

Alaska Dispatch

News and voices from the Last Frontier

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OPINION:

Alaska is about to set out on a path toward a bad deal for a natural gas pipeline. We are being lulled into thinking decisions made today do not matter because there will be plenty of opportunities for the Legislature and public to weigh in later. In fact, many major decisions will be approved by an unelected board and not be subject to legislative approval or public review. The rest will be made piecemeal so that the public and Legislature do not see the cumulative impact of the decisions being made. And much of the information that goes into decision making will be kept confidential, available only to legislators who sign confidentiality agreements.

The proposal is for a liquefied natural gas project that consists of a gas treatment plant on the North Slope, a pipeline to a tidewater LNG treatment facility, and a marine terminal for transport to Asian markets. Five out-take points for in-state gas will be included, but not the infrastructure for in-state distribution.

Despite past studies that show the risks of state ownership in a pipeline outweigh the benefits, the administration is opting for 25 percent state ownership in the proposed LNG project. The three major North Slope producers -- ExxonMobil, BP, and ConocoPhillips -- will own the rest of the project.

Because the state cannot afford the full cost of ownership of our 25 percent share, the pipeline company, TransCanada, will own the state's share of the pipeline and gas treatment plant, with an option for the state to later acquire 40 percent ownership in those components. The state will repay TransCanada's costs by paying a tariff for shipping our gas on our piece of the pipe.

Through the pipeline bill poised to pass the Alaska Legislature, Senate Bill 138, the Legislature will sanction the administration moving forward with taking an ownership interest in the project, authorize the Alaska Gasline Development Corporation to enter commercial agreements with the producers; give the Department of Natural Resources commissioner unlimited discretion to confidentially negotiate contracts; allow the state to

take our royalty gas and gas production tax as gas rather than cash; and establish the production tax rate for gas.

SB 138 sets Alaska on the path to ownership in a pipeline project we cannot afford, and to paying the costs for shipping gas we do not produce. Despite the administration's assurances, many of the project contracts committing us to this path may be signed without public involvement or legislative approval.

As the state's ownership representative, AGDC will negotiate agreements that govern the operations of the joint venture between the state, the producers and TransCanada, and that will establish the rights and responsibilities between the parties, including voting rights, confidentiality and dispute-resolution provisions. The AGDC board of directors will oversee and approve these major agreements; a board comprised of governor appointees, including an out-of-state former Exxon official. The agreements will not be subject to legislative approval; its role is limited to providing funding for the venture. Due to confidentiality issues, the public may not ever see the signed agreements. That means three major oil and gas companies negotiating against AGDC with no worries about public review or legislative approval. How confident do you feel that Alaska will get a good deal?

The DNR commissioner will negotiate agreements with TransCanada that establish terms and conditions for shipping Alaska's gas share, terms like the state paying shipping costs even if there is no gas available for shipping. These terms will first be incorporated into a Precedent Agreement that is not subject to legislative approval, and then into a final agreement that is subject to approval. The Legislature will be limited to an up or down vote and, at that point, lawmakers will likely feel they have no choice but to approve the deal. It is easy to take a single step forward in isolation from other decisions, and much harder to take a big step back.

For the other major contracts subject to legislative approval, due to confidentiality issues, most legislative briefings will occur behind closed doors. The public may get to see final contract terms, but we will not have much information or opportunity to influence the decision-making process.

The possibility exists for the producers to negotiate a commercial deal to their liking and then sit on it until the project is truly profitable. At that point, the state will be locked into whatever gets agreed to in the next couple of years, even though the economics may be such that we could have gotten a better deal if we had waited. Or we'll spend hundreds of millions, possibly billions, on a project that never gets built.

With much unknown about whether state ownership in the project is in Alaska's best interests, major contractual agreements may be entered into without public review and legislative approval. It's best that SB 138 be stopped. Only a few days are left to the legislative session. Call your legislators now and tell them to say no.

Lisa Weissler is an attorney with expertise in natural resource law and over 20 years' experience with the state of Alaska. She has served as an assistant attorney general specializing in oil, gas and mining law and coastal management, worked thirteen sessions for the Alaska Legislature, served as a special assistant for the Department of Natural Resources, and as a project analyst for the Alaska coastal management program.

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