South Texas COLLEGE OF LAW — HOUSTON —

ROUND 1

Drafted by Chuck Brownman[1]

General Facts for Both Sides

1. The Parties

A. ***Anchor Petroleum, Inc.*** ("Anchor") is an oil and gas company that concentrates on the "upstream" or exploration and production ("E&P") phase of the business.[2] Accordingly, it either owns mineral rights in its own name and/or leases from third parties. Those mineral rights give Anchor the ability to explore for oil and gas (and potentially other minerals, although in this problem we are focusing on oil and natural gas) through drilling. If oil and/or gas are discovered in commercial quantities, those mineral rights also give Anchor the ability and the obligation to produce the hydrocarbons by operating the wells that produce the hydrocarbons.

Like many of its competitors, Anchor does business in most of the shale basins located throughout the United States, including the Permian Basin (located in west Texas and eastern New Mexico), the Eagle Ford (Southern Texas), the Marcellus (in the Appalachian Basin in the eastern U.S.), the Bakken (North Dakota) and the Niobrara (Colorado, Wyoming and South Dakota); however, in addition to exploring in, and producing from, these established areas, Anchor also explores in previously unexplored areas, called "wildcat" areas.[3]

One feature of exploring in a wildcat area is that if producible reserves are indeed found, there is often little or no infrastructure nearby that can be used to make the produced

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[1] In addition to practicing full-time as in-house counsel to a major refining and chemical company, Mr. Brownman also serves as an Adjunct Professor at South Texas College of Law Houston, teaching courses in oil & gas and energy topics, contract drafting, contract negotiation and transactional skills.

[2] The "midstream phase" in the oil and gas industry involves the gathering, transportation, processing / refining and storing of oil and gas. The "downstream phase" in the oil and gas industry involves the distribution and sale to industrial, commercial and residential end-users.

[3] Wildcat drilling, also known as exploratory drilling, is the process of drilling for oil or natural gas in unproven or fully exploited areas that either have no concrete historic production records or have been fully exploited as a site for oil and gas output. This type of exploration generally has a higher rate of failure and risk; however, as the first producer to identify a new production area, the rewards can also be quite high. The term "wildcat drilling" probably has its origins in the fact that drilling activity in the first half of the 20th century was often undertaken in remote geographical areas. Because of their remoteness and distance from populated areas, some of these locations may have been, or appeared to be, infested with wildcats or other untamed creatures in the American West. Presently, with global energy companies having scoured much of the Earth's surface for oil and gas, including deep oceans, few areas remain unexplored for their energy potential.

hydrocarbons marketable (e.g., by transporting them to markets, processing the natural gas to remove and market separately other marketable substances such as natural gas liquids, and removing impurities such as water and sulphur so that the natural gas meets quality specifications of various pipelines.)

As the result of its wildcat exploration activities at the edge of the Permian Basin, Anchor has taken several oil & gas leases with mineral owners at rates, and on terms, that will be advantageous ***IF*** the area proves to be productive. As the result of its seismic program and exploratory drilling, Anchor has discovered what it believes will be a new extension of the Permian Basin productive formations – what Anchor is calling the "Cool Ander Trend." Anchor has drilled one well and is preparing to drill two more, and the preliminary results look promising – there appears to be a significant amount of oil that can be produced.

There is, however, one problem. Associated with the oil (i.e., meaning that it is produced simultaneously with the oil as the oil comes out of the ground) is a significant amount of "sour gas," which will need to be dealt with in order to produce the oil.[4] In earlier times, sour gas was seen by oil producers as a substance with no economic value. In those bygone days, companies producing large volumes of sour gas would simply "vent" the gas into the atmosphere. These days, such action is prohibited without the approval of federal and/or state environmental regulatory agencies, and even if allowed would trigger litigation and significant adverse publicity. Also, an application for venting sour gas is a matter of public record, and the application itself could also cause unwanted publicity. Anchor is interested in discussing a way to avoid venting the sour gas.

B. ***Morkin Gander Pipeline Company, Inc.*** ("Morkin Gander") is a pipeline company that owns several pipeline systems that service oil and gas production fields around the country. Among its pipeline systems is the C-4 Pipeline System, which is located in, and transports production from, the Permian Basin.

Morkin Gander is one of many pipeline companies that service the Permian Basin, and these several pipeline companies own multiple pipelines that traverse the Permian Basin. Competition among the various pipelines and pipeline companies that have facilities in the Permian Basin is fierce, causing margins for transportation services to decline to as little as a few cents as producers attempt to play one transporter against the other. There have even been instances where competing pipelines have struck uncompetitive deals solely in order to obtain transportation commitments from producers and keep market share and capacity utilization from going to one of their competitors.

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[4] "Sour gas" refers to natural gas that contains significant amounts of acidic gases such as hydrogen sulfide and carbon dioxide (CO2)**.** It is preferable instead to have sweet gas because it does not contain such amounts of these contaminants. Sour gas is problematic for a variety of reasons – besides its toxicity and flammability, hydrogen sulfide in the gas stream damages drilling equipment, and both hydrogen sulfide and CO_2 corrode piping during gas production and transportation. Removing CO_2 is also important because high concentrations decrease the amount of energy yielded when burning the gas. The processes for removing these contaminants from the gas stream are both costly and energy intensive.

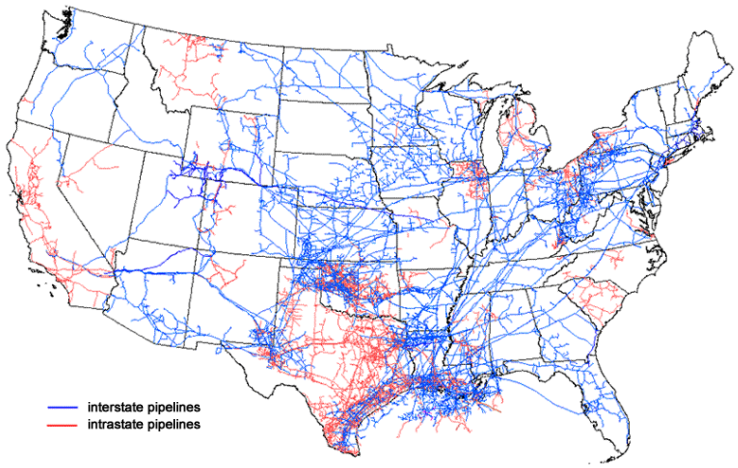
2. General Information

A. Natural Gas Pipelines

There are two types of natural gas pipelines – gathering pipelines and transmission (a/k/a transportation) pipelines. Transmission pipelines are typically constructed of larger-diameter pipe than the pipe used to construct gathering systems. In addition, transmission pipelines generally transport natural gas for much longer distances and at much higher pressures than gathering systems. In Texas, there are two types of transmission pipelines – intrastate pipelines and interstate pipelines. Transportation service provided by interstate pipelines is regulated by the Federal Energy Regulatory Commission ("FERC") and transportation service provided by Texas intrastate transmission pipelines is regulated by the Railroad Commission of Texas ("RRC"), unless the pipeline company has elected to provide service under Section 311 of the Natural Gas Policy Act ("Section 311"), in which case any service provided by the intrastate pipeline pursuant to Section 311 will be regulated by FERC.

An interstate pipeline is a pipeline system that extends beyond the boundaries of one state, putting its transmission service into the flow of interstate commerce.[5] There are over 213,000 miles of interstate pipelines in the lower 48 states.[6] The following map generally depicts the locations of interstate pipelines throughout the continental United States.

Map of U.S. interstate and intrastate natural gas pipelines



Source: U.S. Energy Information Administration, *About U.S. Natural Gas Pipelines*

NOTE: this map (last accessed on October 4, 2018) can be found at:
https://www.eia.gov/energyexplained/index.php?page=natural_gas_pipelines

[5] http://www.wutc.wa.gov/webimage.nsf/web+objects/pipeline/$file/Appendix%20E%20-%20Typology%20and%20Glossary.pdf.
[6] http://www.eia.doe.gov/pub/oil_gas/natural_gas/analysis_publications/ngpipeline/mileage.html.

B. Natural Gas Regulation and Precedent Agreements

Under section 1(b) of the Natural Gas Act ("NGA")[7], the Federal Energy Regulatory Commission ("FERC") has jurisdiction over the transportation of natural gas in interstate commerce and over the natural gas companies that provide this transportation. Under section 7(c) of the NGA[8], no natural gas company may transport natural gas or construct any facilities used for such transportation without first receiving a certificate of public convenience and necessity issued by the Commission.

In determining whether a proposed project is in the public convenience and necessity, FERC starts with its Certificate Policy Statement guidelines[9], which set forth an analytical framework under which the FERC determines whether there is a need for a proposed expansion and whether it will serve the public interest. FERC also performs a "flexible balancing process," where it weighs and considers the factors presented in an application such as the proposal's market support, economic, operational and competitive benefits and its environmental impact.[10]

For expansion projects, the Certificate Policy Statement sets as a threshold requirement that the pipeline company be prepared to financially support the project without relying on subsidization from its existing customers. The pipeline company must also demonstrate that it has made efforts to eliminate or minimize any adverse effects the project might have on its existing customers, existing pipelines in the market and their captive customers, and landowners and communities to be affected by the construction. If residual adverse effects on these groups remain, the Commission will perform an economic balancing test comparing the public benefits to be achieved by the expansion against the residual adverse effects. If the proposal passes muster under this test, FERC will proceed with an environmental analysis of the project.

Before filing for construction authorization of an expansion under the NGA, pipelines are required to conduct what are known as "open seasons," where transport customers are given the opportunity to express an interest in bidding on, and contracting for, the expected to-be-available expansion capacity. Open seasons provide pipelines with an "early look" at whether or not there will be sufficient demand for the expansion, so that they (and FERC staff) can decide if the expansion is economically justified. Pipelines have wide discretion in how they conduct their open seasons.

After being named a successful bidder in an open season for expansion capacity, the next task for that bidder and the pipeline company is negotiating a mutually agreeable precedent

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[7] 15 U.S.C. §717

[8] 15 U.S.C. §717f

[9] *Certification of New Interstate Natural Gas Pipeline Facilities*, 88 F.E.R.C. ¶ 61,227 (1999), *order on clarification*, 90 F.E.R.C. ¶ 61,128 (2000), *order on clarification*, 92 F.E.R.C. ¶ 61,094 (2000) [hereinafter Certificate Policy Statement]. On April 19, 2018, FERC announced a Notice of Inquiry, requesting public and industry input to "help the Commission explore whether, and if so, how, to revise existing policies regarding its review and authorization of interstate natural gas transportation facilities under section 7 of the Natural Gas Act." *See* https://www.ferc.gov/media/news-releases/2018/2018-2/04-19-18-C-1.asp.

[10] Certificate Policy Statement, 88 F.E.R.C.¶ 61,227, at p. 61,743.

agreement ("PA"). The PA sets forth the commercial terms under which the pipeline company proposes to build the project, the financial terms under which the shipper is to purchase the expansion capacity and the specific amount, transportation path, and terms of service to be provided.

Once the pipeline expansion is constructed, the PA will terminate, and the pipeline company and its shippers will enter into a TSA, the form of which has previously been approved by FERC. Many PAs provide that the terms of the PA, with the exception of the creditworthiness provisions, terminate upon the effectiveness of the TSA.[11] The TSA, in turn, will generally take effect upon the in-service date of the project.[12] Although PAs are filed with FERC in the expansion certificate proceeding, in many instances, pipelines file such PAs on a privileged and confidential basis, thereby precluding other shippers on the pipeline from gaining access.

3. The Commercial Transaction: The Anchor – Morkin Gander PA

In anticipation of developing its Cool Ander Field, Anchor has contacted Morkin Gander to request that Morkin extend its C-4 Pipeline to the Cool Ander Field, and Morkin has indicated that, under the right circumstances and terms, it might be amenable to doing so. Both parties realize that Morkin would need to file with FERC for approval to expand the C-4 Pipeline, and that the filing would first require, as a pre-requisite, Morkin initiating an open season. Both parties also want to make sure that Anchor's commercial terms are set before the open season is initiated. In anticipation of Morkin filing for permission to expand its C-4 Pipeline, and Anchor participating in the associated open season, lawyers for Anchor and Morkin are meeting in Houston on April 6th to negotiate the basic terms and conditions of the PA into which they would enter. Although such agreements are lengthy and complex, the parties have agreed to focus on several fundamental terms of the PA. These issues are listed below, followed by a brief explanation of each.

(a) The date by which the C-4 Extension would be completed;
(b) Force majeure clause;
(c) Shipment rates;
(d) Commitment of Anchor;
(e) Shipper creditworthiness; and
(f) The term of the agreement.

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[11] This is because the Commission allows more stringent creditworthiness provisions for new capacity expansion shippers as compared to the tariff provisions which govern creditworthiness for shippers acquiring existing pipeline capacity. *See, e.g., Calpine Energy Servs., L.P. v. Southern Natural Gas Co.*, 103 F.E.R.C. ¶ 61,273 at P 36.

[12] In some instances, pipelines can provide interim or limited service before an expansion is fully in service. In such instances, additional TSAs governing this early service will be filed with the Commission. *See, e.g.,* Letter Order issued on September 10, 2015 in Docket No. RP15-1195-000 *et al.* (accepting Texas Eastern Transmission, L.P.'s August 14, 2015 OPEN Project compliance filings re the Ohio Pipeline Energy Network Project.).

(a) A shipper negotiating an expansion PA desires some degree of certainty as to when the expansion capacity will be placed in service. To manage the economic risk of delays, shippers may seek provisions in the PA that allow them to terminate if the project fails to stay on track or is not placed in service within a specified amount of time after the target commencement date. Conversely, pipelines require some ability to deviate from the target in-service date, given the multitude of issues that can impact a project's completion. Therefore, the parties seek to balance their respective interests in having flexibility on the completion date with the shipper's need to have service commence by a specific date.

(b) In addition to having termination rights in the event the PA's conditions precedent are not satisfied or waived, shippers typically seek a right to terminate if the pipeline company fails to commence service by a particular date. However, the pipeline company may seek to limit this as long as the delay is not attributable to force majeure. The companies will have to decide whether or not force majeure would act to delay the completion date and how comprehensive the clause would be.

(c) Shippers generally prefer fixed rates over a specified amount of time. Alternatively, pipeline companies prefer the flexibility to allow for market fluctuations and will typically attempt to impose variable rates.

(d) Sometimes a pipeline company will want a shipper to "dedicate" a minimum volume or even all of the gas produced from a field or specified tracts of land. This is done to assure the pipeline company that it is receiving the maximum amount of throughput possible for its pipeline (thereby maximizing revenue) and that competitors are not being given an opportunity to acquire additional volumes of gas.

(e) Pipeline companies typically require that all expansion shippers either meet certain specific creditworthiness requirements or provide financial security to protect the pipeline company against default. To be considered creditworthy, pipeline companies commonly require that the shipper have a "favorable" credit rating (however the parties define that) for long-term senior unsecured debt from Moody's Investors Service, Inc. or Standard & Poor's. If the shipper is a subsidiary of a larger corporate parent, it may not have a credit rating, but its parent company will. In such cases, a parental guarantee may be required.

(f) This refers to the number of years that the TSA will last.

Confidential Information for Anchor Petroleum

Anchor is very interested and excited to finalize this deal with Morkin Gander. From past operations, Anchor is well aware of the poor optics that come with a company opting to vent sour gasses. In all honesty, Anchor would prefer to avoid this approach entirely, and instead enter into a contract with a pipeline company to transport the sour gas to processing plants, where the impurities can be removed, the valuable components (such as methane, ethane and propane, among others) can be sold, and the remaining natural gas ("residue gas") can also be sold as a standalone commodity. To do this, and in order for the gas production to not impede the production and sale of the more valuable crude oil, Anchor needs a pipeline to be built into its wildcat area. Without such a pipeline, Anchor's inability to do something with the sour natural gas will inhibit the oil production, ultimately making the wells and the new formation uneconomic and unmarketable. Also, an extended delay in getting the pipeline built, which would delay production from Anchor's oil and gas leases, could put those leases at risk. According to its oil & gas leases, if Anchor discovers oil or gas in commercial quantities, Anchor will be able to maintain its leases during the "secondary term."[13] Therefore, Anchor needs to get a pipeline constructed into its Cool Ander Field as soon as possible.

If Anchor and Morkin cannot reach an agreement, another pipeline company – Intercon – has a pipeline system that Anchor could use to transport gas from the Cool Ander Field wells. Intercon's system, however, is further away from the Cool Ander Field (about three miles, vs. two miles for Morkin's), so Intercon would need to acquire more miles of right-of-way and lay more pipe to connect Anchor's Cool Ander Field wells. That would cost more money, and take more time for Anchor to connect to Intercon's system than it would to connect to Morkin's pipeline system. However, Intercon has expressed a willingness to discuss this with Anchor, including the flexibility to make some concessions.

Ultimately, Anchor wants to make a deal with Morkin if it can. The most ideal outcome for Anchor on each remaining issue is provided below.

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[13] A standard Oil & Gas Lease typically contains two terms – a "primary" term that last a specified (and increasingly shorter) period of years (ranging anywhere from one to ten years), and a "secondary term" that allows the Oil & Gas Lease to continue forever, as long as the leased substances (oil, gas and/or other minerals) are produced in "paying quantities" (defined as operating revenues less operating expenses). Therefore, such Leases will often contain a shut-in well clause, allowing a lessee to maintain a lease during the secondary term provided that a well capable of producing in paying quantities is located on the leased acreage (or lands pooled therewith) with, usually, an annual payment of shut-in royalty made to the lessor in return. Such shut-in royalties are payments to royalty owners under the terms of a lease that allow the lessee to defer production from a well which is capable of producing but is temporarily turned off (i.e., "shut-in") for lack of a market or other reason, so long as the Lessee diligently and in good faith searches for a market. If a Lease does not contain a shut-in royalty clause, or if it does but the Lessee does not diligently search for a market (or it starts to do so, but stops), the Lease will terminate and the Lessee will lose its right to explore and produce.

Contract Term

Anchor prefers a long-term contractual transportation commitment from Morkin. Ideally it would like a seven year contract, but you are authorized, if necessary, to commit to only three years.

Rates

Anchor strongly prefers competitive pricing with rates that are fixed with no or minimal escalation (or, at least the mechanism for future increases if specific and determinable at the start of the contract, and rates remain fixed for at least the first two years).

If it could do so without giving up much, Anchor would like a "favored nations" clause from Morkin. A "favored nations" clause is a contract provision where the pipeline company assures the shipper (typically in exchange for providing early support for, or commitment to, the pipeline project; or perhaps for other commercial reasons) that for a stated period of time, the shipper will always pay the best (i.e., the lowest) transportation rate. A "favored nations" clause would require the pipeline to lower the shipper's rate if the pipeline grants to another, similarly situated shipper, a rate that is less than paid by the first shipper. Shippers like this clause because it assures them that no other shipper has a transport rate lower than they do. On the other hand, pipeline companies don't like this clause because it limits their ability to "cut a deal" with a new customer by offering an incentive rate. You may consider getting from Morkin a favored nations clause that lasts for a comparable time period as Anchor is willing to comply with a creditworthiness requirement.

Completion Date

Anchor would like a fixed and determined project completion date that specifies when the pipeline expansion will be capable of taking volumes of gas. Having analyzed its oil and gas leases, and knowing something about what and how long it takes to build a pipeline, Anchor thinks that a realistic deadline for Morkin to have the pipeline up and running would be May 1, 2021. Anchor could accept a later date, but it needs the ability to terminate with no financial exposure if the pipeline is not built and operational at the latest by December 1, 2021 (that right would only come into play if the project is not completed by that date – after completion, the right would cease to exist). This mitigates their risk if Morkin is not proceeding on an agreeable schedule.

Force Majeure

To protect its oil and gas leases, Anchor really needs the pipeline project to be completed as soon as possible and as close as possible to the expected completion date. Accordingly, it opposes an expansive force majeure clause that could theoretically allow Morkin to delay its obligations

under the contract. Ideally, Morkin will complete the project on time, regardless of force majeure. In Anchor's opinion, the biggest risk for getting the pipeline built is actually FERC approval, rather than force majeure; therefore, Anchor would be willing to intervene and actively support Morkin's FERC filing if Morkin would be willing to drop the force majeure clause in its entirety. Alternatively, if Morkin will not agree to drop the force majeure clause, Anchor would have to re-assess its willingness to intervene and support the project (although, since that could add to the delay, Anchor could be harming its own goals). If Morkin insisted on both the force majeure clause AND getting Anchor's support at FERC, Anchor would insist on comparable commercial concessions from Morkin (such as, but not limited to, lower rates, the favored nations clause, the priority, etc.).

Creditworthiness

Pipeline companies sometimes propose PA language providing that, if at any time a creditworthy shipper or guarantor ceases to meet the negotiated definition of creditworthy, the pipeline company can require the shipper to provide financial security in the form of cash prepayment, an irrevocable standby letter of credit, or a guarantee from a creditworthy party. The collateral amount for such financial security can essentially be as high as the market will bear because FERC does not regulate the amount required in pipeline PAs, so long as the pipeline company is not unduly discriminating amongst shippers. Thus, although FERC policy generally prohibits pipelines from requiring more than three months of financial security when they sell existing capacity, pipelines constructing new capacity can and often do require the posting of a year or more of financial security by shippers who do not meet the creditworthiness standard. The financial security required for an expansion project is frequently tied to the shipper's maximum daily quantity of capacity that it reserves and pays for (i.e., the shipper would be required to provide financial security for an amount equal to x months/years of demand charges under the TSA contemplated by the PA). Therefore, shippers will generally try to avoid having creditworthiness obligations in their PAs or TSAs.

Anchor anticipates that creditworthiness will be an important requirement for Morkin. Ultimately, Anchor would not object to some sort of creditworthiness requirement; however, it wants the flexibility to put these assets into a standalone or special purpose subsidiary and sell them. In that situation, the more stringent the creditworthiness clause is, the more difficult it would be to find a willing buyer. Anchor would prefer to guarantee a B+ credit rating[14] from either Moody's or Standard & Poor's but is willing to assure a higher rating (for a negotiated amount of time) if required by Morkin.

Commitment

[14] Please note that this is a modified/limited version of actual credit ratings available in the market. For purposes of this problem, please assume the available options for negotiation are B-, B, B+, A-, A, and A+.

Anchor would like a priority for its gas. Anchor would be willing to agree to a very strong creditworthiness provision that commits Anchor and its subsidiaries, in return for a provision that clearly states that Anchor's gas will have priority over other shippers; if Morkin does not agree to that, Anchor would need some other concession (such as a longer term contract, and/or the favored nations clause) to assure Anchor that it is getting a firm and good deal.

Similarly, Morkin may request a dedication from Anchor, meaning all of Anchor's production from the Cool Ander Field would be dedicated to Morkin's C-4 Pipeline Extension. While you have authority to grant this dedication, you should attempt to grant the dedication for as short a period as possible (depending on the negotiated contract term). This benefits Anchor because once the Cool Ander field is found to be profitable, other pipeline companies will likely extend into the area, thereby providing Anchor with alternative (potentially less expensive) pipelines to choose from in the future.

Confidential Information for Morkin Gander

Morkin Gander is very interested and eager in finalizing this deal with Anchor. Being the first pipeline transportation company to lay a pipeline extension into a new production area gives the pipeline company who builds and operates the pipeline extension a significant and critical competitive advantage over competitors who enter the area later. This is why all pipelines aggressively try to extend their existing pipelines into new production or wildcat areas. Morkin's C-4 Pipeline is the closest pipeline to Anchor's Cool Ander Field, being approximately two miles away from the wildcat area. In fact, if Morkin is able to lay this pipeline, they have been reassured by two other petroleum companies that those two companies would also be ready and willing to contract with them. For that reason, Morkin must get this deal with Anchor finalized.

Morkin is aware of the possibility that Anchor has other pipelines lying in wait to land the pipeline contract. Therefore, Morkin wants to make sure that Anchor is fully committed to the project, because that commitment is the economic underpinning of the expansion. Morkin is also anxious about its expansion case at the FERC. While the company feels confident in its case, it is also aware of the substantial amount of bureaucratic red tape it is going to have to circumnavigate to be awarded the expansion. For this reason, Morkin wants a commitment from Anchor to intervene in support of Morkin's pipeline expansion case at FERC.

The most ideal result for Morkin for each of the remaining issues is detailed below.

Contract Term

Morkin seeks a long-term contractual commitment from Anchor. Morkin strongly prefers a four-year contract but it has authorized you to accept upwards of eight years.

Rates

Morkin requires some flexibility regarding rate increases. Generally speaking, pipeline companies need a "finance-able" project. This involves banks that are willing to lend construction costs due to (1) revenue certainty (volumetric commitments and/or dedications in TSAs), and (2) rates keeping pace with inflation by escalating over time.

Preferably, Morkin would like Anchor to commit to variable rates that will fluctuate with the market, however, you anticipate pushback from Anchor on this issue. Consequently, Morkin has authorized you to guarantee fixed rates for the first year only, unless Anchor can provide some other significant concession.

You anticipate that Anchor may ask for a favored nations clause. This is a contract provision where the pipeline company assures the shipper (typically in exchange for providing early support for, or commitment to, the pipeline project; or perhaps for other commercial reasons) that for a stated period of time, the shipper will always pay the best (i.e., the lowest) transportation rate. A favored nations clause would require the pipeline to lower the shipper's rate if the pipeline grants to another, similarly situated shipper, a rate that is less than paid by the first shipper. Shippers like this clause because it assures them that no other shipper has a transport rate lower than they do. On the other hand, pipeline companies don't like this clause because it limits their ability to recruit new customers by offering an incentive rate. Morkin is willing to entertain the idea of granting such a clause, however, it depends on the other concessions received by Anchor.

Completion Date

Morkin has had legal and reputational issues in the past regarding acquiring right-of-way and steel pipe for its pipelines – this is one reason why it needs flexibility on the start date. Knowing its business and how long it takes to build a pipeline, Morkin thinks that a safe and realistic deadline for it to have the pipeline up and running would be February 1, 2022; however, if needed to secure Anchor's commitment to the project, Morkin could agree to a more accelerated date and construction schedule – perhaps as early as July 1, 2021 – especially if they get from Anchor the extensive force majeure clause that they are seeking. Not having a force majeure clause, or the tighter / less expansive it is, the more that Morkin would need a longer date and Anchor's commitment to support the project before FERC. You would allow Anchor to terminate with no financial exposure if the pipeline is not built and operational by a mutually acceptable date.

Commitment

Regulatory risk mitigation and compliance are essential for pipeline companies. Therefore, Morkin needs a commitment from Anchor to intervene and actively support their FERC filing. If Morkin can obtain this from Anchor, Morkin would be willing to either drop the force majeure clause entirely, or to dilute it and make it a significantly weaker and less expansive clause.

Morkin would like a dedication from Anchor, dedicating to Morkin's C-4 Pipeline Extension all of the production from the Cool Ander Field. A dedication is intended to assure Morkin, and its respective investors, that a sufficient utilization of the gathering and processing system will be used, and that the maximum amount of natural gas will be transported. Anchor would essentially guarantee all of its production will be sent to Morkin's pipeline. You should attempt to obtain the dedication for as long a period as possible (depending on the negotiated contract term). Once the Cool Ander field is found to be profitable, your competitors will likely extend into the area,

thereby providing Anchor with alternative (potentially less expensive) pipelines to choose from. In return for Anchor making this dedication, Morkin is willing to offer Anchor a fixed rate for up to two and a half years (although the preference is still a fixed rate for only the first year).

Creditworthiness

As the price of oil has fluctuated so much, especially in the last few years, Morkin has had several bad experiences with producers filing for bankruptcy and walking away from their throughput obligations and their obligations to pay demand charges to maintain their capacity in the pipeline. Therefore, management is determined that Anchor have as strong a creditworthiness clause as possible, even amounting to a guarantee or a letter of credit, so that Morkin will not be at risk if the Cool Ander Field doesn't end up producing as Anchor expects and hopes.

Morkin requires a very strong creditworthiness provision that commits not only Anchor but any of its subsidiaries and successors. Morkin would prefer that Anchor guarantee an A+ credit rating[15] from either Moody's or Standard & Poor's but is ultimately willing to accept an A- rating if necessary. Under no circumstances will Morkin accept lower than an A-. Morkin is willing to offer Anchor priority (over other shippers) for Anchor's gas in order to obtain the highest credit rating guarantee as possible. A priority is a benefit to Anchor that Morkin doesn't necessarily care about. Morkin could also attempt to get from Anchor a creditworthiness requirement that lasts for the same time period as Morkin is willing to give Anchor a favored nations clause.

[15] Please note that this is a modified/limited version of actual credit ratings available in the market. For purposes of this problem, please assume the available options for negotiation are B-, B, B+, A-, A, and A+.

Summary of Main Issues and Authority

ANCHOR	MORKIN GANDER
CONTRACT LENGTH/TERMS:	
• 7 year term preferred Willing to agree to: • As few as 3 years • Anchor would like a favored nations clause from Morkin and is willing to concede in other areas of the negotiation in order to obtain it	• 4 year term preferred Willing to agree to: • 8 year term if absolutely necessary • A favored nations clause, if Anchor makes further concessions in other areas of the negotiation
CONTRACT RATES:	
• Anchor strongly prefers competitive pricing with rates that are fixed with no or minimal escalation (or, at least the mechanism for future increases if specific and determinable at the start of the contract, and rates remain fixed for at least the first two years).	• Preferably, Morkin would like Anchor to commit to variable rates that will fluctuate with the market Willing to agree to: • Guaranteed fixed rates for the first year only, unless Anchor can provide some other significant concession.
COMPLETION DATE:	
• Anchor thinks that a realistic deadline for Morkin to have the pipeline up and running would be May 1, 2021 • Anchor could accept a later date, but it needs the ability to terminate with no financial exposure if the pipeline is not built and operational at the latest by December 1, 2021	• Prefers for the pipeline to be up and running by February 1, 2021 Willing to agree too: • July 1, 2021 • Willing to agree to allow Anchor to terminate with no financial exposure if the pipeline is not built and operational by a mutually acceptable date.
COMMITMENT:	
• Anchor would like a priority for its gas. Anchor would be willing to agree to a very strong creditworthiness provision that commits Anchor and its subsidiaries, in return for a provision that clearly states that Anchor's gas will have priority over other shippers • Open to agreeing to a dedication, but Anchor should agree to the shortest term possible • Anchor would be willing to intervene and actively support Morkin's FERC filing if Morkin would be willing to drop the force majeure clause in its entirety • If Morkin insists on both the force majeure clause AND getting Anchor's support at FERC, Anchor would insist on comparable commercial concessions from Morkin (such	• Morkin wants to attempt to obtain a dedication from Anchor, for as long as possible, that will guarantee that Anchor will use Morkin's pipeline. Morkin is willing to offer Anchor a fixed rate for up to two and a half years in exchange for the dedication. • If Morkin can obtain a commitment from Anchor to intervene and actively support their FERC filing, Morkin would be willing to either drop the force majeure clause entirely, or dilute it to make it a significantly weaker and less expansive clause.

as, but not limited to, lower rates, the favored nations clause, a priority, etc.).	
CREDITWORTHINESS:	
• Anchor would prefer to guarantee a B+ credit rating from either Moody's or Standard & Poor's but is willing to assure a higher rating (for a negotiated amount of time) if absolutely required by Morkin.	• Morkin prefers that Anchor guarantee an A+ credit rating from either Moody's or Standard & Poor's • Willing to accept A- rating if necessary • Cannot accept a credit rating below A-