

Stranded Gas Hearings

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RCA's Memorandum of Understanding with FERC on the Regulation of an Interstate Gas Pipeline and its Role in the Regulation of Rates for In-State Gas Processing and Gas Gathering Lines

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Margery Fowke, National Energy Board (NEB) - Canada;

John Katz, Assistant General Counsel for Energy Projects, Federal Energy Regulatory Commission (FERC);

Robert Cupina, Deputy Director, Office of Energy Projects, Federal Energy Regulatory Commission (FERC)

MR. DAVE HARBOUR, Chair, Regulatory Commission of Alaska (RCA), introduced Judge Jan Wilson, Administrative Law Judge, RCA, who specializes in the application of oil and gas pipeline regulations, particularly under AS 42.06.

With your approval today, what I'd like to do is offer our panel participation as citizens. The reason for this is the decisions we make and the statement we make in public are the product of due process hearings and a legal record. So, we don't for a moving target like this express approval on the commission on what we say. We'll do our best to help today with your deliberations. Our goal is to provide you with this brief opening statement and then attempt to personally help with the questions you may have.

Bonnie Robson advised us today that we'd be talking about general regulatory issues affecting the Alaska gas pipeline. I think the statements you've got are going to be most to the point of the interests of this committee. However, I think I can provide a few points that might assist and round out your understanding.

First, the Alaska Pipeline Act establishes our commission's pipeline jurisdiction throughout the state except as it might conflict with federal jurisdiction. The legislature specified in AS 42.06 that the Alaska Commission has jurisdiction, 'of intrastate transportation of North Slope natural gas through a North Slope natural gas pipeline.' So, that is there.

Second, in chapter 15 of USC 15, we find language dealing with the regulation of interstate pipelines and a special note that federal regulation and matters relating to the transportation of natural gas in interstate and foreign commerce is in the public interest. So, that will be regulated by the federal government, but the jurisdiction is limited and does not include, 'local distribution of natural gas or to the facilities used for such distribution'. Federal jurisdiction also doesn't apply to 'persons engaged in the transportation in interstate commerce or the sale in interstate commerce for resale of natural gas received by such person from another person within or at the boundary of a state if all the gas so received is ultimately consumed within the state.'

Number three – jurisdictional decision. Where specific projects are involved, federal and state regulators are similarly situated. That is to say we can't make findings and issue decisions except when we have real applications, fact finding, a complete record, and an opportunity for all parties to have their due process. I think all the regulatory agencies that you hear from today have that type of a concept in common....

The RCA and the FERC have anticipated that an Alaska gas project could produce jurisdictional questions and we've created a memorandum of understanding (MOA). It's very similar in wording to the MOA in the pack Ms. Fowke handed to you from the NEB - between it and FERC. That is to say we don't have a specific application; we don't have specific projects to deal with, but there is an anticipation by the agencies, the FERC, the NEB, and the RCA that this is coming and that we need to work and will work effectively together to resolve jurisdictional questions.

A number of conversations we've had with Chairman Wood of the FERC and Commissioner Brownel have verified this. I think that the members can take comfort in that.

Finally, I draw your attention to the energy bill. Mr. Cupina made some reference to it earlier and Mr. Katz is highly conversant with it, but while several recent versions are interesting, I'll refer to the S 1005 version, not the whole 215 pages, but section 131 dealing with the Alaska Natural Gas Pipeline Act. I want to draw your attention to several provisions relating to jurisdiction that you've discussed at this meeting that should give Alaska comfort.

Number one, Section 133 requires the FERC to provide by an open season process support for exploration, development and competition - secondly, to provide for capacity beyond the initial capacity and access for gas other than from Prudhoe Bay and Pt. Thompson.

Second, the act requires the certificate holder to evaluate in-state needs including tie-in points for in-state access.

Third, the state can request that the FERC hear its concerns for access to the pipeline for transportation of royalty gas for local and state consumption.

Fourth, Section 135 provides for expansion of the pipeline in appropriate circumstances.

Fifth, Section 138 anticipates local distribution of North Slope gas, additional pipelines and rate coordination with us, with Alaska. Maybe the best contribution I can make to your afternoon is to give you a memorandum that Bob Loeffler gave me a couple of days ago anticipating this event. Bob is a lawyer; I'm not a lawyer. Bob, from his viewpoint representing the state, has summarized this jurisdictional question in a two-page memo. I think to some rights the FERC and RCA are in a good position to efficiently coordinate processes as a project takes shape and an actual application is filed. I said an application; I'm kind of reflecting the sentiment that Mr. Cupina gave you earlier - the admonition to us all that a single application will be much more timely dealt with than multiple competitive applications through a regulatory process. Thank you, Mr. Chairman. Judge Wilson and I will be happy to answer any questions that members may have.

CHAIR SAMUELS asked if NEB ordered an expansion and FERC can't order an expansion, would that give Canadian explorers access to the pipe south of Alberta and then because that expansion was filled up, would that cut off Alaskan explorers.

MS. FOWKE asked if he was assuming it was Canadian gas coming in.

CHAIR SAMUELS said yes and clarified that he was asking if the Canadian companies would have an advantage because of their regulatory environment. "Has that happened before?"

MS. FOWKE replied that it hasn't happened before. The pipelines that are in existence now originate in Canada and the suppliers are all Canadian.

Because we have all rolled-in, one producer is not in a better situation than another producer, because they all pay the same toll. If your scenario is that if you had a pipeline coming from Alaska down through Canada and there was Alaskan supply coming through it and then there was a pool discovered in Canada that was then going to come on? Was that your scenario?

CHAIR SAMUELS replied yes.

MS. FOWKE replied:

I guess the producers that are producing in the United States and Alaska and the Canadians producing in Canada would pay the same rate for the Canadian portion of the pipeline. So, the toll that they would pay in Canada, assuming that the pool that you're talking about is relatively far north - if it's south, you might have a different issue - the toll that they would be paying would be the same or essentially the same depending on your tolling regime. So, they wouldn't be discriminated against in terms of the Canadian toll that's being paid.

CHAIR SAMUELS asked Mr. Cupina to respond.

MR. CUPINA replied:

I don't think there's any discrepancy in that if we had an incremental expansion and, at the same time in Canada they had a rolled-in expansion, those two different rate regimes are applied. I'm not sure why they would have to be uniform.

MR. KATZ said he heard the question to be what happened to producers who are not initial shippers on the pipeline if gas was later developed and was ready to move and the pipeline declined to move that gas. I think you're correct that in the absence of the energy bill, the commission would not have the authority to require the expansion of that pipeline.

SENATOR ELTON added that the other instance is expansion of capacity in Canada that would preclude expansion of capacity at the northern part of the Alaskan component of the line. He said he'd be interested in knowing how the two regulatory bodies would deal with that issue.

MS. FOWKE asked how an expansion in Canada would preclude expansion in Alaska.

SENATOR ELTON was assuming that authorized expansion of capacity in Canada would limit expansion capacity for Alaskan producers.

CHAIR SAMUELS asked if the expansion caps out in Canada.

MS. FOWKE replied no, the engineers just get more and more excited about what they get to do. The cheapest expansion is going to be with compression; then you start looping the line, which might have economic restrictions. There aren't any physical restrictions.

I don't see how an expansion in Canada would preclude an expansion for Alaskan shippers. If there was a pool to be developed in Canada, in the Yukon, that would then ship on this same pipeline that was bringing Alaskan gas down and if that somehow captured some of the cheaper expansion – the compressors – then it wouldn't prohibit or restrict our ability to provide for more facilities if there was more gas being produced in Alaska that needed to be shipped and if it was in the public interest to provide for expansion.

SENATOR ELTON asked, "Doesn't there have to be a protocol between FERC and NEB to accommodate U.S. producers for capacity expansion that would be conducted in Canada?"

MS. FOWKE replied:

It may well be that we work out some kind of a protocol, but we can't influence the other tribunal's decision. FERC can't influence what our decision is; our decision has to be in the Canadian public interest. The FERC's decisions have to be in the American public interest.... I can tell you that in all the history that's gone on, the pipelines have managed to meet at the borders and the expansions have been seamless. And there have been major expansions. The GH-5-89 expansion was a \$2.6 billion expansion in Canada that went down into the States. It was huge at the time and it was seamless. They approved what they needed to approve; and we approved what we needed to be approved. So, it's always happened....

MR. KATZ added, "That's the situation where the MOU between the commission and the NEB would come usefully into play, because while I absolutely agree with what was just said with respect to each tribunal needing to make independent decisions. The MOU provides the framework where the two entities could work together developing the records they need and gathering requisite information and one would hope that having done that, the logical conclusions would be reached by both entities if they had the same information before them.

CHAIR SAMUELS said he hated to beat a dead horse, but the fear is that Canadians would take advantage of the cheap expansion rolled-in. Alaskan explorers would come on later with the incremental tariff and the exploration dollars flow to Canada then as opposed to flowing to Alaska.

MS. FOWKE responded that the tolls are just one of the issues that the explorers have to look at.

However, in the scenario where the Alaskan gas were to come on and have more expensive expansion in Canada, because a pool in Canada was taking the cheaper expansion, there would still be rolled-in tolls in Canada.

The producers who are producing in Canada that came on stream with the cheaper expansion would still be facing an increase in toll, the same increase as the producers that are producing in Alaska would face.

MR. CUPINA said he thought the timing of when to lock in capacity would be a market decision that the shippers or producers would have to take into consideration.

REPRESENTATIVE MIKE HAWKER said there have been references to a 25-year old treaty between the RCA and NEB.

MS. FOWKE replied that would probably be the Northern Pipeline Treaty, which is what preceded the Canadian Northern Pipeline Act dealing with the Foothills project. Since there are outstanding issues on that matter, she wasn't able to discuss it.

REPRESENTATIVE HAWKER said a statement was made by TransCanada that they have the right to build any pipeline that would be built in Canada. It was in response to sponsors in Alaska that want to be part of building a pipeline in Canada. He asked if TransCanada has a preemptory right.

MS. FOWKE replied, "That is their view."

REPRESENTATIVE HAWKER said that Alaska has a sponsor group that is interested in building a pipeline across Canada.

REPRESENTATIVE GUESS asked what currently prohibits the RCA from having an approach like the NEB on taking it on a case-by-case basis on whether a roll-in on incremental tariff is in the best interest.

MR. CUPINA replied that it's the commission's policy choice, which has been in effect since 1999, and maybe since 1995 as opposed to any inherent bar. There is a written commission policy statement that spells that out, nothing at the federal level. "The statute requires what is called just and reasonable rates. Throughout the history of the Natural Gas Act, that's constituted different types of rates and different types of rate designs.

REPRESENTATIVE GARA observed that nothing jumps out at him as a problem under existing Canadian law that would prevent a fair transportation of Alaska gas.

What is the guarantee that we have that at some point when a large new reservoir of Canadian gas is found that a rule wouldn't be adopted in Canada that would say all pipelines that go through Canada have to allow for a 50 percent transportation of Canadian gas? It would take a law change in Canada. Should we not even consider that something like that might ever happen?

MS. FOWKE replied that it's possible.

The North American energy market is so integrated and the NEB is so aware of that as is our parent department, the Natural Resources Canada. I guess 10 years ago who thought we were going to be seeing \$50 oil! I find that really hard to imagine. We've got NAFTA, too. So, I'm sure there's some arrangements in NAFTA that talk about this....

REPRESENTATIVE CHENAULT considered that the same rules could pass that would only allow us to accept so much from Canada

CHAIR SAMUELS asked if NEB chose to order an expansion and FERC chose not to order an expansion, even though they had the ability to, it can only order expansion on the pipeline that is physically in Canada and FERC could only order it for what is in the U.S. He asked if that issue would be in the MOU between the organizations and how many political battles are there between the two now.

MR. KATZ responded:

I don't think we've ever had any such and as a reality, no shipper is going to sign up to pay a rate

if they don't know that their gas can get to market. So, I think it would be exceedingly unlikely that shippers would sign up for a rate and start paying reservation charges or whatever else if they weren't assured that there was a way to get the gas through Canada....

MR. CUPINA added:

In our experience...there have been a number of cross-border projects...and they match up because the commercial realities required that they match up. We have a good relationship with the NEB and we'll continue that, but that's not the only grounds on which these types of communications will occur.

REPRESENTATIVE HAWKER said that a certain Canadian interest believes it has grounds for a position that says they have an exclusive right to construct any gas pipeline that might be constructed and asked if it was across Canada or just in a certain province.

MS. FOWKE replied that it was in Alberta going down to the existing Foothills pipeline and through the Yukon.

REPRESENTATIVE HAWKER asked how that issue could be resolved.

MS. FOWKE replied:

Absent the federal government coming out with some kind of policy that would say something, which they have not done or an act that would say that they would have exclusive authority and making it absolutely clear that they do. I assume the matter would have to come before the NEB either through the Foothills proposal that might require some modifications to what they have or through another proponent applying to the board and then Foothills could, if they wanted at that point, challenge the board's jurisdiction to hear the matter.... If an application is filed with us by any of the other groups, we will examine it to determine whether it is complete and absent anything else, we will set it down for a hearing. We can tell you that there have been meetings at the NEB with the other groups. The producers as a group has been in talking to us. The board has not said to them and we have no grounds to say to them that we will not consider their application.

REPRESENTATIVE HAWKER asked if anyone had filed a claim or protest with the NEB.

MS. FOWKE replied no and she didn't think any filings were imminent. She could only think of one circumstance in the last 20 years when expansions didn't go through, which was because market conditions changed – the Millennium Pipeline. The FERC approved it and NEB was still in the process, but the project just cratered. A lot of expansions had happened for oil pipelines and the regulatory agencies managed to come to the same decisions.

MR. CUPINA added that he wouldn't characterize the Millennium project as having cratered. Millennium is working with other agencies that have related statutes to FERC's and it remains to be seen where those discussions lead. There is talk that Millennium would amend its project.

MS. FOWKE said her point is that there were no disparate FERC and NEB decisions with respect to the pipeline.

MR. CUPINA agreed.