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Background

Agrium U.S., Inc. (Agrium) filed a formal complaint⁴ against Marathon Oil Company (Marathon) and Union Oil Company of California (Unocal Alaska) for operating CIGGS⁵ in violation of the Alaska Public Utilities Regulatory Act⁶ and the Pipeline Act.⁷ Marathon and Unocal Alaska answered the complaint.⁸ We found that good cause existed to institute an investigation and opened an investigation into Agrium's complaint against Marathon and Unocal Alaska as owners of the CIGGS⁹.

ENSTAR, a natural gas utility, and Aurora Gas, a natural gas producer and explorer which owns and operates several natural gas producing fields on the west side of Cook Inlet, petitioned to intervene in this proceeding.¹⁰ The State, a royalty

⁴*Agrium U.S. Inc.'s Formal Complaint Against Marathon Oil Company and Union Oil Company of California for Their Ongoing Violations of the Alaska Public Utilities Regulatory Act and the Alaska Pipeline Act Through Providing Unregulated Transportation Service and Refusing to Provide Regulated Transportation Service Through the Cook Inlet Gas Gathering System*, filed October 1, 2004 (Complaint).

⁵Cook Inlet Gas Gathering System (CIGGS).

⁶AS 42.05.

⁷AS 42.06.

⁸*Answer of Marathon Oil Company to Agrium U.S. Inc.'s Complaint Against Marathon Oil Company and Union Oil Company of California*, filed October 21, 2004; *Erratum to Answer of Marathon Oil Company to Agrium U.S. Inc.'s Complaint Against Marathon Oil Company and Union Oil Company of California*, filed October 22, 2004; *Answer of Union Oil Company of California*, filed October 21, 2004.

⁹Order P-04-20(2), *Order Finding Good Cause to Investigate Formal Complaint, Opening Investigation, Setting Prehearing Conference, and Inviting Intervention*, dated December 22, 2004.

¹⁰*ENSTAR Natural Gas Company's Petition for Intervention*, filed October 26, 2004; *Aurora Gas, LLC's Comments and Petition to Intervene*, filed November 10, 2004.

1 owner of gas, also petitioned to intervene.¹¹ Marathon did not oppose intervention by
2 ENSTAR, Aurora Gas, or the State. All petitions to intervene were timely filed under
3 Order P-04-20(2).

4 Marathon filed a motion for clarification of issues on January 18, 2005,
5 three days before a scheduled prehearing conference. Agrium filed its opposition and
6 Unocal Alaska filed its response to the motion on January 31, 2005. Marathon replied
7 on February 7, 2005.

8 A prehearing conference was held January 21, 2005. Agrium, Marathon,
9 and Unocal Alaska, the parties in this proceeding at the time of the prehearing
10 conference, participated in the prehearing conference. ENSTAR and Aurora Gas, not
11 yet then parties, participated as well. At the prehearing conference, the parties were
12 unable to agree on a preliminary joint statement of issues and, therefore, submitted
13 separate preliminary statements.

14 Discussion

15 Intervention by the ENSTAR, Aurora Gas and the State

16 We invited any person or entity interested in participating in this
17 proceeding to file a petition to intervene within one week following the prehearing
18 conference.¹²

19 We consider petitions to intervene only in cases that are to be decided by
20 an evidentiary record after notice and hearing.¹³ Otherwise, we use the criteria outlined

23 ¹¹*State of Alaska's Petition to Intervene*, filed January 28, 2005.

24 ¹²3 AAC 48.110(d) requires a petition to intervene be filed before the first
25 prehearing conference unless we order otherwise, as we did in Order P-04-20(2).

26 ¹³3 AAC 48.110(a).

1 in 3 AAC 48.110(b) in considering whether to grant intervention to a party in a particular
2 proceeding.

3 As the largest retail distributor of natural gas in southcentral Alaska,
4 ENSTAR seeks intervention. While ENSTAR is not a shipper on the CIGGS, it does
5 receive a substantial amount of natural gas shipped over CIGGS in order to bring that
6 natural gas to market. As such, ENSTAR claims it has a substantial financial interest in
7 the outcome of this proceeding. Aurora Gas requests intervention as a developer of
8 natural gas in Cook Inlet and a potential customer-shipper on CIGGS. Finally, as a
9 royalty owner of much of the land from which natural gas shipped on the CIGGS is
10 produced and as a production tax collector of CIGGS natural gas, the State seeks
11 intervention in this proceeding.

12 Based on evaluation of the criteria in 3 AAC 48.110(b), we grant the
13 petitions to intervene.

14 Decision Process

15 In Order P-04-20(2), we instructed the parties to present a preliminary joint
16 statement of issues at the prehearing conference and stated that if the parties could not
17 agree on a statement of issues, each party was to submit a separate preliminary
18 statement of issues. The parties could not agree. Therefore, two separate statements
19 were submitted: one from Agrium and one jointly from Marathon and Unocal Alaska. At
20 the prehearing conference, Aurora Gas joined Marathon and Unocal Alaska's statement
21 of issues.

22 Additionally we asked the parties to be prepared to discuss:

- 23 1. what issues we can resolve based on the legal briefing of counsel only and
24 what issues require an evidentiary hearing.
25 2. the feasibility of entering into stipulations of fact, rather than submitting
26 prefiled testimony.

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3. whether they would participate in an organized process to stipulate facts, including help by a Commission-appointed mediator, if necessary.¹⁴

The parties were not able to reach clear consensus on any of these procedural matters. In our review of the transcript, we recognize that many of the parties have a common procedural concern, that the scope of the investigation is very broad and could become burdensome.

We appreciate the effort the parties made in the prehearing conference to enunciate their concerns and to move toward agreement where possible. We recognize, however, that we need to take a strong role in achieving the end result with the lowest possible cost to all parties.

After review of the transcript, we establish a sequential pleading process that permits us to focus initially only on the narrow question of whether CIGGS should be regulated. We call this process Phase One.

In Phase One, we focus the parties' efforts on answers to six questions. We will decide each question separately after a round of briefs and replies. We do not allow discovery for Questions 1-4. Depending on responses from the parties and our decision on each question, we may not require answers to all six questions. The Phase One questions, and consequently, the order of our decisions, are as follows:

Question 1 Is CIGGS furnishing, by transmission or distribution, gas to the public for compensation within the meaning of AS 42.05.990(4)(D)? Before the pleading cycle on this question, Marathon and Unocal Alaska shall file a list of gas customers with associated gas volumes and destinations for all gas shipped through CIGGS during 2004. Marathon and Unocal Alaska shall also state whether this list of

¹⁴Order P-04-20(2) at 5.

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customers and their associated volumes and destinations are representative of normal ongoing operations of the pipeline over the course of the last three years and in the current year. If this information is confidential, Marathon and Unocal Alaska shall file a proposed confidentiality order agreed to by all parties before the filing deadline. We allow no additional discovery on Question 1 during this phase.

Question 2 Can CIGGS be bifurcated jurisdictionally as was suggested by Unocal Alaska at the prehearing conference, with one half of the pipeline regulated and the other half of the pipeline unregulated, based on ownership of the pipeline and/or the end users of the gas which flows through the pipeline? Pleadings must refer to statutory, regulatory or legal precedent as the basis for a party’s conclusion.

Question 3 Is CIGGS subject to the jurisdiction of the Commission under the Pipeline Act as a “natural gas pipeline” within the meaning of AS 42.06.630(10)? Is a “natural gas pipeline” a “pipeline” for all purposes under AS 42.06?

Question 4 Is CIGGS subject to regulation under the Pipeline Act as a “pipeline carrier” as defined in AS 42.06.630 because its facilities are part of “a total system of pipe . . . used by a pipeline carrier for transportation of” within the meaning of AS 42.06.630? Before the round of pleadings on this question, Marathon and Unocal Alaska shall jointly file a list of all interconnections of CIGGS with other pipelines as of December 31, 2004 and a map in sufficient detail for us to identify the interconnections and directional gas flows. If the interconnecting pipeline is owned by Marathon and/or Unocal Alaska jointly or

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severally, and used by Marathon and/or Unocal Alaska in conjunction with CIGGS to transport gas from a field to a customer, they shall so state in their filing. Marathon and Unocal Alaska shall also state whether there were additional interconnections pending as of December 31, 2004 and describe those pending interconnections, if any, in the same manner. We allow no additional discovery on Question 4 during this phase.

Question 5 Does CIGGS use its facilities to provide transportation “for hire as a common carrier” within the meaning of AS 42.06.630(16)? Before the pleading cycle on this question, Marathon and Unocal Alaska shall jointly or separately file a list of all gas exchange agreements in existence with any developer, shipper or gas customer during the three years ending December 31, 2004. Marathon and Unocal Alaska shall include in the filing a copy of the gas exchange agreement, a summary of the volumes of gas exchanged per exchange agreement during each of the last three years and the associated financial impact, if any, resulting from each exchange. We may allow additional discovery on Question 5 during this phase.

Question 6 Is CIGGS subject to regulation under the Alaska Pipeline Act pursuant to the terms of the Right-of-Way Leasing Act¹⁵? Before the pleading cycle on this question, Marathon and Unocal Alaska shall jointly or separately file their most current state pipeline right-of-way leases in the Cook Inlet area. We may allow additional discovery on Question 6 during this phase.

¹⁵AS 38.35.

1 Docket U-05-20

2 We open Docket U-05-20 to consider whether CIGGS is furnishing, by
3 transmission or distribution, gas to the public for compensation within the meaning of
4 AS 42.05.990(4)(D).

5 We designate the parties in Docket P-04-20 as parties in Docket U-05-20.
6 If any designated party does not wish to participate in Docket U-05-20, it may file a
7 notice of nonparticipation by March 11, 2005.

8 We require any person or entity wishing to file a petition to intervene in
9 Docket U-05-20 to file that petition by March 11, 2005.

10 Procedural Schedule

11 In Ordering Paragraph No. 7, we provide a procedural schedule for filing
12 discovery, briefs and replies for our consideration of Questions 1-6. We require parties
13 to provide same day e-mail or facsimile delivery of briefs and replies in addition to
14 service by mail.

15 Phases Two and Three

16 All parties expressed concern at the prehearing conference about what
17 happens from an operational standpoint if we decide CIGGS is a public utility under
18 AS 42.05 or a pipeline under AS 42.06. To alleviate these concerns, we provide for a
19 Phase Two of this proceeding to address the interim terms and conditions of pipeline or
20 utility operation. In Phase Three, if necessary, we will establish final terms and
21 conditions of ongoing operations. We will establish a procedural schedule for Phase
22 Two and Phase Three, if necessary, at the conclusion of the previous phase.

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1 Motion for Clarification of Issues

2 Marathon requested that we “state with more specificity the issues and
3 allegations in which we have an interest.”¹⁶ In its opposition to the motion, Agrium
4 states that the motion is, in effect, a request for reconsideration of Order P-04-20(2),
5 and if granted, would unnecessarily expand the scope of the investigation. Unocal
6 Alaska, in its supporting comments on the motion, states that the Commission should
7 view the substance of the motion as a request for summary disposition.

8 In this Order we have addressed the issues and we deny Marathon’s
9 motion for further clarification.

10 **ORDER**

11 THE COMMISSION FURTHER ORDERS:

12 1. The petition to intervene filed by Aurora Gas, LLC on November 10,
13 2004, is granted.

14 2. The petition for intervention filed by ENSTAR Natural Gas Company, a
15 division of SEMCO Energy, Inc. and Alaska Pipeline Company, a wholly-owned
16 subsidiary of SEMCO on October 26, 2004, is granted.

17 3. The petition to intervene filed by the State of Alaska on January 28,
18 2005, is granted.

19 4. Docket U-05-20 is opened to consider whether CIGGS is furnishing, by
20 transmission or distribution, gas to the public for compensation within the meaning of
21 AS 42.05.990(4)(D).

22 5. By 4 p.m., March 11, 2005, a designated party may file a notice of
23 nonparticipation.

24 _____
25 ¹⁶*Motion of Marathon Oil Company for Clarification of Issues*, filed January 18,
26 2005.

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6. By 4 p.m., March 11, 2005, any interested person or entity may file a petition to intervene in Docket U-05-20.

7. The following procedural schedule is established:

A.	4 p.m.	March 11, 2005	Marathon Oil Company and Union Oil Company of California shall file a list of gas customers with associated gas volumes and destinations for all gas shipped through the Cook Inlet Gas Gathering System during 2004. Marathon Oil Company and Union Oil Company of California shall also state whether this list of customers and their associated volumes and destinations are representative of normal ongoing operations of the pipeline over the course of the last three years and in the current year.
B.	4 p.m.	March 22, 2005	Briefs addressing Question 1, is the Cook Inlet Gas Gathering System furnishing, by transmission or distribution, gas to the public for compensation within the meaning of AS 42.05.990(4)(D), are due.
C.	4 p.m.	March 29, 2005	Reply briefs responding to briefs filed on March 22, 2005, are due.
D.	4 p.m.	April 26, 2005	Briefs addressing Question 2, can the Cook Inlet Gas Gathering System be bifurcated jurisdictionally as was suggested by Union Oil Company of California at the prehearing conference, with one half of the pipeline regulated and the other half of the pipeline unregulated, based on ownership of the pipeline and/or the end users of the gas which flows through the pipeline two pipes, are due.
E.	4 p.m.	May 3, 2005	Reply briefs responding to briefs filed on April 26, 2005, are due.
F.	4 p.m.	May 31, 2005	Briefs addressing Question 3, is the Cook Inlet Gas Gathering System subject to the jurisdiction of the Commission under the Pipeline Act as a "natural gas pipeline" as defined in AS 42.06.630(10), are due.

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G.	4 p.m.	June 7, 2005	Reply briefs responding to briefs filed on May 31, 2005, are due.
H.	4 p.m.	July 6, 2005	Marathon Oil Company and Union Oil Company of California Alaska shall jointly file a list of all interconnections of the Cook Inlet Gas Gathering System with other pipelines as of December 31, 2004 and a map in sufficient detail to identify the interconnections and directional gas flows. If the interconnecting pipeline is owned by Marathon and/or Unocal Alaska jointly or severally, and used by Marathon and/or Unocal Alaska in conjunction with the Cook Inlet Gas Gathering System to transport gas from a field to a customer, they shall so state in this filing. Marathon and Unocal Alaska shall also state whether there were additional interconnections pending as of December 31, 2004 and describe those pending interconnections, if any, in the same filing.
I.	4 p.m.	July 20, 2005	Briefs addressing Question 4, is the Cook Inlet Gas Gathering System subject to the jurisdiction of the Commission under the Pipeline Act as a "natural gas pipeline" as defined in AS 42.06.630(10), are due.
J.	4 p.m.	July 27, 2005	Reply briefs responding to briefs filed on July 5, 2005, are due.
K.	4 p.m.	August 24, 2005	Marathon Oil Company and Union Oil Company of California shall jointly or separately file a list of all gas exchange agreements in existence with any developer, shipper or gas customer during the three years ending December 31, 2004. Marathon Oil Company and Union Oil company of California shall include in the filing a copy of the gas exchange agreement, a summary of the volumes of gas exchanged per exchange agreement during each of the last three years and the associated financial impact, if any, resulting from each exchange.
L.	4 p.m.	September 7, 2005	Briefs responding to Question 5, does the Cook Inlet Gas Gathering System use its facilities to provide transportation "for hire as a common carrier" within the meaning of AS 42.06.630(16),

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			are due.
M.	4 p.m.	September 14, 2005	Reply briefs responding to briefs filed August 9, 2005, are due.
N.	4 p.m.	October 12, 2005	Marathon Oil Company and Union Oil Company of California shall jointly or separately file their most current pipeline right-of-way state leases in the Cook Inlet area.
O.	4 p.m.	October 26, 2005	Briefs on Question 6, is the Cook Inlet Gas Gathering System subject to regulation under the Alaska Pipeline Act pursuant to the terms of the Right-of-Way Leasing Act right of way terms, are due.
P.	4 p.m.	November 2, 2005	Reply briefs responding to briefs filed on September 13, 2005, due.

8. The motion for clarification of issues filed by Marathon Oil Company on January 18, 2005, is denied.

DATED AND EFFECTIVE at Anchorage, Alaska, this 7th day of March, 2005.

BY DIRECTION OF THE COMMISSION
(Commissioners Dave Harbour and
James S. Strandberg, not participating.)

(S E A L)