

STATE OF ALASKA

DEPARTMENT OF LAW

SARAH PALIN, GOVERNOR

P.O. Box 110300
Juneau, Alaska 99811-0300
Phone: (907) 465-3600
Fax: (907) 465-2075

August 4, 2008

The Honorable Sarah Palin
Governor
State of Alaska
P.O. Box 110001
Juneau, Alaska 99811-0001

Re: HB 3001 (efd fld) -- approving issuance of a license by the commissioner of revenue and the commissioner of natural resources to TransCanada Alaska Company, LLC and Foothills Pipe Lines Ltd., jointly as licensee, under the Alaska Gasline Inducement Act
Our file: 883-09-0002

Dear Governor Palin:

At the request of your legislative director, we have reviewed HB 3001 (efd fld) approving issuance of a license by the commissioner of revenue and the commissioner of natural resources (commissioners) under the Alaska Gasline Inducement Act, AS 43.90.010 – 43.90.990 (AGIA) to TransCanada Alaska Company, LLC and Foothills Pipe Lines Ltd. (TC Alaska), jointly as licensee.

Background

AGIA established a competitive process to facilitate construction of a natural gas pipeline to transport Alaska's natural gas from the North Slope to markets, to promote exploration and development of North Slope oil and gas resources, and to encourage oil and gas lessees and other persons to commit to ship natural gas on a project licensed under AGIA.

The commissioners were required to request applications for a proposed natural gas pipeline project and evaluate the proposals under defined criteria to determine if a project merited issuance of a license. A licensee under AGIA is entitled to state matching funds of up to \$500 million toward construction of a natural gas pipeline project.

If the commissioners determined that an application “will sufficiently maximize the benefits to the people of this state and merits issuance of a license...”, they were required to issue a determination and written finding to that effect, publish notice, and provide the legislature with the determination and notice of intent to issue a license. (AS 43.90.180)

On receipt of the commissioners’ determination and notice of intent, AGIA directed the legislature to introduce and consider bills for the approval of the license proposed to be issued by the commissioners. (AS 43.90.190) AGIA provides that if the legislature passes a bill approving the issuance of the license within 60 days after receiving the determination under AS 43.90.180, the commissioners shall issue the license as soon as practicable after the effective date of the Act approving the license. (AS 43.90.190)

1. Section 1 of the Bill: Authorizing Issuance of an AGIA License

Section 1 of the bill amends the uncodified law of the State of Alaska by adding a section that authorizes the commissioner of revenue and the commissioner of natural resources to issue a license under AS 43.90.010 – 43.90.990 to TransCanada Alaska Company, LLC and Foothills Pipe Lines Ltd. (TC Alaska), jointly as licensee.

Insofar as a bill approving issuance of a license by the commissioners may raise separation of powers questions under the Constitution of the State of Alaska, the Department of Law has previously recognized that "the executive is free as a matter of comity to acquiesce in what amounts to the legislature's request for more active oversight."¹ We noted that executive comity is particularly appropriate in circumstances that involve the state's fiscal regime – a subject substantially under the purview of the legislative branch. The \$500 million state matching contribution to the licensee’s qualified expenditures under AS 43.90.110 and 43.90.400 is clearly under the purview of the legislative branch's appropriation powers.²

In the case of approval to issue the proposed contract under AS 43.90.190, we believe the legislation could be viewed as evidencing the governor has agreed, as a matter of comity, to the legislative approval of the executive branch decision that an application merits issuance of the license. Keeping in mind that, if possible, legislation should be

¹ 1998 Alaska Op. Atty. Gen. 122, Page 2, 1999 WL 638618 (Alaska A.G.), on review of SCS CSHB 393(FIN).

² June 5, 2007, Alaska Atty. Gen. on review of SCS CSHB 177 (FIN) (AGIA).

construed to avoid the possibility of unconstitutionality, we believe this provision reasonably can be construed as not violating the separation of powers doctrine.

2. Effective Date of the Bill

HB 3001 was introduced with an immediate effective date. The immediate effective date provision failed to pass the House with the required two-thirds vote. Therefore, the effective date of the bill is 90 days after the bill is enacted into law.

3. Letter of Intent

The House and Senate adopted a House Letter of Intent that is transmitted with the bill. The letter states that it is the intent of the legislature "that an AGIA license will enable and encourage an All Alaska gas line/liquefied natural gas (LNG) project within the TransCanada project." The letter further states that it is the intent of the legislature "that an award of an exclusive license to TransCanada not interfere with the rapid delivery of North Slope gas to Alaskans markets," and that an All Alaska gas line/LNG project in conjunction with the TransCanada project "receives the assistance of the executive branch and be granted expedited review and action by state agencies."

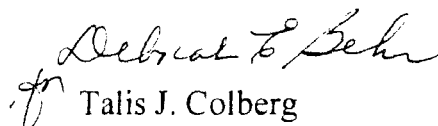
Finally, the letter states, "[n]othing in this letter of intent is intended to alter the obligations of the parties under the law, and nothing in this letter is intended to encourage the violation of these obligations."

A letter of intent does not have the force of law, and as a general rule, does not impose a legal duty. See State of Alaska v. ASEA/AFSCME Local 53, 923 P.2d 18 (Alaska 1996).

Conclusion

HB 3001 (efd fld) is the legislature's substitute to the original bills introduced by the House and Senate Rules Committees at the request of the governor. We see no significant legal concerns presented by the bill, and believe that the bill will withstand any significant statutory or constitutional challenge.

Sincerely,


Talis J. Colberg
Attorney General

TJC:DB:LAW:ajh