UNITED STATES OF AMERICA
BEFORE THE
DEPARTMENT OF ENERGY

COMMENTS OF THE LEGISLATIVE BUDGET AND AUDIT COMMITTEE OF THE ALASKA STATE LEGISLATURE IN RESPONSE TO NOTICE OF INQUIRY 64050-01-P REGARDING ALASKA NATURAL GAS PIPELINE LOAN GUARANTEE

Introduction and Executive Summary

On May 27, 2005, the United States Department of Energy ("DOE") issued Notice of Inquiry No. 6450-01-P. In that Notice of Inquiry the DOE requested comments on whether it should start the process of developing regulations for the implementation of Section 116 of the Alaska Natural Gas Pipeline Act, which pertains to the federal government's guarantee of loans procured to finance up to eighty percent of the cost of building an Alaska natural gas pipeline project. The Alaska State Legislature, through its Budget and Audit Committee, hereby responds to DOE's requests for comments.

While the Alaska State Legislature appreciates DOE's efforts to advance construction of an Alaska natural gas pipeline, the Alaska State Legislature notes that regulations are not required by Section 116 of the Alaska Natural Gas Pipeline Act ("the Act"). In fact, regulations—which are rules of general application—may not be well-suited to the process of guaranteeing loans to be procured by a single entity for a single project when a loan guarantee agreement—which is required by statute—may suffice. And even if regulations are appropriate to the task at hand, rulemaking is premature and burdensome at a time when the statutory prerequisite for guaranteeing a loan—the issuance of a certificate of public convenience and necessity by the Federal Energy Regulatory Commission ("FERC")—is still years away. DOE rulemaking now would have to address the unique natures, needs, and risks of at least three very different entities that are vying for the right to build one of three different projects when only one entity and one project is apt to progress through non-DOE state and federal processes that must precede the execution of any DOE loan guarantee agreement.

Not only would the regulations have to address multiple potential projects if adopted at this time, they would also have to tackle a wide array of concerns held by various stakeholders (including potential shippers), many of which may be resolved in other arenas through the actions of the State of Alaska and the FERC well in advance of the time that loan guarantees will be required. Thus, to the extent that regulations are ultimately adopted, it would be premature and inefficient to do so now. DOE should, at a minimum, defer its rulemaking until a more appropriate future date when many of the issues presently affecting the project are resolved.

Comments

The Alaska State Legislature, and particularly its Budget & Audit Committee, plays a role that is little-known outside the State of Alaska in advancing the construction of an Alaska natural gas pipeline project. Under the Alaska Stranded Gas Development Act, AS 43.82, the Executive Branch of the State of Alaska may negotiate, and the Legislature may approve, condition, or disapprove, a contract between the State of Alaska and an entity interested in building an Alaska natural gas pipeline project (or shipping gas on that project). The contract may commit the State to limit its tax and royalty take from the project. Such a contract is now being actively pursued by three different entities for three different projects: 1) oil and gas companies BP Exploration (Alaska) Inc., ConocoPhillips Alaska, Inc., and Exxon Mobil Alaska Production Inc., for the development of the Pt. Thomson field, a North Slope gas treatment plant, and a gas pipeline from the North Slope to Chicago; 2) pipeline company TransCanada Corporation, for a gas pipeline from the North Slope to Alberta; and 3) the municipality-backed Alaska Gasline Port Authority, for a gas pipeline from the North Slope to Valdez, a liquefaction plant in Valdez, LNG tankers, and a West Coast regasification plant. Contract negotiations are well-advanced for one or more of these projects, and the Governor of the State of Alaska, the Honorable Frank Murkowski, plans to bring a proposed contract to the Alaska State Legislature for consideration in special session later this calendar year. With contract approval, the field of potential project sponsors and potential projects may be narrowed to one. Thus, both the executive and legislative branches of the State of Alaska are actively involved in advancing an Alaska natural gas pipeline project, and their role may prove significant in determining which project will bring Alaska's abundant North Slope gas resources to Lower 48 gas consumers.

Following completion of administrative and legislative action under Alaska's Stranded Gas Development Act, a number of additional events must occur before loan guarantees are required and the nature and terms of the guarantees will undoubtedly be affected by these developments. Specifically, FERC's rules oblige the sponsors of any pipeline project to initiate and complete a formal "open season" during which interested parties may subscribe for pipeline capacity. The open season will not commence until at least 2006, nor can it be completed in less that six months, per the terms of FERC Order No. 2005-A. Following a successful conclusion of the open season process, the sponsors of a pipeline project will have to complete final engineering and design work—which is no small task—and then file an application for a certificate of public convenience and necessity with the FERC. Once a complete application is submitted to the FERC, FERC's own processes (including the necessary environmental review) are expected to consume an additional twenty months.

Since the Alaska Natural Gas Pipeline Act requires the final product of FERC's efforts—the certificate of public convenience and necessity—before the DOE guarantees any loan, it will be years before guarantees can be issued. Thus, there is no urgency in establishing formal rules, processes, or criteria for these loan guarantees at the present time. Indeed, due to the number and nature of events which must take place prior to FERC's issuance of a certificate, we expect that the requirements of the project sponsors, the lenders, the government, and other interested parties will change between now and the time that guarantees are needed. Equally important is that as each of these intervening activities transpires, the range or universe of concerns that parties may have regarding the terms and conditions of the guarantees may be narrowed. Thus, establishment of rules at this juncture could well be unnecessarily burdensome and even counterproductive, possibly impeding construction of a project or necessitating a further rulemaking process later for purposes of amending any rules adopted now.

The Legislature is aware that certain stakeholders may call for DOE rulemaking or some other public process at some stage. Certainly DOE should not dismiss concerns those stakeholders now have regarding the transparency of the process, possible inconsistencies between conditions imposed by FERC and by DOE, and the potential that terms accompanying loan guarantees could be used to advance an unwarranted competitive advantage. If regulations are to be promulgated now, legitimate concern by potentially affected parties will prompt these parties to seek rules that will guard against risks that may well never actually arise. Deferral of the DOE's process will thus narrow the scope of the process and may well moot the necessity for issuance of rules at all. Thus, the need for regulations, and the terms of any guarantees, are best revisited at some future date when parties know the issues actually confronting their interests.

Finally, we emphasize that, unlike perhaps other statutes under which DOE has granted loan guarantees, the Act does not require that regulations be established with respect to these loan guarantees. This fact, combined with lengthy and potentially dynamic processes that will have to be completed prior to the issuance of guarantees, support the DOE deferring for now the establishment of formal rules. However, we do not mean to suggest that DOE postpone all thought of loan guarantees. What appears to be needed now is a commitment by DOE to establish a flexible and collaborative approach that will allow informal consultation between the project sponsors, the government, and other interested parties as events unfold. Informal consultation can both give potential project sponsors some comfort about the availability of loan guarantees and satisfy others that the process is not being used to gain competitive advantage. And at some stage—perhaps as early as the time an application for a certificate of public convenience and necessity is filed with FERC—it will be appropriate to initiate a some form of public process—whether by rulemaking, letter ruling, or otherwise—that assures all stakeholders that final terms associated with any loan guarantee do not inadvertently run afoul of or counter the intent behind the Alaska Natural Gas Pipeline Act, the FERC regulations governing access to an Alaska natural gas pipeline, the FERC certificate of public convenience and necessity, and any contract approved under Alaska's Stranded Gas Development Act.

CONCLUSION

DOE is to be commended for trying to do its part to expedite the Alaskan pipeline project. However, it would be premature and inefficient to initiate a formal rulemaking process at this time. The Legislative Budget and Audit Committee of the Alaska State Legislature respectfully requests that rulemaking, if any, be delayed until there is but one project.

Submitted: July 26, 2005

/s/ Gene Therriault
Senator Gene Therriault
Chair, Legislative Budget & Audit Committee
Alaska State Legislature
Phone: (907) 488-0857
Senator_Gene_Therriault@legis.ak.us

/s/ Ralph Samuels
Representative Ralph Samuels
Vice-Chair, Legislative Budget & Audit Committee
Alaska State Legislature
Phone: (907) 269-0240
Representative_Ralph_Samuels@legis.ak.us

UNITED STATES OF AMERICA
DEPARTMENT OF ENERGY

Alaska Natural Gas Pipeline	)	**6450-01-P**
Loan Guarantee	)	

COMMENTS OF ALLIANCE PIPELINE L.P. ON THE NOTICE OF INQUIRY

Pursuant to the Notice of Inquiry (the "NOI") issued by the Department of Energy ("DOE") in the captioned docket on May 27, 2005, Alliance Pipeline L.P. ("Alliance") hereby submits its comments on the NOI.

A. THE ALASKA NATURAL GAS PIPELINE ACT

On October 13, 2004, Congress enacted the Alaska Natural Gas Pipeline Act (the "Act"). The Act encourages the development of a pipeline system to transport natural gas from Alaska to markets in the lower-48 states, through provisions intended to expedite regulatory review, approval, and construction of such a pipeline project. Section 116 of the Act authorizes the Secretary of Energy (the "Secretary") to enter into Federal loan guarantee agreements to assist in the financing of such a project. Specifically, Section 116(a)(1) authorizes the Secretary to enter into agreements with one or more holders of a certificate of public convenience and necessity issued by the Federal Energy Regulatory Commission ("FERC") under section 103(b) of the Act to issue Federal guarantee instruments with respect to loans and other debt obligations for a "qualified infrastructure project." Moreover, Section 116(a)(2) authorizes the Secretary to enter into agreements with one or more owners of the Canadian portion of a qualified infrastructure project to issue Federal guarantee instruments with respect to loans and other debt obligations for such a project.[1] The Secretary is authorized to issue regulations to carry out the loan guarantee provisions of the Act.

B. THE NOTICE OF INQUIRY

The NOI indicates that DOE is considering the development and issuance of regulations that would establish certain minimum requirements or terms for loan guarantee agreements ("LGA") entered into pursuant to Section 116 of the Act. In order to identify issues potentially affecting implementation of the loan guarantee authority, the NOI invites interested parties to comment on specific questions set forth in the NOI and to provide DOE with other information or analyses potentially relevant to the development of loan guarantee regulations and the implementation of the loan guarantee provisions of the Act.

C. CONTACT PERSONS

Communications and correspondence regarding these comments should be sent to the following persons:

Rob Power
Senior Regulatory Compliance Specialist
Alliance Pipeline L.P.
600, 605 – 5th Avenue SW
Calgary, Alberta, Canada
T2P 3H5
(403) 517-7740

William A. Williams
James P. White
Fulbright & Jaworski L.L.P.
Market Square
801 Pennsylvania Avenue N.W.
Washington, D.C. 20006
(202) 662-0200

1 Section 114 of Division J of the Consolidated Appropriations Act, 2005 (Public Law 108-447) amended Section 116 of the Act to add authority for the Secretary to enter into loan guarantee agreements with an entity the Secretary deems is qualified to construct and operate an LNG project to transport LNG from "Southcentral Alaska to West Coast States."

D. ALLIANCE STANDS READY TO PROVIDE "B-TO-C" CAPACITY AS PART OF AN ALASKA NATURAL GAS TRANSPORTATION PROJECT

Alliance has a direct and substantial interest in the DOE's loan guarantee regulations because the Alliance system is exceptionally well-positioned to serve as a cost effective, readily expandable, and technologically advanced source of takeaway capacity, able to deliver substantial volumes of Alaska gas from an Alaska pipeline, through Canada, and on into the lower-48 states. In addition, Alliance has recent experience in successfully developing and financing a major international natural gas pipeline system. This experience can be useful in developing regulations to govern the DOE's LGA process.

The Alliance system is a seamlessly integrated international pipeline system extending from points of receipt in Western Canada to multiple delivery points which interconnect with the United States pipeline grid in the Chicago area. Alliance Pipeline Limited Partnership is the Canadian portion of the Alliance system. Alliance Pipeline Limited Partnership consists of 214 miles of 42-inch mainline pipeline and 758 miles of 36-inch mainline pipeline, commencing in northeast British Columbia and northwest Alberta and extending across Alberta and Saskatchewan, to a point of interconnection with the United States segment of the Alliance system at the Canada/U.S. border. Alliance Pipeline Limited Partnership also includes 479 miles of lateral pipelines, seven mainline compressor stations and related appurtenant facilities. Alliance Pipeline Limited Partnership receives gas at 46 receipt points, primarily at gas processing plants, located in the Western Canadian Sedimentary Basin.

Alliance Pipeline L.P. represents the U.S. portion of the Alliance system and consists of 886.8-miles of 36-inch diameter, state of the art mainline pipe, seven compressor stations, seven delivery point meter stations, and other appurtenant facilities.[2] Alliance commences at the North Dakota/Canada border where it interconnects with, and receives Canadian gas supplies from, its affiliate, Alliance Pipeline Limited Partnership. Alliance traverses the States of North Dakota, Minnesota, Iowa, and Illinois and delivers gas to the Chicago area hub at delivery points into Northern Illinois Gas Company, Peoples Gas Light and Coke Company, ANR Pipeline Company, Midwestern Gas Transmission Company, Natural Gas Pipeline Company of America; and Vector Pipeline L.P. Alliance also delivers gas into the non-jurisdictional liquids extraction plant owned by Aux Sable Liquid Products LP ("Aux Sable").[3]

The integrated Alliance system is designed to transport up to 1.325 Bcf of gas per day on a firm basis, plus additional volumes of Authorized Overrun Service. Average system deliveries for the 12 months ended April 30, 2005, were nearly 1.6 Bcf/d. The system transports a rich natural gas stream at a pressure of 1740 psia, which allows for more efficient energy transportation. Construction of the Alliance pipeline system commenced in the spring of 1999 and concluded in the fall of 2000. Commercial operations commenced in December 2000. Construction of the Alliance pipeline system involved an overall investment which exceeded U.S. $3.5 billion.

While the current Alliance system firm capacity is fully subscribed on a long-term basis, the system can be expanded economically and efficiently to provide takeaway capacity to

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2 Alliance Pipeline L.P. is a Delaware limited partnership. The managing general partner of Alliance Pipeline L.P. is Alliance Pipeline Inc. Alliance is owned indirectly by Enbridge Inc. (50.0%) and Fort Chicago Energy Partners L.P. (50.0%). Alliance Pipeline Limited Partnership is an Alberta limited partnership, owned by affiliates of the same entities indicated above as holding ownership interests in Alliance Pipeline L.P.

3 Alliance also has a delivery point at Richland County, North Dakota.

transport Alaska gas from western Canada to existing interconnects with the U.S. pipeline grid in Chicago.[4] Currently, compressor stations are located every 120 miles along the Alliance pipeline system. By the addition of in-fill compressor stations at every 60 miles, the system capacity can be expanded by approximately 450,000 Mcf/d. Sites for these in-fill compressor stations have already been identified and purchased, valves were installed as part of the original construction, and the possibility of additional compression has been factored into the system hydraulics. Moreover, given its optimal location and route, looping of the Alliance system could provide takeaway capacity to accommodate the transportation to market of a substantial portion of Alaska gas. Indeed, Alliance is actively exploring options to expand its system by anywhere from 450,000 Mcf/d to 7.0 Bcf/d.

In addition, the fact that the Alliance pipeline is a new and technologically advanced system offers additional advantages as a source of takeaway capacity. The Alliance system is a high-pressure, rich gas, dense phase transportation system, which has operated safely and reliably for almost five years. These are the type of design elements that will provide the transportation efficiencies which will assist in rendering delivery of Alaska gas economic. Moreover, Alliance is already connected to Aux Sable -- a large, state-of-the-art gas processing facility, which will facilitate the ability to process rich Alaska gas. Finally, given Alliance's history, it has developed the type of advanced commercial innovations that are needed to deal with the high pressure, high-energy operational factors that are likely to be characteristic of an Alaska pipeline system. These innovations include approaches to tolling and gas processing, and the provision of long-distance, seamless transmission service across international borders.

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[4] Attachment A hereto depicts how an expanded Alliance Pipeline system would constitute a fundamental part of the "B-to-C" segment of an Alaskan natural gas pipeline project.

Since commencing operations, Alliance has become an important component of the North American natural gas grid. For the twelve-month period ended April 30, 2005, Alliance delivered about 2.6 percent of United States gas consumption, on a volumetric basis. Alliance transported approximately ten percent of the marketable natural gas produced from the Western Canadian Sedimentary Basin during that same period. Moreover, Alliance accounted for 16 percent of total Canadian natural gas exports and 36 percent of Canadian gas exports to the United States Midwest during that period.[5]

E. COMMENTS OF ALLIANCE ON THE NOI

As a potential sponsor of both the Canadian and U.S. segments of the "B-to-C" leg of an Alaska gas pipeline project, Alliance's primary interest with regard to the loan guarantee regulations relates to the DOE's definition of the scope of the loan guarantees available under the Act. Therefore, in response to the NOI, Alliance offers below its comments on the critical issue of the scope of the loan guarantee provisions of the Act. In a subsequent section, Alliance also offers comments on the specific questions set forth in the NOI.

1. Scope of the Loan Guarantee Provisions of the Act

The Act provides critical momentum for the successful completion of the pipeline and related facilities required to deliver Alaska natural gas to markets in the lower-48 states. Because of the anticipated very substantial nature and costs of an Alaska gas pipeline project, the loan guarantee provisions of the Act are particularly important to the successful development of such a project. The loan guarantees will help reduce some of the financial risk of such a project

[5] Additional information regarding the Alliance Pipeline system is available at the Alliance website "www.alliance-pipeline.com."

and will help reduce the cost of capital, to the ultimate benefit of shippers and consumers. As a party with a demonstrated interest in the development of those pipeline facilities, Alliance submits that it is important for the DOE, at this early stage, to clearly define the scope of the pipeline facilities that are eligible to be beneficiaries of the loan guarantees provided for in the Act. In that regard, Alliance respectfully requests that the DOE confirm its position regarding two aspects of loan guarantee eligibility.

a. DOE Should Confirm that the Loan Guarantees Provided for in the Act Are Available for Expansions of Existing Pipeline Systems that Directly Connect Alaska Gas to Markets in the Lower-48

Alliance requests confirmation that the loan guarantees provided for under the Act will be made available for looping and other expansions of existing pipeline systems that directly connect Alaska gas to markets in the lower-48, as well as for new "greenfield" projects. Alliance submits that the Act permits loan guarantees to be provided for expansion projects. Alliance submits further that a number of policy considerations favor the incorporation of expansion capacity into any Alaska gas pipeline project.

The loan guarantee provisions at Section 116 of the Act make no distinction between qualifying expansion projects and greenfield projects. Moreover, there is nothing in the entirety of the Act which would suggest that the loan guarantees are to be limited to greenfield projects. In the absence of a clear statutory directive to the contrary, there is no basis to justify restricting the loan guarantees to greenfield projects. Alliance submits that including expansion capacity that directly connects Alaska gas to markets in the lower-48 within the scope of projects eligible for loan guarantees is particularly appropriate in view of a number of important policy considerations, discussed below, which favor encouraging the delivery of Alaska gas to market through the expansion of existing systems.

First, utilizing expansion of existing pipeline systems as part of an Alaska gas pipeline enhances the ability of project sponsors to "right-size" B-to-C capacity to a much greater degree than a greenfield project. Greenfield projects are likely to require a very large-scale design in order to reach the critical mass necessary to be economic. On the other hand, the expansion of an existing pipeline system or systems can be cost-justified on a substantially lesser scale. Thus, one or more capacity expansion projects could be designed and implemented on a more tailored basis, adding just the most efficient and cost-effective increment of capacity. Such an approach could well result in lower overall project costs, to benefit of consumers, consistent with the public interest.

Second, in addition to right-sizing, there are likely to be other efficiencies and cost savings resulting from the expansion of existing pipeline capacity in lieu of major new greenfield projects. These efficiencies can result from the sharing of existing pipeline right-of-way, operational control centers and field offices, pipeline personnel, the utilization of existing construction and operational expertise, as well as other aspects of pipeline development and operation which would have to be incorporated into a greenfield project. Again, the cost savings and efficiencies achieved by utilizing capacity expansion in lieu of new greenfield projects will benefit the public interest by lowering the cost of Alaskan natural gas delivered to U.S. consumers.

Third, notwithstanding the economic efficiencies presented by expansion of existing systems, the costs associated with such an expansion still will be substantial, such that the loan guarantees will play an important role in financing such a project. Expansion projects will require the expenditure of costs associated with steel procurement and line pipe fabrication, the purchase of compressor horsepower, as well as costs associated with design, engineering, and construction. In addition, environmental, regulatory, public consultation, and administrative costs will still be incurred. Further, while a looping project may share some of the existing pipeline's rights-of-way, depending on pipeline diameter and existing right-of-way width, additional right-of-way still may need to be acquired, including temporary construction workspace.

Finally, it is recognized that the parallel co-location of pipeline systems, achieved through the looping of existing pipeline facilities, can confine environmental and other disturbances to already-disturbed areas. Co-location also leverages compliance with pipeline integrity management requirements. For these reasons as well, there is a basis to favor expansion of existing pipeline systems over the development of new, greenfield projects in developing the loan guarantee regulations.

While expansion projects clearly are eligible for loan guarantees under the Act, Alliance suggests that access to the loan guarantees could be conditioned on a demonstration by the sponsor of an expansion project that the system expansion is proposed as a necessary link in an Alaska gas pipeline project directly connecting Alaska gas to markets in the lower-48. Such a requirement would prevent the loan guarantees under the Act from being utilized to subsidize the development of capacity unrelated to non-Alaska gas.

b. DOE Should Confirm that the Loan Guarantees Provided for in the Act are Available for the U.S. Portion of a "B-to-C" Project Delivering Gas to Markets in the Lower-48

Section 116(a)(1) of the Act provides that the Secretary may enter into agreements with one or more holders of a certificate of public convenience and necessity under section 103(b) of the Act or section 9 of the Alaska Natural Gas Transportation Act of 1976 to issue Federal guarantee instruments with respect to loans and other debt obligations for a "qualified infrastructure project." The term "qualified infrastructure project" is defined at section 116(g)(4) to mean an "Alaskan natural gas transportation project consisting of the design, engineering, finance, construction, and completion of pipelines and related transportation and production systems (including gas treatment plants), and appurtenances thereto, that are used to transport gas from the Alaska North Slope to the continental United States." Alliance requests confirmation of its understanding that the loan guarantees under the Act will be made available for the U.S. portion of a "B-to-C" leg of an Alaska gas pipeline project that delivers gas to markets in the lower-48.[6]

As noted, a "qualified infrastructure project" is defined in Section 116(g)(4) to include pipelines and related transportation that are used to transport gas "from the Alaska North Slope to the continental United States." By it terms, that definition does not stop at the Canada/United States border or exclude the continuation of such a pipeline to its terminus within the lower-48 states. When Congress intended defined facilities to stop at a border, it explicitly so stated, as in the definition of "Alaska natural gas transportation project" set forth at Section 102(2) of the Act. Indeed, such an interpretation would be illogical and counterproductive, as it would exclude

[6] Section 116(a)(2) expressly provides that the Secretary may enter into loan guarantee agreements with one or more owners of the Canadian portion of a qualified infrastructure project.

from the benefits of the loan guarantees the vitally important portion of an Alaska gas pipeline project which delivers gas to U.S. markets. The most likely design for the "B-to-C" segment of an Alaska gas pipeline project is a "bullet" pipeline from Western Canada to a pipeline hub or other point of liquidity in the lower-48 states. To cut off the U.S. portion of such a bullet line from the loan guarantees would undermine the ability of project sponsors to develop that portion of the project.

Alliance notes further that the Act was enacted at a time when the cost of a pipeline project designed to bring Alaska gas to the Chicago market hub was estimated on the order of $22 billion. The loan guarantees provided for in the statute are limited to no more than 80 percent of the total capital costs of the project or $18 billion.[7] The $18 billion limit represents approximately 80 percent of $22 billion. Accordingly, it appears that the cost limits in the Act contemplated making loan guarantees available for 80 percent of the cost of the full pipeline system needed to bring Alaska gas into the lower-48 pipeline grid for access to U.S. markets.

Accordingly, given the important policy goal of ensuring that Alaska gas is delivered to U.S. markets on an expeditious and cost effective basis, and in view of the context within which the Act was enacted, Alliance submits that it is important for the Secretary to confirm that loan guarantee agreements are available to the U.S. lower-48 segment of an Alaska gas transportation project, as well as to the Canadian portion of such a project. Alliance submits further that a project sponsor should be required to demonstrate that the U.S. portion of a "B-to-C" project is related directly to the delivery of Alaska gas to U.S. markets, so that the loan guarantees are not utilized to subsidize non-Alaska gas pipeline development.

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7 See Sections 116(c)(1) and (2) of the Act.

2. *Comments on Questions Raised in the NOI*

The NOI seeks comment on ten questions or groups of questions regarding the development of loan guarantee regulations. Alliance believes that its recent experience in financing a $3.5 billion international pipeline project provides it with meaningful insight into these issues. As general principles, Alliance submits that the loan guarantee regulations should be structured to carry out Congressional intent to provide incentives and remove barriers to development of the infrastructure needed to bring Alaska gas to market. Alliance further submits that the regulations should be sufficiently flexible to accommodate a project that is not yet fully defined and to include the use of existing facilities. Further, the regulations should leverage the benefits of utilizing standard industry financing agreements and terms. Alliance sets forth below its comments on those specific questions, as enumerated in the NOI:[8]

Question 1. Conditional Commitment.

Alliance submits that there is a practical business need to establish the terms and conditions under which a loan guarantee will be issued prior to the issuance of a FERC certificate of public convenience and necessity. Project sponsors will require certainty as to the terms and conditions of a loan guarantee agreement prior to investing in project development, design, right-of-way acquisition, and environmental assessment.

Long-term shipper commitments are the essential first step in proving commercial viability. Securing firm expressions of capacity interest from shippers will require that the project sponsor (most likely a consortium of companies given the size of the project) present a

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[8] These issue-specific comments largely correspond with the comments being submitted on the NOI by one of Alliance's corporate parents, Enbridge Inc.

solid, technically viable facilities plan and a feasible financing structure to assure that the pipeline will become a reality. The terms and conditions of the federal loan guarantee are an essential component of that financing. The majority of this planning process must necessarily occur before the project sponsor can apply to FERC for a certificate.

The regulations should allow the DOE to negotiate a conditional commitment as early in the process as practicable. To rationalize such a conditional commitment process, the DOE will need to develop preliminary requirements to be met by potential project sponsors, which assure that only those entities with sufficient industry expertise and business capability are given the opportunity to receive such a commitment. Such requirements could include both a viable project plan outlining the pipeline and related facilities; an outline of the proposed financing structure; a demonstration of business commitments that establish the business consortium sponsoring the project; as well as a showing that the sponsor group has committed resources and staff with sufficient construction and management expertise on energy projects of similar scope and complexity (including experience in business transactions with native communities, familiarity with liquid-rich Alaskan gas, experience with construction on permafrost and other cold climate issues for those portions of the project where such considerations are relevant, and experience with and a good record in dealing with landowner and environmental issues to assure completion of the project).

Question 2. Determinations and Findings by the Secretary.

This question relates to DOE's stated intention to consider the desirability of requiring by rule certain findings and determinations as conditions for approval of an application for loan guarantees for a "Qualified Infrastructure Project." Part A restates the Act's requirements for either a final FERC certificate for natural gas transmission pipelines, or a determination of qualifications to construct and operate for an LNG project. Alliance urges the Secretary to apply a level of scrutiny to proposed LNG projects that is equivalent to that applied by the FERC to a transmission pipeline. This will protect the government's interests and assure a level playing field. Because Canadian National Energy Board ("NEB") review will be required for the Canadian portion of an Alaska gas pipeline project, issuance of an NEB certificate may be an appropriate addition to this requirement.

With respect to Part B, Alliance agrees that there should be a showing that a proposal is a "Qualified Infrastructure Project" as a condition for loan guarantee approval. Alliance requests that its comments set forth at Section E.1. above, regarding the scope of the Qualified Infrastructure Project definition, be given all due consideration in framing this requirement in the regulations.

With respect to Part C, Alliance submits that requirements for providing "reasonable assurances of repayment" should be framed in terms of making a showing that available natural gas reserves are present to meet the proposed capacity of the project(s); that shippers' commitments are in place; and that user demand exists in the marketplace over the term of the project. Natural gas reserve studies and user demand side studies, consistent with normal industry practices, should be deemed sufficient for this purpose.

In Alliance's experience, Parts D and E are usual and customary commercial requirements for these types of projects. The DOE can ensure adequate security by including covenants in its agreements that are consistent with typical large commercially financed energy projects. Additionally, the DOE could introduce a "drawstop" concept, which is typically at the point where the drawn amount on the construction facility equals the sponsor's remaining equity commitment to the project (thus, all capital to this point is effectively equity). The DOE could assign conditions to the "drawstop" before the project could proceed. Also, see comments below concerning cost overruns (3) and collateral (8).

Question 3. Special Terms and Conditions.

Alliance submits that a number of specific terms and conditions should be considered in developing the loan guarantee regulations.

> Cost Overrun Contingency – A detailed explanation of how the project sponsor proposes to fund the project should be required. This explanation should include an estimated cost overrun contingency, based on experience with prior projects. Potential project sponsors may be required to describe contingency plans to address schedule and construction risks as part of the conditional commitment process. This requirement could be established in the regulation, or in the mandatory loan guarantee documentation.
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> Landowner Concerns – Potential project sponsors should be required to submit detailed plans for addressing stakeholder concerns, including how they will address any concerns of landowners and Native or Aboriginal communities near the right-of-way, at each step of the loan guarantee process, starting with the conditional commitment.
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> Experience in Northern Climates – Pipeline construction and operations in northern regions, including areas of continuous and discontinuous permafrost, requires unique skills. Evidence of sufficient experience in such environments should be required from potential sponsors of those components of a project that involve northern climate construction.
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> Capability of Addressing Environmental Concerns – Project sponsors seeking a conditional commitment should be required to provide an outline of an environmental management plan to provide assurances that the sponsor is capable of addressing the extensive environmental issues associated with an Alaska gas pipeline project.

Design Capability to Transport Liquids Rich Gas – The Alaskan gas reserves contain a high percentage of natural gas liquids ("rich gas"). The transportation of such a gas stream requires special expertise in both the construction of a high pressure pipeline (required to move the liquids rich gas) as well as expertise in the operation of such a pipeline. DOE should consider requesting evidence of such construction and operational expertise at the time a sponsor requests a conditional commitment.

Question 4. Lender Risk.

Alliance submits that several aspects of the normal commercial financing agreements typical of these types of projects assure appropriate shared risk for all lenders. First, consistent with commercial practice, Alliance assumes that the loan guarantee agreements will require lenders to make certifications and representations concerning the accuracy of any project evaluations and impose standards of care in the servicing requirements on the lenders, with appropriate actual damages and/or liquidated damages for breach of such provisions.

Second, this type of project financing typically involves a floating rate construction loan, followed by a short operating period financed by floating rate debt prior to the start of the permanent financing. The risk inherent in these floating rates is normally worked out between, and covered by, the lender and the project owner using interest rate swaps derivatives. All of these provisions are normally subject to negotiations between the parties in a commercial transaction.

In this case, the DOE has the ability to impose narrow requirements and contract provisions through the regulatory process, or to express its general intent that the lender carry some level of risk and leave the specific provisions for negotiation with the project sponsor and lender. Alliance recommends that the DOE take the second approach. Additional lender risk will translate directly to higher interest rates. Moreover, this approach will allow creative market financing techniques to produce the best possible cost structure for the project and, ultimately, the gas consumer. As the provider of the loan guarantee, the DOE will have more than adequate leverage in the negotiation of the conditional commitment to assure that the federal government's interests are protected.

Question 5. Guarantee Fee.

Because all fees imposed on the loan guarantee program directly impact project costs, they will directly impact the price of gas transported on the system. Alliance urges DOE not to impose any such fee, or to impose the lowest fee possible, to avoid negating the Congressional intent behind the loan guarantee provisions of the Act.

In typical commercial financing transactions, such fees are used to pay the administrative costs of the guarantee and may also be viewed as a return on capital reserved against the risk of default on the guarantee. Under this program, however, the Act authorizes appropriations "to cover the cost of the guarantees under this section" and the Federal government does not normally hold reserves against default risk on loan guarantees. Moreover, with regard to the issue of project risk that would be addressed by such a reserve, Alliance notes that there has never been a default on project financing related to an oil or gas transmission pipeline in Canada or the United States. If loan guarantee program fees are imposed, Alliance recommends the use of a credit-weighted scale of fees based on the project sponsor's commercial ratings (e.g. S&P or Moody's).[9]

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9 Alliance has no preference as to fees on an annual basis or upfront. Upfront fees would be included in project financing, while annual fees would be paid out of operating revenues. Alliance urges DOE to appreciate the value that the loan guarantee program provides as an incentive to construction of this major project and the project's importance to consumers. These considerations militate against imposing fees that are counter-productive to the incentive goals envisioned by Congress.

Question 6. Equity Funding Commitment.

The usual and customary documents for a commercial transaction of this type would be negotiated by all parties with a significant participation/commitment. A tri-party equity agreement between the project sponsor, the lead credit providers, and the DOE as guarantor would be well within these norms. Subject to negotiation of specifics, there are accepted commercial project provisions to address all aspects of risk allocation, including equity contribution commitments, priorities/subordination in access to assets, and all other applicable rights and responsibilities on the project.[10] Such a tri-party agreement would necessarily have to incorporate or reflect compliance with the conditional commitment for the guarantee.

Question 7. Thirty Year Loan Guarantee Term.

Alliance submits that the guarantee should commence with the first construction loan borrowing, subsequent to receipt of the FERC certificate and NEB approvals, and include both construction and long term debt. Alliance's current understanding is that this would roughly include a five (5) year construction period and a subsequent twenty-five (25) year operation period.

Question 8. Collateral/Recourse/Default.

Given the importance of the Federal loan guarantees, the DOE could insist on a first lien on project assets, however, the commercial norm is for all assets to be pledged initially to the lenders. That lien, and essentially control of the project, would transfer to the DOE when and if the lenders called upon the guarantee. This structure assures that the lender will exercise all

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[10] Alliance notes, however, that the DOE's primary form of protection will be in evaluating the credit-worthiness of its project sponsors.

options to cure or restructure the debt before the government is required to cover any default. There are Conditions Precedent, Representations and Warranties, Covenants, and Default provisions that are usual and customary for this type of project financing, which would be included in the tri-party agreement.

On the issue of pledged security, Alliance notes that risk during the construction period is significantly higher than after the project is complete and in operation. Alliance urges DOE to consider adopting customary practice in commercial arrangements for projects of this nature, which calls for all physical assets, the commitments under the equity agreements and the legal pipeline entity itself to be pledged as security during the construction period. Upon commencement of operations, that pledge would end and be replaced with a reduced security package that reflects the end of construction risk. The level of that reduced security will depend on the specifics of the proposed project.

Alliance recommends further that DOE consider issuing flexible, broad-based regulations to address this issue and allow specificity to be developed in the loan agreements, as the timing and scope of the project are finalized. It may be advisable to follow accepted and common commercial infrastructure financing practice and use commercially tested provisions and financial arrangements. Specific provisions and details can be proposed by the potential project sponsors and negotiated by the DOE as part of the conditional commitment process when the more specific structure of the proposed project(s) has been detailed to the DOE.

Question 9. Cost Overruns.

As suggested in response to Question 3, "Special Terms & Conditions," proposed project plans should address contingencies for project construction cost increases and overruns. Consistent with industry practice, Alliance would expect that cost overruns, beyond the normal and customary allocated contingencies built into the project budget, would require additional equity and/or lender participation that would not be covered by the guarantee.

Question 10. Monitoring and Reporting Requirements.

There are well established commercial market practices in this regard, which call for guarantors, such as the DOE, to receive the same level of information required by other major lenders. Such information should include quarterly reports from the project sponsor's outside auditors on the status of the project, certifications from the project sponsor's executive confirming compliance with all debt and DOE loan guarantee covenants, and third-party engineering reports concerning construction progress (including costs incurred and committed to date compared to projected schedules).

F. CONCLUSION

Alliance appreciates the opportunity to comment on the loan guarantee regulations being considered by DOE. In sum, Alliance respectfully requests that the Secretary confirm that the loan guarantees provided for under the Act will be available for looping and other expansions of existing pipeline systems that directly connect Alaska gas to markets in the lower-48. Alliance further requests confirmation that the loan guarantees provided for in the Act will be made available for both the U.S. and Canadian portions of a "B-to-C" project delivering gas to markets in the lower-48. Finally, Alliance requests that the Secretary give due consideration to the specific comments set forth above regarding the details of the regulations governing implementation of the loan guarantee authority.

Respectfully submitted,

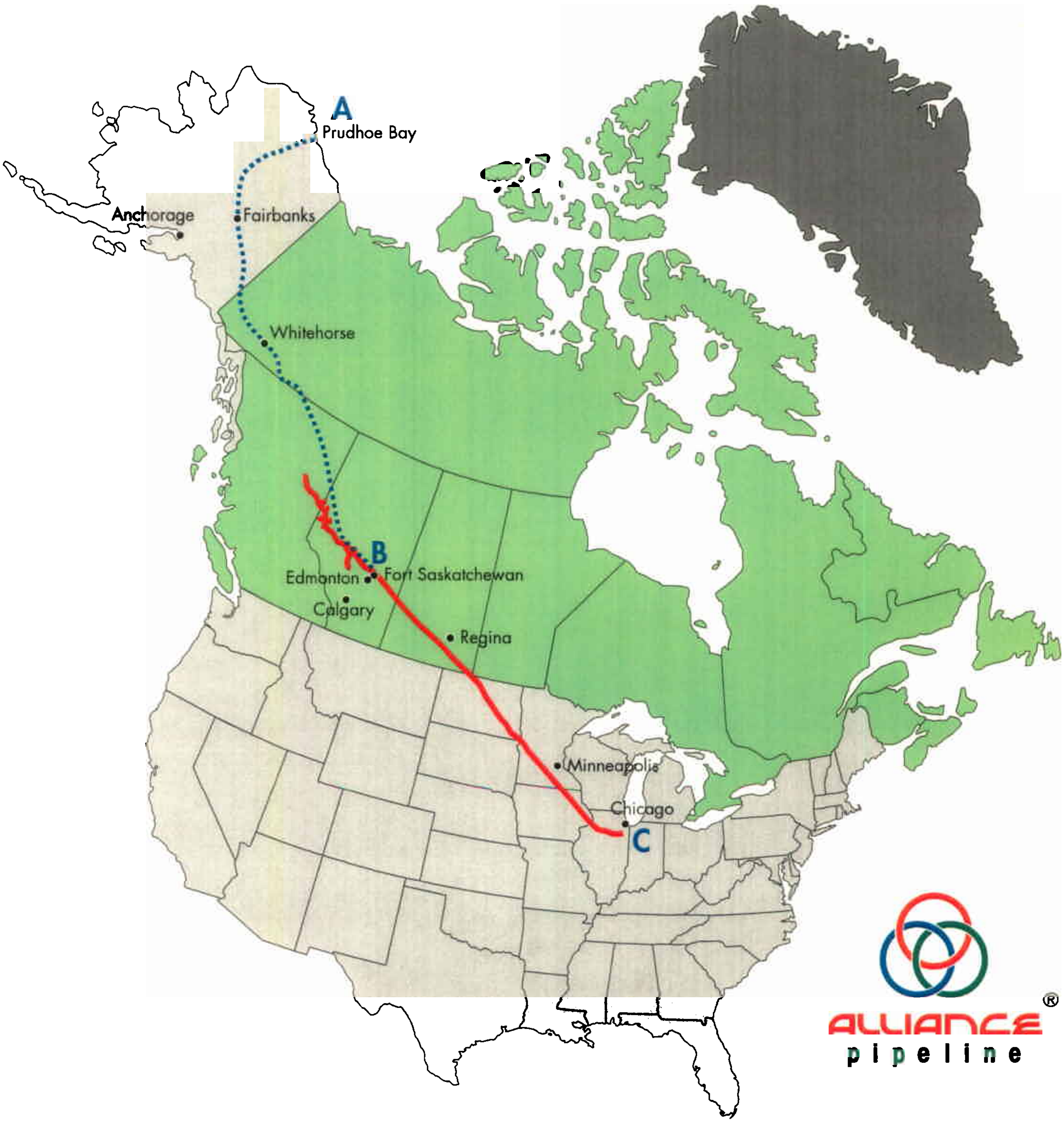
William A. Williams
James P. White
Fulbright & Jaworski L.L.P.
801 Pennsylvania Avenue N.W.
Washington, D.C. 20006
(202) 662-0200

Attorneys for
Alliance Pipeline L.P.

Dated: July 26, 2005

Rob Power
Senior Regulatory Compliance
Specialist
Alliance Pipeline L.P.
600, 605 – 5th Avenue SW
Calgary, Alberta, Canada
T2P 3H5
(403) 266-4464

Attachment A
The Alliance Pipeline System:
Positioning for an Alaska Natural Gas Pipeline Project



The dashed line reflects the expected route of a greenfield pipeline from the Alaska North Slope connecting into the existing Alliance pipeline system at Fort Saskatchewan, Alberta (A to B). Alaskan-sourced natural gas would then be carried on an expanded Alliance system to the Chicago market hub (as a fundamental part of B to C). Collectively, the A to C facilities would constitute the Alaska natural gas pipeline project.

Office of the General Counsel, GC-72
Attention: Lawrence R. Oliver
U.S. Department of Energy
Forrestal Building, Room 6B-256
1000 Independence Avenue, S.W.
Washington, DC 20585

Re: Response to DOE Notice of Inquiry Related to Issuance of Loan Guarantees Under the Alaska Natural Gas Pipeline Act

Dear Mr. Oliver:

Anadarko Petroleum Corporation (Anadarko) is pleased to submit the following comments in response to the Notice of Inquiry (NOI), dated May 27, 2005, from the U.S. Department of Energy (DOE) related to the issuance of Federal loan guarantees under the authority granted to DOE under the Alaska Natural Gas Pipeline Act (ANGPA) to facilitate the construction of a pipeline and/or liquidified natural gas (LNG) project to transport natural gas from the North Slope of Alaska to the continental United States.

Anadarko is one of the world's largest independent oil and gas exploration and development companies. Anadarko has acquired exploration and development rights to millions of natural gas-prone acres across the North Slope of Alaska. To date, Anadarko has invested hundreds of millions of dollars in oil and gas exploration and development activities in Alaska and plans to invest considerably more in the future. The challenges associated with exploring for and developing natural gas in Alaska (including higher capital, maintenance and operating costs due to harsh environment, short drilling seasons, remote operations and Arctic conditions) are formidable, but these challenges have not deterred Anadarko and other independent oil and gas companies from making these types of investments in Alaska. However, fair and open access to the pipeline constructed as a result of the federal loan guarantees provided under the ANGPA is absolutely essential in order to enable Anadarko and other independent producers to continue to participate in the development of natural gas reserves in Alaska.

Congressional intent to ensure fair and open access to the pipeline by independent producers and shippers is one of the fundamental premises on which the ANGPA is based. In enacting the ANGPA, Congress recognized that the three major producers who would be the likely owners/sponsors of the pipeline project (*i.e.*, BP Exploration (Alaska), Inc., Conoco

Phillips Alaska, Inc., and Exxon Mobil Corporation) control over 90% of the natural gas reserves available for transportation through the pipeline. Congress was concerned that the control of these three producers over the existing reserves, and therefore over the possible initial throughput on the pipeline, would not only place other producers at a significant competitive disadvantage but could also deter such other producers from conducting additional exploration and development activities in Alaska in the future. Accordingly, in Section 103(e)(2) of the ANGPA, Congress specifically directed the Federal Energy Regulatory Commission (FERC), in adopting regulations governing the conduct of open seasons for access to the pipeline and the allocation of capacity rights on the pipeline to do so in a fair and non-discriminatory manner that will "promote competition in the exploration, development and production of Alaska natural gas." FERC recently completed this rulemaking in accordance with this congressional directive. *See Regulations Governing the Conduct of the Open Seasons for Alaska Natural Gas Transportation Projects*, Order No. 2005, FERC Stats. & Regs. ¶ 31,174 (Feb. 9, 2005); *order on rehearing*, Order No. 2005-A,111 FERC ¶ 61,332 (June 1, 2005.)

Accordingly, Anadarko's principal comment in response to the NOI is that the loan guarantees themselves, and the process established by DOE to develop the criteria for the loan guarantees, must also be consistent with this congressional directive. DOE may not do anything in connection with the loan guarantee program authorized under the ANGPA that could directly or indirectly have an adverse impact on the ability of independent producers and shippers to obtain access to the pipeline on fair and reasonable terms.

With respect to the central question posed by DOE in the NOI, Anadarko strongly urges DOE to develop and promulgate a separate set of regulations implementing the loan guarantee provisions of the ANGPA. Providing interested parties with the opportunity to provide input through written, on the record, comments in a rulemaking proceeding will provide greater assurance that the significant issues related to the impact of the terms and conditions of the loan guarantees on non-owner shippers will be raised, thoroughly examined, and resolved in a fair, even-handed and transparent manner and that the interests of all parties, including the interests of taxpayers and natural gas consumers and independent producers, like Anadarko, will be considered. DOE has successfully followed this practice in the past by adopting formal regulations to implement the loan guarantee programs authorized under a variety of other energy-related statutes and allowing all interested parties to participate in the rulemaking process. *See* The Geothermal Loan Guaranty Program, 10 C.F.R. § 790 (rescinded 1995); Electric and Hybrid Vehicle Research, Development, Demonstration, and Production Loan Guaranties, 10 C.F.R. § 791 (rescinded 1995); Federal Loan Guarantees for Alternative Fuel Demonstration Facilities, 10 C.F.R. § 796 (rescinded 1995); Urban Wastes Demonstration Facilities Guarantee Program, 10 C.F.R. § 798 (rescinded 1995); and Loan Guarantees for Alcohol Fuels, Biomass Energy and Municipal Waste Projects, 10 C.F.R. § 799 (rescinded 1995). DOE should do so again here. However, should the DOE decide that it is premature to adopt regulations relating to the terms and conditions of the loan guarantee at this time, DOE should at least establish a process through which all interested persons, not just the project sponsors, may provide input to DOE so that the DOE can ensure that the loan guarantee terms do not adversely impact the rights of non-owner shippers to access to the pipeline or adversely affect the development of competition in the exploration, development, and production of natural gas in Alaska.

Anadarko's comments on the ten other specific issues raised in the NOI are set forth below. While Anadarko's comments focus primarily on the relationship of these issues to a loan guarantee on a pipeline project, they are also generally applicable to a loan guarantee on an LNG project.

1. Conditional Commitment. It is unclear whether DOE has the statutory authority under the ANGPA to conduct any preliminary negotiations with potential project sponsors prior to the issuance of a FERC certificate. However, even if DOE were to possess such authority, it would be inappropriate for DOE to negotiate a conditional commitment for a loan guarantee with one or more project sponsors prior to the issuance of a FERC certificate. Rather, before commencing negotiations DOE should develop and promulgate final regulations, including a proposed form of loan guarantee agreement (LGA), that will provide all potential project sponsors, lenders, and shippers with adequate advance notice of the requirements that will be associated with a DOE loan guarantee. This will facilitate the ability of DOE and the actual project sponsors to promptly enter into a loan guarantee upon the issuance of the applicable FERC certificate. Proceeding in this manner will ensure that all interested parties will have an opportunity to participate in the development of the proposed LGA, provide greater assurance that the pro-competitive purposes of the ANGPA will be met, and lessen the likelihood of any conflict or inconsistency between the terms of the LGA and the FERC certificate, other government orders, licenses, permits, and approvals related to the project, including the provisions of the loan documents and other commercial contracts related to the project.

2. Determinations and Findings by the Secretary. Unless the results of the rulemaking dictate otherwise, the DOE regulations should include a specific rule requiring that all of the proposed generic findings and determinations listed in this section of the NOI must be made by DOE as conditions for approval of an application for a loan guarantee. In addition, the regulations should also require supplemental findings related to each of these generic findings, as appropriate. These should include a specific DOE finding that the interest rates on the guaranteed loans and the material terms and conditions of these loans are fair, reasonable, competitive, and appropriate in light of the prevailing conditions in the financial markets at the time.

3. Special Terms and Conditions. The DOE regulations should also include as a requirement of any loan guarantee a requirement that the project will provide natural gas transportation services on an open-access basis and will operate in a fair, non-discriminatory and competitive manner in accordance with the rules established by FERC. DOE should also require annual recertification by the project sponsors, or the special purpose entity (SPE) formed by the sponsors to own/operate the project, that the project is in compliance with all of the material terms and conditions of the FERC certificate and all applicable FERC rules and regulations relating to the project.

4. Lender Risk. Section 116(g)(3) of the Act does not preclude the lender from bearing any risk on the project debt. Accordingly, DOE should consider imposing certain limited risks on the lender, particularly in situations where a lender breaches the terms of its loan agreement on the project, improperly interferes with project activities, or engages in fraudulent activities or other improprieties that will increase the cost of the project or the debt associated with the project. The specific risks that the lenders should bear can be specifically identified and considered during the development of the DOE regulations and incorporated into the proposed LGA. Moreover, in furtherance of the pro-competitive purposes of the ANGPA, it is essential that the DOE regulations also (a) provide DOE with appropriate audit rights with respect to the loans, and (b) provide adequate assurance that any entities affiliated with the project sponsors will be precluded from participating as lenders covered by the loan guarantee. Further, the regulations should require that all negotiations between the sponsors, SPE and lenders will be conducted on an "arms length" basis. Finally, the regulations should specifically provide that the guarantee does not cover any lender costs associated with project evaluation and servicing requirements.

5. Guarantee Fee. Unlike other loan guarantee statutes, the ANGPA does not specifically authorize DOE to impose a loan guarantee fee. *See* Geothermal Energy Research, Development, and Demonstration Act of 1974, 24 U.S.C. § 1141(i); Federal Nonnuclear Energy Research and Development Act of 1974, 42 U.S.C. § 5919(j); Biomass Energy and Alcohol Fuels Act of 1980, Title II of the Energy Security Act, 42 U.S.C. § 8817(g). Since Congress clearly knows how to impose such a fee requirement when Congress considers it to be in the national interest or necessary or appropriate to protect the public interest, the absence of such a requirement in the ANGPA suggests that it would not be appropriate for DOE to impose such a requirement after Congress chose not to. Such a fee would increase the overall cost of the project and be detrimental to the interests of ratepayers and natural gas consumers since the fee would ultimately be passed along to consumers. Accordingly, Anadarko respectfully submits that DOE should not impose such a fee.

6. Equity Funding Commitment. Section 116(c)(1) of the ANGPA does not necessarily require the project sponsors to make at least a 20% equity contribution to the project. Rather, Section 116(c)(1) can be interpreted to allow the project sponsors to make a smaller equity contribution and make up the difference with subordinated debt issued by the sponsors or the SPE that would not be guaranteed by DOE under the LGA. Such an arrangement may be attractive to certain lenders and sponsors and could reduce the overall cost-of-service rates for the natural gas transportation services provided by the project, if the rate of return on the subordinated debt component of total project capitalization were lower than the authorized rate of return for the equity component. In any event, the DOE regulations can establish the appropriate criteria that must be met by the project sponsors and/or the SPE with respect to their own financial condition (*e.g.*, minimum balance sheet and projected cash flow requirements, debt service coverage ratios, dividend and distribution restrictions, investment grade bond ratings, *etc*.) and also establish the acceptable credit support mechanisms required in connection with the equity contribution commitments by the project sponsors (*e.g.*, letters of credit, parental guarantees, *etc*.).

Under Section 116(b)(3) of the ANGPA, DOE is prohibited from imposing "any throughput or other guarantee from prospective shippers greater than such guarantees as shall be required by the project owners." However, Section 116(b)(3) does not preclude DOE from restricting the kinds of guarantees that the project owners may choose to impose on potential shippers as a condition of the loan guarantee. A primary objective of Congress in enacting the ANGPA was to ensure that competition in the exploration, development and production of Alaska natural gas is promoted. This directive demands open and fair access to the pipeline. The imposition of restrictive conditions on shippers in the form of guarantees required by the project owners can result in a denial of access to the pipeline. Federal loan guarantees should not be available to support a pipeline which operates in a manner that frustrates either the statutory directive of promoting competition or FERC's open-access requirements. In setting its own financial assurance requirements for the project sponsors and/or SPE with respect to a loan guarantee, DOE must ensure that Congressional objectives are not frustrated.

7. Thirty-Year Loan Guarantee Term. The calculation of the maximum loan guarantee "term" of 30 years for purposes of Section 116((d)(1) of the ANGPA need not commence with the first construction borrowing, unless the construction loans are not eventually refinanced with permanent long-term financing. It is imperative that this section of the ANGPA not be used by DOE and/or the pipeline sponsors to attempt to justify a minimum 30-year contract term for shippers, because such a requirement could have an anticompetitive impact on independent producers and shippers and potentially violate the letter, if not the spirit, of Sections 103(e)(2) and 116(b)(3) of the ANGPA.

8. Collateral/Recourse/Default. The regulations and the proposed form of the LGA should provide DOE with a lien on all project assets and such other assets of SPE, the sponsors, their parent companies and/or and their other affiliates, as necessary or appropriate to secure the guarantee. The regulations and LGA should also provide for consultations between DOE, the State of Alaska, the shippers and other interested parties in the event of default and the establishment of an orderly process for the completion and continued operation of the project pending resolution of the default, including, if appropriate, a mechanism for the designation of a substitute management committee and/or qualified operator for the project.

9. Cost Overruns. Cost overruns could be funded through the use of guaranteed debt up to the statutory limits of $18 billion or 80% of the total capital cost of the project in accordance with Section 116(c) of the ANGPA. To the extent the cost overruns would cause the project to exceed either of these limits, the project sponsors would be required to raise additional equity or non-guaranteed debt to cover the overruns. Congressional authorization for additional loan guarantee amounts in excess of the current statutory limits would otherwise be required.

10. Monitoring and Reporting Requirements. The DOE regulations and the LGA should require the submission of comprehensive quarterly reports by the project sponsors providing construction status reports, loan disbursement requests and payments, and other appropriate information during the construction phase of the project, along with the submission of interim notices and reports, as appropriate, on a more timely basis with respect to significant

developments and events that occur during this phase that could have a material impact on the project schedule or cost or the project financing arrangements. Once construction is completed and the project becomes operational, the DOE regulations should require the submission of annual reports providing project throughput data, operations and maintenance status reports, capital improvement plans and projects, loan repayment reports and other appropriate information. All of these reports should be made publicly available in a timely manner. To the extent that reports containing the necessary information are filed with FERC, the DOE may wish to simply require that the project sponsors file a copy of the FERC report with the DOE. The DOE regulations and the LGA should also provide DOE with appropriate inspection and audit rights with respect to the project and the guaranteed loans, comparable to the rights provided under the DOE regulations for other loan guarantee programs in the past. *See* The Geothermal Loan Guaranty Program, 10 C.F.R. § 790.33 (1993); Electric and Hybrid Vehicle Research, Development, Demonstration, and Production Loan Guaranties, 10 C.F.R. § 791.33 (1993); Federal Loan Guarantees for Alternative Fuel Demonstration Facilities, 10 C.F.R. § 796.55 (1993); Urban Wastes Demonstration Facilities Guarantee Program, 10 C.F.R. § 798.56 (1993); Loan Guarantees for Alcohol Fuels, Biomass Energy and Municipal Waste Products, 10 C.F.R. § 799.15 (1993).

The foregoing comments reflect Anadarko's basic position with respect to the loan guarantees in general and Anadarko's preliminary views on the specific issues raised by DOE in the NOI. Anadarko is looking forward to participating in any DOE rulemaking on this vitally important program that will reduce our reliance on foreign energy sources and help the United States more forward on the path to greater energy independence.

Thank you again for the opportunity to provide these initial comments on the loan guarantee program authorized by the ANGPA and the process that DOE should follow to implement this program.

Sincerely yours,

Karol Lyn Newman
Kevin P. Gallen
Morgan, Lewis & Bockius, LLP
1111 Pennsylvania Avenue, N.W.
Washington, D.C. 20004
202.739.3000

COUNSEL FOR
ANADARKO PETROLEUM CORPORATION

BEFORE THE
UNITED STATES DEPARTMENT OF ENERGY

ALASKA NATURAL GAS PIPELINE	**)**	
LOAN GUARANTEE	**)**	**NOTICE OF INQUIRY**

COMMENTS OF BP EXPLORATION (ALASKA) INC.,
CONOCOPHILLIPS COMPANY, AND
EXXON MOBIL CORPORATION ON NOTICE OF INQUIRY

July 25, 2005

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COMMENTS OF BP EXPLORATION (ALASKA) INC.,
CONOCOPHILLIPS COMPANY, AND
EXXON MOBIL CORPORATION ON NOTICE OF INQUIRY

BP Exploration (Alaska) Inc., ConocoPhillips Company, and Exxon Mobil Corporation ("the Companies") appreciate the opportunity to respond to the Department of Energy's Notice of Inquiry ("Notice"), Alaska Natural Gas Pipeline Loan Guarantee, 70 Fed. Reg. 30,707 (May 27, 2005). In the Notice, DOE requests public comment to assist it in considering whether to conduct a rulemaking to develop regulations implementing the loan guarantee provisions of the Alaska Natural Gas Pipeline Act of 2004 ("ANGPA"), Pub. L. No. 108-324, 118 Stat. 1220, 1255 (2004). As described below, the Companies believe that such a rulemaking would not further the goals of ANGPA.

I. INTRODUCTION AND SUMMARY

Congress enacted ANGPA to advance the national goal of bringing supplies of domestic natural gas from the North Slope of Alaska to North American markets. To promote that overall objective, ANGPA contains a loan guarantee provision creating a financial incentive, through reduced project financing costs, that seeks to encourage and facilitate the construction of an Alaska natural gas pipeline. The statute sets forth limits and conditions that Congress believed would maximize the usefulness of the loan guarantee and protect the government's interests. Consistent with the loan guarantee provision's purpose of reducing project costs, Congress, among other things, instructed DOE to take into account project-specific considerations in its guarantee instruments. Congress also authorized, but did not require, DOE to promulgate regulations to implement the loan guarantee provision.

To remain true to Congress's goals, implementation of DOE's loan guarantee authority should assure that the loan guarantees (a) are actually usable and (b) lower the project's financing costs. This is an impossible task until DOE knows the nature of the underlying financing that will be needed by and available to the project. The underlying financing, in turn, depends on commercial arrangements that are not yet determined and that cannot be determined at this point in project development. Because of the project's unprecedented size and complexity, the only certainty is that "normal" or "typical" market requirements will not apply.

The Companies therefore respectfully submit that DOE should decline to promulgate loan guarantee regulations. It would be inefficient to invest time and effort in a rulemaking process that could delay, rather than advance, the project. Instead, the more efficient and expeditious course would be for DOE, after a period of consultations with interested parties, to engage in direct negotiations with viable project sponsors to work out the best way to structure the loan guarantees. Such negotiations should include the State of Alaska as a potential equity participant. DOE periodically could conduct briefings or publish reports to keep the public apprised of developments.

When a project and its financing needs have been better defined, direct negotiation will yield the terms and conditions that maximize the benefit of the loan guarantee to the project while appropriately protecting the interests of the United States (including the interests in keeping project costs down and facilitating pipeline construction). In the meantime, open channels of communication between DOE and potential sponsors should be maintained as financing options and needs evolve and become better defined. In light of the small number of potential project sponsors, this approach to developing effective loan guarantee terms would be, the Companies believe, more effective than trying to devise regulations. Moreover, unlike the typical federal loan guarantee program, regulations are not needed to guide the processing of a continuing stream of future applications.

Although the Companies believe that engaging in a rulemaking process will not advance the purposes of the ANGPA loan guarantee provision, they nonetheless respond in these comments to the specific inquiries posed by DOE in the Notice. DOE's questions involve issues that the agency likely will need to confront in any event in order to negotiate conditional commitments and finalize any loan guarantee agreement. It therefore would be beneficial for the Companies to share their current views on these matters with DOE. The Companies are hopeful that they will be able to continue engaging DOE, together with the State of Alaska, on these and other important loan guarantee issues as project development proceeds.

In particular, and as described in more detail below, the Companies believe:

- Appropriately timed conditional commitments offer an opportunity to expedite the project and mitigate project risk and, therefore, should be pursued;

- Imposing guarantee terms and conditions, beyond those specified in ANGPA, to reduce the credit risk for the government appears to run counter to the statutory intent of providing a financial incentive through reduced financing costs to facilitate development of an Alaska natural gas pipeline project;

- To preserve flexibility, it is important to assure that the loan guarantees will be beneficial in a variety of potential financing scenarios, including, but not limited to, scenarios in which the borrower(s) are the project sponsor(s) and scenarios in which affiliates of the project sponsor(s) provide a portion of the lending;

- ANGPA provides that no risk may be imposed, directly or indirectly, on the guaranteed debt portion of the project financing. Moreover, unless the "full faith and credit" of the U.S. government stands behind the loan guarantees to ensure payment of all of the guaranteed amounts, when due, the intended benefits of the legislation will not be realized;

- ANGPA does not contemplate the imposition of guarantee fees. Congress understood that such fees could render the guarantees unusable, particularly for sponsors with a low corporate cost of funds;

- ANGPA permits DOE to impose an equity funding commitment on project sponsors. To maximize the benefit of the loan guarantees, however, the nature and structure of this commitment should be tailored to the specific needs of the project;

- To the extent that multiple loans (or tranches) are obtained for the project, the statute provides that each loan carries its own guarantee period of up to 30 years;

- ANGPA specifies the credit-quality requirements contemplated by Congress. Sponsors should be permitted to structure the project and its financing free from burdens and requirements not specified in the statute. With respect to security interests, default, and remedies, the Companies caution against any provision that could prematurely or inappropriately interrupt construction or operation of the project;

- In the event that there is a realistic risk that project costs will exceed budget, there are a variety of ways to address any concern, which should be explored in the context of project-specific negotiations; and

- The Companies will work with DOE to ensure that it receives the information needed to carry out its loan guarantee responsibilities.

The Companies hope that their responses to DOE's inquiries, which necessarily are preliminary, will assist the agency in meeting the challenges posed by such a large, unique, and complex project and will underscore the need to retain flexibility and minimize burdens as DOE considers how, when, and under what circumstances it will negotiate loan guarantee agreements with project sponsors.

II. BACKGROUND

A. The Alaska Natural Gas Pipeline Project

An Alaska natural gas pipeline will be one of the largest and most expensive infrastructure project ever constructed in North America. Based on preliminary planning, the Companies believe that, starting on the North Slope of Alaska, approximately 4-4.5 Bcf/day of gas (equivalent to approximately 7% of current U.S. demand) would be treated and transported via the main pipeline through Alaska and into Alberta, Canada. From Alberta, gas would move to major North American markets through some combination of new-build pipe, excess capacity, and expansion of existing systems.

The Companies are potential joint sponsors of an integrated Alaska gas pipeline project. As noted above, the State of Alaska also may be an equity participant in the project. The Alaska portion of the project would be designed, permitted, constructed, and operated by one or more newly created entities that would be separate from the production and marketing arms of the Companies. The Canadian portion of the project will be owned through a separate entity. Other companies may be participants in aspects of the project. Agreement has not yet been reached on either the commercial structure of the project or the fundamental commercial arrangements. These are only a few of the many variables in the development of this unique, large, and complex project that must be accommodated in a project financing.

In 2001-2002, the Companies collectively spent $125 million to study the feasibility of a project to bring Alaska natural gas to North American markets. In that study, the Companies estimated project costs (in 2001 dollars) to be approximately $20 billion. That estimate included a gas treatment plant, a pipeline from Alaska to Alberta, a potential natural gas liquids plant, and a potential pipeline from Alberta to Chicago. The Companies estimate that the planning, design, permitting, construction, and commissioning of the project will take approximately ten years. It will cost hundreds of millions of dollars just to complete the work necessary to prepare an application for a certificate of public convenience and necessity for submission to the Federal Energy Regulatory Commission ("FERC"), and substantial resources also will be required to obtain approvals from Canadian authorities for Canadian segment(s) of the project.

Because of the size, scale, and location of an Alaska natural gas pipeline, and the price volatility of materials and natural gas, the project's inherent risk is high, as demonstrated by the inability of any project to become a reality over the past 30 years. Indeed, in a study of natural gas supply and demand in the United States, undertaken at the request of the Secretary of Energy ("Secretary"), the National Petroleum Council stated that "[c]onditions must be particularly strong to support an investment of this magnitude considering the long lead-time and the inherent risks."[1]

Regardless of who actually owns the pipeline, this risk will be borne predominantly by the Companies, based on either their direct project investment or their shipper obligations. The risk is compounded by the large up-front costs that must be incurred. Investments in development and construction of an Alaska natural gas pipeline, once made, cannot be re-directed. In addition, a decade or more will elapse between the initial investment and the point at which pipeline sponsors begin to realize revenues from the project.

The Companies' 2001-02 study concluded that the project's risks at that time outweighed its benefits and that efforts to further the project should focus on reducing its risks. As part of the study, the Companies identified four means of reducing risk to the project:

- U.S. Federal enabling legislation;
- a fiscal contract with the State of Alaska that ensures predictable and durable fiscal terms;
- an open and efficient regulatory process in Canada; and
- a significant reduction in project costs and a gas market outlook that is sufficiently encouraging over the life of the project.

With the passage of ANGPA, Congress has provided enabling legislation. The Companies are continuing to work on the other needs identified by the study. We are working with the State of Alaska on a fiscal framework for the project, which may include the State as an

[1] *Balancing Natural Gas Policy – Fueling the Demands of a Growing Economy*, National Petroleum Council, Vol. I at 39 (2003).

equity owner. The Companies are also working with Canadian authorities to maintain an open and efficient regulatory process in Canada. As discussed below, the Companies have ongoing efforts to find ways to reduce the cost of the project and enhance its feasibility. Access to the Federal Guarantee Instruments and associated low-cost financing are important components of those efforts.

As Congress recognized in passing ANGPA, construction of this project will achieve significant public benefits. A project, if constructed, would connect Alaska's vast natural gas resources to North American markets. The project also would create thousands of construction jobs, hundreds of operating jobs, and billions of dollars of government revenue, and would promote future exploration for additional gas in Alaska.

B. The Alaska Natural Gas Pipeline Act

In the current world of natural gas transportation, pipelines operate solely as transporters and take no ownership interest in the natural gas that flows through their lines. Shippers contract with pipelines to carry the shipper's gas to market. A proposed pipeline project will not be able to obtain financing unless the capital markets have confidence that, once constructed, the pipeline will be supported by firm shipper obligations.

Instilling that confidence for the Alaska pipeline is a challenge, particularly in light of the long lead-time to operation and the large up-front investments required. That is why Congress concluded, in enacting ANGPA, that special measures are needed to encourage the pipeline's construction. A number of those measures focus on expediting, streamlining, and coordinating the complex federal approval processes with which the project must comply.

For example, ANGPA enables any qualified applicant to obtain, on an expedited basis, the necessary federal approvals for the construction of a pipeline to transport the substantial natural gas resources located in Alaska to the continental United States. *See* § 103(a)-(c). To streamline the process, Congress directed FERC, in considering a certificate application, to presume that "a public need exists to construct and operate the proposed Alaska natural gas transportation project." § 103(b)(2)(A). ANGPA also includes provisions intended to expedite the NEPA review process (§ 104), Federal agency approval processes (§ 106(d)), and judicial review of Federal agency decisions (§ 107). Another key feature of ANGPA is the creation of the Office of Federal Coordinator, which is responsible for coordinating and effectuating the expeditious discharge of all project activities and responsibilities of Federal agencies. *See* § 106(a)-(c).

These ANGPA provisions share the common objectives of reducing risk, containing and restraining costs, and expediting construction of the project. Another provision of ANGPA – the loan guarantee authority of § 116 – is intended to serve the same objectives. That provision is described in the following section.

C. ANGPA's Loan Guarantee Provision

Among the measures that Congress adopted to facilitate the construction of a project providing U.S. consumers with access to Alaska natural gas is § 116 – Loan Guarantees. That section authorizes the Secretary to enter into agreements with one or more holders of a certificate of public convenience and necessity to issue Federal guarantee instruments with respect to loans and other debt obligations for a "qualified infrastructure project." § 116(a)(1).[2] "Qualified infrastructure project" is defined to mean "an Alaskan natural gas transportation project consisting of the design, engineering, finance, construction, and completion of pipelines and related transportation and production systems (including gas treatment plants), and

[2] In the FY 2005 Consolidated Appropriations Act, 2005, Pub. L. No. 108-447, § 114(b), 118 Stat. 2809, 3346, Congress appears to have revised this provision to preclude DOE from authorizing loan guarantees to more than one project.

appurtenances thereto, that are used to transport natural gas from the Alaska North Slope to the continental United States."[3] § 116(g)(4). The authority to issue the Federal guarantees expires two years after a "final certificate" (including any Canadian certificates) has been issued for the project. § 116(a)(3).

The purpose of the federal loan guarantee is to lower the project sponsors' financing costs and thereby provide an incentive encouraging construction of the project. Consistent with that purpose, Congress authorized the Secretary to issue guarantees for loans and other debt obligations up to an aggregate of $18 billion, adjusted for inflation, so long as the guaranteed debt does not exceed 80% of the project's total capital costs. § 116(c)(1)-(2). Congress expressly authorized the appropriation of "such sums as may be necessary to cover the cost of loan guarantees under this section . . . ." § 116(f).

Congress's appreciation for the uniqueness of an Alaska gas project and its interest in assuring that the loan guarantees would be useful in furthering such a project are also apparent in the provisions it adopted with respect to repayment flexibility, loan terms and fees, and sponsor obligations. In particular, Congress authorized the Secretary to issue guarantee instruments "that take into account repayment profiles and grace periods justified by project cash flows and project-specific considerations." § 116(d)(1). Congress also provided that the Federal government may guarantee loans whose terms do not exceed 30 years. *See id.*

Congress expressly authorized eligible private sector lenders to assess and collect reasonable and customary fees but did not authorize the Secretary to do so. *See* § 116(d)(2). Congress also specifically stated that the Secretary "shall not require . . . any contractual commitment or other form of credit support of the sponsors (other than equity contribution

[3] Section 114(a) of the FY 2005 Consolidated Appropriations Act extended the definition to include an LNG project.

commitments and completion guarantees) or any throughput or other guarantee from prospective shippers greater than such guarantees as shall be required by the project owners." § 116(b)(3). Thus, Congress rejected the imposition of any credit support requirements (other than an equity contribution and a completion guarantee) that would diminish the benefit of the loan guarantee incentive.

Congress directed that the lenders of the guaranteed debt are to be fully insulated from the risk of project default, thereby ensuring that the sponsors' financing costs would be as low as possible. Congress stipulated that the Federal guarantee instrument would "pay *all* of the principal and interest on any loan or other debt obligation entered into by a holder of a certificate of public convenience and necessity." § 116(g)(3) (emphasis added).

Finally, while Congress authorized the Secretary to issue regulations to carry out the section, it did not mandate that such regulations be issued. § 116(e). Congress instead gave DOE the flexibility to proceed in the manner best suited to maximizing the benefits of the project loan guarantee.

III. DISCUSSION

A. Overall Approach to Loan-Guarantee Regulation

In addition to requesting comment on ten specific matters, DOE has asked for "other information or analyses potentially relevant to the development of loan guarantee regulations and the implementation of the loan guarantee provisions." 70 Fed. Reg. at 30,707. The Companies respond to this general solicitation at the outset to highlight two overarching principles that should guide implementation of the loan-guarantee authority granted in § 116.

First, as described above, by enacting ANGPA, Congress intended to encourage and expedite the construction of a pipeline to bring Alaska natural gas to North American markets. The Federal loan guarantee provision should be interpreted and applied consistently with the overall Congressional goals. The Companies believe that establishing a process for consultation and negotiation, rather than promulgating a set of prescriptive regulations, is the best way to move forward in pursuit of those goals.

As DOE recognizes, an Alaska natural gas pipeline project will be unique in size and complexity. Structuring a loan guarantee for such a project will require a sustained commitment by all involved. In the Notice, DOE acknowledges that the loan guarantee agreement will be "a negotiated document" and that there will be a "negotiation process." Thus, at best, regulations could provide only a framework for the inevitable negotiations.

Moreover, attempting to create a regulatory framework in a vacuum, where project details and potential financing issues are not yet known, including whether the State of Alaska will be an equity participant, would risk compromising the guarantees' ultimate usefulness or, at minimum, unnecessarily complicate the financing process. The Companies suggest that, rather than trying to adopt "one-size-fits-all" rules that may prove to be unworkable as project development proceeds, DOE at the appropriate time convene the parties (including the State of Alaska as a potential equity participant) to negotiate tailored terms and conditions that will serve the specific needs of the project. It is only through negotiation in the context of a relatively concrete proposal that DOE and the sponsors will be able to arrive at an optimal loan guarantee arrangement that maximizes the benefits that Congress intended to provide when it enacted § 116. Accordingly, the Companies respectfully request that in the interim DOE refrain from adopting regulations that might unnecessarily tie its hands or those of the project sponsors.

This is not a situation in which administrative considerations dictate the adoption of regulations to govern the processing, on an ongoing basis, of large numbers of applications filed in the context of a program created to provide loan guarantees for a particular class of participants or activities. Establishing the basic infrastructure to bring Alaska natural gas to the continental United States is a unique endeavor. Potential sponsors are few, and DOE should be able to work through their specific issues and needs on an individualized basis.

Moreover, DOE can achieve transparency in the implementation of the loan guarantee provision without adopting regulations. For example, the agency could hold one or more technical conferences in which knowledgeable individuals can discuss the financing needs of an Alaska natural gas pipeline and the pros and cons of various approaches to loan guarantees for such a project. Similarly, DOE could periodically conduct briefings or publish reports to keep the public apprised of developments. In any event, the Companies believe that the focus should be on maintaining an active and flexible dialogue with appropriate transparency and public awareness.

Second, in addition to the overall goals of ANGPA, the specific purpose of § 116 should be kept in mind when considering how that section will be implemented. At its core, the Federal loan guarantee is designed to provide a low-cost financing incentive that will help constrain overall project costs and lower the tariff that shippers will have to pay. Such lower transportation costs should promote further investment to develop additional gas resources in Alaska and also may facilitate future expansion of the proposed pipeline. This result is consistent with the desire, reflected not only in ANGPA, but in numerous statements by members of the Executive and Legislative Branches, to promote the development of domestic energy resources and deliver these resources to continental U.S. markets.

To fulfill Congress's intent in adopting § 116, the "all-in" financing costs achievable through use of the loan guarantees must be lower than the costs of funds independently attainable by potential sponsors. Such costs, of course, would include not only interest charges but any commitment, debt placement, underwriting, and other fees and the legal and financial advisory costs incurred to structure the loan guarantee and financing. As those expenses increase, overall project costs rise. Unnecessary constraints and costs also could be imposed on a project through collateral or other security requirements or other forms of credit support. Unwieldy or burdensome administrative requirements or a cumbersome loan guarantee process can impose direct costs and interfere with or delay pipeline construction. Thus, structuring a loan guarantee that furthers the statutory purposes will require careful compliance with the Congressional limitations on project burdens and avoidance of any requirements imposing unauthorized or unnecessary costs.

In sum, the Companies seek to work cooperatively with DOE to achieve a loan guarantee arrangement that enhances the project's feasibility and a financing schedule that blends seamlessly with the overall project timetable and avoids unnecessary delays due to project financing issues.

B. Comments on Specific Questions in the Notice of Inquiry

There are too many uncertainties about the project and its financing structure for the Companies to identify at this time what would be required for workable loan guarantee terms. Nevertheless, the Companies wish to be responsive to the specific questions posed in the Notice, many of which involve matters that DOE will likely need to consider as the loan guarantee process unfolds. The Companies' preliminary views on these questions are described below, but none of them should be taken to indicate that the Companies are seeking rules or any other formal resolution of the issues at this time. Rather, the Companies offer their preliminary analyses of the questions to provide whatever helpful information they can at this stage of DOE's consideration of the issues. The information provided, the Companies believe, will illustrate not only the complexity of developing usable loan guarantees that satisfy ANGPA's purposes but also the infeasibility of attempting to formulate regulations that achieve that result.

1. Conditional Commitment

DOE asks whether it can and should negotiate a conditional commitment with one or more potential project sponsors before final certificates of public convenience and necessity are issued. In particular, DOE asks whether a conditional commitment process would expedite the loan guarantee process and at what point in the certificate application or project consideration process the negotiation of a conditional commitment should begin.

As a threshold matter, the Companies believe that DOE has the statutory authority to engage in a conditional commitment process. While § 116 of ANGPA permits DOE to "enter into" a loan guarantee agreement only with the "holder" of a certificate of public convenience and necessity, the statute imposes no restrictions on the initiation of negotiations or the making of conditional commitments.

The Companies also strongly support the use of conditional commitments to facilitate the efficient and expeditious negotiation of a loan guarantee agreement ("LGA"). In their view, DOE will likely conclude, when it is presented with a project development and financing plan, that use of an appropriately timed conditional commitment will further the goals of ANGPA. As Congress recognized in creating the Office of the Federal Coordinator, the size and complexity of the Alaska natural gas pipeline project mean that direct and ongoing communication among the project sponsors and all relevant state and federal agencies will be critical to achieving project success. Conditional loan guarantee commitments are consistent with this concept of early and on-going communication and coordination.

Conditional commitments also are consistent with the overall expedition objectives of ANGPA. They would facilitate the negotiation of loan guarantees, and the underlying financing agreements, on a timely basis. Having the terms and conditions applicable to the loan guarantee and the project financing established through negotiations before issuance of certificates would help assure that financing does not become the critical path or otherwise delay completion of the project. It also would lower project risk by facilitating early resolution of what otherwise would be a significant uncertainty for the project. In addition, allowing the DOE process to proceed concurrently with FERC certification may enable the project sponsors to address FERC and DOE concerns simultaneously. Eliminating or reducing duplicative administrative burdens and ensuring a coordinated approach to regulatory issues would reduce project costs and enhance the prospects for a completed project.

If DOE decides, as a matter of resource management, that it should negotiate conditional commitments only with sponsors of projects that are likely to be viable, the agency could establish certain minimum requirements that would have to be met as a prerequisite to such negotiations. Some factors that DOE might consider include whether the potential project sponsors: (1) can show the existence of shipper subscriptions accounting for substantially all of the capacity offered by the project in an open season; (2) have developed a rigorous and detailed project design and cost estimate; and (3) have a well-developed project-funding plan. DOE may conclude that these or other minimum requirements allow it to conserve resources by concentrating on projects that have reached an advanced stage of development and that have a reasonable chance of being realized.

The terms of a conditional commitment could be tailored to the project's development path and specify the conditions, other than those in § 116(b) itself, that would be predicates for execution of an LGA. Such terms also could clarify the operation of the two-year time limit on DOE's loan guarantee authority in § 116(a)(3). FERC procedure allows for rehearing of orders granting certificates of public convenience and necessity, and, following rehearing, such orders also are subject to judicial review. FERC may seek to impose one or more conditions on a certificate that are unacceptable to a project sponsor, who would then challenge the approval order. It is also possible that another party may challenge the certificate in administrative and judicial proceedings. In a project of this magnitude and risk, such a challenge could effectively preclude the sponsor from going forward with the project until the challenge is resolved. The resolution process has the potential to consume much, if not all, of the DOE's two-year authority to act, which could defeat effective implementation of the loan guarantee provision and related financings.

A potential solution is for DOE to treat the final resolution of any agency rehearing or judicial review proceeding as re-starting the two-year clock of § 116(a)(3). After final disposition by FERC or a reviewing court, the certificate would be considered "final" and "issued" for purposes of § 116, which in turn would trigger the full two-year period. DOE has the flexibility to adopt this solution and to implement it (or an appropriate alternative) in the terms of a conditional commitment.

2. Determination and Findings by the Secretary

The Notice asks whether certain findings and determinations by the Secretary should be conditions for approval of an application for loan guarantees. As stated above, the Companies do not believe that such findings and determinations need to, or should, be set forth in rules. Nonetheless, the Companies provide the following preliminary comments on DOE's proposals:

> *(A) That the applicant has received a final certificate from FERC or, with respect to an LNG project, that the Secretary has made a determination that the entity applying for loan guarantees is qualified to construct and operate a liquefied natural gas project "to transport liquefied natural gas from Southcentral Alaska to West Coast States."*

The Companies believe that it would be appropriate for DOE to condition its execution of a loan guarantee agreement on a determination that the applicant has received a final certificate from FERC (or that an applicant for an LNG facility has obtained the required finding by DOE).[4] As noted in the Companies' comments on Question No. 1, for purposes of triggering the two-year period of § 116(a)(3), "receipt" of a final certificate should be understood to refer to a certificate that is not subject to ongoing administrative or judicial review proceedings. In addition, DOE may wish to make clear that, before it will enter into an LGA for a project under ANGPA or the Alaska Natural Gas Transportation Act of 1976, the requisite Canadian authorizations need to be obtained. Because of the scope and likely complexity of the project's financing, the full two-year period after receipt of a final certificate of public convenience and necessity, as defined in § 116(a)(3), should be preserved to provide the time and flexibility needed to execute the financing.

(B) The project submitted for approval is a "Qualified Infrastructure Project" as defined in the Act.

This is a statutory requirement, and the Companies therefore agree that this condition has to be met before DOE can execute an LGA.

(C) That there is a reasonable assurance of repayment of the guaranteed debt.

(D) That the guaranteed loan funds and the equity contribution of the project sponsors will be sufficient to complete the construction and start-up of the "Qualified Infrastructure Project" and fund any cost overruns.

(E) That the terms and conditions of the LGA provide adequate terms and security to appropriately protect the financial interests of the United States Government.

[4] As noted in the Notice (70 Fed. Reg. at 30,707), § 114 of Title I of Division J of the Consolidated Appropriations Act, 2005 (Pub. L. No. 108-447) amended § 116 of ANGPA to authorize DOE to enter into LGAs with an entity determined by the Secretary to be qualified to construct an LNG project to transport LNG from southcentral Alaska to the west coast of the continental United States.

With respect to subpart (D), ANGPA permits the Secretary to require equity contribution commitments and/or completion guarantees, and the Companies agree that the Secretary should require assurances of adequate funding to reach completion as a prerequisite to entering into an LGA.

With respect to subparts (C) and (E) of DOE's Question No. 2, the proposed conditions suggest that, before the federal government could issue a guarantee, the project would have to pass an additional test of creditworthiness to be developed by DOE. The Companies respectfully submit that ANGPA provides no basis for that approach. Under ANGPA, the guarantee is to cover 80% of the capital cost (subject to the $18 billion cap, escalated for inflation) of any qualified project that reflects the commercial requirements of the parties and satisfies the regulatory requirements for issuance of a certificate of public convenience and necessity. Not only does ANGPA refrain from dictating any particular credit quality for the guaranteed loans, but § 116(b)(3) also prohibits the Secretary from requiring "any contractual commitment or other form of credit support of the sponsors" other than "equity contribution commitments and completion guarantees." § 116 (b)(3).

ANGPA does not impose on DOE the difficult task of determining what combination of shipper support, contract terms, loan covenants, security, and other credit features are "adequate" or provide "reasonable assurance" of repayment. The requirement for 20% equity means that billions of dollars of sponsor equity will be at risk (in addition to substantial additional upstream and downstream investments and exposure on shipping obligations), and will rank junior to the financial exposure of the United States under the guarantee. Congress therefore foresaw no need to define, or to require DOE to define, the credit profile of loans subject to the federal guarantee. Instead, ANGPA simply requires the 20% equity cushion and adequate assurances of completion.

The statute relies on the commercial interests of the parties and the regulatory process to ensure that the project is sound and worthy of a loan guarantee from the United States.

3. Special Terms and Conditions

DOE asks whether there are additional terms and conditions that are unique to construction of an Alaska natural gas pipeline project and, if so, whether such terms and conditions should be included in any LGA and/or regulations.

Many aspects of the financings for this unique and complex project are now unknown. Much greater clarity must be achieved before any sponsor could begin to anticipate how the Federal guarantees should be crafted to accommodate the financing structure, lenders, credit structure, and terms that would provide the optimal, lowest-cost financing package for the project. There are currently many unresolved questions fundamental to a successful federally guaranteed financing. Some examples are:

- Borrowing Structure – Will the project companies borrow, or will their owners? There may be a need for different financings where the credit profile of each borrower could be separate or "blended" through cross-collateralization and cross-defaults.

- Sources of Finance – The size of the financing differentiates it from any previous federal loan guarantee program. What types of indebtedness will be guaranteed: loans, bonds, commercial paper? It may or may not be efficient or necessary for affiliates of project sponsors to be senior lenders, as is the case in many recent large oil and gas financings.

- Credit Structure – Will the structure involve a single loan before and after project completion? It is not known at this point whether the indebtedness will amortize, be full or limited recourse, or be secured or unsecured.

- Terms – How can project development and operation be protected from premature or inappropriate exercise of lender remedies? It is not clear whether conventional "enforcement" will be allowed or what the nature of the completion test will be.

- Use of Guarantee – How can the project and DOE maximize the benefit of a finite amount of guarantees? It is too early to know whether it may be necessary for the project sponsors to borrow senior or subordinated loans in excess of the guaranteed amount or how these loans should be treated.

In any financing, maintaining optionality is one of the keys to achieving success. The Companies cannot say now which financing structures or terms might prove to be necessary or desirable to achieve a timely and lowest-cost financing for the project. We can say, however, that the adoption of rules shutting the door on any of these structures or terms would impair, rather than advance, the prospects for a successful project. For example, it is now known that flexibility needs to be preserved so that (a) the guaranteed borrowers can be the project sponsors (as opposed to the project entit(ies)) even though the LGA itself would be with the entit(ies) that hold the required U.S. and Canadian certifications and (b) the "eligible lender" benefiting from the guarantee can include affiliates of the project sponsor(s) that might provide a portion of the loan. Thus, the Companies respectfully suggest that the question of special terms and conditions should not be addressed now by regulation, but should be resolved through consultations in the context of a specific project development and financing plan.

4. Lender Risk

DOE asks whether the definition of "Federal guarantee instrument" in § 116(g)(3) of ANGPA precludes "any 'lender risk' on the project debt that receives a Federal guarantee" and whether 100% guaranteed debt will have an impact on "project evaluation and servicing requirements." 70 Fed. Reg. at 30,708.

The plain terms of the statute reflect a Congressional decision that there is to be no "lender risk" on the guaranteed debt portion of the project financing. The statutory definition cited by DOE in the Notice "pledge[s] the full faith and credit of the United States to pay *all* of the principal and interest on any loan or debt obligation entered into by a holder of a certificate of public convenience and necessity." ANGPA, § 116(g)(3) (emphasis added). Congress could not have expressed its intent more clearly. The statute requires that the federal government fully protect the lenders of the guaranteed debt.

Moreover, a contrary interpretation of § 116(g)(3) would conflict with Congress's purpose in enacting the loan guarantee provision. Imposing non-guaranteed risk directly or indirectly on project lenders would undermine the cost-minimization purpose of § 116 because anything short of the contemplated "full faith and credit" guarantee necessarily would increase the costs of the underlying debt. To obtain the benefit of the cost-reduction potential of the guarantee on the guaranteed portions of the project debt (*i.e.*, the portion within the $18 billion, as adjusted, cap), the guarantees must be supported by the "full faith and credit" of the United States for the payment of all amounts owing, when due.

The question posed in the Notice may reflect a concern that, because the lenders of the guaranteed debt will be relying on the federal government, they will not have an adequate incentive to monitor and manage the underlying credit diligently. The Companies acknowledge that having 100% of the debt guaranteed may affect the role that guaranteed lenders play in evaluating and administering the underlying project debt. The Companies believe that ways can be developed to address this practical concern through some form of project structure, financing structure, and/or LGA provisions. Moreover, ANGPA has an effective, built-in safeguard. By requiring that project sponsors retain 20% of the risk, the statute assures that an economically sound project will be developed and that there will be continuing incentives to produce cash flows sufficient to service and retire the guaranteed debt.

5. Guarantee Fee

DOE seeks comments on the amount of a possible loan guarantee fee and whether the fee should be an origination or an annual fee.

ANGPA does not authorize the imposition of loan guarantee fees. While the statute explicitly recognizes the right of an eligible lender to impose fees as are "reasonable and customary" for project finance transactions in the energy sector, it does not similarly grant or recognize any such rights for the Secretary with respect to loan guarantees. The legislative history reinforces this conclusion. When the loan guarantee provision was under legislative consideration, the Department of Treasury and the Office of Management and Budget submitted a mark-up requesting that various modifications be made. (A copy of the mark-up is attached to these comments.) Insert D on page 8 of the mark-up contains language that would have authorized the Secretary to impose various loan guarantee fees "to minimize the cost to the Government." Despite the executive agencies' urging, Congress declined to authorize the imposition of fees or other costs on the Federal loan guarantee.

Congress understood that imposing such costs would have been inimical to the fundamental objective of ANGPA's loan-guarantee provision: to lower the all-in costs of financing the project and the resulting transportation charges to shippers. Moreover, the imposition of fees could destroy the usefulness of the Federal guarantees for project sponsors that have low corporate cost of funds. For the loan guarantee provision to function as an effective financing incentive, it must result in all-in costs that are lower than the sponsors' own cost of funds. Adding any fees or other costs to the loan guarantee is likely to make it more expensive than the sponsors' internal sources of funds, thus negating its potential benefit. Congress clearly did not intend such a result.

6. Equity Funding Commitment

DOE requests comments on what assurance it should require from project sponsors to ensure that scheduled equity contributions will be made when needed.

As noted earlier, ANGPA authorizes DOE to impose two types of contractual commitments on project sponsors – an equity funding commitment and/or a completion guarantee. The statute expressly prohibits the imposition of any other type of "contractual commitment or other form of credit support." ANGPA, § 116(b)(3).

Consistent with the statutory limitations, DOE can obtain adequate assurances by obtaining a written commitment from an investment-grade guarantor (or its wholly owned affiliate) that the equity contribution obligation will be met and that completion will occur. A completion guarantee by itself will provide assurances that the sponsors will fulfill their equity contribution commitment. To maximize the benefit of the loan guarantee provision, however, the sponsors should not be locked into a rigid funding schedule but rather should be able to draw debt and equity financing when and as needed.

7. 30-Year Loan Guarantee Term

DOE requests comments on "whether the calculation of the maximum loan guarantee 'term' . . . should commence with the first construction loan borrowing and include the sum of both the construction period and long-term debt period." 70 Fed. Reg. at 30,708.

The question posed in the Notice appears to be premised on the notion that § 116 of ANGPA contemplates only a *single* 30-year loan guarantee term. But that understanding, the Companies respectfully submit, has no basis in the text of the statute. Section 116(d)(1) of ANGPA states that "[t]he term of any loan *guaranteed* under this section shall not exceed 30 years." (Emphasis added.) Thus, the statute contemplates a maximum 30-year term for each project loan that is guaranteed under § 116. Among many other possible amortization structures, project loans may be tranched with multiple maturities, and each would be eligible for guarantee if its term does not exceed 30 years.

Moreover, this reading of the statute comports with the Congressional objective of facilitating construction and operation of the project. For a guarantee to be useful, it must be in place and fully appropriated well in advance of initial borrowing and carry through to final repayment.

To the extent that multiple loans are drawn down to finance construction, each such loan, consistent with the statutory language quoted above, should carry its own 30-year guarantee period. Under this approach, a new loan that is entered into at the commencement of commercial operations and that is guaranteed in accordance with § 116 could have parallel repayment and carry its own 30-year guarantee period.

8. Collateral/Recourse/Default

DOE notes that ANGPA is silent on requirements and procedures for collateral for federally guaranteed debt. DOE also asks for comments on what recourse or options the Secretary should have in the event of default and whether security other than project assets should be pledged to secure the guarantee.

As noted above in response to Question No. 2 on the possibility of findings and determinations on collateral and underlying credit quality, the Companies do not believe that ANGPA authorizes DOE to impose collateral and credit-quality requirements other than those specified in the statute (equity contribution commitment and completion guarantee).

With respect to default and recourse, the project is not sufficiently advanced for DOE to begin formulating required loan terms at this time. Moreover, any such loan terms will need to be consistent with as yet undefined requirements of FERC or Canada's National Energy Board ("NEB").

Nevertheless, to the extent that DOE undertakes a consideration of default and recourse at this time, the Companies offer their preliminary views on pertinent general principles. Any default procedure should not be precipitous. Rather, DOE should take a flexible and staged approach and provide the project with the maximum time reasonably possible to cure the commercial difficulties through continuing operations. If the project's commercial health ultimately is unable to be restored, the Federal government as guarantor should be permitted to "step in" to keep the project operating. In that circumstance, the Federal government would service the debt as guarantor and be reimbursed to the extent of net project cash flows. To ensure the lowest possible financing costs, the lenders must be assured that, in the event of default, they will not be adversely affected and will continue to receive principal and interest for the full term of the guaranteed loan or otherwise be kept whole economically.

9. Cost Overruns

DOE requests comments "on how cost overruns can or should be funded and the appropriate mechanism or formula for addressing cost overruns in the LGAs and any appropriate regulations." 70 Fed. Reg. at 30,708.

Under § 116(c) of ANGPA, debt financing guaranteed by the Federal government will be available for 80% of project costs (including overruns) up to $18 billion, escalated for inflation. If a project financing plan involves a realistic risk that aggregate project costs could exceed the then inflation-adjusted equivalent of $22.5 billion ($18 billion in guaranteed debt and $4.5 billion in equity), a number of different options exist for addressing the concern. Such options include additional equity commitments, unguaranteed sponsor or third-party debt, other stand-by commitments, and/or completion guarantees. The choice and structure of completion support (which, of course, addresses overrun risk as well as other risk) should take into account the substantial incentive that the Companies would have to avoid cost overruns, which could lead to higher tariffs. Such increased transportation costs could threaten the Companies' ability to economically commercialize their stranded Alaskan natural gas resources.

Notwithstanding the strong incentives that the sponsors would have to stay within budget, the possibility of a cost overrun cannot absolutely be foreclosed. That is why it is important that the project sponsors have the substantial financial strength that would be needed were a cost overrun on a project of this scale to occur.

10. Monitoring and Reporting Requirements

DOE solicits comments on the timing and contents of reports that it should require in carrying out its monitoring responsibilities.

In light of its scale and scope, the Alaska natural gas project will be subject to a myriad of reporting requirements of numerous federal, state, and other agencies. On the U.S. federal level, the project or aspects of it are potentially subject to review by a range of agencies, including FERC, DOE, the Department of Interior, EPA, and the Department of Transportation. The State of Alaska also will be deeply involved in regulating the project and monitoring its progress. In Canada, the project will have to deal with a variety of regulatory bodies. At the federal level, the project will be subject to oversight by the NEB, the Canadian Environmental Assessment Agency, and other Responsible Authorities, as defined by the Canadian Environmental Assessment Act. The project will also have dealings with various provincial and territorial government agencies and First Nation Boards established under Land Claims Settlements. The Companies will be required to report substantial amounts of information to the various regulatory bodies.

The Companies will work with DOE to ensure that it receives the information that is necessary to carry out its loan guarantee responsibilities. Ultimately, the Companies are hopeful that the various agencies can work together to rationalize and eliminate conflicting and duplicative reporting obligations.

IV. CONCLUSION

The Companies appreciate the opportunity to participate in DOE's Notice process and commend the agency for seeking information and ideas on how best to implement the incentive provided by the loan guarantee provision in order to further ANGPA's cost-reduction and risk-mitigation purposes. The Companies urge DOE to consider the foregoing comments and to conclude that it would not be necessary or productive to go forward with a rulemaking proceeding. Rather, Congress's goals of obtaining expeditious access to a secure source of domestic energy supplies and of providing the foundation for further natural gas exploration and development in Alaska will best be served through consultations, direct negotiations, and conditional commitments. DOE can structure those activities to include appropriate opportunities for public reports, briefings, and input.

Respectfully submitted,

BP EXPLORATION (ALASKA) INC.,
CONOCOPHILLIPS COMPANY, AND
EXXON MOBIL CORPORATION

within 2 years after the date of such certification; and

(3) the Secretary of the Interior concurs in writing to the Secretary with the certification made under paragraph (2) after considering—

(A) the status of necessary State and Federal permits;

(B) the availability of financing for the pipeline project; and

(C) other relevant factors and circumstances.

(d) AUTHORIZATION OF APPROPRIATIONS.—There is authorized to be appropriated to the Secretary such sums as may be necessary, but not to exceed $20,000,000, to carry out this section.

SEC. 144. LOAN GUARANTEES.

(a) AUTHORITY.—

(1) The Secretary may enter agreements with 1 or more holders of a certificate of public convenience and necessity issued under section 133(b) of this Act or section 9 of the Alaska Natural Gas Transportation Act of 1976 (15 U.S.C. 719g) to issue Federal loan guarantee commitments ~~instruments~~ with respect to loans and other debt obligations for a qualified infrastructure project.

(2) Subject to the requirements of this section, the Secretary may also enter into agreements with 1 or more owners of the Canadian portion of a qualified infrastructure project to issue Federal loan guarantee commitments ~~instruments~~ with respect to loans and other debt obligations for a qualified infrastructure project as though such owner were a holder described in paragraph (1).

(3) The authority of the Secretary to issue Federal loan guarantee commitments ~~instruments~~ under this section for a qualified infrastructure project shall expire on the date that is 2 years after the date on which the final certificate of public convenience and necessity (including any Canadian certificates of public convenience and necessity) is issued for the project. A final certificate shall be considered to have been issued when all certificates of public convenience and necessity have been issued that are required for the initial transportation of commercially economic quantities of natural gas from Alaska to the continental United States.

(b) CONDITIONS.—

commitment (1) The Secretary may issue a Federal loan guarantee ~~instrument~~ for a qualified infrastructure project only after a certificate of public convenience and necessity under section 133(b) of this Act or an amended certificate under section 9 of the Alaska Natural Gas Transportation Act of 1976 (15 U.S.C. 719g) has been issued for the project.

(2) The Secretary may issue a Federal loan guarantee commitment ~~instrument~~ under this section for a qualified infrastructure project only if the loan or other debt obligation to be guaranteed ~~by the instrument~~ has been issued by an eligible lender.

(3) The Secretary shall not require as a condition of issuing a Federal loan guarantee commitment ~~instrument~~ under this section any contractual commitment or other form of credit support of the sponsors (other than equity contribution commitments and completion guarantees), or any throughput or other guarantee from prospective shippers greater than such guarantees as shall be required by the project owners.

Not requiring contractual commitments for business will substantially increase the subsidy cost.

INSERT A

(c) LIMITATIONS ON AMOUNTS.—

(1) The principal amount of loans and other debt obligations any portion of which is guaranteed under this section for a qualified infrastructure project, shall not exceed 80 percent of the total capital costs of the project. ~~including interest during construction.~~

INSERT A

(3) The Secretary shall as a condition of issuing a Federal loan guarantee commitment under this section require reasonable assurance of repayment from the borrower.
(4) The Secretary shall require collateral in addition to the project assets to secure the loan and protect the financial interest of the Federal government in the event of default. Such collateral may include cash reserves, letters of credit, or other high-quality assets such as real property.

(2) The principal amount of loans and other debt obligations, any portion of which is guaranteed under this section shall not exceed, in the aggregate, $18,000,000,000, which amount shall be indexed for United States dollar inflation from the date of enactment of this Act, as measured by the Consumer Price Index.

INSERT B

(d) LOAN TERMS AND FEES.—

(1) The Secretary may issue Federal loan guarantee ~~instruments~~ commitments under this section that take into account repayment profiles and grace periods justified by project cash flows and project-specific considerations. INSERT C The term of any loan guaranteed under this section shall not exceed 30 years from the date of obligation.

(2) An eligible lender may assess and collect from the borrower such other fees and costs associated with the application and origination of the loan or other debt obligation as are reasonable and customary for a project finance transaction in the oil and gas sector.

INSERT D

(e) REGULATIONS.—The Secretary may issue regulations to carry out this section.

(f) AUTHORIZATION OF APPROPRIATIONS.—There are authorized to be appropriated such sums as may be necessary to cover the cost of loan guarantees, as defined by section 502(5) of the Federal Credit Reform Act of

INSERT B

(3) Subject to the limitation in subsection (c) of this section, Federal loan guarantee commitments issued for a qualified infrastructure project shall not exceed 80 percent of the principal amount of such loans and other debt obligations.

INSERT C

To the extent such profiles and grace periods are taken into account, the terms must not subordinate repayment of the Federally guaranteed loans and other debt obligations to any unguaranteed loans or other debt obligations issued for the qualified infrastructure project.

INSERT D

(3) The Secretary may assess origination and other fees to minimize the cost to the Government, as such term is defined in section 502 of the Federal Credit Reform Act of 1990, as amended.

(4) Prior to issuance of a Federal loan guarantee commitment, the Secretary shall require the project applicant to provide a rating opinion letter from at least 1 rating agency evaluating the creditworthiness of the loan or other debt obligation to be guaranteed. Such evaluation shall be conducted without regard to the Federal guarantee.

(5) Subject to appropriation, the Secretary may charge and use fees to pay for the cost of receiving and evaluating applications for Federal loan guarantee commitments to be issued under this section.

(6) No loan or other debt obligation guaranteed by the Federal government under this section will be subordinated to any other debt contracted by the borrower or to any other claims against the borrowers in the case of default.

INSERT E

1990 (2 U.S.C. 661a(5)). Such sums shall remain available until expended.

(g) DEFINITIONS.—In this section, the following definitions apply:

(1) The term "Consumer Price Index" means the Consumer Price Index for all-urban consumers, United States city average, as published by the Bureau of Labor Statistics, or if such index shall cease to be published, any successor index or reasonable substitute thereof.

(2) The term "eligible lender" means any non-Federal qualified institutional buyer (as defined by section 230.144A(a) of title 17, Code of Federal Regulations (or any successor regulation), known as Rule 144A(a) of the Securities and Exchange Commission and issued under the Securities Act of 1933), including—

(A) a qualified retirement plan (as defined in section 4974(c) of the Internal Revenue Code of 1986 (26 U.S.C. 4974(c)) that is a qualified institutional buyer; and

(B) a governmental plan (as defined in section 414(d) of the Internal Revenue Code of 1986 (26 U.S.C. 414(d)) that is a qualified institutional buyer.

INSERT E

There are authorized to be appropriated such sums as shall be necessary for administrative expenses to carry out the program.

(3) The term "Federal loan guarantee ~~instrument~~ commitment" means any guarantee or other pledge by the Secretary to pledge the full faith and credit of the United States to pay ~~all~~ up to 80 percent of the principal ~~and interest~~ on any loan or other debt obligation entered into by a holder of a certificate of public convenience and necessity.

(4) The term "qualified infrastructure project" means an Alaskan natural gas transportation project consisting of the design, engineering, finance, construction, and completion of pipelines and related transportation and production systems (including gas treatment plants), and appurtenances thereto, that are used to transport natural gas from the Alaska North Slope to the continental United States.

INSERT F

(~~5~~6) The term "Secretary" means the Secretary of Energy.

SEC. 145. SENSE OF CONGRESS ON NATURAL GAS DEMAND.

It is the sense of Congress that:

(1) North American demand for natural gas will increase dramatically over the course of the next several decades.

(2) Both the Alaska Natural Gas Pipeline and the McKenzie Delta Natural Gas project in Canada

INSERT F

(5) The term "rating agency" means a bond rating agency identified by the Securities and Exchange Commission as a Nationally Recognized Statistical Rating Organization.

WALKER & LEVESQUE, LLC

ATTORNEYS AT LAW

William M. Walker
Donna P. Walker
Joseph N. Levesque

731 N Street
Anchorage, AK 99501
(907) 278-7000 ¦ Fax (907) 278-7001

- -

Harbor Court, Suite 204
P. O. Box 872
Valdez, Alaska 99686
(907) 835-2225

E-mail: bill-wwa@ak.net

July 25, 2005

Office of General Counsel, GC-72
Attention: Lawrence R. Oliver
U.S. Department of Energy
Office of the General Counsel, GC-72
Forrestal Building, Room 6B-256
1000 Independence Avenue, SW
Washington, DC 20585

VIA EMAIL: bettie.corey@hq.doe.gov

Re: Alaska Gasline Port Authority Comments to DOE
Notice of Inquiry No. 6450-01-P
Our File No. 181-2

Dear Mr. Oliver:

As legal counsel to the Alaska Gasline Port Authority (the "Authority"), we have been requested to submit comments on their behalf in the above-referenced matter.

Section 116 of the Alaska Natural Gas Pipeline Act of 2004 (the "Act") allows the Secretary of Energy (the "Secretary") to issue federal loan guarantees for an Alaska natural gas project. The Department of Energy (the "DOE") has issued Notice of Inquiry No. 6450-01-P relating to advance notice of proposed rulemaking for regulations governing the issuance of those guarantees. The DOE is considering the development and issuance of regulations that "would establish certain minimum requirements or terms" for loan guarantee agreements (an "LGA") and seeks public comment by July 26, 2005 on a number of questions relating to such regulations. The Authority, the primary sponsor of the project to transport gas via pipeline parallel to the TransAlaska Oil Pipeline to Valdez and liquefied natural gas ("LNG") from southcentral Alaska to the continental United States, provides the following response.

The Authority believes the DOE is premature in deciding whether it needs regulations to negotiate the terms of LGAs, and certainly thinks it is too soon to actually undertake the rulemaking process. First, since under section 116(b)(4) of the Act, as amended, the Secretary may only issue guarantees for one project the DOE should be able to fill in those portions of customary loan guarantee requirements for which the Act is silent through negotiation rather than rulemaking. Additionally, the Authority is concerned that rules adopted in the coming months, with current notions of project specifics in mind, will constrain one or more existing or new projects as they develop in the future. For instance, the Authority's proposed LNG project will likely involve less Federal Energy Regulatory Commission (the "FERC") jurisdiction than other projects (thus the Secretary and not the FERC must certify our project for purposes of receiving loan guarantees under the Act). One only has to look to the Alaska Natural Gas Transportation Act of 1977 and its subsequent application to an Alaska natural gas project to see how a regimented legal structure can, over time, become unworkable (at least as to different proposals).

Although section 116(e) of the Act clearly authorizes the Secretary to promulgate regulations governing the loan guarantees process, the Act neither requires such rules nor imposes a deadline for their adoption. The loan guarantees may only be utilized by the project chosen by the FERC as the qualified project. Thus an LGA may practically only be executed after *inter alia*:

(i) the Governor of the State of Alaska (the "State") has submitted a project or projects to the State legislature under the Alaska Stranded Gas Development Act, AS 43.82 et seq.;

(ii) the legislature has approved the State fiscal terms of a project;

(iii) applicable FERC open season requirements have been met;

(iv) project design is finalized;

(v) if necessary, an application for a certificate of public convenience and necessity is filed with FERC;

(vi) the FERC selects the qualified project and the necessary certificates are issued; and

(vii) the DOE and qualified project negotiate terms.

This timeline does not even consider potential regulatory hurdles for the Canadian portion of a highway route line which might lengthen the process considerably. Since it will take a significant amount of time for the qualified project to be chosen, likely measured in years and not months, there is no practical need to have a regulatory framework for the guarantees in place over the short-term. The Authority respectively suggests that the DOE should wait until the final nature of the qualified project begins to take shape before undertaking the rulemaking process, if it does so at all.

Please find below the Authority's comments to the specific issues raised in the Notice of Inquiry. Note that the nature of the inquiry has been summarized in italics before the actual comment.

1. Conditional Commitment.

DOE is considering whether it "can or should" negotiate a conditional commitment with "one or more potential project sponsors" prior to the time that a final certificate is issued by FERC or the Secretary issues the required certifications for an LNG project. The FERC requests comments on whether doing so would expedite the loan guarantee application process and at what point in the process the DOE should enter into a conditional commitment.

A conditional commitment would result in the DOE negotiating the terms of the loan guarantees before the FERC (or Secretary in the case of a LNG project) certified it. It would seem advantageous to have the DOE work with a project to establish financing terms as early as is practically possible, but the Authority at this stage sees no need for rules authorizing a "conditional commitment." Further, the DOE should not settle on one of multiple competing projects for loan guarantees before the FERC has made its final choice. Thus until such time as FERC chooses a project as the qualified project DOE should only be allowed to negotiate and enter into a conditional commitment if it will do so with all interested competing projects. If conditional commitments are established, the timeline for negotiation and execution of a conditional commitment should be determined by each project sponsor based upon its project's needs.

2. Determinations and Findings by the Secretary.

DOE is considering requiring by rule that: (A) the applicants have received a final certificate from FERC (or Secretary in the case of a LNG project); (B) the project be the FERC chosen project; (C) there is a reasonable assurance of debt repayment; (D) the guaranteed loan funds and the equity contribution of the project sponsors will be sufficient to cover project cost and overruns; (E) and the terms of the LGA provide adequate terms and security to protect financial interests of the federal government. DOE is also requesting comments on what determinations and/or findings should be made by the Secretary before an LGA is entered into.

Items (A)-(E) appear typical and reasonable in the abstract, although the Act is liberal in limiting what terms the DOE can extract from a guaranteed party. Section 116(b)(3) provides: "The Secretary shall not require as a condition of issuing a Federal guarantee instrument under this section any contractual commitment or other form of credit support of the sponsors (other than equity contribution commitments and completion guarantees), or any throughput or other guarantee from prospective shippers greater than such guarantees as shall be required by the project owners." Consequently, the scope of contractual commitments that the DOE can or must seek under regulation is limited.

As far as a list of determinations/findings that should be made by the Secretary before executing an LGA, it would seem prudent to allow the projects to develop before making specific suggestions.

3. Special Terms and Conditions.

The DOE requests comments on what other terms and conditions, other than usual project financing requirements, should be included in guarantees, and whether those terms should be mandated by regulation.

There are advantages and disadvantages to mandating terms by regulation. The rulemaking process would bring such terms into the open and would allow for debate and public comment at an early stage. But adopted rules will limit DOE flexibility in the future in calibrating terms based on specific project needs. Consequently, the rulemaking process should be delayed. If it is not the Secretary should be allowed to waive any terms and conditions required by regulation upon a best interest finding (i.e., regulation can usefully provide the DOE and project sponsors an outline for LGA terms but should not unduly burden future negotiations).

4. Lender Risk.

DOE requests comments on whether the Act precludes any "lender risk" on guaranteed debt and on the potential impact of 100 percent guaranteed debt on project evaluation and servicing requirements.

The terms of the Act prevent the DOE from requiring a potential lender, project sponsor (other than equity contribution commitments and completion guarantees), or shipper to assume project risk on guaranteed debt. This would appear to prohibit "lender risk."

5. Guarantee Fee.

DOE requests comments on how the amount of any loan guarantee fee should be determined and whether the fee should be an origination or annual fee.

Section 116(d)(2) of the Act specifically provides that an eligible lender may charge customary and reasonable origination fees. The Act does not, however, authorize the DOE to charge guarantee fees.

6. Equity Funding Commitment.

DOE requests comments as to what type and form of assurance DOE should require from the project sponsors to assure that the scheduled equity contribution to the project will be available and will be made when needed.

No comment.

7. Thirty Year Loan Guarantee Term.

DOE requests comments on whether the calculation of the maximum 30 year loan guarantee "term" should commence with the first construction loan borrowing and include the sum of both the construction period and long-term debt period.

Section 116(d)(1) refers to specific loans guaranteed, meaning the maximum 30 year term would apply to each loan individually rather than the project in aggregate. Thus the 30 year term should commence with, and only apply to, each individual loan. For debt issued in installments there would be staggered 30-year maturity terms. For each loan, the 30 year term could reasonably be interpreted as starting at issuance or upon the date of first repayment.

8. Collateral/Recourse/Default.

What recourse should the Secretary have in the event of default (e.g., security other than on project assets, credit and related agreements, or first lien on all project assets)? What should any regulations include regarding collateral requirements, recourse and default procedures.

Section 116(b)(4) is very specific in stating no "contractual commitment or other form of credit support of the sponsors (other than equity contribution commitments and completion guarantees)" can be required by the Secretary to issue the loan guarantees. Thus it would appear under the Act the DOE may not predicate the execution of an LGA on any form of additional security other than non-priority liens on project assets.

9. Cost Overruns.

DOE is requesting comments on how cost overruns can or should be funded and the appropriate mechanism or formula for addressing cost overruns in the LGAs and any appropriate regulations.

The DOE may properly employ loan guarantees to help finance cost overruns so long as the 80 percent and $18 billion caps (and the $2 billion cost limitation for a LNG project) found in section 116(c) have not been exceeded.

10. Monitoring and Reporting Requirements.

The DOE is requesting comments on appropriate required reporting to DOE including the content and timing reporting for such things as the status of loan disbursement requests, whether loan repayment status reports should be required, and the timing and content of construction status reports.

No comment.

The Authority is grateful that the DOE's Notice of Inquiry has allowed it to comment early on potential rulemaking for the federal loan guarantee process for the Alaska natural gas pipeline. Hopefully these and other comments will persuade the Secretary that the time is not yet ripe for the DOE to undertake rulemaking. Please do not hesitate to contact the Authority, or myself as its representative, if there is further assistance that can be provided on these matters.

Very truly yours,

WALKER & LEVESQUE, LLC

William M. Walker

Enbridge Energy Company, Inc.
1100 Louisiana, Suite 3300
Houston, Texas 77002
www.enbridgepartners.com

July 26, 2005

Office of the General Counsel, GC-72
ATTN: Lawrence R. Oliver
U.S. Department of Energy
Forrestal Building, Room GB-256
1000 Independence Avenue, S.W.
Washington, DC 20585

Re: U.S. Department of Energy, Alaska Natural Gas Pipeline Loan Guarantee, Notice of Inquiry, May 27, 2005

Dear Mr. Oliver:

Enbridge Inc., a Canadian corporation, is one of the foremost pipeline operators in North America, with ownership interests in over 20,000 miles of crude oil, petroleum products, and natural gas pipelines in Canada and the United States. Enbridge owns, through U.S. subsidiaries and affiliates, approximately 11.2% of Enbridge Energy Partners, L.P., headquartered in Houston, Texas. Enbridge's more than 8,000 miles of crude oil and products pipelines includes its ownership and operation of the world's longest liquid petroleum pipeline, extending from supply sources in western Canada to markets in the Great Lakes region of the United States. The company's nearly 12,000 miles of natural gas pipeline holdings include: 50 percent ownership of the Alliance Pipeline system, a cross-border natural gas transmission pipeline extending 1,900 miles from western Canada to a terminus near Chicago; 60 percent ownership of the Vector Pipeline extending from Chicago to Ontario; and its ownership interest in approximately 1,500 miles of pipeline that transport over 50% of natural gas production from the Gulf of Mexico.

Enbridge's comprehensive expertise in pipeline construction includes extensive construction management, construction, and operation north of the 60th parallel, and world class expertise in pipeline technology, control and integrity management. This operating experience places Enbridge in a unique position to provide leadership to the effort to plan, permit, build and operate the Alaska natural gas pipeline ("Alaska Pipeline"). Enbridge has been involved with the planning, permitting and environmental assessments of approximately 3,000 miles of large diameter gas and liquids pipelines built over the last decade. North of the 60th parallel, Enbridge has 19 years of day-in, day-out experience operating in permafrost conditions, commencing with its 1985 construction of the 540-mile underground Norman Wells crude oil pipeline, its subsequent development of the Inuvik Gas natural gas local distribution system joint venture, and its extensive involvement in permafrost construction studies and field trials as Enbridge prepared to participate in constructing the Alaska Pipeline.

The Alaska Pipeline will present significant design, engineering, and construction challenges related to construction in continuous and sporadic pockets of discontinuous permafrost. Given its extensive experience with pipeline construction and operation in permafrost terrain and challenging environments, such as the deep water Gulf of Mexico, Enbridge is well positioned to help overcome these challenges in a fashion that will reduce costs, minimize environmental impact, and limit delays during construction.

We appreciate this opportunity to provide comment as the Department of Energy (DOE) considers the rulemaking and process for implementing the loan guarantee program authorized by Congress to encourage development of the Alaska Pipeline.

SUMMARY OF ENBRIDGE COMMENTS:

Action by the U.S. Congress late last year in passing the Alaska Natural Gas Pipeline Act ("Act") provided critical momentum for the successful completion of the Alaska Pipeline. In particular, the provision for federal loan guarantees helps reduce some of the financial risk of a project of this magnitude and, as we elaborate on in our comments, helps lower the cost of capital and ultimately provides savings and benefits to gas consumers.

As DOE considers the next steps in implementing the federal loan guarantee program, Enbridge suggests that three key principals remain top of mind:

- **Intent of Congress:** The structure of the regulations and details of the ultimate loan guarantee agreement need to carry out the intent of Congress in providing financial incentives and removing barriers to construction of the largest energy infrastructure project ever undertaken in North America.

- **Flexibility:** The loan guarantee program will be most effective in carrying out this legislative intent if the regulations remain flexible enough to (1) protect the federal government's desire to minimize its risk; (2) accommodate an application from sponsors for a project that has yet to be fully defined in scope, participants or timing; and (3) encompass a definition of a "qualified infrastructure project" that encourages technically and economically efficient design including use of expanded existing systems to deliver Alaskan gas into the U.S. Lower 48 market.

- **Reflect Approaches Tested in Commercial Financial Markets:** The structure of the loan guarantee program will benefit by the experience gained in commercial markets to protect lenders. Acceptance and use of standard industry financing agreements has multiple benefits. The meaning and intent of such provisions will be understood and accepted by project owners, underwriters and investors who are planning, evaluating, building, financing and operating the pipeline. This shared understanding should expedite the planning and negotiation of the financing component of the project's development.

SPECIFIC RESPONSE TO QUESTIONS POSED IN NOTICE OF INQUIRY

1. Conditioned Commitment. Section 116(a)(3) of the Act provides that "[t]he authority of the Secretary to issue Federal guarantee instruments under this section for a qualified infrastructure project shall expire on the date that is 2 years after the date on which the final certificate of pubic convenience and necessity (including any Canadian certificates of public convenience and necessity) is issued for the project." Section 116(b)(1) of the Act provides that "[t]he Secretary may issue a Federal guarantee instrument for a qualified infrastructure project only after a certificate of public convenience and necessity…has been issued for the project, or after the Secretary certifies there exists a qualified entity to construct and operate a liquefied natural gas project to transport liquefied natural gas from Southcentral Alaska to West Coast States." Under these provisions the Secretary may not enter into an LGA (a negotiated document which sets forth in writing the terms and conditions that must be met before the Secretary will issue the loan guarantees) until a certificate of public convenience and necessity has been issued by FERC or the Secretary has issued an appropriate certification in the case of an LNG project. The Department of Energy ("DOE") is considering whether it can or should negotiate a conditional commitment with one or more potential project sponsors prior to the time that a final certificate is issued by FERC or the Secretary issues the required certifications with respect to an LNG project. A conditional commitment would, after the terms and conditions specified therein have been satisfied, lead to the execution of an LGA after the required subsequent conditions occur. DOE is requesting comments on potential advantages and disadvantages of this approach including whether it would expedite the loan guarantee application process and at what point in the certificate application and/or project consideration process the loan guarantee application and/or negotiation process with DOE should begin.

Enbridge Comments:

While we appreciate the underlying premise that a Federal loan guarantee can only be issued after the Certificate of Public Convenience and Necessity ("Certificate") is issued by FERC, there is a practical business need to establish the terms and conditions under which that guarantee will be issued much earlier in the developmental process. Long before the final Certificate is issued, project owners will need to have some surety of the terms and conditions of the loan guarantee agreement before investing up to $1 billion in project development, design, route acquisition and environmental assessment.

Specifically, acquiring shipper commitments is the essential first step in proving commercial viability. Securing firm expressions of capacity interest from shippers will require that the project sponsor (most likely a consortium of companies given the size of the project) demonstrate: (i) a solid, technically viable facilities plan, (ii) a financial track record and capacity to fund the equity portion of the project and (iii) a feasible financing structure. **The terms and conditions of the federal loan guarantee are an essential component of that financing structure.** The majority of this planning process must necessarily occur before the project sponsor can apply to FERC for a Certificate.

Subsequent to receiving initial capacity commitments, a Certificate filing necessitates a commitment of the above estimated funds to undertake the market, design, safety and environmental studies that form the basis of a Certificate application. Therefore, Enbridge urges DOE to consider regulations that allow for a conditioned commitment as early in the process as practical.

We would expect that the DOE will want to develop preliminary requirements to be met by potential project sponsors to assure that only those entities with sufficient industry expertise and financial capacity are given such a conditioned commitment. We support DOE establishing requirements that provide the agency with sufficient screening of viable project owners/sponsors. Such requirements may include:

- a viable project plan outlining the pipeline and related facilities;
- an outline of the proposed financing structure;
- clear demonstration of financial track record and capacity to fund the equity portion of the project;
- a showing of business commitments that establish the business consortium which will sponsor/own the pipeline (as well as identifying the corporate ownership and financial condition of each participant in the consortium);
- showing that the business consortium has committed resources and staff with sufficient construction and management expertise on energy projects of similar scope and complexity including expertise to:
    - undertake a full Certificate proceeding;
    - complete Environmental Impact Assessments to meet cross-border, multi-jurisdictional requirements;
    - address stakeholder and landowner concerns (such as successful approval by FERC of the stakeholder consultation plan, including consultation with Native American landowners and authorities, within the FERC "pre-filing" process);
    - manage construction and operation of a pipeline in northern climates and permafrost conditions; and,
    - design, construct and operate a liquids-rich, high pressure natural gas pipeline system.

These and other requirements levied on the sponsor should provide sufficient assurance to DOE to enter into a conditioned commitment while remaining consistent with the specific provisions of the Act.

2. <u>Determinations and Findings by the Secretary</u>. *DOE is considering the desirability of requiring by rule the following findings and determinations as conditions for approval of an application for loan guarantees for a "Qualified Infrastructure Project": (A) That the applicant has received a final certificate from FERC or, with respect to an LNG project, that the Secretary has made a determination that the entity applying for the loan guarantees is qualified to construct and operate a liquefied natural gas project "to transport liquefied natural gas from Southcentral Alaska to West Coast States"; (B) That the project submitted for approval is a "Qualified Infrastructure Project" as defined in section 1116(g)(4) of the Act: (C) That there is a reasonable assurance of repayment of the guaranteed debt; (D) That the guaranteed loan funds and the equity contribution of the project sponsors will be sufficient to complete the construction and start-up of the "Qualified Infrastructure Project" and fund any cost overruns; and (E) That the terms and conditions of the LGA provide adequate terms and security to*

appropriately protect the financial interests of the United States Government. DOE is requesting comments on what determinations and/or findings the Secretary should make prior to approving an LGA for one or more parts of a "Qualified Infrastructure Project."

Enbridge Comment:

Enbridge suggests that the findings and determinations be established in two steps. First, per our response in Inquiry 1, Enbridge believes that criteria should be established for the project sponsor to receive a conditioned commitment from DOE. Building on those conditions already reviewed, we suggest that DOE consider the following additional considerations prior to granting a final loan guarantee (following the Part A to E format):

A.

As Congress laid out in authorizing the loan guarantee program, DOE can expect the applicant to have received either a Final Certificate (for natural gas transmission pipelines) or a determination of qualifications to construct and operate LNG projects. We would urge DOE to issue regulations that apply a level of scrutiny to any proposed LNG projects that are equivalent to that applied by the FERC for a natural gas transmission pipeline. This will assure the government's interests are protected and to assure a level playing field for what could be two separate, potentially competing, ownership structures.

We also urge DOE to consider that the Canadian portion of the project must undergo parallel certification/approval by the Canadian National Energy Board ("NEB"). Conditions and determinations of findings required by DOE for the loan guarantee might also include a requirement for receipt of an NEB Certificate.

B.

The Act requirement for a "Qualified Infrastructure Project" is very broadly defined. We urge DOE to establish a loan guarantee program that encourages maximum flexibility in defining a "qualified infrastructure project", recognizing that the optimum facilities to deliver gas to U.S. markets may need to consider various delivery options between Alberta and the Lower 48. While some project proponents have considered, as part of normal planning and due diligence, a "bullet line" from Alaska to Chicago, to the best of Enbridge's knowledge all potential sponsors are now considering the advantage of optimizing/expanding existing systems to move Alaska natural gas supplies out of Canada. We urge DOE to consider a flexible definition of a "qualified infrastructure project" to include those projects into the Lower 48 that expand existing systems **in direct response to the requirement to transport Alaska gas to market**. This flexibility would assure project sponsors are encouraged to evaluate the most cost-effective delivery options. The federal loan guarantee would cover such expansions and enhancements to the extent they are constructed and necessary to move Alaskan gas to Lower 48 markets. As such, the definition of "qualified infrastructure project" should not be applied in a manner that unduly restricts or prevents the optimum transportation solutions that benefit shippers and consumers. **Such a definition is fully consistent with both the intent and legislative language of the Act.**

C.

Requirements for providing "reasonable assurances of repayment" should be framed in terms of making a showing that:

- available natural gas reserves are present to meet the proposed capacity of the project over its economic life;
- tolling arrangements/shippers commitments are in place; and
- user demand exists in the marketplace over the economic life the project.

Natural gas reserve studies and user demand-side studies, consistent with normal industry practice, should be sufficient for this purpose.

D. and E.

In Enbridge's experience with major capital projects of this nature, Parts D and E of the above inquiry are usual and customary commercial requirements. The DOE can ensure adequate security by including covenants in its agreements that are consistent with typical large commercially financed energy projects. Additionally, the DOE could introduce a "drawstop" concept. Drawstops are sometimes incorporated in project loan agreements to ensure that certain key project milestones are achieved before further construction loans are advanced. They are often triggered at a point in time when the drawn amount on the construction facility equals the sponsor's remaining equity commitment to the project (thus, all capital to this point is effectively equity). In this case, the drawstop would apply both to the construction debt and the underlying DOE guarantee. The DOE could assign conditions to the "drawstop" before the project could proceed. Also, see comments below concerning cost overruns (3) and collateral (8).

3. <u>Special Terms and Conditions</u>. DOE is also requesting comments on what other terms and conditions, other than the usual project financing requirements, that are unique to construction of a natural gas pipeline or LNG facility, should be included in the regulations and whether the regulations should include requirements for such unique terms and conditions in the LGAs.

Enbridge Comments:

As Enbridge responded above, the terms and conditions should be established in two stages with terms for a conditioned commitment forming step one (see specific terms in our response to Inquiry 1 above) and further specific terms for the final commitment focused on:

- receipt of the Certificate;
- reasonable assurances of repayment (see 2(C));
- typical commercial terms for collateral (see 2(D) and (E)); and
- further conditions that could include a requirement for handling cost overruns through customary contingencies (see 9).

Enbridge urges the DOE to **establish broad parameters** for all terms and conditions for both the conditioned commitment and the final approvals within the regulations, providing flexibility to spell out specific details within the two-step application process. In this way DOE can assure adequate public input on broad terms in the regulatory process and provide project sponsors a clear understanding of expectations, while delaying the definition of specific terms within these preestablished parameters that are better suited to the actual conditioned commitment and final approval documentation.

4. <u>Lender Risk</u>. *Section 116(g)(3) of the Act provides that "the terms 'Federal guarantee instrument' means any guarantee or other pledge by the Secretary to pledge the full faith and credit of the United States to pay all of the principal and interest on any loan or other debt obligation entered into by a holder of a certificate of public convenience and necessity," DOE requests comments on whether this provision precludes any "lender risks" on the project debt that receives a Federal guarantee and also the potential impact of 100 percent guaranteed debt on project evaluation and servicing requirements.*

Enbridge Comments:

We appreciate the DOE's interest in assuring all lenders have appropriate and normal commercial incentive to assure a successful project and protect the government from default. Enbridge wishes to emphasize however, that several aspects of normal commercial financing agreements typical to these types of projects assures appropriate shared risk for all lenders.

First, consistent with commercial practice, we assume that the loan guarantee agreement will require project sponsors and lenders to make certifications and representations concerning the level of due diligence undertaken for the project, and that the level of due diligence is consistent with that which would have been undertaken for commercial projects of similar size and scope.

Second, there may be other areas where lenders may be required to assume additional risks. For example, construction loans typically carry a floating rate interest. Interest rate derivatives may be required to fix the interest cost during construction and/or to hedge the subsequent term-out financing, which would allow for greater toll certainty. These derivatives are normally undertaken with the project lenders. To the extent that obligations under the derivative contracts are not covered by the guarantee, the lenders will take on additional risk.

5. <u>Guarantee Fee</u>. *DOE is considering the imposition of a loan guarantee fee on the portion of the loan that is guaranteed by DOE. DOE requests comments on how the amount of any loan guarantee fee should be determined and whether the fee should be an origination or an annual fee.*

Enbridge Comments:

It is Enbridge's view that nothing in Section 116 of the Act expressly authorizes DOE to impose a fee. With that said, any fee imposed should be directly related to those costs incurred by DOE to administer the loan guarantee program. Indeed, Enbridge wishes to emphasize to DOE that the legislative **intent of the loan guarantee program was to provide incentives** for the economic construction of the Alaska Pipeline. Any fees above direct administrative costs only serve to add to project costs and thus would be contrary to the intent of Congress. All fees imposed on the loan guarantee program will directly impact the project costs, the transportation fees to recover such costs, and the ultimate costs to consumers. We urge DOE to consider regulations that impose fees (if any) as low as possible to avoid negating the incentives that were intended by Congress when it passed the loan guarantee provision.

In normal commercial financing transactions, such fees are used to pay the administrative costs of the guarantee and may also be viewed as a return on capital reserved against the risk of default on the guarantee. Under this program, the Act authorizes appropriations “to cover the cost of the guarantees under this section” and the Federal government does not normally hold reserves against default risk on loan guarantees.

On the issue of project risk that would be addressed by such a reserve, we note that to the best of Enbridge’s knowledge there has never been a default on project financing related to an oil or gas transmission pipeline in Canada or the United States.

Enbridge is indifferent to either an upfront (lump sum) or an annual fee, if applicable. We note that any upfront or lump sum fee would be part of the project capital costs included in project financing, while annual fees would typically be considered an operating cost paid out of operating revenues.

6. <u>*Equity Funding Commitment*</u>*. Section 116(c)(1) provides that “[t]he amount of loans and other debt obligations guaranteed under this section for a qualified infrastructure project shall not exceed 80 percent of the total capital costs of the project, including interest during construction.” Section 116(b)(3) provides that “[t]he Secretary shall not require as a condition of issuing a Federal guarantee instrument under this section any contractual commitment or other form of credit support of the sponsors (other than equity contribution commitments and completion guarantees).” These provisions may be interpreted as in effect requiring the project sponsor to make at least twenty (20) percent equity contribution to the project. At the time of the execution of the LGA and related documents DOE must be satisfied that necessary equity contributions can and will be made during the construction and startup phase of the project consistent with an established equity contribution schedule. DOE requests comments as to what type and form of assurance DOE should require from the project sponsors to assure that the schedule equity contributions to the project will be available and will be made when needed.*

Enbridge Comment:

While there are no absolute rules, the usual and customary documents for a commercial transaction of this type would be negotiated by all parties with a significant financial participation/commitment. A tri-party equity agreement between the project sponsor, the lead credit providers and the DOE as guarantor would be well within these norms. Subject to negotiation of specifics, there are accepted commercial project provisions to address all aspects of risk allocation, including equity contribution commitments, priorities/subordination in access to assets and all other applicable rights and responsibilities on the project. We would note however, that the DOE’s primary form of protection will be in evaluating the credit-worthiness of the project sponsors. We would recommend that the DOE consider a minimum threshold of the lower of an S&P rating of BBB or a Moody’s rating of Baa2. The tri-party agreement would necessarily have to incorporate or reflect compliance with the agreements and requirements of the conditioned commitment for the guarantee.

7. <u>*Thirty Year Loan Guarantee Term*</u>*. Section 116(d)(1) of the Act provides, in part that "[t]he term of any loan guarantee under this section shall not exceed 30 years." DOE requests comments on whether the calculation of the maximum loan guarantee "term", for purposes of this provision, should commence with the first construction loan borrowing and include the sum of both the construction period and long-term debt period.*

Enbridge Comment:

We believe that the guarantee should commence with the first construction loan borrowing, which is typically subsequent to receipt of the applicable FERC Certificate and NEB approvals (prior funds are financed from owners-equity in typical projects). The term should include both construction and long term debt. Our current understanding is that this would roughly include a five (5) year construction period and a subsequent twenty-five (25) year operation period.

8. <u>*Collateral/Recourse/Default*</u>*. The Act is silent with regard to requirements and procedures relating to collateral for the Federally guaranteed debt. What recourse or options should the Secretary have in the event of a default. For instance, should security other than the project assets be pledged to secure the guarantee, credit and related agreements and should DOE have a first lien on all project assets? DOE requests comments on what should be included in any regulations, should DOE decide to promulgate regulations, regarding collateral requirements, recourse and default procedures.*

Enbridge Comments:

Given the importance of the Federal loan guarantee to incent sponsors to proceed with this nationally important energy infrastructure project, the DOE could insist on a first lien on project assets, however the commercial norm is for all assets to be pledged initially to the lenders. That lien, and essentially control of the project, would transfer to the DOE when and if the lenders called upon the guarantee. The guarantee could be structured to necessitate that the lender exercise all reasonable options to cure or restructure the debt, including an insolvency proceeding, before calling upon the guarantee. This would assure that adequate financial and legal discipline is applied by the lender to the project. There are Conditions Precedent, Representations and Warranties, Covenants and Default provisions that are usual and customary for this type of project financing which would be included in the tri-party agreement. We do note however, that any conditions that restrict the lender's ability to call upon the guarantee could translate into higher interest costs and therefore higher costs to consumers.

On the issue of pledged security, we note that risk during the construction period is significantly higher than after the project is complete and in operation. We urge DOE to consider adopting customary practice in commercial arrangements for projects of this nature. During construction this could include extending a pledge of key project contracts, sponsor's equity commitments during construction, the sponsor's ownership interest in the project vehicle, project bank accounts and, where practicable, the physical pipeline and related assets. Post completion, the security requirements would typically be relaxed. The amount of security required, if any, would be a function of the underlying business and the financial risk inherent to the project.

Enbridge advocates that DOE consider issuing broad-based regulations to address this issue and allow the detail to be spelled out within the actual loan guarantee instruments, as the specifics, timing and scope of the project have yet to be finalized. DOE may want to consider signaling its intent within the regulations to follow acceptable and common commercial infrastructure financing practice, and use commercially tested provisions and financial arrangements. Specific provisions and details can be proposed by the potential project sponsors and be negotiated by the DOE as part of the Conditioned Commitment process.

9. *Cost Overruns.* *The Act is silent on how LGAs might address cost overruns on a Qualified Infrastructure Project, or how a debt instrument guaranteed pursuant to an LGA might be used to fund cost overruns. The Act, therefore, provides no guidance on whether cost overrun can or should be funded through the authorized guaranteed debt, other debt, equity or some combination. DOE is requesting comments on how cost overruns can or should be funded and the appropriate mechanism or formula for addressing cost overruns in the LGAs and any appropriate regulations.*

Enbridge Comments:

A detailed explanation of how the project sponsor proposes to fund the project is to be expected as part of the project proposal and is an expected term of the final loan approval. This explanation should include an estimated cost overrun contingency, which would be based on experience with prior projects. On a project of this scale, with the additional logistical challenge of construction in a northern environment, the DOE should require a higher level of detail concerning how cost overruns will be managed. As the final design, environmental mitigations, construction techniques, route, etc, are not finalized until a Certificate is issued, the parameters for a cost-overrun plan are best included in the specific application and terms of the loan guarantee. However, it would be reasonable for DOE to ask the applicant to discuss the broad parameters of a cost overrun contingency plan in the application for the conditioned commitment. Consistent with industry practice, we would expect that cost overruns (beyond the normal and customary allocated contingencies built into the project budget) would require additional equity and lender participation that would not be covered by the guarantee.

The broad terms required during the conditioned commitment stage and the requirement for a specific plan to be approved prior to final loan guarantee approval should be included in the regulations. However, the specifics of such a cost overrun management plan are, as reasoned above, more appropriately spelled out in the final loan guarantee application.

10. *Monitoring and Reporting Requirements*. *DOE is requesting comments on appropriate required reporting to DOE to assist DOE in its monitoring responsibilities including the content and timing of such reporting generally, whether reports should address the status of loan disbursement requests, whether loan repayment status reports should be required, and the timing*

and content of construction status reports and other appropriate information submission from the project sponsors.

Enbridge Comments:

There are well-established commercial market practices in this regard which calls for guarantors, such as the DOE, to receive the same level of information required by other major lenders. Such information could include quarterly reports on the status of the project from the project sponsor's outside auditors, certifications from the project sponsor's executive confirming compliance with all debt and DOE loan guarantee covenants, and third-party engineering reports concerning construction progress (including costs incurred and committed to date compared to projected schedules.)

<u>CLOSE</u>

Enbridge appreciates DOE's willingness to gather feedback on this complex program prior to issuing a Notice of Proposed Rulemaking. Should you have any questions or wish elaboration on any of our comments, please don't hesitate to contact us.

Sincerely,

Ron Brintnell

Ron Brintnell
Project Director, Alaska Gas
403-266-7932

MORRISON | FOERSTER

2000 PENNSYLVANIA AVE., NW
WASHINGTON, D.C.
20006-1888

TELEPHONE: 202.887.1500
FACSIMILE: 202.887.0763

WWW.MOFO.COM

MORRISON & FOERSTER LLP

NEW YORK, SAN FRANCISCO,
LOS ANGELES, PALO ALTO,
SAN DIEGO, WASHINGTON, D.C.

DENVER, NORTHERN VIRGINIA,
ORANGE COUNTY, SACRAMENTO,
WALNUT CREEK, CENTURY CITY

TOKYO, LONDON, BEIJING,
SHANGHAI, HONG KONG,
SINGAPORE, BRUSSELS

Writer's Direct Contact
(202) 887-1506
RLoeffler@mofo.com

July 26, 2005

<u>BY E-MAIL AND U.S. MAIL</u>

Office of the General Counsel, GC-72
Attention: Lawrence R. Oliver
U.S. Department of Energy
Forrestal Building, Room 6B-256
1000 Independence Avenue, SW.
Washington, DC 20585

Re: Notice of Inquiry — Section 116 of the Alaska Natural Gas Pipeline Act

Ladies and Gentlemen:

Enclosed are the comments of the State of Alaska in response to the Notice of Inquiry issued May 27, 2005 by the Department of Energy regarding the loan guarantee provisions of the Alaska Natural Gas Pipeline Act, which authorizes the Secretary of Energy to issue federal loan guarantees to facilitate the construction of a pipeline or liquefied natural gas project to bring natural gas from the Alaska North Slope to the lower 48 states. The State appreciates the opportunity to comment on this important matter.

If you have any questions concerning these comments, or if we may otherwise be of assistance, please do not hesitate to contact me at 202-887-1506.

Sincerely,

Robert H. Loeffler

Robert H. Loeffler
Attorney for the State of Alaska

dc-421963

UNITED STATES OF AMERICA
BEFORE THE
DEPARTMENT OF ENERGY

Alaska Natural Gas Pipeline Loan Guarantee

COMMENTS OF THE STATE OF ALASKA IN RESPONSE TO NOTICE OF INQUIRY

The State of Alaska ("Alaska" or the "State") submits these comments in response to the Department of Energy ("DOE" or "Department") Notice of Inquiry dated May 27, 2005 ("Notice of Inquiry") regarding the loan guarantee provisions of the Alaska Natural Gas Pipeline Act ("Act"). The Act authorizes the Secretary of Energy ("Secretary") to issue Federal guarantee instruments to facilitate the construction of a pipeline or liquefied natural gas project and related components to bring natural gas from Alaska's North Slope to the continental United States ("Alaska Gas Project"). The State appreciates the opportunity to present comments on this subject to the DOE.

The State of Alaska is vitally interested in the Alaska Gas Project and is committed to its successful and early development. Alaska's lands are the primary source of the gas that will flow through the pipeline. Today, the primary sources of known gas reserves in Alaska that will support the project are the Prudhoe Bay and Point Thomson fields, which are fields leased to the North Slope producers by the State of Alaska. Alaska receives a royalty of at least one-eighth of the production from these fields and also imposes a production tax on the balance of production. Alaska is entitled to take its royalty gas either in value or in kind. Construction of the Alaska Gas Project will also spur development of Alaska's promising and huge natural gas resources for at long last there will be a way for Alaska gas to reach established markets. And construction and operation of the pipeline will create jobs for Alaskans, both directly and indirectly, and opportunities for Alaska businesses.

That is the beginning, not the end, of the story. Recognizing the importance of the Alaska Gas Project to the future of Alaska, the Legislature of Alaska passed a Stranded Gas Development Act ("SGDA"). The purpose of this statute is to encourage new investment to develop the State's heretofore "stranded" gas resources by authorizing the State to enter into a contract with qualified project sponsors to provide them with as much fiscal certainty about the Alaska tax and royalty provisions applicable to a project as Alaska's Constitution will permit. Alaska's SGDA is virtually unprecedented in the United States.

Governor Frank Murkowski has committed his administration to the early and successful development of the Alaska Gas Project under the SGDA. He has dedicated a team of senior cabinet officials to negotiations of SGDA fiscal certainty contracts. Three different projects have qualified under the SGDA and contracts are being negotiated with their applicants. Negotiations with two of the applicants are nearing completion. One application was filed jointly by a group of the large North Slope oil producers. These companies, ExxonMobil Alaska Production Inc., BP Exploration (Alaska) Inc. and ConocoPhillips Alaska, Inc. ("Producers") are among the largest corporations in the world. A second application was filed by TransCanada Corporation, a large and well-established Canadian pipeline company. A third, more recent, application was filed by the Alaska Gasline Port Authority, an entity established by three municipal governments in Alaska to pursue a liquefied natural gas project. The State's objective is to pursue a contract with the project that best serves the interests of Alaska and its citizens.

Governor Murkowski had decided, as the negotiations have developed, and will propose to the Alaska Legislature, that the State should commit to taking a risk position in the Alaska Gas

Project. Alaska has offered to participate in the Alaska Gas Project through a multi-billion dollar investment in the pipeline company. Such participation by a state in the United States is also unprecedented.

Thus, Alaska's interests in the development of the Alaska Gas Project are fundamental and far-reaching. They transcend the normal interests of a producing state in a project to be developed within its lands. In fact, Alaska's participation and policies may provide the answer to how soon or even whether an Alaska Gas Project will be developed. Alaska's comments are offered from this perspective.

Before answering the particular questions of the Notice of Inquiry, Alaska wants to state four bedrock principles that should guide DOE in deciding the process and parameters for development of the loan guarantee. Given the status of the Alaska Gas Project today, DOE's fundamental objective should be to provide financial incentives to advance, not hinder, the development of the Alaska Gas Project. Adhering to the four following principles would achieve that objective.

First, in developing its loan guarantee program the Department should be sensitive to the fact that the nature of the Alaska Gas Project and the DOE guarantee are unprecedented. The pipeline is colossal – it will require up to an estimated $20 billion of new investment. Depending on the structure of the final project proposal selected, the Alaska Gas Project potentially could require more than three thousand miles of pipe to transport gas from Alaska through Canada to the lower 48 states.

Unlike other large federal guarantee programs, for example, those involving New York City, the Chrysler Corporation and the U.S. airlines, this program does not involve the bailout of a distressed city, corporation or industry. The Producers' and TransCanada's applications involve large and successful energy companies. The Act is intended to provide incentives for the expedited development of the Alaska Gas Project. Thus, the DOE should not approach loan guarantee issues with the mindset that has been applied by the federal government to distressed industries. Rather, the issue is how to create a Federal loan guarantee that best supports and encourages the development of this huge multi-national energy project.

Second, the State strongly suggests that it is premature, unnecessary and unwise to develop loan guarantee regulations for the Alaska Gas Project.[1] There is no statutory requirement that regulations be developed and adopted. Unlike many other federal regulatory regimes which are intended to address an entire "class" of parties and situations, the DOE guarantee is authorized to cover a single project that will emerge from the several alternatives now being developed. Given the absence of a statutory command to develop regulations, the DOE has the discretion not to adopt regulations and certainly not to adopt them at a time or in a way that would be at odds with the statutory aim that the Federal loan guarantee aid the development of the Alaska Gas Project.

Although the broad outlines of the competing project proposals are known, the corporate, financial and regulatory structures of the projects are still being developed. The Department should bear in mind that innovative and creative financing arrangements will be developed to accommodate the enormous size and requirements of the Alaska Gas Project. Adoption of regulations could very well present a regulatory strait jacket that would interfere with development of the optimal financial structure for the Alaska Gas Project. Negotiating the

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[1] The State recognizes that DOE may need to develop procedural regulations governing, for example, filing requirements for submission of project materials, how to request guidance from DOE on various issues, and similar matters.

project terms directly, without first creating a regulatory framework, should also minimize the possibility of having to deal with unworkable provisions later.

Third, it is also important not to advantage one project over another by creating a regulatory regime that reflects a focus on one or another project type. At this stage, there is uncertainty about the scope and timing of all the projects. Developing a regulatory framework that gives an advantage to one project proposal over another interferes with the market-based development of the optimal project. There is no reason for the Federal guarantee to interfere with the market process.

Fourth, a streamlined, flexible DOE process is critical. The issues raised in the Notice of Inquiry present certain key questions in the project negotiation process—and indeed are all interrelated, along with other issues not addressed. Accordingly, it would not be appropriate to promulgate regulations with respect to a subset of these issues without addressing the remainder, or to address some issues before others. Moreover, since the Act is designed to support this one project alone (as opposed to an ongoing program), it would be a duplication of effort to first develop regulations, and then to apply those regulations to the Alaska Gas Project. The DOE should recognize that it must maintain the flexibility to adapt to evolving project structures and not base the guarantee program's development on a "snapshot" of the current state of the projects. In order to maintain a streamlined, flexible process, the Department should be open to providing guidance to project sponsors on the application of the Act to specific situations. As the negotiations proceed and additional information is developed, adjustments to the extent necessary could be made on previously negotiated terms.

The State's views with respect to the specific questions raised in the Notice of Inquiry are set forth below.

1. Conditional Commitment

Question 1 in the Notice of Inquiry requests comments on potential advantages and disadvantages of negotiating a conditional commitment with one or more potential project sponsors, given the requirements of Sections 116(a)(3) and 116(b)(1) of the Act.

In general, we believe that a conditional commitment could be desirable if it were in term sheet format for long lead-time elements of the transaction, such as credit terms of the loan.

Entering into such a conditional commitment with a sponsor group before final certifications are received could have the benefit of alleviating some of the time pressure in finalizing the transaction terms. It could also give sponsors the option to offer tariff terms in an open season that might not otherwise be possible—especially if such tariff terms are designed to include taking advantage of the Act's contemplation of loan guarantee instruments that allow grace periods that take into account project cash flows.

We note that the terms of the Act seem to require only that the Secretary may not enter into the final Federal guarantee instrument until after the Certificate of Public Convenience and Necessity process at the Federal Energy Regulatory Commission is concluded or the Secretary decides that an LNG project is qualified, which would allow negotiation and execution of preliminary agreements before that time, and even final binding agreements (containing conditions precedent to issuance of the guarantee), so long as the actual issuance of the guarantee is to occur later.

2. Determinations and Findings by the Secretary

Question 2 in the Notice of Inquiry requests comments on what determinations and/or findings the Secretary should make prior to approving a Loan Guarantee Agreement ("LGA") for one or more parts of a "Qualified Infrastructure Project" as defined in Section 116(g)(4) of the Act.

In general, we believe that the certifications described all seem appropriate for the Secretary to make. It should be relatively straightforward for DOE to determine that required certificates from FERC have been obtained and that the project is a "Qualified Infrastructure Project." The Secretary will need to establish a fair and transparent process for determining how an LNG project qualifies.

The remaining three determinations (regarding reasonable assurance of repayment, sufficiency of available funds, and adequate terms and security) would all be encompassed in DOE's due diligence regarding the credit and security terms of the project. Although each determination is a general and subjective test, all of these thresholds establish a minimum standard that the project would likely be able to meet. The standards used to support a finding in any given instance should be determined only when the project is better defined, and are best left to negotiation. Maximum flexibility is needed to ensure that no standard for determination is imposed that unnecessarily undermines project feasibility.

3. Special Terms and Conditions for Gas Pipelines

Question 3 in the Notice of Inquiry requests comments as to what terms and conditions for construction of a natural gas pipeline or liquefied natural gas facility should be included in any proposed regulations.

We have no specific comment on what terms and conditions are unique to construction of a natural gas pipeline or liquefied natural gas facility. However, we do reiterate our general opposition to developing regulations at this time. We note that to develop regulations embodying industry-specific terms and conditions now, and then later to apply those regulations to this project would seem to be duplicative.

We therefore suggest that it would be preferable to address project-specific terms and conditions in the negotiation of specific project terms with the project sponsors.

4. Lender Risk

Question 4 in the Notice of Inquiry requests comments on whether the definition of the term "Federal guarantee instrument" in Section 116(g)(3) of the Act precludes any "lender risk" on the project debt that receives a Federal guarantee, and also the potential impact of 100 percent guaranteed debt on project evaluation and servicing requirements.

We believe that the proposed guarantee coverage seems to preclude any "lender risk" on the project debt that receives a Federal guarantee. The definition of "Federal guarantee instrument" in Section 116(g)(3) of the Act, and especially the phrase "to pay all of the principal and interest on any loan or other debt obligation," (as opposed to "all or any part of") seems to rule out anything less than 100%-guaranteed debt.

The potential impact of 100%-guaranteed debt on project evaluation and servicing requirements is likely to be that DOE will be the party taking all the credit risk with respect to the guaranteed loans.

The concept that DOE is the sole credit risk-taker is unobjectionable and is in fact the case in other programs for U.S. Government guarantees of project financings (e.g., the Overseas Private Investment Corporation guarantee program) that provide for 100%-guaranteed debt.

5. Guarantee Fees to DOE

Question 5 in the Notice of Inquiry requests comments as to how the amount of any loan guarantee fee should be determined and whether the fee should be an origination or an annual fee.

An overriding issue with respect to guarantee fees for this Project is that the Act and the loan guarantees are above all else designed to be an incentive to expedite the construction and facilitate the operation of the Project. The DOE should consider whether any fees are necessary or authorized. The imposition of a high guarantee fee -- or indeed, of any guarantee fee at all --

can clearly serve as a disincentive to the Project. It adds to the cost of the project and, because those costs are passed through to shippers, adds to the cost of their product. Higher shipping costs operate to reduce what price natural gas developers receive at the well and thus lowers their incentives to explore and develop. Therefore, it is of the utmost importance that the Federal guarantee create a real financial incentive for the sponsors to undertake the Project.

6. Form of Equity Support

Question 6 in the Notice of Inquiry is regarding what type and form of assurance DOE should require from the project sponsors to assure that the scheduled equity contributions to the project will be available and will be made when needed.

We note that it is typical in large project financings for the project sponsors to enter into contractual commitments to provide equity contributions as required from time to time, and that this idea is contemplated expressly by the words "equity contribution commitments" in Section 116(b)(3) of the Act. This equity contribution commitment is enforced by requiring as a condition precedent to the loan disbursement equity contributions sufficient to maintain at least 20% equity funding of the project. In this transaction the project sponsors will be large entities with sufficient liquidity to make agreed-upon equity contributions on time and in full.

7. 30-Year Tenor

Question 7 in the Notice of Inquiry requests comments on whether the calculation of the maximum loan guarantee "term" for purposes of Section 116(d)(1) of the Act should commence with the first construction loan borrowing and include the sum of both the construction period and long-term debt period.

The overriding concern for purposes of financing the Project is that, however the "term" is calculated, every dollar of debt should be covered by the guarantee from the date it is disbursed (i.e., during the construction period) to the date it is repaid. Debt that starts "uncovered" by the guarantee and then becomes subject to later guarantee coverage would not be feasible for a project of this magnitude.

Subject to the foregoing, we defer to the judgment of DOE with respect to the appropriate method of calculating the term of the loan guarantees.

8. Collateral Security

Question 8 in the Notice of Inquiry requests comments on what should be included in any regulations, should DOE decide to promulgate regulations, regarding collateral requirements, recourse and default procedures.

As noted above, we believe that none of these issues would require promulgation of regulations, since they are all part of the project negotiation process and, as noted above, difficult to address in isolation. We note that a lien on all project-related assets is the norm in project financings, and would be acceptable in this case. However, it would be atypical in a project financing for non-project-related assets be pledged to a lender or guarantor to secure repayment of project loans. Again based on the project financing model, it would be expected that DOE would have creditor's rights and recourse in the event of a default, but tailored to the specific needs of this unique project.

9. Cost Overruns

Question 9 in the Notice of Inquiry requests comments on how cost overruns can or should be funded and the appropriate mechanism or formula for addressing cost overruns in the LGAs and any appropriate regulations.

Because the Act makes no distinction in estimated costs and "total" costs (including cost overruns), it seems clear that cost overruns can be funded through authorized guaranteed debt. The details of how cost overruns are funded should be left up to negotiation, so long as the loan guarantees do not cover more than 80% of the total project costs or more than $18 billion of debt. Again, as noted above with respect to other issues, it would be duplicative to first develop regulations addressing cost overruns, and then to apply those regulations to this one project. Cost overrun issues will be part of the evolving project financing negotiation process.

10. Loan Monitoring

Question 10 in the Notice of Inquiry requests comments on appropriate required reporting to DOE to assist DOE in its monitoring responsibilities.

In general, we believe that reporting requirements for large project financings typically would include the following, all certified by authorized representatives as being accurate and complete:

- construction plan and construction budget (at outset)
- unaudited financial statements (quarterly)
- audited financial statements (annual)
- construction progress report (monthly during construction)
- base case financial projections (before commencement of operations)
- operating plan and operating budget (before commencement of operations)
- operating report (quarterly during operations)
- reporting obligations of certain material events (as events occur)

Separate reports specifically regarding the status of loan disbursement requests and loan repayments are not typical, because those issues are addressed in the loan disbursement process itself. Disbursement requests usually include the status of amounts drawn and remaining available under financing facilities, as well as proposed uses of disbursements to pay interest during construction and confirmation that all amounts due have been paid.

* * *

In closing, the State of Alaska is pleased to have the opportunity to submit this response to the Notice of Inquiry.

Respectfully submitted,

Robert H. Loeffler

Robert H. Loeffler
Nicholas J. Spiliotes
Frederick E. Jenney
Morrison & Foerster LLP
2000 Pennsylvania Avenue, N.W.
Washington, D.C. 20006-1888
(202) 887-1500

Attorneys for the State of Alaska

Dated: July 26, 2005

STATE OF ALASKA

FRANK H. MURKOWSKI, GOVERNOR

ALASKA NATURAL GAS
DEVELOPMENT AUTHORITY

411 WEST 4TH AVENUE
ANCHORAGE, ALASKA 99501
TELEPHONE: (907) 257-1347
FACSIMILE: (907) 646-5005

July 25, 2005

Office of the General Counsel, GC-72
Attention: Lawrence R. Oliver
U S Department of Energy
Forrestal Building, Room 6B-256
1000 Independence Avenue, SW
Washington, DC 20585

In Response to Notice of Inquiry 70 FR 30707
Alaska Natural Gas Pipeline Loan Guarantee

Dear Sirs:

Your notice of May 27, 2005, invited public comment on information potentially relevant to the development of loan guarantee regulations and the implementation of the loan guarantee provisions in Section 116 of the Alaska Natural Gas Pipeline Act (enacted on 10/13/04 & amended on 11/18/04).

The Alaska Natural Gas Development Authority (ANGDA) is a public corporation of the State of Alaska focused on getting North Slope gas to market and assuring benefits to Alaskans. ANGDA is the primary sponsor of a lateral high-pressure gas transmission line that would be part of the pipeline system connecting either an AlCan highway and/or Valdez LNG pipeline to the Cook Inlet area (“spurline”).

The vast majority of current Alaska gas use is in the Cook Inlet area and the importance of providing gas to these in-state consumers is emphasized in the Act and subsequent FERC rulemaking on open seasons. A June 2004 DOE study emphasized the linkage of North Slope gas transportation systems to satisfying the long term residential, commercial, and industrial demands for natural gas in this South Central region of Alaska. Principal sponsors of potential projects exporting Alaska gas to the contiguous states (“Lower-48”), including the State of Alaska, BP, Exxon-Mobil, Conoco-Phillips, Trans Canada, Alaska Gasline Port Authority, and Enbridge, all have included delivery of gas to the Cook Inlet area in their system design considerations and have testified to their support of the availability of North Slope gas to meet in-state energy needs.

Subsection (g) Definitions of Section 116 of the Alaska Natural Gas Pipeline Act provides that:

> (4) Qualified Infrastructure Project.—The term "qualified infrastructure project" means an Alaskan natural gas transportation project or system ……. that are used to transport natural gas from the Alaska North Slope to the continental United States.

Please note that the term "continental United States" specifically includes Alaska, while excluding Hawaii. That is different from the term "contiguous United States" which Congress uses when its intent is to exclude both Alaska and Hawaii from the effect of Congressional Acts.

ANGDA respectfully requests that in any regulations adopted by the Department of Energy related to the Alaska Natural Gas Pipeline Loan Guarantee, the lateral gas transmission lines within Alaska built as part of the Alaskan natural gas transportation system be clearly identified as eligible for the Federal loan guarantee.

Thank you for anticipating the need for clarity in this extremely important Federal action and we of course stand ready to work with you in any way we can.

Yours truly,

Harold Heinze
Chief Executive Officer of ANGDA

Also sent as an e-mail to: bettie.corey@hq.doe.gov

Copies to: Senator Ted Stevens
Senator Lisa Murkowski
Congressman Don Young
Governor Frank H. Murkowski

Goldman Sachs

Memorandum

Date: July 26, 2005

To: Department of Energy

From: Goldman, Sachs & Co.

Subject: Alaska Natural Gas Pipeline Loan Guarantee Agreement

The Department of Energy (the "Department") is seeking comments and information from the public to assist it in developing a notice of proposed rulemaking concerning the Loan Guarantee Agreement ("LGA") for the Alaska Natural Gas Pipeline Project (the "Project"). Goldman, Sachs & Co. ("Goldman") has reviewed the Department's questions for public comment and presents our preliminary thoughts below. We would be happy to meet with the Department to discuss our thoughts and recommendations in more detail.

1. Conditional Commitment:

We believe that the Department should retain flexibility during the negotiation process and have the ability to negotiate a conditional commitment. A conditional commitment will help to expedite the loan guarantee application and allow for a "head start" in the process with little or no disadvantages.

2. Determinations and Findings by the Secretary:

We believe that it is appropriate for the Secretary to make certain determinations and findings before approval of any LGA. We would, however, caution the Department that any such determinations and findings may only be made based upon reasonable judgment given the facts and circumstances at the time that they are made. It is not possible to know with 100% certainty, for example, that there will not be cost overruns or that expected cash flows will not vary from original estimates.

3. Special Terms and Conditions:

We would expect the debt or loan that the LGA secures to have terms and conditions similar to other standalone pipeline projects and project financings in general. Such terms and conditions would include, but are not limited to, the following:

General Covenants

a) Maintenance of Existence
b) Compliance with Laws, Permits and Governmental Consents
c) Maintenance of Books and Records
d) Notices
e) Financial Statements
f) Taxes; Governmental Charges
g) Preservation of the Security Interests
h) Auditors
i) Insurance Requirements
j) Ratings Agency Disclosure
k) Additional Contracts and Amendments to Permits
l) Transaction Documents
m) Payment of Principal and Interest
n) Maintenance of Office or Agency
o) Monies for Security Payments to Be Held in Trust
p) Available Information
q) Transactions with Affiliates
r) Good Pipeline Practice
s) Maximum Borrowing Amount
t) Demand Charges and Rates

Negative Covenants

a) Limitation on Indebtedness
b) Limitation on Liens
c) Limitation on Lines of Business
d) Limitation on Disposition of Assets
e) Limitation on Mergers
f) Limitation on Assignment of Transportation Contracts
g) Transaction Documents; Waiver; Modification; Amendment
h) Suspension of Activities; Abandonment
i) Limitations on Equity Distributions

The important feature of the LGA will be to ensure that it is irrevocable and provides timely (next day) payments of the debt which it secures in the event the LGA is drawn upon. Repayment terms, payment priorities and remedies available to the LGA should be similar to terms found in senior or subordinated project financing debt and may include extension rights and accrued rights.

4. Lender Risk:
We would expect the pipeline project to have a capital structure that would consist of senior debt, subordinated debt, equity, working capital lines, other operating lines of credit, and other financing mechanisms. The risk to the lender will depend upon where in the capital structure the loan or financial instrument provided by the lender falls. We recommend that the LGA be permitted to secure senior and/or subordinated debt. Moreover, we recommend that if the LGA secures subordinated debt it need not secure the senior debt. A capital structure that permits multiple liens of debt and the use of the LGA on the different liens of debt will lower costs, increase flexibility, and ensure the greatest success of the Project.

5. Guarantee Fee:
We believe that it is reasonable for the Department to impose a loan guarantee fee to compensate itself for the risk, the time, and the costs involved in the commitment of the LGA.

6. Equity Commitment:
The Department should expect some assurances will be available and made as needed through either a) acceptable credit ratings, b) a demonstrated ability to access the capital markets, or c) sufficient or demonstrated liquidity.

7. Thirty-Year Loan Guarantee Term:
We recommend that the term of the LGA match the term of the long term debt to allow for the greatest flexibility and lowest cost.

8. Collateral/ Recourse/ Default:
The senior or subordinated debt secured by the LGA should have collateral, recourse, and default terms similar to those found in other project financings, including standalone pipeline financings. Examples of covenants are included above. The debt, and therefore the LGA which backs the debt, should have recourse only to the pipeline assets.

9. Cost Overruns:
We recommend allowing the project sponsors to issue LGA-backed debt on a senior or subordinated basis to fund both project costs and potential cost overruns. The LGA should permit "reserving" capacity to cover cost overruns. The Department and project sponsors can negotiate the priority and relationship of repayment of LGA-secured cost overrun debt and equity payouts.

10. Monitoring and Reporting Requirements:
Typical monitoring and reporting requirements include monthly reporting during construction and quarterly reporting during operations.

Goldman Sachs has experience with pipeline projects, energy financings and other complex project financing structures. The terms, conditions, and structure for projects like the Alaska Pipeline can take many different forms. We recommend that the Department maintain the greatest flexibility in order to add the most value and ensure the success of this important project.

We would be happy to discuss further with the Department alternative structures and terms for the loan guarantee provisions for the Alaska Pipeline project. Please feel free to contact Tim Romer (310-407-5886), Richard Schober (206-613-5533), Ray Strong (212-902-1068), or Bruce Schwartz (212) 855-0759 with any questions.

JPMorgan

Office of the General Counsel, GC–72
Attention: Lawrence R. Oliver
U.S. Department of Energy
Forrestal Building, Room 6B–256
1000 Independence Avenue, SW.
Washington, DC 20585

July 26, 2005

Re: Alaska Natural Gas Pipeline Loan Guarantee

JPMorgan very much appreciates the opportunity to respond to your Notice of inquiry published by the Department of Energy relating to the Alaska Natural Gas Pipeline Loan Guarantee program. JPMorgan has opted to comment on those provisions relating to the structure and sale of US government guaranteed obligations. JPMorgan is one of the few institutions in the United States that maintains an active and dedicated practice specifically focused on the funding of US government guaranteed obligations. We have extensive experience in programs run by The Export-Import Bank of the United States, the Overseas Private Investment Corporation, the US Small Business Administration, the Commodity Credit Corporation, the US Maritime Administration, the US Department of Defense, the US Agency for International Development and others.

We routinely participate in the design and implementation of programs that we fund as assets for our own portfolio of loans, that we syndicate as loans to other financial institutions and that we securitize and sell to institutional investors in the US and abroad. Given the size and scope of this particular program, we will emphasize issues relating to enhancing the syndication and/or securitization of such obligations.

We would be most pleased to make ourselves available to those responsible for the implementation of this program as a source to evaluate the market implications of alternatives which will be proposed during the drafting of the regulations. We have assisted many programs at this stage of development.

The first provision upon which we wish to comment is your fourth paragraph having to do with "Lender Risk". Lender Risk within this context should be considered from at least three different perspectives. First is credit risk, the second is market risk and the third is event risk. Credit risk is fully mitigated by a guarantee provided the provisions of the guarantee provide for the lender to have his principal and interest returned promptly upon the event of a default on scheduled principal and/or interest payment without the need to prove anything other than a scheduled payment was not made on a timely basis. Lenders will also accept a provision that provides for

J.P.Morgan Securities Inc., 270 Park Avenue, 10th Floor, New York, NY 10017
212-834-5160 michael.clare@jpmorgan.com

payment to be made by the guarantor following some administrative delay period provided that the lender also receives accrued interest from the date of default to the date of payment.

Market risk is frequently an issue lenders consider carefully in US guarantee programs. The risks can be somewhat different for obligations carrying a fixed versus a variable rate of interest. Guarantors will almost always reserve the right to prepay an obligation at the time of default rather than assume the obligation and continue to make the scheduled payments as originally promised by the borrower. Lenders clearly have a preference for predictability and would always opt to be paid out according to the original loan provisions. Having said this, variable rate lenders will not be hurt in these situations if the guarantor promises to only make such prepayments on a scheduled principal or interest payment date. Should the guarantor wish greater flexibility, lenders will seek the right to be protected against "break funding" exposures.

Prepayments present fixed rate lenders with a more significant market risk. These lenders are exposed to being prepaid at a time when interest rates are lower than those called for in the original loan. Whenever this occurs, the lender is unable to realize the earning potential originally planned. Such losses of potential can be very significant. Under normal commercial circumstances, lenders would not allow optional prepayments when interest rates are lower without so called "make whole" protections. The typical make whole provision would require the borrower (or guarantor) to return the outstanding principal and interest together with the foregone interest that would have otherwise been earned. Some government guaranteed programs will provide for make whole protections to be given to lenders. Those that do not will frequently attempt to limit the amount of additional interest rate lenders would otherwise want by agreeing at the outset to service obligations to maturity should a default occur. Other guarantors will attempt to mitigate the risk by prohibiting any optional prepayments when interest rates are lower. It is not uncommon for lenders to accept protections against such economic prepayments on the theory that borrowers do not default on obligations to affect prepayments.

Event risk is always carefully scrutinized by potential lenders into government guaranteed programs. Event risks arise when predictability comes into question. For example, lenders will want to know if the Department of Energy's ability to satisfy claims is at all subject to ongoing congressional appropriations. Lenders will also carefully consider the provisions having to do with the borrower's obligation to pay guarantee fees. If a failure of the borrower to pay the guarantee fee could void the guarantee, lenders will most certainly expect the guarantee fee to be paid in a single up front lump sum. Any documentation risk could also be considered an event risk. Lenders will expect all documents (and related opinions) to be fully and properly executed prior to any funds being loaned.

The next issue upon which we wish to comment is item five having to do with the guarantee fee. It is our working assumption that the overall guarantee fee for the program will be an issue determined between OMB and DOE once program specifics have been determined. Factors influencing the amount of the guarantee fee will include loan tenor, the project risk profile, loan amortization (if any) and loan amount. DOE will also need to determine and establish guidelines for guaranteeing loans and assessing fees prior to project completion. The typical objective of the amount of the guarantee fee is to allow the guarantor to charge a sufficient amount to "zero out" the cost of the program from an appropriations perspective. As mentioned above, it will be the expectation of lenders that the fee be payable in a single lump sum up front. It is most common that such up front payments are capitalized thereby allowing for the payment of the guarantee fee to DOE to come from loan proceeds. As a point of clarification, it is our expectation that guarantee any fee assessments would only be made as funds are drawn. From our perspective, there is absolutely no need to see guarantee fees collected prior to the time funds are actually drawn.

Another issue likely to be faced by DOE is how the fee assessed to a given project is to be allocated to the project sponsors. We will only observe that here seems to be a trend in project finance to allocate such fees based on the credit of the sponsors rather than as a single fee.

As for item seven, having to do with the proposal for a thirty year loan guarantee term, such programs typically commence upon project acceptance and not upon the beginning of construction. Perhaps of greater significance, however, is whether or not the obligation will amortize. At this stage there seems to be no indication as to DOE's expectations with regard to retiring the guaranteed obligations on some preset amortization schedule. Amortization is likely to have a more significant impact on the borrower than will whether the term begins with construction or acceptance.

We thank you for the opportunity to respond to your Notice and should you have any questions regarding these comments, please do not hesitate to contact me on 212 834-5160.

Yours sincerely,

MICHAEL K. CLARE
MANAGING DIRECTOR

MAYER BROWN ROWE & MAW

Mayer, Brown, Rowe & Maw LLP
1909 K Street, N.W.
Washington, D.C. 20006-1101

Main Tel (202) 263-3000
Main Fax (202) 263-3300
www.mayerbrownrowe.com

David I. Bloom
Direct Tel (202) 263-3204
Direct Fax (202) 263-5204
dbloom@mayerbrownrowe.com

July 26, 2005

BY MESSENGER

Lawrence R. Oliver, Esq.
Assistant General Counsel
Office of the General Counsel, GC-72
U.S. Department of Energy
1000 Independence Avenue, S.W.
Washington, D.C. 20585

Re: Alaska Natural Gas Pipeline Loan Guarantee, 6450-01-P

Dear Mr. Oliver:

Enclosed are an original and three (3) copies of the Comments of TransCanada Corporation on the Department's Notice of Inquiry concerning Alaska Natural Gas Pipeline Loan Guarantees. We have provided a copy of the Comments by email to Bettie Corey.

Please date-stamp the enclosed extra copy of the Comments and return to me by our messenger.

If you have any questions regarding the Comments, please feel free to call me at (202) 263-3204.

Sincerely,

David I. Bloom

David I. Bloom

Enclosure

UNITED STATES OF AMERICA
BEFORE THE
DEPARTMENT OF ENERGY

ALASKA NATURAL GAS PIPELINE LOAN GUARANTEES
NOTICE OF INQUIRY

COMMENTS OF TRANSCANADA CORPORATION

On May 27, 2005, the U.S. Department of Energy ("DOE") issued a Notice of Inquiry ("NOI") seeking comments and information to assist it in developing a possible advance notice of proposed rulemaking or notice of proposed rulemaking ("NOPR") concerning the loan guarantee provisions of the "Alaska Natural Gas Pipeline Act" (the "Act"). Section 116(a) of the Act authorizes the Secretary of Energy (the "Secretary") to enter into Federal loan guarantee agreements ("LGAs") for a "Qualified Infrastructure Project" ("QIP") with (1) one or more holders of a certificate issued by the Federal Energy Regulatory Commission ("FERC") under either section 103(b) of the Act or section 9 of the Alaska Natural Gas Transportation Act of 1976 ("ANGTA"), and (2) one or more owners of the Canadian portion of a QIP. The LGAs may not exceed $18 billion and 80% of the total capital costs, including interest during construction, of a QIP.[1] Once an LGA is in place, Section 116(b)(1) states that the Secretary can issue the actual Federal loan guarantee instruments only after a certificate of public convenience and necessity under 103(b) of the Act, or an amended certificate of public convenience and necessity under section 9 of ANGTA, has been issued. The Act authorizes, but does not require, the Secretary to issue LGA regulations to implement the Act's LGA provisions.

TransCanada Corporation ("TransCanada") strongly supports the Secretary's efforts to provide advance guidance to sponsors of a QIP. TransCanada believes that the development of a QIP will raise unique and complex financing issues, the nature of which cannot be clearly known until the financing is being negotiated. Therefore, TransCanada believes that it would be more efficient for the Secretary to address these issues when financing proposals (or components thereof) are presented to DOE, rather than to attempt to anticipate these issues in the context of regulations that could, inadvertently, make financing more difficult. Accordingly, TransCanada recommends that, at this time, the Secretary should announce general principles, but avoid the issuance of detailed regulations.

Whether or not the Secretary decides to issue formal regulations, the Secretary should provide QIP sponsors with:

- maximum flexibility to use the LGAs in a manner that will lead to the expeditious development, construction and operation of the project;
- the ability to devise and obtain LGA support for non-traditional financing structures;

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[1] LGAs also are available for an entity the Secretary determines is qualified to operate and construct a liquefied natural gas ("LNG") project to transport LNG "from Southcentral Alaska to West Coast States."

- the ability to obtain pre-commitments from DOE, based on specific commercial and financial components proposed by project sponsors, which would bind DOE to issue LGAs subject to the satisfaction of agreed-upon conditions precedent; and

- an opportunity for project sponsors to obtain both informal guidance on, and formal prior review of, proposed structures and uses of the LGAs before entering into the LGAs.

The pre-commitment and consultation processes are necessary – for sponsors, lenders and shippers – in order to conduct a meaningful open season for capacity on a QIP, to prepare fully developed applications for submission to the appropriate regulatory authorities, and to develop debt and equity packages required to finance any QIP.

I. TRANSCANADA'S INTERESTS

Pursuant to the Act, LGAs will be available for any QIP, including the Alaska Natural Gas Transportation System ("ANGTS") authorized under ANGTA. The ANGTS is the gas pipeline project approved in accordance with ANGTA in the United States, the Northern Pipeline Act in Canada, and the Agreement between the United States of America and Canada on Principles Applicable to a Northern Natural Gas Pipeline. As approved, the ANGTS is a 4,800-mile international pipeline system commencing at Prudhoe Bay and paralleling the Trans-Alaska Oil Pipeline System ("TAPS") to Fairbanks, where it angles southeast, following the Alaska Highway to the Alaska-Yukon border with Canada, down through the Yukon Territory and northern British Columbia, and into Alberta. In Alberta, the pipeline splits into two legs. The Eastern Leg proceeds southeast, crossing the U.S.-Canada border at Monchy, Saskatchewan and terminating near Chicago. The Western Leg proceeds southwest, crossing the U.S.-Canada border near Kingsgate, British Columbia and terminating at a point near Antioch, California.

Alaska Northwest Natural Gas Transmission Company ("ANNGTC"), which is now wholly owned by TransCanada, was selected and designated by the President, the United States Congress, and FERC to construct and operate the Alaska segment of the ANGTS. As such, ANNGTC is the current holder of the certificate of public convenience and necessity for the Project, the grantee of a right-of-way across federal lands in Alaska, and the holder of Clean Water Act Section 401 and Section 404 and Coastal Zone Management Act / Alaska Coastal Management Program permits and authorizations. ANNGTC (in Alaska) and Foothills Pipe Lines Ltd. ("Foothills") (in Canada), also a wholly owned subsidiary of TransCanada, intend to design, build and operate the 1,750-mile portion of the ANGTS to transport Alaska North Slope natural gas from Prudhoe Bay, Alaska to Boundary Lake, Canada. Foothills also will construct, own and operate any additional facilities in Canada necessary to integrate Alaska natural gas supplies into the existing infrastructure, in accordance with its existing Northern Pipeline Act certificate. Foothills already has constructed, and now owns and operates, the Eastern and Western Legs of the ANGTS in Canada, which transport approximately one-third of all natural gas exported from Alberta into the Lower 48 States. In addition, in 2004, TransCanada completed its acquisition of Gas Transmission – Northwest, the natural gas transmission system that comprises the original Western Leg of the ANGTS "pre-build" facilities in the United States.

In June 2004, subsidiaries of TransCanada submitted an application under the Alaska Stranded Gas Development Act ("SGDA") to the Department of Revenue of the State of Alaska. The contract developed with the State of Alaska under this SGDA application will provide the vehicle for the State of Alaska to establish financial parameters for project participants, including royalty rates on gas production, real estate taxes and other charges.

Subsidiaries of TransCanada own and operate one of the largest, most sophisticated, remote-controlled natural gas pipeline networks in the world. TransCanada and its subsidiaries have strong track records with stakeholders, including affected communities, regulatory agencies and shippers. These companies have accumulated a significant base of knowledge and information pertaining to building and operating a gas transportation system through Alaska and northern Canada, and they maintain the expertise, policies and management systems to support their construction and operation of the ANGTS.

TransCanada, ANNGTC and their affiliates do not own interests in any gas reserves. TransCanada has consistently expressed its willingness, even its preference, that any QIP be developed jointly by it with multiple stakeholders, including independent pipeline developers and investors, natural gas producers and Alaskan interests, including specifically the State of Alaska. No matter who participates and whether the QIP is certificated pursuant to section 9 of ANGTA or section 103(b) of the Act, TransCanada's vision is an independent, transportation-only pipeline, whose goals and incentives will be to maximize throughput by constructing a pipeline large enough to accommodate all interested initial shippers and by expanding the pipeline when new reserves and shipping commitments make such expansions economic. Such an independent pipeline will further, and indeed be aligned with, the interests of both initial and future shippers on the pipeline.

TransCanada is prepared to commit capital and other resources to the planning, construction and operation of an Alaska natural gas pipeline system. The availability of LGAs under reasonable terms and conditions is a critical precondition to meeting the challenges of the successful development and construction of such a system.

II. EXECUTIVE SUMMARY

TransCanada strongly supports steps by DOE to provide advance guidance to sponsors of a QIP, including TransCanada. The continued development of an Alaska natural gas pipeline will require the investment of hundreds of millions of dollars by project sponsors and major decisions by shippers to enter into long-term transportation and gas purchase contracts simply to move to the stage where applications can be prepared for filing with FERC and the Canadian authorities. Project sponsors, potential shippers and gas sellers will not be willing to make these investments or enter into long-term commitments without an understanding of the basic financial parameters that will govern the project. LGAs will have a significant influence on the rates charged by the pipeline, the structure of tariffs (both cost-of-service and negotiated rates) and transportation agreements, the use of innovative financing structures to manage the unique physical and governmental challenges of constructing the pipeline, and the ability of a QIP to attract equity investment and debt financing.

TransCanada believes that if DOE determines to propose regulations, or when DOE receives requests for pre-application guidance or reviews applications for LGAs, DOE must keep four overarching principles in mind.

First, it is essential that DOE be willing to enter into **conditional** commitments, pursuant to which LGAs would be available to the sponsors of a QIP who have not yet satisfied the requirements of section 116(a) of the Act or other mileposts established by DOE. The conditional commitments then would become final once agreed-upon conditions precedent are satisfied. Conditional commitments are necessary because the general terms of any LGA will be critical in attracting equity investment, developing the project (including rate and tariff specifications), providing necessary information for prospective shippers to evaluate an open season for capacity, and preparing and pursuing applications with FERC and Canadian authorities. In addition, before formal requests for DOE to enter into an LGA are submitted, DOE should be willing to provide informal and, when requested, formal pre-commitment guidance on whether specific provisions of a proposed financing structure would be accepted by DOE.

Second, DOE should be open to **innovative** approaches to the financing and commercial structures of the Alaska pipeline. The development and construction of a QIP will require project sponsors to handle unprecedented challenges, including the risks of construction in frontier areas, the heavy overlay of regulation on this project, the coordination of multiple jurisdictions in two nations, and the planning uncertainties for project sponsors, shippers, suppliers and off-takers of a project that will not be placed into service until 2012 or later. Therefore, the LGAs should allow project sponsors to take full advantage of all the available financial tools and options, including structures that might include different tiers of debt potentially supported by different revenue streams, collateral packages and terms and conditions for those tiers.

Third, DOE must recognize that the construction of an Alaska pipeline system will involve **risks** for project sponsors and shippers that no other North American energy project will entail. Indeed, Congress adopted the Act specifically in order to allow an Alaska natural gas pipeline to be built despite the challenges its development and construction will entail. Therefore, the conditions to any LGA must not require project sponsors or other parties to absorb all project risk. The imposition of such conditions would defeat the very purposes of the Act. Indeed, the QIP likely would not be constructed if LGAs were so conditioned.

Fourth, without diluting the requirement that any loan guaranteed by an LGA be reasonably forecast to be repaid in full, DOE should recognize the significant **benefits** that construction of a QIP will provide users of natural gas and the treasuries of the United States and the State of Alaska:

- U.S. consumers will obtain access to a much needed incremental source of natural gas.

- According to most studies, the availability of Alaskan natural gas to Lower 48 markets will result in meaningful moderation, and probable reduction, in the price of natural gas, with commensurate benefit to the U.S. economy.

- The U.S. and Alaskan governments will receive significant income from income taxes, real estate taxes, severance taxes and other payments.

- The U.S. balance of payments will be improved and U.S. national security enhanced by increased use of domestic energy supplies.

- The rates paid by shippers, and therefore the prices paid by consumers, should be lower because of the reduced borrowing costs made possible by the LGAs.

- Producers of Alaskan natural gas, from existing and future reserves, will be able to receive payment for their past investments and be encouraged to make new investments in exploration, development and production.

- Alaskan consumers will gain much needed access to natural gas.

- If designed properly, a QIP can maximize the use of existing infrastructure in Canada and the U.S., thereby reducing the costs of the project and resulting in the most efficient use of resources.

Turning to the specific issues raised by the NOI:

1. Conditional Commitment. It is imperative that DOE stand ready to enter into binding commitments to enter into LGAs once agreed-upon conditions precedent are satisfied, modified or waived. Absent such conditional commitments, it may be impossible for a project to attract the capital and shipper commitments necessary to file applications with FERC and the Canadian authorities. Timely construction of a QIP would be derailed if the project sponsors prepared applications based upon financial structures, received shipper commitments and regulatory authorizations to proceed based upon those structures, and then were forced to renegotiate shipper commitments, to revise their financing plans, and to amend their regulatory applications in order to obtain LGAs.

In addition to conditional commitments (and most certainly if DOE determines that it cannot enter into conditional commitments before the regulators have issued the authorizations required by section 116(a) of the Act or other project milestones have been reached), TransCanada requests that DOE develop clear procedures for project sponsors to obtain informal and formal guidance on specific components of a proposed financing plan. For example, a project sponsor might request that the Secretary "pre-approve" a proposed approach to equity contributions or a tariff mechanism for addressing the sharing of market risk between the project and its shippers. An advance commitment by the Secretary to accept specific structural components will enable project sponsors, shippers and regulators to make informed and timely decisions.

2. Determinations and Findings by the Secretary. TransCanada believes that each of the proposed five findings is consistent with the language and intent of the Act. However, it is important to recognize that the Congressional purpose in establishing LGAs was to address effectively the unique challenges of an Alaska gas pipeline system that might otherwise prevent the project from being developed and financed. Therefore, DOE must look for **reasonable**

assurances that the loans guaranteed by the LGAs will be paid in full, rather than absolute guarantees. The purpose of the LGA provisions of the Act is to provide U.S. government support for the project-specific risks of developing and constructing a QIP that market participants – sponsors, shippers, producers and debt providers – cannot entirely assume on their own.

3. Special Terms and Conditions. TransCanada does not believe that DOE should impose separate conditions beyond those required by the Act and demanded by the commercial lenders. Additional conditions imposed by DOE should primarily govern the relationship between DOE, as guarantor, and the commercial lenders.

4. Lender Risk. TransCanada believes that the Act requires that any loans covered by the LGAs be guaranteed in full, thereby precluding any "lender risk" if the terms of the LGA are fully complied with. However, DOE should be open to alternative structures that make the LGAs applicable to specific tiers of debt, provide partial coverage of debt, allow the use of non-guaranteed debt (secured or unsecured), and permit the shifting of the available LGAs from one debt tier to another as circumstances warrant.

5. Guarantee Fee. The placement into service of a pipeline system will take several years after FERC and Canadian authorities issue the necessary approvals. Therefore, TransCanada suggests that DOE's fees should be annual fees that begin to accrue and are payable after the QIP is placed into commercial service and that the fees should be limited to the actual costs to DOE, or its agent, of administering the LGAs.

6. Equity Funding Commitment. TransCanada believes that the Act intends that the project sponsors will fund 20% of project costs with equity commitments and other at-risk funds. DOE should allow project sponsors to use different debt/equity ratios for different project tiers, which may include debt not covered by the LGA, as long as DOE does not guarantee more than 80% of the total capital costs and $18 billion, as adjusted for inflation under the Act. (For example, sponsors may choose to satisfy the minimum 20% component through a combination of common equity, preferred stock and other at-risk investment vehicles, and they may use different equity/debt ratios for each tier of investment in the QIP.)

Project sponsors should be required to contractually bind themselves to make required equity infusions to the project companies they establish to actually own and operate the QIP. Non-creditworthy sponsors – i.e., sponsors who are not investment grade – should be required to provide parent guarantees or other credit support. However, DOE should recognize that, consistent with modern project finance practice, project sponsors likely will be willing to guarantee, through their equity contribution agreements, their full funding of the equity portion of the reasonable cost projections (including contingencies), as submitted by them for review by the appropriate regulators, to complete the project and place it into commercial operations, rather than provide an absolute guarantee of completion under all circumstances.

7. Thirty-Year Loan Guarantee Term. TransCanada anticipates that the thirty-year term of any LGA will run from the first construction loan borrowing.

8. Collateral/Recourse/Default. TransCanada believes that the primary collateral for the LGAs should be the revenue streams from the transportation contracts, with a pledge of related project contracts. Other forms of collateral may not be available for the project. For example, given the physical length of any pipeline system and the legal complexity of dealing with multiple jurisdictions, the creation of perfected liens on pipeline property may be time consuming, difficult to obtain, unduly expensive, and of little practical value to the U.S. Government. DOE should look primarily to covenants that protect its priority for revenue streams committed to the servicing of guaranteed loans. It also is possible that project debt, and therefore the LGAs covering that debt, will be carved into separate tiers, with each tier having recourse to different collateral – i.e., dedicated revenue streams – and different grace periods. If specific revenue streams are committed to specific debt tiers, cross-defaults across debt tiers may not be an option and, similarly, the consequences of defaults for project sponsors may vary across debt tiers.

9. Cost Overruns. Debt incurred to fund cost overruns must be eligible for LGA coverage. Moreover, so long as the statutory 20%/80% equity/debt ratio is maintained, DOE should be indifferent to whether the debt guarantee is issued to fund estimated initial capital cost estimates or cost overruns and to the equity/debt ratio of any individual tier of spending.

10. Monitoring and Reporting Requirements. DOE should, of course, receive the information necessary to supervise any LGAs and protect the interests of the U.S. Government in repayment of the loans guaranteed by the LGAs. As DOE develops these requirements, TransCanada suggests that two principles are key. First, the construction and operation of a QIP will be subject to detailed reporting requirements to FERC, Canadian authorities and others. DOE should rely, to the maximum extent possible, on these reports, rather than requiring the preparation of separate, but parallel reports. Second, once an LGA is in place, DOE should minimize the preapprovals that are required for draws upon guaranteed loans or the entry into contracts that will be funded through guaranteed loans. Construction seasons in the Arctic are very short and volatile, and project sponsors should have the flexibility to move quickly.

III. DISCUSSION

A. Overview

The construction of the Alaska gas pipeline system will be one of the most important and challenging energy projects of the 21st century. It will require the construction of thousands of miles of pipeline, much of it in frontier locations. The construction of the pipeline will be subject to unusual risks, including uncertain construction seasons and an unusually heavy overlay of government regulation in two countries. Project shippers will be required to make binding commitments years in advance of commercial operations, and, as a result, they will face unusual market risks. It is the costs and uncertainties of these risks that LGAs can offset, so that a QIP can proceed to deliver much needed natural gas supplies to U.S. markets.

As DOE considers the structure of LGAs, it should recognize that the construction of the Alaska gas pipeline system will produce major benefits, and the value of these benefits should be fully reflected by DOE in its policies concerning the LGAs.

First, the pipeline system will be the vehicle for delivering much needed natural gas supplies to the Lower 48 states. All major studies of the U.S. natural gas supply/demand balance conclude that Alaskan natural gas is required to meet future anticipated demand. A QIP will allow the commercialization of the existing North Slope reserve and encourage exploration and development of new reserves.

Second, if Alaska gas reaches Lower 48 markets, natural gas prices for consumers will be less volatile and potentially lower than otherwise would be the case. This will strengthen the economy and could increase the disposable income of consumers.

Third, the U.S. Treasury will benefit directly from the commercialization of Alaskan natural gas. The U.S. Government will receive increased income taxes and other fees, and its costs as a consumer of natural gas also will decrease. As new Alaskan natural gas reserves are commercialized, royalty revenues may increase even further.

Fourth, the State of Alaska will receive increased income tax, royalties and other fees. In addition, regions of Alaska may receive natural gas service for the first time, while other areas will be able to replace declining supplies.

TransCanada understands that DOE will require that any applicant for an LGA must demonstrate that there is a reasonable assurance that the guaranteed project debt will be repaid in full. However, DOE should recognize these "off balance sheet" benefits to U.S. consumers and the U.S. Treasury when it reviews innovative proposals for the structuring of project debt. Furthermore, DOE should recognize that there are certain risks, which are remote but could be large, that project sponsors and other project participants cannot bear alone. Therefore, DOE should not undercut the purposes of the Act's LGA program by imposing conditions that, in essence, eliminate the value of the LGAs by forcing project participants to underwrite the success of a QIP.

Finally, the Secretary is authorized, but not required, to adopt regulations to implement the LGA program. TransCanada believes that regulations are not necessary at this time and could, indeed, inadvertently complicate or even foreclose the use of innovative financing structures designed to respond to future and unanticipated requirements. If the Secretary elects to propose regulations, rather than rely on case-by-case review of LGA applications, the Secretary should not adopt regulations that lock into place every detail of the LGA program. Instead, TransCanada urges the Secretary to propose and then adopt broad regulations that mirror the stated requirements of the Act, preserve the greatest flexibility possible for DOE to administer the Act when reviewing future applications, and allow for conditional commitments and/or informal and formal advance review of specific components of a financing plan.

B. Specific Comments

1. Conditional Commitment. TransCanada believes that DOE must be willing to enter into conditional commitments for the issuance of LGAs, in order for a QIP to be built on a timely basis. The terms of the LGAs will be critical for any party that enters into a contract with the State of Alaska under its SGDA, for the design of any open season for the allocation of capacity on the Alaskan or Canadian segments of the pipeline system, for the negotiation of

precedent agreements with potential shippers, for the commitment of equity by project sponsors for the hundreds of millions of dollars that will be required simply to obtain authorization to construct the pipeline, and for the preparation of applications to be filed with FERC, the Canadian authorities and others.

Shippers will not be willing to enter into binding precedent agreements unless they have adequate assurances that the financial packages they negotiate will be honored. Project sponsors will want similar assurances that a project is feasible before they are willing to enter into binding commitments to make the equity investments necessary to prepare the necessary regulatory applications and obtain the necessary regulatory approvals. (TransCanada estimates that the costs of detailed engineering and obtaining the necessary approvals in the U.S. and Canada could total several hundred million dollars.) The in-service date of the project could be delayed by years if, after shipper agreements were negotiated and regulatory approvals obtained, DOE imposed new conditions on debt that required new commercial negotiations to be undertaken and certificate amendments to be filed.

Project sponsors and lenders also will want assurances that LGAs will be available if they decide to employ innovative financing techniques to reduce the total financing costs of the QIP, to reduce tariffs, to provide shippers with some protection against market risks, and to address the unique risks associated with construction of the project. These techniques could include creating different tiers of debt with different security packages and dedication of funds for repayment, debt financing of cost overruns, tariffs that reflect a sharing of market risk, and other tools. Project sponsors will require certainty that LGAs will be provided for financings with innovative features before they are willing to commit the significant at-risk sums necessary to obtain certificates in the US and Canada.

Therefore, TransCanada believes that DOE must be willing to enter into such conditional commitments, pursuant to which DOE would bind itself to issue LGAs if negotiated conditions precedent are satisfied. DOE should be willing to enter into these commitments, upon request by project sponsors, no later than the completion by project sponsors of any binding open season. Furthermore, in order to allow the orderly conduct of an open season, DOE should be willing to hold informal discussions with project sponsors on the permissible structure of the LGAs proposed to be used by any QIP. Finally, the conditions precedent should be flexible enough to accommodate changes in any QIP that may emerge in any regulatory proceedings before FERC and the Canadian authorities.

If DOE concludes, however, that it is not willing to enter into conditional commitments before the regulators issue required approvals or the project sponsors and DOE conclude that the negotiation of detailed conditions precedent is too onerous and uncertain a task early in the project development stage, DOE should be ready to provide either informal guidance, based on discussions between project sponsors and DOE staff, or formal guidance, based on the submission of a written request for formal approval by DOE, of specific components of a proposed project plan. Of course, any formal approval issued by DOE would bind it only with respect to the specific issue addressed.

2. Determinations and Findings by the Secretary. The NOI proposes five findings that the Secretary should make before an application for an LGA for a QIP is approved.

TransCanada believes that the proposed findings and determinations are reasonable and appropriate, subject to the following clarifications.

Proposed finding (A) should be modified to track, for any pipeline, the actual language of section 116(a) of the Act. Section 116(a) does not require that a QIP receive a "final" certificate. FERC orders are subject to rehearing, and rehearing orders themselves may be subject to rehearing. Therefore, in order to ensure that the project is not unnecessarily delayed, the Secretary should be able to enter into LGAs as soon an applicant obtains the required certificates for the U.S. portion of the QIP or owns the Canadian portion of the QIP, as applicable.

Proposed finding (B) tracks the Act and, therefore, is an appropriate and necessary condition.

Proposed finding (C) states that "there is a reasonable assurance of repayment of the guaranteed debt." TransCanada agrees that this is the appropriate standard for DOE to use when reviewing LGA applications.

However, TransCanada believes that the "reasonable assurance" should not be interpreted to require guaranteed recovery, as the Act was intended precisely to provide backstop support for risks that the private sector cannot absorb. Furthermore, in determining whether such reasonable assurance exists, DOE should look to all the mechanisms available for repayment, including any back-up mechanisms that a project sponsor proposes in the event that the primary repayment mechanisms are inadequate, in any given period of time.

Proposed finding (D) would require that the guaranteed loan funds and equity contributions be "sufficient to complete the construction and start-up" of the QIP and "fund any cost overruns." Project sponsors should be required to guarantee to provide equity funds for their share of the project costs, including contingencies, as set forth in the cost projections they submit for review by the appropriate regulators. However, they should not be required to provide an absolute completion guarantee.

Furthermore, the Act limits LGAs to coverage of 80% of project costs, without specifying how the remaining 20% would be financed. While TransCanada fully expects that most, if not all, of the "uncovered" 20% will be funded with common equity, project sponsors should be free to investigate other alternatives, such as the use of preferred equity and other at-risk sources of financing.

Accordingly, TransCanada suggests that the finding be modified to read:

"That the guaranteed loan funds, the equity contribution of project sponsors and other sources of funding for the project are reasonably predicted at the time of the Secretary's entry into the guarantee to be sufficient …." This revised text more accurately states the appropriate test as there will always be some risk, however small, that a QIP cannot be completed, and some of the debt may not be protected by the LGA.

Furthermore, the "reasonable prediction" should be based upon the cost estimates, including contingencies, prepared by the projects sponsors and submitted for review by FERC and the Canadian authorities, rather than some separately developed estimate. It is essential that the cost review processes of DOE, the regulators and the financial community be coordinated and not impose multiple reporting obligations on project sponsors.

TransCanada supports proposed finding (E), because it recognizes that DOE can request "appropriate," but not complete, protection of the financial interests of the U.S. Government. Indeed, because the purpose of the Act is to provide guarantees because a QIP might not otherwise be able to attract the necessary funding, there will always be some quantum of uncovered risk that the U.S. Government will be required to accept.

TransCanada does not believe that the list of proposed findings should be expanded. DOE should maintain the maximum flexibility to collaborate with project sponsors to develop LGAs that support the successful construction and operation of the Alaska natural gas pipeline system.

3. Special Terms and Conditions. TransCanada does not believe that any regulations adopted by DOE need to reflect any special terms and conditions other than those addressed in TransCanada's answers to the other questions posed by the NOI. However, TransCanada believes that DOE should recognize that project costs will include all costs necessary to convert construction loans to commercial operating period loans. Therefore, project costs should include, for example, the funding of any reserves that must be established before the loans are converted.

4. Lender Risk. The NOI requests comments on whether Section 116(g)(3) of the Act precludes any "lender risk." TransCanada believes that the language of the Act is clear on this point – any loan guarantee must cover "all" of the principal and interest of the guaranteed loan. Guaranteed lenders should not be required to assume any project risk.

However, as recognized by the NOI, it is possible that some debt will not be covered by LGAs, at least initially. DOE should not prevent project sponsors from using a combination of guaranteed and non-guaranteed debt as part of an overall financing plan.

DOE also requested comments on the potential impact of 100 percent guaranteed debt on project evaluation and servicing requirements. TransCanada does not believe that DOE needs to take any additional evaluation steps. First, LGAs will only be available after certificates have been issued by FERC and Canadian regulators. These regulators will examine the feasibility of any project, and shippers and other interested parties will have a full opportunity to test project assumptions. Second, project sponsors will be rigorous in their evaluation of any project, because, assuming full use of the $18 billion loan guarantee, they will be at risk for $4.5 billion. Third, commercial lenders will conduct their customary review of engineering and financial feasibility, notwithstanding the availability of LGAs. Therefore, the feasibility of any QIP will be fully tested before it is eligible to actually draw upon the LGAs.

5. Guarantee Fee. The NOI requests comments on how the amount of any loan guarantee should be determined and whether the fee should be an origination or an annual fee.

Because the costs of any guarantee will be passed on to shippers and, ultimately, consumers, the fees should be kept as low as possible. Indeed, fees should be limited to DOE's actual costs of administering the LGA program. Fees based on project risk would, in essence, recapture some of the benefits that the LGAs are intended to provide.

However, if DOE intends the fees to cover its risk in entering into LGAs, any such fees should be no higher than DOE charges for other loan guarantee programs – i.e., there should be no special risk premium for a QIP. Indeed, in setting the fees, DOE should recognize that an Alaska gas pipeline system will not entail "country" risk, currency risk (other than conversion issues for the Canadian dollar), technology risk, or other types of risk that are present in loans to support overseas investments or unproven technologies.

With respect to timing, TransCanada believes that fees should only commence upon the commercial operation of the system. This will prevent a project from having to borrow additional funds, themselves guaranteed by DOE, to pay DOE.

6. Equity Funding Commitment. The Act limits the guaranteed loans and debt obligations to 80% of the total project costs, including interest during construction. Section 116(b)(3) of the Act authorizes the Secretary to require, as a condition of any LGA, equity contribution commitments and completion guarantees. The NOI requests comments as to what type and form of assurance DOE should require from the project sponsors in order to ensure that scheduled equity contributions to the project will be made when needed.

As a preliminary matter, DOE should not interpret the statute to require that project sponsors make at least a 20% "common equity" contribution to the project. While TransCanada fully expects that the Alaska gas pipeline system will have at least 20% equity funding, if completed within budget, it is possible that a QIP might be funded with some combination of common equity, preferred equity, and other at-risk amounts. The provisions of the Act will be satisfied as long as the LGAs themselves do not cover more than 80% of the QIP's capital costs.

With respect to the 20% of project costs that cannot be covered by an LGA, DOE should require the types of assurances customary in large project financings. These may include parent guarantees and the posting of letters of credit and other instruments in the event that a project sponsor (or its guarantor) ceases to be creditworthy. To the extent that a project sponsor proposes to rely on hybrid instruments to satisfy a portion of the 20% funding commitment, the sponsor should be required to demonstrate that it has obtained binding commitments for funding from creditworthy parties.

While TransCanada fully agrees that any loan guarantee must be supported by binding equity contribution commitments, DOE should be aware that project sponsors are highly unlikely to provide open-ended completion guarantees. Such guarantees are not an accepted practice in the project financing of large energy projects of this nature. Accordingly, DOE's regulations, if any, and its analysis of applications should focus on the equity contribution requirements and the guarantees contained therein that project sponsors will fund their full share of the projects costs, including contingencies, that are submitted by them for review and approval by FERC and the Canadian regulators. Of course, equity contribution obligations should be several, but not joint.

Finally, for the 20% equity component, project sponsors should receive credit for the time value of their investments, which should be calculated to reflect carrying costs on amounts invested prior to the commencement of commercial operations for the project, as recognized by FERC and the Canadian regulators in reviewing the costs of any QIP.

7. Thirty-Year Loan Guarantee Term. TransCanada believes that it is reasonable for the thirty-year term of any LGA to include the construction and operating periods, commencing with the first draw of guaranteed loans, rather than the date of the DOE LGA commitment.

8. Collateral/Recourse/Default. The NOI requests comments on the recourse that the Secretary should have in the event of a default, as well as the collateral and security that should be pledged to DOE.

TransCanada requests that DOE not adopt specific regulations on this subject beyond the general requirement that DOE must be provided with adequate collateral. Because TransCanada believes that the financing structure for any QIP will need to be innovative and may include non-traditional mechanisms, TransCanada is concerned that regulations adopted today may be too inflexible to accommodate a proposed financing package that is yet to be developed.

For example, it is possible that the guaranteed debt for the project may be issued in tiers, with different tiers having exclusive recourse to different revenue streams. A final financing package also could reflect some sharing between project sponsors (and their lenders) of the market risks faced by shippers, coupled with provisions for accelerated repayment. Financing could be arranged separately for the "base estimate" costs of the QIP, with separate financing for any overrun costs. The collateral packages would have to be tailored carefully to ensure that designated revenue streams are reserved for the appropriate debt tier, without creating the potential for the redirection of funds or cross-defaults when one debt tier is current and another is temporarily in arrears. Because of these complexities, which will have to be considered on a case-by-case basis, TransCanada suggests that DOE's regulations, if any, be general and require only that each debt instrument guaranteed by DOE provide DOE with recourse solely to the revenue stream dedicated to servicing that debt instrument.

The NOI also requests comments on whether DOE should have a first lien on all project assets. Because the project will extend over thousands of miles and across multiple jurisdictions, the granting of such a lien may not be feasible. Instead, lenders and DOE may look for their security to a pledge of project accounts or project agreements (such as shipper agreements), operating agreements, and similar agreements. The U.S. Government should be willing to share the collateral with non-guaranteed lenders on a *pari passu* basis. As noted above, any such pledges would have to be structured to recognize that a single document, such as a shipper transportation agreement, might produce multiple revenue streams that are directed to several tiers of debt.

DOE also should be open to non-traditional approaches to default and remedies, particularly given the size of the equity commitments that project sponsors will be required to make. For example, different revenue streams may be dedicated to servicing different tiers of debt. As a result, the financing for any QIP could create different consequences for nonpayment of different tiers of debt. Default in the payments to commercial lenders under one tier of debt may result in a traditional default, with project sponsors facing traditional risks. For other tiers of debt, however, default might trigger a take-out of commercial lenders, followed by a restated payout period to DOE under the LGAs, with restrictions on payments to project sponsors but no foreclosure. Similarly, different grace periods may be appropriate at the various stages of the project, and grace periods may vary by debt tier. There are many options that project sponsors, shippers and lenders could pursue to reduce financing costs and address market challenges. DOE should be open to any of these approaches, *provided* there is a reasonable prospect that DOE will be repaid in full, including the time value of money.

9. Cost Overruns. The NOI requests comments on how cost overruns can or should be funded under the LGA mechanism.

The LGA should be fully available for the funding of cost overruns as long as (i) the determinations and findings referenced in item 2 above, including reasonable prospects of repayment, are made, and (ii) the 80% cap and $18 billion limit on guaranteed debt are respected. There is no reason to prevent the use of LGAs to fund cost overruns.

In fact, DOE should allow project sponsors maximum flexibility to use LGAs to fund overruns. For example, in order to help limit debt costs, a project sponsor may propose an initial equity ratio thicker than 20%, in order to maintain borrowing capacity for cost overruns. Project sponsors should be allowed flexibility in this regard, up to 100% debt financing of cost overruns, provided that the guaranteed debt is limited to 80% of total project costs and the project sponsors have demonstrated a reasonable likelihood that the revenue streams dedicated to servicing overrun debt will result in full repayment by the end of the guarantee period.

If projects sponsors seek to "reserve" a portion of the available LGAs for cost overruns, DOE should preserve the flexibility of project sponsors to put to constructive use any LGAs not ultimately used as originally proposed. For example, a project sponsor might initially finance the "base costs" of a QIP with a combination of guaranteed and non-guaranteed loans. The project sponsor should have the ability, after the QIP is placed into service, to apply any unused LGAs to the non-guaranteed loans, with the resulting lower financing costs reflected in its rates.

10. Monitoring and Reporting Requirements. TransCanada anticipates that loans to the Alaska gas pipeline system will require extensive reporting and monitoring to creditors and to DOE, as loan guarantor. TransCanada is involved in many project financings and fully understands the range of details that lenders typically require.

However, in defining the reporting and monitoring requirements, DOE should keep three principles in mind.

First, reports to DOE should be coordinated with reports to the guaranteed lenders. DOE should not impose a separate reporting standard, but instead should work with the guaranteed lenders to develop a single set of reporting requirements. Similarly, DOE and the project lenders should rely upon a single project monitor, such as an independent engineer, so that project sponsors are not required to deal with multiple organizations with parallel, but differing, information requirements.

Second, the project will be subject to extensive reporting requirements to FERC, other Federal agencies, Canadian regulators and the State of Alaska. DOE should allow project sponsors to use these materials, to the maximum extent feasible, when reporting to DOE.

Third, one of the greatest challenges to construction of an Alaska gas pipeline system is the dependence of construction upon weather and the local climate conditions. Construction windows can be very short and subject to change, so project sponsors must be able to respond quickly to changed circumstances. Therefore, requirements for pre-approval of expenditures or commitments should be kept to a minimum. It is the reality of Arctic construction that a delay in receiving a necessary approval can roll work over into the following construction year.

IV. CONCLUSION

TransCanada commends DOE for moving so promptly to address the LGA issues that will help determine whether the Alaska gas pipeline system can be placed into service on a timely basis, to the great benefit of U.S. consumers, the U.S. Treasury, and the State of Alaska.

As DOE proceeds, whether to formulate a NOPR or to review proposals for loan guarantees, TransCanada asks that DOE keep four overarching principles in mind:

First, project sponsors must be able to enter into conditional commitments with DOE with respect to LGAs as early as possible, so that they can enter into commitments with shippers, attract capital, and make the investments necessary to prepare and pursue applications before FERC and the Canadian regulators. If DOE is not willing to enter into binding discussions, subject of course to the satisfaction of agreed-upon conditions precedent, the in-service date of a QIP could be delayed by years. If DOE determines that it cannot enter into conditional commitments before the regulators have issued their authorizations or some other project milestone, TransCanada requests that DOE stand ready to provide both informal and binding, formal guidance on specific components of a proposed financing plan prior to the final LGA commitment date.

Second, the construction of a pipeline for the transportation of Alaskan natural gas will raise novel issues in planning, construction and, of course, financing. DOE should remain open to innovative financing techniques and commercial structures, with the full availability of LGAs, as long as DOE is reasonably assured that the guaranteed loans will be repaid in full.

Third, DOE should recognize that the guarantee provisions of the Act are designed specifically to provide coverage for risks unique to the construction of an Alaska gas pipeline that the private sector cannot accept by itself.

Fourth, DOE should recognize the significant benefits that an Alaska natural gas pipeline will bring significant benefits to users of natural gas and the treasuries of the United States and the State of Alaska.

Therefore, TransCanada urges DOE to adopt a program, whether or not incorporated into formal regulations, that maximizes DOE's flexibility, that encourages innovative approaches to financing this project of vital importance to the national security and economic well-being of the United States, that provides project sponsors and affected parties with the ability to obtain advance guidance when appropriate, and that maximizes coordination among DOE, U.S. and Canadian regulators and the financial community.

Respectfully submitted,

TRANSCANADA CORPORATION

By______________________________
David I. Bloom

David I. Bloom
Mayer, Brown, Rowe & Maw LLP
1909 K Street, N.W.
Washington, D.C. 20006-1101
(202) 263-3204

J.Curtis Moffatt
Tom Roberts
Van Ness Feldman, P.C.
1050 Thomas Jefferson, St. N.W.
Washington, D.C. 20007-3877
(202) 298-1800

COUNSEL FOR TRANSCANADA CORPORATION

July 26, 2005

SYNERGISTIC DYNAMICS, INC.

◂ S D I ▸

John C. Snedeker, Chairman & CEO
5 Anchorage Court, Westwind Landing
Savannah GA 31410 USA
www.sdi-savannah.com

MAIL: P.O. Box 30807
Savannah GA 31410-0807 USA
E-mail: JohnCSnedeker@cs.com
912-897-4764 1-888-897-4764 *new* Fax: 912-897-1784

22 JUNE 2005

U.S. DEPARTMENT OF ENERGY
Office of the General Counsel, CG-72
1000 Independence Avenue SW - Room 6B-256
Washington DC 20585

Att: Lawrence R. Oliver, Esq.

Re: Request for Comments - Alaska Natural Gas Pipeline Loan Guarantee
Notice of Inquiry 6450-01-P

Dear Mr. Oliver:

We are pleased to respond to your Request for Comments concerning the loan guarantee provisions contained in Section 116 of the "Alaska Natural Gas Pipeline Act" (PL108-324), hereinafter referred to as the "Act".

QUALIFICATIONS

Synergistic Dynamics, Inc. ("SDI") is a financial and management consulting firm with extensive experience with the U.S. Maritime Administration's Maritime Loan Guarantee Program, commonly known as "Title XI" (of the Merchant Marine Act of 1936, as amended). We believe that the Title XI regulations (46 CFR Part 298) — which are currently being supplemented and revised to further protect the interests of the United States — are an excellent template for the proposed DOE Loan Guarantee Agreement (LGA).

During my career with units of the Grumman organization (now Northrop Grumman), I held positions as a program and contract manager on large-scale, high technology programs of national importance, so I am very familiar with the Federal acquisition process and how it relates to the subject Project. Our qualification statements are enclosed as Exhibit A. You will note that SDI is a member of the Association of Energy Engineers.

ISSUES

We believe two basic issues should be addressed, (1) the need for a federal guarantee in order that financing for the Project be made available on economically acceptable terms, and (2) how to overcome the strong opposition of the Administration and its Office of Management and Budget (OMB) to Federal loan guarantees. In other words, the Department of Energy must make a convincing case to the Congress and to the American people that a Federal loan guarantee is essential to the success of the Project.

Creative Management, Financial and Technical Services for Industry & Government Since 1983
Professional Affiliations
American Bar Association (Associate) Section of Public Contract Law - National Contract Management Association
American Society of Naval Engineers - Society of Naval Architects & Marine Engineers - Association of Energy Engineers

Unlike the Title XI Program, which was enacted to enable small, privately-owned vessel owners to obtain financing on terms normally available only to investment-grade borrowers, the company or consortium of companies, that will build and own the Alaska Natural Gas Pipeline Project and related facilities will be large, multi-national, investment-grade companies that have ready access to capital markets.

SDI's COMMENTS

In order to properly frame our comments in the proper context, we have summarized the issues in regular type, DOE's questions in italics and present our comments in bold type.

1 CONDITIONAL COMMITMENT

DOE states that Section 116(b)(1) of the Act provides that "the Secretary may issue a Federal guarantee instrument for a qualified infrastructure project only after a certificate of public convenience and necessity has been issued for the project, or after the Secretary certifies three exists a qualified entity to construct and operate a liquified natural gas project to transport liquified natural gas from South-Central Alaska to West Coast States."

DOE is considering whether it can or should negotiate a conditional commitment with one or more potential sponsors prior to the time that a final certificate is issued by the FERC (Federal Energy Regulation Commission) or the Secretary issues the required certifications with respect to an LNG project...

DOE is requesting comments on potential advantages and disadvantages of this approach including whether it would expedite the loan guarantee application process and at what point in the certificate application and/or project consideration process the loan guarantee application and/or negotiation process with DOE should begin.

Based on our extensive experience with large-scale Federal programs and with the Title XI Maritime Loan Guarantee Program, we do not see any potential advantages to the suggested change to the procedure required by Section 116(b)(1). Drawing on our experience with the Federal acquisition process and with preparation of proposals for Federal contracts, we recommend that DOE solicit comprehensive proposals from potential sponsors using the format set forth in the Federal Acquisition Regulations (FAR) and the DOE FAR Supplement. The Request for Proposals (RFP) should include the full text of the proposed LGA (which should be in place before issuing the RFP).

Criteria for selection of a sponsor should include either acceptance of the Regulations as presented in the RFP or a statement of exceptions and the reasons therefore. The DOE source selection authority will then have a basis for evaluating the competing proposals, including the willingness of offerors to accept the terms and conditions of the proposed LGA as presented in the RFP. This should minimize the need for extensive negotiations of the terms of the LGA.

2 DETERMINATION AND FINDINGS BY THE SECRETARY

DOE is considering the desirability of requiring, by rule, the following findings and determinations...(A) that the applicant has received a final certificate from the FERC or, with respect to an LNG project, that the Secretary has made a determination that the entity applying for the loan guarantee is qualified to construct and operate a liquified natural gas project....(B) that the project ... is a "Qualified Infrastructure Project....(C) That there is a reasonable assurance of repayment of guaranteed debt; (D) That the guaranteed funds and the equity contribution of the project sponsor(s) will be sufficient to complete construction and start-up...and fund any cost overruns; and (E) That the terms and conditions of the LGA provide adequate terms and security to appropriately protect the financial interests of the United States Government.

DOE is requesting comments on what determinations and findings the Secretary should make prior to approving a LGA for one or more parts (of the Project).

A comprehensive proposal of the scope recommended in Section 1 above, including requirements that Offerors present detailed technical, business management and financial plans for the Project, will provide the basis for the findings and determinations that must be made by the Secretary.

3. SPECIAL TERMS AND CONDITIONS

DOE is also requesting comments on what other terms and conditions other than the usual project financing requirements, that are unique to the construction of a natural gas pipeline or LNG facility, should be included in the regulations and whether the regulations should include requirements for such unique terms and conditions in the LGA.

Any and all terms and conditions that are unique to the project MUST be incorporated into the proposed Regulations for a LGA and in the RFP for the project in order that DOE will have all necessary data and information on which to base a source selection decision and as a basis for negotiating the necessary contracts and the LGA. Requirements to address safety and environmental issues in both the Technical Plan and in the Business Plan should be emphasized.

4. LENDER RISK

Section 116(g)(3) (Definition of) FEDERAL GUARANTEE INSTRUMENT.— The Term "Federal guarantee instrument" means any guarantee or other pledge by the Secretary to pledge the full faith and credit of the United States to pay all of the principal and interest on any loan or other debt obligation entered into by a holder of a certificate of public convenience and necessity.

DOE requests comments on whether this provision precludes any "lender risk" on the project debt that receives a Federal guarantee and also the potential impact of 100 percent guaranteed debt on project evaluation and servicing requirements.

Under the cited Section, the lender assumes no risk, but, as is the case with the current language in the Title XI regulations (§298.2), it leaves open the matter of when the obligee (lender) will receive payment from the Government after a default occurs. The comparable language in the current version of §298.2 says that the obligee will be paid the unpaid balance of the principal and interest accruing between the date of default...and the date of payment. There have been a number of cases where payment was delayed by extended proceedings in a bankruptcy court. On 8 June 2005, The U.S. Maritime Administration posted a notice in the Federal Register that, among other changes to Remedies in the event of a default, the language in the Security Agreement will be changed to provide that "The unpaid balance of the principal... and the interest shall become due and payable immediately upon a determination by the Secretary (of the USDOT) that a default has occurred and is continuing..." It also adds 2% to the interest rate of the defaulted obligation.

With regard to the second part of DOE's question, a Federal guarantee backed by the full faith and credit of the United States will encourage international financial institutions to lend to the sponsor(s) of the project. Absent such a guarantee, it could be difficult to obtain such a large loan, or package or loans, on economically acceptable terms.

5. GUARANTEE FEE
DOE is considering the imposition of a loan guarantee fee....

DOE requests comments on how the amount of any loan guarantee fee should be determined and whether the fee should be an origination or an annual fee.

There should be a loan guarantee fee and it should be an annual fee. The Title XI regulations require an annual fee at a rate of not less than 1/4 of 1% and not more than ½ of 1% of the excess of the average principal amount over the amount in the construction escrow account estimated to be outstanding during the annual periods of the construction phase; and not less than ½ of 1% and not more than 1% of the average outstanding balance during each year of the permanent financing phase. The entire fee, discounted to present value at the rate set forth in the Economic Bulletin issued by the Department of Commerce, is paid at the time of Closing, but is included in the amount to be financed. If the maximum amount of the project cost to be financed is 80%, the borrower would pay 20% of the discounted guarantee fees at the time of Closing.

6. EQUITY FUNDING COMMITMENT
Section 116(c)(1) of the Act limits the amount of the guaranteed debt to 80% of the total capital costs of the project. Section 116(b)(3) states "The Secretary shall not require...any contractual commitment or other form of credit support...other than equity contribution and completion guarantees or any throughput or other guarantees from prospective shippers greater than such guarantees as shall be required by the project owners."

DOE requests comments as to what type and form of assurance DOE should require from the project sponsors to assure that the scheduled equity contribution...will be available and will be made when needed.

Again we recommend that the Title XI regulations be the model. They require the entire equity contribution be deposited in an escrow account at the date of Closing. Promises are nice, but cash in the bank will assure DOE that the funds will be available when needed. The Title XI regulations also require that draws during the construction phase be made first against the owner's equity in the account. Then, only when the entire amount of the Owner's equity has been disbursed, would payments commence to be made from the borrowed funds that have been deposited into the account.

7. THIRTY YEAR LOAN GUARANTEE TERM
Section 116(d)(1) of the Act provides that the term of the loan guarantee not exceed 30 years.

DOE requests comments on whether the calculation of the maximum loan guarantee "term" should commence with the first construction loan borrowing (draw) and include the sum of both the construction period and the long-term debt period.

While we believe that 30 years is too long for the long-term debt period. We believe it should exceed 25 years, but 30 years would be acceptable for the entire period of the guaranteed financing (construction period plus long-term debt period).

8. COLLATERAL/RECOURSE/DEFAULT
DOE notes that the Act is silent with regard to these subjects.

DOE requests comments on what should be included in any regulations, should DOE decide to promulgate regulations, regarding collateral requirements, recourse and default procedures.

The regulations MUST address these three subjects in detail. Again, the current Title XI regulations together with pending amendments thereto provide an excellent model for not only protection of the Government's financial interests, but of the integrity of the project in the event of a default.

We strongly recommend that additional unencumbered collateral be required to be provided by the sponsor(s). We also recommend that the regulations clearly set forth the procedures by which the Government will take complete and absolute control of the project and all of its assets, tangible and intangible, in the event of a default.

9. COST OVERRUNS

DOE notes that the Act is silent on this subject.

DOE is requesting comments on how cost overruns can or should be funded and the appropriate mechanism or formula for addressing cost overruns in the LGA and any appropriate regulations.

On a project of this magnitude, it is impossible to establish firm fixed prices at the outset, so overruns are inevitable. But they can be mitigated by ensuring that the specifications and statements of work are carefully drafted and thoroughly negotiated before the commitment is issued. The amount of the loan can and should be adjusted if the Government makes changes to the specifications or other terms of its contract(s) with the sponsors, but cost increases determined to be the owner's responsibility should be funded by additional equity contributions by the owner(s).

10. MONITORING AND REPORTING REQUIREMENTS

The Act does not address these subjects.

DOE is requesting comments on appropriate required reporting to DOE to assist DOE in its monitoring responsibilities including the content and timing of each reporting generally, whether reports should address the status of loan disbursement requests, whether loan repayment status reports should be required and the timing and content of construction status reports and other appropriate information submissions from the project sponsor(s).

It is precisely the lack of adequate oversight that has caused problems for the Maritime Administration. The reforms of the Title XI program recommended by the Inspector General (IG) of the US Department of Transportation (USDOT) and the Government Accountability Office (GAO) in their twin audit reports presented to the Senate Commerce Committee on 5 June 2003 and in the Final Audit Report issued by the IG on 28 September 2004 provide guidance, but it is essential that DOE establish a dedicated program office to oversee the program during the construction period and throughout the duration of the long-term debt period. Space does not permit presentation of detailed recommendations, but as a minimum, no funds should be disbursed during the construction period without written approval by the DOE program director. Each member of the sponsor's team should be required to submit audited financial statements and quarterly statements throughout the life of the guaranteed debt.

ADDITIONAL CONSIDERATIONS

There are a number of additional considerations that we believe should be addressed in formulating a program plan and in drafting a set of regulations for the proposed LGA. Again, we make reference to the Title XI Maritime Loan Guarantee Program to establish a frame of reference.

11. INVESTIGATION FEE
§298.15 of the Title XI regulations currently requires payment of an "investigation fee" to at least partially pay for the Government's due diligence. The base fee is ½ of 1% of the first $10,000,000 of the guarantee plus 1/8 of 1% of all amounts over $10,000,000. In addition, the USDOT IG recommended that certain applications be subject to a risk assessment conducted by an outside consulting firm. As of the date of this letter, the amount to be paid by the borrower had not been established. One possibility being discussed is to increase the investigation fee for certain types of projects.

12. SUBSIDY RATE AND APPROPRIATIONS
Section 116(f) of the Act requires that "There are authorized to be appropriated such sums as may be necessary to cover the cost of loan guarantees under this section as defined by section 502(5) of the Federal Credit Reform Act of 1990 (2 USC 661a(5))". OMB implements this requirement by establishing a "subsidy rate" (we prefer the term "leverage rate") for each Federal loan guarantee program based on the loss history of the program. This, in turn, is used to establish the amount of appropriated funds required in a given Fiscal Year in order to give the agency the required guarantee authority. The subsidy rate for Title XI guarantees was about 5% in FY2003 and in the FY2004 Supplemental appropriation. A 5% subsidy rate provided a leverage factor of 20 to 1. However, a guarantee issued early in 2005 applied a leverage factor of about 5 to 1 or a subsidy rate of 20% to an application for a project that had been assessed by outside consultants as being of higher than normal risk. Assuming a leverage factor of 20 to 1 for the subject Project, it will be necessary for Congress to appropriate $900,000,000 in order to give DOE authority to issue $18,000,000,000 in loan guarantees. This may be difficult for Congress at a time when it is under great pressure to reduce the Federal deficit unless a very strong case is made for the Project and for a Federal guarantee to finance it.

MODEL REGULATIONS
In 2002, responding to a request by a member of Congressman Rick Larsen's staff, we drafted a set of loan guarantee regulations for Alternative Energy Projects. A copy is enclosed as Exhibit B.

We will be pleased to provide additional information upon request. We will also be pleased to be considered as a resource to assist the U.S. Department of Energy draft the loan guarantee regulations and prepare a Request for Proposals for competitive selection of a sponsor team.

Best regards,

John C. Snedeker
Chairman & CEO

Signed original with enclosures; three (3) copies without enclosures