STATE OF ALASKA

SEAN PARNELL, GOVERNOR

550 WEST 7TH AVENUE, SUITE 1400
ANCHORAGE, ALASKA 99501-3650
PHONE: (907) 269-8431

DEPARTMENT OF NATURAL RESOURCES
DEPARTMENT OF REVENUE

OFFICE OF THE COMMISSIONERS

May 2, 2012

Mr. Tony Palmer
Vice President, Major Projects Development
TransCanada Pipelines Limited
450 - 1st Street S.W.
Calgary, Alberta, T2P-5H1 Canada

Re: Approval of AGIA Licensees' Project Plan Amendments

Dear Mr. Palmer:

We are in receipt of your "AS 43.90.210 – Request for approval of project plan amendments under the [AGIA] License in respect of a potential LNG alternative – Phase 1" (the "PPA"), dated March 15, 2012. The PPA requests approval of two modifications to the project plan, described and identified by TransCanada Alaska Company, LLC ("TC Alaska"), Foothills Pipe Lines (North B.C.) Ltd. and Foothills Pipe Lines (South Yukon) Ltd. (jointly, the "Licensees" or "TransCanada") as the "Requested Amendments". Pursuant to AS 43.90.210, the Commissioner of Revenue and the Commissioner of Natural Resources for the State of Alaska ("Commissioners") approve the Requested Amendments to the project plan, as provided below.

BACKGROUND

On December 5, 2008, the Licensees were issued a license under the Alaska Gasline Inducement Act ("AGIA"), AS 43.90, *et seq.* The AGIA License incorporates the project plan set forth in the Licensees' November 30, 2007 AGIA application ("AGIA project plan" or "project plan"), as amended by the project plan modifications approved by the Commissioners by letter dated January 29, 2010.

Under Section 210 of AGIA, the Commissioners may approve a proposal by the AGIA licensee to change its project plan if, among other things:

> the amendment or modification is necessary because of changed circumstances outside the licensee's control and not reasonably foreseeable before the license was issued. An amendment or modification approved under this section must be consistent with the requirements of AS 43.90.130 and, except for an amendment or modification required because of an order or requirement of a regulatory agency with jurisdiction over the project or by the Alaska Oil and Gas Conservation Commission, may not substantially

diminish the value of the project to the state or the project's likelihood of success.

The Licensees propose two amendments to the project plan. First, the Licensees propose to include in the project plan the limited work plan, timeline and associated budget set forth in the PPA and identified as the "Initial Work Plan Amendment".[1] The Licensees state in the PPA that this amendment would facilitate participation by the Alaska Pipeline Project ("APP")[2] with the Alaska North Slope Producers (ExxonMobil, BP and ConocoPhillips, jointly "ANS Producers") in a concept selection assessment of a liquefied natural gas ("LNG") alternative specifically relating to a gas pipeline and related midstream facilities to deliver natural gas from the Alaska North Slope to the tidewater of south-central Alaska. These work plans are part of formal agreements executed between APP and the ANS Producers. More generally, these LNG work plans were set forth in a joint letter on March 30, 2012 by the chief executive officers of the ANS Producers to Governor Parnell. The Licensees state that while this concept selection process is occurring, they would continue work on the current project plan that contemplates a pipeline from the North Slope to Alberta ("Alaska-Alberta Project") to the extent required to preserve rights and the Alaska-Alberta Project as an alternative to commercialize ANS gas.

Second, the Licensees propose to amend the date by which the Licensees are required to file an application for a certificate of public convenience and necessity ("CPCN") for the Alaska-Alberta Project from the Federal Energy Regulatory Commission ("FERC") from October 2012 to October 31, 2014, set forth in the PPA and identified as the "Regulatory Amendment". The deferral of the FERC filing deadline would coincide with the process of assessing the in-state LNG project alternative discussed above.

As discussed below, the Licensees contend that the PPA meets the requirements of AGIA Section 210 because of changed circumstances outside their control and not reasonably foreseeable before the license was issued. The Licensees also contend that the PPA does not substantially diminish the value of the project to the state or the project's likelihood of success, and is consistent with the requirements of AS 43.90.130.

DISCUSSION[3]

The Requested Amendments would facilitate the ability of the APP Parties, on behalf of the Licensees, to continue work on the efforts to commercialize ANS gas with a focus on an in-state LNG project. These amendments are an outgrowth of Governor Parnell's request to the ANS Producers and the AGIA Licensees that they align under the AGIA framework for timely commercialization of North Slope natural gas resources for use in-state and for markets beyond Alaska. In response, the chief executive officers of the ANS Producers recently announced that they and the APP Parties "have aligned on a structured, stewardable and transparent approach with the aim to commercialize North Slope natural gas resources within an AGIA framework."[4] In their

---

[1] TransCanada requested confidentiality of the PPA, due to a claim of certain proprietary information contained within the PPA. The Commissioners granted this requested as provided under AS 43.90.210. However, much of the information contained in the PPA was not considered confidential by the Commissioners and is discussed in full in this determination.

[2] The Alaska Pipeline Project (APP) is being developed under an agreement entered into in 2009 between affiliates of TransCanada and ExxonMobil ("APP Parties") to jointly develop the project set forth in the Licensees' AGIA project plan.

[3] To the extent this determination does not address a specific statement or representation made in the PPA, it should not be construed as agreement with, or rejection of, any such statements or representations.

[4] ANS Producers' CEO March 30, 2012 letter to Governor Parnell (hereinafter "ANS Producers' CEO Letter").

letter to the Governor, the ANS Producers state that they "are now working together" with a focus on"large-scale liquefied natural gas (LNG) exports from south-central Alaska . . . as an alternative to gas line exports through Alberta."[5]

Related to this alignment, the State and the ANS Producers also recently reached agreement on a settlement regarding development of the oil and gas resources at Point Thomson. Under the settlement, the ANS Producers "are moving forward . . . with the initial development phase at Point Thomson with confidence that North Slope gas development will ultimately bring the Point Thomson resource to market." [6]

With these developments, particularly the alignment by the ANS Producers and the APP Parties in focusing on LNG commercialization, the proposed Initial Work Plan Amendment would enable the Licensees, through the APP Parties, to participate with the ANS Producers and focus commercial efforts on the LNG alternative, while reducing the level of expenditures on the Alaska-Alberta Project during the period the LNG alternative is being evaluated. The Requested Amendments lay out a transition phase between an ANS gas commercialization project that is focused on Lower 48 markets to one that is focused on LNG export markets abroad.

The proposed Regulatory Amendment, which would postpone the 2012 FERC filing date by two years, is expected to result in a reduction of Fiscal Year 2013 State-reimbursable expenditures on the Alaska-Alberta project under the AGIA License. This reduction would be achieved by deferring until October 2014 the Licensees' obligation under AS 43.90.130(3) and the AGIA License to file a complete application at FERC for a CPCN for the Alaska–Alberta project while the Licensees, APP and the ANS Producers focus on the LNG alternative.[7]

In support of its PPA, TransCanada contends that changed circumstances justify both of its proposed amendments. Specifically, TransCanada points to (a) the decline in natural gas prices experienced in the U.S. largely as a result of increased shale gas production, (b) the projection by the U.S. Energy Information Administration ("EIA") that the U.S. will become a net exporter of natural gas in the future, and (c) the interest the ANS Producers have expressed in focusing their efforts on an LNG alternative to the Alaska-Alberta Project. TransCanada also notes that, according to a January 2012 report by the EIA, "natural gas prices span a range from ... $4 per MMBtu in the United States and $16 per MMBtu in Asian markets that rely on LNG imports."

Based on the relevant facts that exist at this time, including the specific and limited nature of the requested PPA, the Commissioners find that changed circumstances exist for purposes of AS 43.90.210.[8] The relevant facts include: (1) a substantial increase in U.S. shale gas reserve

---

[5] ANS Producers' CEO Letter.

[6] *Id.*

[7] Among other things, TransCanada also committed to use the FERC's pre-filing procedures prior to filing its certificate application. TransCanada has an obligation to pursue that commitment and its other license commitments in a diligent manner, which the Commissioners expect would result in a determination by FERC that TransCanada's certificate application is complete once that application is filed. *See* the Request for Applications issued by the State of Alaska on July 2, 2007, at p. 49 (Section 5.1(40), stating that the licensee will pursue regulatory approvals and other actions "Promptly and Diligently", which is defined as "a manner that is commercially reasonable in the interstate gas pipeline industry in the U.S. with respect to timing and execution of relevant actions.").

[8] Under AS 43.90.210, each project plan amendment must be separately and independently justified and subject to the Commissioners' approval. The Commissioners, therefore, do not address the Licensees' request for acknowledgment or approval at this time that any future project plan amendments relating to the "LNG Pipeline Midstream Facilities" be considered to have arisen from the same set of changed circumstances as detailed in the PPA. This does not preclude the Licensees from raising the same or other changed circumstances in future requests for project plan amendments as

estimates; (2) significantly higher natural gas prices in Asia and other world markets, reflecting a higher oil to natural gas price ratio; (3) EIA's related projection that the U.S. will become a net exporter of natural gas in the future; and (4) the interest of the ANS Producers in aligning their work efforts behind an LNG alternative, which was not foreseeable at the time of the AGIA Findings and when the License was issued in 2008 because, at that time, the Lower-48 market looked much more robust.[9] This is the first time since AGIA was enacted that the Licensees and all three ANS Producers have been aligned on a gas commercialization effort.

The Commissioners also find that the PPA does not substantially diminish the value of the project to the State or the project's likelihood of success.[10] As noted by the Licensees, the U.S. EIA has recently found that natural gas prices in Asia are much higher than in the U.S. Focusing efforts among the Licensees, APP, and ANS Producers on the feasibility of an LNG project to serve higher-priced Asian and other markets may improve the value of the project to the State and the project's likelihood of success. Given the high natural gas prices that currently exist in Asia and in other world markets, an LNG project may be even more economic than it was at the time of the AGIA Findings. In addition, this shift in focus will not diminish the ability to meet in-state gas needs.[11]

Thus, the Commissioners expect the ANS Producers to make substantial and timely progress with the APP Parties in developing an LNG project, consistent with the ANS Producers' obligations under their leases with the State. In particular, the Commissioners expect that these parties will continue to pursue an aggressive work schedule to meet Governor Parnell's State of the State timeline to conclude the concept selection process referenced in the March 30, 2012 letter by the end of September 2012.

As noted above, ANS gas commercialization efforts are in a transition phase with ANS Producers, the APP Parties, and the Licensees working together for the first time on a single effort. After this initial concept selection work is completed, we expect the Licensees to file a more definitive PPA that will reflect the details of the project selection, the public solicitation (see below) and an associated timeline relating to an LNG project.[12]

The Commissioners also find that the PPA is consistent with the requirements of AS 43.90.130, which obligate the AGIA Licensees to certain commitments. Under the PPA, the Licensees continue to be bound by the requirements of AGIA, including all of their AGIA commitments under AS 43.90.130. The Licensees continue to be required to file a complete application for a CPCN at FERC for the Alaska-Alberta project by a date certain; the obligation to file a complete application is merely deferred until October 31, 2014.[13] Subject to this deferral, the

---

appropriate to the request, which the Commissioners will then address based on the facts and circumstances that exist at that time.

[9] The mere fact that natural gas prices have changed since the AGIA License was issued in 2008, standing alone, does not meet the changed circumstances standard set forth under section 210. However, such price changes are a relevant factor when combined with the other relevant factors discussed above, under the circumstances that exist at this time and given the limited nature of the requested PPA.

[10] While it is not determinative to this decision, the Commissioners do not comment on, or find it necessary to rule on the merits of, the Licensees' limited interpretation of the term "value to the State".

[11] In addition to a focus on an in-state LNG project, the ANS Producers' CEO Letter also highlights the importance of addressing in-state Alaska gas needs and demands.

[12] The ANS Producers' CEO letter references an "associated timeline" as part of the gas commercialization project selection.

[13] *See supra* note 6.

Licensees will minimize the expenditure of State funds on the Alaska-Alberta alternative while the commercial focus shifts to the LNG alternative.

The Commissioners' approval of the Initial Work Plan Amendment and the Regulatory Amendment is subject to the following:

First, the Licensees will conduct and complete a comprehensive and meaningful public solicitation of interest in an LNG project by December 31, 2012, including interest in making firm pipeline capacity commitments on a pipeline from the North Slope to a new or existing LNG liquefaction terminal at tidewater as well as to Alberta. This solicitation must satisfy the requirements of AGIA and the AGIA license, and include all potential market participants, including but not limited to North Slope producers, explorers, LNG terminal developers, and entities seeking to import Alaska gas into Asian and other markets.

Second, the State will continue to reimburse the Licensees for reimbursable costs in accordance with AGIA for expenditures within the parameters of the project plan as amended by this determination. No reimbursements will be provided or paid for any costs relating to the LNG Pipeline Midstream facilities which occur after the period covered in the revised work plan, timeline and budget unless the Licensees have obtained approval of a subsequent project plan amendment covering work in the subsequent period. Consistent with Governor Parnell's State of the State address, the Licensees will consult with the Alaska Gasline Development Corporation ("AGDC") to determine whether useful work product is available from AGDC and, if so, then the Licensees will take reasonable steps to obtain or utilize the AGDC work product from AGDC. This is in the interest of prudently avoiding unnecessary and duplicative expenditure of state funds on projects that share the important objectives of addressing in-state demands for natural gas and commercialization of ANS gas.

Third, all work product related to the Alaska-Alberta Project generated by or on behalf of APP, including both complete and incomplete work, will be inventoried as soon as practicable and preserved. This inventory, which must be provided to the Commissioners, will include, without limitation, a description of the currently incomplete work that is expected to become complete and be transferred to the Licensees over the period of the Initial Work Plan Amendment. In addition, all work product related to the LNG Pipeline Midstream Facilities pursuant to the Initial Work Plan Amendment generated by or on behalf of APP or the Licensees during the concept selection process for the LNG alternative will be transferred to the Licensees at the end of the concept selection stage, as described in the PPA.

FINDINGS AND CONCLUSIONS

For the reasons discussed above, the Commissioners conclude as follows:

1. The PPA is necessary because of changed circumstances outside the Licensees' control and not reasonably foreseeable before the license was issued,

2. The PPA is consistent with the requirements of AS 43.90.130,

3. The PPA does not substantially diminish the value of the project to the state or the project's likelihood of success, and

4. The PPA is approved as provided herein.

The Commissioners emphasize that the foregoing discussion, findings and conclusions are limited to the two Requested Amendments proposed in the PPA. The Commissioners do not approve or acknowledge any additional or future project plan amendments that may be stated or implied in the PPA.

Daniel S. Sullivan
Commissioner
Dept. of Natural Resources

Bryan Butcher
Commissioner
Dept. of Revenue