson and Mike Chenault, Mayor John Williams (Kenai Peninsula Borough), Mayor Curt Menard (Matanuska-Susitna Borough), Mayor Mark Begich (Municipality of Anchorage), Mayor David Carey (City of Soldotna), the Export Council of Alaska, the Alaska Support Industry Alliance, the Alaska Natural Gas Development Authority (a public corporation under the State of Alaska Department of Revenue), Alaska Trucking Association, the World Trade Center, the Resource Development Council, the Anchorage Chamber of Commerce, ASRC Energy Services, Cook Inlet Region, Inc., Heat & Frost Insulation, Inc., HMH Consulting, Inc., Inlet Drilling Alaska, Inc., J-3 Energy, LLC, Peak Oil Field Service Co. and VECO Corp.

Inlet – to supply all of the unmet utility natural gas requirements for at least the export period under threat of a commercial penalty (*i.e.*, the loss of the opportunity to export natural gas). Second, the State requests that DOE/FE require Applicants to pledge to develop at least as much natural gas as they will export before the end of the export period, regardless of whether or not this development expenditure meets the commercial requirements of Applicants. Third, the State requests that DOE/FE require Applicants to offer "open access" for third-party use of their LNG export facility under terms and conditions to be set by DOE/FE.

In essence, the State – like each of the private protestants – is asking DOE/FE to ignore free market forces and allow special interests to exert commercial leverage against Applicants. The level of government intervention in the market advocated by intervenors is not consistent with Section 3 of the NGA. Moreover, CPANGC and Marathon cannot be reasonably expected nor should they be required to satisfy every competing interest or perceived marketplace flaw.

Separate from and beyond the fact that there are sufficient natural gas supplies to meet both regional demand and the export market, there is nothing to prevent local utilities, manufacturers or industrial users from negotiating with CPANGC and Marathon for the 116 TBtus (or other uncommitted supplies) after the export authorization is approved.[10] In that regard, it is important to recognize two nuances of the export authorization sought by Applicants. First, Applicants seek a two-year <u>blanket</u> authorization to export LNG. As is customary with blanket exports, this means Applicants are not required to have these export volumes contracted for at the time of the application and are merely seeking authority to do so if they wish to proceed. Second, Applicants seek authorization to export <u>up to</u> the equivalent of 99 TBtus on a <u>cumulative basis</u> over the two-year export term. Nothing in the blanket export authorization

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[10] As explained in the Export Application, although the authorized export volume would be 99 TBtus, the total volume of production required to yield 99 TBtus of exportable LNG over the two-year export period is approximately 116 TBtus. Export Application at p. 3, n. 5.

sought by Applicants will compel them to export all of the authorized volumes. Local utilities, manufacturers or refiners are free to compete for the volumes associated with the export authorization as well as other natural gas available in the marketplace. Applicants have already demonstrated their willingness to contract volumes with the local utilities.[11] Permitting commercial parties to negotiate such arrangements free from unnecessary regulatory constraints is consistent with DOE/FE's stated policy of minimizing Federal control and involvement in the natural gas market, based on the premise that the market, not government, should largely determine energy contract terms.[12]

In the end, none of the intervenors has made a case for the proposition that the blanket authorization for LNG exports should not be granted or should be conditioned. Applicants' request for a two-year blanket authorization for continued LNG exports should therefore be granted.

III.
ANSWER TO CERTAIN MOTIONS TO INTERVENE

Pursuant to Section 590.303(e) of DOE's regulations, Applicants hereby answer in opposition to the motions to intervene filed by (i) Agrium U.S. Inc. ("Agrium"), (ii) Chevron U.S.A. Inc. and Union Oil Company of California ("Unocal") (together "Chevron"), and (iii) Tesoro Corporation and Tesoro Alaska Company (together "Tesoro") (collectively "Movants"). The interests alleged by Movants are beyond the scope of this proceeding and are irrelevant to determining whether granting the export authorization is inconsistent with the public interest. Applicants request that DOE/FE take special care not to allow interventions by parties that have

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11 *See infra* pp. 18-19.

12 *New Policy Guidelines and Delegation Orders From Secretary of Energy to Economic Regulatory Administration and Federal Energy Regulatory Commission Relating to the Regulation of Imported Natural Gas*, 49 Fed. Reg. 6684 (Feb. 22, 1984).

no legitimate interest in this proceeding. Otherwise, this proceeding may be abused by Movants as it provides them with an opportunity to extract advantages in unrelated matters.

Movants have filed their respective motions to intervene with the ulterior motive of expanding the scope of this proceeding to include commercial issues solely to perpetuate Movants' economic and private self-interest, rather than to protect the public interest. These issues have no place in this proceeding and only serve to unduly delay, burden and complicate the matters before DOE/FE. Accordingly, Movants have failed to state their interests in sufficient detail to demonstrate that they represent an interest which may be directly affected by the outcome of this proceeding, as required by Section 590.303(b) of DOE's regulations.[13] Therefore, Movants' motions to intervene should be denied.

A. Private Commercial Issues Have No Bearing on the Public Interest or this Proceeding

In its motion to intervene, Agrium claims that it has an interest in this proceeding because its fertilizer manufacturing plant is a consumer of Cook Inlet natural gas.[14] Agrium asserts that the viability of its fertilizer manufacturing plant is dependent on the availability of natural gas, and represents that it is concerned about whether there will be adequate natural gas supplies and deliverability to meet local utility demand in Southcentral Alaska.[15] Tesoro alleges similar claims in its motion to intervene, stating that it purchases natural gas produced in the Cook Inlet region for use in its Kenai refinery,[16] and that its refinery requires a stable, adequate supply of

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13 Under Section 590.303(b), any person other than a state commission that seeks to become a party to an export application proceeding "shall file a motion to intervene, which sets out clearly and concisely, the facts upon which the petitioner's claim of interest is based." 10 C.F.R. § 590.303(b) (2007).

14 "Motion to Intervene, Comments and Protest of Agrium U.S. Inc." at p. 5 [hereinafter "Agrium Intervention"].

15 *Id.*

16 "Comments, Protest, Motion to Intervene and Motion for Additional Procedures of Tesoro Corporation and Tesoro Alaska Company" at p. 8 [hereinafter "Tesoro Intervention"].

natural gas from the Cook Inlet fields to continue its business operations. Tesoro also alleges that it has recently experienced "shortages" under a natural gas supply contract with Marathon.

As discussed later in this Answer,[17] it is important to note that neither Agrium nor Tesoro provides any relevant, or even probative, evidence to controvert Applicants claim that there are sufficient *reserves* of natural gas to serve both the LNG exports and the local market. Rather, Agrium's and Tesoro's claims are each based on the fact that they do not have a *contract* securing the sale of natural gas at the commercial terms they feel are adequate to support their operations. This is an issue that relates strictly to commercial dealings of private parties and has no bearing on the public interest of whether there is sufficient regional natural gas supply. Furthermore, as discussed later in this Answer,[18] this is a circumstance of Tesoro's and Agrium's own choosing, and requesting the right to intervene in this proceeding to have DOE/FE remedy such commercial failures is not appropriate.

Chevron's motion to intervene also fails in this respect. Chevron states that it has an interest in Applicants' proposed export of LNG due to its role as a supplier of natural gas to Enstar Natural Gas Company ("Enstar"), Chugach Electric Association, Inc. ("Chugach") and industrial customers in Southcentral Alaska.[19] Chevron claims that the decisions of Applicants or their affiliates, as the operator of three natural gas producing fields jointly owned with Chevron, will affect Chevron's supply obligations to Enstar and other customers in Southcentral Alaska.

These are theoretical claims at best. It is important to note that being the operator of a natural gas field does not grant preferential rights of access to reserves or deliverability.

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17 *See infra* pp. 26-30.

18 *See infra* pp. 22-26.

19 "Motion to Intervene of Chevron U.S.A. Inc. and Union Oil Company of California" at p. 2 [hereinafter "Chevron Intervention"].

Moreover, Chevron's concerns are already protected in private dealings between Chevron and Applicants. Access to reserves and plans for development from any of the three jointly-owned fields are subject to a joint decision making process in private operating agreements. That is the proper forum for Chevron to deal with any concerns it has with Applicants' LNG export operations. These operational issues are not affected by Applicants' current LNG exports, and it is therefore hard to understand how continued exports would have any additional impact. To the extent that this intervention is based on protecting these private interests at the expense of Applicants, DOE/FE should deny Chevron's intervention.

B. Alternative Export Interests Have No Bearing on the Public Interest or this Proceeding

In the case of Agrium, it is important to note that its natural gas demand is not even a legitimate regional need. Agrium acknowledges that it is simply an alternative export option – in the form of fertilizer – for Cook Inlet natural gas.[20] Agrium also fails to demonstrate that such manufacturing operations would be impacted by an order granting the blanket export authorization sought by Applicants. Granting the blanket export authorization would not preclude any supplier from supplying natural gas to Agrium in the future – it in fact tacitly legitimizes such future potential sale for export.

C. Attempts to Have DOE/FE Acknowledge a Private Right of Eminent Domain are Beyond the Scope of this Proceeding

Agrium's and Tesoro's filings, when taken to their logical conclusion, seek to force an order denying the authorization in order to sequester natural gas for their own use and incentivize

[20] Agrium Intervention at pp. 9-10. In Applicants' last export proceeding, DOE/FE explained that the natural gas use of Agrium's predecessor "could be characterized as an 'indirect export' because the gas is used to produce a commodity primarily destined for, in this instance the same, export market." DOE/FE Opinion and Order No. 1473 at p. 9, n. 29.

Applicants to sell natural gas to Agrium and Tesoro at artificially depressed prices.[21] This position is neither advanced by their participation in this proceeding, nor is it one that should be recognized or legitimized by DOE/FE. In fact, this argument was raised by Agrium's predecessor in Applicants' last export application proceeding in FE Docket No. 96-99-LNG, and was characterized by DOE/FE at that time as an effort "to assert the section 3 public interest standard to obtain, in effect, a private right of eminent domain to take natural gas from an exporting producer for [its] own use."[22] This attempt to establish private right of eminent domain does not further the public interest review of DOE/FE and should not be used as a basis for intervention in this proceeding.

D. Chevron Fails to Provide a Basis for Intervention

In addition to its private interest allegations, Chevron further states that it is unable to state a position on the Export Application at this time because it is still studying the impact the application will have on it and its ongoing ability to receive natural gas from fields jointly owned with Applicants. In this regard it is difficult, if not impossible, for DOE/FE to even determine what interest Chevron is espousing in this proceeding. DOE/FE should, therefore, deny Chevron's motion to intervene in this proceeding because Chevron has failed to state or otherwise illustrate its position in this regard, as was incumbent upon it to do in its motion to intervene.

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21 While Applicants strongly dispute any arguments in this proceeding that there are insufficient natural gas supplies in the Cook Inlet, it is noteworthy that Agrium's position actually runs counter to the public interest. This is because Agrium seeks to purchase, consume and then export the natural gas it alleges is so scarce in the Cook Inlet. This further belies Agrium's intent in this proceeding to divert the available natural gas supply for its own use, but just at a lower price.

22 DOE/FE Opinion and Order No. 1473 at p. 47.

E. Certain Alleged Interests are Already Protected by Other Intervenors

Tesoro suggests that it represents the interests of Alaska and Alaskans as a whole and that these interests cannot be adequately represented by any other party to this proceeding.[23] In this regard it is important to note the State has filed its own intervention in this proceeding.[24] Tesoro fails to demonstrate how it can better represent the interests of Alaska and its citizens than can the State itself. Therefore, this cannot justify Tesoro's involvement in this proceeding.

IV. ANSWER TO COMMENTS AND/OR PROTESTS

Pursuant to Section 590.304(f) of DOE's regulations, Applicants in this Section respond to the comments filed by Chugach, Enstar, and the State. In Section III above, Applicants have asked DOE/FE to deny the motions to intervene filed in this proceeding by Agrium and Tesoro. However, in the event and to the extent that DOE/FE does not deny these motions to intervene, Applicants also address comments and protests filed by both Agrium and Tesoro out of an abundance of caution so that this Answer will be sufficient to terminate DOE/FE's receipt of argument in this proceeding.

A. Applicable Legal Standard

Under Section 3 of the NGA, DOE/FE must authorize an export of natural gas unless there is a finding that the export will not be consistent with the public interest.[25] DOE/FE has found that Section 3 creates a statutory presumption in favor of approving an application which opponents bear the burden of overcoming.[26] Domestic need for the natural gas proposed to be

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23 Tesoro Intervention at pp. 4-5.

24 "State of Alaska's Motion to Intervene and Request for Additional Procedures" at pp. 2-3 [hereinafter "State Intervention"].

25 15 U.S.C. § 717b.

26 DOE/FE Opinion and Order No. 1473 at p. 13 (emphasis added), *citing*, *Panhandle Producers and Royalty*

exported is the only explicit criterion that must be considered by DOE/FE in determining the public interest.[27] DOE/FE has found regional need for natural gas in Southcentral Alaska to be the relevant inquiry for an export of LNG from Kenai, Alaska due to the geographic isolation of both Alaska and the Cook Inlet region.[28] DOE/FE has also considered other factors to the extent relevant to its public interest determination.[29] Paramount among these has been DOE/FE's desire to promote competition in the natural gas marketplace by allowing commercial parties to negotiate arrangements with minimal government interference.[30]

None of the comments and/or protests filed in this proceeding dispute that these longstanding principles should form the framework of DOE/FE's public interest analysis of Applicants' requested blanket export authorization. Nor do these comments and/or protests in opposition to the blanket export application overcome the statutory presumption in favor of approving Applicants' application.

1. *Burden of Proof*

As a preliminary matter, contrary to Enstar's claims, Section 3 of the NGA does not place a burden on Applicants to "conclusively" demonstrate that the blanket export authorization is consistent with the public interest. Rather, DOE/FE has made clear that a party opposing an export application bears the burden of proving that the export would be inconsistent with the

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Owners Ass'n v. ERA, 822 F. 2d 1105, 1111 (D.C. Cir. 1987), in which the court found Section 3 of the NGA "requires an affirmative showing of inconsistency with the public interest to deny an application" and that a "presumption favoring ... authorization...is completely consistent with, if not mandated by, the statutory directive."

27 DOE/FE Opinion and Order No. 1473 at p. 14, *citing*, Delegation Order No. 0204-111, 1 ERA ¶ 70,032 (1984).

28 *Id.* at p. 15, n. 48.

29 *Id.* at p. 14.

30 *Id.*

public interest.[31] None of the motions to intervene, comments or protest filed in this proceeding satisfies that burden.

2. *Public Interest Analysis Employed in Yukon Pacific Corp.*

As discussed above, DOE/FE has determined regional need for the natural gas to be the primary focus of its public interest analysis of proposed exports of LNG from Southcentral Alaska. Citing *Yukon Pacific Corp.*,[32] Enstar asserts that DOE should employ the following three-step analysis to determine the need for the natural gas to be exported by Applicants: (i) whether the export will cause a shortage;[33] (ii) whether the needs unmet by natural gas may be more efficiently served by alternate fuels;[34] and (iii) whether the export will reduce the quantity[35] of energy available or increase the total cost of energy in the relevant market.[36]

Whether DOE/FE chooses to employ this three-part analysis in this proceeding is a matter of policy. However, both the precedential value of *Yukon Pacific Corp.* and Enstar's articulation of the test used in that order are questionable. As background, Yukon Pacific Corp. ("Yukon Pacific") proposed to export Alaska North Slope ("ANS") natural gas to countries in the Pacific Rim by means of the Trans-Alaska Gas System ("TAGS"). The NGA Section 3 analysis employed by DOE/FE in that proceeding was therefore tailored to specific issues related to the export of ANS natural gas and statutory provisions of the Alaska Natural Gas

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31 *See supra* p. 11.

32 DOE/FE Opinion and Order No. 350, 1 FE ¶ 70,259 (1989), *denied on reh'g*, 1 FE ¶ 70,303 (1990).

33 Although Enstar employs the word "shortage," the word is not used in this context in the order itself. Rather, the order states that "[f]irst, the DOE determines whether national or regional demand can reasonably be expected to exceed anticipated available domestic supplies over the term of the proposed export." DOE/FE Opinion and Order No. 350 at p. 18.

34 Enstar fails to explain that this second consideration is only relevant if DOE/FE first determines that regional demand is projected to exceed supply. *Id.*

35 Although DOE/FE evaluated both quantity and quality in the order due to the unique circumstances of the export, Enstar only includes quantity in its articulation of the test. *Id.*

36 "Motion to Intervene and Initial Comments of Enstar Natural Gas Company" at p. 26 [hereinafter "Enstar Intervention"].

Transportation Act ("ANGTA"). Notably, DOE/FE has not employed the specific analysis used in *Yukon Pacific Corp.* in any subsequent LNG export application proceeding.[37]

Even if DOE/FE were to employ this three-part analysis, Applicants' blanket export authorization has not been shown to be inconsistent with the public interest. First, Applicants have presented evidence to show that there are adequate supplies of Cook Inlet natural gas to meet both regional demand and the foreign export market during the relevant timeframe. This evidence is essentially unrefuted. The comments and/or protests filed in this proceeding accordingly fail to overcome the statutory presumption that the proposed export is in the public interest. Since regional demand will not exceed available Cook Inlet supplies, there is no need for DOE/FE to address the second part of the *Yukon Pacific Corp.* test – whether excess demand can be met by other energy sources as or more efficiently than by the proposed export. Finally, the third part of the test is not relevant to Applicants' blanket export application. In *Yukon Pacific Corp.*, DOE/FE stated that its evaluation of the effects of the export on the quality, quantity and price of energy corresponded to the provisions of Section 12 of ANGTA which prohibit exports of ANS natural gas unless the President finds that such exports will not adversely affect American consumers by diminishing the quantity or quality of available energy supplies or increasing the total price of available energy.[38] The third part of the analysis therefore is statutorily inapplicable to the export proposed by Applicants. In any event, the export will not diminish the quantity or quality of energy available, nor should it increase the total cost of energy in the market assuming that the market is functioning properly. Consistent with DOE/FE policy, the market should largely determine energy contract terms.

[37] *See* DOE/FE Opinion and Order No. 1473 (assessing regional need as part of the public interest analysis without use of the three-part test employed by DOE/FE to assess Yukon Pacific's proposed export of ANS natural gas).

[38] DOE/FE Opinion and Order No. 350 at p. 24.

3. *Timeframe for the Public Interest Analysis*

Both the State and Chugach raise the policy question of whether the scope of DOE/FE's public interest analysis should include the impact of Applicants' export of LNG for some undefined period beyond the termination of the requested blanket export authorization (*i.e.*, after March 31, 2011).[39] Applicants submit that the term of the export period itself is the appropriate focus of DOE/FE's public interest analysis, consistent with its review of Applicants' previous export applications as well as the practice of the agency or its predecessor agency in previous proceedings under Section 3 of the NGA.[40] Neither the State nor Chugach provides any compelling reason for DOE/FE to depart from precedent to expand the scope of its NGA Section 3 public interest analysis to include time periods after the termination of the proposed export term.[41]

B. Applicants Have Demonstrated that the Export Authorization is in the Public Interest Because there is No Regional Need for the Exported Natural Gas

In their respective comments and/or protests, the State, Chugach, Enstar, Tesoro and Agrium allege that the export authorization would not be consistent with the public interest because there is a regional need for some or all of the natural gas Applicants seek to export pursuant to the requested blanket authorization. In general, these comments and/or protests regarding regional need do not focus on the specific demand and supply estimates presented in the Netherland, Sewell & Associates, Inc. ("NSAI")[42] and Resource Decisions ("RD") reports

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39 State Intervention at p. 7; "Chugach Electric Association, Inc's Motion to Intervene" at p. 21 [hereinafter "Chugach Intervention"].

40 *See* DOE/FE Opinion and Order No. 1473 (confining public interest analysis to the time period between the commencement and termination of the proposed export).

41 In fact, the data filed by Applicants in support of their Export Application demonstrate that there should be an adequate supply of natural gas to meet the reasonably projected needs of the regional market following end of the requested export period. "An Economic Analysis of Kenai LNG Export – January 2007," Resource Decisions (dated Jan. 9, 2007) at pp. 5-1 – 5-4 [hereinafter "RD Report"].

42 "Remaining Reserves the Cook Inlet Region of Alaska," Netherland, Sewell & Associates, Inc. (dated Jan.

commissioned by Applicants to assist in determining the regional need for the natural gas proposed to be exported as LNG. Instead, the comments and/or protests claim that the public interest requires either (i) specific contractual commitments for all projected local utility demand for the full term of the proposed export, or (ii) imposition of a condition allowing diversion of the export volumes to satisfy any local market needs as may arise during the export period, before it can be shown that there is adequate supply to meet regional demand for natural gas. Neither assumption is correct. As discussed in detail below, these arguments are nothing more than an attempt to use the NGA Section 3 public interest standard to create a right of eminent domain to take natural gas from Applicants' export operations for the private use of Chugach, Enstar, Tesoro and Agrium.

1. *Regional Demand*

In order to evaluate the regional need for natural gas during the term of the export, the RD Report projects demand for each of the primary natural gas users in Southcentral Alaska: (i) electric utilities using natural gas for generation, (ii) natural gas utilities providing residential and commercial service, (iii) the military, (iv) field operations, and (v) industrial demand, including fertilizer manufacturing and LNG exports. Comments and/or protests related to each of these demand categories of natural gas users (other than the military, which is nominal in size) are addressed below.

a. Electric Generation and Utility Gas Demand

In comments filed in this proceeding, the State, Chugach, and Enstar claim that the public interest effectively requires Applicants to demonstrate that electric generation and utility gas demand will be met during the export term (and afterwards) on a contract by contract basis.

4, 2007) [hereinafter "NSAI Report"].

Tesoro and Agrium also make some general statements regarding electric generation and utility natural gas demand.

i. Comments of the State

The State claims that Applicants have failed to demonstrate that local need for natural gas of Chugach and Enstar will be met during the export term and immediately thereafter. The State does not take direct issue with whether sufficient reserves exist, but focuses its concern instead on whether the producers holding the leases will be willing to sell the natural gas to Chugach and Enstar under terms that the Regulatory Commission of Alaska ("RCA") will approve. The State asserts that Applicants cannot demonstrate that regional needs will be satisfied unless the "producers" (presumably CPANGG and Marathon and no other producer) present contractual opportunities to Chugach and Enstar for natural gas supplies to meet the utilities' outstanding requirements under terms that the RCA will approve.

ii. Comments of Chugach

Like the State, Chugach claims that the export application raises concerns over the adequacy of domestic natural gas supply. Chugach specifically asserts that the natural gas supplies available to it to meet the region's electric load will run out soon unless it is able to enter into new contractual arrangements with CPANGC, Marathon, and/or other suppliers. Chugach states that Marathon and CPANGC supply 60% of its natural gas supply pursuant to contracts which end in 2010 and the First Quarter 2011, respectively (*i.e.*, around the time the export authorization requested by Applicants would be expiring).[43] Chugach claims that it has no assurances that required natural gas will be available to it if the export application is granted

[43] The remaining 40% is provided by Anchorage Municipal Light & Power ("ML&P") (20%) and Chevron (20%).

despite the fact that it is currently in negotiations with a number of producers for contracts for supply which would commence when these contracts expire.

Chugach states that it is willing to support the export application if it is assured that there will be no adverse impacts on itself, the Cook Inlet region and the public. Chugach outlines the following assurances which it "soon" hopes to have (presumably from Applicants): (i) new contractual natural gas supply commitments in reasonable volumes, with reasonable deliverability, for a reasonable period of time under reasonable terms and conditions; and (ii) after due diligence, confirmation by entities retained by Chugach that the producers have the ability to meet all of their contractual commitments, including those to Chugach.[44]

Mirroring the State's filing, Chugach asks DOE/FE to condition approval of the export application on assurances, through contractual commitments, that local domestic supply and deliverability needs in Anchorage and the Cook Inlet region will be met for a reasonable time period. This might be accomplished, Chugach suggests, by having DOE/FE dismiss the current application without prejudice to Applicants' right to re-file their application after Chugach has concluded natural gas contracts and those contracts have been approved by the RCA.

iii. Comments of Enstar

Enstar similarly claims that there is insufficient supply in the Cook Inlet region to meet demand due to the fact that not all of its projected natural gas demand is under an RCA-approved contract during the relevant timeframe. Enstar explains that its firm natural gas supply is presently purchased from four producers, including Marathon. Enstar states that the majority of the natural gas is provided under its contract with Chevron. Enstar acknowledges that all "unmet" requirements during the 2009-2016 time period would have been met by the "APL-5"

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44 Chugach Intervention at pp. 13-14.

contract with Marathon which was rejected by the RCA.[45] It also acknowledges that it has initiated a new Request for Proposals ("RFP") for the supply that would have been covered by the APL-5 contract and has received two responses. In conclusion, Enstar argues that DOE/FE should require Applicants to establish conclusively that natural gas reserves are sufficient to meet regional needs, or, in the alternative, condition the blanket authorization to limit exports during periods when supplies are unable to meet domestic demand.

iv. Answer to Comments Regarding Utility Demand

Applicants address the overlapping comments of the State, Chugach and Enstar regarding electric generation and utility natural gas demand together. As a threshold matter, Applicants' export application does in fact demonstrate that there are sufficient reserves to satisfy both LNG exports and regional needs, including projected utility demand during the export term.[46] DOE/FE has never found the public interest to require all utility demand to be under contract. In fact, DOE/FE has found that "it is <u>not</u> in the public interest for DOE to interfere with the normal workings of a competitive market by requiring an exporter to give contract priority to domestic customers."[47]

DOE/FE should reject the State's claim that regional need cannot be demonstrated unless all outstanding utility requirements are under RCA-approved contracts. Although the State's argument may be consistent with its desire to achieve an artificially low natural gas cost for Alaskan consumers, it has nothing to do with whether or not there is sufficient natural gas supply

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45 *In the Matter of the Gas Sales Agreement Between ENSTAR NATURAL GAS CO., A DIVISION OF SEMCO ENERGY, INC. and MARATHON OIL CO.*, No. U-06-2, 2006 Alas. PUC LEXIS 383 (Sept. 28, 2006), *order on reconsideration*, 2006 Alas. PUC LEXIS 517 (Dec. 29, 2006).

46 RD Report at pp. 5-1 – 5-4.

47 DOE/FE Opinion and Order No. 1473 at p. 45 (emphasis added).

to meet both utility and export requirements.[48] The State calls for DOE/FE to engage in a level of governmental intervention in private contractual arrangements vis-à-vis this blanket export application that is without precedent. Similarly, Chugach would have DOE/FE withhold approval of the authorization until CPANGC and Marathon provide it with certain "assurances" of natural gas supply on "reasonable" terms and prices – the satisfaction of which appear to be measured in the sole discretion of Chugach and then by the RCA.

The process proposed by Chugach and the State amounts to a regulatory anomaly under which Applicants would have to enter into RCA-approved deals with the regional utilities as a pre-condition to receiving DOE/FE's approval of the blanket export application. Making approval of the export application subject to such a pre-condition is statutorily impermissible as it would essentially constitute a delegation of DOE/FE's federal authority for approval of Applicants' export authorization to a state regulatory agency. It would also be discriminatory because no other producer would be similarly burdened.

The comments regarding Enstar's and Chugach's respective uncontracted volumes basically confuse the existence of contracts with the sufficiency of Cook Inlet natural gas supplies. In the case of Enstar, the fact that it currently has uncommitted volumes does not reflect a supply shortage, but is instead the result of the RCA's rejection of the APL-5 contract by a narrow 3-2 vote. As background, the majority of Enstar's natural gas supply is provided by Chevron, under a contract that provides Chevron with a "first option" to supply all unmet

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48 In a separate dissenting statement in the APL-5 decision, RCA Commissioner Dave Harbour described the majority's focus on low natural gas prices as follows, "[w]ithout citing any convincing distinguishing factor, the majority challenges almost every nook and cranny of APL V while our precedent clearly provides that the commission '[w]ould not speculate whether a better agreement could have been obtained'. One notes that the majority not only speculated; it acted on its own speculation that a lower price could be demanded." Dissenting Statement of Commissioner Dave Harbour, (filed Oct. 12, 2006) at p. 6 [hereinafter "Harbour Dissent"]. *See* "Natural Gas Contracts: Approval Process, Pricing Terms and Consumer Impacts," presentation by RCA to Alaska Senate Resources Committee on Feb. 5, 2007 (explaining that the RCA rejected the APL-5 contract because it did not find that the Henry Hub price was a reasonable exchange for the secure supply) (available at: <http://www.ktoo.org/gavel/schedule.cfm>) (last visited May 7, 2007).

volumes projected each year by Enstar. Only if Chevron first declines to commit to provide these additional natural gas supplies can other suppliers provide such unmet requirements.

Due to a previously declined Chevron commitment, the Marathon-Enstar APL-5 natural gas supply contract was entered into to supply proven reserves for the available portion of Enstar's unmet requirements through 2016. However, as noted, this natural gas supply contract was rejected by the RCA in late 2006, and then again in early 2007 upon reconsideration sought by Marathon. Ironically, the Attorney General's office, which now demands that contracts with the utilities be in place for all of their needs before the instant export application can be approved by DOE/FE, also provided counsel for the State before the RCA in its active opposition to the natural gas supply contract that would have satisfied this condition for Enstar. It is disingenuous for the State, through the Attorney General and RCA, respectively, to oppose and reject a contract that would have met Enstar's needs, and then, less than one year later, oppose the LNG extension sought by CPANGC and Marathon because Enstar has unmet needs.

Enstar itself acknowledges that it is currently in negotiations with at least two suppliers for these volumes in a new RFP process. Enstar might soon have all of its natural gas under contract, or it may not. Even if contractual certainty were relevant to DOE/FE's public interest analysis, that certainty cannot be established because, as discussed above, Chevron has the option to commit additional natural gas volumes to Enstar before any other supplier could provide alternative supply – a provision that was approved by the RCA. Further, even if a contract for such supply were executed today, the state regulatory approval process for approval would almost certainly include the intervention, yet again, of the Attorney General and several of the other parties that have sought intervention here. Based upon past experience, this process could consume a year or more.[49]

In the case of Chugach, the uncontracted volume that Chugach currently forecasts during the time period covered by the Export Application is, at least in part, a result of forecasted discretionary sales by Chugach. Chugach in fact had no forecasted uncommitted supply requirement during the timeframe covered by the Export Application at the time that the RD Report data input was being finalized in early December 2006. However, in its annual forecast in mid-December 2006, Chugach's forecast changed to show a 4.9 Bcf unmet requirement in 2010. The increase in Chugach's discretionary "Potential Economy Sales," for which it has no customer contracts as of yet, and which are subject to competition locally by ML&P and regionally by the ability of the electric utility in Fairbanks, Golden Valley Electric Association ("GVEA") to fuel switch, is responsible for the majority of the projected uncontracted volume requirement. This incremental demand is thus highly speculative and can be minimized or potentially eliminated by Chugach's own actions.

DOE/FE should also reject outright Chugach's suggestion that Applicants should withdraw and then refile their blanket export application after Chugach has an RCA-approved contract in place. Re-filing the instant application is not a practical solution and, if required, will likely permanently end the possibility of continued LNG exports by Applicants.

b. Field Operations Demand

The RD Report projects demand for natural gas consumed in the process of producing oil and natural gas, including the small amount of natural gas consumed by Tesoro's refinery.[50]

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49 For example, the RCA took approximately 14 months to ultimately reject the Marathon-Enstar contract in the APL-5 proceeding in Docket No. U-06-2.

50 RD Report at pp. 3-11 – 3-12. Note that the RD Report categorizes Tesoro's demand for natural gas as field operations demand in order to be consistent with the categorizes used by the Alaska Department of Natural

Tesoro protests the Export Application as not consistent with the public interest to the extent that the proposed export of LNG threatens the adequacy of natural gas supply for domestic use in Alaska. Tesoro states that at least some of the natural gas to be exported by Applicants as LNG will be needed to meet local demand because Marathon curtailed natural gas supply to Tesoro during certain days in the winter of 2006. Tesoro states that these shortages call into question the representation made by Applicants in the export application that there is no regional need for the LNG to be exported by Applicants.

Answer: Contrary to Tesoro's claims, the RD Report demonstrates that there are adequate supplies to meet regional demand in Southcentral Alaska, including field operations demand. The representations made by CPANGC and Marathon in the Export Application are fully supported by the empirical data contained in the RD Report. Tesoro's suggestion that there is a shortage of natural gas supply in the Cook Inlet because it did not receive a portion of the natural gas it desired for a limited duration of time is a leap of logic.

Tesoro fails to provide any evidence which contradicts the two reports submitted by Applicants in support of their application. The situation described by Tesoro has nothing to do with a "shortage" of natural gas. Tesoro is the only refinery in the State that uses both natural gas and alternative fuels to power its refinery operations. Therefore, Tesoro need not contract with any natural gas supplier on a "firm" basis as it can always switch to alternative fuels (such as propane, diesel, etc.) to fuel its operations. It is clear to see that such fuel-switching capability allows Tesoro to enjoy cost savings as it permits Tesoro to contract for natural gas on a non-firm basis. In making a business decision to contract in this manner, Tesoro presumably sought to trade-off security of supply for economic benefit. Any "curtailment" in the natural gas supplies to Tesoro has been in accordance with the commercial terms of the natural gas supply contract

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Resources ("ADNR").

between Marathon and Tesoro. Tesoro should not be permitted in this forum to gain any competitive advantage over Applicants.

In short, Tesoro's intervention, protest, comments and request for additional procedures are simply an attempt by Tesoro to use the power of DOE/FE to force Applicants to have to sell natural gas to Tesoro under terms and conditions dictated by Tesoro. DOE/FE should not be misled by any claims to the contrary.

c. Ammonia-Urea Manufacturing Demand

The RD Report projects demand for natural gas by Agrium for the manufacture of ammonia-urea fertilizer. The Expected Demand Case assumes 20 Bcf in demand for the fertilizer plant for 2007 and then no demand from 2008-2011 based upon Agrium's publicly stated plans to shut down the facility.[51] The Stress Demand Case assumes that the fertilizer plant will continue its current level of operation (20 Bcf/year) at least through 2011.[52]

Agrium argues that the application is not in the public interest because there is unmet domestic need for the natural gas to be exported. Specifically, Agrium claims that Applicants have understated its demand for natural gas for fertilizer manufacturing. It claims that Applicants have erred in assuming that Agrium's reduced consumption of natural gas in recent years reflects declining demand. Instead, according to Agrium, the "shortage" of available natural gas supplies is the only cause of its reduced natural gas use. Agrium asserts that the RD Report should have assumed a demand for Agrium of approximately 53 Bcf/year or 56 TBtus/year for 2009, 2010, and 2011. Agrium also asserts that its demand for natural gas for manufacturing should not be discounted by DOE/FE because its products are shipped to foreign

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[51] *Id.* at p. 3-13.

[52] *Id.*

markets. It claims DOE/FE must include its demand for natural gas for manufacturing in the calculation of regional demand.

Answer: The RD Report considers Agrium's demand under both the Expected Demand Case and Stress Demand Case scenarios. Based on these estimates, the RD Report demonstrates that there is no regional need for the LNG to be exported by Applicants. The 53 Bcf/year proposed by Agrium is, by contrast, based on the fertilizer plant's theoretical maximum production capability, not its current level of operations or its publicly proclaimed future plans for operation of the plant.

Agrium's claim that the shortage of natural gas supplies is the sole cause of its reduced level of operations is inaccurate and misleading. As with the utilities and Tesoro, Agrium's situation is more indicative of commercial decision-making than a lack of available natural gas. Agrium fails to discuss the fact that its level of operations is impacted by both the price of natural gas in Cook Inlet and the price of fertilizer in the world marketplace. Hence, Agrium's commercial interest lies with depressing the cost of natural gas feedstocks in order to maximize its profit margins on fertilizer sales. Agrium also fails to acknowledge that it first knew of its long-term natural gas supply problem shortly after it purchased the fertilizer plant from Chevron. Since then, Agrium has made no commitment to any producer sufficient to warrant developing resources for what Agrium freely admits is a business dependent upon low priced natural gas.

Agrium's claim that it was forced to take a multi-million dollar financial impairment on the fertilizer plant due to the lack of natural gas supply is misleading. Agrium fails to mention that, in 2004, it settled claims against Chevron for cash payments by Chevron totaling $86 million.[53] Part of the settlement payment was in return for releasing Chevron from any natural

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[53] "Unocal reaches final settlement of Alaska gas sales dispute" (dated Dec. 14, 2004) (available at: <http://www.chevron.com/news/archive/unocal_press/release.aspx?id=2004-12-14>) (last visited on May 7, 2007).

gas supply obligations to Agrium after October 2005. In its 2004 annual report, Agrium reported a $36 million pre-tax gain associated with this settlement and the release of Chevron's natural gas supply obligation.[54] Agrium also stated that it would have to cease operations in 2005 unless it was able to secure an economic source of natural gas. In the meantime, Chevron had entered into a long-term, higher priced contract to sell natural gas to Enstar that required some exploration investments by Chevron. Clearly, the market price offered by Enstar supported investment while the price constraints of Agrium did not. Now Agrium wants Applicants, via this DOE/FE proceeding, to be placed in the position of having to subsidize Agrium's operations by eliminating Applicants' market place options and stranding Applicants' natural gas.

2. *Regional Supply*

Certain comments and/or protests raise minor issues related to the regional supply analysis filed by Applicants in support of their export application. As background, the RD Report's supply analysis is based on estimates of natural gas reserves and resources in the Cook Inlet. With regard to reserves, the RD Report adopts the NSAI reserve estimate of 1,726.4 Bcf in both the Expected Supply Case and Stress Supply Case.[55] In addition, the Expected Supply Case assumes that 1,050 Bcf of additional natural gas resources will become available in Cook Inlet.[56] The Expected Supply Case does not include any Possible or Speculative resources.[57] In the Stress Supply Case, the RD Report assumes only 600 Bcf of resources are technically available and will be discovered and/or developed into proven reserves when market conditions and prices

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54 "Agrium Inc. Annual Information Form Year Ended December 31, 2004" (dated Feb. 9, 2005) (available at: <http://www.agrium.com/uploads/Annual_Information_form_2004.pdf>) (last visited on May 7, 2007).

55 The NSAI reserve estimate of 1,726.4 Bcf includes proved reserves of 1,211.8 Bcf and probable reserves of 514.6 Bcf. RD Report at p. 4-11.

56 *Id.* at p. 4-12.

57 The Colorado School of Mines' Potential Gas Committee ("PGC") estimates Possible and Speculative resources in Cook Inlet to be up to 4.2 Tcf and 7.2 Tcf, respectively. *Id.* at pp. 4-12 – 4-13.

warrant.[58] The RD Report also concludes that there are substantiated natural gas supplies and substitute energy sources available to meet the long-term (*i.e.*, post-March 31, 2011) needs of the Southcentral Alaska market.

As set forth below, the comments and/or protests filed in this proceeding do not challenge the Cook Inlet supply estimates contained in the NSAI Report and RD Report. These comments and/or protests therefore fail to overcome the statutory presumption in favor of approving the blanket export authorization sought by Applicants.

a. The Sufficiency of Reserves

The State questions whether there are sufficient reserves of uncommitted natural gas to meet utility needs during the export term and immediately thereafter. Similarly, Enstar claims that Applicants have not conclusively proven sufficient reserves. Enstar also claims that reserves are being consumed more quickly than they are being developed.

Answer: The RD Report demonstrates that there are sufficient reserves. The resource estimates included in the RD Report employed sound petroleum engineering principles and methodologies. None of the comments and/or protests filed in this proceeding presents any empirical evidence on supply to the contrary. The RD Report is consistent with the reserve estimates prepared at the state level by the ADNR. The comments of the State and Enstar instead relate to commercial issues which are outside the scope of the NGA Section 3 public interest analysis.

Historically, the Cook Inlet basin has been oversupplied with natural gas such that natural gas prices were well below natural gas prices in the Lower 48 States. As such, there was no reason for natural gas exploration or development until resources had been consumed. In these

[58] *Id.* at p. 4-15.

circumstances, it is logical that consumption rates would outstrip reserve replacement. As demonstrated in the RD Report, as the market has come into balance, industry has significantly increased drilling development and exploration activities in the Cook Inlet basin.[59] The pace of future investment will depend on balancing the timing of investment capital with expectations of when the resource can be sold. In the absence of any economic analysis, Enstar's comment that resources are being consumed faster than they are being replaced is not a meaningful statement.

b. Alleged Differences in Reserve Estimates

Agrium claims that the reserve estimates included in the application require critical review by DOE. Agrium alleges that Applicants have tried to minimize certain field-specific differences between the NSAI estimates and the ADNR estimates.[60] It claims that the total reserve estimates are similar, but that there are significant differences between the reserve estimates for various fields.[61]

Answer: Agrium fails to explain the significance of the alleged differences between reserve estimates in various fields. It also fails to explain how these alleged differences are relevant to the minor difference between the gross totals of the NSAI and ADNR reserve estimates.

c. Consideration of Potentially Discoverable Resources

Agrium asserts that potentially discoverable resources should not be relevant to DOE/FE's evaluation of supply during the export term. It states that even if these resources do become reserves and are produced, that is unlikely to occur during 2009-2011 timeframe.

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59 RD Report at pp. 4-1 – 4-9.

60 ADNR estimates proved and probable natural gas reserves in Cook Inlet to be 1,648.4 Bcf as of December 31, 2005. *Id.* at p. 4-10.

61 Agrium Intervention at pp. 17-18.

Answer: Consistent with precedent, DOE/FE should consider potentially discoverable resources as part of its supply analysis. In Applicants' last export application, DOE/FE estimated the total volume of natural gas reserves and resources available to be produced in the Cook Inlet area between 1998 and 2009 to be 4,545 Bcf.[62] It arrived at that estimate by combining the ADNR proved reserve estimate of 3,066 Bcf with the U.S. Geological Survey ("USGS") probable reserve growth estimate of 1,038 Bcf, added to which was the USGS estimate of 441 Bcf for recoverable gas from undiscovered fields (based on a price of \$2.00/Mcf).[63]

Even if these resources are not discovered and/or developed during the export term, they serve to show that the proposed export will not threaten long-term natural gas supply in the Cook Inlet region. The pace of exploration and development of natural gas reserves will proceed as required by market demand and competitive price signals. There is no incentive to continue exploring for and developing resources when the market demand can be met for five to ten years into the future for those who are willing and able to buy natural gas at a reasonable, market-based price.

d. Consideration of Potential Energy Sources

Agrium asserts that all of the potential energy sources discussed in the RD Report (*i.e.*, ANS natural gas, coalbed methane, coal gasification and LNG gasification) face significant challenges and are unlikely to be available during the 2009-2011 timeframe.

Answer: Applicants do not claim that any of these sources will be available during the export term. The RD Report acknowledges that no ANS natural gas is expected to become

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62 DOE/FE Opinion and Order No. 1473 at p. 29.

63 *Id.*

available during the period studied in the report.[64] As a result, the Stress Demand Case only reflects increased demand for natural gas due to construction of an Alaska North Slope Gas Pipeline Project. Similarly, the RD Report does not include any supply or demand impacts from coalbed methane in either the Expected Case or Stress Case.[65] Nor does the report include the potential impact of Agrium's proposed Kenai coal gasification project in the Expected Case or Stress Case because the project, if pursued, would not be in-service during the relevant time frame.[66] In addition, Applicants' LNG export terminal would not be converted into an LNG import and regasification terminal during the export term if the export authorization is granted by DOE/FE.[67]

These potential energy sources are included in the RD Report to show that the proposed export will not threaten the long-term energy security of the Cook Inlet region. The inclusion of these potential energy sources in the supply assessment is consistent with relevant DOE/FE precedent. In Applicants' last export application proceeding, in addition to the conventional natural gas resources, DOE/FE considered other potential sources of natural gas available to Southcentral Alaska. DOE/FE elected not to include the potential sources in its aggregate resource estimates or rely on them in reaching its decision because the record demonstrated that there were more than sufficient conventional natural gas supplies.[68] However, DOE/FE concluded that the potential energy sources represented "significant, potential sources of future supplies."[69]

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64 RD Report at p. 4-14.

65 *Id.*

66 *Id.*

67 *Id.*

68 DOE/FE Opinion and Order No. 1473 at p. 29.

69 *Id.*

3. *Deliverability as an Additional Regional Need Issue*

The State, Chugach, Enstar and Agrium encourage DOE/FE to evaluate "deliverability" (a term which none of them actually defines) as an element of regional need during the requested export term. Although it fails to cite any relevant DOE precedent, the State claims that Applicants have failed to address the deliverability requirements of local utility Enstar which remain unmet during the requested export term. The State explains that Enstar relies on existing supplier contracts to meet its seasonal deliverability requirements because the utility has failed to construct natural gas storage of its own.[70] The State claims that Enstar has no safety net to meet its winter peaking needs other than existing Cook Inlet natural gas infrastructure. The State further claims that regional needs for natural gas cannot be shown to be satisfied unless Enstar and Chugach have RCA-approved contracts in place which expressly grant them priority rights to natural gas during winter peaking periods. Enstar and Chugach echo the State's comments in their respective filings.

Agrium similarly claims that DOE\FE should take deliverability issues into consideration when assessing regional supply and demand. Agrium claims that the actual supply of natural gas for domestic consumers is determined by deliverability constraints.[71] Agrium claims that actual access to supply, not theoretical sufficiency of reserves, should be at the core of DOE\FE's public interest determination.

<u>Answer</u>: Contrary to the claims of the State, Chugach, Enstar and Agrium, Applicants are not required to demonstrate deliverability under DOE precedent, nor is there any compelling reason to require them to do so here. In fact, DOE/FE has recognized that responsibility for

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70 State Intervention at pp. 6-7.

71 Agrium Intervention at p. 20.

deliverability, including natural gas storage, lies with the utilities. In addressing deliverability concerns in DOE/FE Opinion and Order No. 1473, DOE/FE stated the following:

> ...section 3 of the NGA creates a presumption in favor of approval of an export application. In evaluating an export application, DOE applies the principles described in the Secretary's natural gas import policy guidelines which presume the normal functioning of the competitive market will benefit the public.
>
> Regarding the field development and other infrastructure constraints raised by the Protestors, we agree with the Applicants that deliverability from what DOE has determined is an "adequate reserve base is [ultimately] largely a function...of competitive market forces." DOE believes that as (and if) gas markets further develop in Alaska, and economics and technology support exploration and development, the Cook Inlet area's gas reserves and the corresponding infrastructure will increase. This is exactly what has occurred in the lower-48 States this decade when natural gas consumption increased by 17 percent and marketed production increased by six percent since 1990. In its May 1998 report, EIA noted
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>> [L]ower-48 gas reserves increased to 156 Tcf in 1996, making the third consecutive year of higher reserve levels although still slightly below the 1990 level of 160 Tcf. This recent trend is expected to continue. Various factors, such as improved well completions, advanced stimulation technology, and improved seismic technology, have allowed producers to maximize gas output from existing fields, resulting in a decline in the ratio of reserves to production since 1990.
>
> The arguments advanced by the Protestors, based on current Cook Inlet market characteristics, to question the market's ability to deliver sufficient supplies to meet future demand in fact illustrate the efficient operation of that market. The Protestors point to the fact that "over the past 19 years, only 205 Bcf of reserves have been added through new pool and field discoveries and extensions." To DOE this does not demonstrate gas resources cannot be brought on-line in a timely manner to supply demand. Rather, it is an indication the market is operating efficiently. Demand for gas in Cook Inlet has been stable for many years with only limited incremental growth, and reserve production has met demand. Therefore, to date, there has been no reason for more extensive exploration and development activities. DOE's projections of cumulative demand for 1998-2009 (Table 2) anticipate the continuation of stable demand levels in Cook Inlet. Under these circumstances, and given the total resource base available, the normal working of a competitive market will ensure the timely development of both resources and infrastructure. Similarly, the argument that the thin margin between actual production and production capacity indicates a probability of a shortfall merely proves the point that in a stable demand situation,

> such as has existed in Cook Inlet, the market produces closely correlated actual production to delivery capacities to maximize efficiency.[72]

This excerpt from DOE/FE Opinion and Order No. 1473 remains true today. Despite DOE/FE's finding in 1999, there has been virtually no direct investment by Enstar, Chugach or any other utility in deliverability projects. The utilities have chosen not to address an issue that they admit needs to be addressed and which DOE/FE advised them was their responsibility by virtue of its finding in DOE/FE Opinion and Order No. 1473. Instead, the utilities, and now the State, continue to argue that the producers, specifically here CPANGC and Marathon, are responsible for insuring "deliverability." All of these parties want to find a short-term, "quick fix" for this need, but the conditions they are trying to impose on Applicants here will only hasten the downward spiral of investments necessary to develop new resources and storage supported by competitive market signals. Simply put, responsibility for fixing the system should not be demanded solely of Applicants. Instead, market forces should be allowed to implement a natural gas supply system that specifically addresses base load, peak and needle peaking requirements.

Recent public comments by Enstar's Regional Vice President Tom East indicate that the utility may be on the verge of making the necessary investment in deliverability projects:

> 'We'll probably end up doing a study and looking at developing our own storage or maybe purchasing storage capacity from a producer,' East said. 'If we start having multiple rates for base load, peaking and needle peaking we could take a look at what the differential is between the base load and the needle peaking, and with that differential we could possibly develop our own storage ... and provide the needle peaks ourselves.'[73]

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72 DOE/FE Opinion and Order No. 1473 at pp. 42-43 (citations omitted).

73 "Cook Inlet gas market in transition for Enstar," Petroleum News, Vol. 12, No. 17 (Apr. 29, 2007) (available at: <http://www.petroleumnews.com/pnfriends/738133846.shtml>) (last visited May 7, 2007). *See also* "Cook Inlet Gas Supply & Prices," presentation by Enstar to Alaska Senate Resources Committee on Apr. 16, 2007 (discussing the importance of insuring deliverability as well as the important role the LNG plant has played in peak demand situations) (available at: <http://www.ktoo.org/gavel/schedule.cfm>) (last visited May 7, 2007).

For these reasons, DOE/FE should reject the calls for evaluation of "deliverability" as part of its NGA Section 3 public interest analysis of Applicants' blanket export application, and leave it up to the market to deal with how best to insure these reserves are actually produced and delivered where and when they are needed.

C. <u>Other Public Interest Considerations</u>

1. *Impact of Denial of Export Application*

Chugach and Agrium both claim that Applicants have not adequately supported their claim that failure to grant the export application would lead to shut down of the LNG facility, shut-in of wells and other reductions in production. However, neither Chugach nor Agrium provides any explanation of how Applicants have failed to make their case on the shut-in issue, or any evidence to the contrary. Agrium seems to base its argument that there will be no shut-in of production because it (Agrium), as the lone remaining large industrial customer of natural gas, will buy all the surplus gas in question. That is an anti-competitive proposition which should be summarily rejected by DOE/FE. In addition, to the extent Agrium claims that the export extension will result in shortages to the local utilities, it does not explain how its consumption of the natural gas to be exported helps the local utilities. Agrium's offer to consume the natural gas to be exported confirms that its interest is solely that of a competitor attempting to create a temporarily distressed natural gas market for its own economic advantage.

2. *Economic Impact of LNG Exports*

Chugach asserts that DOE/FE should evaluate the impact of the export on the economy of the Cook Inlet region, the income of Alaskans and the royalty income of the State. Agrium asserts that its fertilizer facility produces more economic benefits for the Alaskan economy than

Applicants' LNG facility. Based on a 2004 report,[74] Agrium states that the fertilizer plant employs more people, spends more money in the community, and creates a manufactured product that has greater value than the LNG facility.[75] Agrium argues that, if there is not enough natural gas for both fertilizer manufacturing and LNG exports, the local economy would be better off if the natural gas supply were devoted to fertilizer manufacturing.

Answer: Chugach offers no explanation of how Applicants have failed to make their case on the impact of the export on the economy of Cook Inlet region, the income of Alaskans and the royalty income of the State. Nor does Chugach offer any evidence to the contrary. With regard to Agrium's comments, DOE/FE should not put itself into the position of umpire regarding the comparative benefits of alternative industrial uses of the natural gas.

3. *Balancing and Reliability*

The State argues that the natural gas supplies in question are needed to meet peak demand. However, the State's claims are overcome by the historical practice of the LNG plant diverting natural gas on peak days in order to meet human needs. The State's argument also completely overlooks the fact that Applicants need the LNG terminal and supply system to be up and running in order to be in a position to provide that supply security.

Agrium claims that its facility can also provide balancing and reliability for local utilities if natural gas supplies are available for fertilizer production. However, unlike the LNG facility, Agrium has no storage and does not otherwise have the flexibility to provide these peak-shaving functions which CPANGC and Marathon have performed and demonstrated they are willing to perform in the future.[76]

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74 Agrium Intervation at Appendix A.

75 *See id.* at p. 14 (summarizing comparison).

76 Applicants' LNG plant can divert natural gas to the local market as well as supply LNG locally. For

In addition, Agrium's stated position in this proceeding is not consistent with its past behavior with respect to balancing and reliability functions. In a letter dated June 14, 2003, Agrium discussed the impact of a planned shutdown during the warmest time of year. Agrium referenced losses of $500,000 to $1,000,000 as a result of the shutdown. The letter states:

> An ammonia/urea complex such as the Kenai Facility does not have an instantaneous turndown or on/off capability. The complexity of the process and the need to bring up and then restart high-temperature and high-pressure equipment in a safe and controlled manner to minimize adverse environmental, personnel and equipment considerations takes time. As an example, to bring the two ammonia and two urea plants down, with minimal risk and in the most orderly fashion possible, usually involves starting about 24 hours ahead of the outage, taking the required outage time and then taking another 24-48 hours to restart the processes and line them out assuming no mechanical or process difficulties are encountered.[77]

Thus, by Agrium's own admission, diversion of natural gas supplies from the fertilizer plant in response to emergency supply needs would be very expensive and difficult for Agrium to provide.

D. <u>The Cook Inlet Market is Reacting Rationally</u>

Agrium, Chugach, Enstar and Tesoro all argue that local shortages of natural gas have occurred and are indications that the Cook Inlet basin is running short of natural gas. In reality, the market is sorting out which entities are economically viable as the era of stranded natural gas comes to an end in Cook Inlet. Specifically, these intervenors claim that Agrium's seasonal operation, Tesoro's natural gas supply interruption this past winter, and the diversion of natural gas from the LNG plant into the local market for peaking natural gas are all examples that prove that there is insufficient natural gas supply in Cook Inlet. Closer examination, however, shows that these results are reactions to economic factors, not indicators of natural gas supply shortages.

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example, on two separate occasions in 2006 the LNG plant was called upon by Fairbanks Natural Gas to divert LNG.

77 A copy of this letter is provided in Appendix A of this Answer.

As stated previously, both Tesoro and Agrium desire to have low priced natural gas to enhance their economic profitability. The fact that neither Tesoro nor Agrium has been able to incentivize any oil and gas company to explore and develop a long-term supply of natural gas for their specific use, but that Enstar has been successful in doing so reinforces the point that natural gas may no longer be economically viable for fertilizer and refining operations. Enstar's success has proven that the natural gas supply problems experienced by Agrium and Tesoro are price-related, not supply-related.

The diversion of natural gas supplies from the LNG plant into the local market on certain cold days has also been used to support the contention that the local market is short on natural gas supply. This is simply not the case. The reality is that natural gas production in Cook Inlet is limited by compressor capabilities, not a lack of supply. The LNG plant represents one tool that has historically been made available to meet local human needs during certain peak day situations. As long as the LNG plant is in operation, it will continue to be available to help alleviate these human needs requirements per current or, if necessary, future individual arrangements between each of ConocoPhillips and Marathon and the local utilities (or other companies that supply natural gas to the local utilities).

V.
ANSWER TO REQUESTS FOR CONDITIONS TO BE IMPOSED ON EXPORT AUTHORIZATION

As discussed above, certain comments and/or protests request that DOE/FE impose conditions on the blanket export authorization pursuant to its "plenary and elastic" authority under NGA Section 3. However, these comments and/or protests fail to either justify the need for the requested conditions, or show the requested conditions are consistent with those imposed by DOE/FE in granting past export authorizations. DOE/FE should therefore reject all such requests for conditions to be imposed on the blanket export authorization. As the uncontested supply data indicate, Applicants have already addressed all of these concerns by confining the requested export authorization to 99 TBtus over a two-year time period.

A. <u>DOE/FE Should Not Condition Applicants' Export Authorization to Require Contracts or Limit Exports</u>

As discussed in Section III.B.1., the State asks DOE/FE to condition the export application on the requirement that the natural gas supply needs of Chugach, Enstar and other regional utilities be under contract at terms approved by the RCA. Additionally, Enstar asks DOE/FE to require Applicants to limit exports during periods when available supplies are unable to meet domestic demand. Agrium requests that DOE/FE condition any grant of export authorization requested by Applicants on a requirement that domestic demand for natural gas be met before natural gas may be exported.

<u>Answer</u>: DOE/FE has never imposed the conditions requested by the State, Enstar and Agrium on Applicants in the past and these conditions should not be imposed now. The requested conditions are unnecessary because the RD Report and NSAI Report demonstrate that there are adequate Cook Inlet supplies of natural gas to meet regional demand in Southcentral Alaska. They are otherwise inappropriate for reasons discussed extensively in this Answer.

Enstar's reliance in its comments on *Cia Mexicana De Gas v. FPC*[78] is misplaced. In this opinion, the U.S. Court of Appeals for the 5th Circuit upheld the Federal Power Commission's ("FPC") authorization of the export of natural gas from Texas to Mexico. The 1946 order issued by the FPC states that preferential service should be rendered to persons and municipalities of

[78] 167 F.2d 804, 808 n. 4 (5th Cir. 1948).

the United States.[79] However, the FPC described this condition, which has not been subsequently imposed in any NGA Section 3 export authorization since then, as follows:

> ...the authorization granted hereby shall not constitute ground or justification for any refusal by applicant to transport or sell natural gas to any person or municipality at any time hereof, for consumption in the United States by such person or municipality, it being the intent of this authorization that at all times, persons and municipalities in the United States are to receive preferential service over that to Gas Industrial.[80]

The concern that caused the FPC to impose this condition in its 1946 decision is not present here. As discussed above, Applicants are not precluded from contracting with local utilities, manufacturers or refiners for the export-related volumes after the export is authorized.

B. <u>DOE/FE Should Not Condition Applicants' Export Authorization on Natural Gas Reserves Replacement</u>

The State asks DOE/FE to require Applicants to continue investment in projects that target the replacement of all exported natural gas reserves as a condition for the export authorization. The State explains that its request is built on the notion that the Cook Inlet basin's existing stock of proven reserves should, at a minimum, be kept whole as a condition of an extension of Applicants' LNG export authorization.[81] The State believes that this condition would create an incentive for Applicants to return again to request additional future export license renewals, keep industrial users in the Cook Inlet in business, and serve the requirements of public utilities.

DOE/FE should reject the State's call for the imposition of this condition. As a preliminary matter, exploration and production decisions should be influenced by market forces, not regulatory fiat. As demonstrated in the application, the Cook Inlet is a resource rich basin

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[79] *In Matter of Reynosa Pipe Line Co.* 5 FPC 130 (1946).

[80] *Id.* at *14.

[81] State Intervention at p. 17.

with more than enough proved, probable and potential natural gas reserves to service the needs of the basin for many years to come. However, upstream investments are inherently risky and generally spread across many companies to reduce individual company exposure. Taken at face value, this requirement could impose an open-ended financial obligation on both CPANGC and Marathon in the event that exploration activities fail to achieve the desired results. In addition, the State's condition would require that investments be made whether or not they are required to meet contractual demands and regardless of economic merit. This places a unique and unfair economic penalty on Applicants.

This proposed condition would also be impractical to enforce. Until there is some production history from a new well, it can be difficult to predict its ultimate recovery. Were the State's condition to be adopted by DOE/FE, it may well kill the opportunity for continued exports since it may not be possible to prove ultimate recovery in the time frame available.

The State further maintains that the Cook Inlet basin "represents an environment for investment as attractive as any other..."[82] Unfortunately, under the requirements for continued exports advocated by the State, this simply is not true. Recent actions by the RCA have sent the signal to investors that Cook Inlet natural gas prices must be far below the opportunities elsewhere in the United States.[83] This condition, along with the desire of the State to turn the LNG plant into an open access facility, as discussed below, sends the message that no private investment in Alaska is safe from being commercially compromised by the State. The vision of the State is one in which the outlook for a successful future for Cook Inlet natural gas supplies is

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82 State Intervention at p. 17.

83 RCA Commissioner Harbour explained in his dissent from the APL-5 decision that the majority had "sent a signal to industry that its investment dollars would be better risked in areas where regimes impose a clearer regulatory burden[.]" Harbour Dissent at p. 14.

significantly diminished. The "replacement" condition advocated by the State has never been imposed before by DOE/FE and should not be imposed here.

C. DOE/FE Should Not Condition the Applicant's Export Authorization on Open Access for Third-Party Producers

The State also asks DOE/FE to require Applicants to give third-party producers access to the LNG export terminal under terms which DOE/FE deems reasonable as a condition for Applicants' requested export authorization. The State believes that open access would broaden the Cook Inlet supply base and provide stability to the overall market.

Again, the State fails to cite any precedent in support of its request for this condition. Open access, in the first instance, should be an issue for the U.S. Federal Energy Regulatory Commission ("FERC"), rather than DOE. By law and policy, open access is not required by FERC of any new receiving terminal in the Lower 48 States.[84] In any event, imposing such a condition on Applicants at this point in time would be unfair in that it would frustrate past reliance on the right of CPANGC and Marathon to use their terminal for proprietary purposes.

The combined effect of this condition and that discussed above in Section V.A., would be that CPANGC and Marathon would have to subsidize local utility supplies, but open their LNG facilities to competition from other producers who are not so burdened and who will presumably compete with them in the export market, a result that is unfair on its face. Since the DOE/FE authorization is volume specific, it is not clear whether the State also seeks to require Applicants to make available to third parties a portion of the volumes that Applicants are authorized to export. It is also not clear whether the State seeks to require Applicants to use their LNG tankers to transport third-party LNG and market that LNG on behalf of the third parties. If the

[84] In 2002, FERC adopted its "Hackberry" policy under which an LNG terminal is not required to provide open access service. *Hackberry LNG Terminal, L.L.C.*, 101 FERC ¶ 61,294 (2002), *reh'g*, 104 FERC ¶ 61,269 (2003). Congress codified FERC's Hackberry policy in Section 311 of the Energy Policy Act of 2005, Pub. L. No. 109-58, 119 Stat. 594 (2005).

expectation of the State is that, in reality, Applicants will purchase natural gas from other suppliers, that only makes sense to the extent that (i) the LNG plant has capacity (*i.e.*, Marathon and CPANGC are unable to meet the plant's requirements as defined by the plant's operational constraints and export limits), and (ii) a commercial deal can be arranged that makes sense to both the seller and purchaser. Purchase and sale arrangements must be left to voluntary, arms-length negotiations between the affected parties.

VI.
ANSWER TO REQUESTS FOR ADDITIONAL PROCEDURES

DOE/FE should deny with prejudice the State's and Tesoro's respective requests for additional procedures because they have failed to bear the burden of showing that such procedures are necessary to achieve a complete understanding of the facts and issues in this proceeding as required by Section 590.310 of DOE's regulations.[85]

DOE/FE has found that a trial-like hearing is only necessary when a party has raised material issues of fact genuinely in dispute.[86] Neither the State nor Tesoro has raised any such issues. Rather, the State and Tesoro have raised issues of policy, which, as discussed above, are either immaterial to the NGA Section 3 public interest determination or subject to a presumption that they have failed to rebut or even challenge. Neither the State nor Tesoro takes substantive issue with the data submitted by Applicants in support of the adequacy of natural gas supply or the fundamental arguments made by Applicants in support of the blanket export authorization. Rather, the State and Tesoro rely upon parochial economic arguments as the basis for their

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85 10 C.F.R. § 590.310 (2007).

86 *See Philips Alaska Natural Gas Corp. and Marathon Oil Co.*, 1 FE ¶ 71,482 (Nov. 6, 1997) (denying requests for trial-type hearing in export proceeding because parties had not demonstrated that there were relevant and material factual issues in dispute); *Panhandle Producers and Royalty Owners Ass'n v. ERA*, 822 F.2d at 1113-1114 (rejecting petitioner's claim that it was entitled to a trial-like hearing in a blanket export proceeding because no material facts were in dispute).

opposition to the Export Application. The foregoing discussion also confirms that none of the other intervenors has raised an issue that cannot be addressed on the strength of what is already on the record by virtue of the export application and subsequent pleadings.

DOE/FE denied similar requests for additional procedures, including a trial-type hearing, formal discovery and a public conference, in Applicants' last export application proceeding and should do so here.

VII.
CONCLUSION

For the reasons set forth above, Applicants have conclusively shown that their request is not inconsistent with the public interest. None of the intervenors have met the burden of proof required to overcome the statutory presumption in favor of granting the Export Application. Similarly, none of the intervenors who have requested additional procedures have made the argument that additional procedures are required or merited. A timely decision on this Export Application from DOE/FE is important to the efficient and proper planning required on the part of Applicants for continued LNG exports. Applicants accordingly renew their request for DOE/FE action on the Export Application on or before December 1, 2007.

Respectfully submitted,

Douglas F. John

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Counsel for ConocoPhillips Alaska Natural Gas Corporation and Marathon Oil Company

Dated: May 8, 2007.

APPENDIX A

Agrium

Chris W. Tworek
Vice President, Supply Management

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June 14, 2003

Mr. Daniel M. Dieckgraeff
Vice President, Finance and Rates
Enstar Natural Gas Company
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USA 99519-0288

Dear Dan,

In the matter of the planned Enstar June 19th 2003 Pipeline Outage (for the purposes of a hot tap to facilitate highway construction), we seek both Enstar's and the industry's cooperation to mitigate the damage that this Outage will have on the Agrium Kenai Plant. We only learned of this Outage late Thursday June 12, 2003.

This planned Outage has created a downward spiral of events that, if left without remedy, will cause Agrium's Kenai facility to shutdown down for as long as 2-3 days incurring losses of $500,000 to $1,000,000. The essence of the situation is:

1. An ammonia/urea complex such as the Kenai Facility does not have an instantaneous turndown or on/off capability. The complexity of the process and the need to bring up and then restart high-temperature and high-pressure equipment in a safe and controlled manner to minimize adverse environmental, personnel and equipment considerations takes time. As an example, to bring the two ammonia and two urea plants down, with minimal risk and in the most orderly fashion possible, usually involves starting about 24 hours days ahead of the outage, taking the required outage time and then taking another 24-48 hours to restart the processes and line them out assuming no mechanical or process difficulties are encountered.

2. The Kenai facility is currently constrained on supply by a situation that is publicly known. Unfortunately, the planned Enstar Outage creates a situation where the plant will end up seeing a further reduction in supply to the point where it will have to come down. It cannot ride through both the constrained supply and the further reductions relating to the Outage.

3. Agrium has been trying to alleviate both the constrained supply and the Outage by attempting to work with all producers and natural gas transporters in the Cook Inlet to secure additional gas supply and flexibility on remaining gas transportation and exchange

capability. Unfortunately, as of this Friday, we found the cooperation limited by several factors:

a. Our plant, due to process constraints requires a 2:1 ratio of high to low pressure gas. This is why we have to seek both high and low pressure gas supply and having been working with Enstar and natural gas suppliers on this issue and on projects such as the Kenai jump-over line and additional compression.

b. The perceived rights of some Enstar suppliers to call on Unocal gas supply, exchanges and transportation also impact our primary gas supply. We were surprised to learn that as of Friday, one of these suppliers was unable to confirm their intentions to call upon Unocal gas supply because Enstar has yet to confirm its requirements for the period of the Outage. We would urge you do so in a most timely manner as this will confirm the magnitude of the impact we face.

c. There are various transportation and exchange agreements in the Cook Inlet that involve our plant in their considerations. Advance planning for any project between all affected parties would be a significant improvement over the current process and co-ordination of planned Outages amongst the parties could serve to mitigate the severity of impact on any one party. In the context of the current proposed Outage, if all parties cooperated to find a solution, some if not all of the current issues might be likewise mitigated.

   Unfortunately, as of this past Friday, we have been unable to obtain this cooperation and while we continue to wish to work with all parties in this regard, it puts Agrium in the position of contemplating challenges to all agreements by whatever commercial, public and legal means are available.

While the time may be limited to pursue all avenues for this particular Outage due to the very short notice that Enstar has given all participants, we understand that there may be a second Outage for July or August. We urge better planning and coordination among all affected parties for that eventuality. With the information we have at present, it would appear there are a considerable number of factors that would suggest a late September timing for this second project would be advisable as this fits better with work planned by a number of participants.

In conclusion, it is Agrium's desire for all Cook Inlet participants to work together to find a solution for this Outage. Mike Palmer and I will be in Anchorage Monday June 16 to Friday June 20. (We can be reached at the Anchorage Marriott or on our cell phones – (403) 589-2310 for myself and (403) 598-0229 for Mike - or through our home office voicemail). We will be contacting all the impacted parties to work this issue. We most certainly ask for your cooperation and we look forward to working with you and others to find the optimal solution to both these Outages.

Yours truly,

Chris W. Tworek

cc:

Mr. Anthony M. Izzo, President and CEO, Enstar
Mr. Jack Phelps, Special Assistant to the Governor, State of Alaska
Mr. Dave Harbour, Chair, Regulatory Commission of Alaska
Ms. Kate Giard, Commissioner, Regulatory Commission of Alaska
Mr. Mark K. Johnson, Commissioner, Regulatory Commission of Alaska
Mr. James S. Stranberg, Commissioner, Regulatory Commission of Alaska
Ms. G. Nanette Thompson, Commissioner, Regulatory Commission of Alaska
Mr. Tom Irwin, Commissioner, Department of Natural Resources, Alaska
Mr. Chuck Pierce, VP Alaska, Unocal
Mr. Dan Thomas, Alaska Gas Mgr, Unocal
Mr. John Barnes, GM Alaska, Marathon
Mr. Ed J. Jaroch, Alaska Account Mgr Domestic Gas, Marathon
Mr. Scott Pfoff, President, Aurora Gas and Power
Mr. J. Scott Jepson, Cook Inlet Asset Manager, Conoco Phillips, Alaska

VERIFICATIONS

VERIFICATION

STATE OF ALASKA)
) SS:
THIRD JUDICIAL DISTRICT)

BEFORE ME, the undersigned authority, on this day personally appeared J. Scott Jepsen, who, having been by me first duly sworn, on oath says that he holds the office of Vice President of ConocoPhillips Alaska Natural Gas Corporation and is duly authorized to make this Verification; that he has read the forgoing instrument and that the facts therein stated are true and correct to the best of his knowledge, information and belief.

J. Scott Jepsen

Subscribed and sworn to before me, a notary public, this 7th day of May, 2007.

Notary Public

My Commission expires:

May 6, 2010

KRISTIE D. ARMBRUST
NOTARY PUBLIC
STATE OF ALASKA
My Commission Expires May 6, 2010

VERIFICATION

STATE OF TEXAS)
) SS:
COUNTY OF HARRIS)

BEFORE ME, the undersigned authority, on this day personally appeared David M. Risser, who, having been by me first duly sworn, on oath says that he is Manager, Natural Gas Marketing for Marathon Oil Company and is duly authorized to make this Verification; that he has read the forgoing instrument and that the facts therein stated are true and correct to the best of his knowledge, information and belief.

David M. Risser

Subscribed and sworn to before me, a notary public, this 8th day of May, 2007.

Holly Keiser
Notary Public

My Commission expires:

4-17-2011

HOLLY SUE KEISER
Notary Public, State of Texas
Commission Expires 04-17-2011

CERTIFICATE OF SERVICE

I hereby certify that I have this day served a copy of the foregoing document upon the following individuals listed on the official service list in this proceeding by first-class mail:

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Douglas F. John

Douglas F. John

Dated at Washington, D.C., this May 8, 2007.