

1 **A. REPLY TO ANSWER.**

2 **1. Summary of Reply.**

3 In this proceeding, ConocoPhillips and Marathon have represented that there are
4 sufficient supplies of natural gas in Southcentral Alaska to meet domestic need, as well as
5 to export. Tesoro and other commentors have noted growing supply shortages in recent
6 years, which would indicate that it is not in the public interest to export gas which is
7 otherwise needed to satisfy domestic need.

8 If the representations of ConocoPhillips and Marathon are accurate, they should be
9 permitted to export LNG, but only so long as domestic need is being fulfilled. To the extent
10 that the export of LNG will result in insufficient supplies of gas for domestic need, such
11 exports should be curtailed.

12 **2. Legal Standard Applicable to Export Permit Applications.**

13 Under Section 3 of the Natural Gas Act (“NGA”),¹ the Department of Energy
14 (“DOE”) and its Office of Fossil Energy (“OFE”) is required to deny an export application
15 if it finds that the exportation “will not be consistent with the public interest.”² D O E
16 Delegation Order No. 0204-111 clarifies the public interest at stake by requiring that exports
17 “shall” be regulated “based on a consideration of the domestic need for the gas to be exported
18 and such other matters as the Administrator finds in the circumstances of a particular case

19 ¹ 15 U.S.C. § 717b.

20 ² 15 U.S.C. § 717b(a).

1 to be appropriate.” The DOE/OFE also has the discretionary authority to grant an export
2 application “in whole or in part, with such modification and upon such terms and conditions
3 as the Commission may find necessary or appropriate.”³

4 **3. Domestic Need in Southcentral Alaska.**

5 Consistent with the “public interest” and “domestic need” standards cited above,
6 Tesoro does not oppose the export authorization sought by ConocoPhillips and Marathon,
7 provided that such authorization does not permit the exportation of gas which is otherwise
8 needed in Alaska.

9 While the ConocoPhillips/Marathon Answer asserts that “there are sufficient natural
10 gas supplies to meet both regional demand and the export market,”⁴ recent actual supply
11 shortages in Southcentral Alaska belie these assertions. ConocoPhillips and Marathon
12 attempt to misdirect attention from these supply shortages by claiming that the commentors
13 are motivated by “their own economic self interest” and that commentors are using this
14 proceeding “to obtain commercial leverage under the guise of concerns regarding the
15 adequacy of natural gas supplies.” While Tesoro disputes these contentions, the DOE should
16 not get bogged down in the mire of these red herrings, because they detract from the real
17 issue raised in this proceeding – that is, are there sufficient supplies of natural gas in
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19 ³ 15 U.S.C. § 717b(a).

20 ⁴ ConocoPhillips/Marathon Answer at 5.

1 SouthCentral Alaska to meet both domestic need and the export market sought to be served
2 by ConocoPhillips and Marathon?

3 The concern expressed by several commentors regarding the adequacy of gas supply
4 are drawn from real-life experiences, not from some statistical analysis of what might be, as
5 advanced by ConocoPhillips and Marathon. For example, Tesoro's Comments relate to the
6 actual current natural gas shortages experienced at its Kenai, Alaska Refinery ("Kenai
7 Refinery") during the months of November and December 2006.⁵ During this period,
8 Marathon advised Tesoro that it was necessary to curtail deliveries to Tesoro's Kenai
9 Refinery in order to meet other contractual priority demands. In other words, according to
10 Marathon, there simply was not enough gas to go around. This reduced level of supply has
11 significantly impacted Tesoro's operations and has resulted in significant economic loss, as
12 well as reduction in the supply of propane to Alaskan customers during the winter. Such
13 supply curtailments, coupled with the fact that Tesoro had not previously experienced such
14 shortages, is strong evidence that there is currently insufficient natural gas to fulfill domestic
15 need.

16 Consistent with Tesoro's actual recent experience, Enstar Natural Gas Company
17 ("Enstar") has confirmed the growing shortages by stating:

18 The peak day deliverability shortages that had been anticipated in the
19 mid-1990s and early 2000s have actually come to pass. During every winter

20 ⁵ Tesoro's Comments at 2-3, 5-7.

1 since 2003-2004, industrial loads have had to be curtailed to insure that there
2 was sufficient gas for all utility uses when there were operational problems in
3 some of the fields during cold weather periods. During the winter of 2005-
4 2006, Agrium's operations had to be curtailed during cold weather periods,
5 even when all the fields were operating normally. For example, Agrium tried
6 to secure gas to run its fertilizer plant at Nikiski beyond October 31, 2005 (the
7 date its long-term supply agreement with Union/Chevron expired). Agrium
8 was able to secure only enough gas to operate at about half production, and all
9 of that volume (except a limited amount necessary to keep the plant "warm")
10 was subject to interruption by Agrium's suppliers to cover cold weather
11 demands by other customers. Agrium has publically [sic] stated that, even
12 during the summer, when there are not peak demands, it has been unable to
13 secure commitments of enough gas to operate the plant at full production
14 levels.

15 Gas deliveries to the Agrium plant were again curtailed during the
16 winter of 2005-2006. In November and early December, volumes were cut
17 during cold weather periods, but Agrium had sufficient gas to maintain a
18 minimal level of production. However, in late January 2006 it had to cease
19 production for a ten-day period as its suppliers needed the gas for cold weather
20 deliveries to other customers. The situation was still more serious in 2006-
2007, which has been a particularly cold winter in South Central Alaska. It
has been reported that deliveries to the Tesoro refinery at Nikiski were
curtailed so the suppliers could meet their commitments to the utilities.

Motion To Intervene and Initial Comments of Enstar Natural Gas Company, filed April 9,
2007, FE Docket No. 07-02-LNG at 19.

Also consistent with Tesoro's actual experience, Agrium U.S., Inc., has indicated that:

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
as limited, short-term gas supplies become available. However, while Agrium
continues to try to work with all producers to arrange for a long-term supply
of gas, its contracts currently end in October 2007. Agrium, therefore, has
announced that operations will be suspended at that time unless further gas
supplies can be found.

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Motion to Intervene, Comments and Protest of Agruim U.S. Inc., filed April 9, 2007, FE Docket No. 07-02-LNG at 4.

In its Comments and Protest, at 7-9, Agrium also discusses the ConocoPhillips/Marathon understatement of demand associated with the Kenai Fertilizer Plant. Specifically, whereas the subject Export Application implies that the reduced operations of the Kenai Fertilizer Plant in recent years have been due to voluntary reductions in production, Agrium clarifies that the only reason that it has been required to reduce, and most recently shut down, its operations is the lack of available supplies of gas to fulfill its needs. Therefore, in addition to problems related to deliverability of gas during cold winter months, there is simply a shortage of gas supply to meet ongoing domestic need.

In spite of the representations made by ConocoPhillips and Marathon in this proceeding, domestic need in Southcentral Alaska has already begun to outstrip supply during high demand seasonal periods and, in the case of Agrium, with regard to year-round operations. Since Southcentral Alaska is not tied to non-domestic sources of gas, Alaska gas consumers rely completely on domestic sources of gas to meet domestic need. The current producing fields in the Cook Inlet region simply cannot meet present demand. The fact that there may be undiscovered reserves in the region does not alleviate present supply shortages. These shortages in supply validate commentors' concerns over the proposed export of natural gas for foreign uses while domestic need goes unsatisfied.

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3. Any ConocoPhillips and Marathon Export Authorization Should Be Conditioned Upon Meeting Local Need First.

As it stands, ConocoPhillips and Marathon have represented to the DOE that there is plenty of gas to go around, whereas actual documented events of the past several years contradict their position. Tesoro and other long-time Southcentral Alaska natural gas consumers should not bear the risk of such representations being incorrect. If the shortages in supply which have been previously experienced by Tesoro and others continue in the future, ConocoPhillips and Marathon should not be permitted to export natural gas that is otherwise needed to meet local need.

The solution to the problem is straightforward. ConocoPhillips and Marathon should be required to certify that domestic needs of Southcentral Alaska's gas consumers are being fulfilled in order to export LNG as proposed. However, in the event of shortages in supply to Southcentral Alaska's gas consumers, the export of LNG should be curtailed to meet such local need. This solution is fully consistent with the spirit of the NGA, taking into account the public interest and, more specifically, domestic needs.

B. RENEWAL OF MOTION FOR ADDITIONAL PROCEDURES.

Tesoro hereby renews its request for additional procedures as more specifically set forth in Tesoro's Comments. In support of this renewed request, Tesoro notes that while ConocoPhillips and Marathon have had many months to prepare their Export Application

1 herein,⁶ commentators such as Tesoro have had only an abbreviated time period to respond,
2 and have had no opportunity to conduct discovery upon or otherwise test the representations
3 made by the applicants. Given the imposition of the burden upon a party opposing the Export
4 Application of proving that the proposed export would be inconsistent with the public
5 interest, as urged by ConocoPhillips and Marathon,⁷ it is simply inequitable and inconsistent
6 with the requirements of reasonable due process, to proceed without additional procedures
7 as requested.

8 Tesoro, Agrium, Enstar and Chugach Electric Association, Inc., represent a wide
9 variety of types of gas consumers in Alaska, as well as the vast majority of gas consumed by
10 volume, in Southcentral Alaska. The additional procedures requested by Tesoro will allow
11 the voices of commentators to be heard, provide the parties with the tools necessary to fully
12 air the matters at issue, and assist in the creation of a full record for a decision on the Export
13 Application. In the absence of such additional procedures, commentators will not have the
14 opportunity to delve into the issues raised in the Export Application, which will unfairly
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16 ⁶ During a hearing on August 26, 2006 before the Regulatory Commission of Alaska in its
17 Docket U-06-02 (*In the Matter of the Gas Sales Agreement Between Enstar Natural Gas
18 Company, a Division of Semco Energy Inc., and Marathon Oil Company*, filed as TA139-4),
19 Marathon witness Calvin Webber testified that Marathon and ConocoPhillips had jointly
20 commenced work preliminary to the filing of the instant Export Application. Mr. Webber
further testified that as of that date, Marathon and ConocoPhillips had jointly employed
consultants to perform an economic evaluation and a reserves study, and had employed Doug
John of John & Hengerer as their counsel. (Tr. 2423-2426)

⁷ ConocoPhillips/Marathon Answer at 12-13.

1 prejudice the development of the issues related to the public interest, domestic need for gas,
2 and such other matters as the DOE/OFE deem relevant.

3 **C. SUMMARY AND CONCLUSION.**

4 The DOE/FE is precluded from granting an export application if it finds that “the
5 proposed exportation . . . will not be consistent with the public interest.”⁸ The Export
6 Application of ConocoPhillips and Marathon is premised upon the contention that there are
7 sufficient supplies of natural gas in the Cook Inlet Region of Alaska to meet domestic need,
8 as well as to export, as proposed.

9 The continued efficient operation of Tesoro’s Kenai Refinery in Southcentral Alaska
10 relies heavily upon the availability of dependable and consistent supplies of natural gas.
11 Tesoro has recently experienced significant disruptions in the operation of its Kenai Refinery
12 due to the unavailability of a natural gas supply, thereby calling into question the gas supply
13 and demand picture which forms the basis for the Export Application.

14 Any authorization issued by the DOE in response to the Export Application should
15 be subject to an on-going obligation by ConocoPhillips and Marathon to certify that domestic
16 gas needs are being met before exporting gas to foreign soil.

17 The DOE has established extensive administrative regulations which govern the
18 permit application process, including opportunities for comments, protests, discovery, oral
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20 ⁸ 15 U.S.C. § 717b.

1 presentations, and hearing.⁹ Such procedures were designed to assist in considering and
2 evaluating the matters at issue, and for the purpose of developing a full record as a basis for
3 a decision on the Export Application. The employment of such procedures is appropriate
4 here.

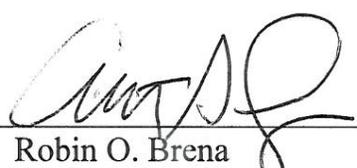
5 In light of the foregoing, Tesoro requests that the DOE:

6 1. Grant Tesoro's Motion for Additional Procedures so that the issues presented
7 for consideration in this proceeding will be fully aired and provide the DOE with a complete
8 record upon which to base its decisions herein; and

9 2. Modify or condition any approval of the Export Application such that Alaska's
10 domestic needs for natural gas will be met as a precondition to the export of LNG.

11 DATED this 22nd day of June, 2007.

12 BRENA, BELL & CLARKSON, P.C.
13 Attorneys for Tesoro Corporation
and Tesoro Alaska Company

14
15 By 

16 Robin O. Brena
17 Anthony S. Guerriero
18 David W. Wensel
810 N Street, Suite 100
Anchorage, Alaska 99501
Telephone: (907) 258-2000
Facsimile: (907) 258-2001

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20 ⁹ 10 C.F.R. § 590.

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VERIFICATION

STATE OF ALASKA)
) ss.
THIRD JUDICIAL DISTRICT)

Anthony S. Guerriero, being first duly sworn upon his oath, states as follows:

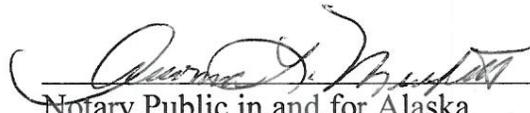
I am an attorney with the law offices of Brena, Bell & Clarkson, P.C., counsel for Tesoro Corporation and Tesoro Alaska Company in the above-referenced matter. I hereby certify that I have read the foregoing document, know the contents thereof, and believe that the same are true and correct to the best of my knowledge, information and belief.

DATED this 22nd day of June, 2007.



ANTHONY S. GUERRIERO

SUBSCRIBED AND SWORN TO before me this 22nd day of June, 2007.



Notary Public in and for Alaska
My Commission Expires: 3/7/09



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CERTIFICATE OF SERVICE

The undersigned hereby certifies that on the 22nd day of June, 2007, a copy of the foregoing document was served by e-mail and mail upon the following parties:

AGRIUM U.S., INC.

Mr. Craig Fisher
Agrium, Inc.
13131 Lake Fraser Drive S.E.
Calgary, Alberta
Canada T2J 7E8
E-Mail: cfisher@agrium.com

John K. Norman, Chair
Alaska Oil and Gas Conservation Commission
333 West Seventh Avenue
Suite 100
Anchorage, Alaska 99501-3539
E-Mail: john.norman@admin.state.ak.us

Mr. Chris Tworek
Agrium, Inc.
13131 Lake Fraser Drive S.E.
Calgary, Alberta
Canada T2J 7E8
E-Mail: ctworek@agrium.com

Alan Birnbaum, Esq.
Assistant Attorney General
Oil, Gas and Mining Section
1031 West Fourth Avenue
Suite 200
Anchorage, Alaska 99501
E-Mail: Alan.Birnbaum@law.state.ak.us

Mr. Chris J. Sonnichsen
Director of Alaska Operations
Agrium U.S., Inc.
P. O. Box 575
Kenai, Alaska 99611-0575
E-Mail: csonnich@agrium.com

STATE OF ALASKA
The Honorable Sarah Palin
Governor of the State of Alaska
P. O. Box 110001
Juneau, Alaska 99811-0001
E-Mail: governor@gov.state.ak.us

Douglas Smith
Van Ness Feldman
1050 Thomas Jefferson Street, N.W.
Seventh Floor
Washington, D.C. 20007
E-Mail: dws@vnf.com

Steven D. DeVries, Esq.
Assistant Attorney General
Department of Law
RAPA
1031 West Fourth Avenue, Suite 200
Anchorage, Alaska 99501
Email: steve.devries@law.state.ak.us

**ALASKA OIL AND GAS
CONSERVATION COMMISSION**

Jody J. Colombie
Special Assistant to the Commission
Alaska Oil and Gas Conservation Commission
333 West Seventh Avenue
Suite 100
Anchorage, Alaska 99501
E-Mail: jody.colombie@admin.state.ak.us

CHUGACH ELECTRIC COOPERATIVE

Mr. Lee Thibert
Senior Vice President Power Delivery
Chugach Electric Cooperative
5601 Electron Drive
P. O. Box 196300
Anchorage, Alaska 99519-196300
E-Mail: lee_thibert@chugachelectric.com

1 Eric Redman, Esq.
701 West Fifth Avenue
Suite 6100
2 Seattle, Washington 98104
E-Mail: eric.redman@hellerehrman.com
3 **Via DHL Express Mail**

CONOCOPHILLIPS

4 Mr. J. Scott Jepsen
Vice President
ConocoPhillips Alaska
5 Natural Gas Corporation
P. O. Box 100360
6 Anchorage, Alaska 99510-0360
E-Mail: scott.jepsen@conocophillips.com

7 Roger Belman, Esq.
Attorney for ConocoPhillips Alaska Natural
8 Gas Corporation
P. O. Box 100360
Anchorage, Alaska 99510-0360
9 E-Mail: roger.belman@conocophillips.com

10 Douglas F. John, Esq.
Attorney for ConocoPhillips Alaska Natural
Gas Corporation
11 John & Hengerer
1200 - 17th Street N.W., Suite 600
Washington, D.C. 20036-3013
12 E-Mail: djohn@jhenergy.com
Via DHL Express Mail

13 **ENSTAR NATURAL GAS COMPANY**

14 Julian Mason, Esq.
Ashburn & Mason
1227 West Ninth Avenue, Suite 200
Anchorage, Alaska 99501
15 Email: bah@anchorlaw.com

16 Mr. Tom East
Regional Vice President - Alaska
ENSTAR Natural Gas Company
17 P. O. Box 190288
Anchorage, Alaska 99519-0288
18 E-Mail: tom.east@enstarnaturalgas.com

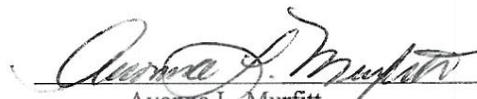
John S. Decker, Esq.
Vinson & Elkins, L.L.P.
1455 Pennsylvania Avenue, N.W.
Suite 600
Washington, D.C.
E-Mail: jdecker@velaw.com
Via DHL Express Mail

MARATHON OIL COMPANY

William Holton, Jr., Esq.
Senior Counsel
Marathon Oil Company
Room 2509
5555 San Felipe Street
Houston, Texas 77056-2799
E-Mail: wrholton@marathonoil.com
Via DHL Express Mail

David M. Risser, Manager
Natural Gas Marketing
Marathon Oil Company
Room 2415
5555 San Felipe Street
Houston, Texas 77056-2799
E-Mail: dmrisser@marathonoil.com
Via DHL Express Mail

Douglas F. John, Esq.
Attorney for Marathon Oil Company
John & Hengerer
1200 - 17th Street N.W., Suite 600
Washington, D.C. 20036-3013
E-Mail: djohn@jhenergy.com
Via DHL Express Mail


Avonna L. Murfitt