

FERC denies state request for cooperating agency status in EIS

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The law doesn't allow the Alaska Department of Natural Resources to participate as a cooperating agency in the federal environmental impact statement for the state-led Alaska LNG project, U.S. regulators said. The department had promised not to share any information with the project developer, the Alaska Gasline Development Corp. (AGDC), but that wouldn't solve the legal problem, said the Federal Energy Regulatory Commission (FERC).

"Even with a firewall, both agencies would nevertheless be accountable to advancing the interests of the state of Alaska in getting the project approved," Jim Martin, a branch chief at FERC's Office of Energy Projects, said in a Dec. 14 letter to the Natural Resources commissioner's office.

The department in July asked if it could formally join the FERC-led team preparing the environmental impact statement (EIS) for the state-led North Slope gas development. The federal regulator is scheduled to release its draft EIS for the project in February, assuming it receives all the information it has requested from the state corporation.

"Even with a firewall, the state of Alaska cannot participate in the proceeding in the dual capacity of both applicant and cooperating agency," FERC said adding that its rule "does not provide an exception for having off-the-record communications with one part of a state ... while walling off another part of a state. ... The Office of General Counsel has informed us that such an arrangement could result in significant due-process issues."

And regardless if FERC's rules accepted such a firewall or administrative screen for blocking communications between state agencies, "it would still not resolve the conflict of the state of Alaska acting as an applicant while also seeking to act as an assistant to the decision maker through its status as a cooperating agency," Martin said in his letter.

"Although we are not able to grant the state's request for cooperating agency status, the state may nevertheless communicate its special expertise on the record," Martin said. There are no restrictions on the Department of Natural Resources or any other state agency submitting public comments to FERC's docket for the Alaska project.

Federal offices with permitting authority over a project are required to assist as cooperating agencies, and FERC's rules allow non-federal agencies to participate as cooperating agencies in preparing an EIS if they have "special expertise with respect to the environmental impact of the proposal."

The state Office of Project Management and Permitting submitted the July request to FERC. The office coordinates between multiple state agencies with environmental permitting expertise and “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,” the request said.

What’s different with the gas line project, however, is that the state is the developer of the proposed \$43 billion venture to pipe North Slope gas more than 800 miles from Prudhoe Bay to a liquefaction plant and export terminal in Nikiski on Cook Inlet.

In addition to working toward FERC approval, the state development corporation is trying to line up customers, partners, and financing for what would be one of the most expensive energy projects in North American history.