UNITED STATES OF AMERICA
DEPARTMENT OF ENERGY
OFFICE OF FOSSIL ENERGY

In the matter of:	)	
	)	
CONOCO PHILLIPS ALASKA	)	
NATURAL GAS CORPORATION	)	
AND	)	**FE DOCKET NO. 07-02-LNG**
MARATHON OIL COMPANY	)	

REPLY COMMENTS OF CHUGACH ELECTRIC ASSOCIATION, INC.

Chugach Electric Association, Inc. ("Chugach") appreciates the opportunity to submit reply comments pursuant to the June 5, 2007 order of the Office of Fossil Energy. As required, these reply comments are limited to matters raised in the May 8th Answer of Conoco Phillips Alaska Natural Gas Corporation and Marathon Oil Company ("Applicants"). Chugach responds in its Executive Summary to matters Applicants raise in their Executive Summary, and in the Argument section to those arguments of Applicants (from Sections IV and V of the Answer) that most concern Chugach.

A. Executive Summary

1. Applicants base their case on the assertion that there will exist adequate supplies of natural gas in Cook Inlet *during the requested two-year export extension period.* That assertion is misleading, as shown below. More important, the assertion misses the point. The proper focus of this proceeding is not so narrow as a two-year period. Unlike other U.S. localities, Cook Inlet has no interstate pipeline connections. In terms of gas supply, Cook Inlet is completely isolated – an island. Today, by any measure, the available and uncommitted gas reserves in Cook Inlet are declining rapidly. Neither (a) the long-standing export of much of the production in the form of LNG, nor

(b) an enormous increase in Cook Inlet gas prices, has produced significant additions to existing reserves. (Price increases really have been enormous: what Chugach pays has far more than doubled in recent years, and is *twenty-five times* what Chugach paid twenty years ago.) There has not even been much new exploration, including by Applicants – two companies who dominate Cook Inlet gas production and control most of the dwindling supplies of gas that remain uncommitted.

What's happening in Cook Inlet, in effect, is that the existing reserves are being harvested. Nothing is in prospect to replace them. The local economy and populace, both inordinately gas-dependent by U.S. standards, may be left to shift for themselves.

In this context, Applicants seek permission – *without* having first met local needs – to export what for local purposes is a large volume and significant percentage of all remaining uncommitted gas Applicants possess and Cook Inlet is currently known to hold. The export period involved may be limited to two years. But in the circumstances, the public interest could be adversely impacted for far longer than that.

These facts are what have prompted – including from Chugach and the State of Alaska, two parties accustomed to accommodating Applicants' reasonable business interests – the unprecedented disagreements this proceeding reflects. If the Department fails to see the problem whole, and in this light, it will fail to perceive the public interest issues in this proceeding, in which the public interest is the standard for decision.

This overview and context are more important, for decision-making purposes, than the individual arguments in this docket. If Applicants are correct that gas supplies are sufficient to meet local needs and still allow LNG exports, then Applicants could commit themselves now to meet those needs – in which case, local users such as Chugach

could in turn support the export of any gas that is excess to those needs. The failure of Applicants to make that commitment, or to acknowledge its significance to the public interest – and their impugning the motives of entities such as Chugach, their usual ally, which is prepared to cooperate with them – is sad and troubling.[1]

2. Applicants assert benefits to the Alaska economy from the increment – *considered in isolation* – of jobs and royalty payments associated with two years of LNG exports. But that is no measure of *net* economic impact unless royalties would not otherwise be earned, and unless the exports produce no offsetting *adverse* impacts. It is precisely such adverse impacts that Chugach fears. Because (a) the Cook Inlet economy, like Chugach, is extraordinarily gas-dependent; (b) Cook Inlet gas supplies are shrinking despite rising local prices; and (c) local needs for gas that Applicants could commit to meet, such as Chugach's requirements during and after the extension period, still lack commitments, it follows that (d) the locally significant volume of gas (116 Bcf) proposed for LNG export and use – enough to meet Chugach's requirements for nearly nine years, and those of Chugach and its wholesale and economy utility customers for more than four years – could make a critical difference to the overall health of the Alaska economy.[2]

Applicants don't address how economic benefits they tout could be obtained while avoiding the larger economic harms the interveners fear. If Cook Inlet supplies are as great as Applicants assert, and sufficient to meet *both* local needs *and* continued

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[1] Applicants mischaracterize Chugach as suggesting that new contracts must be approved by the Regulatory Commission of Alaska ("RCA") before Chugach can support LNG exports. Applicants suggest it is impossible to satisfy Chugach and gain an export extension in time, given the pace of RCA proceedings. But Chugach has not suggested RCA approval as a precondition. If Chugach and Applicants agree on terms of new contracts – something that could be achieved almost overnight – then for Chugach, that will suffice. As a cooperative utility, owned by members of the public and not shareholders, Chugach does not fear disapproval by public regulators of any gas contract Chugach would agree to. See *infra* at 17-19.

[2] If all this gas would be produced either for local consumption or for export, then net royalty payments are not likely to be affected significantly by whether the additional exports are authorized or not.

exports, then the proper approach in the public interest would be for Applicants to commit first to meet local needs during the requested extension period and for some reasonable period thereafter. This Applicants have failed – rather pointedly – to do.[3]

3. Applicants assert that a *numerically* "overwhelming majority" of filings support the export extension. "In contrast," pleadings "raising questions" were filed by only "a small number of entities."[4] This is disingenuous. The "small number of entities" includes the State and the consumer-owned utility Chugach – which Applicants treat as a "private protestant." Chugach provides power directly and through its consumer-owned wholesale customers to more than half the people in Alaska, each a member-owner of his or her electric cooperative or municipal utility. The interveners, including Chugach, addressed their arguments to the Department – not to the public in an effort to whip up a letter-writing campaign. The issues here are not to be decided by straw poll.

4. Applicants characterize the interveners as asking the Department "to ignore free market forces and allow special interests to exert commercial leverage against Applicants."[5] There is much wrong in that statement, and nothing right.

First, Applicants invoke "free market forces" in an inapposite context, namely one with little or no competition. More than ninety percent (90%) of Cook Inlet gas is produced by four entities. Applicants alone produce more than sixty-five percent (65%) of that amount – and enjoy an even more disproportionate share of *uncommitted* supplies. There are no pipelines to bring "outside" gas to the area, and no adequate local

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[3] Applicants dismiss Chugach's suggested approach on grounds that "reasonableness" exists only in the eye of the beholder. In law and policymaking, however, "reasonableness" is intended as an objective standard. Here, for example, a "reasonable period" might be the period during which, if the gas were not exported, it could still be produced for local purchase and use. That is a reasonable period during which to ask Applicants to continue to meet local needs if they wish to export gas during the extension period.

[4] *Answer of ConocoPhillips Alaska Natural Gas Corporation and Marathon Oil Company to Certain Motions to Intervene, Comments, Protests and/or Requests for Additional Procedures* ("Answer"), at 3-4.

[5] *Id.*, at 5.

substitutes, within a reasonable period of time, for gas Applicants decline to supply. By any measure, the Cook Inlet gas market is not competitive. Here, unlike more competitive areas of the nation, "free market forces" is a slogan, not a reality.

Second, Congress did not leave LNG export decisions to "free market forces." This proceeding exists – and Applicants must apply for *authorization* – precisely because Congress mandated that when export of U.S. energy supplies is involved, a government agency should determine what is in the public (not private) interest. Deferring to "free market forces" in this context – particularly when the market involved is non-competitive – would abdicate the responsibility Congress entrusted to the Department.

Third, as noted above, not all interveners, and certainly not Chugach, can fairly be labeled "special interests." Both Chugach and the State are controlled (and Chugach is owned) by members of the public. Chugach is not a profit-making enterprise or profit-driven. Other interveners, who include investor-owned and profit-seeking entities, are no different in that respect from Applicants themselves – and not barred, on those grounds, from invoking the public interest unless Applicants are similarly barred.

The Answer's use of denigrating labels is not just a case of the Applicant pot calling the intervener kettle black. The excessive rhetoric of Applicants' Answer, its disparaging of intervener motives, and its treatment of intervener-proposed alternatives as straw men to be knocked down disdainfully – all this in the Answer indicates a refusal to treat as legitimate the fundamental public interest concerns and suggestions of the interveners summarized above, and to join in a search for mutually acceptable solutions to what is, after all, a shared set of problems. Responsible interveners, including Chugach, have *not* urged that the application be denied outright.

Finally, who "seeks commercial leverage" over whom? Applicants assert, rather coldly, that "*the market* is sorting out which entities are economically viable as the era of stranded natural gas comes to an end in Cook Inlet."[6] By exporting more gas, Applicants will hasten that end, and thus the demise of "entities" (including *public utilities*?) that are not "economically viable." But it is not "the market" that exports LNG. And it is not "the market" from whom Chugach and others must buy Cook Inlet gas. It is the Applicants. Cook Inlet has no gas market in the Lower 48 competitive sense. Such gas market as exists in Cook Inlet, Applicants substantially control. By not allaying Chugach's gas supply concerns at a time when Chugach's existing supplies are running out – a problem Applicants must and do claim they could remedy whenever they wish – Applicants exacerbate rather than allay the uneasy suspicion that "commercial leverage" of their own may be precisely what they have in mind.[7]

5. Applicants argue that nothing prevents Chugach or others from negotiating new gas contracts with Applicants after the export extension is approved. It is equally true that nothing prevents the Applicants from negotiating new gas supply contracts with Chugach, among others, *before* the extension is approved. No significant delay need be involved. In Chugach's case, as William Henry Seward famously urged in negotiating Alaska's purchase from Russia, the situation is one of "Let us make the treaty *tonight*." The difference between negotiating new gas contracts before rather than after export extension is granted is fundamental: *only* if new contracts are committed to prior to the

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[6] Answer, at 36 (emphasis added).

[7] The 116 TBtu Applicants seek authorization to use for export are unlikely to affect *global* supplies or pricing of natural gas very much. But, as noted above, this volume – which is *in addition to* other volumes authorized for export but not yet exported – is very substantial in terms of available uncommitted Cook Inlet supplies. Applicants do not dispute that authorization to use this volume for export could significantly affect *local* supplies and pricing of natural gas, which is the legitimate public interest concern of Chugach and the State of Alaska, among other interveners.

extension can there be assurance that local needs will actually be met. At the moment, neither the Department nor Chugach, as a major customer dependent on Applicants, has any such assurance.[8]

The primary public interest benefit Applicants claim is continued operation of the LNG facility. If, as Applicants suggest, interveners can still negotiate for the *very same gas*, and do so successfully, it follows that the LNG facility would then lack this gas and could not operate. The public interest benefit Applicants claim would disappear. Thus, either (1) the suggestion that export-authorized gas will remain available for potential local use is not accurate, or (2) Applicants are prepared to disappoint those who, in hopes of keeping the LNG facility operating, wrote letters to support the application. Either way, Applicants are effectively treating some requirements – the LNG facility's or those of local users – as expendable. In public interest terms, it would be better for Applicants to stick to their position that local needs can be met *despite* extended operation of the LNG facility – and prove it by making their local gas supply commitments first.

B. Specific Replies (to Sections IV & V of Applicants' Answer)

1. Applicable legal standard & burden of proof

Applicants assert that interveners have not met their burden of proof that the proposed authorization is not in the public interest. That assertion is both misleading and misplaced.

The key and undisputed point is that the public interest provides the standard for the Department's decision on the application. The primary *public* interest Applicants have asserted to support the application is that the LNG export facility can continue to

[8] As noted below, at pp.17-19, Chugach's situation as an electric utility, with a duty to serve the public and no feasible alternative means of doing so in the relevant time period, is somewhat different from that of Agrium and Tesoro as individual end-use consumers, and different also from that of Enstar.

operate. (Whether it could be modified to operate as an LNG *import* facility, and thus preserve local LNG jobs, is something the application does not discuss.)

In response, interveners showed that the export authorization may well harm the overall public interest, so long as local requirements for gas remain uncommitted-to and unmet. In support of this position, interveners demonstrated that (1) local requirements are in fact uncommitted-to and unmet; (2) the proposed export volume is significant in terms of availability of gas to meet those local requirements; (3) key local users, such as Chugach as Alaska's largest electric utility, not only have unmet requirements during the proposed extension period and beyond, but also have no realistic possibility of obtaining sufficient gas from other sources *or* substitutes for gas as a generating fuel in any relevant time frame; and thus (4) the *net* economic impact of the export authorization may – contrary to the assertions of Applicants – be negative, unless Applicants take care of local requirements first, as they claim they have sufficient gas supplies to do.

Legally, this showing by the interveners shifted the burden of going forward with contrary evidence to Applicants. It was Applicants' job to overcome this showing. Applicants' Answer, however, is essentially non-responsive to the interveners' case. Basically, Applicants repeat their opening position, which is that (1) nothing beyond the two-year extension period can be considered in the Department's search for the public interest, (2) mathematically, there should be "adequate" volumes to meet local needs and LNG exports during that two-year period, even if local needs are currently uncommitted-to and unmet; and (3) the Department basically has no business delving into matters such as local needs, or conditioning the authorization, or deferring action until such matters are resolved. Instead, the Department should step aside and let "market forces" operate.

Chugach respectfully suggests that, the burden having shifted to Applicants, they have failed to meet it. For good measure, however, such specific arguments as Applicants adduce in answer to Chugach's comments are replied to below.

2. Public interest analysis under *Yukon Pacific*

Contrary to Applicants' assertions regarding the *Yukon Pacific*[9] test, (1) for public interest purposes "the relevant time frame" is not limited to a two-year period, nor have Applicants proven that adequate supplies will realistically be *available* to local users (i.e., actually sold to these users) even if the total volume of known reserves is as great as Applicants suggest; (2) there *are* unmet local needs, including Chugach's, during the extension period itself, not just beyond it; and (3) whether the proposed exports will reduce the energy available or increase its cost in the local market cannot be brushed aside, in the case of Cook Inlet, by "assuming that the market is functioning properly." A properly functioning market is competitive. Cook Inlet is not such a market: four producers share ninety percent (90%) of that market, and Applicants dominate it.

3. Time frame for public interest analysis

Applicants again urge the Department to disregard impacts on the public interest other than during the narrow window of the proposed two-year extension period. Given today's circumstances, doing so would reduce this proceeding to an empty exercise. The precedents Applicants cite involved very different circumstances. Most (if not all) local needs were still being met under contracts with years to run, and abundant supplies of gas existed to meet local needs and exports for the indefinite future. Moreover, because of subsequent merger activity, fewer producers now control the Cook Inlet reserves. Today, local customers such as Chugach face the imminent exhaustion of their available gas

[9] *Yukon Pacific*, DOE/FE Order No. 350, 1 FE 70,259 (1989).

supplies, and Chugach has received no new commitments from Applicants, on whom Chugach depends for some sixty-eight percent (68%) of its gas supply.

Moreover, the supply situation in Cook Inlet has become much tighter, as Applicants not only concede but emphasize in their statement about "the market" sorting out which users are "economically viable as the era of stranded natural gas comes to an end in Cook Inlet."[10] As Chugach pointed out in its Comments, Applicants did not assert that the 116 TBtu of gas they seek to use for export could not be conserved for local use *beyond the requested extension period* if not exported. Applicants still have not made that assertion. This issue is important in terms of the public interest. By definition, it cannot be resolved by looking at the extension period as the only relevant time frame.

4. Regional need for the exported natural gas

In their Answer, Applicants claim to have demonstrated that "the export authorization is in the public interest because there is no regional need for the exported natural gas."[11] This is incorrect. As shown in its Comments, Chugach's needs for gas are not currently assured of being met *even during the proposed two-year extension period.* Chugach's currently available gas supplies will run out during that period.

In their Answer, Applicants assert that Chugach's supplies would not run out *quite* so fast if Chugach refrained from making economy energy sales to Alaska utilities who otherwise burn oil to generate power. That assertion is ill-made. First, even without such sales, Chugach's available supplies would *still* run out during the proposed extension period. Current estimates show unmet volumes without economy energy sales of 2.4 BCF in 2010 and 16.8 BCF in 2011 – more than one-sixth of the 116 BCF export

[10] Answer, at 36.
[11] *Id.*, at 15.

use volume. If estimated economy energy sales are added, the unmet gas needs would be larger: 4.9 BCF in 2010 and 17.8 BCF in 2011. That difference, here, is negligible. What matters under either scenario are the large volumes of unmet gas requirements needed to make power for end-use consumers with no available electricity alternatives.

Second, it would be astounding to conclude that gas to make economy energy sales is not in the public interest. Such sales allow cleaner, more efficient, and less expensive natural gas to displace the burning of dirtier, less efficient, more expensive oil. For decades, encouraging precisely this displacement has been a major and consistent policy of the Department. It cannot be in the U.S. public interest for Fairbanks to burn oil so that Tokyo can burn Alaska gas.

Third, there is a regional need for the exported gas *beyond* the extension period – and Applicants have not demonstrated, or tried to demonstrate, that the gas they propose to use for export could not be conserved to meet the regional needs that loom ahead, only a few years from now. Applicants propose export of a locally significant gas volume at a time when local users cannot obtain supply commitments from Applicants. This is what impels Chugach, the State, and others to argue that, in terms of the public interest, the application is at least ill-timed. To assert that "no regional needs" exist is simply wrong.

5. Alleged adequacy of supply and deliverability

Incidents of inadequate gas deliverability in Cook Inlet have already occurred. Tesoro argues that interruptions in deliveries to its refinery provide evidence of insufficient supply. Applicants answer that Tesoro agreed to interruptible service, and that the curtailments were made in accordance with contract terms. To Chugach, that answer misses the point. Obviously suppliers have contract rights to interrupt service to

interruptible customers. The need to do so, however, arises only when some form of shortage occurs. Such shortages have now begun to show up in Cook Inlet gas deliveries. That is something new, and indeed evidence of potentially worrisome problems.

It may be, as Applicants contend, that Tesoro's problem does not necessarily reflect insufficient *supply*. But Tesoro's problem suggests that Cook Inlet supplies, deliverability, and existing uses are in a rather delicate balance – a point the Answer essentially concedes. The system no longer has ample margin for continuous deliveries to all users. In these circumstances, it is reasonable to question whether extending LNG exports may make the situation worse. If so, that would not be in the public interest.

6. Adequacy of regional supply

Applicants argue that no one has presented evidence to refute their consultants' report that "adequate" reserves exist to meet both local demand and exports *during the proposed two-year extension period.* As noted, however: (1) that two-year period is much shorter than the period during which the proposed exports, if authorized, may adversely affect the public interest; (2) Applicants have made no showing that the proposed export gas could not be conserved for later local use; and (3) in any event, Chugach has shown that supplies currently available to Chugach will run out *during* that two-year period. Yet despite two years of negotiations and a claimed "adequacy" of reserves for the proposed extension period – which is not a claim of *abundant* reserves – Applicants still have not committed to sell additional gas to Chugach.

It should be noted that in the matter of the "adequacy" of reserves, Applicants – not interveners – possess all the relevant information. Chugach is not among those who urged trial-type procedures for this docket. But it is fair to point out that there has been

no discovery of any sort, hence no opportunity for interveners' consultants to examine the reserve data and other information available to Applicants' consultants, who also have not been deposed or cross-examined. In these circumstances, which include none of the fact-finding stages of a trial-type hearing, Applicants cannot properly make too much of what their (unexamined) consultants conclude. Who knows what other consultants might conclude, or Applicants' consultants might concede in deposition or on the stand?

7. Deliverability & its significance

As noted above, the Cook Inlet system has begun to experience deliverability shortages sufficient to result in interruption of deliveries to interruptible customers. The significance of this is that the deliverability capability of the system has begun to stretch thin. In light of this, it is entirely appropriate for interveners to question whether continuing LNG exports will result in the system being stretched even more, with resulting increases in the frequency of interruptions in deliveries of natural gas.

Applicants deflect this question in several ways, but do not answer it – or rather, their answers only reinforce interveners' expressed concerns. Applicants answer first that only customers like Tesoro whose contracts allow interruptions have so far suffered them. But no one accused Applicants of breach of contract. The point is that they have already resorted to interruptions in order to meet their existing deliverability obligations. It is reasonable to ask whether extending exports may make the problem worse.

Applicants next answer, curiously, that deliverability is somehow an obligation of local purchasers, not Applicants. This answer is difficult to understand. Under their existing contracts – the only contracts relevant to interruptions of deliveries that have already occurred – Applicants assumed deliverability obligations up to specified limits.

They have no obligation to provide deliverability above those limits. Providing deliverability up to contract limits, however, is a service Applicants are paid for. Given this, what does it mean to assert that the local users are obligated to provide deliverability (other than deliverability in excess of contract limits Applicants have agreed to)?

In any event, under Chugach's contract with Applicant ConocoPhillips, Chugach agreed to pay its allocated share of the cost of new compression facilities to maintain deliverability from the gas field out of which ConocoPhillips serves Chugach. Chugach has paid ConocoPhillips $1,277,485 under this provision, and is slated to pay an additional $3,715,000. Chugach hopes to benefit from this investment in deliverability under a new contract with ConocoPhillips. But unless Chugach gains that new contract, the only benefit will end up being reaped by ConocoPhillips and its co-producers.

Some entity other than the Cook Inlet producers may one day offer storage or other services to allow local users to obtain more deliverability than Applicants provide. That is irrelevant here. What matters is that Applicants have not refuted interveners' point that deliverability shortages have already begun to show up in Cook Inlet.

In these circumstances, would it be in the public interest to authorize more exports – more deliveries to the LNG terminal – while local needs in the proposed extension period and beyond remain uncommitted-to and unmet? Or would that authorization be likely to exacerbate deliverability problems that have already materialized? Ominously, in their Answer, instead of providing reassurance on deliverability, Applicants for the first time (at least to Chugach's knowledge) now seem to disclaim responsibility for deliverability as a continuing component of the service they have always provided. In public interest terms, that would represent – decidedly – a step back.

8. Balancing and reliability benefits of the LNG facility

Chugach does not argue, of course, that the LNG facility provides no public interest benefits, *provided that local requirements for gas continue to be met*. But it is illogical for Applicants to argue that serving the LNG facility benefits local users because gas provided to the LNG facility can be interrupted when other users need it. Unless Applicants can show that gas provided to the LNG facility could not otherwise be produced and delivered when needed for local use, the same gas could still be provided to local users even if the LNG facility did not exist. That such gas can be diverted from the LNG facility when needed by other users shows that such gas can be produced and delivered to other users even without service to the LNG facility.

Applicants are not utilities. On a utility system, the existence of interruptible customers can help reduce rates for all customers by spreading fixed costs over more units of sales without increasing fixed costs to serve the interruptible customers specifically. But natural gas in Cook Inlet is not priced on the basis of cost. It is priced by negotiated contractual agreements. In such circumstances, any lower cost of serving an interruptible customer may benefit the seller of gas, but not other buyers – i.e., not the other local users. The ability to interrupt a particular gas customer is not a public interest benefit when the issue is whether the public interest is benefited, on a net basis, from serving that customer at all.

9. The "rational" reaction of the Cook Inlet gas market

Applicants contend that their pressing ahead with more exports at the same time that local domestic customers cannot get Applicants to sell them more gas is simply the result of "market forces" sorting out which local domestic customers are "economically

viable" and which are not. The Cook Inlet gas market, they say, is reacting "rationally."[12]

Some issues such statements raise have already been dealt with above. These include the absence of *competitive* "market forces" in Cook Inlet, given that two Applicants dominate available uncommitted gas supplies. It is not the market or market forces that might choose added exports over available local sales – it is Applicants.

Implicit in Applicants' position is that the price of LNG in Tokyo (presumably a world price) represents "the market" for gas, and that any local domestic user unwilling to pay that price is resisting "market forces" – and asking the Department to interfere with them. There are at least two things wrong with that implicit proposition.

First, would Applicants even consider selling gas to local users at a price equal to the net revenue Applicants receive from LNG exports? Chugach has asked this question, and – although Chugach does not know what net price Applicants expect to receive for LNG – Chugach has offered Applicants prices Chugach believes might meet this test. If the net revenue from sales to Japan represents the best the market offers, one would expect Applicants to offer to sell locally at an equivalent price. A "rational" market would yield that result. If not, it seems fair to infer that Applicants expect local users to pay a *higher* net price – a result that increased LNG exports may well tend to force.

Second, the difference between *exporting* gas and selling it domestically is fundamental. The statutory premise of this proceeding, the reason the Department must regulate Applicants' exports but not their domestic sales, is that the gas comes from domestic supplies. It is not just Applicants' gas, it is part of the U.S. energy supply.

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[12] Answer, at 36.

Congress has not given producers blanket authority to export domestic supplies of natural gas – exports are authorized only if the Department finds them to be in the public interest.

Congress concluded that the U.S. has a stake – a form of national security interest – in preserving U.S. energy supplies for use by U.S. citizens, if such supplies may be needed to meet domestic requirements. This is very different from concluding that "market forces" – effectively profit maximization – should govern decision-making on natural gas exports. The gas here is from Cook Inlet, not some foreign field. Applicants argue, in effect, that this should make no *substantive* difference – that it simply forces Applicants to endure a *procedural* inconvenience, after which the Department should reach the same result Applicants would reach on their own. But Congress charged the Department with applying a different *substantive* standard: what does the public interest require, not where would "market forces" lead if the public interest were not decisive.

10. Chugach's request for a condition on export authorization

Other interveners asked the Department to impose several conditions on Applicants' export extension. The State, for example, asks not only that Applicants enter into new contracts with local utility customers, but also that those contracts first be approved by the Regulatory Commission of Alaska ("RCA"). Chugach appreciates the State's position, but does not believe it is necessary to go that far for Chugach. Chugach has no intention of entering into contracts that Chugach itself cannot successfully defend before the RCA. If Chugach and Applicants agree on terms for new gas contract commitments – something Chugach is eager to achieve, and that could be achieved overnight – then from Chugach's standpoint, that should suffice here. There is still some risk that the RCA might reject one or both contracts. But Chugach does not expect that

risk to materialize. In any event, Chugach does not ask that Applicants be held hostage to such a risk with respect to any contract Chugach itself is prepared to sign.

Despite disagreements in this proceeding, Applicants have long been Chugach's most important gas suppliers and among Chugach's most valued commercial counterparts. The relationships have been characterized by accommodations to one another's reasonable business interests. So long as Chugach's reasonable future gas needs continue to be met on terms Applicants and Chugach accept, Chugach has no reason of its own to argue that extending LNG exports necessarily harms the public interest. Chugach, after all, speaks for a large portion of that public interest – the majority of electric power consumers in Alaska – but cannot speak for all of it.

Chugach's situation differs from that of others. Unlike the State, Chugach cannot purport to speak for all Alaskans. Unlike Agrium and Tesoro, Chugach is not a private industrial company but a State-certificated utility with a statutory duty to provide electric service to the public throughout a large territory. Without continued supplies of Applicants' gas, Chugach cannot meet the public's electric loads – neither adequate natural gas nor adequate energy from alternative sources can be available in the relevant period. Agrium and Tesoro contribute to the local economy (and the power system) in other ways, but they are not obligated to supply utility service to Alaskans. Chugach is.

In key respects, Chugach is also unlike Enstar, the local gas distribution company that is also a certificated public utility under Alaska law. Unlike Enstar, Chugach is not an investor-owned utility. Enstar passes through the cost of purchased gas to its customers and earns a return on investment for its shareholders. Chugach is a consumer-

owned utility, not only Alaska's largest electric utility but its largest electric cooperative. Chugach has no shareholders, and earns no profits.

The RCA, which rejected Enstar's proposed new gas contract with Applicant Marathon, must consider potential tensions between the interests of Enstar's shareholders and those of its customers. Such tensions do not exist in Chugach's case. Like the RCA, Chugach can evaluate new gas supply arrangements strictly in terms of impacts on the consuming public. This is one reason RCA disapproval of the Enstar-Marathon contract does not suggest any need, in Chugach's case, to condition approval of the LNG export extension on RCA approval of new gas supply commitments by Applicants to Chugach.

In short, although others may argue for more extensive conditions than Chugach, Chugach is not a party to such arguments. Chugach's gas is due to run out during the proposed extension period; Applicants have not yet agreed to continue selling gas to Chugach when currently available supplies are exhausted; Chugach cannot otherwise continue to meet its electric loads; and those electric loads comprise the majority of consumers in Alaska. In these circumstances, for all their other arguments, Applicants cannot fairly contend that the public interest is not currently threatened by the imminent exhaustion of Chugach's gas supplies, which Applicants claim they could easily replenish. Nor, in such circumstances, can Applicants reasonably contend that authorizing the additional export of Cook Inlet gas volumes equivalent to years of Chugach's currently unmet requirements would be a wise or sensible decision by the Department, since that the decision must rest, in the end, on the public interest.

C. Conclusion

For the foregoing reasons, Chugach respectfully requests that the Office of Fossil Energy delay approving the Export Application until Applicants provide adequate assurances, through contractual commitments, that domestic gas supply and deliverability needs will continue to be met for a reasonable future period.

Respectfully submitted,

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Dated: June 26, 2007

CERTIFICATE OF SERVICE

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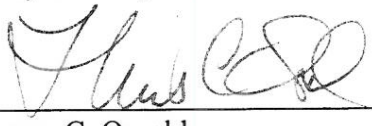
Dated at Washington, D.C. this 26th day of June, 2007.



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