

**UNITED STATES OF AMERICA
DEPARTMENT OF ENERGY
OFFICE OF FOSSIL ENERGY**

**CONOCOPHILLIPS ALASKA
NATURAL GAS CORPORATION
AND
MARATHON OIL COMPANY**

FE DOCKET NO. 07-02-LNG

**ORDER GRANTING AUTHORIZATION
TO EXPORT
LIQUEFIED NATURAL GAS
FROM ALASKA**

DOE Opinion and Order No. 2500

JUNE 3, 2008

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GLOSSARY OF TERMS AND ABBREVIATIONS

ADNR	Alaska Department of Natural Resources
Applicants	ConocoPhillips Alaska Natural Gas Corporation and Marathon Oil Company
Bcf	Billion cubic feet
Btu	British thermal unit
CPANGC	ConocoPhillips Alaska Natural Gas Corporation
DOE	Department of Energy
ERA	Economic Regulatory Administration, DOE
FE	Office of Fossil Energy, DOE
ISER	Institute of Social and Economic Research, University of Alaska
LNG	Liquefied Natural Gas
Marathon	Marathon Oil Company
NEPA	National Environmental Policy Act
NGA	Natural Gas Act of 1938
NSAI	Netherland, Sewell & Associates, Contractor to the Applicants
OFE	Office of Fossil Energy, DOE
Pacific Rim	Any destination point for the delivery of liquefied natural gas on or abutting the Pacific Ocean in a country with which trade is not prohibited by United States law
PANGC	Phillips Alaska Natural Gas Corporation
PGC	Colorado School of Mines Potential Gas Committee
RD	Resource Decisions, Contractor to the Applicants
TBtu	Trillion British thermal units
Tcf	Trillion cubic feet

I. SUMMARY

Following an examination of all record evidence in this proceeding in conformity with the requirements of section 3 of the Natural Gas Act, 15 USC 717b (NGA), the Office of Fossil Energy (OFE) of the Department of Energy (DOE) is herein granting the application of ConocoPhillips Alaska Natural Gas Corporation (CPANGC) and Marathon Oil Company (Marathon) (jointly, Applicants) for authority to export on their own behalf or as agents for others up to 99 Trillion British thermal units (TBtus) of liquefied natural gas (LNG) (equivalent to 98.1 Bcf of natural gas)¹ on a short-term or spot market basis from facilities near Kenai, Alaska. As requested in the application, the Applicants will be authorized to export the above-specified quantity of LNG from the Kenai facilities to Japan and/or one or more countries on either side of the Pacific Rim over a two-year period commencing April 1, 2009, and terminating March 31, 2011. In making the forgoing determinations under section 3 of the NGA, FE has found that the requested export authorization will not be inconsistent with the public interest and the application should be granted as filed.

In addition, FE is herein granting the request of the Applicants contained in the application to vacate the Applicants' existing blanket authorization, issued in Opinion and Order No. 1580,² to export up to 10 TBtus of LNG from the Applicants' Kenai facilities to international markets contemporaneous with the effective date, April 1, 2009, of the authorization granted in the instant Opinion and Order.

¹ Based on a conversion factor of 1009 Btu/cubic foot of natural gas.

² *Phillips Alaska Natural Gas Corporation and Marathon Oil Company*, DOE/FE Opinion and Order No. 1580 (2 FE ¶ 70,472, April 10, 2000) (Order No. 1580).

The additional reasons in support of these and other findings and rulings in this Opinion and Order are set forth below.

II. PROCEDURAL HISTORY

On January 10, 2007, CPANGC and Marathon filed a joint application with OFE seeking authority to export LNG on their own behalf or as agents for others on a short-term or spot market basis from facilities near Kenai, Alaska. The Applicants requested authority to export up to 99 TBtus of LNG (equivalent to 98.1 Bcf of natural gas) to Japan and/or one or more countries on either side of the Pacific Rim over a two-year period commencing April 1, 2009, and terminating March 31, 2011. The Applicants also asked that FE vacate their existing Order No. 1580 blanket authorization to export up to 10 TBtus to international markets contemporaneous with and conditioned on a grant of the instant authorization (Application at 6).

On February 16, 2007, the Applicants filed a letter regarding their request to vacate their authorization under Order 1580. In that letter, the Applicants stated that they were contemplating the activation of their Order No. 1580 authorization and they further stated that it would not be necessary to vacate the authorization if it was activated before the issuance of a favorable order in the instant proceeding. On the other hand, the Applicants also stated that if FE issued a favorable order before the Applicants activated the Order No. 1580 authorization, the Applicants sought to reserve their right to activate the Order No. 1580 authorization prior to the 2009-2011 time period covered by the instant application.

DOE issued a public notice of the application on March 2, 2007.³

Pursuant to the notice and 10 C.F.R. §§ 590.302 and 590.303, on April 9, 2007, FE received timely filed motions to intervene, comments, and/or protests of the application from Agrium U.S., Inc. (Agrium); Chevron U.S.A., Inc. and Union Oil Company of California (jointly, Chevron); Chugach Electric Association, Inc. (Chugach); ENSTAR Natural Gas Company (ENSTAR); the State of Alaska (State); and Tesoro Corporation and its subsidiary, Tesoro Alaska Company (jointly, Tesoro). In addition, also on April 9, 2007, the Alaska Oil and Gas Conservation Commission (AOGCC) filed a notice of intervention pursuant to 10 C.F.R. § 590.303(a); and, on or before April 9, 2007, other non-interveners filed 76 letters in support of and one letter opposed to the application. Additionally, the Export Council of Alaska, the Anchorage Chamber of Commerce, and the Kenai Peninsula Borough submitted resolutions on or before April 9, 2007, in support of the application.

Of the numerous timely pleadings received by FE in this proceeding by April 9, 2007, two included requests for additional procedures. The State filed a motion asking for trial type procedures with discovery and permission to submit additional reply comments in response to any potential answer from the Applicants. Tesoro submitted a motion requesting an opportunity to file reply comments; a preliminary conference of the parties that could have included settlement discussions, a stipulation of issues and/or additional procedures; an opportunity to conduct discovery; a public hearing in Anchorage, Alaska to address local public interest issues; an opportunity to make an oral presentation; and an opportunity to hold evidentiary trial-type proceedings.

³ 72 FR 10507, March 8, 2007.

On April 20, 2007, the Applicants jointly filed a motion seeking additional time until May 8, 2007, in which to file their answer to the various motions to intervene, comments, and protests. OFE granted the Applicants' motion on April 24, 2007.

On May 8, 2007, the Applicants filed their Answer to the April 9 pleadings. In their Answer, the Applicants, *inter alia*, opposed the intervention of Agrium, Chevron, and Tesoro. Applicants also contested the claims of commenters and protestors that the authority sought either should be denied or, if granted, should be substantially conditioned.

OFE issued an Order on May 9, 2007, in which it deferred ruling on the pending motions to intervene, comments, protests, and Applicants' answer in order to afford itself further opportunity to review all of the pleadings before it.

On June 5, 2007, OFE issued a further Order granting all of the previously filed, timely motions to intervene in this proceeding. The June 5 Order also granted the requests of the State and Tesoro for an opportunity for interveners to file replies to the Applicants' answer by June 26, 2007. FE deferred ruling on the requests of the State and Tesoro for a trial-type hearing and for other additional procedures, but stated that it would reconsider those requests after the submission of interveners' replies.

Tesoro filed its reply to Applicants' answer on June 25, 2007. On the following day, June 26, 2007, Agrium, the State of Alaska, Chugach, and Chevron filed their respective replies to Applicants' answer.

On June 28, 2007, ENSTAR submitted a motion for leave to file its reply comments out of time. FE took no action on ENSTAR's motion within 30 days of the filing date. Pursuant to section 302(c) of the applicable regulations (10 CFR 590.302(c)), ENSTAR's motion was denied by operation of law on July 28, 2007.

On October 11, 2007, Agrium filed the first of its two motions in this proceeding seeking leave to supplement its comments and supplemental comments. The purpose of the October 11 supplemental comments, discussed further below, was to inform FE that Agrium had closed its Kenai Fertilizer Plant and to indicate for the record that the closure was due to Agrium's unsuccessful efforts to secure natural gas supplies. The Applicants submitted an answer to Agrium's motion on October 26, 2007, and, three days later, on October 29, 2007, re-submitted their answer with a minor correction. The minor correction was necessary to clarify a reference to Agrium's Fertilizer Plant which the Applicants previously had mischaracterized as an LNG facility. No party contested the minor correction and FE granted Agrium's October 11 motion for leave to file supplemental comments on November 1, 2007.

On October 31, 2007, Tesoro filed to withdraw its protest of the application. Tesoro indicated that it had entered into a settlement with the Applicants and represented that it no longer opposed an unconditional grant of the authority sought by the Applicants. Accordingly, FE issued an order on November 28, 2007, finding that Tesoro's protest would be deemed withdrawn.

Although FE had granted Agrium's motion for leave to file its October 11 supplemental comments on November 1, 2007, the Applicants filed a second corrected version of their answer to that motion on November 13, 2007. This second correction consisted of the deletion of a substantial portion of the Applicants' pleading. The language in question described an alleged settlement of a natural gas supply dispute between Agrium and Chevron in 2004 and an alleged successor agreement for the sale of the gas that was the subject of the dispute between Chevron and ENSTAR. The Applicants, apparently at the request of Chevron, sought to remove any discussion of the

alleged settlement because the supposed settlement, in fact, was between Agrium and Unocal and the agreement predated the settlement by several years.

On November 20, 2007, Agrium filed in support of the proposed second correction of the Applicants' answer to Agrium's October 11 motion. No party opposed the second correction and the Applicants and Agrium both agreed that the revision was necessary to clarify the record. In its November 28 Order, OFE found that, while the second correction was a substantive amendment of the Applicants' previously filed answer, the second correction was warranted and should be allowed. OFE accordingly accepted the amendment of the Applicants' answer to Agrium's October 11 motion for leave to file supplemental comments.

On January 4, 2008, the State filed its own motion for leave to file supplemental comments and supplemental comments. The State's filing of January 4 indicated that the State had entered into a settlement with the Applicants and the settlement resolved Alaska's opposition to the pending application without condition.

Chugach submitted a motion on January 18, 2008, for leave to file supplemental comments on the State's settlement by February 7, 2008. Chugach stated that it needed time to evaluate the impact of the settlement on Chugach's position. OFE granted Chugach's motion on January 23, 2008 and, as requested, gave Chugach until February 7, 2008, to submit its second set of supplemental comments.

ENSTAR filed a motion for leave to file supplemental comments and supplemental comments on January 23, 2008. ENSTAR indicated that it had successfully negotiated an agreement with the Applicants to cover significant aspects of its projected supply shortage through the first quarter of 2011 and ENSTAR now supported issuance of the requested authorization without condition.

Per the terms of the January 23 Order, Chugach submitted its supplemental comments on the State's settlement with the Applicants on February 7, 2008. Essentially, Chugach stated that the State's settlement did not alter its position on the merits of the application.

On February 21, 2008, OFE issued an Order granting both the Chugach and the ENSTAR motions for leave to file supplemental comments.

Agrium filed a motion for leave to file a second set of supplemental comments and supplemental comments on March 14, 2008. Agrium filed its March 14 supplemental comments for the purpose of notifying OFE that Agrium was not going to develop a previously planned coal gasification project, also known as the Kenai Gasification Project (KGP) Plant. According to Agrium, the KGP Plant was a source of natural gas that had been factored into the Applicants' case in chief and Agrium's decision not to develop the Plant was a relevant factual development that should be considered in evaluating the Applicants' claims of adequate local gas supply. OFE granted Agrium's March 14 motion by Order issued April 10, 2008.

On April 18, 2008, Colleen Starring, Regional Vice President of ENSTAR, submitted a letter to the undersigned urging the timely approval of the pending application. Because the letter was directed to a decisional employee but was not properly served on all parties of record, we found in an Order issued on May 1, 2008, that the letter constituted a prohibited off-the-record communication in violation of our regulations,⁴ placed the letter in the public file, and held that parties would have seven days, *i.e.*, until May 8, 2008, in which to submit comments on the letter.

⁴ See, 10 CFR 590.107(a) and 590.108(a).

On May 8, 2008, ENSTAR and Chugach filed timely comments regarding ENSTAR's May 1 letter. On May 19, 2008, ENSTAR submitted a motion for leave to reply and reply to Chugach's May 8 comments. The Applicants likewise submitted a request to answer and an answer to Chugach's May 8 comments on May 20, 2008. On May 22, Chugach submitted a motion for leave to respond to ENSTAR's May 19 filing and the Applicants' May 20 filing; also, on May 27, 2008, ENSTAR filed a letter response to Chugach's previous filings.

III. BACKGROUND

The instant application bears a noteworthy relationship to past and current export authorizations held by the Applicants. In particular, the Applicants hold an existing long-term authorization to export LNG to Japan granted to CPANGC predecessor Phillips Petroleum Company (Phillips) and Marathon by the Federal Power Commission in 1967.⁵ Phillips and Marathon were specifically authorized to export LNG from the State of Alaska to supply Tokyo Electric Power Company Inc. (Tokyo Electric) and Tokyo Gas Company Limited (Tokyo Gas) for a 15-year period terminating on May 31, 1984. The order also authorized Phillips and Marathon to construct proposed liquefaction and marine terminal facilities in the Cook Inlet Basin near Kenai, Alaska necessary to support the export of LNG to Japan. The long-term export authorization was subsequently amended and extended by the Economic Regulatory Administration (ERA) at various times between 1982 and 1987.⁶

On July 28, 1988, ERA granted CPANGC, then known as Phillips 66 Natural Gas

⁵ / See, *Phillips Alaska Natural Gas Corporation and Marathon Oil Company*, 37 FPC 777 (April 19, 1967).

⁶ / See, DOE/ERA Opinion and Order No. 49 (1 ERA ¶ 70, 116, December 14, 1982) (extended export authority); DOE/ERA Opinion and Order No.49-A (1 ERA ¶ 70,127, April 3, 1986) (transferred authorization from Phillips Petroleum Company to Phillips 66 Natural Gas Company); DOE/ERA Opinion and Order No. 206 (1 ERA ¶70,128, November 16, 1987) (amended pricing formula).

Company, and Marathon an extension of the long-term authorization to export LNG to Japan for a term of 15 years, ending March 31, 2004. FE subsequently approved amendments of the long-term authorization at various times between 1991 and 1995.⁷

On April 2, 1999, in DOE/FE Opinion and Order No. 1473, FE granted CPANGC predecessor Phillips Alaska Natural Gas Corporation (PANGC) and Marathon a further five-year extension of the long-term authorization to annually export up to 64.4 TBtus of LNG to Japan commencing April 1, 2004, through March 31, 2009.⁸

On June 20, 2000, FE granted PANGC and Marathon approval of a revision in the pricing provisions of their Japanese sales contracts.⁹

On April 10, 2000, in DOE/FE Order No. 1580, FE granted CPANGC and Marathon blanket authorization to export up to 10 TBtus of LNG (equivalent to 10 Bcf of natural gas) from the Kenai LNG facility to international markets over a two-year period beginning on the date of the first export.¹⁰ This blanket authorization was intended to supplement the long term authorization issued in Order No. 1473, and was activated on September 29, 2007. To date, one export of LNG under the Order No. 1580 authorization has been made to Russia to condition the Sakhalin LNG facility.

⁷/ See, DOE/ERA Opinion and Order No. 261 (1 ERA ¶ 70,130, July 28, 1988) (extended export authority); DOE/FE Opinion and Order No. 261-A (1 FE ¶ 70,454, June 18, 1991) (amended pricing formula); DOE/FE Opinion and Order No. 261-B (1 FE ¶ 70, 506, December 19, 1991) (transferred authorization from Phillips 66 Natural Gas Company to PANGC); DOE/FE Opinion and Order No. 261-C (1 FE ¶ 70,607, July 15, 1992) (increased annual contract quantity from 52 TBtus to 64.4 TBtus-the provision for yearly sales up to 106 percent of annual contract quantity remained unchanged); DOE/FE Opinion and Order No. 261-D (1 FE ¶ 71,087, March 2, 1995) (amended pricing formula); DOE/FE Opinion and Order No. 261-E (2 FE ¶ 71,429, July 18, 1997) (dismissed complaint).

⁸/ See, *Phillips Alaska Natural Gas Corporation and Marathon Oil Company*, DOE/FE Opinion and Order No. 1473 (2 FE ¶ 70,317, April 2, 1999) (Order No. 1473).

⁹/ See, DOE/FE Opinion and Order No. 261-F (2 FE ¶ 70,506, June 20, 2000) (amended pricing provisions of Japanese sales contracts).

¹⁰/ See, *Phillips Alaska Natural Gas Corporation and Marathon Oil Company*, DOE/FE Opinion and Order No. 1580 (2 FE ¶ 70,472, April 10, 2000).

On January 30, 2008, FE issued DOE/FE Order No. 261-G reflecting a name change from Phillips Alaska Gas Corporation to ConocoPhillips Alaska Natural Gas Corporation.¹¹

IV. THE APPLICATION

Applicants seek authority to export on their own behalf or as agents for others up to 99 TBtus of LNG (equivalent to 98.1 Bcf of natural gas) on a short-term or spot market basis from their LNG liquefaction facilities near Kenai, Alaska to Japan and/or one or more countries on either side of the Pacific Rim over a two-year period commencing April 1, 2009, and terminating March 31, 2011.

A. Relationship to Existing Authorizations

The commencement date proposed by the Applicants for the blanket export authorization in the instant proceeding coincides with the anticipated termination date of the Applicants' currently effective long-term authorization issued in Order No. 1473. Also, in the instant proceeding, the Applicants initially requested that FE vacate the blanket authorization issued in Order No. 1580 contemporaneous with, and conditioned on, the issuance of the proposed blanket authorization sought herein. However, by letter dated February 16, 2007, the Applicants notified DOE that they were still contemplating activation of the blanket authorization issued in DOE/FE Order No. 1580. The Applicants further stated in the February 16 letter that if they activated the Order No. 1580 blanket authorization before the Department issues a favorable order in the instant proceeding, it will not be necessary for the Department to vacate the Order No. 1580 authorization. Alternatively, the Applicants stated that if the Department issues a favorable order herein before the Applicants activate the Order No. 1580 authorization,

¹¹ See, DOE/FE Opinion and Order No. 261-G (2 FE ¶ 71,597, January 30, 2008) (name change).

then the Applicants seek to reserve the authority to activate the Order No. 1580 authorization prior to the effective date of any authority granted in this proceeding.

B. Public Interest Considerations

In support of their application, CPANGC and Marathon state there is no regional need for the up to 99 TBtus of LNG (equivalent to 98.1 Bcf of natural gas) that they seek to export during the two-year time period of the proposed authorization. The Applicants commissioned separate studies by two independent consulting firms, Netherland, Sewell & Associates (NSAI) and Resource Decisions (RD), to assist in determining the regional need for the natural gas proposed to be exported as LNG.

NSAI, a world-wide petroleum consultant, analyzed the estimated gross proved and probable natural gas reserves in the Cook Inlet region of Alaska as of December 31, 2005. The data used in the preparation of this analysis depended solely on information found in the public domain.

NSAI estimated the gross (100 percent) gas reserves for the Cook Inlet region of Alaska, as of December 31, 2005 to be:

<u>Category</u>	<u>Gross (100 percent) Gas Reserves (Bcf)</u>
Total Proved	1,211.8
Probable	<u>514.6</u>
Proved + Probable	1,726.4

In addition to NSAI, the applicants hired RD to perform an economic analysis of the LNG export proposal. RD reviewed and analyzed four different sources of information in order to derive estimates of Cook Inlet natural gas supplies. First, RD looked at the ADNR's annual estimates of proved and probable natural gas reserves in

Cook Inlet as of December 31, 2005. Second, RD compared the ADNDR estimates of natural gas reserves with NSAI estimates for the same time period. Third, RD reviewed two studies released by DOE in 2004 and 2006. The 2004 study, entitled *Southcentral Alaska Natural Gas Study* (“2004 DOE Gas Study”) analyzed Cook Inlet region’s potential natural gas supplies. The 2006 study is entitled *Alaska Natural Gas Needs and Market Assessment* (“2006 DOE Market Assessment”) and it examined natural gas supplies and market demand throughout the State of Alaska. Finally, RD looked at the Colorado School of Mines’ Potential Gas Committee (“PGC”) estimate of probable, possible, and speculative Cook Inlet region natural gas resources (*i.e.*, natural gas above and beyond known reserves in existing fields) contained in its most recent assessment published in 2004.

In its final assessment of natural gas supply availability during the time of the requested LNG export period, RD relies on NSAI’s estimated proved and probable natural gas reserves figure of 1,726.4 Bcf and PGC’s estimates of potential resources in the Cook Inlet region. Under PGC’s “most likely” case, the estimated volumes of natural gas resources present (*i.e.*, natural gas above and beyond known reserves in existing fields) in the Cook Inlet region (onshore & offshore) totaled 1,050 Bcf, while under the “minimum” or high probability case, at least 600 Bcf of potential natural gas resources (*i.e.*, natural gas above and beyond known reserves in existing fields) was found to be present. Although RD’s analysis referenced other possible alternative sources of energy, such as coalbed methane and converting the LNG export facility into an import terminal, they were not used in assessing whether there were sufficient supplies of natural gas to meet both the Alaskan needs and proposed LNG export.

From its analysis of these four sources, RD concluded that natural gas supplies in the Cook Inlet region are more than enough to meet the needs of the Alaskan consumer for the foreseeable future and that there also are sufficient supplies to continue exporting LNG at the level proposed in the application for the proposed two-year period (April 2009 through March 2011). RD in particular pointed out that the 2004 DOE Gas Study found that the potential exists for an additional 13 to 17 Tcf of conventionally recoverable reserves remaining in the Cook Inlet region, and this estimate was stated again in the DOE 2006 Market Assessment Study.

Based on RD's analysis, the Applicants developed two natural gas supply scenarios for the time of the proposed LNG export. The first scenario, labeled the "Expected Supply Case", uses NSAI's estimated proved and probable natural gas reserves figure of 1,726.4 Bcf, coupled with PGC's "most likely" case that estimated potential natural gas resources (*i.e.*, natural gas above and beyond known reserves in existing fields) at 1,050 Bcf for the Cook Inlet region. Under this scenario, the total natural gas supply resources for the region equal 2,776.4 Bcf. The second scenario, termed the "Stress Supply Case" employs the same use of NSAI's estimate of proved and probable natural gas reserves figure of 1726.4 Bcf; however, it substitutes PGC's "minimum" or high probability (95%) estimate of 600 Bcf of potential natural gas resources (*i.e.*, natural gas above and beyond known reserves in existing fields) in its supply forecast. The total natural gas supply under this scenario is 2,326.4 Bcf.

The RD study postulates "Expected Cases" and "Stress Cases" for natural gas supply and demand in Southcentral Alaska in order to discern the possible impact of the export of LNG on regional need from 2006 through the first quarter of 2011. The Applicants state that the Expected Demand Case employs the most likely estimates for

Southcentral Alaska natural gas demand and the Expected Supply Case employs the most likely estimates for Cook Inlet natural gas supply. The Stress Demand Case, on the other hand, reportedly employs regional natural gas demand assumptions that are higher than expected and the Stress Supply Case employs Cook Inlet natural gas supply assumptions that are lower than expected. The Applicants project that under all of the analyzed scenarios, there are sufficient supplies of natural gas and other energy sources to meet both the regional demand of Southcentral Alaska and the foreign export market during the two year period of the proposed export authorization.¹²

With respect to national need, CPANGC and Marathon state that shipment of LNG from the Applicants' Kenai LNG facilities to the lower 48 states does not appear to be a viable option due to certain regulatory and economic hurdles. The Applicants emphasize that the requirements of Section 27 of the Merchant Marine Act of 1920 (46 U.S.C. § 883), commonly known as the Jones Act, would present a substantial regulatory hurdle. The Applicants also emphasize that there are no existing U.S. west coast LNG receiving terminals and the cost of shipping Kenai LNG to U.S. east coast or gulf coast LNG receiving terminals would vastly exceed the cost of transporting the same LNG to Japan and/or another customer in the Pacific Rim due to the distances involved.

The Applicants assert that approval of the requested authorization to export Cook Inlet LNG from Kenai to Japan and/or one or more countries on either side of the Pacific Rim will provide tangible benefits to the Alaskan economy and to U.S. national interests. The Applicants maintain that the Kenai LNG Facility provides a stable source of income and employment in Southcentral Alaska, an area noted for seasonal unemployment and a

¹²/ See Resource Decisions, Economic Analysis of Kenai LNG Export (January 2007) included as Appendix C to the application of CPANGC and Marathon filed January 10, 2007; and Netherland, Sewell & Associates report evaluating natural gas reserves in the Cook Inlet region of Alaska (January 4, 2007), included as Appendix D to the application of CPANGC and Marathon, filed January 10, 2007.

marked cyclical response to world oil price changes. The operation of the Kenai LNG Facility reportedly provides employment generating an estimated \$15.9 million dollars in personal income.¹³ The State of Alaska and its citizens also allegedly benefit from royalty payments on the LNG and from production and corporate income tax receipts. The Applicants assert that a denial of the application will lead to the end of LNG exports from the Kenai LNG Facility by early 2009, resulting in a major loss in benefits to the State of Alaska.

The Applicants further assert that shutdown of the Kenai LNG Facility would cause a shut-in of the flowing gas supplies that would otherwise be produced from the Cook Inlet reservoirs and could result in permanent loss of natural gas reserves and deliverability. In this regard, the Applicants maintain that once flowing wells are shut-in, there is no guarantee that those supplies will be available in the future at the same rate of production or that reserves will not be lost permanently. Finally, CPANGC and Marathon assert that the exportation of LNG will help to improve the United States' balance of payments with Pacific Rim countries during the two year term of the proposed blanket authorization.

V. INTERVENTIONS, COMMENTS, AND PROTESTS

As summarized above, FE received timely filed motions to intervene, comments, and/or protests of the application from Agrium; Chevron; Chugach; ENSTAR; the State; and Tesoro. Agrium, Chevron, Chugach, the State, and Tesoro also submitted timely replies to the Applicants' answer; Chugach filed comments on the settlement between the State and the Applicants; and Agrium twice filed supplemental comments on the application.

¹³ In 2005 dollars.

As also described above, three parties—Tesoro, the State, and ENSTAR—entered into settlements with the Applicants whereby they withdrew all opposition to the application. Consequently, the following discussion addresses solely the positions of the non-settling parties—Agrium, Chevron, and Chugach—that submitted argument and evidence in this proceeding. Because the State and Tesoro settled and now unconditionally support a grant of the application as filed, we also do not address those parties’ outstanding requests for additional procedures.

A. Agrium

Agrium, reportedly the nation’s largest fertilizer retailer, owns a fertilizer manufacturing plant on the east side of the Cook Inlet on the Kenai Peninsula adjacent to the Applicants’ LNG facility. Based on its use of natural gas as a feedstock in its operations, Agrium maintains in its Motion to Intervene, Comments, and Protest (Agrium Intervention) that it requires a substantial and consistent flow of Cook Inlet gas in order to keep its Kenai plant open.

Agrium states that the Kenai Fertilizer Plant is capable of manufacturing 1.1 million tons of urea and approximately 600,000 tons of ammonia for sale each year. In order to manufacture these volumes, the Kenai Fertilizer Plant reportedly requires approximately 53 Bcf of natural gas per year. A study commissioned by Agrium and prepared for the instant proceeding by The McDowell Group, an independent consultant, entitled The Economic Impact of Closing Agrium Kenai Nitrogen Operations, (the McDowell Group Report), reports that for every thousand cubic foot (Mcf) of natural gas used at the Kenai Fertilizer Plant, “over \$9 in total Alaska economic output is generated” (Agrium Intervention at 4, *quoting* McDowell Group Report at 1). In 2003, the McDowell Group Report indicates, Agrium’s operations generated a total economic

output of \$374 million while operating at 75% capacity and consuming 40 Bcf of natural gas. *Id.*

Agrium's Intervention recounts a history of a declining level of operations and corresponding declining level of gas consumption at the Kenai Fertilizer Plant:

Prior to 2002, when the Kenai Fertilizer Plant was running at full capacity, gas consumption was approximately 53 Bcf per year. Due to gas supply shortages, gas consumption in 2002 was reduced to 47 Bcf, a reduction of 11% from full capacity. From 2003 to 2005, gas consumption was further reduced to an annual average of approximately 40 Bcf, a reduction of 25% from full capacity. Due to continued gas supply shortages, one of the two urea plants at the Kenai Fertilizer Plant had to be shut down in October 2004 and one of the two ammonia facilities at the Kenai Fertilizer Plant had to be shut down in November 2005. Both of these plants currently remain shut down. In 2006, gas consumption was further reduced to 21 Bcf, a 60% reduction.

Due to continuing and worsening gas supply shortages, the entire Kenai Fertilizer Plant was shut down on October 24, 2006, and currently remains shut down. Agrium anticipates restarting the plant, at reduced rates, later this month....

Agrium Intervention at 4.

However, as noted in the summary above of the Procedural History of the instant proceeding, Agrium's first set of supplemental comments in this proceeding, Agrium's plan to restart the Kenai Fertilizer Plant has been cancelled and the plant will remain closed until an adequate supply of natural gas is obtained. As also summarized above, Agrium stated in its second set of supplemental comments that it has abandoned plans to construct a coal gasification facility that would provide an alternative source of natural gas for use in its Kenai Fertilizer Plant.

Agrium protests a grant of the application. Agrium contends that the application should be denied or, in the alternative, granted subject to a condition that exports are only permitted to the extent that domestic demand for Cook Inlet natural gas is also being satisfied. Agrium Intervention at 18. Citing section 3 of the NGA and its legislative and

regulatory history, Agrium asserts that applications for the export of natural gas must be limited or denied if a grant of export authority were to impair the sufficiency of the supply of natural gas within the United States. Agrium Intervention at 5-6. Agrium points out also that, given the geographic isolation of Alaska and the Cook Inlet from the rest of the United States, “the domestic need consideration in this case must focus on the impacts on domestic users of Cook Inlet gas in Southcentral Alaska.”¹⁴ *Id.*

Based on a number of factors addressed in its pleading and summarized below, Agrium maintains that the proposed exports are not in the public interest and that the application either should be denied or conditioned to ensure that domestic demand requirements are met before natural gas may be exported. Much of Agrium’s argument focuses on its claim that there is unmet domestic demand for the gas that the Applicants seek to export and to Agrium’s objection to a statement in the application that “there is no regional need for the volume of LNG for which the Applicants are requesting export authority during the two-year period terminating March 31, 2011.” Application at 23. In this regard, Agrium claims that it has not been able to secure sufficient supplies since 2002, and that the utilities in the area have only been able to acquire resources on a relatively short-term basis; that the benefits to the people of Alaska from the operations of Agrium’s Kenai Fertilizer Plant greatly exceed the benefits that will derive from operation of the Applicants’ LNG Facility in connection with the proposed exports; and that, in evaluating the adequacy of local supplies of natural gas, OFE should consider not only the theoretical adequacy of reserves and undeveloped resources but also the limits on actual access to supply due to deliverability constraints.

¹⁴ Agrium Intervention at 6, *citing* Order No. 1473 at n. 48.

In further commenting on the application, Agrium asserts that the applicants have understated the demand for natural gas associated with Agrium's Kenai Fertilizer Plant. Agrium contends that the application incorrectly assumes that the Plant would operate at 75% of an already reduced capacity through 2007; that, at the 75% of reduced capacity rate, Agrium would consume approximately 20 Bcf of natural gas annually; and that Agrium would have no demand for natural gas from 2008 to 2011. Agrium maintains in response that it purchased the Kenai Fertilizer Plant in 2000 with the intention of running the plant at full capacity (Agrium Intervention, note 16 at 9); that the declining levels of gas consumption at the Kenai Fertilizer Plant are not the result of declining demand but, in fact, are the result of insufficient gas supply. If supplies were adequate, according to Agrium, the Kenai Fertilizer Plant would be consuming approximately 53 Bcf per year. Agrium further asserts that the inadequacy of gas supply has prevented it from taking advantage of high fertilizer prices and resulted in a post-tax financial impairment to Agrium in 2003 of \$140 million.

The failure of the application to fully include the demand for natural gas at the Kenai Fertilizer Plant, according to Agrium, should not be discounted simply because the majority of the products that Agrium produces are bound for foreign markets. Agrium points out that it is also the largest supplier of urea for the Alaskan wholesale and industrial markets and those products also are used to supply the western United States.

Agrium also contests the Applicants' representation that regional demand for natural gas in the Cook Inlet is largely contracted through 2011. The implication of this representation, according to Agrium, is that there is no local unmet demand for natural gas. In support, Agrium refers to a September 2006 decision of the Regulatory Commission of Alaska (RCA) rejecting a contract between ENSTAR, a local gas

distribution company in the Cook Inlet region, and Marathon and a letter from Marathon acknowledging ENSTAR’s unmet requirements. Additionally, Agrium points to a January 9, 2007, incident in which the Applicants had to divert production from their LNG facility in order to meet utility supply shortfalls and to a presentation by ENSTAR, entitled Cook Inlet Supply and the Impact of North Slope Natural Gas for Future Generations (December 2006) in which ENSTAR projected a supply shortfall beginning in 2009. The letter and other materials cited by Agrium are appended to its Intervention.

Agrium contests the claims of the Applicants regarding benefits to the local economy of the Cook Inlet region from a grant of the requested export authorization. To the contrary, Agrium maintains that use of gas at the Kenai Fertilizer Plant will produce a greater net benefit than the proposed export. “The Kenai Fertilizer Plant employs more people, spends more money in the community, and creates a manufactured product that has greater value than the LNG Facility with any given volume of gas” (Agrium Intervention at 12). At page 14 of its Intervention, Agrium presents the following summary table of alleged comparative benefits:

Summary Comparison of Benefits to Alaska from LNG Facility and Kenai Fertilizer Plant		
	LNG Facility	Kenai Fertilizer Plant
Employment—Direct	58	264
Employment— Direct and Indirect	186	685
Personal Income Generated	\$15.9 M	\$42 M
Alaska goods and services	\$5 M	\$77 M
Property Tax	\$0.9 M	\$2 M

Based on the forgoing alleged comparative benefits, Agrium submits that the choice between granting the export authorization and retaining the same volume of natural gas for use at the Kenai Fertilizer Plant clearly favors the latter.

Agrium also challenges the Applicants' assertion that a shut-in of the LNG facility (due to a denial of the export authorization) could cause a shut-in of the flowing gas supplies and, potentially, lost gas reserves and deliverability for local markets.

Agrium maintains that the local demand for natural gas will support a continuation of flowing gas supplies and there will be no shut-in because of the denial of the export.

Insofar as the Applicants contend that operation of the LNG facility is needed or useful for balancing and reliability, Agrium counters that the Kenai Fertilizer Plant can provide the same balancing and reliability functions. Agrium alleges, for example, that when there were local supply shortages in 2003, the Kenai Fertilizer Plant volumes were diverted to meet other local needs.

Agrium faults the application in addition for assuming that Agrium's planned construction of a coal gasification plant will mean that Agrium's demand for natural gas from the Applicants will be zero. Agrium states that it is only investigating the construction of a coal gasification plant because of local gas shortages. In any case, as described above, Agrium states in its second set of supplemental comments that it has shelved these plans altogether.

Agrium criticizes the application's apparent reliance on potentially discoverable reserves as support for the claim that gas supplies are adequate to meet local needs and still leave enough for the proposed export of LNG. The time frame for developing and bringing to market any potentially discoverable reserves is far too long, according to Agrium, to support the Applicants' inclusion of the reserves in their supply and demand

calculations. Similarly, Agrium criticizes the inclusion of “other energy sources,” including Alaska North Slope Gas, Coalbed Methane, Kenai Coal Gasification, and LNG re-gasification, in the supply and demand calculations because none of these resources, in Agrium’s view, are likely to be available during the 2009-2011 term of the requested authorization.

Agrium also attacks the reserve estimates in the application because they differ significantly from estimates developed by the ADNR and, in particular, faults an assertion in the RD Report that the small difference between the NSAI and ADNR estimates is a matter of interpretation. Agrium Intervention at 17, *citing* RD Report at 2-3. Agrium submits that, while total reserve estimates in the NSAI and ADNR reports may be similar, there are significant underlying differences when the estimates at particular gas fields are compared to one another. In support of its assertion, the Agrium provides a breakdown of these differences:

	NSAI		DNR		Proven Variance		P1 + P2 Variance	
	Proven	Proven + Probable	Proven	Proven + Probable	BCF	%	BCF	%
Beaver Creek	39.6	41.1	36.4	36.4	-3.2	(9%)	-4.7	(13%)
Beluga River	473.3	509.4	539.4	539.4	66.1	12%	30.0	6%
Cannery Loop	44.2	44.2	68.5	68.5	24.3	35%	24.3	35%
Kenai	98	173.2	140.4	140.4	42.4	30%	-32.8	(23%)
McArthur River	89.4	174.9	110.2	110.2	20.8	19%	-64.7	(59%)
Ninilchik	56.4	82.5	50.8	50.8	-5.6	(11%)	-31.7	(62%)
North Cook Inlet	350.3	610.2	320.8	320.8	-29.5	(9%)	-289.4	(90%)
Other	60.6	90.9	85.7	381.9	25.1	29%	291.0	76%
	1211.8	1726.4	1352.2	1648.4	140.4	10%	-78.0	(5%)

Agrium Intervention at 18.

B. Chevron

Chevron, a producer of natural gas, intervened in these proceedings by a timely filed motion (Chevron Intervention). While including comments on the application in its Intervention, Chevron did not protest or otherwise oppose the application.

Chevron states that it is engaged in the exploration for and production and marketing of Cook Inlet natural gas. Chevron exclusively relies on Cook Inlet gas to meet its contractual obligations to supply gas to its local customers, including ENSTAR, Chugach (the electric utility serving portions of Southcentral Alaska), and other industrial customers in Southcentral Alaska.

Chevron is a participant with the two Applicants in three jointly-owned fields on the Kenai Peninsula. CPANGC, Chevron, and Marathon each operate one of these three fields. The reservoirs underlying these fields are the source of the gas sold by Chevron to its local customers and will be the source, according to Chevron, of at least some of the gas to be exported if the application is granted.

Because the Applicants operate two of the three jointly-owned fields, Chevron asserts that the Applicants' decisions regarding production rates from these fields in respect to the proposed export could substantially affect Chevron's ability to meet its delivery obligations to its customers. Chevron notes that the Applicants themselves buttress the concern over the effect of the export on deliverability from the subject gas fields when, in the application, they claim that a shutdown of the Kenai LNG plant could cause a shut-in of the flowing gas supplies that otherwise would be produced from the

Cook Inlet reservoirs and could result in permanent loss of natural gas reserves and deliverability.

Chevron asserts that its continuing ability to deliver gas to its local customers is an important component in determining the public interest of the proposed export authorization. Given the current levels of demand in the Cook Inlet, maintaining at least the current level of deliverability on an ongoing basis is critical to Chevron's ability to meet the demands of its utility customers. While not formally opposing or protesting the application, Chevron stresses that the actions of the Applicants in respect to their proposed export authority could affect Chevron's own ongoing responsibility to meet the needs of Chevron's local customers in the Cook Inlet region.

C. Chugach

Chugach is an electric utility organized as a cooperative in the Cook Inlet area of Alaska. In its Motion to Intervene (Chugach Intervention), Chugach states that it is not opposed in principle to LNG exports and, in fact, had supported the Applicants' last major export extension request. However, Chugach contends that the pending application to export LNG should be granted "only if the Applicants first give assurances, through contractual commitments, that local domestic supply and deliverability needs in Anchorage and the Cook Inlet region will be met for a reasonable period of time" (Chugach Intervention at 1). To grant the application without those conditions, in Chugach's view, could adversely affect not only Chugach itself but the Cook Inlet region generally and would be contrary to the public interest.

In support of its position, Chugach states that it is the largest utility in Alaska and is heavily dependent on the use of natural gas produced on the Cook Inlet for the generation of electricity. Chugach states that it has contracts with four suppliers,

including both of the Applicants. According to Chugach, 84% of the electricity that it generated in 2006, as measured in megawatt hours (MWh) came from Cook Inlet natural gas and much of this gas came from the Beluga River Field, which is operated by ConocoPhillips.

Chugach states that it has no alternative or back-up source of fuel of any significant size and that it is prevented by its existing natural gas supply agreements with producers from developing non-gas power generating resources at this time (Chugach Intervention at 7). Chugach states that it currently uses approximately 26 Bcf of natural gas per year. “In other words, Chugach’s gas requirements in any two year period are currently about fifty percent (50%) of the gas volume that Applicants seek to export during the two year period of their proposed LNG export license extension” (Chugach Intervention at 7).¹⁵

Chugach further states that it currently depends on Cook Inlet natural gas from the two Applicants for over 60% of its total gas supply but indicates that its contracts with the Applicants are due to expire in 2010 (in the case of Marathon) and the first quarter of 2011 (in the case of ConocoPhillips). Those contracts, according to Chugach, have not been renewed and without them, Chugach believes that the entire Cook Inlet region will run out of needed natural gas supplies. Chugach estimates that “it will have unmet gas needs of approximately 4.9 Bcf in 2010 and approximately 17.8 Bcf in 2011” (Chugach Intervention, note 7 at page 8). In addition, Chugach reports that because the Beluga River Field is operated by ConocoPhillips, the two other suppliers of natural gas from that Field—Chevron and Anchorage Municipal Light & Power (ML&P)—have

¹⁵ Chugach notes at page 16 of its Intervention that the Application calls for 99 Bcf of potential new exports but also 10 Bcf of separately authorized exports and 16 Bcf for LNG facility fuel.

expressed significant uncertainty regarding the volumes or deliverability that they will be able to provide to Chugach after 2011.

This uncertainty exists, according to Chugach, notwithstanding the fact that it has supply reserved under contracts with the three Beluga Field producers—ConocoPhillips, Chevron, and ML&P—for the delivery of 120 Bcf (40 Bcf from each producer) beginning in 2011. Chugach states that the terms of these contracts are still subject to negotiation between the parties and approval by the RCA. Chugach is concerned that the reserved supply could be lost if the export authorization is granted.

Chugach argues that the pending export application raises domestic gas deliverability issues and that FE should consider those issues when it evaluates the adequacy of local supplies of natural gas. Essentially, Chugach seems to argue that declining supplies aggravate problems inherent in the constraints of the local delivery infrastructure.

Even in 2007 (and even with the Agrium fertilizer plant shut down due to lack of adequate natural gas supply), at a time when continued LNG exports as well as local domestic requirements both make demands on the natural gas production and delivery infrastructure in Cook Inlet, deliverability has already become a problem, including on one occasion in January when deliveries to the LNG facility were curtailed in order to meet the domestic needs of customers. At this time, the Beluga River Field producers are having to undertake expensive new investments to maintain deliverability, a portion of the cost of which Chugach is obligated to pay (and the benefit of which Chugach naturally hopes to continue receiving for years to come). In practice and in policy, there is no lesser significance to a shortfall of deliverability than to a shortfall of supply. Chugach considers it imperative that the DOE focus not just on available Cook Inlet gas reserves, but also on deliverability to determine whether or not domestic needs could be satisfied if the export license is extended.

Chugach Intervention at 10-11.

As noted above, Chugach maintains that granting the application as filed could be deleterious to the economy of the Cook Inlet region because it will contribute to a

reduction in local gas supply. Chugach points out that the consequence will be higher gas and electric power prices throughout the region. In this regard, Chugach asks that OFE not simply accept the Applicants' assurances to the contrary and that OFE should grant the application only if it is first assured that the authority sought "would produce net benefits for the Cook Inlet region" (Chugach Intervention at 12). More specifically, Chugach requests that the claims of benefits contained in the application are factual matters that should be tested. Insofar as the application claims that the exports will yield additional income for Alaskans, Chugach maintains that those benefits (if they exist) may be more than offset by the negative income effects for Alaskans of having to pay higher prices for electricity or natural gas. Chugach Intervention at 20. Also, while the application claims that the export authorization will produce additional royalty income for the State, Chugach maintains that the State might receive on a net basis the same or even greater royalty payments if the same gas is sold to other buyers in the Cook Inlet region. *Id.*

Chugach stresses that its opposition to the instant application is the consequence of significantly different circumstances than the circumstances that prevailed when the Applicants received their current export authorization in Order No. 1473 in 1999. While Chugach supported the prior authorization, it notes that there was no serious issue at that time regarding the continued availability of Cook Inlet gas for local use.

Supplies and deliverability, at the time, seemed ample. The only real issue...was whether reasonable contract provisions would be agreed to and approved by regulators—not whether the needed volumes and deliverability would even still exist at the relevant time. Today, the situation is much different. In the absence of adequate Cook Inlet gas supplies being committed to Chugach (and others) for the proposed extension period and beyond—including the absence of reasonable assurances of adequate and economical deliverability to make good on such commitments to local domestic users—there is room for substantial, good faith

concern that the added export volumes will have negative impacts on local domestic users, both during the export extension period and beyond.

Chugach Intervention at 13. Chugach adds that a major distinguishing factor is that much of the reserves of natural gas from 1999 have been consumed and “very few new reserves have been added.” *Id.*

For purposes of determining the adequacy of natural gas supplies, the proper focus of this proceeding, according to Chugach, should not be the limited two-year period covered by the application. Chugach urges OFE to look at whether a grant of the application could have longer-term effects on local needs.

VI. APPLICANTS’ ANSWER

The first portion of the Applicants’ answer challenges the standing of Agrium, Chevron, and Tesoro to intervene. OFE addressed and rejected these arguments in its June 5, 2007 Order.

On the merits of the comments and protests filed by the interveners, the Applicants’ answer emphasizes several principal arguments:

- The evidence introduced by the interveners does not contradict the benefits shown by the Applicants from a grant of the requested authorization;
- There will be significant irreversible harm to Alaskans from a shutdown of the Applicants’ LNG Facility;
- The great majority of the filings from the public support the application;
- The filings in opposition to the application to a significant extent ask OFE to consider factors that fall outside the scope of a lawful analysis under NGA section 3;
- Even to the extent the filings in opposition to the application raise issues properly considered under NGA section 3, those filings fail to overcome the statutory presumption in favor of granting the application;

- The interveners request that FE impose conditions on the Applicants that would put the Applicants at an economic disadvantage to their competitors; and
- Because the Applicants seek only a two-year blanket authorization for the export of up to 99 TBtus, the Applicants are not required to have a contract in place for the sale of the volumes to be exported; these facts mean that other parties interested in obtaining the same gas for domestic consumption will be free to compete for the volumes in the open market.

In addressing the issue of the proper legal standard under section 3, the Applicants contend that domestic need for the gas supply in question is “the only explicit criterion that must be considered” under the law. The Applicants observe that previous decisions issued by OFE have found that regional need in Southcentral Alaska is the relevant inquiry. Other factors that may be considered, according to the Applicants, include the desire to promote competition in the natural gas marketplace. These principles, the Applicants contend, are not disputed. The Applicants also assert that the burden is on the interveners to show that a grant of the application is inconsistent with the public interest and contend that none of the interveners have met that burden.

The Applicants contest Chugach’s argument that OFE should examine the impact of a grant of the requested authorization beyond the two-year period, 2009-2011, covered by the application. Citing to Order No. 1473, the Applicants maintain that OFE’s prior practice both with respect to the authorizations awarded to the Applicants and generally has been to confine the analysis of impact to the coincident period for which an authorization is sought. Applicants’ answer, note 40 at 15.

The Applicants further maintain that no party has specifically addressed the supply and demand estimates contained in the NSAI and RD reports. Instead, according to the Applicants, the filings contesting the application have incorrectly argued that specific contractual commitments for all projected local utility demand must be met for

the full term of the proposed export authorization or that OFE should impose a condition allowing diversion of the export volumes to satisfy local demand during the proposed term of the export authorization. The Applicants assert that “these arguments are nothing more than an attempt to use the NGA Section 3 public interest standard to create a right of eminent domain to take natural gas from Applicants’ export operations for the private use of Chugach, ENSTAR, Tesoro, and Agrium.” Applicants’ answer at 16.

The Applicants stand by their argument that the application demonstrates that sufficient reserves exist to satisfy both LNG exports and regional needs. Applicants’ answer at 19. DOE/OFE has never, according to the Applicants, insisted that all local demands be met and under contract prior to granting export authority. The Applicants maintain, in fact, that OFE has previously determined that “it is not in the public interest for DOE to interfere with the normal workings of a competitive market by requiring an exporter to give contract priority to domestic customers.” Applicants’ answer, note 46 at 19, *quoting* Order No. 1473 at 45.

Accordingly, the Applicants ask that OFE reject the contentions of interveners seeking to impose a condition that all local natural gas demands must first be met under binding contractual commitments prior to allowing the proposed export. Not only would such a condition be unprecedented, the Applicants state, but it also would effectively constitute an unlawful delegation of OFE’s authority to decide the instant application to the RCA. This would occur, according to the Applicants, because the contracts in question require the RCA’s approval but, if the proposed condition were adopted, other producers would not be similarly burdened. Therefore, the Applicants maintain that such a condition would be discriminatory. Applicants’ answer at 20.

The Applicants additionally object to Chugach's claims that its demands for natural gas will not be met if the application is granted as filed. According to the Applicants, Chugach's projections of unmet demand are highly speculative.

Chugach in fact had no forecasted uncommitted supply requirements during the timeframe covered by the Export Application at the time the RD data input was being finalized in early December 2006. However, in its annual forecast in mid-December 2006, Chugach's forecast changed to show a 4.9 Bcf unmet requirement in 2010. The increase in Chugach's discretionary "Potential Economy Sales," for which it has no customer contracts as of yet, and which are subject to competition locally by ML&P and regionally by the ability of the electric utility in Fairbanks, Golden Valley Electric Association ("GVEA") to fuel switch, is responsible for the majority of the projected uncontracted volume requirement.

Applicants' answer at 22. Moreover, the Applicants request OFE to reject Chugach's request that the Applicants be ordered to withdraw their application and not to refile it until Chugach has an RCA-approved contract in place.

The Applicants charge that Agrium's claims of inadequate supply likewise are misleading and inaccurate. The Applicants maintain that, while Agrium has an interest in keeping down its natural gas supply costs, it has known about the problem of obtaining a long-term supply of natural gas since shortly after purchasing the fertilizer plant from Chevron and yet "has made no commitment to any producer sufficient to warrant" its operations. Applicants' answer at 25.

Similarly, the Applicants dismiss the claims by Agrium that there are significant field-specific differences between the NSAI estimates and the ADNR estimates (see chart *supra* page 22) and that potentially discoverable reserves will not be available during the term of the requested authorization and, therefore, should not be considered. According to the Applicants, Agrium fails to explain the significance of any field-specific differences in reserves or how these differences affect the minor difference in the gross

totals of both estimates. The Applicants also maintain that OFE should consider potentially discoverable reserves, as it has in prior decisions including Order No. 1473, because these estimates help to show that the proposed export will not threaten long-term natural gas supply in the Cook Inlet region.

Other potential energy sources (Alaska North Slope (ANS) natural gas, coalbed methane, coal gasification, and LNG re-gasification) are included in the RD Report for much the same reason, according to the Applicants, *i.e.*, to show that the proposed export will not threaten the long-term energy security of the Cook Inlet. The Applicants note that they do not claim that these other energy sources will be available during the export period and that the Stress Demand Case in the RD Report reflects increased demand due to construction of an ANS natural gas pipeline but does not include any supply or demand impacts from coalbed methane or coal gasification. The Applicants further state that inclusion of these potential energy sources as contributing only to long-term energy security is consistent with FE's determination in Order No. 1473 to consider other potential sources of natural gas available to Southcentral Alaska. The Applicants acknowledge, however, that

DOE/FE elected not to include the potential sources in its aggregate resource estimates or rely on them in reaching its decision because the record demonstrated that there were more than sufficient conventional natural gas supplies. However, DOE/FE concluded that the potential energy represented 'significant, potential sources of future supplies.

Applicants' Answer at 30, *quoting* Order No. 1473 at 29.

The Applicants challenge the assertions by several of the interveners that the Applicants are solely responsible for assuring deliverability of natural gas. The Applicants note that the interveners do not even define what is meant by "deliverability" and yet the interveners assert that deficiencies in deliverability are both relevant to a

review of the application and must be cured before OFE authorizes the requested export license. In this regard, the Applicants quote liberally from Order No. 1473 to support their position that deliverability is not a relevant consideration and that deliverability from an adequate reserve base is largely a function of competitive market forces, not a matter that properly should be considered in determining whether an export license should be issued. Applicants' answer at 32, *quoting* Order No. 1473 at 42-43. Instead, the Applicants contend that "market forces should be allowed to implement a natural gas supply system that specifically addresses base load, peak and needle peaking requirements." Applicants' answer at 33. The Applicants specifically are looking for the interveners, among other users and consumers of natural gas, to take responsibility for the addition of storage and other infrastructure necessary to support adequate local deliverability.

The Applicants also respond to several public interest considerations raised by the interveners.

First, the Applicants do not agree with Chugach and Agrium that Applicants have failed to show how or why a denial of the requested authorization would lead to a shut down of the LNG Facility, shut-in of wells, or other reductions in production. The Applicants contend that Agrium's position that it needs and would consume all of the gas that would be exported if the authorization were granted is an "anti-competitive" proposition that OFE should summarily reject because the offer to consume the gas "confirms that its [Agrium's] interest is solely that of a competitor attempting to create a temporarily distressed natural gas market for its own economic advantage." Applicants' answer at 34.

Second, the Applicants maintain that Chugach has not offered any evidence to cast doubt on the Applicants' claim that a grant of the requested authorization would benefit the economy of the Cook Inlet region, the income of Alaskans, and the royalty income of the State. In response to Agrium's claims that the fertilizer plant provides greater benefits to the economy and the State, the Applicants contend that "DOE/FE should not put itself into the position of umpire regarding the comparative benefits of alternative industrial uses of the natural gas." Applicants' answer at 35.

Third, the Applicants dispute the claims of interveners that additional natural gas supplies are needed to meet peak demand. According to the Applicants, the intervener's argument overlooks the historical practice of the Applicants of diverting natural gas from the LNG Facility on peak days to meet human needs. The interveners also allegedly overlook the fact that the LNG Facility must be up and running to meet those peak day needs. In this regard, the Applicants additionally reject Agrium's claim that peak shaving is available from Agrium. The Applicants observe that Agrium's plant, unlike the LNG Facility, has no storage capacity and they quote from a June 14, 2003, letter from Agrium U.S. Inc. to ENSTAR Natural Gas Company to illustrate that Agrium itself has acknowledged that the shut-down and restart times for the fertilizer plant are too long to practically accommodate peak shaving needs of other gas users and consumers.

Fourth, the Applicants dispute charges by interveners that the curtailments or interruptions of gas service that have been cited demonstrate the existence of a gas supply shortage. In the view of the Applicants, these events are more a function of economic factors than supply factors. Applicants opine that the success experienced by ENSTAR in securing supplies belies the claims by Agrium on this issue. More specifically with

regard to peak day curtailments, the Applicants state that such interruptions are due to the capacity limits of installed compressors rather than any supply shortfall.

The Applicants additionally oppose the arguments of the interveners for attaching various supply-related conditions to any grant of export authority herein. These conditions are unnecessary and inappropriate, according to the Applicants, in part because supplies are adequate and also because of the other deficiencies in the interveners' arguments summarized above.

VII. INTERVENERS' REPLIES

Agrium, Chevron, and Chugach each submitted timely replies to the Applicants' answer. To the extent that the replies reiterate previously made arguments, they will not be summarized again.

A. Agrium Reply

Agrium charges in its reply that much of the Applicants' answer is meant to distract OFE from the fact that there is a real shortage of natural gas in the Cook Inlet. Agrium maintains that the supposed rebuttable presumption under section 3 of the NGA that a proposed export is in the public interest has been overcome in this case by evidence of existing supply problems. In a footnote, Agrium challenges the proposition that there is a rebuttable presumption. Agrium reply at 3, note 4. Agrium rejects the Applicants' contention that Agrium and the other interveners are trying to get OFE to interfere with commercial negotiations among domestic producers and consumers. Agrium also criticizes what it calls the Applicants' "views" that suggest that selling natural gas to unspecified overseas purchasers in lieu of meeting domestic demand would be acceptable. According to Agrium, this view is inconsistent with the public interest standard which, under section 3, focuses on domestic need. The supply shortages

experienced by the interveners, Agrium continues, were real and cannot legitimately be dismissed merely as the market sorting itself out.

In response to the Applicants' contention that the conditions which the interveners seek to place on the requested authorization are unprecedented, Agrium states that accepting the Applicants' argument would imply that unless the original export authorization were conditioned, no subsequent authorization could ever be conditioned. Additionally, Agrium contends that circumstances, particularly the gas supply situation, have changed since OFE last considered the issues raised in this proceeding and that the mere fact that OFE did not attach the requested conditions previously is no reason not to attach them in the instant proceeding.

Agrium recounts the conflicting positions of the Applicants, on the one hand, and, on the other, the interveners, and concludes that one way to reconcile these conflicts is to preclude export if, and only if, domestic demands are unmet. Agrium reply at 6. Agrium additionally points out that the requested condition should cause no concern for the Applicants if the Applicants' statements as to the adequacy of natural gas supplies for both domestic and export markets are correct. In this regard, Agrium also indicates that "[s]imply pointing to unproduced reserves in the ground will not provide much solace to the public whose interests the NGA requires DOE to protect." Agrium reply at 7.

Agrium disputes the assertion in the Applicants' answer that the domestic supply condition sought on the export authorization by Agrium and other interveners, if imposed, would amount to a "taking" by eminent domain:

Agrium has not requested, or even suggested, that OFE require Applicants to sell natural gas to Agrium. If OFE conditions the export authorization as requested by Agrium, Applicants would remain free to decide whether to produce gas, to whom to sell it to in the U.S., and at what price. The only restriction would be on

exports, and that restriction would be triggered only if there was “domestic need for the gas to be exported.”

Agrium reply at 7-8.

Furthermore, Agrium asserts that the argument by the Applicants that no condition be imposed on the requested authorization because any restriction would be undue market interference “is essentially an argument that the NGA section 3 public interest test should be read out of existence.” *Id.*

Agrium challenges the Applicants’ contention that since Agrium uses natural gas to manufacture fertilizer for export, therefore Agrium’s natural gas is not a “legitimate regional need.” Agrium reply at 8, quoting Applicants’ answer at 9. There is no precedent, according to Agrium, to support the Applicants’ argument.

On the issue of deliverability, Agrium likewise challenges the position taken by the Applicants in their answer. Agrium concedes that “[w]hile the responsibility for delivering gas to utility customers during peak periods may arguably lie with the utilities, the rates at which gas is produced from the field at any given time are within the control of the producers.” Agrium reply at 10. Accordingly, Agrium contends that OFE should consider the issue of production rates in its decision on the application. “It is these production rates (as opposed to the size of reserves) that are critical to the supply side of the public interest evaluation.” *Id.* Agrium, in fact, asks that OFE entertain oral presentations on the issue of whether, in considering the sufficiency of gas supplies to meet regional demands, OFE should compare domestic demand to gas reserves or to gas production. Agrium reply at 11.

B. Chevron Reply

The position of Chevron in this proceeding is set out for the first time in its reply comments.¹⁶ Chevron's reply reiterates much of the same argument contained in its intervention regarding the purported link between the proposed exports and the ability of Chevron to ensure that there is adequate deliverability from the jointly held working interests in gas fields that it co-owns with the Applicants. Chevron points out that the Applicants do not contest these "facts" but do seek to minimize their significance. Chevron reply at 6, citing Applicants' answer at 8-9. Chevron charges that the position taken by the Applicants is internally inconsistent: "Applicants cannot rely on Chevron's ability to meet those commitments to support its application in one breath, and then seek to trivialize Chevron's concerns about Chevron's ability to meet those commitments in another, when it is clear that Chevron's ability to meet those obligations will be directly affected by the Applicants' proposal here." Chevron reply at 6.

Regardless of whether the application is denied or granted, Chevron is concerned that untoward consequences may follow. If denied, Chevron is concerned that the Applicants may no longer wish to jointly develop existing fields with Chevron and this would impair Chevron's ability to meet the needs of in-state Alaska customers. If granted subject to a condition (originally proposed by the State, but subsequently withdrawn) that requires open access to use of the LNG Facility by third parties, Chevron is concerned that there would again be disincentives for the Applicants' future participation in development activities. On balance, Chevron asks that OFE carefully

¹⁶ Notwithstanding the fact that we have granted Chevron's motion to intervene over the objections of the Applicants, the question of whether other parties may have been prejudiced by the timing of Chevron's first statement of position in its reply could have been problematic. However, because neither the Applicants nor the other interveners objected to the submission of Chevron's reply or to the statement of position contained therein, OFE will consider the statement of position in tandem with the other argument and evidence in the pleading.

consider the impact of any decision herein in order to ensure that no disincentives to future development result. If that consideration is honored by a condition on the requested authorization, Chevron would support a grant of the application.

C. Chugach Reply

Chugach reiterates many of the same arguments contained in its intervention regarding the need for the Applicants to ensure that local demand requirements are met through contractual commitments prior to OFE authorizing the requested exports of LNG. In its reply to Applicants' answer, however, Chugach clarifies that it did not mean to imply that RCA approval of such contractual commitments was necessary before Chugach would support a grant of the requested authorization. "If Chugach and Applicants agree on terms of new contracts—something that could be achieved almost overnight—then for Chugach, that will suffice." Chugach reply, note 1 at 3.

Chugach takes issue with the Applicants' characterization of the filings submitted in response to the application. The Applicants' answer, according to Chugach, is disingenuous when it asserts that an "overwhelming majority" of the filings were in support of the application. Chugach considers that most of these responses were prepared as part of a letter-writing campaign and asserts that "[t]he issues here are not to be decided by straw poll." Chugach reply at 4.

Chugach also objects to the insistence by Applicants in their reply that the relief sought by the interveners would interfere with free market forces. The Applicants, according to Chugach, ignore the fact that more than 90% of Cook Inlet gas is produced by four entities and that the Applicants alone account for more than 65% of the local gas production and hold "an even more disproportionate share of uncommitted supplies." Chugach stresses the isolation of the Cook Inlet, including the fact that there are no

pipelines to bring “outside” gas to the area and no other local substitutes for local gas supplies. “By any measure, the Cook Inlet gas market is not competitive.” Chugach reply at 5.

Moreover, Chugach insists that in propounding the public interest standard under section 3 of the NGA, Congress did not leave LNG export decisions to market forces. This is a particularly relevant consideration, Chugach adds, given the lack of competition in the Cook Inlet gas market.

Chugach challenges the “disparaging labels” used by the Applicants in their pleadings. Chugach maintains that it is not just a “special interest” but, in fact, is a non-profit-making public utility controlled and owned by the public while the Applicants, on the other hand, are investor-owned profit-seeking entities. In this context, Chugach rejects the Applicants’ claim that the interveners are seeking to exploit a commercial advantage by their opposition to an unconditioned grant of the export authorization. That is, Chugach contends that the Applicants, by not allaying the concerns of interveners over gas supply, are themselves the ones seeking to gain a commercial advantage at the expense of supply security for natural gas consumers and users in the Cook Inlet region.

In response to the Applicants’ claim that nothing prevents the interveners from negotiating gas supply contracts even after a blanket export authorization is granted, Chugach replies that nothing prevents the Applicants from negotiating such agreements before the exports are authorized. Chugach adds that such negotiations will not cause significant delay.

Chugach also observes, however, that the Applicants claim that the gas in question is available for sale should domestic users wish to negotiate market-clearing contracts may undercut the Applicants’ other claim of a major benefit from the continued

operation of the LNG Facility. According to Chugach, if the same gas in question were contracted by domestic users that otherwise would be exported, that gas would not be liquefied for export and, as the Applicants themselves have argued, the LNG Facility might have to shut down. Consequently, the local economic benefits from continued operation of the LNG Facility would be eliminated.

Chugach maintains that the interveners opposing or seeking to impose conditions on the requested authorization have met their burden under NGA section 3 of showing that the proposed export is not in the public interest. Therefore, Chugach states that the burden of going forward has shifted to the Applicants but the Applicants have failed to meet that burden.

In addressing the standard of review, Chugach refers to the three part analytic framework used in a 1989 export decision, *Yukon Pacific Corp.*, 1 FE 70,259, Opinion and Order No. 350, at 71,134 (1989) (*Yukon Pacific*). Under *Yukon Pacific*, the threshold question is whether the export will cause a shortage. The second inquiry is whether the needs unmet by gas may be more efficiently served by alternate fuels. The final stage of the inquiry is whether the export will reduce the quantity of energy available or increase the total cost of energy in the relevant market.¹⁷

More particularly, Chugach contends that in applying the *Yukon Pacific* analysis, the relevant time frame should not be limited to the two-year term of the proposed authorization. Chugach also asserts that the Applicants should not be permitted to “brush aside” Chugach’s concerns over adequate supply on the grounds that the market is working properly when the evidence indicates the market is not competitive. Chugach

¹⁷ Enstar as well proposed applying the *Yukon Pacific* analysis in its intervention herein and the Applicants filed in opposition in their Answer.

deems it important in this regard for OFE to understand that the gas that will be used for the proposed exports could be conserved beyond the two-year period and used to support the domestic market in the Cook Inlet region. Chugach reply at 11.

Chugach further contends that it anticipates that, based on currently available supplies, it will have unmet requirements even during the two-year term of the proposed authorization. Accordingly, Chugach is critical of the Applicants' assertion (citing Applicants' answer at 15) that Chugach's supplies would not run out quite so fast if Chugach refrained from making economy energy sales to Alaska utilities. Chugach states that its supplies would run out regardless of whether it made such sales. The only difference would be the size of the shortfall—allegedly 2.4 Bcf in 2010 and 16.8 Bcf in 2011 without assuming economy energy sales versus 4.9 Bcf in 2010 and 17.8 Bcf in 2011 with economy energy sales. Chugach reply at 10-11. Chugach adds that economy energy sales—whereby natural gas displaces dirtier burning, less efficient oil—is clearly in the public interest and should not be discouraged in order to support an export of natural gas.

With regard to the issue of deliverability, Chugach contests the Applicants' assertions that deliverability is the responsibility of local purchasers, not the Applicants themselves. Chugach states that, in fact, the Applicants have assumed deliverability obligations up to specified limits in their existing contracts. Chugach offers the example of its contract with ConocoPhillips under which Chugach has paid \$1,277,485 and is scheduled to pay another \$3,175,000 to cover its allocated share of the cost of new compression facilities to maintain deliverability. Chugach is alarmed at the Applicants' disclaimer of responsibility for assuring local deliverability. Chugach maintains that the Applicants' claims about deliverability responsibility in this proceeding constitute the

first time it has made such a disclaimer. “In public interest terms, that would represent—decidedly—a step back.” Chugach reply at 14.

VIII. DECISION

A. Standard of Review

Section 3 of the Natural Gas Act sets forth the statutory criteria for review of the instant export application. Pursuant to applicable amendments and delegations,¹⁸ Section 3 provides:

[N]o person shall export any natural gas from the United States to a foreign country or import any natural gas from a foreign country without first having secured an order of the [Secretary of Energy] authorizing it to do so. The [Secretary] shall issue such order upon application, unless after opportunity for hearing, [he] finds that the proposed exportation or importation will not be consistent with the public interest. The [Secretary] may by [the Secretary’s] order grant such application, in whole or part, with such modification and upon such terms and conditions as the [Secretary] may find necessary or appropriate.

15 USC 717b(a).

In Order No. 1473, OFE found that Section 3 creates a rebuttable presumption that a proposed export of natural gas is in the public interest and that DOE must grant such an application unless those who oppose the application overcome that presumption.¹⁹ Also in Order No. 1473, OFE stated that the burden on the opponents of the requested authority was “heavy” due to the long-standing nature of the authority and the fact that, prior thereto, no party had contested the export. Order No. 1473 at 13.

¹⁸ See, DOE Delegation Order No. 00-002.00G (Jan. 29, 2007) and DOE Redelegation Order No. 00-002.04C (Jan. 30, 2007).

¹⁹ As we observed in Order No. 1473, in order to overcome the rebuttable presumption favoring export authorizations, opponents of an export license must make an affirmative showing of inconsistency with the public interest. Order No. 1473, note 42 at 13, citing *Panhandle Producers and Royalty Owners Association v. ERA*, 822 F.2d 1105, 1111 (DC Cir. 1987). Accordingly, we disagree with and reject Agrium’s argument, presented in its June 26, 2007 reply to the Applicants’ answer that challenges the proposition that there is no statutorily-required rebuttable presumption in favor of granting the application.

In implementing section 3 of the NGA, the Department issued a set of policy and regulatory guidelines (Guidelines) at 49 FR 6684 (February 22, 1984). The goals of the Guidelines are to minimize federal control and involvement in energy markets and to promote a balanced and mixed energy resource system. The Guidelines further provide that

[t]he market, not government, should determine the price and other contract terms of imported [or exported] natural gas. The federal government's primary responsibility in authorizing imports [or exports] will be to evaluate the need for the gas and whether the import [or export] arrangement will provide the gas on a competitively priced basis for the duration of the contract while minimizing regulatory impediments to a freely operating market.

Id.

While nominally applicable only to natural gas import cases, OFE held in Order No. 1473 and in subsequent cases that the same policies will be applied to natural gas export applications.²⁰

In reviewing the proposed LNG export under the Guidelines in Order No. 1473, OFE indicated that it also was guided by DOE Delegation Order No. 0204-111. That delegation order, which authorized the Administrator of the Economic Regulatory Administration (ERA) to exercise the agency's review authority under NGA section 3, also directed the Administrator to regulate exports "based on a consideration of the domestic need for the gas to be exported and such other matters as the Administrator finds in the circumstances of a particular case to be appropriate."

While DOE Delegation Order No. 0204-111 is no longer in effect, the principal focus of this agency's review of export applications in decisions under current delegated authority has continued to be the domestic need for the natural gas proposed to be

²⁰ Order No. 1473 at 14, *citing Yukon Pacific*, Opinion and Order No. 350, 1 FE 70,259 at 71,128.

exported. Furthermore, given the relative geographic isolation of the natural gas market in the Cook Inlet region of Alaska, OFE in Order No. 1473 focused specifically on the regional need for the gas for which the export application in that case was sought.

Therefore, DOE considers domestic need for the gas and any other issue determined to be appropriate, including whether the arrangement is consistent with DOE's policy of promoting competition in the marketplace by allowing commercial parties to freely negotiate their own trade arrangements, as the critical legal considerations to be weighed in reviewing the instant application for export authority.

In addition to the review and approvals required under the NGA, the National Environmental Policy Act (NEPA), 42 U.S.C. § 4321 *et seq.*, requires DOE to give appropriate consideration to the environmental effects of its proposed decisions.

B. Regional Need

1. Natural Gas Supply in Southcentral Alaska

a. The Applicants

The Applicants, through the NSAI report, projected that the sum of proved and probable natural gas reserves in the Cook Inlet region is 1,726.4 Bcf. The Applicants, through the use of RD's analysis, developed two natural gas supply scenarios during the time of the proposed LNG export. The first scenario, labeled the "Expected Supply Case", uses NSAI's estimated proved and probable natural gas reserves figure of 1,726.4 Bcf, coupled with PGC's "most likely" case of an estimated 1,050 Bcf of potential natural gas resources present in the Cook Inlet region. Under this scenario, the total natural gas supply resources total 2,776.4 Bcf. The second scenario, termed the "Stress Supply Case", employs the same use of NSAI's estimate of proved and probable natural gas reserves figure of 1,726.4 Bcf; however, it substitutes PGC's "minimum" or high

probability (95%) case of an estimated 600 Bcf of potential natural gas resources present in the Cook Inlet region in its supply forecast. The total natural gas supply under this scenario is 2,326.4 Bcf.

b. The Interveners

i. Agrium

Agrium does not provide a study of present or future gas supplies. However, Agrium does submit a table, *supra* page 22, showing field-specific discrepancies between Applicants' projected proven and proven plus probable reserves and those of the ADNR. The field-specific discrepancies for proven plus probable reserves range from a low of 6% (for the Beluga River field) to a high of 90% (for the North Cook Inlet field). Overall, however, the difference in total proved plus probable reserves for the Cook Inlet region between the Applicants' projections and those of the ADNR is minimal (slightly less than 5%).

ii. Chevron

Chevron, as indicated previously, has not submitted a supply study but is principally concerned about the effect that the proposed exports could have on deliverability from commonly owned working interests.

iii. Chugach

Chugach is particularly concerned about future gas supplies and alleged deliverability problems in times of peak demand in the winter months. But, like Chevron, it has not submitted a supply study.

c. Discussion

In order to determine whether there is a regional need for the natural gas proposed to be exported, the available supply of natural gas is a principal issue, and the Department

has carefully reviewed the Cook Inlet region natural gas supply projections submitted, cited, or relied upon by the parties to this proceeding.

The non-settling interveners have not submitted any supply studies of their own, nor have they mounted a serious challenge to the supply estimates contained in the Applicants' submissions in this proceeding. While Agrium has identified certain field-specific discrepancies in proven plus probable natural gas reserves between the NSAI estimates used by the Applicants and the estimates published by the ADNR, the overall variance in total proven plus probable natural gas reserves between these estimates is insignificant (less than 5%). Further, the PGC estimates of potential additional natural gas resources in the Cook Inlet region projected by the Applicants have not been challenged by the non-settling interveners, and the undisputed evidence of record indicates the total natural gas supply resources are distributed on a region-wide basis throughout the Cook Inlet region. On this basis, we do not find that the non-settling interveners have shown that there is a domestic supply shortage within the Cook Inlet region. Rather, the Applicants' submissions provide a reasonable basis for concluding that local supplies are adequate to support the proposed export as well as meet local demand requirements during the term of the proposed authorization and beyond.²¹

2. Natural Gas Demand in Southcentral Alaska

a. The Applicants

As described above, the Applicants retained RD to perform an economic analysis of the LNG export proposal. As a part of this analysis, RD constructed two possible

²¹ We do not reach the issue of whether or not it is appropriate or necessary to look beyond the two-year period covered by the proposed authorization. Given the paucity of evidence challenging the Applicants' supply studies for the two year period and beyond, we need not resolve that matter. Even assuming arguendo that looking beyond the two-year period were warranted, the predominant weight of the evidence supports the Applicants' position that there will be an adequate supply of natural gas to meet local needs.

natural gas demand scenarios for the 2006 to 2011 time frame: expected case and stress case. Inasmuch as future natural gas demand for the electric and natural gas utilities largely reflects demographic changes, the Applicants relied on demographic forecasts published by the Institute for Social and Economic Research (ISER). ISER is a publicly-funded research center within the University of Alaska Anchorage.

Under the expected demand scenario, the population is projected to grow at an annual rate of 1% and employment is expected to increase annually by 0.5%. With regard to natural gas demand for the electric utilities, Chugach Electric Association and Anchorage Municipal Light & Power, RD shows a decline of 4% from 38.5 Bcf in 2006 to 31.6 Bcf per year by 2011. This forecast reflects a gradual decline in per capita gas demand due to efficiency improvements and a further reduction in natural gas demand due to the replacement of inefficient generation equipment by 2010. In forecasting demand for gas utilities, RD relies on projected population changes and regulatory filings made by ENSTAR Natural Gas Company (ENSTAR) on projected retail sales, with an additional allowance for direct access customers. RD notes that the military bases in the region previously relied upon their own generation facilities; however, they now purchase all of their electric and natural gas needs from the local utilities. Consequently, this demand is reflected in the forecasts of the electric and gas utilities. Natural gas demand for field operations (oil & gas production) in the Cook Inlet region is expected to decline during the 2006-2011 timeframe, from 11.9 Bcf in 2006 to 7.2 Bcf in 2011 to reflect lower production. Industrial demand for natural gas comes primarily from the ammonia-urea fertilizer plant owned by Agrium and the Kenai LNG facility owned by the Applicants. Under this demand scenario, the Applicants forecast that Agrium will discontinue operations after 2007; therefore, there will not be any demand for natural gas

beyond the current year. If the plant were to open in the future, RD assumes that Agrium would utilize coal gas from a new coal gasification plant that was being contemplated by the company. RD's demand projection for the Applicants' LNG facility shows a steady annual decline from 75 Bcf in 2006 to 58 Bcf during the requested two-year blanket export request.

Thus, under RD's "expected" demand case, the total regional annual demand for natural gas will fall from 180.4 Bcf in 2006 to an annualized level of 79.3 Bcf starting on April 1, 2011, excluding any natural gas use for LNG exports and fertilizer manufacturing. Under this demand case, RD projects a cumulative total natural gas consumption of 813 Bcf from 2006 through the first calendar quarter of 2011.

Under the stress demand scenario, the Applicants assume greater population growth and higher rates of employment than under the expected demand scenario. The growth in population and employment is caused by rapid tourism expansion, the building of the Alaska North Slope Gas Pipeline and the Knik Arm Bridge, high oil revenues and rapid mining sector expansion. Under these assumptions, the population is projected to grow at an annual rate of 2.3%, while employment is expected to grow at an annual rate of 1.9%. Under the stress demand case, natural gas use by electric utilities parallels the increased growth in population, but follows the same per capita demand as shown in the expected demand case. Although this demand case forecasts per capita efficiency gains, it does not include efficiency gains in electricity generation. Under the stress demand case, natural gas demand for electricity generation increases 1.2% from 38.6 Bcf per year in 2006 to 41 Bcf per year in 2011. With regard to gas utilities, greater population assumptions and a 2% faster growth rate in customers than forecasted by ENSTAR to regulatory authorities results in natural gas demand growing faster than under the

expected demand case. Natural gas demand for military bases is the same as under the expected demand case. The stress demand case projections for field operations gas use are somewhat higher due to increased natural gas production. However, it also shows a steady decline from 2006 to 2011. Industrial demand for natural gas under the stress demand case is the same as the expected demand case for LNG production, but increases by 20 Bcf per year for Agrium's fertilizer plant. This assumption is that Agrium will continue to run its plant at the 2006 level of operation from 2007 through 2011.

Thus, under the "stress" demand case, the total regional annual demand for natural gas, including fertilizer manufacturing, is projected to fall from 180.7 Bcf in 2006 to an annualized level of 120.7 Bcf in 2011, excluding any natural gas used for LNG exports. Under this demand case, RD projects a cumulative total natural gas consumption of 917 Bcf from 2006 through the first calendar quarter of 2011.

c. The Interveners

i. Agrium

Agrium is the only intervener that disputes the Applicants' demand forecasts. Under the Applicants' "stress" demand case, it showed Agrium being supplied 20 Bcf of gas per year for 2008 and beyond. Agrium argues that the Applicants understate the demand associated with the fertilizer plant as it would take 53 Bcf of natural gas per year if the supply were available. Agrium maintains that its plants' reduced gas consumption reflects insufficient supply to meet existing gas demand, not reduced demand for natural gas. Agrium never divulges what it pays for its natural gas feedstocks. However, Agrium has not presented an alternative study of natural gas demand for the entire Cook Inlet region.

ii. Chevron

Chevron does not present an alternative analysis of demand in the Cook Inlet region and essentially does not contest the demand estimates submitted by the Applicants. Chevron's concern principally is in assuring that any authority granted to the Applicants does not have a deleterious effect on Chevron's own ability to deliver gas from joint working interests in gas fields co-owned with the Applicants.

iii. Chugach

Chugach, like Chevron, makes no specific comment on the Applicants' demand forecasts.

c. Discussion

On balance, the interveners opposing the application have not submitted evidence that substantially contradicts the demand estimates in the Applicants' submissions. Agrium is the sole non-settling intervener to submit relevant estimates, and those numbers alone are not based on an independent analysis by qualified professionals and do not warrant a finding adverse to the Applicants' showing of estimated demand. On the other hand, the demand studies introduced by the Applicants were prepared by independent analysts and are largely unchallenged in their particular findings by the interveners herein.

In this regard, OFE finds that Agrium has not demonstrated that its decision to close its fertilizer plant, thereby dampening demand in the Cook Inlet region, is the consequence of an actual supply shortfall, deliverability constraints at the production side of the local distribution system, infrastructure limits within the distribution network, or simply a business decision based on the market price of natural gas or, possibly, a

number of other business judgments. Whichever the case, it is clear that Agrium has not established a reason to reject the Applicants' demand estimates.

3. Additional Regional Need Issues

a. Deliverability Constraints, Curtailments, and Competition

There is undisputed evidence that curtailments have occurred within the Cook Inlet region on peak winter days and that the Applicants have sometimes diverted supplies from their LNG Facility in order to assure service to meet human needs. As indicated above, however, the anecdotal evidence also includes conflicting claims as to the reasons for these curtailments and the parties are clearly split on who bears responsibility for ensuring that there is adequate deliverability to meet local needs. It may well be that there are deliverability constraints at the Applicants' production facilities and/or within the local utility distribution networks. However that may be, even assuming that there are deliverability problems that are within the control and responsibility of the Applicants, we do not find that the alleged deliverability problems are a basis for denying the requested authorization or for conditioning the export authorization on an assurance that local demand must always be met before LNG is exported.

As in Order No. 1473, we continue to believe that market forces will drive the installation of adequate delivery mechanisms and that the cost of such improvements will be appropriately assessed at a market-clearing price. While allegations have been made regarding a high degree of concentration of economic power in the hands of a few producers of natural gas in the Cook Inlet region, we do not find that the non-settling interveners leveling those charges have attempted to substantiate them in a meaningful way, *e.g.*, through the introduction of market concentration studies.

Furthermore, the fact that local stakeholders may have been slow in the past to act to install additional gas storage and other peak-shaving resources, thereby perpetuating a nascent problem at the time that Order No. 1473 was issued in 1999, is evidence only that the problem was not then severe enough to drive corrective action and the market was working without the additional facilities.

Consistent with the Guidelines that inform our decision on export applications, we find that market forces should be allowed to continue to work and that there is no basis within the scope of our authority under section 3 of the Natural Gas Act to impose a condition that effectively guarantees that local needs must be met through firm contractual commitments before exports can commence.

We hasten to add that we do not agree with the Applicants' supposition that such a condition alone would cause a shut-down of the LNG Facility or a shut-in of the field from which the gas to be exported is produced. If, as the Applicants themselves allege and as we have found above, there is sufficient gas to support both the planned export and the supply of local needs, we see no basis for concluding that conditioning the export license would cause either of these undesired results.

However, we do find that such a condition on the export license would be onerous and unduly discriminatory because it would single out the Applicants and put them at a competitive disadvantage *vis-à-vis* other producers that do not have to comply with such a condition and are free to sell their gas in either domestic or export markets. Given the market-oriented focus of our inquiry, and for the additional reasons set forth above, we are unwilling to impose such a condition.

b. Contractual Issues

We observe that Chevron has raised a distinct concern which warrants separate comment. Chevron understandably is concerned with production rates from a field in which it holds a joint working interest with the Applicants. If the export authorization is granted, Chevron is concerned that production rates and, therefore, deliverability from the field will be reduced and that it will have no control over that event.

The problem that Chevron anticipates may or may not come to pass. However, we do not believe that this matter is any more susceptible of proper redress in the context of this NGA section 3 proceeding than the corresponding deliverability issues raised by Agrium and Chugach at the delivery end of the system. In fact, as a joint working interest owner, Chevron and the Applicants should have common interests in assuring deliverability from the field and, presumably, no one of these producers would reasonably undertake an action which works to their own detriment. To the extent that Chevron nonetheless believes that the other two working interest owners are undertaking an activity, *e.g.*, the proposed export, that is inimical to the deliverability of production, Chevron has recourse to the courts under standard oil and gas law principles. OFE is not the proper jurisdictional forum for resolving these sorts of contractual disputes.

4. Conclusion

Based on the evidence of record, DOE finds there are adequate supplies to meet both domestic and export demand during the proposed export timeframe, and approval of the export license will not adversely affect domestic gas use in the Cook Inlet region. In addition, DOE finds the arguments made by the non-settling interveners regarding deliverability constraints and other economic and contractual issues do not alter the basic supply and demand balance for the Cook Inlet region, thus reinforcing the conclusion

there are adequate supplies to meet both domestic and export demand during the proposed export timeframe.

C. Other Public Interest Considerations

Domestic need is the only explicit public interest consideration identified by DOE Delegation Order No. 0204-111. However, consistent with DOE's Guidelines and applicable precedent, *e.g.*, Order No. 1473, the Department considers the potential effects of proposed exports on other aspects of the public interest. These other considerations include Alaskan interests, international effects, and the environment.

1. Alaskan Interests

As described previously, the Applicants have asserted that approval of the requested authorization will provide significant tangible benefits to the Alaskan economy whereas a denial would likely result in significant detriments. The two principal benefits alleged by the Applicants include:

- Steady employment and income generation in Southcentral Alaska, an area noted for seasonal unemployment, of approximately \$15.9 million dollars in personal income per year; and
- Royalty payments on LNG and from production and corporate income tax receipts.

Conversely, the major detriments likely arising from a denial of the application, according to the Applicants, are:

- A major decline in employment and income in the Cook Inlet region due to a shut-down of the Kenai LNG Facility;
- A shut-in of flowing gas supplies that would otherwise be produced from the Cook Inlet reservoirs; and
- A potentially permanent loss of natural gas reserves and deliverability.

Agrium as well submitted substantial evidence regarding the benefits flowing from its fertilizer operations on the Kenai Peninsula. Whereas the Applicants focused on benefits from the liquefaction plant standing alone, Agrium presented a table (duplicated above) purporting to compare the relative benefits to the local economy of its fertilizer operations *vis-à-vis* the Applicants' liquefaction plant.

The information submitted by Agrium is uncontested and it shows that Agrium's operations, in fact, do yield significantly greater benefits for the local economy than the Applicants' liquefaction operations.²² If this proceeding turned on choosing between the two plants' potential contributions to the local economy of Southcentral Alaska, the choice would favor Agrium.

That is not the case, however. As discussed above, we have found that there is adequate gas supply to support local demand and also the proposed export authorization. While Agrium claims that it has decided to close its fertilizer plant because of inadequate gas supply, thereby attempting to present to FE a critical choice between authorizing the proposed export or in effect preserving gas for local consumption, we find that this choice is unnecessary. There is enough gas to support both. And, notwithstanding Chugach's unsubstantiated claim that granting export authority would result in higher local gas and electric prices,²³ doing both clearly would be the overall optimal net solution for the interests of Alaskans.

²² The net benefits claimed by Agrium included: higher employment levels at its fertilizer plant (685 direct and indirect employees) versus the Applicants' liquefaction facility (186 direct and indirect employees), greater personal income generated (\$42 million versus \$16.9 million), production of larger volumes of Alaskan goods and services (\$77 million versus \$5 million); and more property tax receipts (\$2 million versus \$0.9 million) *See*, Agrium Intervention at 14.

²³ It may be theoretically true, as alleged by Chugach, that the combined demand for natural gas at the local level and due to the proposed exports could increase the price of natural gas on the Kenai Peninsula. Since, however, the authorization granted by this order, in effect extends the Applicants' existing authority under Order No. 1473, the price impact is likely to be null. In any event, the benefits to the local economy from

Obviously, there is a problem in doing both. For any of a variety of reasons, Agrium has decided to close its facility. Based on the evidence presented, however, we are persuaded that Agrium has been unable to come to terms on a natural gas supply contract at a price and on terms which are mutually acceptable to the involved parties. This is a problem, however, of competition and market forces, not a problem of inadequate supply. Although, as we explained previously, there may also be problems of deliverability due to capacity limitations, these problems are correctible by local investments by responsible parties.

On balance, we find that local interests are well served by a grant of the requested authorization because the continued operation of the Applicants' liquefaction plant provides significant benefits to the local economy. While it would be desirable for Agrium to continue operating its fertilizer plant, thereby generating even greater additional benefits to the local economy, that decision rests with Agrium.

We note additionally that the Applicants' operations provide one other significant benefit in support of local interests, *i.e.*, the liquefaction plant provides a peak-shaving function that actually enhances deliverability during the coldest periods of the winter. No party provided evidence that this service had not been provided on occasions when most critically needed. The evidence presented by the Applicants also persuades us that, due to slow start-up and shut-down cycles, Agrium's fertilizer plant is incapable of providing a similar peak-shaving service. These facts further support a grant of the proposed authorization because they will help to ensure that the liquefaction operations continue.

continuing the operations of the liquefaction plant is likely to outweigh the impact of a marginal increase to the price of natural gas, if any.

2. International Effects

The Applicants assert that the exportation of LNG will help to improve the United States' balance of payments with Pacific Rim countries during the two-year term of the proposed blanket authorization. No intervener disputed the likelihood of this benefit and we find that mitigation of balance of payment issues may result from a grant of the instant application.

3. The Environment

DOE has considered the National Environmental Policy Act (NEPA) compliance aspects of the requested LNG export authorization, and has determined that the Department is not required to prepare a detailed analysis of the potential effects of granting the application. The requested authorization does not involve new construction or changes in existing export operations. Authorization by DOE would not involve any extraordinary circumstances. Therefore, DOE has determined that its authorization of the Applicants' request to export LNG is covered by the Categorical Exclusion found at paragraph B5.7 of Appendix B to Subpart D, 10 CFR Part 1021, which applies to the approval of new authorization to import/export natural gas.

D. Other Matters

1. Requests for Additional Procedures

We note that Tesoro and the State separately filed requests for additional procedures prior to the withdrawal of all opposition to an unconditional grant of the authorization requested by the Applicants. In our June 5, 2007, order herein, we deferred ruling on those requests. In light of the withdrawal of all opposition to a grant of the requested authorization, the pending requests are moot and shall be dismissed.

Additionally, Agrium included in its June 26, 2008, reply a “Suggestion for Oral Presentation on Test for Evaluating the Public Interest.” No party responded to the suggestion. Whether Agrium intended for its “suggestion” to be construed as a motion under applicable regulations governing the instant proceeding, 10 CFR 590.302, is not precisely clear. So construed, however, we find that the suggestion should be denied because the record before us provides a sound evidentiary basis for our decision and oral presentations on the appropriate legal test to be used in evaluating the application are unnecessary in light of our reading of the law and agency precedent. In any case, under our regulations (10 CFR 590.302(c)), the suggestion *qua* motion was deemed denied by operation of law because no action was taken within 30 days of its submission.

2. Request to Vacate Applicants’ Order No. 1580 Authorization

On April 10, 2000, in DOE/FE Order No. 1580, FE granted CPANGC and Marathon blanket authorization to export up to 10 TBtus of LNG from the Kenai LNG facility to international markets over a two-year period beginning on the date of the first export. This blanket authorization was intended to supplement the long-term authorization issued in Order No. 1473.

In the instant proceeding, the Applicants initially requested that FE vacate the blanket authorization issued in Order No. 1580 contemporaneous with, and conditioned on, the issuance of the proposed blanket authorization sought herein. In a letter dated February 16, 2007, the Applicants notified DOE they were still contemplating activation of the blanket authorization issued in Order No. 1580. The Applicants further stated in their February 16, 2007, letter that if the blanket authorization issued in Order No. 1580 was activated before the Department issued a favorable Order in the instant proceeding, it would not be necessary for the Department to vacate the Order No. 1580 blanket authorization. Alternatively, the Applicants stated that if the Department issues a favorable Order herein before the Applicants activate the Order No. 1580 blanket authorization, then the Applicants seek to reserve the authority to activate the Order No. 1580 blanket authorization prior to the effective date of any authorization granted in the instant proceeding.

Subsequent to the Applicants' February 16, 2007, letter, the blanket authorization issued under Order No. 1580 was activated by the Applicants on September 29, 2007. To date, one export of LNG under this authorization in an amount equivalent to 1.9 Bcf of natural gas has occurred. Since this blanket authorization was issued for a two-year term commencing from the date of first activation, the term of this authorization would normally extend to September 28, 2009, or until LNG in the amount equivalent to 10 Bcf of natural gas has been exported.

In light of the Applicants' uncontested request in their application to vacate the blanket authorization issued in Order No. 1580 contemporaneous with the effective date of the instant authorization, the Order No. 1580 authorization will be vacated by DOE on April 1, 2009. We note that the Applicants never withdrew their request that the Order

No. 1580 authorization be vacated concurrent with the effective date of the authorization issued in the instant proceeding and the February 16, 2008, letter only presented conjectural statements about the need to vacate under various possible circumstances.

3. ENSTAR's Prohibited Off-The-Record Communication

As summarized previously, on April 18, 2008, Colleen Starring, Regional Vice President of ENSTAR, submitted a letter to the undersigned urging the timely approval of the pending application. We issued an order on May 1, 2008, holding that the letter constituted a prohibited off-the-record communication in violation of our regulations.²⁴ We placed the letter in the public file and provided that parties would have seven days, *i.e.*, until May 8, 2008, in which to submit comments on ENSTAR's May 1 letter. ENSTAR and Chugach filed timely comments on May 8, 2008. ENSTAR therein essentially apologized for its improper submission and maintained that the error was an innocent one.

In its May 8 comments, on the other hand, Chugach disputed ENSTAR's claim of an innocent error and contended that, in sending the letter to DOE with copies to several public officials,²⁵ ENSTAR perpetuated a pattern of misconduct of trying to improperly apply political pressure to DOE in order to obtain a favorable decision on the application and that these actions were undertaken in concert or at least with the foreknowledge of the Applicants.

²⁴ See, 10 CFR §§ 590.107(a) and 590.108(a).

²⁵ The public officials apparently receiving the Enstar letter include Alaska's two United States senators and sole member of the U.S. House of Representatives, Alaska's governor, and the entire membership of the Alaska state legislature.

In support of its position, Chugach refers to:

- Another letter, allegedly sent in January 2008 by the Alaska congressional delegation to the Secretary of Energy; the January 2008 letter, like the April 2008 letter, was not served on other parties to this proceeding; however, unlike the April 2008 letter, the January 2008 letter was intercepted by DOE staff and returned to the senders before it reached its intended addressee; and
- Gas supply agreements between ENSTAR and both of the Applicants, executed April 11, 2008—just one day after ENSTAR submitted its improper communication; the contracts were executed after ENSTAR withdrew its conditional opposition to the application; Chugach maintains that from this sequence of events, it is logical to infer that the April 10 letter represented part of the overall consideration necessary to secure the Applicants' agreement to the contracts and that the Applicants agreed that the letter would be sent and, perhaps, even agreed to its text as well.

Given the forgoing, Chugach requests that DOE issue an order requiring the party responsible for the improper communication, *i.e.*, the Applicants, not ENSTAR, to show cause why its “claim or interest in the proceeding should not be dismissed, denied, disregarded, or otherwise adversely affected on account of the violation” of the agency’s rules.²⁶ Chugach adds that if the Applicants do deny their involvement in ENSTAR’s April 10 letter, DOE should conduct discovery for the purpose of determining the relevant facts. On the other hand, if the Applicants admit their involvement, Chugach requests DOE to issue another show cause order contemplating sanctions, including possible dismissal of the application.²⁷

²⁶ Chugach May 8, 2008 Comments at 2, quoting 10 CFR 590.108(a)(6).

²⁷ Chugach May 8, 2008 Comments, at 5.

In addition to claiming that the Applicants were improperly involved in the April 10, 2008, letter from ENSTAR, Chugach maintains that the conduct of the Applicants in securing a withdrawal of the conditional opposition to the application by Chugach and the State in exchange for the offer of new gas supply agreements exposes “a fatal flaw” in the Applicants’ case:

The Applicants started out to demonstrate, as they must, that Cook Inlet gas supplies already are and will remain ample to meet local domestic needs. Otherwise, the Application would not be in the public interest. The Applicants have ended up in the opposite position, basically threatening that local domestic needs cannot and will not be met unless the Application is first granted. The local users and future supplies of Cook Inlet gas are all being held hostage to exports.... The ENSTAR letter confirms what Chugach has contended throughout, namely that the Applicants have put exports first and local domestic users second. Since the standard of decision requires the reverse, this makes outright approval of the Application legally impossible.

Chugach May 8, 2008 Comments at 8-9 (footnote omitted).

Based on our review of ENSTAR’s May 1 letter and the timely filed comments submitted by ENSTAR and Chugach, as well as the May 19 motion and reply filed by ENSTAR; the May 20 request to answer and answer submitted by the Applicants; the May 22 motion by Chugach for leave to respond and response,²⁸ and the May 27 letter response by ENSTAR, we find that Chugach has not substantiated its claims of impropriety and the relief requested by Chugach accordingly is unwarranted. In this connection, we do not find that ENSTAR’s April 10 letter compromised the integrity of the proceeding. It may be true that ENSTAR’s representative naively believed that the

²⁸ We find that the May 19 motion for leave to reply filed by Enstar; the May 20 request to answer submitted by the Applicants; the May 22 motion by Chugach for leave to respond and response; and the request for leave to reply in the May 27 letter from ENSTAR should be granted. The aforementioned filings provide additional factual perspective on the circumstances surrounding the transmittal of Enstar’s April 10 letter and will assist us in addressing the issues raised by Chugach. Accordingly, we have considered the material submitted to enhance our understanding of the relevant facts and circumstances, particularly the fact that the Applicants deny that they were involved in or cognizant of the April 10 letter from Enstar prior to its transmittal.

letter would produce a salutary result for her employer in terms of accelerating DOE's handling of the matter. Otherwise, there would have been no reason to submit the letter in the first place. However, we do not find that the letter evinced an intent to improperly influence the substantive view or the disposition of the case on the merits by DOE decisional employees. The letter contained absolutely no new or relevant information or argument that would have affected the outcome of the case and ENSTAR's interest in seeing an unconditional grant of the application was already well-established on the record when the letter was filed.

We do not mean to imply or suggest that we take lightly ENSTAR's submission of a prohibited off-the-record written communication. As is evident from the flurry of pleadings that followed the issuance of our May 1 order herein, the very act of submitting such a prohibited communication gives rise to all sorts of possible inferences, charges, and counter-charges. Were the content of the improper communication something more substantive, we would be inclined to grant Chugach's request for the issuance of a show cause order and, absent sufficient evidence showing the non-involvement of the Applicants, we might have found that additional remedial action was warranted, potentially including dismissal of the application. That case, however, is not before us. The seriousness of the act in this proceeding does not rise to the level described in Chugach's characterizations and speculations and we will deny Chugach's requested relief. We admonish ENSTAR and all parties, however, that the Department does not look favorably on the submission of prohibited communications and all persons appearing before the agency should have in place internal safeguards to avoid such an event.

Additionally, we reject Chugach's contention that the agreement of the Applicants

to enter into supply agreements with ENSTAR represents a fatal flaw in the Applicants' position in this proceeding. As discussed *supra*, these supply agreements actually seem to confirm the Applicants' stated position that there is enough natural gas in the Cook Inlet region to support both the proposed exports and local needs for natural gas.

Assuming that the Applicants are operating in good faith, as we must in the absence of contrary evidence, they presumably would not have committed to both selling gas locally and exporting LNG unless their reserves supported both.

E. Conclusion

After taking into consideration all of the information in the record of this proceeding, we find a two-year blanket authorization for ConocoPhillips Alaska Natural Gas Corporation and Marathon Oil Company to export LNG to Japan and/or one or more countries on either side of the Pacific Rim has not been shown to be inconsistent with the public interest. In particular, the record shows there is sufficient regional supply of natural gas to satisfy local and export demand through the authorization timeframe. Furthermore, we believe the blanket authorization will continue benefits provided by the export to the Alaskan economy and international trade.

ORDER

Pursuant to section 3 of the Natural Gas Act, and for the reasons set forth above, it is ordered that:

A. ConocoPhillips Alaska Natural Gas Corporation and Marathon Oil Company are authorized to export up to 99 Trillion British thermal units (TBtus) of liquefied natural gas (LNG) (the equivalent of 98.1 Billion cubic feet (Bcf) of natural gas), to Japan and/or one or more countries on either side of the Pacific Rim (as defined in the Glossary of Terms and Abbreviations above), pursuant to transactions that have terms of no longer than two years. This authorization shall be effective for a two-year term beginning on April 1, 2009, and extending through March 31, 2011.

B. This LNG may only be exported from the Kenai LNG export facility located near Kenai, Alaska.

C. Monthly Reports: With respect to the export of LNG authorized by this Order, both ConocoPhillips Alaska Natural Gas Corporation and Marathon Oil Company shall file with the Office of Natural Gas Regulatory Activities, within 30 days following the last day of each calendar month, a report indicating whether exports of LNG have been made. Monthly reports must be filed whether or not initial deliveries have begun. If no exports have been made, a report of "no activity" for that month must be filed. If exports of LNG have occurred, the report must give the following details of each LNG cargo: (1) the name of the U.S. export terminal; (2) the name of the LNG tanker; (3) the date of departure from the U.S. export terminal; (4) the country of destination; (5) the name of the supplier/seller; (6) the volume in thousand cubic feet (Mcf); (7) the delivered

price per million British thermal units (MMBtu); (8) the duration of the supply agreement (indicate spot sales); and (9) the name(s) of the purchaser(s).

D. The first monthly report required by this Order is due not later than May 30, 2009, and should cover the reporting period from April 1, 2009 through April 30, 2009.

E. All monthly report filings shall be made to U.S. Department of Energy (FE-34), Office of Fossil Energy, Office of Natural Gas regulatory Activities, P.O. Box 44375, Washington, D.C. 20026-4375 Attention: Ms. Yvonne Caudillo. Alternatively, reports may be e-mailed to Ms. Caudillo at Yvonne.caudillo@hq.doe.gov or ngreports@hq.doe.gov, or may be faxed to Ms. Caudillo at (202) 586-6050.

F. The Applicants' authorization granted in Order No. 1580 is vacated as of the effective date of the instant authorization, on April 1, 2009.

G. All motions or requests for additional procedures in this proceeding, not denied by earlier Order or previously denied by operation of law, including the Suggestion for Oral Presentation submitted by Agrium in its June 26, 2008 reply, are hereby denied.

H. ENSTAR's motion for leave to reply, submitted May 19, 2008, is granted.

I. The Applicant's request to answer, submitted May 20, 2008, is granted.

J. Chugach's motion for leave to reply, submitted May 22, 2008, is granted.

K. ENSTAR's May 27, 2008 letter response seeking leave to reply is granted.

Issued in Washington, D.C., on June 3, 2008.



Robert F. Corbin
Manager, Natural Gas Regulatory Activities
Office of Oil and Gas Global Security and Supply
Office of Fossil Energy