

## Gas line right-of-way could land in court

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*Alaska Journal of Commerce*

Publication Date: 02/06/05

There was an undercurrent of conflict between North Slope gas producers and TransCanada Corp., an independent pipeline company, flowing through the Alaska Support Industry Alliance's "Meet Alaska" conference held in Anchorage Jan. 27.

TransCanada hopes to build a North Slope natural gas pipeline and has applications for a pipeline right-of-way pending before the state of Alaska. The company also has Canadian government approvals to build portions of the pipeline in that country.

The three major North Slope producers - BP, ConocoPhillips and Exxon Mobil Corp. - are meanwhile working on their own plans and may want to build the pipeline themselves.

Dennis McConaghy, TransCanada's executive vice president for gas development, told the Meet Alaska conference his company would sue to protect its exclusive rights to build the Canadian sections of a pipeline if the producers tried to secure their own right-of-way through Canada.

BP and ConocoPhillips, meanwhile, raised their concerns at the conference that TransCanada may sue to assert exclusive rights to build a pipeline in Alaska if its application for an unconditional right-of-way across state lands is approved by state resources commissioner Tom Irwin.

If TransCanada's application for an unconditional right-of-way is approved by Irwin, it could make it legally difficult for the state to issue a second right-of-way if the three gas producers choose to build their own pipeline, the companies said.

Steve Marshall, president of BP Exploration (Alaska) Inc., said a grant of an unconditional pipeline right-of-way to TransCanada would reduce competition and eliminate others from the field. "It could prevent the best pipeline project from going forward," Marshall said.

Marshall said it was premature for the state to grant an exclusive right-of-way at this point in the project, and urged Irwin to instead grant conditional, non-exclusive rights to TransCanada.

ConocoPhillips' Alaska president Jim Bowles echoed Marshall's concerns at the Meet Alaska conference.

"We don't see any of the proposals for a pipeline far enough along for the state to issue a right-of-way," Bowles said.

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In the last year, TransCanada has been working to complete right-of-way work started in the 1980s when Foothills Pipelines, now a TransCanada subsidiary, was part of the Alaska Natural Gas Transmission Project. That consortium attempted to build a gas pipeline from Alaska to the Lower 48 also along the Alaska Highway.

The consortium spent about \$1 billion on environmental and engineering studies. A right-of-way was secured across federal lands and an application was made for a state right-of-way, but when natural gas prices fell in the Lower 48 work stopped.

Foothills subsequently bought out its partners' interests in the project. The company also held certificates issued by the Canadian government under Canada's Northern Pipeline Act. After Foothills was acquired by TransCanada, ownership of Foothills' rights to the Alaska project passed to the parent company.

At the Meet Alaska conference, TransCanada's McConaghy said the Northern Pipeline Act in Canada gives his company sole authority to build the Alaska pipeline.

"From TransCanada's perspective this is a matter of property rights," McConaghy said. "An attempt (by others) to bring another application will bring the expected reaction," from TransCanada, McConaghy warned.

The company also feels it has U.S. federal authority to build the Alaska section of the pipeline under the federal Alaska Natural Gas Transmission Act passed in the 1980s.

However, McConaghy said TransCanada chose not to interfere in recent U.S. Congressional action establishing an alternate legal framework for the gas producers or others to apply for federal certificates to build the Alaska pipeline. Under U.S. law, the Federal Energy Regulatory Commission must approve interstate pipeline applications.

"We chose not to interpose ourselves," in that Congressional action, McConaghy said. "But Canada is different," he said. TransCanada would react strongly to any attempt to do an end-run around the Northern Pipelines Act, under which the company holds its certificates.

Although McConaghy said his company was taking a hands-off approach to Alaska, BP and ConocoPhillips say the effect of the state granting TransCanada's request for an unconditional right-of-way across state-owned lands would raise questions over the state's legal authority to issue a second right-of-way.

The uncertainties would lead to delays and possibly litigation if TransCanada chose to defend what it felt could be an exclusive right to a right-of-way in Alaska, according to sources in the producing companies, speaking on background.

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"An unconditional right-of-way effectively means TransCanada is in a position to challenge any project that uses the same right-of-way," one source said. There are points along the route, such as in Atigun Pass and at approaches to the Yukon River bridge, where the two rights-of-way would inevitably conflict, according to the source.

BP's Marshall said the state could issue a conditional right-of-way to TransCanada, which would clearly leave the door open for additional, competing applications.

State officials downplayed the potential for conflicts over pipeline routes but acknowledged that a grant of an unconditional right-of-way would give TransCanada rights that could not be adversely affected by another applicant.

In a Jan. 31 presentation to a state legislative committee in Juneau, Mark Myers, director of the state Division of Oil and Gas, acknowledged that attorneys for the producing companies have concerns over possible conflict.

Myers told the Senate Resources Committee that if the nonconditional right-of-way were given to TransCanada there would be nothing stopping the state from granting a separate right-of-way along the same route. He added, however, that the additional right-of-way could not conflict with or adversely affect the TransCanada right-of-way.

McConaghy said TransCanada is cooperating with the producers in other areas. An example is the evaluation of new pipeline construction techniques and new high-strength steel, which could lead to a high-pressure pipeline being built with thinner-wall pipe.

Sources among the producers say they are concerned that the state may tilt toward TransCanada in its consideration of the different projects because Gov. Frank Murkowski has previously said one of his goals is to see the pipeline owned by an independent pipeline consortium, rather than a project owned and controlled by the three producers.

One of the problems with TransCanada moving aggressively ahead with its right-of-way and permit work is that the Canadian pipeline company is working with obsolete data gathered in the 1980s by the consortium of which Foothills was a member, the producer company sources said.

That project was substantially different than what is being discussed today, they said. It involved a 48-inch low-pressure pipeline.

What is being discussed now, the sources said, is a pipeline up to 52 inches in diameter that would operate at high pressures, also moving gas liquids like propane and ethane through the pipeline along with methane, the main component of natural gas.

The producers spent \$125 million in 2000 and 2001 to do conceptual engineering and preliminary environment studies using the pipeline now

planned. TransCanada has not made a comparable investment to update its 20-year-old information, the sources said.

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