
From the desk of

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Marty Rutherford, Deputy Commissioner
Department of Natural Resources
State of Alaska
550 W. 7th Ave., Suite 1400
Anchorage, AK 99501

Re: Your July 30 response to my July 29 letter to Senator Dyson

Dear Deputy Commissioner Rutherford:

On review of your July 30 response to my July 29 letter to Senator Fred Dyson concerning the information provisions of the TransCanada AGIA proposal, I find that many of the points I raised in my letter were not addressed.

During the intense week following release of my report on the TransCanada AGIA proposal to the Alaska Public Interest Research Group (AkPIRG) July 22, feedback and discussion with legislators led me to focus on the effects of confidentiality provisions and the state's need to secure comprehensive information in a timely manner. While I appreciate the fact that you and your staff apparently put out your response to my July 29 letter in less than 24 hours, I found that response insubstantial. In response, I offer the following comments on your July 30 response on behalf of the administration:

Paragraph 1 (page 1). Contrary to the statement in paragraph 1 that "Mr. Fineberg does not identify anything in AGIA that increases the state's vulnerability to higher tariffs or compromises our ability to protect the state's interests," my July 29 letter raised substantive questions (for example, questions relating to the information provisions in the AGIA statute and the Alliance Pipeline model) that the July 30 response does not address.

Paragraph 2 (page 1). I do not accept the statement that the state "has all of the tools necessary" to ensure that tariffs are as low as possible. In this regard, I note that the response to my letter did not address (and did not even mention) the itemized list of apparent gaps and potentially troubling ambiguities in the AGIA statute that I included in the July 29 letter. Finally, I do not agree that it is "fact that the State has unrestricted ability to gain further access to data via FERC proceedings and under FERC rules."

Paragraphs 3, 4 and 5 (pages 1-2). It seems a bit paradoxical that immediately after acknowledging issues in paragraph 3 "that the State must be pro-active" in its approach to tariff, the letter devotes paragraphs 4 and 5 to describing the state's reliance on FERC procedures and requirements. I believe it is generally understood that FERC oversight will not necessarily protect Alaska's interests. Isn't that one of the principal reasons the administration advocates the AGIA contractual agreements?

Paragraph 7 (page 2). The July 30 letter acknowledges that it “is certainly a fair question” to ask why the state’s right under AGIA to have a representative involved as a de-facto member of the governing body only extends through construction. If one accepts the proposition that this arrangement will assure access to the data necessary to deter unjust and unreasonable tariff inputs and calculations during construction (the letter does not explain how this arrangement will work), does it not follow that the termination of this position at start-up will leave a potentially important void for the operating life of the pipeline, to the detriment of effective tariff management?

Paragraph 8 (page 2). This paragraph skips over the discrepancies between (a) the reported Alliance Pipeline tariffs in AGIA Findings Appendix J (which were also cited in my July 29 letter) and (b) the significantly higher Alliance tariffs reported by Barry Pulliam in his June 4 presentation, and by Alliance itself. The letter strangely states that high cost overruns on the Alliance Pipeline are an undisputed fact, but there was no dispute between us on this point. Instead of setting the facts about the Alliance Pipeline tariffs straight and considering whether the Alliance experience may have particular relevance for the Alaska-BC pipeline, the July 30 letter appears to confirm my concern, as stated July 29, that the Alliance experience may “illustrate the kind of issues whose significance may be overlooked when confidentiality and complexity combine to overload state policy makers, their staffs and their consultants.”

Paragraph 10 (page 2). The July 30 letter states that “Mr. Fineberg does not appear to understand” that AGIA addresses the issue of tariff manipulation through the 70/30 debt/equity financing limit and rolled-in rates. I believe I understand how these provisions work, but I still question whether these provisions prevent tariff manipulation.

Paragraph 11 (page 3). The concluding paragraph of the July 30 letter reiterates the state’s reliance on its promised seat at the project “board of directors” table and FERC procedures, discussed above, as vehicles for active participation to defend state interests. I might take greater comfort in this response if the first ten paragraphs had attempted to address the questions I raised with greater specificity.

As you note in your July 30 letter, there is a broad congruity between the administration’s starting point on pipeline tariff policy and my own. For this reason, when I undertook this project, I did not expect that I would not be able to endorse the AGIA team’s work product. As the problems I have identified came to light, I made additional efforts to assure that my report and subsequent comments reflected informed understanding of the issues. To this end, my report attempted to synthesize data from diverse sources that included: administration materials; trade, economic and ratemaking literature; and information gained from discussions with various informed parties, including members of the administration AGIA team and some of its consultants. Based on what I have learned, I stand by the concerns raised in my July 22 report for AkPIRG and its four-page bullet summary, as well as my July 25 testimony to the State Senate Special Committee on Energy, the Sept, 27 follow-up letter to Special Committee Chairman Huggins and the Sept. 29 letter to which you responded.

To make sure that the questions I have attempted to raise concerning confidentiality and timely receipt of information are not lost as the TransCanada AGIA proposal moves forward, I am attaching a copy of my July 29 letter. If I can provide additional information on any of the points I have raised, please let me know.

Sincerely,

Richard A. Fineberg

Cc: Senator Fred Dyson