

ALASKA STATE LEGISLATURE
JOINT COMMITTEE ON LEGISLATIVE BUDGET AND AUDIT

May 6, 2005

8:12 a.m.

MEMBERS PRESENT

Senator Gene Therriault, Chair
Representative Ralph Samuels, Vice Chair
Senator Bert Stedman
Senator Lyda Green
Senator Lyman Hoffman
Representative Mike Chenault
Representative Mike Hawker
Representative Beth Kerttula
Senator Gary Wilken, alternate
Representative Kevin Meyer, alternate

MEMBERS ABSENT

Senator Ben Stevens
Representative Pete Kott
Representative Reggie Joule, alternate

COMMITTEE CALENDAR

FERC ORDER NO. 2005
OTHER COMMITTEE BUSINESS

PREVIOUS COMMITTEE ACTION

No previous action to record

WITNESS REGISTER

DONALD C. SHEPLER, Counsel
Legislative Budget and Audit Committee
Washington, D.C.

POSITION STATEMENT: Explained the Federal Energy Regulatory Commission (FERC) regulations governing the conduct of open seasons for Alaska natural gas transportation projects.

JOE BALASH, Staff to Senator Therriault
Alaska State Legislature
Juneau, Alaska

POSITION STATEMENT: Offered information about Senate Concurrent Resolution 15.

ACTION NARRATIVE

CHAIR GENE THERRIAULT called the Legislative Budget and Audit Committee meeting to order at [8:12:08 AM](#). Senators Therriault, Stedman, Hoffman, Wilken, and Representatives Samuels, Hawker, Kerttula, and Meyer were present at the call to order. Senator Green and Representative Chenault arrived as the meeting was in progress.

FERC ORDER NO. 2005

SCR 15-LB&A TO LITIGATE GAS PIPELINE CASE

[8:12:53 AM](#)

CHAIR THERRIAULT announced that the only order of business would be Senate Concurrent Resolution (SCR) 15, which authorizes the Joint Committee on Legislative Budget and Audit to enter into litigation regarding the Federal Energy Regulatory Commission (FERC) Order No. 2005. The fore mentioned order contained the regulations for conduct regarding the open season methodology for the gas pipeline.

[8:13:19 AM](#)

JOE BALASH, Staff to Senator Therriault, Alaska State Legislature, turned to the memorandum from Legislative Legal and Research Services, which lays out the rationale behind the aforementioned resolution. He relayed that the Legislative Budget and Audit Committee, similar to Legislative Council, has the statutory authority to sue in the name of the legislature between sessions. Chevron filed its complaint in the district court of appeals in Washington D.C., on April 8, 2005, hence there is 30 days to intervene, which places the date on [May 8, 2005]. He offered that the delegation of the authority to the committee was necessary.

[8:14:41 AM](#)

CHAIR THERRIAULT opined that the committee could have taken the action without the resolution if the court period to file had gone into the interim, but while the legislature is available the statutes require the legislature to prompt the action.

[8:15:06 AM](#)

DONALD C. SHEPLER, Counsel, Legislative Budget and Audit Committee, characterized this as a technical, legal, procedural matter that has to be filed no later than [May 9, 2005]. He explained that the committee participated in the FERC rule and those proceedings have moved on to the court of appeals; this motion makes the committee a party to that appeal so that the committee can continue to take whatever action is appropriate to maintain the standing of the FERC order. With the approval of the committee, Mr. Shepler said that he was prepared to file this in the D.C. circuit on May 9, 2005.

CHAIR THERRIAULT inquired as to when the next decision in the legal proceeding may come.

MR. SHEPLER reminded the committee that FERC issued its order on February 9, 2005, to become effective 90 days after it was published in the federal register, which he estimated to be in mid-May. He related that a number of parties have filed for a rehearing of the FERC order and FERC has taken that under advisement. He related his belief that once FERC meets [May 18, 2005,] the commission might address the rehearing request. Once FERC acts on rehearing, it's expected that others would seek to appeal or possibly ask for further rehearing to the extent that FERC might make changes. He suspected that the aforementioned situation might "start the clock" for more appeals being filed in the court of appeals. He highlighted that under D.C. circuit rules, once the Legislative Budget and Audit Committee is made a party to the Chevron appeal the committee becomes a party to all of the appeals that are subsequently filed, appealing in the same order. Therefore, once the motion to intervene is filed, the committee will then be party to all the proceedings that go into the court of appeals. The federal statute under Order No. 2005 provides that all appeals from any FERC action under that statute have to be lodged in the Washington, D.C., circuit court of appeals and the court has to treat the appeals expeditiously. After the intervention a provision of time within which the respondent, FERC, has to file in order to dismiss the case on whatever grounds it may seek to do. Thereafter, the court will establish a briefing schedule for the appeal, which will most likely be established after the other appeals to be filed in 60 days after the order on rehearing comes out. At some point within the next 90 days, there ought to be established some sort of briefing schedule for all of the appeals of Order No. 2005, he added. The requirement that the judicial proceedings be expedited will [require] formal arguments on the appeal and then a decision. The exact timeline is undetermined because it depends upon the court's briefing schedule. However, some time

within this month the FERC will dispose of the pending request for hearing, after which parties can then proceed to the court of appeals if they so choose, he added.

[8:21:34 AM](#)

REPRESENTATIVE SAMUELS asked what the range of finality dates might be.

MR. SHEPLER estimated that the final finality will be at the end of year.

[8:21:58 AM](#)

CHAIR THERRIAULT related his opinion that other than filing in order to get placement in the court proceedings, the committee may choose to take no further action in the filing but it will receive all of the action brought to the court.

MR. SHEPLER replied that the committee is not obligated to do anything. Since there was no appeal filed, because the order was perceived as favorable, the committee has no right to file any briefs. However, by being an intervener the committee becomes a party to the case and will receive copies of everything that is filed in the court proceedings on this appeal and all subsequent appeals for Order No. 2005. He added that the committee can only take actions if it's an intervener.

[8:23:16 AM](#)

CHAIR THERRIAULT related his understanding that intervening on this case automatically makes the committee a party to any subsequent legal challenges brought forth by any party. He asked if the aforementioned is because the court consolidates all of the appeals cases.

MR. SHEPLER answered that Court Rule 15(b) states that an intervener in a proceeding is [automatically] an intervener in all subsequently filed appeals for the Court of Appeals in the same case. He related his belief that any subsequent appeal would be consolidated into one oral argument and one court appeal decision.

[8:24:26 AM](#)

REPRESENTATIVE SAMUELS moved that the Legislative Budget and Audit Committee authorize Mr. Shepler to file the motion in the

U.S. Court of Appeals for the District of Columbia Circuit and to authorize the Chair to order further motions to be filed by the Legislative Budget and Audit Committee attorney during the interim on the same subject.

CHAIR THERRIAULT, in response to Mr. Shepler, clarified that the Legislative Budget and Audit Committee would intervene on behalf of the legislature.

MR. SHEPLER noted then, in that case, the draft [motion to intervene] may need to be reworded. He said he assumed that he would have the purview to do so.

CHAIR THERRIAULT confirmed that.

[8:25:27 AM](#)

A roll call vote was taken. Senators Hoffman, Stedman, Green, Wilken, and Therriault, and Representatives Samuels, Chenault, Hawker, Kerttula, and Meyer voted in favor of the motion to authorize Mr. Shepler to file the motion in the U.S. Court of Appeals for the District of Columbia Circuit and authorize the Chair to order further motions to be filed by the Legislative Budget and Audit Committee during the interim on the same subject. Therefore, the motion passed by a vote of 10-0.

OTHER COMMITTEE BUSINESS

[8:26:16 AM](#)

MR. BALASH related that next Wednesday the committee will meet to provide updates and feedback regarding what the federal agencies have done in preparation for the receipt of a FERC certificate on the Natural Gas Pipeline Act of 2004. He explained that FERC was vested with the coordination authority to oversee the permitting and certification of the pipeline and will be speaking about the status of regulations on the federal loan guarantees.

[8:28:09 AM](#)

SENATOR WILKEN requested that the Chair issue a request for proposals (RFP) in order to "slow down a train that's running down the tracks and it's rolling over our efforts ... to put forth a high school qualifying exam that is valid and reliable." He reminded the committee that the new qualifying exam was implemented in April and was panned across the state as

inadequate and not a good measurement of the third through eleventh grade students. He recalled that House Bill 146 was when the legislature started the work on a high school qualifying exam and approximately \$20 million was spent to develop a test. In 2001, the federal government instituted the No Child Left Behind (NCLB). In December 2003, a new RFP was issued and a new test was started but it has since been rushed into existence and was administered in April of this year. As a result of the April test, the commissioner is setting up the cut scores for the tests in October. He related his belief that the test is flawed in compilation, content, administration, and does not reflect an adequate sampling of the population on which the cut scores should be based. He requested the Chair to slow the test down and write the commissioner a letter requesting that he wait [to establish the cut scores]. He further requested that a third party assess the situation.

SENATOR WILKEN read aloud a letter from his school district explaining how difficult the tests were. The letter related that normally these type of tests take between 2 to 3 hours, but this test took 5 to 6 hours a day. Furthermore, the tests were 3 day tests and the math was on the third day when the fourth graders were exhausted. The letter went on to relate that some of the questions had no correct answers; the reading questions were in the math books; test books were collated backwards and thus some students took the test in reverse order. The fourth through ninth graders had two test booklets that were 11x19 inches, one of which was the question book and the other was the answer book. Furthermore, imbedded into the test were between 15 to 39 new questions that were the basis of the next level of the test, although those questions haven't been verified or validated. He opined that the test has failed.

SENATOR WILKEN turned to the report he requested from the department and showed the committee how unintelligible the report was because it was a photo file, which is unable to change font sizes. The aforementioned is the typical kind of frustration that one experiences when trying to deal with this issue. He offered his belief that the state is rushing headlong into millions of dollars in lawsuits. Furthermore, the school boards are going to be overwhelmed from parents with children who are spending 6 to 7 hours daily, 3 days a week taking a cumbersome test. He asked the Chair to help slow down these tests so the tests in October aren't based on a very bad picture of where they're at today.

[8:35:17 AM](#)

SENATOR GREEN explained that she doesn't disagree, but pointed out that there are two Health, Education and Social Services Standing Committees and a House Special Committee on Education [that can address this matter]. This is a policy issue not just a Legislative Budget and Audit Committee position. All the parties should be involved, she opined. She asked if there was a crossover between the high school qualifying exams and the grade level exams.

SENATOR WILKEN responded that there are two sections and both have problems. Additionally, there are questions imbedded in both.

[8:36:18 AM](#)

SENATOR GREEN replied there will always be questions imbedded because that is how they prepare the next round of tests. She opined that the committee needs to be careful before a letter is sent out.

[8:36:37 AM](#)

CHAIR THERRIAULT said he would discuss the presented information with Senator Wilken and the Chairs of the individual Health, Education and Social Services Standing Committee regarding what action they need to take versus what action this committee needs to take.

[8:37:10 AM](#)

SENATOR WILKEN said he would distribute the earlier mentioned letter from his district relating the problems one school district had with the test.

[8:37:28 AM](#)

SENATOR GREEN encouraged members to gather information on this matter and they could personally write opinions and ask questions.

CHAIR THERRIAULT requested that Senator Wilken's staff make packets with regard to what is the pertinent information for all members to consider.

ADJOURNMENT

8:37:50 AM

There being no further business before the committee, the Legislative Budget and Audit Committee meeting was adjourned at 8:37 a.m.