

## **State wants to participate in federal EIS for Alaska LNG project**

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The Alaska Department of Natural Resources has asked federal regulators if its permitting office can join the environmental review team for the Alaska LNG project as a “cooperating agency,” promising not to share anything with the project applicant, its colleague in state government, the Alaska Gasline Development Corp. (AGDC).

The Federal Energy Regulatory Commission (FERC) has been working toward an environmental impact statement (EIS) for the state-led North Slope natural gas project since AGDC filed its application in April 2017. The commission is scheduled to issue its draft EIS in March 2019.

Federal offices with permitting authority over a project are required to assist as cooperating agencies, such as the Army Corps of Engineers and U.S. Fish and Wildlife Service for the Alaska LNG project. FERC is the lead for the federal EIS for the Alaska gas development. The law also allows non-federal agencies to participate, if they have “special expertise with respect to the environmental impact of the proposal.”

Cooperating agencies must cover all their own costs of participating in the review.

The Office of Project Management and Permitting at Natural Resources coordinates between multiple state agencies with such environmental permitting expertise, Department of Natural Resources (DNR) Deputy Commissioner Heidi Hansen said in a July 13 letter to FERC, asking the commission to accept the state office as a cooperating agency in the federal review.

The DNR office “routinely enters into agreements with the lead federal agency as the single point of contact for state regulatory agencies ... participating in the deliberative process and compiling state agency comments,” Hansen wrote.

### **STATE MODELS REQUEST ON 2011 AGREEMENT**

The state’s letter included a draft agreement for FERC to consider, modeled on a 2011 agreement from a previous state-supported Alaska gas line effort. The draft commits DNR’s Office of Project Management to hold confidential any material in the federal environmental review not available to the public.

“To the extent permitted by law,” the July 13 draft agreement said, the office would not release any confidential or deliberative information outside of state agencies that have permitting or regulatory authority over the project. The ban would prohibit sharing with the project applicant, AGDC.

“There is clear separation between AGDC and the State of Alaska’s regulatory agencies for conducting the permitting process,” Hansen said in her letter to FERC. The state Legislature created AGDC in 2010 to promote, permit, and finance a North Slope gas pipeline project. It has the power of eminent domain to acquire private property, and it has authority to borrow money for construction.

Although federal regulators are far along in their environmental review, “we see significant value in participating in the EIS process to assist FERC and other cooperating federal agencies by providing additional information and data needed for their analyses,” the deputy commissioner said.

To further address the potential conflict for an Alaska state agency to cooperate on a federal EIS for a project led by the state, DNR’s project office “acknowledges that it is FERC’s policy that an agency cannot be both a cooperating agency and an intervenor in the same proceeding.” In the draft agreement presented to federal regulators, DNR’s Office of Project Management agreed “to forego its right to seek intervention in the Alaska LNG project EIS proceeding with FERC.”

An intervenor in a FERC proceeding has the legal right to challenge not only the EIS but also any commission decision.

However, the draft agreement continued, “this will not disqualify the State of Alaska or the Office of the Governor and other principal departments of the state ... from actively participating as intervenors in the Alaska LNG project certificate proceeding before FERC.

One state entity sitting on the review team for another state entity’s federal EIS is not unique — for Alaska.

In 2011, when the state was an advocate and partial funder for a different North Slope gas development project, FERC accepted the State Pipeline Coordinator’s Office at Natural Resources as a cooperating agency for the environmental review. However, FERC rejected a request from the Fairbanks North Star Borough to participate as a cooperating agency.

The state pipeline coordinator’s office joined the effort several months before FERC held public meetings in early 2012 — called scoping sessions — to learn what issues people and organizations wanted covered in the EIS. (The pipeline office closed in 2015 and its duties were reassigned within the department.)

This time around, the state asked for cooperating-agency status almost three years after the FERC-led scoping sessions for the Alaska LNG project. Federal regulations instruct cooperating agencies to participate in the process “at the earliest possible time.”

The 2011 proponents ExxonMobil and TransCanada, operating as the Alaska Pipeline Project, never advanced beyond the pre-file stage at FERC and formally withdrew their application in

2014 before regulators started drafting an EIS. The pipeline would have carried Alaska gas through Canada and into the North America pipeline system. Prolific U.S. shale gas production and low prices put an end to the effort to sell Alaska gas in the Lower 48 states.

About the same time as the file closed at FERC on the North American pipeline project, Alaska oil and gas producers ExxonMobil, BP, and ConocoPhillips turned their focus to the export market. The companies started the pre-file process at FERC in September 2014 for a project to pipe North Slope gas to Nikiski on Cook Inlet, where the methane would be liquefied and loaded aboard ships for delivery to Asian buyers.

When the producers decided to slow down spending on the LNG project in 2016, due to weak market conditions and low oil and gas prices, the state took over and went ahead with the application to FERC.

### **AGDC CONTINUES ANSWERING QUESTIONS**

AGDC and its contractors have been working the past year to answer questions and data requests from federal regulators, filling in gaps for the environmental review. In its latest filing, the state project team on July 24 presented FERC with the same material it gave the Army Corps of Engineers a few months earlier, addressing wetlands, dredging, and fill issues. The Clean Water Act requires AGDC to obtain a permit from the Army Corps.

In addition to ensuring preservation or restoration of wetlands and identifying appropriate Cook Inlet disposal sites for dredged material from the Nikiski marine terminal, the Army Corps and FERC review will look at the state's plans for streambed and bank restoration efforts at temporary bridges over waterbodies. AGDC plans 54 temporary bridges for construction access roads and pipeline work, ranging from a 20-foot-long span over an unnamed creek to two 300-foot spans over the Deshka River.

Included in the state's July 24 filing with FERC, the state team said it is "not practicable" to restore to their original condition and function all wetlands affected by the project, such as areas of gravel fill placed during construction. Some wetlands will be re-established with revegetation. "These wetlands could have a functional value that is equal to, better than, or less than the value of the wetlands they replace," AGDC has told the Corps and FERC.

Some property owners may not want the wetlands restored after construction, if the owner sees more value in retaining the gravel fill, the state team said. And, in some cases, removing fill placed during construction could "introduce open water and erosion" and "can do more harm than good."

Impacts to wetlands and other waterbodies "will be discussed in a Wetlands Compensatory Mitigation Plan, which will be provided after the draft EIS is issued," AGDC told FERC. "The plan will be refined in coordination with the Corps, leading up to the final EIS."

As soon as the Army Corps decides what areas covered by the project would qualify as wetlands, AGDC will provide more detailed mapping of terrain and boundaries.

The state team also noted that wildfires can turn areas “of discontinuous permafrost wetlands into uplands,” reporting that the pipeline would cross “several areas of discontinuous permafrost that were previously burned.” AGDC is waiting for the Army Corps to issue its determination of what still is considered wetlands.