

15 AAC 55.151(b)(2) is repealed and readopted to read:

(2) for oil or gas produced

(A) before July 1, 2007, the producer's reasonable costs of transportation under 15 AAC 55.180 and 15 AAC 55.191 must be subtracted from the destination value determined under (1) of this subsection; reasonable costs of transportation are calculated from the point of production of the oil or gas to its sales delivery point, or if different, to a point where prevailing value is calculated under 15 AAC 55.171 or 15 AAC 55.173;

(B) after June 30, 2007, the producer's costs of transportation under AS 43.55.150 and 15 AAC 55.193 must be subtracted from the destination value determined under (1) of this subsection; costs of transportation are calculated from the point of production of the oil or gas to its sales delivery point, or if different, to a point where prevailing value is calculated under 15 AAC 55.171 or 15 AAC 55.173;

(Eff. 1/1/95, Register 132; am 1/1/2000, Register 152; am 1/1/2002, Register 160; am 1/1/2003, Register 164; am 5/3/2007, Register 182; am ___/___/____, Register ____)

Authority: AS 43.05.080 AS 43.55.110 AS 43.55.900
AS 43.55.020 AS 43.5.150

The section heading of 15 AAC 55.180 is changed:

15 AAC 55.180. Choice of methods for determining reasonable cost of transportation for oil and gas produced before July 1, 2007.

15 AAC 55.180 is amended by adding a new subsection to read:

(c) This section applies to oil and gas produced before July 1, 2007. (Eff. 1/6/80, Register 73; am 1/1/95, Register 132; am 1/1/2000, Register 152; am ___/___/____, Register _____)

Authority: AS 43.05.080

AS 43.55.020

AS 43.55.110

AS 43.55.150

15 AAC 55 is amended by adding a new section to read:

15 AAC 55.181. Comparison of actual and reasonable costs of transportation for oil and gas produced after June 30, 2007. (a) Except as otherwise provided

under (b) of this section, for purposes of determining the lower of actual costs of transportation or reasonable costs of transportation under AS 43.55.150(b), the actual costs are compared to the reasonable costs of transportation of the producer's oil or gas from each point where that oil or gas is tendered into the facility of the carrier to each point where it is delivered from the facility of the carrier, for transportation

(1) by the carrier with which the shipper is affiliated or using the transportation facility in which a person affiliated with the shipper owns an interest, when the department finds under AS 43.55.150(b) that a condition in AS 43.55.150(a)(1) is present;

(2) under the contract for the transportation of oil or gas that is not an arm's length transaction, when the department finds under AS 43.55.150(b) that the condition in AS 43.55.150(a)(2) is present;

(3) under the method or terms of transportation of oil or gas that are not reasonable in view of existing alternative transportation options, when the department finds under AS 43.55.150(b) that a condition in AS 43.55.150(a)(3) is present.

(b) If different filed tariffs for intrastate transportation and for interstate transportation apply to the transportation of oil or gas from a given point where that oil or gas is tendered into the facility of the carrier to a given point where it is delivered from the facility of the carrier, the comparison of actual costs of transportation and reasonable costs of transportation under (a) of this section is made separately for the intrastate transportation and the interstate transportation of the oil or gas.

(c) For pipeline transportation during a period for which the reasonable costs of transportation are determined under 15 AAC 55.193(q) - (s), if the applicable tariff rate under 15 AAC 55.193(b)(1) is determined using a cost-based tariff methodology, the comparison of actual costs of transportation and reasonable costs of transportation is made on the basis of the net present value of the respective costs over the remaining life of the pipeline, as provided under (d) of this section. If the net present value of the actual costs of transportation is greater than the net present value of the reasonable costs of transportation, the gross value at the point of production is calculated under AS 43.55.150(b) using the reasonable costs of transportation. If the net present value of the actual costs of transportation is not greater than the net present value of the

reasonable costs of transportation, the gross value at the point of production is calculated under AS 43.55.150(b) using the actual costs of transportation.

(d) For purposes of (c) of this section, the net present value of

(1) actual costs of transportation is the net present value, over the number of years of remaining life of the pipeline beginning with the calendar year for which the comparison is first required to be made for the period, of the sum of the annual capital and non-capital costs for each calendar year under the applicable tariff methodology, using for

(A) the discount rate, the WACC, or the weighted average cost of capital, determined under 15 AAC 55.195(j) for the calendar year for which the comparison is first required to be made for the period;

(B) the number of years of remaining life of the pipeline, the number provided under 15 AAC 55.195(j)(14);

(C) annual capital costs, the amounts of depreciation, return on investment, and income tax allowance based only on investment in the pipeline facility

(i) through the calendar year immediately preceding the calendar year for which the comparison is first required to be made for the period;or

(ii) if the pipeline was not in service during the immediately preceding calendar year or was placed in service later than 90 days before the end of the immediately preceding calendar year, through

the calendar year for which the comparison is first required to be made for the period;

(D) annual non-capital costs, the costs other than depreciation, return on investment, and income tax allowance

(i) for the calendar year immediately preceding the calendar year for which the comparison is first required to be made for the period; or

(ii) if the pipeline was not in service during the immediately preceding calendar year or was placed in service later than 90 days before the end of the immediately preceding calendar year, for the calendar year for which the comparison is first required to be made for the period;

(2) reasonable costs of transportation is the net present value, over the number of years of remaining life of the pipeline, as determined under 15 AAC 55.195(j)(14), beginning with the calendar year for which the comparison is first required to be made for the period, of the sum of the following items, using as the discount rate the WACC, or the weighted average cost of capital, determined under 15 AAC 55.195(j) for the calendar year for which the comparison is first required to be made for the period:

(A) the cost of capital allowance for the pipeline facility for each calendar year calculated under 15 AAC 55.195(j), except that the calculation for each year is performed using the WACC and the marginal income tax rate for the calendar year for which the comparison is first required to be made for the period;

(B) the amounts allowed under 15 AAC 55.193(q)(1) and (2), as modified under 15 AAC 55.193(r) if applicable, in calculating reasonable costs of transportation for the calendar year for which the comparison is first required to be made for the period;

(C) each calendar year's allowance, if any, for the cost of dismantlement, removal, and restoration of the pipeline facility allowed under 15 AAC 55.193(q)(3).

(e) For pipeline transportation during a period for which the reasonable costs of transportation are determined under 15 AAC 55.193(q) - (s), if the applicable tariff rate under 15 AAC 55.193(b)(1) is not determined using a cost-based tariff methodology, the comparison of actual costs of transportation and reasonable costs of transportation is made separately for each calendar year.

(f) For purposes of AS 43.55.150 and this section, a physical pipeline is a single transportation facility regardless of whether multiple carriers own interests in the pipeline, file separate tariffs for transporting oil or gas in the pipeline, or enter into separate contracts with shippers to transport oil or gas in the pipeline.

(g) The following example illustrates (d) of this section:

Assume the same taxpayer and facility illustrated in 15 AAC 55.195(l). (See Table 4 in 15 AAC 55.195(l).) In Tax Year 3 the comparison between actual and reasonable costs is invoked.

In Tax Year 3 the marginal tax rate is 38% and the WACC is 5%. The actual tariff is cost-based. The rate base from the actual tariff is \$70 million, and there is no adjustment to this.

Table 1 shows the derivation of the lower of actual and reasonable costs for the first year of the comparison.

Note the following:

- In Column 7, the beginning unrecovered investment in the first year of the comparison is replaced with the rate base from the actual tariff.
- In Column 9, the capital charge for the reasonable methodology is calculated per 15 AAC 55.195(j), holding the WACC and marginal tax rate constant at their values for the first year of the comparison
- Since the NPV of the reasonable is less than the NPV of the actual, the reasonable costs of transportation are considered lower than the actual costs of transportation.

**TABLE 1
DETERMINING LOWER OF ACTUAL AND REASONABLE COSTS
YEAR ONE OF COMPARISON**

col 1	col 2	col 3	col 4	col 5	col 6	col 7	col 8	col 9	col 10
Tax Year	Marginal Income Tax Rate (assumed)	WACC (assumed)	Capital Charge under Actual Tariff Methodology (assumed)	Non-Capital Cost under Actual Tariff Methodology (assumed)	Total Cost under Actual Tariff Methodology (c4 + c5)	Beginning Unrecovered Investment (per 195(j))	Capital Charge under Reasonable Tariff Methodology (per 195(j))	Non-Capital Cost under Reasonable Tariff Methodology (assumed)	Total Cost under Reasonable Tariff Methodology (c8 + c9)
3	38%	5%	15,000,000	4,000,000	19,000,000	70,000,000	6,299,019	3,500,000	9,799,019
4	38%	5%	14,000,000	4,000,000	18,000,000	66,331,302	6,299,019	3,500,000	9,799,019
5	38%	5%	13,000,000	4,000,000	17,000,000	62,795,854	6,299,019	3,500,000	9,799,019
6	38%	5%	12,000,000	4,000,000	16,000,000	59,368,653	6,299,019	3,500,000	9,799,019
7	38%	5%	11,000,000	4,000,000	15,000,000	56,026,607	6,299,019	3,500,000	9,799,019
8	38%	5%	10,000,000	4,000,000	14,000,000	52,638,966	6,299,019	3,500,000	9,799,019
9	38%	5%	9,000,000	4,000,000	13,000,000	49,081,943	6,299,019	3,500,000	9,799,019
10	38%	5%	8,000,000	4,000,000	12,000,000	45,347,069	6,299,019	3,500,000	9,799,019
11	38%	5%	7,000,000	4,000,000	11,000,000	41,425,452	6,299,019	3,500,000	9,799,019
12	38%	5%	6,000,000	4,000,000	10,000,000	37,307,753	6,299,019	3,500,000	9,799,019
13	38%	5%	5,500,000	4,000,000	9,500,000	32,984,170	6,299,019	3,500,000	9,799,019
14	38%	5%	5,000,000	4,000,000	9,000,000	28,444,407	6,299,019	3,500,000	9,799,019
15	38%	5%	4,500,000	4,000,000	8,500,000	23,677,657	6,299,019	3,500,000	9,799,019
16	38%	5%	4,000,000	4,000,000	8,000,000	18,672,569	6,299,019	3,500,000	9,799,019
17	38%	5%	3,500,000	4,000,000	7,500,000	14,510,794	6,299,019	3,500,000	9,799,019
18	38%	5%	3,000,000	4,000,000	7,000,000	11,234,498	6,299,019	3,500,000	9,799,019
19	38%	5%	2,500,000	4,000,000	6,500,000	7,794,387	6,299,019	3,500,000	9,799,019
20	38%	5%	2,000,000	4,000,000	6,000,000	4,182,271	6,299,019	3,500,000	9,799,019
21	38%	5%	1,500,000	4,000,000	5,500,000	389,549	643,821	3,500,000	4,143,821
					NPV ACTUAL	148,495,179		NPV REASONABLE	116,186,330
								LOWER OF	116,186,330

(h) This section applies to oil and gas produced after June 30, 2007. (Eff. ___/___/____, Register _____)

Authority: AS 43.05.080

AS 43.55.020

AS 43.55.110

AS 43.55.150

15 AAC 55.191(a) is amended to read:

15 AAC 55.191. Calculation of reasonable costs of transportation for oil or gas produced before July 1, 2007. (a) Reasonable costs of transportation are the ordinary and necessary costs incurred to transport the oil or gas from the point of production to the sales delivery point [OR, IF GAS HAS BEEN RUN THROUGH A GAS PROCESSING PLANT, FROM THE PLANT TO THE SALES DELIVERY POINT].

15 AAC 55.191(n) is amended to read:

(n) The producer's actual marine transportation cost, as otherwise determined under this section, for a producer that transports oil produced in the state [ON BEHALF OF A NON-AFFILIATED PARTY] through a charter, contract of affreightment, sublease, or other arrangement **on behalf of a person not affiliated with the producer,** in addition to the producer's own oil produced in the state, includes the cost of transporting that non-affiliated **person's** [PARTY'S] oil produced in the state and is

reduced by the revenue received for providing that transportation. [FOR PURPOSES OF THIS SUBSECTION,

(1) "AFFILIATED PARTY" MEANS A COMPANY EFFECTIVELY CONTROLLED BY THE PRODUCER OR BY THE SAME COMPANY THAT EFFECTIVELY CONTROLS THE PRODUCER; A COMPANY "EFFECTIVELY CONTROLS" ANOTHER COMPANY IF IT DIRECTLY OR INDIRECTLY OWNS 20 PERCENT OR MORE OF THE OUTSTANDING STOCK OR OTHER OWNERSHIP INTERESTS;

(2) "NON-AFFILIATED PARTY" MEANS A PRODUCER OF OIL PRODUCED IN THE STATE THAT IS NOT AN AFFILIATED PARTY.]

15 AAC 55.191 is amended by adding a new subsection to read:

(w) This section applies to oil and gas produced before July 1, 2007. (Eff. 1/1/95, Register 132; am 1/1/2000, Register 152; am 1/1/2002, Register 160; am 1/1/2003, Register 164; am 5/3/2007, Register 182; am ___/___/_____, Register _____)

Authority: AS 43.05.080

AS 43.55.020

AS 43.55.030

AS 43.55.040

AS 43.55.110

AS 43.55.150

AS 43.55.900

15 AAC 55.192 is amended to read:

15 AAC 55.192. Monthly share of annual transportation costs. (a) For purposes of AS 43.55.160(c), a producer shall determine the appropriate monthly share of the producer's costs of transportation for a calendar year using an acceptable method under this section that the producer chooses for this purpose and applying that method consistently for all months of the calendar year. An acceptable method is

(1) a method that the producer used consistently in calculating its tax under AS 43.55 during calendar year 2005;

(2) any of the following methods as applicable:

(A) for costs of transportation subject to 15 AAC 55.191(b)(1), (2), (4)(A), or (5) **or 15 AAC 55.193(b)(1), (2), (4)(A), or (5),**

(i) use of the actual costs of transportation that are incurred for the oil and gas produced or shipped during the month in question and that are allowable under the applicable provision of 15 AAC 55.191(b) **or 15 AAC 55.193(b)**; or

(ii) use of the per barrel or per Mcf annual average of the actual costs of transportation that are incurred for the oil or gas, respectively, produced or shipped during the calendar year and that are allowable under the applicable provision of 15 AAC 55.191(b) **or 15 AAC 55.193(b)**;

(B) for costs of transportation subject to 15 AAC 55.191(b)(3), (4)(B), or (8) **or 15 AAC 55.193(b)(3), (4)(B), or (6),** use of the per barrel or per Mcf annual average of the actual costs of transportation that are incurred for the

oil or gas, respectively, produced or shipped during the calendar year and that are allowable under the applicable provision of 15 AAC 55.191(b) **or 15 AAC**

55.193(b); or

(3) another method that is approved by the department as fairly representing the appropriate monthly share of the producer's transportation costs for a calendar year.

(b) A producer may not shift transportation costs between months for the purpose of reducing a tax levied by AS 43.55.011(g), **as that provision read on June 30, 2007, or a tax levied by AS 43.55.011(e)**. (Eff. 5/3/2007, Register 182; am ___/___/____, Register ___)

Authority: AS 43.05.080

AS 43.55.110

AS 43.55.150

AS 43.55.160

15 AAC 55 is amended by adding a new section to read:

15 AAC 55.193. Calculation of costs of transportation for oil and gas produced after June 30, 2007. (a) Costs of transportation are the ordinary and necessary costs incurred to transport the oil or gas from the point of production to the sales delivery point.

(b) Actual costs of transportation under AS 43.55.150(a) are

(1) if transportation of oil or gas is by a regulated carrier, the tariff that is on file with the Federal Energy Regulatory Commission or other regulatory agency

having jurisdiction, and that is applicable to and paid for that transportation of the oil or gas by the carrier, from the point where that oil or gas is tendered into the facility of the carrier to the point where it is delivered from the facility of the carrier;

(2) if transportation of oil is by a vessel that is not owned or effectively owned, in whole or in part, by the producer of that oil

(A) for a single voyage charter, the total costs under the charter for that vessel, plus any voyage and port costs as provided in (e) of this section if those voyage and port costs are incurred for that transportation during the term of the charter, are not included in the charter fee, and are borne by the producer, plus the positioning costs, if any, borne by the producer for that vessel;

(B) for a consecutive voyage charter or a time charter, the total costs under the charter for that vessel, plus any voyage and port costs as provided in (e) of this section if those voyage and port costs are incurred for that transportation during the term of the charter, are not included in the charter fee, and are borne by the producer, plus the positioning cost, if any, borne by the producer for that vessel; the positioning cost must be amortized over the lesser of 36 months or the term of the charter in the case of a time charter, and amortized on the basis of the number of voyages in the case of a consecutive voyage charter; or

(C) for a contract of affreightment, the total costs under the contract, plus any voyage and port costs as provided in (e) of this section if those voyage and port costs are incurred for that transportation during the contract of affreightment, are not included in the charter fee, and are borne by the producer,

plus any positioning costs not included in that fee that are incurred with respect to that transportation during the contract of affreightment and that are borne by the producer;

(3) if transportation of oil is by a vessel that is owned or effectively owned, in whole or in part, by the producer of that oil, the producer's actual cost for that transportation, which is the sum of

(A) voyage and port costs incurred with respect to that transportation, as provided in (e) of this section;

(B) the positioning cost, amortized over 36 months, for that vessel;

(C) depreciation of the vessel as calculated by the producer for financial accounting purposes and used for reporting income and expenses to shareholders and owners, or as provided in 15 AAC 55.195(a), (b), (c), (f), or (h) or 15 AAC 55.196, as applicable; and

(D) an amount that, when added to the amount of depreciation allowed under (C) of this paragraph, will provide a reasonable after-tax return on the acquisition cost, as provided in 15 AAC 55.195(a), of the vessel over its expected useful life as used for financial accounting purposes and used for reporting income and expenses to shareholders and owners, or on the adjusted shipyard cost or invested capital as provided in 15 AAC 55.195(b), (c), (f), or (h) or 15 AAC 55.196, as applicable;

(4) in the case of transportation of gas as liquefied natural gas (LNG),

(A) if not all of the LNG transportation facilities are subject to tariff regulations of the Federal Energy Regulatory Commission or another federal

agency, a state, territory, or possession of the United States, or a foreign nation, and if the producer does not own or effectively own, in whole or in part, the LNG transportation facility, the amount charged to the producer for that LNG transportation;

(B) if the producer owns or effectively owns, in whole or in part, the LNG transportation facility, the producer's actual cost for that transportation, which is the sum of

(i) the direct operating costs of the LNG transportation facility incurred with respect to the producer's gas; for an LNG tanker, direct operating costs consist of the tanker's voyage and port costs as provided in (e) of this section;

(ii) the positioning cost, amortized over 36 months, in the case of an LNG tanker;

(iii) depreciation of the LNG transportation facility as calculated by the producer for financial accounting purposes and used for reporting income and expenses to shareholders and owners, or as provided in 15 AAC 55.195(a), (b), (c), or (d), as applicable;

(iv) an amount that, when added to the amount of depreciation allowed under (iii) of this subparagraph, will provide a reasonable after-tax return on the acquisition cost, as provided in 15 AAC 55.195(a), (b), (c), or (d), as applicable, of the LNG transportation facility over its expected useful life as used for financial accounting purposes and used for reporting income and expenses to shareholders and owners, or on

the adjusted shipyard cost as provided in 15 AAC 55.195(a), (b), (c), or (d), as applicable;

(5) if transportation of oil or gas is by a nonregulated pipeline facility that is not owned or effectively owned, in whole or in part, by the producer of that oil or gas, the transportation fee specified in the contract plus any other costs not included in the fee with respect to that transportation that are borne by the producer;

(6) if transportation of oil or gas is by a nonregulated pipeline facility that is owned or effectively owned, in whole or in part, by the producer of that oil or gas, the sum of the following, allocated to that oil or gas in the proportion that the volume of that oil or gas bears to the total volume of fluids transported by the pipeline:

(A) a cost of capital allowance that includes depreciation and an after-tax return on investment, as provided in 15 AAC 55.195(d);

(B) the reasonable operating and maintenance costs for the pipeline facility, which are determined by multiplying the projected actual annual amount of direct operating and maintenance costs for the pipeline facility by 112 percent; for purposes of this subparagraph, direct operating and maintenance costs are only those costs necessary to physically operate and maintain the pipeline facility;

(C) ad valorem taxes associated with the pipeline facility.

(c) Reasonable cost of marine transportation under AS 43.55.150(b) is fair market value. Fair market value of marine transportation is determined

(1) for shipments of oil, on the basis of third-party charters (that is, time charters in which the producer does not own or effectively own the vessel in whole or in part) of one year or more which are reported to the department for like vessels; two

vessels will be considered like vessels if the difference between them in tonnage is less than 10,000 dead-weight tons and if they are both

(A) Jones Act vessels (46 U.S.C. App. 808 and 883);

(B) Construction-Differential Subsidy ("CDS") vessels (46 U.S.C. App. 1151 - 1161);

(C) Operating-Differential Subsidy ("ODS") vessels (46 U.S.C. App. 1171 - 1185);

(D) CDS and ODS vessels; or

(E) vessels that do not meet the qualifications of (A) - (D) of this paragraph; or

(2) for shipments of gas as LNG, on the basis of third party charters or leases (that is, time charters or leases in which the producer does not own or effectively own, in whole or in part, the LNG transportation facility in question) of three years or more that are reported to the department for like LNG transportation facilities.

(d) If a producer sells its oil or gas to a third party in what would otherwise be a bona fide, arm's-length sale but at the time of the sale the producer expects to repurchase that oil or gas at a subsequent time and place, then that sale to the third party and the repurchase from the third party, when it occurs, must be disregarded and the oil or gas subject to that sale must be regarded as if it had remained the producer's own oil or gas throughout the time between that sale and repurchase. In determining the value at the point of production in such a case, the cost of transportation between the point of sale for that sale and the point of repurchase must be determined as if the producer were the

shipper. This subsection does not apply if the producer's expected repurchase does not in fact occur.

(e) For purposes of this section, allowable voyage and port costs for a vessel do not include losses, damages, or expenses incurred in connection with an oil discharge except as provided in this subsection, and do not include taxes or fees on the receipt of oil or LNG at a marine terminal from a vessel. Allowable voyage and port costs for a vessel or LNG tanker are costs actually incurred for the following purposes:

(1) fuel for the vessel or LNG tanker while in port and at sea not to exceed the actual cost if purchased from a third party, or if the fuel is not purchased from a third party, the spot market price of comparable fuel as reported in Platt's Oilgram Price Report at the time of the fuel purchase for the market nearest the point of refueling, plus related allowable fuel taxes and handling charges;

(2) stores and provisions for the vessel or LNG tanker and its captain and crew;

(3) wages and benefits of the vessel's or LNG tanker's captain and crew;

(4) routine maintenance;

(5) drydocking costs, expensed in the year paid;

(6) port and dock fees;

(7) demurrage;

(8) tug and pilotage fees;

(9) marine agents' fees in port;

(10) lightering;

(11) transshipment charges;

(12) customs fees and duties;

(13) taxes incurred due to the ownership and operation of the vessel or LNG tanker, except for income taxes and other taxes (including certain franchise taxes) measured by income;

(14) regular and customary gratuities that are also legal;

(15) insurance premiums actually paid to third-party insurers;

(16) minor cargo losses or measuring differentials not to exceed .0025 of the oil transported, determined on an annual basis for each vessel;

(17) loading and unloading inspection fees;

(18) Panama Canal transit fees;

(19) a reasonable management fee for operating vessels or LNG tankers; this fee is set at six percent of the allowable costs set out in (1) - (3) of this subsection; this set fee covers all general and administrative costs related to vessel operations, including all costs for accounting services, clerical services, administrative services, secretarial services, data processing services, legal services, corporate and operations management, overhead pass-throughs, facility costs and depreciation, corporate planning, risk management, environmental planning and risk evaluation, public affairs, governmental affairs, political affairs, dues and subscriptions other than dues allowable under (21) of this subsection, long-range scheduling, and long-range planning; additional deductions will not be allowed for these costs;

(20) other costs directly associated with the operation or maintenance of the vessel or LNG tanker, including costs for port services and operations, cargo scheduling and planning, fleet staffing, fleet scheduling, fleet staff training, fleet safety,

engineering for repair, engineering for maintenance, engineering for drydocking, quality assurance for vessel operations, communication systems, navigation systems, United States Coast Guard certifications, and utility services; these costs include costs for personnel performing the functions listed and the first level of supervision of these personnel;

(21) costs incurred in transportation of oil to comply with 33 U.S.C. 2701 - 2761 (Oil Pollution Act of 1990), AS 46.04, and applicable laws of this or any other state or political subdivision requiring equipment and personnel to be in place for spill prevention and response to spills from vessels; those costs must have not been incorporated into a pipeline tariff, but must have been incurred as an actual cost in the transportation of oil produced in the state; and

(22) costs of containing and cleaning up cargo lost in a discharge, unless the discharge is a catastrophic oil discharge under AS 46.04.900.

(f) For purposes of this section, a producer "effectively owns" a vessel, LNG transportation facility, or nonregulated pipeline facility if the vessel, LNG transportation facility, or nonregulated pipeline facility

(1) is owned by another person comprising part of a consolidated business in which the producer is also a part;

(2) is the subject of a lease that qualifies as a capital lease under generally accepted accounting principles, in which the producer or another person comprising part of a consolidated business in which the producer is also a part, is the lessee;

(3) was built to the account of the producer, or of another person comprising part of a consolidated business in which the producer is also a part, was sold

and was chartered or leased back by the producer, or by another person comprising part of a consolidated business in which the producer is also a part, all in a simultaneous transaction, and is on a term charter or lease for a period of 15 years or longer to the producer, or to another person comprising part of a consolidated business in which the producer is also a part; or

(4) in the case of a vessel for which a cost of capital allowance is allowed under 15 AAC 55.196, is treated as owned by the producer, or by another person comprising part of a consolidated business in which the producer is also a part, in a federal income tax return filed by or on behalf of the producer, or by or on behalf of another person comprising part of a consolidated business in which the producer is also a part.

(g) For purposes of this section, the "positioning cost" for a vessel or LNG tanker includes the costs borne by the producer for placing that vessel or LNG tanker into position before the vessel's or LNG tanker's first voyage in service for that producer.

(h) The third-party nature of an agreement between a producer and a third-party carrier regarding transportation costs is not affected during the term of that agreement by a subsequent consolidation of that producer and carrier into a consolidated business, if, at the time they entered into that agreement, neither the producer nor the carrier exercised directly or indirectly any control over the business affairs of the other.

(i) The producer's actual marine transportation cost, as otherwise determined under this section, for a producer that transports oil produced in the state through a charter, contract of affreightment, sublease, or other arrangement on behalf of a person not affiliated with the producer, in addition to the producer's own oil produced in the

state, includes the cost of transporting that non-affiliated person's oil produced in the state and is reduced by the revenue received for providing that transportation.

(j) A producer shall report any reimbursed costs to the department. Reimbursed costs are not allowable as actual costs of transportation under this section.

(k) Only costs incurred in the transportation of oil or gas produced from a lease or property in the state are allowable costs. Costs incurred in connection with the transportation of any other oil or gas are not allowable costs.

(l) For purposes of this section, "expected useful life" means the period of time used to calculate depreciation under (b)(3)(C) or (b)(4)(B)(iii) of this section.

(m) Other costs incurred to transport oil or gas from the flange of the vessel to the sales delivery point are allowable for purposes of AS 43.55.150 if the other costs are actual costs of transportation.

(n) Except as otherwise provided in this subsection and in (p) of this section, if a tariff rate for pipeline transportation of oil has been adjudicated as just and reasonable by the Regulatory Commission of Alaska or another regulatory agency having jurisdiction, the tariff rate establishes the reasonable cost of the pipeline transportation for periods for which the tariff rate is in effect, including periods for which the tariff rate is given retroactive effect, but ending five years after the end of the test period on which the tariff rate is based. If a complaint challenging the tariff rate has been filed with and accepted for investigation by the regulatory agency, the reasonable cost of the pipeline transportation is determined under (q) - (s) of this section for the period

(1) that begins on the date the complaint is accepted for investigation and ends the day before the date, if any, that the complaint proceeding is resolved by

- (A) the adjudication of an applicable tariff rate as just and reasonable; or
- (B) the regulatory agency's acceptance of a settlement to which the state is a party and that provides for a tariff rate that the department determines uses a cost-based tariff methodology; and
- (2) for which no rate referred to in (1)(A) or (B) of this subsection is given retroactive effect.
- (o) Except as otherwise provided in this subsection and in (p) of this section, if the department determines that a tariff rate for pipeline transportation of oil on file with the Regulatory Commission of Alaska or another regulatory agency having jurisdiction uses a cost-based tariff methodology, and if the tariff rate is the result of a settlement that is accepted by the regulatory agency and to which the state is a party, the tariff rate establishes the reasonable cost of the pipeline transportation for periods for which the tariff rate is in effect, including periods for which the tariff rate is given retroactive effect, but ending not later than the latest of the following dates: December 31, 2013; five years after the date the settlement is accepted by the regulatory agency; or three years after the last date that under the settlement the state has the right, beginning no later than five years after the date the settlement is accepted by the regulatory agency and recurring at least once every three years, to require renegotiation or arbitration of material terms of the settlement in response to a material change in rate determination methodologies approved by the regulatory agency, in the economic life of the pipeline facility, in capital structure, or in the cost of capital. If a protest or complaint challenging the tariff rate has been filed with and accepted for investigation by the regulatory agency, the reasonable

cost of the pipeline transportation is determined under (q) - (s) of this section for the period

(1) that begins on the date the protest or complaint is accepted for investigation and ends the day before the date, if any, that the protest or complaint proceeding is resolved by

(A) the adjudication of an applicable tariff rate as just and reasonable; or

(B) the regulatory agency's acceptance of a settlement to which the state is a party and that provides for a tariff rate that the department determines uses a cost-based tariff methodology; and

(2) for which no tariff rate referred to in (1)(A) or (B) of this subsection, is given retroactive effect.

(p) If two or more tariff rates for pipeline transportation of oil from a given point of tender to a given point of delivery are in effect for a calendar year or portion of a calendar year for which each would otherwise establish the reasonable cost of the pipeline transportation under (n) or (o) of this section, the reasonable cost of the pipeline transportation is equal to the average of all such tariff rates, weighted according to the respective amounts of throughput subject to each such tariff rate during the calendar year or portion of the calendar year, as applicable.

(q) Except as otherwise provided under (n) and (o) of this section, the reasonable costs of pipeline transportation for oil under AS 43.55.150(b) are determined under this subsection and, if applicable, (r) of this section. For a pipeline facility with a single point of tender and a single point of delivery, the reasonable costs per barrel of oil tendered for

a calendar year are equal to the sum of the items described in (1) – (4) of this subsection, divided by the number of barrels of oil tendered for transportation on the pipeline during the previous calendar year. For a pipeline facility with multiple points of tender or multiple points of delivery, the reasonable costs per barrel-mile of oil tendered for a calendar year are equal to the sum of the items described in (1) – (4) of this subsection, divided by the number of barrel-miles of oil tendered for transportation on the pipeline during the previous calendar year. The items summed for purposes of the calculations under this subsection are

(1) the ordinary and necessary costs incurred by the carrier during the previous calendar year or, in the case of a pipeline facility with multiple carriers, incurred by all of the carriers during the previous calendar year that are direct costs of prudently operating and maintaining the pipeline facility or are overhead costs directly related to prudently operating and maintaining the pipeline facility; costs allowed under this paragraph do not include items described in AS 43.55.165(e) (3), (4), (6), (7), (9), (10), (12) (13), (16), (19), and (21), or costs of arbitration, litigation, or other dispute resolution activities that involve the state or concern the rights or obligations among carriers or owners of the pipeline facility or between a carrier or owner and a shipper;

(2) ad valorem taxes associated with the pipeline facility and paid the previous calendar year;

(3) if specifically identified in an applicable tariff on file with a regulatory agency having jurisdiction, the allowance for the previous calendar year for the cost of dismantlement, removal, and restoration of the pipeline facility; and

(4) a cost of capital allowance for depreciation of, and an after-tax return on, unrecovered investment, if any, prudently made in the pipeline facility, calculated for the previous calendar year, as provided in 15 AAC 55.195(j).

(r) For purposes of (q) of this section, if the pipeline facility was not in service during the previous calendar year or if it was placed in service later than 90 days before the end of the previous calendar year, the amounts described in (q)(1) – (4) of this section are calculated for the calendar year for which reasonable transportation costs are being determined rather than the previous calendar year, and the sum is divided by the number of barrels or barrel-miles, as applicable, tendered during the calendar year for which reasonable transportation costs are being determined rather than the previous calendar year.

(s) If a producer of oil whose reasonable costs of pipeline transportation would otherwise be calculated under (q) of this section is unable to obtain from a carrier sufficient information to calculate those reasonable costs, the producer shall so inform the department, and the department will determine the reasonable costs of the pipeline transportation, using the method established under (q) of this section if sufficient information is available to the department and otherwise using another reasonable method. To the extent that due process requires disclosure to the producer of information obtained by the department that is entitled to confidentiality, the department will follow procedures substantially equivalent to those set out in 15 AAC 05.250 to ensure appropriate protection of the confidential information.

(t) For purposes of

(1) AS 43.55.150(b) and this section, a tariff rate has been adjudicated when the regulatory agency has issued its final order in the adjudication and that order has become effective, regardless of whether the order is subject to judicial review, unless the order is stayed;

(2) this section,

(A) a settlement has been accepted by a regulatory agency when the regulatory agency has issued its final order accepting the settlement and that order has become effective, regardless of whether the order is subject to judicial review, unless the order is stayed;

(B) a tariff rate is given retroactive effect for a period beginning on a past date if the regulatory agency having jurisdiction provides that the tariff rate is effective beginning on that date, regardless of the extent, if any, to which the agency orders refunds with respect to transportation charges paid by shippers during the period.

(u) This section applies to oil and gas produced after June 30, 2007. (Eff.

___/___/___, Register _____)

Authority: AS 43.05.080

AS 43.55.020

AS 43.55.030

AS 43.55.040

AS 43.55.110

AS 43.55.150

AS 43.55.900

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The section heading of 15 AAC 55.195 is changed:

15 AAC 55.195. Return on investment or cost of capital allowance to be used in calculation of [REASONABLE] costs of transportation for oil or gas, other than certain vessel transportation costs for oil or gas produced on or after January 1, 2003.

The lead-in language of 15 AAC 55.195(a) is amended to read:

(a) For a vessel, LNG transportation facility, or capitalized improvement placed in service before January 1, 1995, by the producer or by a person from whom, directly or through an intermediate transaction of the same nature, the producer later acquired the vessel as part of a larger transfer of both marine and non-marine assets associated with a business merger or acquisition transaction, a reasonable return including depreciation under 15 AAC 55.191(b)(3)(C) and (D), [OR] 15 AAC 55.191(b)(4)(B)(iii) and (iv), 15 AAC 55.193(b)(3)(C) and (D), or 15 AAC 55.193(b)(4)(B)(iii) and (iv) is an amount that yields a return on the acquisition cost of the vessel, LNG transportation facility, or capitalized improvement, after federal income tax, of two percent plus the average annual national inflation rate, measured by the compound root of the GNP deflator, during the period between the time the commitment was made to construct or initially acquire the vessel, LNG transportation facility, or capitalized improvement for the purpose of placing

it in service and the time when the vessel, LNG transportation facility, or capitalized improvement had been received or delivered and was ready to be placed into service, or if that period fell entirely within a calendar year, during that entire calendar year, except that if the department replaced that rate of return with a different rate of return for a vessel, LNG transportation facility, or capitalized improvement under former 15 AAC 55.190(i), that different rate of return is allowed instead. The allowance for the reasonable return on the acquisition cost is a level annual amount, determined in the year of initial acquisition for the purpose of placement in service, considering the marginal federal corporate income tax rate in effect that year and the contemporaneous and projected federal income tax benefits. If, in subsequent years, the federal tax rate changes, or other events occur that change the available federal income tax benefits, a revised level annual allowance must be calculated to yield the same after-tax return. For purposes of this subsection,

...

15 AAC 55.195(c)(1) is amended to read:

(1) a reasonable return including depreciation under 15 AAC 55.191(b)(3)(C) and (D), [OR] 15 AAC 55.191(b)(4)(B)(iii) and (iv), **15 AAC 55.193(b)(3)C) and (D), or 15 AAC 55.193(b)(4)(B)(iii) and (iv)** is \$158,000 per year for 10 years for each \$1,000,000 of adjusted shipyard cost as defined in (b) of

this section, for oil or gas produced before January 1, 2002, and on or after January 1, 2003; and

The lead-in language of 15 AAC 55.195(d) is amended to read:

(d) For an LNG transportation facility or capitalized improvement to that facility first placed in service by the producer on or after January 1, 1995, a cost of capital allowance that consists of depreciation and a return on acquisition cost will be allowed for oil or gas produced on or after January 1, 2002. The cost of capital allowance under this subsection is also available for a pipeline facility under 15 AAC 55.191(b)(8) **or** **15 AAC 55.193(b)(6)**, or for a capitalized improvement that is made to that facility.

However, an improvement to an LNG transportation or pipeline facility that the producer treats as an expense under 26 U.S.C. 179 may not receive a cost of capital allowance under this subsection. The cost of capital allowance under this subsection is an amount to be calculated annually for a calendar year as follows:

’ ’ ’

15 AAC 55.195(d)(18)(B)(i) is amended to read:

(i) except as provided in (ii) of this subparagraph, is the cost of capital, as reasonably determined by the department, for the category of business described for Standard Industrial Classification (SIC) Industry No. 4924, in the Executive Office of the President, Office of Management and Budget, Standard Industrial Classification Manual, as revised as of 1987; as described in this subparagraph, SIC Industry No.

4924 is adopted by reference; in determining a cost of capital for a calendar year under this sub-subparagraph, the department will presume, in the absence of facts to the contrary, that the cost of capital is accurately represented by the weighted average cost of capital using the capital asset pricing model (CAPM), ordinary least squares (OLS) for the industrial composite for SIC code number 4924, as reported in **Morningstar, Inc.**, [IBBOTSON ASSOCIATES] The Cost of Capital Yearbook published during the previous calendar year, plus, for LNG transportation facilities, 0.2 percent after December 31, 2001; and

15 AAC 55.195 is amended by adding new subsections to read:

(j) For purposes of 15 AAC 55.193(q), a cost of capital allowance is calculated under this subsection for the original investment in the pipeline facility and for capitalized improvements, to the extent not previously recovered. However, a capitalized improvement to a pipeline facility that the carrier treats as an expense under 26 U.S.C. 179 may not receive a cost of capital allowance under this subsection. The cost of capital allowance is an amount to be calculated annually for a calendar year as follows:

(1) for purposes of the formulas set out in (9), and (10) of this subsection, the cost of capital allowance is calculated using the following formula: cost of capital allowance = initial cash flow/ (1 – marginal income tax rate); however, the cost of capital allowance may not be less than zero;

(2) for purposes of the formula set out in (1) of this subsection, initial cash flow is calculated using the following formula: $\text{initial cash flow} = \text{unrecovered investment net of the net present value of tax benefits/annuity factor for year } n$, where "n" is years of remaining life of the pipeline facility beginning with the calendar year for which the comparison between actual costs and reasonable costs of transportation is first required to be made; except that in the last calendar year of remaining life $\text{initial cash flow} = \text{unrecovered investment beginning of year } X \left((1 + \text{WACC})^{-.5} \right)$;

(3) for purposes of the formula set out in (2) of this subsection, unrecovered investment net of the net present value of tax benefits is calculated using the following formula: $\text{unrecovered investment net of the net present value of tax benefits} = \text{unrecovered investment beginning of year} - \text{net present value of tax benefits}$;

(4) for purposes of the formulas set out in (2), (3), (7), and (8) of this subsection, unrecovered investment beginning of year is calculated using the applicable formula as follows:

(A) for calendar years after the first year for which reasonable costs of transportation are calculated under 15 AAC 55.193(q) or (s), $\text{unrecovered investment beginning of year} = \text{unrecovered investment from the end of the previous year}$;

(B) for a calendar year not covered by (A) of this paragraph, in the case of a pipeline first placed in service during that year, $\text{unrecovered investment beginning of year} = \text{accumulated prudent unrecovered investment during construction at the time the pipeline facility begins service}$;

(C) for a calendar year not covered by (A) or (B) of this paragraph, unrecovered investment beginning of year = amount of prudently incurred capital investment in the pipeline facility that has not been recovered as of the end of the previous calendar year under the applicable tariff on file with the regulatory agency having jurisdiction; that amount

(i) in the case of a tariff that uses a cost-based tariff methodology is the pipeline facility rate base as of the end of the previous calendar year, excluding any capital investment that as not prudently incurred;

(ii) otherwise is determined under (k) of this section;

(5) for purposes of the formulas set out in (4)(B), (11), (12), (15), and (17) of this subsection, accumulated unrecovered investment during construction at the time the pipeline facility begins service is calculated using the following formula: accumulated unrecovered investment during construction at the time the pipeline facility begins service = ((1 + (portion of the year in which the pipeline facility was under construction X WACC)) X accumulated unrecovered investment during construction at the end of the prior year) plus unrecovered prudent investment during construction for the last year in which an expenditure for the pipeline facility was incurred; for purposes of this paragraph,

(A) accumulated unrecovered investment during construction at the end of the prior year = $((1 + (\text{portion of the year in which the pipeline facility was under construction} \times \text{WACC})) \times \text{accumulated unrecovered investment during construction at the end of the year prior to the prior year}) + \text{unrecovered investment during construction for the year in which an expenditure for the pipeline facility was incurred};$

(B) unrecovered investment during construction for the year in which an expenditure for the pipeline facility was incurred = $((1 + (\text{portion of the year in which the pipeline facility was under construction} \times \text{WACC}))^{0.5}) \times \text{total amount paid to the person building or selling the pipeline facility during the year};$

(6) for purposes of the formula set out in (4)(A) of this subsection, unrecovered investment from the end of the prior year is calculated using the following formula: unrecovered investment end of year = $(\text{unrecovered investment middle of year} \times ((1 + \text{WACC})^{.5}));$

(7) for purposes of the formula set out in (6) of this subsection, unrecovered investment middle of year is calculated using the following formula: unrecovered investment middle of year = unrecovered investment beginning of year + any new capital investment in the pipeline facility prudently incurred during the year + cost of capital addition middle of year – middle of year actual after-tax cash flow;

(8) for purposes of the formula set out in (7) of this subsection, cost of capital addition middle of year is calculated using the following formula: cost of capital addition middle of year = $(\text{unrecovered investment beginning of year} \times (((1 + \text{WACC})^{0.5}) - 1));$

(9) for purposes of the formula set out in (7) of this subsection, middle of year actual after-tax cash flow is calculated using the following formula: middle of year actual after-tax cash flow = cost of capital allowance - actual income tax;

(10) for purposes of the formula set out in (9) of this subsection, actual income tax is calculated using the following formula: actual income tax = marginal income tax rate X (cost of capital allowance - depreciation);

(11) for purposes of the formula set out in (10) and (15) of this subsection, depreciation is calculated using the following formula: depreciation = depreciation factor X the accumulated unrecovered investment during construction at the time the pipeline facility begins service;

(12) for purposes of the formulas set out in (11) of this subsection, depreciation factor is the percentage of the accumulated unrecovered investment during construction at the time the pipeline facility begins service that can be depreciated for federal corporate income tax for a year;

(13) for purposes of the formulas set out in (1) and (10) of this subsection, marginal income tax rate is the highest marginal federal corporate income tax rate for the calendar year plus three percentage points; if the federal income tax rate changes during the year, the department will apply the new tax rate to that portion for the year that equals the number of days in the year that include and follow the day on which the old tax rate changed, divided by the total number of days in that year;

(14) For purposes of the formula set out in (2) of this subsection, annuity factor is calculated using the following formula: annuity factor =

$((1 - (1 / ((1 + WACC)^{\text{Years of remaining life}}))) / WACC) / ((1 + WACC)^{-0.5})$ / the portion of the year in service; for purposes of this paragraph,

(A) for a pipeline for which there is a tariff on file with a regulatory agency having jurisdiction, years of remaining life is the same as embedded in the tariff methodology if the methodology provides for years of remaining life, unless the department determines that number is unreasonable;

(B) if not determined under (A) of this paragraph, years of remaining life is the lesser of 20 years or the number of years remaining until the first year in which the total amount of oil produced from leases or properties whose oil production is transported by the pipeline is forecast to be zero in the field-specific production forecast published by the department under AS 37.07.060(b)(4):

(C) for a pipeline facility that comes into service midyear, the portion of the year in service for the first and last calendar years the facility is in service is the number of days the facility is in service during the year divided by 365, and 100 percent for all other years;

(15) for purposes of the formula set out in (3) of this subsection, net present value of tax benefits is the sum of the discounted annual tax depreciation amounts for each remaining year in which the accumulated unrecovered investment during construction at the time the pipeline facility begins service can be depreciated for federal corporate income tax for the year; the discounted annual tax depreciation amount is calculated using the following formula: discounted annual tax depreciation amount = depreciation X marginal federal tax rate X depreciation discount factor;

(16) for purposes of the formula set out in (15) of this subsection, the depreciation discount factor is calculated using the following formula: depreciation discount factor = $1/((1 + \text{WACC})^{\text{exp. (depreciation discount factor exponent)}})$;

(17) for purposes of the formula set out in (16) of this subsection, the depreciation discount factor exponent is calculated using the following formula: depreciation discount factor exponent = $((((1 - \text{portion of year in service}) - 1) \times 0.5) + 1) + (\text{tax year in which the accumulated unrecovered investment during construction at the time the pipeline facility begins service can be depreciated for federal corporate income tax minus tax year in which the tax is paid, where the first tax year is the year the pipeline facility is placed in service})$;

(18) for purposes of the formulas set out in (2), (5), (6), (8), and (14) of this subsection, WACC, or the weighted average cost of capital, is the cost of capital, as reasonably determined by the department, for the category of business described for Standard Industrial Classification (SIC) Industry No. 4924, in the Executive Office of the President, Office of Management and Budget, Standard Industrial Classification Manual, as revised as of 1987; as described in this subparagraph, SIC Industry No. 4924 is adopted by reference; in determining a cost of capital for a calendar year under this subparagraph, the department will presume, in the absence of facts to the contrary, that the cost of capital is accurately represented by

(A) for calendar years after 1994, the weighted average cost of capital using the capital asset pricing model (CAPM), ordinary least squares (OLS) for the industrial composite for SIC code number 4924, as reported in Morningstar, Inc., The Cost of Capital Yearbook published during the previous calendar year;

(B) for calendar years before 1995, 0.5 percent above the previous calendar year's annual average of the daily reported United States Prime Rate as listed in the Eastern print edition of the Wall Street Journal.

(k) This subsection provides for the calculation of the amount of capital investment in a pipeline facility that has not been recovered as of the end of a calendar year under the applicable tariff for purposes of (j)(4)(C) of this section, in the case of a pipeline facility for which the tariff on file with the regulatory agency having jurisdiction does not use a cost-based tariff methodology. For the first year the pipeline facility is in service, that amount is calculated as described for unrecovered investment in (j)(4)(B) of this section. For subsequent years, that amount is calculated as described for unrecovered investment in (j)(4)(A) of this section, except that for purposes of calculating the unrecovered investment from the end of the previous year, for the years before and including the first year in which the comparison of actual and reasonable costs of transportation is made under 15 AAC 55.181(e), the cost of capital allowance is calculated as provided in this subsection rather than under (j) of this section. The cost of capital allowance equals the remainder obtained by subtracting non-capital pipeline expenses from the total charges for pipeline transportation under the applicable tariff. Non-capital pipeline expenses are operating and maintenance costs, ad valorem property taxes, and the allowance, if any, for dismantlement, removal, and restoration of the pipeline facility. If the remainder is less than zero, the amount of capital investment in the pipeline facility that has not been recovered as of the end of the calendar year is zero.

(l) The following example illustrates (j) of this section:

Taxpayer A places a facility into service 10% (37 days) into Year One. Construction started 75% (274 days) into the calendar year four years earlier.

Table 1 shows for each calendar year of construction a) the portion of the year under construction, b) the amount paid to the person building or selling the pipeline facility, and c) the WACC for each year of construction.

Construction Year	Portion of Year Under Construction	Amount Paid	wacc
1	0.25	5,800,000	0.07
2	1.00	11,600,000	0.08
3	1.00	17,400,000	0.09
4	1.00	23,300,000	0.08
5	0.10	29,100,000	0.07
total		87,200,000	

The pipeline facility begins service in Tax Year 1. In Tax Year 1 the marginal tax rate is 38%, and the WACC is 7%.

Table 2 shows for each tax year a) the portion of year in service, b) the marginal income tax rate, c) the WACC, d) years of remaining life, and e) assumed depreciation factor.

**TABLE 2
YEAR ONE INPUTS**

Tax Year	Portion of Year in Service	Marginal Tax Rate	WACC	Years of Remaining Life	Depreciation Factor
1	90%	38%	7%	20.0	5.0000%
2	100%	39%	6%	19.1	9.5000%
3	100%	38%	5%	18.1	8.5500%
4	100%	37%	6%	17.1	7.6950%
5	100%	36%	7%	16.1	6.9255%
6	100%	35%	8%	15.1	6.2330%
7	100%	36%	9%	14.1	5.9049%
8	100%	37%	8%	13.1	5.9049%
9	100%	38%	7%	12.1	5.9049%
10	100%	39%	6%	11.1	5.9049%
11	100%	38%	5%	10.1	5.9049%
12	100%	37%	6%	9.1	5.9049%
13	100%	36%	7%	8.1	5.9049%
14	100%	35%	8%	7.1	5.9049%
15	100%	36%	9%	6.1	5.9049%
16	100%	37%	8%	5.1	2.9525%
17	100%	38%	7%	4.1	0.0000%
18	100%	39%	6%	3.1	0.0000%
19	100%	38%	5%	2.1	0.0000%
20	100%	37%	6%	1.1	0.0000%
21	10%	36%	7%	0.1	0.0000%

Step One: Calculate the unrecovered investment during construction and the accumulated unrecovered investment for the year in which an expenditure for the pipeline facility was incurred:

For the first calendar year of construction the unrecovered investment during construction for the year in which an expenditure for the pipeline facility was incurred would be:

$$((1 + (0.25*0.07)) ^ 0.5) * 5,800,000 = 5,850,530$$

The accumulated unrecovered investment would be:

$$((1 + (0.25*0.07)) * 0) + 5,850,530 = 5,850,530$$

For the second calendar year of construction the unrecovered investment during construction for the year in which an expenditure for the pipeline facility was incurred would be:

$$((1 + (1.00*0.08)) ^ 0.5) * 11,600,000 = 12,055,074$$

The accumulated unrecovered investment would be:

$$((1 + (1.00*0.08)) * 5,850,530) + 12,055,074 = 18,373,646$$

For the third calendar year of construction the unrecovered investment during construction for the year in which an expenditure for the pipeline facility was incurred would be:

$$((1 + (1.00*0.09)) ^ 0.5) * 17,400,000 = 18,166,133$$

The accumulated unrecovered investment would be:

$$((1 + (1.00*0.09)) * 18,373,646) + 18,166,133 = 38,193,407$$

For the fourth calendar year of construction the unrecovered investment during construction for the year in which an expenditure for the pipeline facility was incurred would be:

$$((1 + (1.00*0.08)) ^ 0.5) * 23,300,000 = 24,214,070$$

The accumulated unrecovered investment would be:

$$((1 + (1.00*0.08)) * 38,193,407) + 24,214,070 = 65,462,950$$

For the fifth, and last, calendar year of construction the unrecovered investment during construction for the year in which an expenditure for the pipeline facility was incurred would be:

$$((1 + (0.10*0.07)) ^ 0.5) * 29,100,000 = 29,201,672$$

The accumulated unrecovered investment would be:

$$((1 + (0.10*0.07)) * 65,462,950) + 29,201,672 = 95,122,863$$

Step Two: Calculate the unrecovered investment beginning of year for the first year the pipeline facility is in service:

For the first year the pipeline facility is in service the unrecovered investment beginning of year is accumulated unrecovered investment during construction at the time the pipeline facility begins service. From Step One this is 95,122,863. In subsequent years the unrecovered investment beginning of year is the unrecovered investment from the end of the previous year.

Step Three: Calculate the annuity factor:

For the first year the pipeline facility is in service the annuity factor would be:

$$(((1 - (1 / ((1 + 0.07) ^ (20)))) / 0.07) / ((1 + 0.07) ^ -0.5) / 0.90 = 12.17615$$

Step Four: Calculate the depreciation:

For the first year the pipeline facility is in service the depreciation would be:

$$0.05 * 95,122,863 = 4,756,143$$

Step Five: Calculate the discount factor exponent for each remaining year in which depreciation for federal corporate income tax will occur:

For the first year the pipeline facility is in service:

- For Tax Year 1 the discount factor exponent would be:

$$(((1 - 0.9) - 1) * 0.5) + 1) + (1 - 1) = 0.55$$

- For Tax Year 2 the discount factor exponent would be:

$$(((1 - 1.0) - 1) * 0.5) + 1) + (2 - 1) = 1.50$$

- Table 3A shows for Tax Year 1 the discount factor exponent for each remaining year in which depreciation will occur. (Table 3B shows this for Tax Year 2.)

Step Six: Calculate the discount factor for each remaining year in which depreciation for federal corporate income tax will occur:

For the first year the pipeline facility is in service:

- For Tax Year 1 the discount factor would be:

$$1/((1 + 0.07) ^ (0.55)) = 0.9635$$

- For Tax Year 2 the discount factor would be:

$$1/((1 + 0.07) ^ (1.50)) = 0.9035$$

- Table 3A shows for Tax Year 1 the discount factor for each remaining year in which depreciation will occur. (Table 3B shows this for Tax Year 2.)

Step Seven: Calculate the discounted annual tax depreciation amount for each remaining year in which depreciation for federal corporate income tax will occur:

For the first year the pipeline facility is in service:

- For Tax Year 1 the discounted annual tax depreciation amount would be:

$$4,756,143 * 0.38 * 0.9635 = 1,741,315$$

- For Tax Year 2 the discounted annual tax depreciation amount would be:

$$9,036,672 * 0.38 * 0.9035 = 3,102,533$$

- Table 3A shows for Tax Year 1 the discounted annual tax depreciation amount for each remaining year in which depreciation will occur. (Table 3B shows this for Tax Year 2.)

Step Eight: Calculate the net present value of tax benefits:

For the first year the pipeline facility is in service the net present value of tax benefits would be the sum of the discounted annual tax depreciation amounts for each remaining year in which depreciation for federal corporate income tax will occur. Table 3A shows for Tax Year 1 this is for Tax Year 1. Table 3B shows this for Tax Year 2. Table 3C shows this for each year.

TABLE 3A
Tax Year 1 - Discounted Annual
Tax Depreciation Amounts for
Each Remaining Year

Remaining Tax Year	Depreciation Discount Factor Exponent	Depreciation Discount Factor	Discounted Annual Tax Depreciation Amount
1	0.55	0.9635	1,741,315
2	1.50	0.9035	3,102,533
3	2.50	0.8444	2,609,607
4	3.50	0.7891	2,194,997
5	4.50	0.7375	1,846,259
6	5.50	0.6893	1,552,928
7	6.50	0.6442	1,374,949
8	7.50	0.6020	1,284,999
9	8.50	0.5626	1,200,933
10	9.50	0.5258	1,122,368
11	10.50	0.4914	1,048,942
12	11.50	0.4593	980,319
13	12.50	0.4292	916,186
14	13.50	0.4012	856,249
15	14.50	0.3749	800,233
16	15.50	0.3504	373,941
17	16.50	0.3275	0
18	17.50	0.3060	0
19	18.50	0.2860	0
20	19.50	0.2673	0
21	20.95	0.2423	0
Sum of amounts each remaining year			23,006,759

TABLE 3B
Tax Year 2 - Discounted Annual
Tax Depreciation Amounts for
Each Remaining Year

Remaining Tax Year	Depreciation Discount Factor Exponent	Depreciation Discount Factor	Discounted Annual Tax Depreciation Amount
2	0.50	0.9713	3,423,105
3	1.50	0.9163	2,906,410
4	2.50	0.8644	2,467,706
5	3.50	0.8155	2,095,222
6	4.50	0.7693	1,778,962
7	5.50	0.7258	1,589,937
8	6.50	0.6847	1,499,940
9	7.50	0.6460	1,415,038
10	8.50	0.6094	1,334,941
11	9.50	0.5749	1,259,379
12	10.50	0.5424	1,188,093
13	11.50	0.5117	1,120,843
14	12.50	0.4827	1,057,399
15	13.50	0.4554	997,546
16	14.50	0.4296	470,541
17	15.50	0.4053	0
18	16.50	0.3823	0
19	17.50	0.3607	0
20	18.50	0.3403	0
21	19.95	0.3127	0
Sum of amounts each remaining year			24,605,061

TABLE 3C
Net Present Value
of Tax Benefits

Tax Year	NPV of Tax Benefits
1	23,006,759
2	24,605,061
3	23,058,331
4	19,481,358
5	16,588,434
6	14,252,189
7	13,102,574
8	12,951,736
9	12,541,335
10	11,840,284
11	10,285,190
12	8,213,726
13	6,287,047
14	4,454,202
15	2,825,253
16	999,902
17	0
18	0
19	0
20	0
21	0

Step 9: Calculate the unrecovered investment net of the net present value tax benefits:

For the first year the pipeline facility is in service the unrecovered investment net of net present value tax benefits would be:

$$95,122,863 - 23,006,759 = 72,116,104$$

Step 10: Calculate the initial cash flow:

For the first year the pipeline facility is in service the initial cash flow would be:

$$72,116,104 / 12.17615 = 5,922,735$$

(Note that in the last calendar year of remaining life the initial cash flow is calculated different.)

Step 11: Calculate the cost of capital allowance

For the first year the pipeline facility is in service the cost of capital allowance would be:

$$5,922,735 * (1/(1 - 0.38)) = 9,552,799$$

Step 12: Calculate the actual income tax:

For the first year the pipeline facility is in service the actual income tax would be:

$$(.38 * (9,552,799 - 4,756,143)) = 1,822,729$$

Step 13: Calculate the middle of year actual after-tax cash flow:

For the first year the pipeline facility is in service the middle of year actual after-tax cash flow would be:

$$9,552,799 - 1,822,729 = 7,730,070$$

Step 14: Calculate the cost of capital addition middle of year:

For the first year the pipeline facility is in service the cost of capital addition middle of year would be:

$$(((1 + 0.07)^{0.5}) - 1) * 95,122,863 = 3,272,992$$

Step 15: Calculate the unrecovered investment middle of year:

For the first year the pipeline facility is in service the unrecovered investment middle of year would be:

$$95,122,863 + 3,272,992 - 7,730,070 = 90,665,785$$

Step 16: Calculate the unrecovered investment end of year:

For the first year the pipeline facility is in service the unrecovered investment end of year would be:

$$90,665,785 * ((1+0.07)^{0.5}) = 93,785,417$$

(Note that unrecovered investment end of year becomes in the following year the unrecovered investment beginning of year.)

Table 4 shows the derivation of the cost of capital allowance over the life of the pipeline.

TABLE 4
COST OF CAPITAL CALCULATION

col	col	col	col	col	col	col	col	col	col	col	col	col	col	col	col	col	col	col
1	2	3	4	5	6	7	8	9	10	11	12	13	14	15	16	17	18	
Portion of Year in Service	Marginal Income Tax Rate	WACC	Years of Remaining Life	Annuity Factor	Depreciation Factor	Depreciation	Unrecovered Investment Beginning of Year	Net Present Value of Tax Benefits	Unrecovered Investment Net of PV of Tax Benefits	Initial Cash Flow *	Cost of Capital Allowance	Actual Income Tax	Actual After-Tax Cash Flow	Cost of Capital Addition Middle of Year	Unrecovered Investment Middle of Year	Unrecovered Investment End of Year		
	(Assumption)	(Assumption)		$(1/(1+(C/W)(S)))^{(C)}$ $(1-(C)^1/(1+C)^1)$	(Assumption)	$(C^1 * Accumulated Unrecovered Investment during Construction)$	(C18)	$(Depend\ PV\ Street)$	(C9 - C10)	(C11 / C8)	$(C12 \times (1 / (1 - C13)))$	$(C13 \times (C13 - C8))$	(C13 - C14)	$(C13 \times ((1 - C13)^{15} - 1) / (-C13))$	$(C13 - C16 - C15)$	$(C17 \times (1 - C13)^{15})$		
1	90%	38%	7.00%	20.0	12.7815	5.0000%	4,756.143	95,122.863	23,026.739	72,116.104	5,827.735	1,822.739	7,730.070	3,272.992	90,665.785	93,735.417		
2	100%	38%	6.00%	19.0	11.5293	9.5000%	9,026.672	90,785.417	24,605.671	69,180.356	6,004.732	3,149.02	9,529.054	2,772.580	87,028.943	89,601.781		
3	100%	38%	5.00%	18.0	12,0197	8.5000%	8,130.005	89,801.781	23,088.531	66,540.490	5,335.195	3,024.010	8,626.737	2,272.723	83,187.787	85,242.055		
4	100%	37%	6.00%	17.0	10,8202	7.8893%	7,319.704	86,240.855	19,481.538	65,769.737	6,075.444	2,930.07	8,163.734	2,520.013	78,978.374	81,312.213		
5	100%	36%	7.00%	16.0	9,98944	6.9255%	6,587.724	81,312.213	16,589.454	64,724.779	6,801.904	2,814.034	8,972.498	2,297.629	75,188.554	77,233.824		
6	100%	35%	8.00%	15.0	8,92667	6.2303%	5,928.861	77,233.924	14,527.889	63,471.736	7,110.351	1,733.515	9,185.487	3,049.147	71,587.954	74,986.000		
7	100%	35%	9.00%	14.0	8,18977	5.5049%	5,616.910	74,380.000	13,102.574	61,283.425	7,372.955	2,201.341	9,534.672	3,075.704	68,197.031	71,157.149		
8	100%	37%	8.00%	13.0	8,25046	5.3049%	5,616.910	71,157.149	12,951.738	59,185.413	7,882.330	2,065.617	9,130.637	2,290.745	64,797.257	67,392.285		
9	100%	38%	7.00%	12.0	8,28022	5.3049%	5,616.910	67,392.285	12,541.535	54,797.980	6,633.857	1,911.588	8,768.382	2,317.713	60,887.916	62,292.850		
10	100%	39%	6.00%	11.0	8,17255	5.0049%	5,616.910	62,982.930	11,840.294	51,142.885	6,257.857	1,811.330	8,448.452	1,861.886	56,396.464	59,631.713		
11	100%	38%	5.00%	10.0	7,97866	5.3049%	5,616.910	58,831.713	10,265.190	47,718.523	5,820.745	1,531.118	8,128.470	1,433.888	51,371.130	52,830.745		
12	100%	37%	6.00%	9.0	7,69178	5.3049%	5,616.910	52,831.745	8,213.726	44,426.018	6,201.051	1,616.487	8,288.308	1,556.191	45,026.626	47,181.400		
13	100%	36%	7.00%	8.0	6,23475	5.3049%	5,616.910	47,181.400	6,267.047	40,884.353	6,559.038	1,667.405	8,381.186	1,623.420	40,223.634	41,607.650		
14	100%	35%	8.00%	7.0	5,48973	5.3049%	5,616.910	41,607.650	4,484.202	37,133.448	6,733.799	1,697.201	8,759.718	1,632.888	34,480.221	35,532.897		
15	100%	36%	9.00%	6.0	4,74279	5.3049%	5,616.910	35,832.887	2,283.253	33,007.644	6,893.543	1,393.658	8,981.631	1,577.746	28,429.011	29,880.739		
16	100%	37%	8.00%	5.0	4,27113	2.9525%	2,888.455	28,880.739	999.922	28,880.858	6,801.433	2,951.135	7,940.171	1,164.891	23,049.979	23,997.475		
17	100%	38%	7.00%	4.0	3,57278	0.00000	0	23,997.475	0	23,997.475	6,678.483	4,093.364	6,678.483	822.899	18,151.801	18,632.721		
18	100%	39%	6.00%	3.0	2,83874	0.00000	0	18,632.721	0	18,632.721	6,584.779	4,308.940	6,584.779	552.022	12,639.985	13,013.640		
19	100%	38%	5.00%	2.0	1,99980	0.00000	0	13,013.640	0	13,013.640	6,520.507	3,964.440	6,520.507	321.373	8,614.306	8,982.740		
20	100%	37%	6.00%	1.0	1,06354	0.00000	0	8,982.740	0	8,982.740	6,554.531	3,349.487	6,554.531	206.432	6,419.911	6,626.342		
21	10%	38%	7.00%	0.0	0.98443	0.00000	0	633.455	0	633.455	675.939	1,084.154	675.939	22.494	0	0		

Note that formula for initial cash flow (C2) changes in last year.

(m) The following example illustrates (k) of this section:

Assume a pipeline facility has been in service for 16 years. In Tax Year 17 the comparison between actual and reasonable costs is invoked. The actual cost is not cost-based. The initial rate base (unrecovered investment) was \$50 million.

Table 1 shows the following assumptions:

- Marginal income tax rate for each past year
- WACC for each past year
- Total actual cost for past years (This is the tariff actually paid.)
- Actual non-capital cost incurred by the pipeline in past years
- Depreciation for federal income tax either incurred in past years

**TABLE 1
DERIVATION OF BEGINNING UNRECOVERED INVESTMENT
FOLLOWING NON-COST BASED TARIFFS
ASSUMPTIONS**

Tax Year	Marginal Income Tax Rate	WACC	Past Actual Cost	Past Actual Non-Capital Cost	Depreciation
1	39%	11.29%	1,800,128	419,160	2,500,000
2	38%	12.54%	10,017,350	3,940,685	4,750,000
3	37%	10.43%	12,433,697	4,818,811	4,275,000
4	36%	8.83%	12,905,171	4,103,793	3,847,500
5	35%	8.70%	13,808,072	3,401,860	3,462,750
6	34%	9.82%	14,121,447	3,104,325	3,116,475
7	33%	11.37%	14,153,113	3,092,855	2,952,450
8	32%	10.51%	15,048,977	3,742,278	2,952,450
9	31%	8.96%	15,609,999	2,080,780	2,952,450
10	30%	6.75%	15,165,478	2,211,666	2,952,450
11	31%	6.50%	14,733,550	3,126,534	2,952,450
12	32%	8.93%	14,383,167	1,508,249	2,952,450
13	33%	8.29%	14,121,042	1,984,831	2,952,450
14	34%	8.30%	14,300,238	2,237,524	2,952,450
15	35%	8.93%	14,519,328	2,542,771	2,952,450
16	36%	8.17%	14,284,660	2,789,189	1,476,225

Table 2 illustrates the steps for deriving the unrecovered investment beginning when reasonable costs are employed.

Step One: Calculate the deemed cost of capital allowance (Column 8):

For Tax Year 1 the deemed capital cost actually recovered would be:

$$1,800,128 - 419,160 = 1,380,968$$

Steps Two - Six: Calculate the:

- **Actual Income Tax**
- **Middle of Year Actual After-Tax Cash Flow**
- **Cost of Capital Addition Middle of Year**
- **Unrecovered Investment Middle of Year**
- **Unrecovered Investment End of Year**

These are calculated as described in 15 AAC 55.195(j).

For the first year in which the comparison of actual and reasonable costs of transportation is made under 15 AAC 55.181(e), the beginning unrecovered investment would be (40,540,341). Since this is less than zero, all capital has been deemed recovered. Thus there is no unrecovered capital going forward, and only non-capital costs would be applicable.

If the comparison between actual and reasonable costs are made in subsequent years, the unrecovered investment at the beginning of the year would be calculated under 15 AAC 55.195(j)(4)(a), where the unrecovered investment at the beginning of the year equals the unrecovered investment from the end of the previous year, with the latter being calculated as described in 15 AAC 55.195(j), including the cost of capital allowance.

(Eff. 1/1/2000, Register 152; am 1/1/2002, Register 160; am 1/1/2003, Register 164; am 5/3/2007, Register 182; am ___/___/_____, Register ___)

Authority: AS 43.05.080 AS 43.55.030 AS 43.55.110
AS 43.55.020 AS 43.55.040 AS 43.55.150

Editor's note: The material adopted by reference in 15 AAC 55.195(d), (f), and (h) from the Standard Industrial Classification Manual may be viewed at or obtained from the Department of Revenue, Tax Division, 550 W. 7th Avenue, Suite 500, Anchorage, AK 99501. The Cost of Capital Yearbook is published by **Morningstar, Inc.** [IBBOTSON ASSOCIATES], 225 North Michigan Avenue, Suite 700, Chicago, Illinois 60601.

Before 1/1/2000, Register 152, the substance of 15 AAC 55.195(a), (b), and (c) was in 15 AAC 55.191(d), (f), and (g). The history note for 15 AAC 55.195 does not reflect the earlier history of the provisions currently set out at 15 AAC 55.195(a), (b), and (c).

15 AAC 55.800 is amended by adding new subsections to read:

(f) The following provisions apply retroactively to July 1, 2007:

- (1) 15 AAC 55.181;
- (2) 15 AAC 55.193;
- (3) 15 AAC 55.195(j);
- (4) 15 AAC 55.195(k).

(g) The changes to the following provisions, effective {effective date of regulations}, apply retroactively to July 1, 2007:

- (1) 15 AAC 55.195(a);
- (2) 15 AAC 55.195(c)(1);
- (3) 15 AAC 55.195(d).

(Eff. 5/3/2007, Register 182; am ___/___/_____, Register _____)

Authority: AS 43.05.080 Sec. 72, ch. 1, SSSLA 2007 AS 43.55.110

15 AAC 55.900(a)(4) is amended to read:

(4) "LNG transportation facility" means any or all of the following: the LNG liquefaction plant, gathering lines to that plant, loading and unloading facilities for LNG tankers **or trucks, LNG trucks,** or LNG tankers;

15 AAC 55.900(a) is amended by adding a new paragraph to read:

- (23) "cost-based tariff methodology" means a methodology for determining the charge for pipeline transportation that
- (A) is substantially similar to
 - (i) an adjudicatory methodology used by the Regulatory Commission of Alaska or another regulatory agency having jurisdiction over one or more pipeline tariffs for a pipeline in the state; or
 - (ii) the methodology set out in 15 AAC 55.193(q);
 - (B) provides for periodic true-up of forecast costs with known costs actually incurred; and
 - (C) provides for a charge per barrel of oil or per Mcf of gas based solely on recovery of the sum of the following elements of cost:

(i) a return on investment calculated by multiplying a specified percentage rate times the amount of investment in the pipeline facility that remains unrecovered in a calendar year;

(ii) depreciation of the investment in the pipeline facility;

(iii) identified elements of operating and maintenance costs, including ad valorem taxes, incurred by the carrier, or identified elements of operating and maintenance costs forecast to be incurred by the carrier; and

iv) a specified allowance, if provided for in the applicable filed tariff, for the cost of dismantlement, removal, and restoration of the pipeline facility.