

1 STATE OF ALASKA

2 THE REGULATORY COMMISSION OF ALASKA

3 Before Commissioners:

4 Kate Giard, Chairman  
5 Dave Harbour  
6 Mark K. Johnson  
7 Anthony A. Price  
8 Janis W. Wilson

9 In the Matter of the Gas Sales Agreement )  
10 Between ENSTAR NATURAL GAS COMPANY, A )  
11 DIVISION OF SEMCO ENERGY, INC. and )  
12 MARATHON OIL COMPANY Filed as TA139-4 )

U-06-2

ORDER NO. 17

13 STATEMENT OF COMMISSIONER DAVE HARBOUR,  
14 DISSENTING IN PART

15 Earlier dissenting<sup>1</sup> from Order U-06-2(15),<sup>2</sup> I now dissent in part with the  
16 majority's decision in Order U-06-2(17).<sup>3</sup> While Order U-06-2(17) admits to certain  
17 fundamental errors that Order U-06-2(15) created, it did not serve the public interest by

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20 <sup>1</sup>*Dissenting Statement of Commissioner Dave Harbour, dated October 12, 2006*  
21 (Harbour Dissent).

22 <sup>2</sup>*Order U-06-2(15), Order Rejecting TA139-4 as a Base Supply Contract Having*  
23 *the Effect of Increasing the Current Average Cost of System Gas Supply but Allowing*  
24 *TA139-4 to Take Effect Immediately as a Base Supply Contract Having the Effect of*  
25 *Decreasing the Current Average Cost of System Gas Supply and Requiring Filings,*  
26 *dated September 28, 2006.*

<sup>3</sup>*Order U-06-2(17), Order Granting Reconsideration in Part; Denying*  
*Reconsideration in Part; and Revising Order U-06-2(15), dated December 29, 2006.*

1 appropriately acting to approve APL-5<sup>4</sup> as Marathon petitioned<sup>5</sup> or providing for other  
2 timely and reasonable remedies.

3 Discussion

4 Order U-06-2(17) violates the public interest by not resolving issues in Docket U-06-2 in  
5 a timely manner.

6 My dissent to Order U-06-2(15) frames my present reaction to the  
7 majority's judgment again reflected in Order U-06-2(17). I also reviewed and am  
8 respectful of Commissioner Johnson's dissent<sup>6</sup> to Order U-06-2(15). Marathon was on  
9 point, and I would have granted its petition.<sup>7</sup> ENSTAR, in its petition,<sup>8</sup> tactfully tried to  
10 suggest a painless path forward for the majority that preserved the record and protected  
11 the time, money, and effort devoted to Docket U-06-2 as an alternative to adopting  
12 Marathon's logic outright. The majority adopted the substance of Marathon's logic in  
13 Order U-06-2(17) but nonetheless failed to accept Marathon's remedy<sup>9</sup> or process  
14 ENSTAR's proposal when it was ripe weeks ago.

15 Instead, the majority waited until the end of December, the eve of the  
16 extended time for reconsideration, to suggest belated remedies. While I do not  
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18 <sup>4</sup>APL-5 is the gas sales agreement between ENSTAR Natural Gas Company, a  
19 Division of SEMCO Energy, Inc. and Alaska Pipeline Company (collectively, ENSTAR)  
and Marathon Oil Company (Marathon) filed in Tariff Advice 139-4.

20 <sup>5</sup>*Marathon Oil Company's Petition for Reconsideration of Order U-06-2(15)*, filed  
October 16, 2006 (Marathon Petition).

21 <sup>6</sup>*Dissenting Statement of Commissioner Mark Johnson*, dated October 16, 2006.

22 <sup>7</sup>Marathon Petition at 13, stating "Marathon requests that the Commission grant  
23 this petition for reconsideration, vacate its rejection of the APL-5 contract, and issue an  
order approving APL-5 as offered to be modified by Marathon at the hearing."

24 <sup>8</sup>*Petition for Reconsideration to Clarify Order Number 15*, filed October 16, 2006  
(ENSTAR Petition).

25 <sup>9</sup>See n.7.

1 characterize this delay as a legal error, I highlight it for the benefit of future commissions  
2 so that we might-all be reminded that the earlier we adjudicate matters, the more  
3 options we retain, and that with delayed decisionmaking come decisions fashioned from  
4 fewer options. The importance of this point is that with more time and options, the  
5 commission might have available to it an option which more responsibly supports public  
6 interest considerations.

7 Applying this "early action, more options" doctrine to the instant case:

8 1. Weeks ago, the majority could have found, as it finally did, that  
9 "Although we affirm Order U-06-2(15),<sup>10</sup> we find it is in the public interest that ENSTAR  
10 secure additional gas supplies as soon as possible."<sup>11</sup> Combined with Ordering  
11 Paragraph Nos. 5, 6, 7, 8, and 9,<sup>12</sup> which break the heart of its earlier WACOG<sup>13</sup>-  
12 Henry Hub<sup>14</sup> Index arguments and go on to fracture its supply argument, the majority  
13 had massive justification for not affirming Order U-06-2(15) and for identifying an option  
14 that more timely and properly satisfied the public interest.

15 2. Had the majority reached that conclusion weeks ago, it then would  
16 have had time to act on the additional alternatives it discussed in Order U-06-2(17),  
17 such as ordering oral argument on the ENSTAR proposal.<sup>15</sup> Had it done that before  
18 December 15, 2006, there would have been time by year-end to act on that expanded  
19 record. The majority, having created this problem with its own delay, disingenuously  
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21 <sup>10</sup>This is the kind of indecisiveness that marked Order U-06-2(15).

22 <sup>11</sup>U-06-2(17) at 23.

23 <sup>12</sup>*Id.* at 22-23.

24 <sup>13</sup>Weighted average cost of gas (WACOG).

25 <sup>14</sup>A pipeline hub on the Louisiana Gulf coast. It is the delivery point for the  
26 natural gas futures contract on the New York Mercantile Exchange.

<sup>15</sup>Order U-06-2(17) at 21.

1 laments this loss of options by reluctantly concluding we cannot further consider the  
2 tariff filing “because the statutory timeline for this tariff filing has run.”<sup>16</sup>

3           3. With options narrowed and assuming a new-found sense of the  
4 importance of supply,<sup>17</sup> the majority gratuitously suggests that ENSTAR might file into a  
5 new docket “a request for pre-approval of the modifications suggested in the ENSTAR  
6 Petition or it may file an amended gas supply contract as a new tariff,”<sup>18</sup> as if that were  
7 both simple and inexpensive. This approach, however, ignored the opportunity  
8 ENSTAR provided in its petition for inviting expedited comment from parties on its  
9 proposal<sup>19</sup> prior to final adjudication. If the majority had undertaken that solution after  
10 receiving the ENSTAR Petition, it could have adjudicated that option at that earlier time  
11 and completed the process within Docket U-06-2.

12 Order U-06-2(17) violates the public interest by ignoring our precedent and not correctly  
13 interpreting the record.

14           Given the last-minute circumstances, and in lieu of an outright reversal of  
15 Order U-06-2(15) — which both precedent<sup>20</sup> and the record support — I could  
16 compliment the majority for acknowledging the importance of gas supply, for indirectly  
17 admitting the error of its conclusion that ENSTAR failed to meet its burden of proof, and  
18 for its openness to receive a request for pre-approval of modifications to APL-5 or,  
19 alternatively, a new tariff filing.<sup>21</sup> I can only hope that the majority’s skill in reforming

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21 <sup>16</sup>*Id.* at 22.

22 <sup>17</sup>*Id.*, stating “we find that it is in the public interest that ENSTAR secure  
23 additional gas supplies as soon as possible.”

24 <sup>18</sup>*Id.*

25 <sup>19</sup>ENSTAR Petition at 8, 11.

26 <sup>20</sup>Harbour Dissent at 7.

<sup>21</sup>Order U-06-2(17) at 22. “Enstar may file, in a new docket, a request....”

1 (while affirming) its position upon reconsideration finds Marathon and ENSTAR still  
2 willing and able to continue their efforts with us to finalize a long-term gas supply  
3 agreement.

4           Instead of timely acting on precedent and on the record, and perhaps  
5 risking criticism, the majority insulated itself from criticism in Order U-06-2(15) and  
6 Order U-06-2(17). After all, the supply squeeze that could materialize in the wake of  
7 APL-5's rejection will not be fully realized for years.<sup>22</sup> The record identifies other  
8 potential gas purchasers that may be attractive to Marathon, at least on a present value  
9 basis. How ironic it would be if one of Marathon's markets could be supplying  
10 15 percent of Unocal's<sup>23</sup> ENSTAR requirement by arbitrage, resulting in higher  
11 consumer prices and netback to Marathon than APL-5 would have produced.<sup>24</sup> Then  
12 the majority's response could be, "Well, no one can fault us for trying to obtain a lower  
13 price for consumers." Of course, there is a chance that Marathon ultimately will reach  
14 agreement with ENSTAR to file a new gas supply contract with modified price and  
15 terms, perhaps along the lines that ENSTAR suggested or perhaps in another form.  
16 The majority will then be able to proclaim to an appreciative populace that its action  
17 forced industry to provide gas to consumers at lower prices, and that admiring public will  
18 have no idea how close it came to losing a long-term, secure supply of natural gas.

19 \_\_\_\_\_  
20 <sup>22</sup>We might, under these circumstances, see an indication of future supply  
21 problems sooner if Marathon refuses to pursue a sale of its proven reserves to ENSTAR  
22 in early 2007.

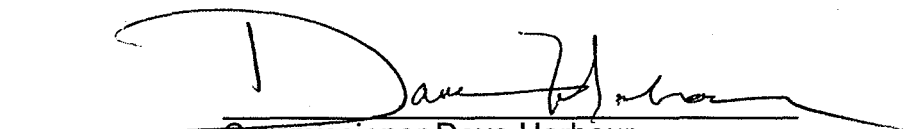
23 <sup>23</sup>Union Oil Company of California (Unocal).

24 <sup>24</sup>Order U-01-7(8), *Order Conditionally Approving TA117-4 (Gas Sales*  
25 *Agreement) and Requiring Filing*, dated October 25, 2001, at 12. Docket U-01-7, *In the*  
26 *Matter of the Gas Sales Agreement Between ALASKA PIPELINE COMPANY, a Wholly-*  
*owned Subsidiary of SEMCO ENERGY, INC., of Which the ENSTAR NATURAL GAS*  
*COMPANY is a Division, and the UNION OIL COMPANY OF CALIFORNIA, Filed as*  
*TA117-4.*

1 Even if ENSTAR and Marathon come together on terms more pleasing to  
2 the majority, this commission will still have contradicted precedent and also the  
3 majority's own affirmation in Order U-06-2(17) that "we should not insert ourselves into  
4 the parties' negotiations or dictate the terms of ENSTAR's gas supply contracts."<sup>25</sup> The  
5 harm done to the investment climate and to precedent will be ignored because *no one*  
6 *will ever know what gas exploration and development investments will not be made in*  
7 *Southcentral Alaska because of regulatory uncertainty.* In its deviation from precedent,  
8 the majority also created the prospect that other regulated industries could begin to  
9 attach some additional risk premium to planned investments throughout Alaska  
10 requiring regulatory approvals based on the commission's precedent; though any of  
11 those lost investments, likewise, will remain forever unknown.

12 As I complete this statement and reflect on the outcome of the docket, I  
13 have great respect for the majority's ability to portray a popular result, but greater regret  
14 that I could not have more effectively communicated the flaws in that portrait and the  
15 virtue of supporting a secure gas supply along with the reliable precedent and healthier  
16 investment climate our predecessors passed on to us.

17 DATED AND EFFECTIVE at Anchorage, Alaska, this 10th day of January, 2007.

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Commissioner Dave Harbour

<sup>25</sup>Order U-06-2(17) at 17.

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U-06-2

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I, Pamela Neale, certify as follows:

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Order No. 17, entitled:

STATEMENT OF COMMISSIONER DAVE HARBOUR,  
DISSENTING IN PART  
(Issued January 10, 2007)

in the proceeding identified above to the persons indicated on the attached service list.

DATED at Anchorage, Alaska, this 10th day of January, 2007.

Pamela Neale

**SERVICE LIST**

**U-06-2(17)**

**Statement of Commissioner Dave Harbour, Dissenting in Part**

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**Statement of Commissioner Dave Harbour, Dissenting in Part**

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