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July 2, 2008

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Via Courier

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Docket Room 3F-056, FE-50
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1000 Independence Ave, SW
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Re: Application for Rehearing of Order Granting Authorization to Export Liquefied Natural Gas from Alaska on Behalf of Chugach Electric Association, Inc.
FE Docket No. 07-02-LNG

Dear Mr. Corbin:

Enclosed please find an original and 15 copies of Application for Rehearing of Order Granting Authorization to Export Liquefied Natural Gas from Alaska on Behalf of Chugach Electric Association, Inc. 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	)	

APPLICATION FOR REHEARING OF ORDER GRANTING AUTHORIZATION TO EXPORT LIQUEFIED NATURAL GAS FROM ALASKA ON BEHALF OF CHUGACH ELECTRIC ASSOCIATION, INC.

Pursuant to 10 C.F.R. §§ 590.103 and 590.501 of the regulations of the Department of Energy ("DOE"), Chugach Electric Association, Inc. ("Chugach") submits its application for rehearing of the Office of Fossil Energy's ("OFE") DOE Opinion and Order No. 2500 "Order Granting Authorization to Export Liquefied Natural Gas from Alaska" in the above-captioned proceeding ("Order"). Section 590.510 of the OFE's regulations requires that an application for rehearing concisely state the alleged errors in the final order and set forth specifically the ground or grounds upon which the application is based. 10 C.F.R. § 590.501(b). If an order is sought to be vacated, reversed, or modified by reason of matters that have arisen since the issuance of the final order, the matters relied upon shall be set forth with specificity in the application.

Chugach respectfully makes the following points in its application for rehearing:

A. Introduction

On June 3, 2008, OFE issued the Order which grants, without conditions, the Cook Inlet liquefied natural gas ("LNG") export authority extension that ConocoPhillips ("COP") and Marathon Oil Company ("MOC") (collectively "Applicants") requested. Chugach had asked that, in the public interest, OFE condition the export authority on the Applicants demonstrating that local

domestic needs for Cook Inlet natural gas, such as those of Chugach, will be met – not just that they *can* be met (i.e., that gas reserves are adequate), but that they *will* be met (i.e., that Cook Inlet producers have committed themselves to doing so).

Natural gas is what keeps the lights on in Anchorage and the surrounding locality. In the long history of Alaska's LNG facility, extensions of LNG export authority have never before been granted at a time when local electric utility requirements for natural gas remain unmet, as they do today, not just in the future but even during the export extension period. Chugach believes that in these circumstances, failure to condition the new grant of LNG export authority as Chugach has requested is an error, both of public policy and (given the public interest standard) of law. Chugach therefore respectfully applies for rehearing of the Order pursuant to Section 590.501 of the OFE Regulations. 10 C.F.R. § 590.501.

Chugach recognizes and appreciates the conscientiousness with which the Order was prepared, on the basis of a sprawling and complex record. Chugach hopes this same conscientiousness will lead OFE, in considering the specific points raised in the narrow context of this application, to amend the Order to include the condition Chugach has requested. Chugach hopes that, on the basis of this application, this modification will strike OFE as appropriate, necessary, and fair, especially since the Order correctly finds that there is "no basis for concluding that conditioning the export license" as Chugach has requested would cause the "undesired results" the Applicants – who subsequently entered into new gas supply contracts with ENSTAR Natural Gas Company ("ENSTAR") – originally suggested. Order at 53.

B. Specific Errors and Grounds For Rehearing

Chugach respectfully requests that rehearing be granted with respect to the following errors:

1. The Order errs in finding that conditioning the new LNG export authorization as Chugach requests would "be onerous and unduly discriminatory because it would single out the Applicants and put them at a competitive disadvantage vis-à-vis other producers that do not have to comply with such a condition and are free to sell their gas in either domestic or export markets." Order at 53.

This finding should be reversed on the following grounds.

(a) The Applicants are "singled out" only by virtue of their own Application. They are the only Cook Inlet producers who seek LNG export authorization. They are the only Cook Inlet producers who own LNG export facilities. No other producer is comparable to the Applicants in any relevant way (and none is currently "free to sell their gas in either domestic or export markets"). The public interest is at issue, and it is not unfair that producers applying for export authority and possessing export capability should be required to demonstrate that local domestic needs will also be met (either by themselves or by other producers).

(b) There are only three major gas producers in Cook Inlet – the Applicants and Chevron (which has acquired Unocal). Chevron supplies less than twenty percent (20%) of Chugach's gas. The Applicants supply some sixty-five percent (65%) of Chugach's gas and control an even larger percentage of uncommitted Cook Inlet reserves. Order at 39-40. It is simply logical, not onerous or discriminatory, that the Applicants are the Cook Inlet producers best positioned to assure that local domestic needs are met.[1]

(c) During this proceeding, the Applicants entered into new gas contracts to meet ENSTAR's otherwise unmet needs during the export authorization extension period and beyond. Chevron has not done so, but presumably the Applicants don't consider their new ENSTAR contracts onerous or the product of unjust discrimination against them. They now have new

[1] Chugach would be happy to continue to receive a portion of its gas supplies from Chevron. No one has suggested, however, that Chugach's gas requirements could be met in total without new contracts for supplies from one or both of the Applicants.

contracts to sell gas to ENSTAR *and* ENSTAR no longer objects to the export authorization extension. ENSTAR withdrew its objections as soon as it reached agreements in principle with the Applicants. The same would be true of Chugach. The Applicants assert – and the Order finds – that available gas is sufficient, and that exporting LNG while also meeting local domestic needs is what the Applicants *want* to do. It is not onerous or discriminatory to make sure the Applicants live up to what the Order finds and the Applicants profess, and not just for ENSTAR.

(d) The Applicants agreed to a Chugach-related volume limitation in their Settlement Agreement with the State of Alaska in January 2008. The specific time period and gas volume covered by the limitation struck Chugach as insufficient, and Chugach so argued to OFE. But the Applicants did not object to the limitation itself. They did not contend that it would be onerous or unduly discriminatory. On the contrary, they agreed to it in order to gain support for their export authorization request. The State of Alaska, at least, considered such a limitation to be in the public interest. The condition Chugach seeks goes further, but it is a logical extension of what the Applicants and the State have already agreed, not a great leap.

2. The Order errs in finding that "a high degree of concentration of economic power in the hands of a few producers of natural gas in the Cook Inlet region" is unsubstantiated, and would require more "meaningful" evidence, such as "market concentration studies." *Id.* at 52 (and elsewhere)

This finding is highly significant to the Order's conclusions, since the Order expresses OFE's commitment to rely on "market forces" to produce solutions to local domestic needs *unless* a "high degree of concentration of economic power" exists in "the hands of a few producers." The finding should be reversed on the following grounds, and the Order's conclusions modified as a result:

(a) This finding overlooks, among other matters of record, the following statement of the State of Alaska at the outset of this proceeding, and the facts supporting it:

> [I]t is important to first recognize the structure of Cook Inlet. This gas market is not truly competitive. The three largest sellers control 95% of the total gas sold. Cook Inlet gas prices have doubled over the past three years. The Lerner Index approximation of basin price and costs indicates a degree of exerted monopoly power is present at current price levels.[2]

(b) There is no need for additional record evidence of market concentration in this instance. It is uncontested that (i) almost all Cook Inlet gas production and uncommitted reserves are controlled by three producers, the Applicants plus Chevron, with the Applicants controlling a disproportionate share vis-à-vis Chevron; (ii) there exist neither pipelines to bring in "outside" gas nor any local non-gas substitutes for natural gas; and (iii) the local economy, and especially the electric utility sector, is extraordinarily dependent on natural gas by any standard. *See, e.g.*, Order at 39-40.[3]

(c) The foregoing provides sufficient evidence of a "high degree of concentration of economic power in the hands of a few producers of natural gas in the Cook Inlet region." *Id.* at 52. But such concentration has also long been established, cited, and relied upon in decisions of the Regulatory Commission of Alaska ("RCA") dealing with Cook Inlet gas contracts to meet local domestic needs. OFE would be entitled to take administrative notice of RCA decisions if such concentration were in actual dispute here – which, Chugach believes, it neither is nor can be.[4]

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[2] Motion to Intervene and Request for Additional Procedures by the State of Alaska at 14, FE Docket No. 07-02-LNG (April 6, 2007).

[3] As the record indicates, a fourth producer is Anchorage Municipal Light & Power ("MLP"), an electric utility that purchased from Shell Western E&P, Inc. ("Shell") a one-third working interest in the Beluga River Field and has continued to perform the gas sales contracts it inherited in that transaction. MLP is not otherwise engaged in gas exploration, production, or sales.

[4] *See, e.g.*, Docket U-06-2, *In the Matter of the Gas Sales Agreement between ENSTAR Natural Gas Company and Marathon Oil, filed as TA139-4* (Order No. 15, at 32 and n. 156) (Sept. 28, 2006):

> ENSTAR has told us there is no other company that can provide what Marathon offers to provide in [the gas contract then proposed.] Thus, there is no competition for this piece of ENSTAR's gas supply. Competition is what holds down price. In the absence of competition, it is only our review that serves to hold down price. Marathon has every

(Footnote continued)

(d) Neither Congress nor the DOE has left LNG export authorization to the play of "market forces" exclusively. A government-issued export license is still required, the exports must be consistent with the public interest, and assuring protection for local domestic needs is part of the public interest. Order at 44. OFE has authority to condition the export license to protect the public interest. Only by invoking market forces as sufficient to protect local needs, and thus relying on an *assumption* that the Cook Inlet natural gas market is workably competitive, does the Order avoid having to condition the export license as Chugach has requested. But the Cook Inlet natural gas market is not workably competitive by any measure – and nothing in the record suggests otherwise.

3. The Order errs in its findings that "There is undisputed evidence that . . . Applicants have sometimes diverted supplies from their LNG Facility in order to assure service to meet human needs;" that the LNG Facility "actually enhances deliverability [to local utilities] during the coldest periods of the winter;" and that "No party provided evidence that this service had not been provided on occasions when most critically needed." *Id.* at 52 and 57.

This finding misstates the evidence, and should be reversed on the following grounds, among others:

(a) The record shows that deliverability shortages have already occurred in Cook Inlet. But no party provided evidence that the Applicants have diverted supplies from their LNG Facility to assure service to local utilities "when most critically needed," or indeed at any time, including "the coldest periods of the winter." Rather, this claimed benefit of the LNG Facility's operation was merely asserted, never demonstrated. Whether this benefit has ever actually been provided is

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incentive to negotiate for itself the highest price it believes ENSTAR would pay or we would allow ENSTAR to pay. . . We are not certain there is any meaningful competition for ENSTAR's business.

impossible to determine on the record, *because the Applicants treat all such information as proprietary and confidential.*[5]

(b) Even if this unproven benefit exists or could exist, despite the lack of record evidence to prove it, its significance would be less than the Order seems to assume. First, as the record reflects, the LNG Facility lacks re-gasification facilities. This means that gas once delivered to the LNG Facility cannot thereafter be diverted back to local utilities. The LNG facility is not a storage facility capable of re-gasifying natural gas in order to meet peak domestic needs. Second, as the record also reflects, even if gas is diverted to the local utilities prior to delivery to the LNG Facility (something the record does not establish as having occurred), such a diversion would and could occur only if and because (i) the Applicants are contractually obligated at the time to meet deliverability requirements of the local utilities, whether by this means or others, and (ii) the Applicants have the physical ability to meet these utility deliverability requirements in any event, even absent LNG exports – not *because of* LNG exports. This undercuts the "enhanced deliverability" finding on which the Order, in weighing the public interest, partially relies.

Since the Applicants have not committed to meet Chugach's unmet gas requirements during the extension period, there can be no assurance that this claimed "enhanced deliverability" benefit will be made available to protect any Anchorage-area electricity consumers.

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[5] Chugach did point this out, in its May 22, 2008 response to ENSTAR and the Applicants. Because the Applicants treat LNG Facility deliveries, diversions, and curtailments as proprietary and confidential, when Applicant MOC cut its contractually-obligated deliveries to Chugach during the winter of 2007-08, Chugach despite inquiring of MOC could not learn (a) whether MOC continued to make deliveries to the LNG Facility at the same time, or (b) whether diverting such deliveries would have done anything to help.

4. The Order errs in finding that ENSTAR's ex parte communication of April 10, 2008 "contained absolutely no new or relevant information or argument that would have affected the outcome of the case." *Id.* at 64.

This finding is factually incorrect. ENSTAR's April 10 letter contained both relevant new information (the fact that ENSTAR's new gas contracts with the Applicants were partially contingent on LNG export authorization being granted) and a relevant new argument (that granting the export authorization had become even more important and urgent to ENSTAR as a result). Neither this information nor argument had appeared in the record previously. Had this not been the case, Chugach would not have reacted to ENSTAR's ex parte communication as it did.

Neither ENSTAR nor the Applicants claimed that this information or argument had been provided to OFE other than through ENSTAR's April 10 letter. ENSTAR claimed the information had been provided to the Alaska Legislature (in a presentation a Chugach representative had observed) – a very different thing. Before April 10, ENSTAR's most recent on-the-record communication with OFE had been its filing of January 23. That filing contains no mention of this particular information or argument – neither of which could reasonably have been inferred from that filing either.

5. The Order errs in finding that "the Applicants deny that they were involved in or cognizant of the April 10 letter from ENSTAR prior to its transmittal." *Id.* at 63, note 28.

The Order relies heavily on this finding in absolving the Applicants of all responsibility for ENSTAR's April 10 letter, and thereby saving them from potential sanctions. The record contains no such denial by the Applicants, however – a point Chugach emphasized in its May 22 response. The actual statement by the Applicants in their May 20 filing was much less categorical and much more carefully hedged. It deals only with whether the Applicants *requested* the letter, and when they first *saw* a copy. Contrary to this finding, on which the Order relies, the Applicants did not deny involvement in or knowledge of the April 10 letter prior to its transmittal.

6. The Order errs in failing to recognize that in their "supply agreements with ENSTAR" the Applicants have conditioned their "commit[ments] to sell gas locally" on LNG export authority being granted, rather than committing themselves "to both selling gas locally and exporting LNG." *Id.* at 64-65.

The Order misconstrues Chugach's point about the substance of ENSTAR's April 10 letter. That point is precisely that the Applicants did *not* commit themselves "to both selling gas locally and exporting LNG." They committed themselves to selling gas locally *if* they received authority to export LNG. By imposing that partial condition in their new ENSTAR contracts, the Applicants did – as Chugach indicated – put LNG exports ahead of meeting local domestic needs. Only by overlooking this can the Order find that the information contained in ENSTAR's April 10 letter supports an unconditional grant of LNG export authority, rather than warranting that local needs be met as a condition of such authority.

7. The Order errs in finding the price-raising impact of LNG exports on local domestic users of Cook Inlet natural gas to be "unsubstantiated" or, even if "theoretically true," likely to be outweighed by "the benefits to the local economy of continuing the operations of the liquefaction plant." *Id.* at 57-58, note 23.

These findings are unsupported by the record, and should be reversed for the following reasons, among others:

(a) The Order finds that the price impact of new LNG exports on local domestic users "is likely to be null" because the Order "in effect extends the Applicants' existing authority" to export LNG. *Id.* This reflects an error of fact and logic. The existing authority was granted at a time when local needs for electric power generation requirements were fully provided for, under long-term contracts that included previously agreed-upon price provisions. That is not the case here. These requirements are currently not provided for, and no pricing is agreed upon. That is what makes this situation unprecedented. It is also what creates a real risk of adverse price impacts for local users resulting from the Order if the Applicants don't commit to meet local needs first.

(b) The "market forces" on which the Order relies include the laws of supply and demand. Other forms of evidence should not be required in order to establish that when OFE authorizes the Applicants to continue meeting (and perhaps even to meet at an unprecedented annual rate of deliveries) the largest single existing segment of demand for Cook Inlet natural gas, then the laws of supply and demand are highly likely to result in higher prices for the remaining local domestic segments of such demand unless commitments to meet local demand are made first.

(c) ENSTAR, at least, has conceded as much in testimony of its expert witness filed with the RCA on May 28.[6] Fairly read, that ENSTAR testimony justifies the new and higher gas prices that ENSTAR has agreed to pay the Applicants as being necessitated in significant part by the extra bargaining power that LNG exports give the Applicants in the local Cook Inlet market.[7]

(d) The record simply does not permit any finding that the higher prices to local users are likely to be only "marginal," or that the impacts of these price increases would be "outweigh[ed]" by "the benefits to the local economy from continuing the operation of the liquefaction plant." Order at 56-57, note 23. This is speculation, unsupported in the record of this proceeding.

C. Conclusion

To paraphrase Order 1473, "the American short story writer O. Henry would appreciate the irony" of a natural gas producer being able to obtain authorization to export its gas to Japan without also committing itself to sell gas to domestic consumers in Alaska. Order 1473, at 44 (April 2,

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[6] Prepared Direct Testimony of Paul R. Carpenter at pg 20, Docket U-08-58, *In the Matter of the Tariff Revision Regarding a Proposed Gas Sales Agreement Between ENSTAR Natural Gas Company and ConocoPhillips Alaska and a Proposed Gas Sales Agreement Between ENSTAR Natural Gas Company and Marathon Oil, filed as TA167-4* (May 28, 2008), *available at* https://rca.alaska.gov/RCAWeb/Filings/FilingDetails.aspx?id=e51b4378-db39-4d96-b76d-c806e785a51b

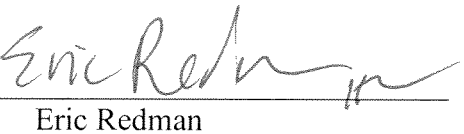
[7] Chugach received ENSTAR's pre-filed written testimony on Friday, May 29. Chugach prepared a motion for leave to file this ENSTAR testimony with OFE, but the Order was issued first (on Tuesday, June 3).

1999). It is, after all, Alaska's gas. The State of Alaska has made clear that it wants the needs of domestic customers, including Chugach, to continue to be met by the Applicants. The Applicants profess to want the same result. In granting the Applicants extended export authority, OFE should honor the State's expressed desire and hold the Applicants to theirs.

OFE's decision in this case properly acknowledges the governing public interest standard, and the need to assure that local domestic needs can be met. To Chugach, the record and the objective circumstances show that the public interest requires a demonstration that the local domestic need for electricity – and for the gas needed to generate that electricity – will in fact continue to be met despite LNG exports. It is not enough that adequate reserves may exist, if there are no commitments to continue selling gas to Alaska's largest electric utility, on which Alaska's entire Railbelt region largely depends for power. In concluding otherwise, the Order rests on findings listed here that Chugach respectfully suggests are in error. For the reasons set forth herein, rehearing is appropriate, and Chugach asks that it be granted.

Respectfully submitted,

CHUGACH ELECTRIC ASSOCIATION, INC.

By 

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Dated: July 2, 2008

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:

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Dated this 2nd day of July, 2008

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HellerEhrman LLP

July 3, 2008

Via Courier

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Washington, DC 20585

Re: Application for Rehearing of Order Granting Authorization to Export Liquefied Natural Gas from Alaska on Behalf of Chugach Electric Association, Inc. FE Docket No. 07-02-LNG

Dear Mr. Corbin:

Enclosed please find an original and 5 copies the Verification and Certificate of Representation to accompany Chugach's Application for Rehearing of Order Granting Authorization to Export Liquefied Natural Gas from Alaska. This original verification was delayed in arriving to Washington, D.C.. Two 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:	)	
	)	
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 Application for Rehearing of Order Granting Authorization to Export Liquefied Natural Gas from Alaska on behalf of Chugach 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 30th day of June, 2008.

LAUREE A. LINGENBRINK
STATE OF WASHINGTON
NOTARY — • — PUBLIC
MY COMMISSION EXPIRES 04-20-09

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