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DOE/OFE/NGR

April 6, 2007

Office of Oil and Gas Global Security and Supply  
Office of Fossil Energy  
U.S. Department of Energy  
Forrestal Building, Room 3E-042, FE-34,  
1000 Independence Avenue, SW.  
Washington, DC 20585

RE: OFE Application for Blanket Authorization to Export LNG from Kenai Alaska

To Whom It May Concern:

My administration supports conditional approval of the application for blanket authorization to export LNG from Kenai Alaska submitted by ConocoPhillips Alaska Natural Gas Corporation and Marathon Oil Company. To this end, I have asked my Attorney General, working in conjunction with the Department of Natural Resources commissioner, to file a motion to intervene over the application. While I support an extension of LNG export, I have concerns that the interests of Alaskans may be jeopardized in granting the blanket authorization unless several critical conditions are met. They are:

- 1) All natural gas supply needs for domestic utilities are under contract;
- 2) Continued applicant investment in projects that target replacement gas reserves;  
and
- 3) Open access to Kenai LNG Plant gas purchases for third-party producers.

The Department of Energy's approval of the application for Blanket Authorization to Export LNG coupled with the adoption of these conditions will ensure a reliable and secure supply of energy to the utility ratepayers and other commercial gas users in Southcentral Alaska for the long run and maximize the benefits of the Cook Inlet natural gas resources for all stakeholders. These conditions achieve 1) sustainable gas supplies for local utility ratepayers, 2) reserves replacement under continued LNG exports, and 3) market access for potential exploration and development investment in the Cook Inlet.

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Ensuring local public utility gas supply requirements are met is essential. But in addition, I also recognize that a diverse, large scale, and competitive oil and gas sector in the Alaska Cook Inlet basin is vital to the economy of Alaska's Southcentral region, where nearly two-thirds of the state's population resides. The Kenai LNG Plant is central to the strength and sustainability of the Cook Inlet basin's energy sector and regional economy. It provides critical deliverability backstopping services to public utilities that rely on Cook Inlet gas during winter peaking supply shortfalls. Further, the scale and stability of natural gas usage at the Kenai plant provides a vehicle to preserve the integrity of the existing resource base and functions as an enormous potential driver for exploration and development investment. This applies to both the Kenai plant owners, ConocoPhillips and Marathon, as well as to other basin producers and explorers that seek the opportunities to monetize investment in a closed basin with limited market opportunities.

The declining trend in the natural gas reserves and rising prices signal the basin's transformation from longstanding abundant natural gas supply to that of a tightened demand-supply gas balance. Naturally, these factors have raised widespread concerns over local energy costs and the sustainability of gas supply for local use under continued liquefied natural gas (LNG) exports beyond 2009. It is a priority of my administration to pursue policies that enhance competition and industry diversity, and seek balance in the mix of energy alternatives and opportunities. Success in achieving this balance should give rise to sustainable gas supply and price stability for all users.

It is in this context that any approval of the LNG authorization must be conditioned. The first condition speaks directly to the necessity of meeting local utility full requirements on a year-round, day-in/day-out basis. Cook Inlet producers must continue to treat the domestic need as first priority, even to the extent of curtailing their affiliated industrial plant operations during periods of peak local utility gas consumption. This requirement must be explicit and unequivocal, just as with the federal authorization to export natural gas.

The second condition is built on the notion that the basin's existing stock of proved reserves should, at minimum, be kept whole as a condition of extended LNG export. The privilege of continued LNG exports must be accompanied with the applicants' commitment to replenish the exported volumes of gas. Maintenance of the balance in production and reserves replacement should keep the Kenai LNG Plant in business for the longterm, which serves the interests of utilities, their ratepayers, and other commercial users.

U.S. Department of Energy

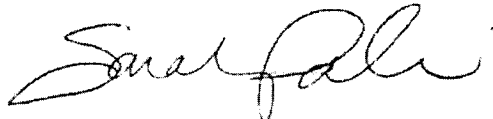
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Lastly, access to the LNG Plant and the markets it serves is essential for the growth and competitiveness of the gas market in the Cook Inlet. The importance of a competitive market applies not only to the sale of produced gas but also to the unimpeded flow of private investment into the basin to finance new exploration and development. The Kenai LNG Plant has direct access to Pacific Rim markets and serves as a potential conduit linking other basin producers, including new entrants, to expanded market opportunities. Open access to the Kenai LNG plant will therefore function as an anchor for these many interrelated interests.

I recognize that a balance must be achieved to preserve gas supply surety for Southcentral utilities and their ratepayers with maintenance of industry investment and pricing outcomes consistent with efficient marketplace competition. It is my sincere hope that under the U.S. Department of Energy's authority, the applicants will respond constructively to the concerns raised by the state and recognize benefits from continued business success in the Cook Inlet basin. Thank you for your consideration in this important matter.

Sincerely,

A handwritten signature in cursive script, appearing to read "Sarah Palin".

Sarah Palin  
Governor

cc: The Honorable Samuel Bodman, US Secretary of Energy  
ConocoPhillips  
Marathon Oil Company

1  
2 UNITED STATES OF AMERICA  
3 DEPARTMENT OF ENERGY  
4 OFFICE OF FOSSIL ENERGY

4 In the Matter of: )  
5 )  
6 CONOCOPHILLIPS ALASKA )  
7 NATURAL GAS CORPORATION ) FE Docket No. 07-02-LNG  
8 and )  
9 MARATHON OIL COMPANY )  
10 )

11  
12 **STATE OF ALASKA'S MOTION TO INTERVENE AND REQUEST FOR**  
13 **ADDITIONAL PROCEDURES**

14 Pursuant to 10 CFR 590.303, 590.310, 590.313 and the Department of  
15 Energy's notice published at 72 Fed. Reg. 10507 – 10509 (March 8, 2007), the State of  
16 Alaska ("State") requests leave to intervene as a party in the above referenced docket  
17 and requests an evidentiary trial be held to adjudicate issues raised in this Docket.

18 Pursuant to 10 CFR 590.303(d), service of all pleadings and notices  
19 should be directed to:

20 Steve DeVries  
21 Daniel Patrick O'Tierney  
22 Assistant Attorneys General  
23 1031 W. 4<sup>th</sup> Ave., Ste. 200  
24 Anchorage, AK 99501  
25 Phone: (907) 269-5100  
26 Fax: (907) 276-3697 or (907) 278-4683  
27 Email: Steve\_DeVries@law.state.ak.us  
28 Daniel\_Patrick\_O'Tierney@law.state.ak.us

DEPARTMENT OF LAW  
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ANCHORAGE, ALASKA 99501  
PHONE: (907) 269-5100

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2 In support of this Motion and Request for Additional Procedures, the State  
3 submits the following:

4  
5 **I. INTERESTS OF THE STATE IN THIS PROCEEDING**

6 The State's interests in this proceeding are compelling and substantial.  
7 The State's interests include:

- 8 1. Protecting and promoting the general welfare of its citizens.<sup>1</sup>
- 9 2. Ensuring the safe, reliable and reasonably priced provisioning of utility  
10 services to citizens in the State who are captive consumers of monopoly  
11 public utility service providers.<sup>2</sup>
- 12 3. Ensuring "the development of its resources by making them available for  
13 maximum use consistent with the public interest."<sup>3</sup>
- 14 4. Promoting economic development within its borders, including making  
15 available economic opportunities to its citizens.<sup>4</sup>
- 16
- 17

18 <sup>1</sup> *E.g. Bill Johnson's Restaurants, Inc. v. N.L.R.B.*, 461 U.S. 731, 742  
19 (1983)(The states have a compelling interest "in protecting the health and well-being of  
20 [their] citizens.");

21 <sup>2</sup> *E.g. New Orleans Public Service, Inc. v. Council of the City of New*  
22 *Orleans*, 491 U.S. 350, 365 (1989)(State regulation of public utilities "is one of the most  
23 important functions traditionally associated with the police powers of the states."); *See*  
24 *also*, Alaska Stat. ("AS") 44.33.020(a)(24).

25 <sup>3</sup> Alaska Const., art. VIII, § 1; AS 44.37.020(a).

26 <sup>4</sup> *See* AS 44.33.020(a)(30) -- (35).

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5. Ensuring the State receives fair and reasonable revenues, in the form of royalty payments and taxes, from the exploitation of its resources.<sup>5</sup>

Each of these compelling State interests will be impacted by any decision made by the Department of Energy (“DOE”) on this Application, which justifies the State’s request to intervene as a party in this Docket. Although the State has significant pecuniary interest in its receipt of tax and royalty revenues which would result from the continuing export of LNG, and although the State has a significant public interest in ensuring continued employment opportunities and municipal government tax revenues from the continuation of LNG exports, the State has a more compelling and overriding interest in ensuring the safety and welfare of its citizens. The need to ensure the security of meeting regional public utility needs for natural gas is of paramount concern to the State.

**A. THE STATE’S INTEREST IN ENSURING ADEQUATE COOK INLET NATURAL GAS SUPPLIES FOR PUBLIC UTILITIES IS PARAMOUNT.**

Natural gas produced from the Cook Inlet is the sole source of gas used by regulated utilities to provide space heat and electrical generation to most Alaskans. Unlike any other area in the contiguous United States, Alaska is geographically isolated from any other pipeline infrastructure. Alaska cannot call on gas from any other state,

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<sup>5</sup> Alaska Const., art. VIII, §§ 11 – 12.

1  
2 from Canada, or from imported LNG. There are no existing facilities that can backstop  
3 Cook Inlet's production. Thus, natural gas produced from proved reserves in the Cook  
4 Inlet is the only existing source of gas currently available to supply local public utilities  
5 for space heat and electrical generation to the bulk of Alaska's population. There is no  
6 other safety net.<sup>6</sup>

7  
8 This is no idle claim. Public utilities that use natural gas produced from  
9 the Cook Inlet supply essential service to over 76% of the State's entire population  
10 base.<sup>7</sup> For example, Enstar Natural Gas Company ("Enstar") is a state regulated public  
11 utility providing natural gas to meet the space heating needs of over 340,000 Alaskans,  
12 which is over 50% of the State's population.<sup>8</sup>

13  
14 In addition to providing for space heating needs, Cook Inlet natural gas is  
15 also the principle energy source used for generation by electrical utilities in Alaska. On  
16 a state wide basis, approximately 80% of electrical generation serving the bulk of  
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20 <sup>6</sup> No projections for permitting and construction of a natural gas pipeline  
21 from the North Slope of Alaska show any plausible scenario where gas could supply  
22 Southcentral Alaska until well beyond the expiration of this proposed export permit.

23 <sup>7</sup> Alaska's population as of 2006 is approximately 670,000. State  
24 population data can be found at <http://labor.state.ak.us/PAGEID=678SUBID=171>.

25 <sup>8</sup> See [www.enstarnaturalgas.com/CompanyInfo/AboutUs.htm](http://www.enstarnaturalgas.com/CompanyInfo/AboutUs.htm).

1  
2 Alaska's population comes from generation powered by Cook Inlet natural gas.<sup>9</sup>  
3 Looking at Southcentral Alaska in particular, where the vast bulk of Alaska's  
4 population resides, the reliance of utilities on Cook Inlet gas as a power source for  
5 electric generation is even more pronounced.

6  
7 Chugach Electric Association, Inc. ("Chugach") is the largest electric  
8 utility in the State. Chugach is engaged in the generation, transmission and distribution  
9 of electricity to directly serve retail customers in the Anchorage and upper Kenai  
10 Peninsula areas. Through an interconnected regional electrical system, Chugach's  
11 power flows throughout Alaska's "Railbelt", a 400-mile-long area stretching from the  
12 coastline of the southern Kenai Peninsula to the interior of the state, including Alaska's  
13 largest cities, Anchorage and Fairbanks. Chugach also supplies much of the power  
14 requirements of three wholesale customers, Matanuska Electric Association, Inc.  
15 ("MEA")<sup>10</sup>, Homer Electric Association, Inc. ("HEA")<sup>11</sup> and the City of Seward  
16 ("Seward"). Collectively, these electric utilities serve approximately 185,000 Alaskan  
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20 <sup>9</sup> According to annual reports filed by public utilities with the Regulatory  
21 Commission of Alaska in 2005, approximately 10% is supplied by hydroelectric  
22 generation, 6% by fuel oil, and about 4 % by coal fired generation.

23 <sup>10</sup> MEA serves communities in areas north of Anchorage, including Wasilla,  
24 Palmer and Eagle River.

25 <sup>11</sup> HEA serves customers on the western Kenai Peninsula including Homer,  
26 Soldotna and Kenai.



1  
2 families. Over 90% of this electric generation is powered by Cook Inlet gas currently  
3 under contract to Chugach.<sup>12</sup>

4 The State has a compelling interest in ensuring that these public utilities  
5 have adequate supplies of natural gas under contract to meet these local needs. Under  
6 State law, these public utility gas supply contracts must be approved by the Regulatory  
7 Commission of Alaska (“RCA”).<sup>13</sup> State commission review is required in order to  
8 ensure captive ratepayers are not required to shoulder the costs of an unreasonably  
9 priced gas supply contract.<sup>14</sup>  
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12 <sup>12</sup> See <http://www.chugachelectric.com/inside/facilities.html>.

13 <sup>13</sup> The RCA is a state regulatory agency charged by law to regulate the rates,  
14 services, facilities, and contracts affecting the rates of public utilities and pipeline  
15 carriers in Alaska. It is required to ensure that all rates and services provided by  
16 monopoly utility and pipeline service providers are fair, just and reasonable. This  
17 review includes of necessity scrutiny of all contracts entered into by public utilities or  
18 pipeline carriers which affect consumer rates. See AS 42.05.141(a), AS 42.05.381(a),  
19 AS 42.05.431(a), AS 42.06.140(a), AS 42.06.370(a), AS 42.06.410(a). See also, *Re*  
20 *Enstar Natural Gas Company*, 8 APUC 319, 323 (1989)(“All gas supply contracts or  
21 other arrangements must be filed with the Commission for its approval, and all such  
22 contracts and arrangements are void unless and until approved by the Commission.”).  
23 [Copies of APUC Reporter decisions are available through Westlaw on the PUR  
24 database. The RCA is the successor regulatory agency to the Alaska Public Utility  
25 Commission (“APUC”).]

26 <sup>14</sup> State Commission review of such supply contracts is not unique to  
Alaska, and is necessary because most gas utilities are largely financially indifferent to  
their purchased gas costs. As is the case in Alaska, these purchased gas costs are  
typically passed directly through to ratepayers on a dollar – for – dollar basis. Thus, the  
RCA – like other state commissions - is required to closely scrutinize such contracts for  
reasonableness. See RCA Order U-06-02(15)(9/28/06) at page 22. [Copies of RCA  
orders are public records available online at <http://www.state.ak.us/rca/orders/>.] See

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2 Both Enstar and Chugach have projected needs for natural gas both during  
3 the years of this proposed LNG export extension, and immediately after, that **are not**  
4 under contract. Enstar has substantial unmet natural gas requirements beginning in  
5 2009.<sup>15</sup> Chugach has substantial unmet requirements for natural gas beginning in  
6 2010.<sup>16</sup> Until such time that all natural gas supply needs of these utilities are under  
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13 *also, United Gas Pipeline Co. v. Mobile Gas Svc. Corp.*, 350 U.S. 332, 344  
14 (1956)(Holding under the Natural Gas Act, 15 U.S.C. § 717 *et seq.*, that the Federal  
15 Power Commission has authority to modify the rates in a contract between a utility and  
16 a gas supplier if the public interest required. This provides, according to the Court, a  
17 “reasonable accommodation between the conflicting interests of contract stability on  
18 one hand, and public regulation on the other.”); *Stepanov v. Homer Electric Ass’n*, 814  
19 P.2d 731, 736 (Alaska 1991)(“[C]ontracts with public utilities are subject to reserve  
20 authority of the state, under the police power, to modify contracts in the interest of  
21 public welfare.”)

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15 Enstar has projected unmet requirements for natural gas totaling 21.8 Bcf  
for the years 2009 – 2011, that are not under contract at the present time. In the years  
immediately following 2011, Enstar’s projected unmet gas needs are: (a) 2012- 10.6  
Bcf; (b) 2013 – 11.1 Bcf; (c) 2014 – 11.7 Bcf; (d) 2015 – 12.2 Bcf; (e) 2016 – 12.7 Bcf;  
(f) 2017 – 13.2 Bcf; (g) 2018 – 15.3 Bcf; (h) 2019 – 19.2 Bcf; and (i) 2020 – 19.8 Bcf.

16 Chugach has projected unmet requirements for natural gas totaling 22.6  
Bcf for the years 2010 – 2011, that are not under contract at the present time. In the  
years immediately following 2011, Chugach’s projected unmet gas needs range between  
13 and 24 Bcf/year from the years 2012 through 2020.

1  
2 contract and approved by the RCA<sup>17</sup>, the State has a compelling interest in intervening  
3 in this proceeding to protect the public welfare of its citizens.

4           **B. THE STRUCTURE OF THE COOK INLET MARKET MUST**  
5           **CONTINUE TO ENCOURAGE DEVELOPMENT AND**  
6           **COMPETITION.**

7           The State's interest in participating as a party in this proceeding is also  
8 grounded on its need to ensure the development of its resources achieves the highest  
9 possible benefit for its citizens. An ability to maximize these benefits requires an  
10 understanding of the Cook Inlet gas market, and how a continuation of LNG exports  
11 must also, in addition to meeting public utility needs, be conditioned upon continued  
12 exploration and development of Cook Inlet resources to ensure continuing development  
13 of Cook Inlet gas resources.

14           As outlined further below, conditions on continued LNG exports, in  
15 addition to first meeting public utility needs, should necessarily include a requirement  
16 for gas reserves replacement, and open access to LNG carriage for third party producers  
17 under terms the DOE deems reasonable. The State has a compelling interest in  
18 participating in this Docket to ensure these conditions are married to any decision to  
19 extend the export license.  
20

21 \_\_\_\_\_  
22           <sup>17</sup> The RCA's standard of review for such supply contracts requires a  
23 showing that utilities will be supplied with a "reliable supply of gas" at a "reasonable  
24 price." RCA Order U-06-02(15)(September 28, 2006) at page 22. The RCA also  
25 generally requires long term supply contracts. *See Re Enstar Natural Gas*, 9 APUC  
552, 556 (1989)("The Commission has previously found a reserve life in excess of 15  
years is in the public interest.")

1  
2 **II. THE STATE CURRENTLY OPPOSES THE APPLICATION**

3  
4 **A. APPLICABLE LEGAL STANDARD**

5 DOE has interpreted Section 3 of the National Gas Act, 15 U.S.C. § 717b,  
6 as "creat[ing] a statutory presumption in favor of an export application . . . unless it  
7 determines the presumption is overcome by evidence in the record of the proceeding  
8 that the proposed export will not be consistent with the public interest."<sup>18</sup> In evaluating  
9 this "public interest" standard, DOE looks to first to domestic need for the natural gas<sup>19</sup>,  
10 as well as to any "other factors as may be appropriate" under the circumstances.<sup>20</sup> The  
11 Application before the DOE fails this test.  
12

13 **B. APPLICANTS DO NOT DEMONSTRATE LOCAL NEED FOR**  
14 **GAS CAN BE MET DURING THE PROPOSED LNG EXPORT**  
15 **TERM.**

16 As noted above, the State's primary concern and responsibility is to  
17 ensure that the welfare of its citizens is protected. At present, the two principal utilities  
18 serving the majority of Alaskans for their space heating needs and for electricity have

19  
20 <sup>18</sup> DOE/FE Opinion and Order 1473, at p. 13.

21 <sup>19</sup> *Id.* at 14, citing Delegation Order No. 0204-111. Given the geographic  
22 isolation of Alaska and Cook Inlet from the lower 48 states, DOE has construed  
23 "domestic" need for natural gas focuses exclusively on the "regional" need for the gas.  
*Id.* at 15, n. 48.

24 <sup>20</sup> 49 Fed. Reg. 6684, 6688 (February 22, 1984); *Panhandle Producers and*  
25 *Royalty Owners Assoc. v. Economic Regulatory Administration*, 822 F.2d 1105, 1107  
(D.C. Cir. 1987).

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2 substantial unmet natural gas requirements both during the years of the proposed LNG  
3 export extension, and immediately thereafter.

4           The Applicants, Marathon Oil Company (“Marathon”) and  
5 ConocoPhillips Alaska Natural Gas Corporation (“CPANGC”) do not address these  
6 outstanding utility needs in their Application. Instead, they claim through their studies  
7 that “there are sufficient supplies of natural gas and other energy sources to meet both  
8 the regional demand of Southcentral Alaska and the foreign export market during the  
9 two-year period of the authorization requested.”<sup>21</sup>

11           This showing is defective for two reasons. First, if existing Cook Inlet  
12 reserves are otherwise contractually committed they may not be available to meet  
13 outstanding local needs during the term of this Application. A showing of proved or  
14 probable reserves adequate to meet regional requirements is meaningful only if those  
15 holding leases to those reserves are willing and able to sell them to meet that local need.  
16 Thus, as explained above, both Enstar and Chugach have substantial outstanding needs  
17 for gas during the requested authorization period. If Cook Inlet lease holders have other  
18 contractual commitments for all existing reserves, the local needs of these utilities  
19 would be unmet during the export term. There is no analysis provided by the  
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23           <sup>21</sup> Application, page 9.

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2 Applicants that shows whether there are adequate *uncommitted* reserves available to  
3 meet the needs of these two utilities during the proposed reauthorization term.

4           Second, even if adequate uncommitted reserves are shown to exist to meet  
5 the natural gas requirements of Chugach and Enstar, those producers holding the leases  
6 must be willing to sell gas to these utilities under terms the RCA will approve. The  
7 RCA has a statutory mandate to protect the interests of captive consumers by ensuring  
8 that rates demanded by utilities are just and reasonable. AS 42.05.141(a),  
9 AS 42.05.381(a). Under this mandate, gas supply contracts between utilities and  
10 suppliers are reviewed by the Commission for reasonableness. AS 42.05.431(a). This  
11 is necessary because the contractual cost of gas used by each utility is passed directly  
12 through to consumers under state regulations. *See* 3 AAC<sup>22</sup> 52.501 *et. seq.* Thus, unless  
13 the producers present contractual opportunities to these utilities for gas supplies to meet  
14 their outstanding requirements, and do so under terms the RCA will approve, there can  
15 be no conclusion local needs are met. Local needs are not met when proved reserves  
16 are not otherwise available.  
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24           <sup>22</sup> Alaska Administrative Code.

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C. THE APPLICANTS ALSO FAIL TO ADDRESS THE DELIVERABILITY REQUIREMENTS OF LOCAL PUBLIC UTILITIES WHICH CURRENTLY REMAIN UNMET DURING THE PROPOSED EXPORT TERM.

The Application is also defective because it fails to address the unique deliverability needs of Enstar, coupled with the lack of adequate storage in the Cook Inlet.<sup>23</sup> Unlike many local distribution companies (“LDC”) in the lower 48, Enstar has no storage facilities of its own. Instead, it relies on its existing supplier contracts, where it has priority of call on gas, to meet its substantial seasonal deliverability requirements.

Priority of gas supply during winter in Southcentral Alaska, where storage is limited, presents unique challenges to an LDC like Enstar. The geographic isolation of Alaska and the Cook Inlet from any other sources of gas to meet winter peak demand is unlike that faced by any other region in the country.<sup>24</sup> Enstar’s winter peaking needs

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<sup>23</sup> “Currently, the Cook Inlet gas delivery system cannot supply the market when demand spikes in the coldest days of winter. . . . Gas for use in the Cook Inlet region along the pipeline distribution system is in short supply during the winter months of peak demand. When demand exceeds supply, gas delivery contracts specify that industrial use be curtailed, thus requiring plant operators to shut down facilities and output.” Alaska Dept. of Natural Resources Report, *Kenai Sterling Pool 6 Storage Lease, ADL 390821, Final Finding of the Director (4/7/06)* at p. 16, a copy of which is available at: [http://www.dog.dnr.state.ak.us/oil/products/publications/gas\\_storage/kenai/kenai\\_gas\\_storage\\_bif.pdf](http://www.dog.dnr.state.ak.us/oil/products/publications/gas_storage/kenai/kenai_gas_storage_bif.pdf). Evident from this report, there is inadequate gas storage in Southcentral Alaska to meet winter peaking gas needs.

<sup>24</sup> See DOE/FE Opinion and Order 1473, at p. 15, n. 48.

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2 must be met through existing Cook Inlet gas infrastructure. There is no other safety net  
3 available.

4           The impact of meeting this peak demand is largely ignored by the  
5 Applicants.<sup>25</sup> Also ignored is any recognition that Enstar's lack of adequate gas supply  
6 under contract during the term of this proposed export extension places it and the  
7 340,000 Alaskans it serves in the precarious place of having no place to turn for gas  
8 when it is needed most because it does not have full gas supplies under contract during  
9 the proposed extension term. Thus, unless Enstar and Chugach have RCA-approved  
10 contracts in place expressly granting them priority rights to gas during winter peaking  
11 periods, there can be no conclusion reached that local needs are being met during the  
12 proposed export term.  
13

14  
15 **D. THE APPLICATION IS DEFECTIVE BECAUSE IT DOES NOT**  
16 **ADDRESS RESERVES REPLACEMENT AND OPEN ACCESS TO LNG**  
17 **CARRIAGE.**

18           In addition to ensuring that local public utility need for gas are met, which is  
19 addressed above, DOE guidelines require the consideration of "other factors" in addition to  
20 suggesting that any proposed export application act in a manner that will spur competition and  
21 development of the resource.<sup>26</sup> Without conditioning any decision to grant this export

22 <sup>25</sup> The Applicants briefly discuss this issue at page 21.

23 <sup>26</sup> See 49 Fed. Reg. 6684, 66878 – 88 (February 22, 1984). While these  
24 guidelines expressly apply to gas imports, DOE has found these principles "applicable  
25 to exports as well." DOE/FE Order No. 1473, at page 14.



1  
2 application on a demonstration that reserves replacement and open access issues are addressed,  
3 DOE would be working at cross purposes with these goals.<sup>27</sup>

4 In order for DOE to address these issues, it is important to first recognize  
5 the structure of the Cook Inlet market. This gas market is not truly competitive. The  
6 three largest sellers control 95% of total gas sold.<sup>28</sup> Cook Inlet gas prices have doubled  
7 over the past three years. The Lerner Index<sup>29</sup> approximation of basin price and cost  
8 indicates a degree of exerted monopoly power is present at current price levels.  
9

10 The Cook Inlet basin is an established oil province, but gas, discovered in  
11 a few large fields in connection with oil exploration, has only recently become a target  
12 of exploration. From the standpoint of gas, the basin is under explored and  
13

14  
15 <sup>27</sup> Although DOE's guidelines suggest "regulatory constraints and  
16 conditions" should be minimized, 49 Fed. Reg. at 6685, imposition of the requested  
17 conditions is necessary to meet "[t]he policy cornerstone of the public interest standard  
18 . . . competition." 49 Fed. Reg. at 6687.

19 <sup>28</sup> These producers are Marathon, ConocoPhillips, and Chevron (Unocal).

20 <sup>29</sup> The Lerner Index is a well-know index of monopoly power that is  
21 calculated by dividing the price-marginal cost difference by the price with the result  
22 falling between zero (pure competition) and one (pure monopoly). Marginal cost is  
23 estimated at \$2.50 per Mcf based on finding and development cost data published in  
24 DOE's June 2006 Final Report *Alaska Natural Gas Needs and Final Assessment* (pp.  
25 104-5) and cost and production data furnished by Wood MacKenzie's *North American*  
26 *(Frontier) Upstream Service for Alaska Cook Inlet* (2006). A Lerner Index value of  
27 0.53 results from the price of \$5.31 per Mcf, based on Alaska Department of Revenue,  
28 Cook Inlet Gas Prevailing Value (see footnote 34, below). See also Abba Lerner, "The  
29 Concept of Monopoly and the Measurement of Monopoly Power," Review of Economic  
30 Studies, (June 1934).

1  
2 underdeveloped compared with other onshore gas supply regions in North America.<sup>30</sup>

3 The current reserves-to-production ratio is approximately 8, based on current Alaska  
4 Department of Natural Resources ("ADNR") estimates.<sup>31</sup>

5 Gas storage investments are relatively new in the basin. There are about  
6 9 Bcf of annual working gas storage at three facilities having about 100 mmcf of peak  
7 deliverability installed since 2001.<sup>32</sup> Given the limited availability of Cook Inlet  
8 storage, added gas supplies have been necessary to meet peak winter demand through  
9 curtailment of industrial usage. During the winter of 2006-07, the LNG plant and  
10 Tesoro refinery both experienced periods of curtailment during cold weather to meet  
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14 <sup>30</sup> This history can be tracked in DOE's June 2004 Final Report, *South-Central Alaska Natural Gas Study*.

15 <sup>31</sup> Alaska Division of Oil and Gas, *Alaska Oil and Gas Report*, at pages 3-3  
16 and 3-27, (May 2006). A copy of this report can be found at:  
17 [http://www.dog.dnr.state.ak.us/oil/products/publications/annual/2006\\_annual\\_report/Ak\\_oilgasdivisionrpt\\_2006.pdf](http://www.dog.dnr.state.ak.us/oil/products/publications/annual/2006_annual_report/Ak_oilgasdivisionrpt_2006.pdf).

18 <sup>32</sup> *Natural Gas Storage in Alaska*. Presentation to the South Central Alaska  
19 Energy Forum, Brian E. Havelock, ADNR, DO&G, September 20, 2006. The 100  
20 mmcf is based on gross monthly delivered volume divided by production days. A  
21 peak delivery of 125 mmcf for the Cook Inlet Basin is currently achievable, but can  
22 only be sustained for short durations. Storage location is a critical factor. Currently,  
23 there are only 0.7 Bcf working gas having 21 mmcf peak deliverability on the west  
24 side of Cook Inlet. Lack of storage on the west side coupled with field delivery  
25 reductions at Beluga Field could result in line pressure drop and loss of service to  
26 utilities and residents north of Anchorage during very cold and windy days. See,  
[http://www.dog.dnr.state.ak.us/oil/products/publications/gas\\_storage/gas\\_storage.htm](http://www.dog.dnr.state.ak.us/oil/products/publications/gas_storage/gas_storage.htm).

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2 domestic space heating demand spikes. The Agrium fertilizer plant has also  
3 experienced seasonal shutdowns for the same reason.

4 It is because of these circumstances that the State's request for the  
5 imposition of conditions on any export license extension should be granted. The  
6 conditions requested below, in addition to first meeting public utility requirements, are  
7 essential for continued investment and long-term sustainability of the Cook Inlet  
8 energy-producing sector.  
9

10 **1. DOE SHOULD REQUIRE CONTINUED APPLICANT**  
11 **INVESTMENT IN PROJECTS THAT TARGET REPLACEMENT**  
12 **GAS RESERVES.**

13 As noted above, current ADNR estimates indicate that roughly eight years  
14 of proved reserves remain (R/P ratio = 8).<sup>33</sup> The Alaska Department of Revenue's  
15 published Prevailing Value for Cook Inlet gas measures the weighted average price of  
16 significant sales of gas to publicly-regulated utilities and indicates steady escalation in  
17 price over the past several years to a current level of \$5.31 per Mcf.<sup>34</sup> This figure falls

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21 <sup>33</sup> Alaska Division of Oil and Gas, *Alaska Oil and Gas Report*, at pages 3-3  
22 and 3-27, (May 2006). A copy of this report can be found at:  
23 [http://www.dog.dnr.state.ak.us/oil/products/publications/annual/2006\\_annual\\_report/Ak\\_oilgasdivisionrpt\\_2006.pdf](http://www.dog.dnr.state.ak.us/oil/products/publications/annual/2006_annual_report/Ak_oilgasdivisionrpt_2006.pdf).

24 <sup>34</sup> Alaska Department of Revenue, "Cook Inlet Gas Prevailing Value,"  
25 <http://www.tax.state.ak.us/programs/oil/prices/prevailingvalue/cookinlet.asp>.

1  
2 well short of Enstar's current cost of gas (\$7.03 per Mcf) in 2007.<sup>35</sup> These supply and  
3 price conditions suggest that the Cook Inlet basin has achieved approximate alignment  
4 with other North American, onshore gas supply basins. As such, the Cook Inlet basin  
5 represents an environment for investment as attractive as any other, provided  
6 opportunities to monetize such investments are available at the time new reserves are  
7 developed, as would be the case under open access, described below.  
8

9           The current application for export renewal is for a two-year extension.  
10 The need to require replacement of reserves as a condition is built on the notion that the  
11 basin's existing stock of proved reserves should, at minimum, be kept whole as a  
12 condition of extended LNG export. By so doing (assuming no significant changes in  
13 market and/or supply conditions occur), the Applicants will have the incentive to return  
14 again to request additional future export license renewals. Maintenance of this balance  
15 in production and reserves replacement should act to keep the Cook Inlet industrial  
16 users in business for the long haul, as well as serve the long term requirements of public  
17 utilities and their consumers.<sup>36</sup> DOE should impose this condition on any decision to  
18 allow continued LNG exports.  
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22           <sup>35</sup> A copy of Enstar's tariff setting forth this gas cost can be seen at  
23 [http://www.enstarnaturalgas.com/CompanyInfo/rate\\_info.htm](http://www.enstarnaturalgas.com/CompanyInfo/rate_info.htm).

24           <sup>36</sup> See footnotes 15 & 16 above, describing the existing long term unmet  
25 natural gas requirements of both Enstar and Chugach, beginning in 2009.

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2           **2.   DOE SHOULD REQUIRE OPEN ACCESS FOR THIRD-**  
3           **PARTY PRODUCERS UNDER TERMS DOE DEEMS**  
4           **REASONABLE.**

5           The Cook Inlet market structure is highly concentrated with significant  
6 barriers to entry and exit. As such, it does not comport to any realistic degree with the  
7 notion of a perfectly competitive model. New entrants as well as existing producers  
8 face the troubling dilemma of how to monetize investment in a timely manner; i.e.,  
9 where to place gas supplies if discovered and developed. This investment barrier stems  
10 from the relatively small number and scale of public utility contracts, their long-term  
11 nature, and the resulting potential for “lockout” from this public utility market.

12           LNG export via the Kenai plant carries with it the opportunity for  
13 increased investment and competition in supply by creating an alternative outlet for new  
14 supply. Thus, after first satisfying local public utility needs, requiring third-party access  
15 to LNG export facilities under terms DOE deems reasonable would allow the Cook Inlet  
16 market to work more effectively. Other than the Agrium fertilizer plant’s potential  
17 availability as a market, opening third-party access to LNG export is the only current  
18 credible means of ensuring opportunities for new entrants to place gas which in turn  
19 should act to broaden the supply base and provide stability to the overall market. DOE  
20 should impose this condition on any decision to allow continued LNG exports.  
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2 **III. ADDITIONAL PROCEDURES UNDER 10 CFR 590.313 SHOULD BE**  
3 **ORDERED.**

4 The State requests a trial-type hearing be scheduled, including the  
5 adoption of discovery procedures consistent with 10 CFR 590.305 – 590.308, to be  
6 conducted sufficiently far in advance of any scheduled hearing so as to be consistent  
7 with due process. In the alternative, and only to the extent that this request for a trial-  
8 type hearing is denied, the State requests an opportunity to submit additional written  
9 reply comments in response to any answer filed by the Applicants.

10 In support of this request for additional procedures, the State identifies the  
11 following factual issues to be addressed, as well as the following issues of law and  
12 policy that should be addressed:  
13

- 14 1. Would it be “consistent with the public interest” under 15 U.S.C. § 717b,  
15 to extend the export license when public utilities using Cook Inlet gas do  
16 not have sufficient gas under RCA-approved contracts adequate to meet  
17 local needs during the export term, and immediately thereafter?
- 18 2. Are there sufficient proved reserves of *uncommitted* Cook Inlet gas  
19 available for local use, including meeting the unmet contract requirements  
20 of Enstar and Chugach for Cook Inlet gas during the export term, and  
21 immediately thereafter?
- 22 3. In addressing local need for gas, should the DOE consider that local  
23 public utilities that depend on Cook Inlet gas to meet space heating and  
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electric generation needs of the bulk of Alaska's population also have substantial unmet natural gas requirements in the years immediately following the proposed export term?<sup>37</sup>

4. In addressing DOE's goal of promoting competition in the marketplace, should DOE impose requirements for gas reserves replacement, and open access for LNG carriage for third party producers under reasonable commercial terms on any decision to allow continued LNG export?

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<sup>37</sup> "It is possible a supply-to-demand ratio so dire as to threaten vital domestic uses might compel DOE to conclude an export of gas is not in the public interest." DOE/FE Opinion and Order No. 1473 at p. 45.


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**IV. CONCLUSION**

For the reasons stated above, the State currently opposes the Application at issue in this docket. The State respectfully requests DOE issue an order allowing the State to intervene as a party in this Docket, and to schedule further proceedings as requested.

DATED this 6<sup>th</sup> day of April, 2007 at Anchorage, Alaska.

TALIS J. COLBERG  
ATTORNEY GENERAL

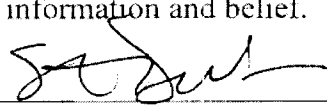
By:   
Steve DeVries  
Assistant Attorney General  
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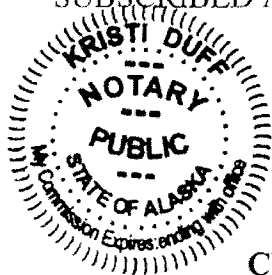



1  
2 **VERIFICATION**

3 Steve DeVries, being first duly sworn, on oath states that he is an Assistant  
4 Attorney General for the State of Alaska and is authorized to make this verification; that  
5 he has prepared the forgoing document and that all allegations of fact stated therein are  
6 true and correct to the best of his knowledge, information and belief.

7   
8 \_\_\_\_\_  
Steve DeVries

9 SUBSCRIBED AND SWORN to before me this 6th day of April, 2007.




14   
15 \_\_\_\_\_  
16 Notary Public in and for Alaska  
17 My commission expires: ending with 04/08

18 **CERTIFICATE OF REPRESENTATIVE**

19 Pursuant to 10 CFR 590.103(b), I hereby certify that I am a duly  
20 authorized representative of the STATE OF ALASKA and that I am authorized to sign  
21 and file with the Department of Energy, Office of Fossil Energy, the foregoing  
22 document.

23 DATED this 6<sup>th</sup> day of April, 2007 at Anchorage, Alaska.

24 TALIS J. COLBERG  
25 ATTORNEY GENERAL

26 By:   
\_\_\_\_\_  
Steve DeVries  
Assistant Attorney General  
Alaska Bar No. 8611105

1  
2  
3 **CERTIFICATE OF SERVICE**

4 I hereby certify that on this 6<sup>th</sup> day of April, 2007, a true and correct  
5 copy of the STATE OF ALASKA'S MOTION TO INTERVENE AND REQUEST  
6 FOR ADDITIONAL PROCEDURES, MOTION TO ALLOW ORIGINAL  
7 DOCUMENTS TO BE FILED BEYOND NOTICE PERIOD and this CERTIFICATE  
8 OF SERVICE were served by regular mail and by email, on the following:

9  
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State of Alaska's Motion to Intervene  
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Page 24 of 25

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22 DATED this 6<sup>th</sup> day of April, 2007 at Anchorage, Alaska.

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25 TALIS J. COLBERG  
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Steve DeVries  
Assistant Attorney General  
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State of Alaska's Motion to Intervene  
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1  
2 UNITED STATES OF AMERICA  
3 DEPARTMENT OF ENERGY  
4 OFFICE OF FOSSIL ENERGY

5 In the Matter of: )  
6 )  
7 CONOCOPHILLIPS ALASKA )  
8 NATURAL GAS CORPORATION ) FE Docket No. 07-02-LNG  
9 and )  
10 MARATHON OIL COMPANY )  
11 )

12 **MOTION TO ALLOW ORIGINAL DOCUMENTS TO BE FILED BEYOND**  
13 **NOTICE PERIOD**

14 The State of Alaska ("State") respectfully requests the Department of  
15 Energy permit the State to submit its original filings beyond the current deadline  
16 imposed under the DOE's notice. All other required copies of the State's submission  
17 are being filed timely, and service on all Applicants is being made this day. The  
18 original documents will follow for filing with DOE at the soonest time possible.

19 DATED this 6<sup>th</sup> day of April, 2007 at Anchorage, Alaska.

20 TALIS J. COLBERG  
21 ATTORNEY GENERAL

22 By: 

23 Steve DeVries  
24 Assistant Attorney General  
25 Alaska Bar No. 8611105  
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