

SENATE BILL NO. 136

IN THE LEGISLATURE OF THE STATE OF ALASKA
TWENTY-SIXTH LEGISLATURE - FIRST SESSION

BY THE SENATE RULES COMMITTEE BY REQUEST OF THE GOVERNOR

Introduced: 3/2/09

Referred: Senate Special Committee on Energy, Resources, Finance

A BILL

FOR AN ACT ENTITLED

1 **"An Act relating to noncompetitive leases of state land and for rights-of-way for oil or**
2 **natural gas pipelines that originate and terminate within the state and to the regulation**
3 **and certification of those pipelines; relating to conditional certification for certain new**
4 **natural gas pipelines; relating to definitions of "common carrier" and "firm**
5 **transportation service" in the Pipeline Act."**

6 **BE IT ENACTED BY THE LEGISLATURE OF THE STATE OF ALASKA:**

7 *** Section 1.** AS 38.05.180(bb)(1) is amended to read:

8 (1) "gas or electric utility" includes an electric cooperative organized
9 under AS 10.25, a municipal utility, and a gas or electric utility regulated under
10 AS 42.05; provided that, if the contract gas is transmitted to consumers through a
11 pipeline and the gas utility either owns the pipeline or is related in ownership to the
12 owner of the pipeline, then the gas utility qualifies as a "gas or electric utility" within
13 the meaning of this paragraph only if it is bound or agrees to be bound by the

1 covenants set out in AS 38.35.120 **and 38.35.121, as applicable;**

2 * **Sec. 2.** AS 38.35.100(d) is amended to read:

3 (d) The commissioner shall include in a conditional lease each requirement
4 and condition of the covenants established under AS 38.35.120 **and 38.35.121, as**
5 **applicable.** The commissioner may also require that the lessee agree to additional
6 conditions that the commissioner finds to be in the public interest. In place of the
7 covenant established under AS 38.35.120(a)(9), the commissioner shall require the
8 lessee to agree that it will not transfer, assign, pledge, or dispose of in any manner,
9 directly or indirectly, its interest in a conditional right-of-way lease or a pipeline
10 subject to the conditional lease, unless the commissioner, after considering the public
11 interest and issuing written findings to substantiate a decision to allow the transfer,
12 authorizes the transfer. The commissioner shall also require the lessee to agree not to
13 allow the transfer of control of the lessee without the approval of the commissioner; as
14 used in this subsection, "transfer of control of the lessee" means the transfer of 30
15 percent or more, in the aggregate, of ownership interest in the lessee in one or more
16 transactions to one or more persons by one or more persons.

17 * **Sec. 3.** AS 38.35 is amended by adding a new section to read:

18 **Sec. 38.35.121. Additional covenants required to be included in leases for**
19 **natural gas pipelines that originate and terminate within the state.** In addition to
20 the covenants required by AS 38.35.120, a noncompetitive lease of state land for a
21 right-of-way for a natural gas pipeline valued at \$1,000,000 or more and that
22 originates and terminates within the state may be granted only upon the condition that
23 the lessee expressly covenants in the lease, in consideration of the rights acquired by it
24 under the lease, that it will

25 (1) commit that after the first binding open season, the lessee will
26 assess the market demand for additional pipeline capacity at least every two years
27 through public nonbinding solicitations or similar means; the solicitations or similar
28 means must

29 (A) be conducted at least every two years after the conclusion
30 of the first binding open season;

31 (B) be public and provide at least 30 days' prior public notice

1 of each nonbinding solicitation or similar means through methods reasonably
2 calculated to simultaneously notify all interested parties, including postings on
3 Internet websites, press releases, direct mail notification, and other advertising;

4 (C) set out the next reasonable engineering increment of
5 capacity, consistent with this chapter;

6 (D) contain the lessee's good faith estimate of regulated tariff
7 rates for the next reasonable engineering increment of capacity as well as a
8 larger expansion utilizing rolled-in rates to the levels required by this chapter;

9 (E) set out a good faith estimate of how long it will take to
10 place into service the next reasonable engineering increment of capacity;

11 (F) contain provisions that permit creditworthy prospective
12 shippers to make binding commitments for expansion capacity in a binding
13 open season to be conducted promptly by the lessee subsequent to the
14 nonbinding solicitation or similar means; in this subparagraph a shipper is
15 deemed creditworthy if

16 (i) the shipper satisfies the creditworthiness standards
17 for the project's applicable tariffs; or

18 (ii) for expressions of interest and expansions initiated
19 before the regulatory approval of the creditworthiness standards of the
20 project's tariff, creditworthiness is determined according to the
21 standards that the lessee applies in its initial binding open season; and

22 (G) commit to promptly and diligently pursue a binding open
23 season for expansion capacity to the extent that expressions of interest
24 demonstrate a market demand on commercially reasonable terms by
25 creditworthy shippers that equals or exceeds the next reasonable engineering
26 increment of capacity; in this subparagraph, "promptly and diligently pursue a
27 binding open season" means that the lessee will act in a manner that is
28 commercially reasonable in the gas pipeline industry in this state regarding
29 timing and execution of relevant actions;

30 (2) commit that in a binding open season, or in any other solicitation of
31 shipping commitment, the lessee will not require

1 (A) a prospective shipper to agree to any particular rate other
2 than the regulated tariff rate; or

3 (B) an existing shipper to pay any rate for a capacity expansion
4 before the date that new expansion facilities go into service;

5 (3) commit to promptly and diligently pursue all regulatory approvals
6 upon the receipt of acceptable binding commitments for expansion capacity, and
7 commit to promptly and diligently proceed to expand the project at a reasonable
8 engineering increment sufficient to satisfy all demand for expansion capacity so long
9 as additional revenue from existing transportation contracts on the project, plus the
10 projected revenue from binding expansion capacity commitments, cover the costs of
11 the expansion, including fuel costs and a reasonable return on capital as authorized by
12 the Regulatory Commission of Alaska, and the lessee's ability to recover the costs of
13 existing facilities is not impaired; in this paragraph, "promptly and diligently pursue"
14 regulatory approvals and expansion capacity means that the lessee shall act in a
15 manner that is commercially reasonable in the gas pipeline industry in the United
16 States regarding timing and execution of relevant actions;

17 (4) commit to file, as part of its tariff, its determination of the
18 reasonable engineering increment of capacity based on the design of the project before
19 project sanction and each time the design capacity of the project changes due to
20 modifications of the facilities or operation of the pipeline, other than normal day-to-
21 day changes in pipeline operations;

22 (5) commit to expand the proposed project in reasonable engineering
23 increments and on commercially reasonable terms that encourage exploration and
24 development of gas resources in this state;

25 (6) commit that the lessee

26 (A) will propose and support the recovery of capacity
27 expansion costs, including fuel costs, from all system users through rolled-in
28 rates as provided in (B) and (C) of this paragraph or through a combination of
29 incremental and rolled-in rates as provided in (D) of this paragraph;

30 (B) will propose and support the recovery of capacity
31 expansion costs, including fuel costs, from all system users through rolled-in

1 rates; a lessee is obligated under this subparagraph only if the rolled-in rates
2 would increase the rates

3 (i) not described in (ii) of this subparagraph by not more
4 than 15 percent above the initial maximum recourse rates for capacity
5 acquired before commercial operations commence; in this sub-
6 subparagraph, "initial maximum recourse rates" means the highest cost-
7 based rates for any specific transportation service set by the Regulatory
8 Commission of Alaska when the pipeline commences commercial
9 operations;

10 (ii) by not more than 15 percent above the negotiated
11 rate for pipeline capacity on the date of commencement of commercial
12 operations where the holder of the capacity is not an affiliate of the
13 owner of the pipeline project; in this sub-subparagraph, "negotiated
14 rate" means the rate in a transportation service agreement that provides
15 for a rate that varies from the otherwise applicable cost-based rate, or
16 recourse rate, set out in a gas pipeline's tariff approved by the
17 Regulatory Commission of Alaska; or

18 (iii) for capacity acquired in an expansion after
19 commercial operations commence, to a level that is not more than 115
20 percent of the volume-weighted average of all rates collected by the
21 project owner for pipeline capacity on the date commercial operations
22 commence;

23 (C) will, if recovery of capacity expansion costs, including fuel
24 costs, through rolled-in rate treatment would increase the rates for capacity
25 described in (B) of this paragraph, propose and support the partial roll-in of
26 expansion costs, including fuel costs, to the extent that rates acquired before
27 commercial operations commence do not exceed the levels described in (B) of
28 this paragraph;

29 (D) may, for the recovery of capacity expansion costs,
30 including fuel costs, that, under rolled-in rate treatment, would result in rates
31 that exceed the level in (B) of this paragraph, propose and support the recovery

1 of those costs through any combination of incremental and rolled-in rates;

2 (E) will not enter into a contractual agreement that would
3 preclude the lessee from collecting from any shipper, including a shipper with
4 a contractual rate agreement, the rolled-in rates that are required to be proposed
5 and supported by the lessee under (B) of this paragraph or the partial rolled-in
6 rates that are required to be proposed and supported by the lessee under (C) of
7 this paragraph; and

8 (F) will propose and support rates that will bear the same
9 percentage change to all rates consistent with this section, including any term-
10 differentiated rates;

11 (7) commit to offer distance-sensitive rates to delivery points in the
12 state;

13 (8) to the maximum extent permitted by law, commit to

14 (A) hire qualified residents from throughout the state for
15 management, engineering, construction, operations, maintenance, and other
16 positions on the proposed project;

17 (B) contract with businesses located in the state;

18 (C) establish hiring facilities or use existing hiring facilities in
19 the state; and

20 (D) use, as far as is practicable, the job centers and associated
21 services operated by the Department of Labor and Workforce Development
22 and an Internet-based labor exchange system operated by the state;

23 (9) commit to negotiate, before construction, a project labor agreement
24 to the maximum extent permitted by law; in this paragraph, "project labor agreement"
25 means a comprehensive collective bargaining agreement between the licensee or its
26 agent and the appropriate labor representatives to ensure expedited construction with
27 labor stability for the project by qualified residents of the state; and

28 (10) commit that it will be regulated under AS 42.06 by the Regulatory
29 Commission of Alaska.

30 * **Sec. 4.** AS 38.35.230 is amended by adding new paragraphs to read:

31 (11) "commercially reasonable terms" means that revenue from

1 transportation contracts covers the cost of the expansion, including increased fuel
 2 costs and a reasonable return on capital as authorized by the Regulatory Commission
 3 of Alaska, as applicable, and there is no impairment of the project's ability to recover
 4 the costs of existing facilities;

5 (12) "reasonable engineering increment" means the amount of the
 6 additional capacity that could be added by compression or a pipe addition of a length
 7 that is at least a full valve section based on the original pipeline mainline valve
 8 locations using a compressor size or pipe size, as applicable, that is substantially
 9 similar to the original compressor size or pipe size.

10 * **Sec. 5.** AS 42.06.240(f) is amended to read:

11 (f) **Except if right-of-way lease covenants required by AS 38.35.120 -**
 12 **38.35.121 provide otherwise, in** [IN] addition to other requirements of (a) - (e) of this
 13 section, the provisions of this subsection apply to a certificate of public convenience
 14 and necessity for a North Slope natural gas pipeline carrier or person that will be a
 15 North Slope natural gas pipeline carrier under this chapter:

16 (1) the person making application shall dedicate a portion of the
 17 pipeline's initial capacity sufficient to transport the total volume of North Slope natural
 18 gas that has been committed by producers and shippers of North Slope natural gas to
 19 tendering for intrastate firm transportation service at the time that the operation of the
 20 North Slope natural gas pipeline commences;

21 (2) upon receipt of the certificate application under this subsection, the
 22 commission shall issue a public notice inviting prospective intrastate shippers of North
 23 Slope natural gas to file requests for service; a request for service submitted by a
 24 shipper in response to a notice issued under this paragraph must include a proof of the
 25 shipper's commitment to use the North Slope natural gas pipeline for intrastate firm
 26 transportation service, specifying the volume of North Slope natural gas that the
 27 shipper will tender for initial intrastate firm transportation service;

28 (3) in its review of an application submitted under this subsection,

29 (A) for purposes of evaluating the total volume of intrastate
 30 transportation of North Slope natural gas to be accepted for initial intrastate
 31 transportation, the commission shall determine total volume based upon

1 written commitments to tender North Slope natural gas for intrastate firm
2 transportation service continuously for a period of not less than three years
3 after the operation of the North Slope natural gas pipeline commences as
4 follows:

5 (i) each request for service by an intrastate shipper that
6 is a public utility, as that term is defined in AS 42.05.990, for the
7 purpose of furnishing natural gas for ultimate consumption within the
8 state by its customers that individually consume an average annual
9 volume of less than 20,000,000 standard cubic feet of gas per day shall
10 be supported by a written commitment by the public utility that sets out
11 the utility's best current estimate of the average annual volume that the
12 utility will require during the three-year period;

13 (ii) each request for service by an intrastate shipper that
14 is not a public utility, as that term is defined in AS 42.05.990, and each
15 request for service by a public utility for the purpose of furnishing
16 natural gas for ultimate consumption within the state by a customer that
17 individually consumes an average annual volume of 20,000,000 or
18 more standard cubic feet of gas per day, that purchases North Slope
19 natural gas from a North Slope natural gas producer, must be supported
20 by one or more contracts for the purchase of the North Slope natural
21 gas on a take-or-pay basis that extends for a period of not less than
22 three years after the operation of the North Slope natural gas pipeline
23 commences;

24 (iii) the commission may consider peak volumes
25 specified in the written commitments of North Slope natural gas
26 producers and purchase contracts; and

27 (B) the commission shall set out in its order granting a
28 certificate of public convenience and necessity the total volume of intrastate
29 North Slope natural gas that the North Slope natural gas pipeline carrier shall
30 accept for intrastate transportation; the total volume may not exceed the
31 volume substantiated by written commitments and contracts that comply with

1 the requirements of this chapter;

2 (4) if the North Slope natural gas pipeline carrier wants to transport
3 North Slope natural gas within the state in excess of the amount set out in the
4 statement of total volume in the pipeline carrier's certificate of public convenience and
5 necessity, the pipeline carrier may apply for authority to transport a greater volume of
6 North Slope natural gas within the state than the carrier is required by the commission
7 to transport in its order entered under (3)(B) of this subsection; the commission shall
8 grant the authority requested by the pipeline carrier if the commission determines that
9 the pipeline carrier's transportation of a greater volume is consistent with public
10 convenience and necessity.

11 * **Sec. 6.** AS 42.06 is amended by adding a new section to read:

12 **Sec. 42.06.275. Conditional certificate.** (a) If an applicant for a new natural
13 gas pipeline has not obtained or committed financing, or does not possess firm
14 commitments for the transportation of natural gas on its proposed pipeline, the
15 commission shall issue a conditional certificate if it finds that

16 (1) the applicant has otherwise met the requirements of AS 42.06.270;
17 and

18 (2) construction of the new natural gas pipeline would be in the public
19 interest.

20 (b) The commission may specify the conditions on which the conditional
21 certificate is issued, including a limitation on the duration of the conditional
22 certificate.

23 (c) If the commission subsequently finds, on application or its own motion,
24 that all conditions placed on the conditional certificate have been satisfied, the
25 commission shall issue a certificate under AS 42.06.270.

26 * **Sec. 7.** AS 42.06.310 is amended by adding a new subsection to read:

27 (e) Notwithstanding (d) of this section, a North Slope natural gas pipeline
28 carrier that transports North Slope natural gas exclusively between any point within
29 the state and another point within the state shall, when ordered by the commission,
30 extend or enlarge its pipeline or storage facilities under the standards set out in
31 AS 38.35.121.

1 * **Sec. 8.** AS 42.06.630(6) is amended to read:

2 (6) "firm transportation service" means service by a natural gas
3 pipeline carrier that is not subject to a prior claim by another shipper or another class
4 of service **and is not subject to reduction unless the pipeline's overall capacity is**
5 **diminished**; service constitutes "firm transportation service" if the service receives the
6 same priority as any other class of firm transportation service.

7 * **Sec. 9.** AS 42.06.630 is amended by adding a new paragraph to read:

8 (20) "common carrier," with respect to natural gas pipelines, includes a
9 common carrier that offers to all shippers both firm transportation service and
10 interruptible transportation service.

11 * **Sec. 10.** This Act takes effect immediately under AS 01.10.070(c).