HellerEhrman LLP

May 8, 2008

Eric Redman
eric.redman@hellerehrman.com
Direct (206) 447-0900
Main (206) 447-0900
Fax (206) 447-0849

VIA HAND DELIVERY

Mr. Robert Corbin
Office of Fuels Programs, Fossil Energy
U.S. Department of Energy
Docket Room 3F-056, FE-50
Forrestal Building
Room 3E-042, FE-34
1000 Independence Ave, SW
Washington, DC 20585

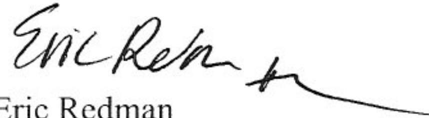
Re: Comments of Chugach Electric Association, Inc. on ENSTAR Natural Gas Company's Letter of April 10, 2008 to the Office of Fossil Energy. FE Docket No. 07-02-LNG

Dear Mr. Corbin:

Enclosed please find an original and 15 copies of Chugach Electric Association, Inc.'s Comments Regarding ENSTAR Natural Gas Company's letter of April 10, 2008 to the Office of Fossil Energy. These comments are in response to the OFE's Order Inviting Comments on Off-The-Record Communication in FE Docket No. 07-02-LNG. Three additional copies are enclosed to be file-stamped and returned to the messenger.

Thank you for your attention to this matter.

Very truly yours,



Eric Redman

Enclosures

cc: Service List
via first class mail and e-mail

UNITED STATES OF AMERICA
DEPARTMENT OF ENERGY
OFFICE OF FOSSIL ENERGY

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

Comments of Chugach Electric Association, Inc.
on ENSTAR Natural Gas Company's Letter of April 10, 2008
to the Office of Fossil Energy

Pursuant to 10 C.F.R. § 590.103 and the Office of Fossil Energy's ("OFE") Order Inviting Comments, Chugach Electric Association, Inc. ("Chugach") submits these Comments in the above-captioned proceeding. The enclosed comments are supported by a Verification attached hereto.

A. Overview and Summary

Chugach, intervener herein, appreciates this opportunity to comment on ENSTAR Natural Gas Company's ("ENSTAR's") letter of April 10, 2008 to the OFE, the decision maker in this case. Chugach learned of this prohibited ex parte communication for the first time on May 1, 2008 -- and even then, only thanks to the OFE's Order inviting these comments. In the meantime, three weeks had elapsed. Those lost weeks are important, for reasons explained herein.

As shown below, ENSTAR's misconduct is not inconsequential – it is highly significant. As also shown below, it seems unlikely that ENSTAR's error was innocent. An innocent error by ENSTAR, although committed on behalf of the Applicants, would not warrant sanctions against the Applicants unless the Applicants were either aware of it or complicit in it. For the reasons set forth below, Chugach cannot believe this error was innocent, or that ENSTAR committed it without the knowledge (if not the agreement) of the Applicants. The Applicants certainly did nothing in response to ENSTAR's letter to preserve the integrity of their own docket.

The applicable Department of Energy regulations provide a ready means for determining the truth of the Applicants' involvement and knowledge in this matter. The Department may issue an Order "requir[ing] the party [responsible for the ex parte communication] to show cause why the party's claim or interest in the proceeding should not be dismissed, denied, disregarded, or otherwise adversely affected on account of the violation." 10 C.F.R. § 590.108(a)(6). Unless the Applicants deny their involvement in and knowledge of the ENSTAR letter, such an Order should issue, for the reasons set forth herein. If the Applicants do deny such involvement or knowledge, then that denial should be tested through discovery, which should be allowed for this limited purpose.

In its appropriate broader context, as shown below, the impropriety of the ENSTAR letter is damning. Although in a narrow sense the impropriety is obvious – because the communication is ex parte – the letter is part of a larger pattern of misconduct surrounding this case, which should be made clear to OFE. Hence the impropriety is addressed first in these Comments, in Part B below.

Ironically, given its purpose, the substance of the ENSTAR letter is also thoroughly damning to the Applicants' case on the merits. The letter completely reverses the applicable standard for decision by urging that OFE expedite approval of exports of Cook Inlet gas because, under new gas supply contracts with ENSTAR, *the Applicants have now taken the position that unless the exports are approved they will not commit themselves to meet ENSTAR's local domestic needs*. (The relevant contract provisions are attached to these Comments as Exhibit A.) This is the polar opposite of how the case began, with the Applicants claiming ample supplies of Cook Inlet gas to meet all local domestic needs, plus an additional surplus available for export. The manner in which ENSTAR's letter unintentionally but neatly scuttles the Applicant's case on the merits is discussed in Part C below.

B. The ENSTAR Letter and the Larger Pattern of Misconduct

It would not be credible to suppose that ENSTAR accidentally failed to serve its letter on the parties to this proceeding – and accidentally failed to file a motion for leave to submit the letter in the form of supplemental comments. The letter on its face indicates that it was delivered not only to the OFE but also to Alaska's two United States Senators, Alaska's Member of the U.S. House of Representatives, the Governor of the State of Alaska, the Alaska Department of Natural Resources, and the Alaska Legislature, which has sixty (60) members. ENSTAR is an intervener here, is represented by two law firms, has properly sought leave to submit comments in the past (for example, on January 23, 2008), and knows this is a formal proceeding conducted on the record before a Federal agency. It is not believable that ENSTAR would serve copies of its letter on the sixty-five (65) highest ranking Alaska public officials and forget to serve copies on the handful of parties in this docket. Nor is ENSTAR's conduct in any way comparable to sending elected representatives courtesy copies of formal filings that are also part of the public record. The ENSTAR letter was not filed publicly. It was meant to be seen by some eyes and – for as long as possible – not others.

There is a pattern here. In January 2008, after the Applicants and the State of Alaska entered into a Settlement Agreement, the Alaska Congressional Delegation at the request of unidentified third parties sent its own prohibited ex parte communication to the Department of Energy regarding this docket. Copies of the letter were not sent to parties in this docket, and no motion to accept it was filed. The letter was addressed to the U.S. Secretary of Energy. The letter was intercepted by ethically alert officials in the Secretary's office and returned to the Congressional senders, with an explanation of its impropriety and notification that the Secretary had not provided it to the OFE. Chugach did not learn of this letter, either, until long after it was sent. (Representatives of the Delegation later explained to Chugach that, before sending the letter, they

had been assured by those urging them to send it that the letter would be non-controversial, and that Chugach and the Applicants were "close to a deal" or "in basic agreement" on the terms of new gas contracts – which, if true, would have signified that local domestic utility needs for Cook Inlet gas were on the verge of being met. Chugach does not fault the Delegation, which was misled by those who wanted the letter sent.)

To Chugach, the pattern seems clear. Some parties to this proceeding have grown impatient, and are trying to bring outside political pressure on OFE to act. The probable purpose of ENSTAR's letter was not to influence OFE directly. For that, supplemental comments and a motion for leave to file them would have been both customary and sufficient. Instead, the evident intent of ENSTAR's letter was for OFE to take a good look at the list of public officials ENSTAR copied on the letter – and for those public officials to take a good look at OFE.

The ENSTAR letter is not harmless. It taints this entire proceeding. It also taints the Applicants – unless they were somehow unaware of it until OFE issued an Order regarding it on May 1. That seems highly unlikely. Consider the following sequence:

1. On January 23, ENSTAR through its outside law firms properly filed a motion with the OFE, seeking leave to file additional comments. Those comments indicated that ENSTAR had reached agreement in principle with the Applicants on new gas supply contracts, but did not reveal the terms. ENSTAR asked to withdraw its opposition to the Application, which it asked to be approved promptly. ENSTAR did not reveal that the Applicants' obligations to supply gas under the new contracts would be partially but expressly conditioned on OFE approving the Application.

2. On April 10, ENSTAR sent the offending letter to the OFE and the Alaska governmental officials. In the letter, ENSTAR revealed (to those who received it) that

ENSTAR's new gas supply contracts with the Applicants required, in order to be fully effective, that OFE approve the Application.

3. Only on the next day, April 11, did the new ENSTAR-Marathon gas supply contract become fully and finally executed.

4. Again, on April 11 – the day after the ENSTAR letter was sent – the new ENSTAR-ConocoPhillips gas supply contract was also executed.

5. Also on that day, April 11, the two new ENSTAR gas supply contracts were then finally filed for approval with the Regulatory Commission of Alaska ("RCA"). As a result of that filing, the contracts themselves were first made public several working days later.

The most logical inference to draw from this sequence is that ENSTAR and the Applicants agreed the letter would be sent – perhaps they even agreed on its text. It seems likely – perhaps probable – that ENSTAR sending the letter represented some part of the overall consideration for the underlying transactions. What seems least logical, and least likely, is that on April 10 and 11, when ENSTAR was engaged in this intense cluster of contractual activity with both the Applicants, ENSTAR somehow failed to inform the Applicants of the letter or share it with them, either in advance or at the time it was sent. After all, the letter dealt exclusively with the Applicants' new contracts with ENSTAR, the Application itself, and this proceeding initiated by the Applicants. If the Applicants saw this letter, or knew about it, then they also knew it was improper, because it is improper on its face – and they took no apparent steps to protect the integrity of their own case.

These inferences of Applicant involvement in, or knowledge of, the ENSTAR letter seem fairly drawn. The matter can be easily and promptly resolved. If the Applicants admit their involvement or knowledge, then a show cause order – contemplating possible sanctions, up to and including dismissal of the Application – is appropriate. If the Applicants deny their involvement or

knowledge, then that denial should be tested through discovery limited to that purpose. If the denial is proven false, then sanctions should follow.

Chugach respectfully submits that there is no innocent mistake behind the ENSTAR letter. The letter represents a crude effort at manipulation. As shown below, this has become a pattern in this case, not only procedurally but also on the merits.

C. Substantively, the ENSTAR Letter Exposes the Applicant's Fatal Flaw

The ostensible occasion for ENSTAR's letter was that ENSTAR and the Applicants have now entered into proposed new gas contracts under which the obligations of both Applicants to supply gas to ENSTAR are expressly contingent, in part, on the OFE granting the Application. *See* Exhibit A attached hereto (setting forth the relevant contract provisions). The Applicants have thus put ENSTAR and its customers in the position of needing gas exports to be approved (i.e., of allowing more Cook Inlet gas to be sold to Japan) before ENSTAR and its customers can be assured of receiving adequate Cook Inlet gas supplies as local domestic users.

This is precisely the opposite of what the Applicants must show and OFE would be required to find in order to grant the Application, namely that local domestic needs will be met no matter what, whether the Application is granted or not. The Application supposedly involves gas that is entirely excess to local domestic needs – gas the Applicants initially assured the OFE and the parties, on the record, is abundantly available. Now the Applicants are saying – including in contracts – that OFE must first approve the exports, then they will see about meeting local domestic needs. Deny the exports, and local domestic sales will fall short.

The contract provisions attached as Exhibit A should be treated as record evidence of what the ENSTAR letter first made explicit: The Applicants either will not or cannot commit themselves to meeting even ENSTAR's full share of local domestic needs first, much less other local domestic needs.

The new gas contracts represent, in effect, a reward to ENSTAR, but a reward contingent on OFE's approval of the Application. The contingent reward is granted to ENSTAR by the Applicants in return for ENSTAR's support of the Application – a price to be paid, willingly or not, by a large local distribution company on the verge of running out of gas. (Unless the new contracts are approved by the Regulatory Commission of Alaska – an uncertain prospect – and the OFE export approval contingency is removed, ENSTAR faces a gas supply shortfall as of January 1, 2009.) Sending the ENSTAR letter seems likely to have been part of the overall deal between ENSTAR and the Applicants, something that negotiations between them produced, not a unilateral random mistake by ENSTAR.

Confidentiality agreements prevent Chugach from describing its own so-far unsuccessful gas contract negotiations with the Applicants. But the ENSTAR letter and the proposed new ENSTAR contracts make clear what happened in the course of ENSTAR's negotiations with the Applicants: There could be no deal without ENSTAR's support for the exports, *and* the deal itself expressly depends on OFE approving the Application (hence the reason for the ENSTAR letter – as the letter itself makes clear).

A third major purchaser of Cook Inlet gas, Agrium, is also a party here. But after expressing initially its opposition to the Application, Agrium cryptically announced that it would henceforth remain silent in this docket. Chugach has little doubt that Agrium, too, somehow got the message that its chances of having its local domestic needs met – if at all – were contingent on Agrium holding its tongue about exports.

Not only gas purchasers have been manipulated in this manner. The State of Alaska initially expressed strong concerns about the Application. Among other matters, the State insisted that the Applicants first commit to a Cook Inlet drilling program, a key purpose of which would be to help assure that local domestic needs would continue to be met despite additional exports (a conclusion

OFE must reach in order to approve the Application). Then, in January 2008, the State announced it had reached its Settlement Agreement with the Applicants, in which the Applicants committed themselves to undertake at least a portion of the State's desired Cook Inlet drilling program – *but only if OFE approves the Application.* Faced with this presumably insisted-upon contingency, the State – like ENSTAR – then changed its position in this proceeding and asked OFE to approve the Application.

These contractual conditions and contingencies with the State and ENSTAR have the effect of standing this case on its head. No one who represents a local domestic user of Cook Inlet gas or whose duties include looking out for the interests of such users can get an agreement to have its gas supply needs or gas supply concerns met by the Applicants except in return for supporting the Application – and with the contingency that if the Application is not granted, then the new contractual agreements (e.g., the Settlement Agreement and ENSTAR's proposed new gas contracts) will turn into pumpkins, either completely or partially.

The ENSTAR letter, the new ENSTAR contracts to which it refers, and the earlier Settlement Agreement show more than a pattern of substantive, not just procedural, manipulation. They also show, in themselves, that the Application does not meet the relevant standard for approval. The Applicants started out to demonstrate, as they must, that Cook Inlet gas supplies already are and will remain ample to meet local domestic needs. Otherwise the Application could not be in the public interest. The Applicants have ended up in the opposite position, basically threatening that local domestic needs cannot and will not be met unless the Application is first granted. The local users and future supplies of Cook Inlet gas are all being held hostage to exports.[1]

---

[1] The ENSTAR letter repeats the assertion that operation of the LNG facility helps local utilities because deliveries to the LNG facility are capable of being interrupted. Once delivered to the LNG facility, however, gas cannot be redirected to the utilities, since the LNG facility lacks re-gasification capability. The Applicants also treat deliveries to the LNG facility, as well as any interruptions, as proprietary information. Since ENSTAR operates one pipeline to

(Footnote continued)

The Applicants seem to have lost sight of the standard of decision in this case. The ENSTAR letter confirms what Chugach has contended throughout, namely that the Applicants have put exports first and local domestic users second. Since the standard of decision requires the reverse, this makes outright approval of the Application legally impossible.

Similarly, the Applicants seem to have lost sight of the fact that they are producing Cook Inlet gas under State leases. The leases (and the public interest) obligate them to drill, to produce, and to market the resulting gas -- whether or not any gas can be exported. The Applicants cannot properly condition drilling activity on approval of exports, any more than they can properly condition local gas sales on approval of exports. Yet they are trying to do both, apparently to induce conduct in this proceeding by the State, by ENSTAR, and by others that will pressure the OFE to grant the Application even though the standard for granting the Application is not met. Pressured itself, ENSTAR stepped over the line this time. Others may have done so as well. Once prohibited conduct comes to light – as it has here, twice in just a few months – it is difficult to be confident that all such conduct has been caught.

---

the LNG facility, ENSTAR may have knowledge of interruptions if they occur. There is no way for other Cook Inlet utilities to verify that deliveries to the LNG facility are, in fact, interrupted in order to maintain service to the utilities.

D. <u>Conclusion</u>

The ENSTAR letter is not a stray. It is part of a pattern of impropriety, and reveals a pattern of manipulating for export purposes those who depend on Cook Inlet gas domestically. Taken on its face, the ENSTAR letter makes clear that in the real world – by contract, and not just hypothetically – local domestic needs will *not* be met unless exports are approved. This kills the Applicants' case on the merits, since meeting local domestic needs is a prerequisite to any export authorization. Leaving local public needs unmet while meeting those of Tokyo with Alaska gas from Alaska state leases could not possibly satisfy any reasonable public interest standard.

The consequences of denying the Application (unless conditioned to protect local users) may well be huge, and picking up the pieces in Cook Inlet may now be difficult. But those are not OFE's responsibilities. The Applicants hold the keys to their own cells, as far as the merits are concerned. And it seems logical to infer their involvement in or knowledge of the improper ENSTAR letter and the improper pressure tactic that letter represents. As the circumstances have developed and emerged – thanks in part to ENSTAR's prohibited letter – and as matters now stand, the Application cannot lawfully be approved.

Finally, unless the Applicants deny involvement in or knowledge of the ENSTAR letter – in which case limited discovery should be allowed in order to test that denial – a show cause order is now called for, with possible sanctions (up to and including potential dismissal of the Application) to follow.

Respectfully submitted,

CHUGACH ELECTRIC ASSOCIATION, INC.

By
Eric Redman
Heller Ehrman LLP
701 Fifth Ave., Suite 6100
Seattle, WA 98104
Attorneys for Chugach Electric Association, Inc.

Dated: May 8, 2008.

EXHIBIT A
Relevant Provisions of New ENSTAR Gas Supply Contracts

ConocoPhillips

10.2 DOE Approval. The gas supply commitment made by Seller in this Agreement is subject to U.S. Department of Energy ("DOE") approval of the LNG export authorization sought by Seller's Affiliate and Marathon Oil Company in Docket No. 07-02-LNG. If the DOE fails to grant the authorization for the requested volume, or imposes conditions that would have a material adverse effect on Seller's or its Affiliate's business, or if Seller's Affiliate is unable to enter into LNG sale agreements for the requested volume on terms acceptable to Seller's Affiliate, then Seller will have the option to terminate its Base Tier commitment for the first calendar quarter of 2009 and all of its Seasonal Tier and Peak Tier commitments.

Marathon Oil

4.2. Condition Precedent. Seller's obligation to make available and deliver Needle Peak Gas to Buyer pursuant to the terms of this Agreement is conditioned upon Seller and ConocoPhillips obtaining U.S. Department of Energy ("***DOE***") approval of the LNG export authorization sought, in the currently pending application by Seller and ConocoPhillips Alaska, Inc. in Docket No. 07-02-LNG (the "***Export License***") in a form acceptable to Seller, in its sole discretion. In the event that Seller and ConocoPhillips Alaska, Inc. do not obtain the Export License before the earlier of (x) September 1, 2008, or (y) the date of any approval for Seller and ConocoPhillips Alaska, Inc. to export liquefied natural gas has limits or restrictions that are unacceptable to Seller, in its sole discretion, (a) Seller shall within thirty (30) Days of September 1, 2008 or such DOE action, give written notice to Buyer with respect to its inability to deliver Needle Peak Gas to Buyer due to non-occurrence of the condition, (b) Seller shall have no obligation to make available and deliver, Needle Peak Gas to Buyer under this Agreement, and (c) all other terms and conditions of this Agreement shall remain in full force and effect. In the event that Seller is unable to deliver Needle Peak Gas to Buyer, the Parties shall negotiate in good faith regarding the possible use of the LNG Facility by Buyer; *provided*, *however*, that either Party may terminate such negotiations at any time, and that neither Party shall be obligated to enter into an agreement regarding the use of the LNG Facility other than in each Party's sole and absolute discretion.

CERTIFICATE OF SERVICE

I herby certify that a true and correct copy of the foregoing document was served by regular mail and by e-mail upon the individuals listed below:

ConocoPhillips Alaska Natural Gas Corp
J. Scott Jepsen
Vice President
ConocoPhillips Alaska Natural Gas Corp.
700 G Street
PO Box 100360
Anchorage, AK 99510-0360
scott.jepsen@conocophillips.com

Roger Belman
Attorney
ConocoPhillips Alaska Natural Gas Corp.
700 G Street
PO Box 100360
Anchorage, AK 99510-0360
roger.belman@conocophillips.com

Marathon Oil Company
Dave Davis III
Attorney
Marathon Oil Company
Room 2415
5555 San Felipe Street
Houston, TX 77056
Dave.Davis@,marathonoil.com

David M. Risser
Manager, Natural Gas Marketing
Marathon Oil Company
Room 2415
5555 San Felipe Street
Houston, TX 77056
dmrisser@marathonoil.com

Douglas F. John
Attorney
John & Hengerer
1730 Rhode Island Ave. NW Suite 600
Washington, DC 20036
djohn@jhenergy.com

Tesoro Corporation
Barron Dowling, Esq.
Associate General Counsel, Supply
Tesoro Corporation
300 Concord Plaza Drive
San Antonio, TX 78216
Bdowling@tsocorp.com

Robin O. Brena, Esq.
Brena, Bell & Clarkson, PC
810 N. Street, Suite 100
Anchorage, AK 99502
rbrena@brenalaw.com

Enstar Natural Gas Company
Tom East
Regional Vice President
Enstar Natural Gas Company
PO Box 190288
Anchorage, AK 99519
Tom.east@enstarnaturalgas.com

A. William Saupe
Ashburn & Mason
1227 West Ninth Avenue, Suite 200
Anchorage, AK 99501
Aws@anchorlaw.com

John S. Decker
Attorney, Vinson & Elkins LLP
1455 Pennsylvania Ave. NW, Suite 600
Washington, DC 20004
jdecker@velaw.com

Agrium U.S. Inc.
Chris Sonnichsen
Agrarium U.S. Inc.
Director of Alaska Operations
PO Box 575
Kenai, AK 99611
csonnich@agrium.com

Douglas Smith
Van Ness Feldman
1050 Thomas Jefferson St. NW
Seventh Floor
Washington, DC 20007
dws@vnf.com

Chevron USA Inc. & Union Oil Company of California
Marc Bond
Chevron North America
Exploration and Production
Chevron USA Inc.
909 West 9th Avenue
Anchorage, AK 99501
mbond@chevron.com

Bradford G. Keithley
Jones Day
717 Texas Street, Suite 3200
Houston, TX 77002
bgkeithley@jonesday.com

Donald A. Page
Commercial Manager
909 W. 9th Avenue
Anchorage, AK 99519
dpage@chevron.com

State of Alaska
Governor Sarah Palin
State of Alaska
PO Box 110001
Juneau, AK 99811
governor@gov.state.ak.us

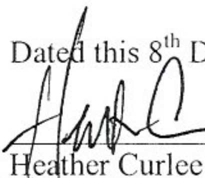
Steve DeVries
Assistant Attorney General
State of Alaska
1031 W. 4th Ave, Suite 200
Anchorage, AK 99501
Steve.Devries@alaska.gov

The Alaska Oil and Gas Conservation Commission
Jody J. Colombie
Special Assistant to the Commission
AOGCC
333 West 7th Avenue
Suite 100
Anchorage, AK 99501
jody.colombie@admin.state.ak.us

John K. Norman, Chair
State of Alaska
The Alaska Oil and Gas Conservation Commission
333 W. 7th Avenue, Suite 100
Anchorage, AK 99501
john_norman@admin.state.ak.us

Alan Birnbaum
Assistant Attorney General
Oil, Gas and Mining Section
1031 West 4th Avenue, Suite 200
Anchorage, AK 99501
Alan.birnbaum@law.state.ak.us

Dated this 8th Day of May, 2008



Heather Curlee
Heller Ehrman LLP
1717 Rhode Island Ave NW
Washington, DC 20036
(202) 912-2155

UNITED STATES OF AMERICA
DEPARTMENT OF ENERGY
OFFICE OF FOSSIL ENERGY

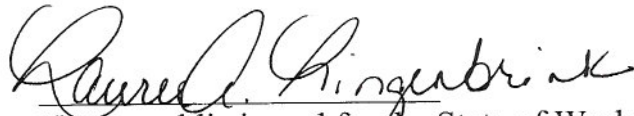
In the matter of:	)	
	)	
CONOCO PHILLIPS ALASKA	)	
NATURAL GAS CORPORATION	)	
AND	)	**FE DOCKET NO. 07-02-LNG**
MARATHON OIL COMPANY	)	

VERIFICATION AND CERTIFICATE OF REPRESENTATION

Eric Redman, being first duly sworn, on oath states, pursuant to 10 C.F.R. § 590.103(b), that he is an attorney at the firm of Heller Ehrman LLP; that he is the authorized representative Chugach Electric Association, Inc. ("Chugach"); that he prepared the Comments of Chugach Electric Association, Inc. Regarding ENSTAR's Improper Ex Parte Communications in the above-referenced proceeding; and that all matters of fact stated therein are true and correct to the best of his knowledge, information and belief.

Eric Redman

SUBSCRIBED AND SWORN to before me this 7th day of May, 2008.



Notary public in and for the State of Washington.
My commission expires: 4-20-09