Report
Submitted to the
United States Congress
by the Federal Energy Regulatory Commission

Fourth Report to Congress on Progress Made in Licensing and Constructing the Alaska Natural Gas Pipeline

August 15, 2007

Fourth Report to Congress on the Alaska Pipeline

I. Executive Summary

This report by the Federal Energy Regulatory Commission (Commission or FERC) is submitted pursuant to section 1810 of the Energy Policy Act of 2005 (EPAct 2005).[1] Section 1810 of EPAct 2005 provides that the Commission shall submit to Congress semi-annual reports describing the progress made in licensing and constructing the Alaska natural gas pipeline and any impediments thereto.

This report describes the events and the progress that has transpired since the Commission's Third Report submitted on January 31, 2007. During the period covered by this report, the following key events have occurred: 1) the State of Alaska has enacted and begun to implement its Alaska Gasline Inducement Act program; 2) the U.S. Court of Appeals upheld the Commission's open season regulations; 3) the Federal Coordinator has been active in discussions with project stakeholders; 4) the Department of Labor issued a grant to the state for pipeline worker training; and, 5) the Commissioners and FERC staff have continued to prepare for the filing of any applications for an Alaskan natural gas pipeline, including a FERC staff site visit to the project area in Alaska.

II. Status Report

A. The Alaska Gasline Inducement Act

In January 2007, Alaska's Governor Sarah Palin introduced a new bill in the state's legislature, entitled the Alaska Gasline Inducement Act (AGIA). The legislature hired several consultants to thoroughly review the AGIA bill and held numerous meetings and hearings at which the FERC staff participated as requested. The AGIA was enacted in May 2007, and a widely-attended ceremonial bill signing was held on June 6, 2007. The AGIA is now the state's vehicle for inducing a project sponsor to proceed with the construction of the Alaska natural gas pipeline.

Under AGIA, Alaska's Commissioner of Natural Resources and Commissioner of Revenue (Alaska Commissioners) will review competitive applications from qualified project sponsors seeking an exclusive and enforceable AGIA license that entitles the licensee to state matching contributions of up to $500 million for expenditures toward the planning and construction of an Alaskan natural gas pipeline project and other state administrative benefits. All project sponsors seeking an AGIA license must agree to several requirements, terms and conditions regarding the construction and operation of the project sponsor's proposed project. An AGIA license will be awarded on a

[1] P.L. 109-58, 119 Stat. 594, 42 U.S.C § 15801 *et seq*. (2005).

competitive basis to the project sponsor who proposes a gas pipeline project that will sufficiently maximize the benefits to the people of Alaska in accordance with the criteria in the AGIA. A more detailed description of the AGIA process and license, supplied by the State of Alaska, is attached in an Appendix to this Report.

On July 2, 2007, Alaska released its Request for Applications (RFA) which included the purpose, instructions, requirements, evaluative criteria, and other information about submitting an application for the competitive AGIA license selection process. Up through July 23, 2007, Alaska received comments and suggested revisions to the RFA, and the Alaska Commissioners made certain changes to the RFA in an amended RFA dated August 6, 2007 which was posted on the state's AGIA website. The amended RFA includes information intended to help interested parties prepare complete applications that comply with the requirements established in AGIA. [2]

Applications for an AGIA license were originally due by October 1, 2007; however, in the August 6th amended RFA, the deadline was changed by a decision of the Alaska Commissioners in response to requests for more time from several prospective applicants. The new deadline for the filing of AGIA license applications is November 30, 2007.

Governor Palin stated that the state administration's goal is to submit its preferred project sponsor choice for an AGIA license in time for the next legislative session in January 2008. Assuming legislative approval, the state will issue an AGIA license by the summer of 2008. [3] A project sponsor could begin field work, engineering and design studies, financing efforts, and take other steps toward obtaining federal certification before obtaining an AGIA license, but many of these tasks are expected to await the issuance of the AGIA license.

It is not necessary that the sponsors of an Alaskan project participate in the AGIA process as a prerequisite to filing an application with the Commission. Moreover, there is no certainty that the Commission would impose on a certificate holder the rate and other requirements included in AGIA – the Commission will have to make an independent determination on these matters. However, FERC staff has testified before the Alaska legislature that nothing in AGIA is on its face inconsistent with the Natural Gas Act

[2] A redline tracked version of the amended RFA is on the state's AGIA website, we noted two areas where more detailed technical instructions were provided related to assumptions to be used for gas quality specifications and net present value calculations.

[3] Governor Sarah Palin - Weekly Gasline Briefing #15 - "The Path From Here", May 17, 2007 - http://www.gov.state.ak.us/agia/pdf/WGB15_TVtext.pdf .

(NGA), [4] the Alaska Natural Gas Pipeline Act (ANGPA), [5] or the Commission's regulations. [6]

To the extent that AGIA requires the holding of an open season within 36 months of the issuance of an AGIA license, and that the license holder commit to using the Commission's pre-filing process and to filing an application with the Commission by a time certain, AGIA may provide incentives that lead to the timely development of an Alaska project. While certificate application pre-filing is mandatory only for liquefied natural gas facilities under our regulations, the Commission's processing of any Alaskan natural gas pipeline would be greatly enhanced with the project sponsor's use of the Commission's pre-filing process. [7] In this connection, we note that the pre-filing process should begin as soon as possible after an AGIA license is issued. Given our understanding that two summer seasons will be necessary to obtain natural resource data, pre-filing work and doing field surveys need not await the open season process or its completion.

B. Status of Three Previously Discussed Potential Projects

Three potential projects were described in the Commission's previous reports, and these projects are still under consideration by the project sponsors. One of these potential projects is the Alaska Natural Gas Transportation System (ANGTS), which is supported by the TransCanada Corporation. The second potential project is the Trans-Alaska Gas System (TAGS), a liquefied natural gas (LNG) export project which is being promoted in some form by the Alaska Gasline Port Authority. The third potential project is sponsored by the Producer Group,[8] which is composed of BP, ConocoPhillips, and ExxonMobil. This project involves an entirely new pipeline which would be authorized pursuant to the provisions of section 103 of ANGPA and section 7 of the NGA.[9] The Alaska Gasline

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[4] (15 U.S.C. § 717, *et seq*.).

[5] P.L. 108-324, 118 Stat. 1220, 15 U.S.C § 719 (2004).

[6] As discussed below under Commission's Activities, intrastate projects could be exempt from the Commission's NGA jurisdiction.

[7] 18 C.F.R. 157.21 - Pre-filing procedures and review process for LNG terminal facilities and other natural gas facilities prior to filing of applications.

[8] The conceptual design of the ANGTS project and Producer Group's project consists of a pipeline that would generally parallel the TAPS oil pipeline from Prudhoe Bay to Delta Junction, Alaska; then follow the Alaska Highway to the Alaska-Yukon/Canadian border and continue through Canada to the Alberta natural gas hub, and ultimately to markets in the lower 48 states through new or existing pipelines.

[9] 15 U.S.C. § 717(f) (2000).

Port Authority has indicated that it will apply for an AGIA license, but the plans of the other two potential project sponsors regarding the AGIA process and license are not known at this time.[10] Project sponsors other than these three may also apply.

The Producer Group has three options regarding an Alaskan Pipeline project. First, through the appropriate affiliates, it could apply as an owner and operator of the pipeline for an AGIA license and a Commission certificate for a project of its design. Second, the producers could become shippers on a pipeline built by an independent pipeline company which secures an AGIA license. Third, the producers could forgo the AGIA license and apply for a Commission certificate for a project of its design. Regarding the first two options, Alaska's AGIA/RFA Inquiries FAQ website states that the AGIA provides the producers with additional royalty, taxes and cost protection incentives to commit their gas to the pipeline, provided that their gas is committed during the first open season for an AGIA licensed project.[11]

C. Related Federal and Alaska Executive, Legislative and Judicial Activities

1. Termination of the Point Thomson Unit

In November 2006, the Alaska Department of Natural Resources (Alaska DNR) announced that the state is terminating the Point Thomson unit on the North Slope and taking back oil and gas leases because the unit operator, ExxonMobil, failed to meet obligations for development. The Point Thomson unit, formed in 1977, but never developed, covered 106,000 acres and held an estimated nine trillion cubic feet of natural gas and 300,000 million barrels of gas condensate and oil. Because the Point Thomson unit is located north of 64 degrees north latitude, any production from that unit would be Alaska natural gas subject to the Commission's open season rules for capacity on the Alaska natural gas pipeline. ExxonMobil, along with other parties, has sought further legal action, and a lower Alaska court ruling sustaining the state's action is being appealed by the natural gas producers.

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[10] The Alaska Natural Gas Development Authority (ANGDA) is a public corporation of the State of Alaska. ANGDA is developing an AGIA application "addendum" that covers the in-state natural gas markets (Cook Inlet area) that can be attached to any of the potential very large North Slope gas export projects (via Canada or LNG). The addendum is being developed in a public, transparent process and will be available for inclusion by any project sponsor with no exclusivity. ANGDA has completed significant project definition work including obtaining a "conditional right-of-way" from the State of Alaska for a particular intrastate pipeline route. (*See* www.angda.state.ak.us).

[11] See http://www.rfainquiries.com/FAQ.aspx?Page=1, Question #12.

2. Federal Interagency Memorandum of Understanding

As discussed in the previous reports, in June 2006 the Federal Interagency Memorandum of Understanding for the Alaska Natural Gas Transportation Project (MOU) was signed and executed by senior executives and heads from 15 federal departments and agencies, including the Commission. The signing of an MOU by this large number of federal agencies demonstrates that the federal government is prepared to expedite the permitting and construction of an Alaska natural gas pipeline project.

3. Congressional Research Service Report on Alaska Project & Steel Markets

On March 28, 2007 the Congressional Research Service (CRS) released an updated November 2006 report about the Alaska pipeline project and its interaction with the natural gas and steel pipe markets.[12] CRS explained how market conditions and costs in the natural gas and steel markets will continue to be key factors in the private sector's capital investment decisions about whether or not to build an Alaskan natural gas pipeline. The CRS Report described how innovations in steel pipe technology and pipe production will have an important impact on an Alaska pipeline project.

4. Operations of the Federal Coordinator

In accordance with section 106 of ANGPA, Drue Pearce, the Federal Coordinator, is responsible for: (1) coordinating the expeditious actions of all federal agencies regarding an Alaska natural gas transportation project; and (2) ensuring the compliance of federal agencies with the provisions and deadlines of ANGPA.

The Office of the Federal Coordinator (OFC) has been established in Washington D.C. and is staffed by the Federal Coordinator and several detailees from the Department of the Interior. To conduct its business, the OFC has entered into several Interagency Agreements to obtain human resources, payroll, contracting, legal and ethics officer services.

The OFC detailees include two Department of the Interior employees: 1) an Acting Director of Communications and Policy Support and 2) a Deputy Federal Coordinator and General Counsel. The OFC has advertised for a Director of Communications and Policy Support and for a Director of Administration. The OFC anticipates making selections for these positions in the third quarter. In addition, the OFC has issued a Request for Proposals under an Alaska Services Agreement. Work

[12] CRS Report to Congress, "Alaska Natural Gas Pipelines: Interaction of the Natural Gas and Steel Markets", Updated March 28, 2007; Order Code RL33716.

under this contract would provide a local Alaska OFC presence pending establishment of its Alaska office and general Alaska-based services.

On May 22, 2007, the Federal Coordinator appeared before the Senate Energy and Natural Resources Committee Subcommittee on Energy regarding S.1089, a bill to amend the Alaska Natural Gas Pipeline Act, which is intended to provide more flexible personnel practices and cost reimbursement authority for most OFC operations. [13]

In response to the AGIA, on July 13, 2007 the OFC announced the creation of a Senior Intergovernmental Management Team for the project(s). This Team will meet at least once a month and will be composed of U.S. and Alaska government officials. Drue Pearce, the Federal Coordinator, will represent the United States and Marty Rutherford, Deputy Commissioner of Natural Resources, will represent the State of Alaska. A representative from Canada has been formally invited to participate, but not yet named, so the appropriate international protocols will be in place if the chosen route goes through Canada.

The Federal Coordinator has conducted numerous stakeholder meetings for the Alaska natural gas transportation project in both Alaska and Canada since our last report. The OFC anticipates continuing stakeholder outreach. The OFC also has met with delegations from Alaska and the Yukon, as well as with Jim Prentice, Canada's Minister of Indian Affairs and Northern Development, Canadian Embassy and FERC leadership, and the private sector representatives. The OFC expects that during the next reporting period it will conduct a meeting of the federal team (approximately 20 agencies), initiate efforts to contract for a gap analysis to evaluate regulatory "gaps" in the gasline permit process and advance federal, Alaskan and Canadian coordination efforts.

5. U.S. Department of Energy

The U.S. Department of Energy's (DOE) program office for the federal loan guarantee process for the Alaskan natural gas transportation project is monitoring the progress of Alaska's AGIA process, and when a commercial project emerges from the AGIA process or otherwise, DOE will proceed with structuring the loan guarantee program.

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[13] This bill is also included as an amendment to the CLEAN Energy Act of 2007 by SAMDT.1513 to HR.6 which was approved by the Senate on June 21, 2007; also included in HR.2950, introduced on June 28, 2007.

6. U.S. Department of Labor

The U.S. Department of Labor made a federal grant award of $ 7.5 million for the Alaska Department of Labor and Workforce Development to spend over the next five years on skill training programs for jobs in pipeline construction and maintenance; a state administered workforce training plan is required by AGIA. The federal grant targets training for more than 2,500 Alaska workers involved in the state's pipeline maintenance and construction activities, with an emphasis on preparing the workforce as pipeline activity ramps up over the next several years. [14]

D. Commission's Activities

1. Potential Jurisdictional Legal Rulings

Under Alaska's AGIA process, project sponsors seeking an AGIA license must document in their application any claim that they make that their project is exempted from the NGA with an opinion letter from the project sponsors' legal counsel or a declaratory order from the Commission. The Commission will take appropriate action on any timely filings it receives in connection with that process.

2. Open Season Regulations

ANGPA directed the Commission to issue regulations governing the conduct of open seasons for Alaska natural gas transportation projects, including procedures for the allocation of capacity. The orders, which the Commission issued promulgating regulations governing the conduct of open seasons for Alaska natural gas transportation projects, including procedures for the allocation of capacity, were affirmed in all respects by a July 27, 2007 ruling of the U.S. Court of Appeals for the District of Columbia Circuit. The court acted on these "purely legal" matters and recognized that, "[d]elaying their resolution would only increase the petitioners' costs and hence diminish the likelihood they will pursue a certificate of public convenience and necessity for an Alaska Pipeline, the construction of which is a priority of the Congress." [15]

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[14] U.S. Department of Labor / Employment and Training Administration News Release, June 29, 2007; http://www.dol.gov/opa/media/press/eta/ETA20070984.htm and Alaska's Governor's Office Press Release, July 19, 2007; Number 07 ‑ 166 http://www.dog.dnr.state.ak.us/agia/labor_award.pdf.

[15] *ExxonMobil Corporation v. FERC*, Case Nos. 05-1299, 05-1300, & 05-1301 (consolidated); Slip Opinion, citation pending, Decided July 27, 2007, Argued December 5, 2006.

On appeal, the North Slope Producer Group had challenged certain specific aspects of the part of the Commission's Alaska natural gas transportation regulations adopted at 18 C.F.R. 157.36 and 157.37.[16] The regulations at 18 C.F.R 157.36 concern pipeline design changes that the Commission might require of the pipeline operator after reviewing the record of a proposed voluntary expansion of the project in order to provide the opportunity for the transportation of gas other than Prudhoe Bay or Point Thomson production. The regulations at 18 C.F.R 157.37 concern pipeline design changes the Commission might require of the pipeline project applicant after reviewing the record of any application for an Alaska natural gas pipeline project in order to promote competition and offer a reasonable opportunity for access to the project.

Specifically, the court found that the Commission's open season regulations fairly balance ANGPA's dual objectives of (1) facilitating the timely development of an Alaska natural gas transportation project, and (2) encouraging the exploration for new gas reserves by assuring competitive access to the pipeline. In particular, the court upheld, as consistent with ANGPA, the regulations at 18 C.F.R. 157.36 and 157.37, allowing the Commission to require project design changes.

3. Environmental Review – Update

As described in the preceding Reports to Congress, the Commission is actively preparing to fulfill its National Environmental Policy Act of 1969 and certificate application responsibilities. Since the Commission's third report, the FERC staff conducted a site visit to the pipeline project areas in Alaska and continued its discussion with the Department of Interior's Bureau of Land Management and the Alaska Department of Natural Resources concerning the eventual environmental impact statement and project permitting. During the site visit in July 2007, the FERC staff viewed previously identified pipeline routes in and around Fairbanks, south of Fairbanks to Delta Junction, and north of Fairbanks following the Dalton Highway to Deadhorse. The site visit included a tour of the Prudhoe Bay facilities.

E. **Developments in Canada**

The Mackenzie Gas Project continues to be under consideration by the government of Canada. The Mackenzie Gas Project includes development of natural gas

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[16] Regulations Governing the Conduct of Open Seasons for Alaska Natural Gas Transportation Projects, FERC Stats. & Regs., Regs. Preambles ¶ 31,174 (February. 9, 2005); 70 Fed. Reg. 8,269 (February 18, 2005) (Order No. 2005) and Regulations Governing the Conduct of Open Seasons for Alaska Natural Gas Transportation Projects, FERC Stats. & Regs., Regs. Preambles ¶ 31,187 (June 1, 2005); 70 Fed. Reg. 35,011 (June 16, 2005) (Order No. 2005-A).

fields, gathering lines, and processing facilities in the Mackenzie River Delta of Canada's Northwest Territories, and a transportation pipeline along the Mackenzie River Valley to deliver the natural gas to market. This major pipeline project consists of over 750 miles of 30-inch natural gas transmission pipeline that would transport 1.2 billion cubic feet (Bcf) per day of new Arctic gas to market. The estimated capital cost of this project has recently risen to $15 billion, and it is now planned to be in operation by 2015.

Although this project is neither a complement to nor a competitor of an Alaska natural gas pipeline, its development presents certain problems and risks to an Alaskan project. First, industry reports indicate that there will not be enough pipeline grade steel available to construct both projects at the same time. Similarly, there could be a shortage of the skilled labor force required to build two technically-challenging Arctic projects of such magnitude at the same time.

Sponsors of the Mackenzie Gas Project have been discussing royalty and fiscal issues concerning the project with the government of Canada. The regulatory review process in Canada for the Mackenzie Gas Project is continuing, although the schedule has been extended. The Joint Review Panel is examining issues and impacts in the areas of the natural and human environments associated with the proposed Mackenzie Gas Project to determine how the project could affect the land, environment and lives of people and communities in the project area.[17]

The National Energy Board (NEB) Panel, consisting of three of the NEB's ten members, is reviewing the technical aspects, such as engineering, economic feasibility, tolls and tariffs, and lands issues associated with the proposed project. The NEB Panel will consider the Joint Review Panel's report in deciding whether the project is in the public interest. If at the end of the process the NEB Panel decides the project is in the public interest, the federal Cabinet must then decide whether to authorize the NEB to issue a certificate so that the project can proceed. If, on the other hand, the NEB Panel decides that a project is not in the public interest, then no further approval of its decision is required.

III. Conclusion

Alaska offers a reliable continental source of natural gas for the Lower 48 States that will help the U.S. economy to grow and thrive, and also contribute to the economic well-being of the State of Alaska. The federal government is ready to act on any projects to transport Alaskan gas to the Lower 48 States. We look forward to seeing if the

[17] The Joint Review Panel for the Mackenzie Gas Project is a seven-member, independent body that will evaluate the potential impacts of the project on the environment and lives of the people in the project area.

progress made by the State of Alaska in enacting AGIA and commencing its RFA is followed by an AGIA licensee selection process that elicits a viable proposal to make Alaska's natural gas available to U.S. consumers.

Appendix

Alaska Gasline Inducement Act (AGIA)
Executive Summary [18]

PURPOSE: The legislation is intended to encourage expedited development of Alaska's natural gas resources by offering incentives to companies that produce the state's oil and gas resources and to companies that can build a North Slope natural gas pipeline.

INCENTIVES FOR PIPELINE CONSTRUCTION: The state offers to match up to $500 million of the costs the licensee will incur to obtain a certificate from the Federal Energy Regulatory Commission or Regulatory Commission of Alaska. The state will appoint a pipeline coordinator to help expedite review and coordination of all state and federal permits and processes; to ensure that all state and federal environmental requirements are completed; and to coordinate with the Federal Coordinator for natural gas transportation projects in Alaska. The state will also develop a training program to prepare Alaskans for project construction, operations and maintenance jobs.

INCENTIVES FOR GAS COMMITMENT: The state will adopt regulations to provide predictability in the state's determination of the value of its royalty share of North Slope natural gas and also in the exercise of its right to take its royalty share in kind (gas) or in value (money). The legislation also offers a production tax exemption for gas committed to the pipeline during the first open season equal to the difference between the tax obligation in effect at open season (the day the first solicitation ends for commitments to ship gas on the pipeline) and any higher obligation that may become effective for 10 years after pipeline start-up.

LICENSE REQUIREMENTS: In order for an application to be evaluated for the state license and pipeline construction incentives under AGIA, it must commit to the 20 requirements in the legislation, which include:

1. Soliciting firm commitments to ship gas on the pipeline (holding an open season) within three years of receiving the AGIA license.

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[18] Prepared by the State of Alaska, Department of Natural Resources, July 10, 2007.

2. Providing a firm date by which the applicant will apply to the Federal Energy Regulatory Commission or Regulatory Commission of Alaska for a certificate authorizing the pipeline.
3. Agreeing to certain financial provisions to keep pipeline tariff rates low.
4. Soliciting demand for pipeline expansion at least every two years through a public, non-binding solicitation or similar means.
5. Describing how construction cost overrun risks will be managed.
6. Agreeing to incorporate at least five gas off-take points along the pipeline in Alaska.
7. And committing, to the maximum extent permitted by law, to hire qualified Alaskans for construction and operation of the gas pipeline.

APPLICATION REVIEW CRITERIA: The commissioners of the Alaska departments of Revenue and Natural Resources (the commissioners) will evaluate the applications under seven criteria spelled out in AGIA and the Request for Applications:

1. Proposed project timeline; specifically how quickly the applicant proposes to begin construction and commence commercial operations.
2. Proposed method to manage construction cost overruns that could increase the tariff.
3. Proposed tariff rate structure.
4. The ability of the project design to accommodate low-cost pipeline capacity expansion.
5. How much of the state's matching funds will be used and timing of the state's payments.
6. Whether the project is feasible.
7. The applicant's ability to perform.

PROJECT PROCESS: The process began when the commissioners issued the Request for Applications (RFA) on July 2, 2007. The application deadline is November 30, 2007 (originally October 1, 2007), although the commissioners may extend the application deadline at any time by public notice. After the application deadline has passed, each application will be opened and reviewed to determine whether it meets the requirements of AGIA and the terms of the RFA. The commissioners will publicly release complete applications and take comments for 60 days. Applicants can apply to protect any proprietary information or trade secrets included in their applications.

The commissioners will evaluate all complete applications under criteria set by AGIA and the RFA to determine whether the application fulfills the purposes of AGIA and sufficiently maximizes the benefits to Alaska. The commissioners will forward a written decision recommending awarding the license and the legislature will have 60 days after that notice to approve the commissioners' proposed action.

After the license is awarded, the licensee must complete an application to the Federal Energy Regulatory Commission or Regulatory Commission of Alaska. The licensee must sanction the project within a year of receiving a certificate from the appropriate regulatory agency if it has adequate financing. If necessary, the licensee has an additional two to five years to obtain financing or transfer the certificate and all associated work product to another licensee designated by the state.

If the project becomes uneconomic after the license is awarded, AGIA describes a process for relinquishing the license that will enable the state to recover the benefit of its investment in the project.