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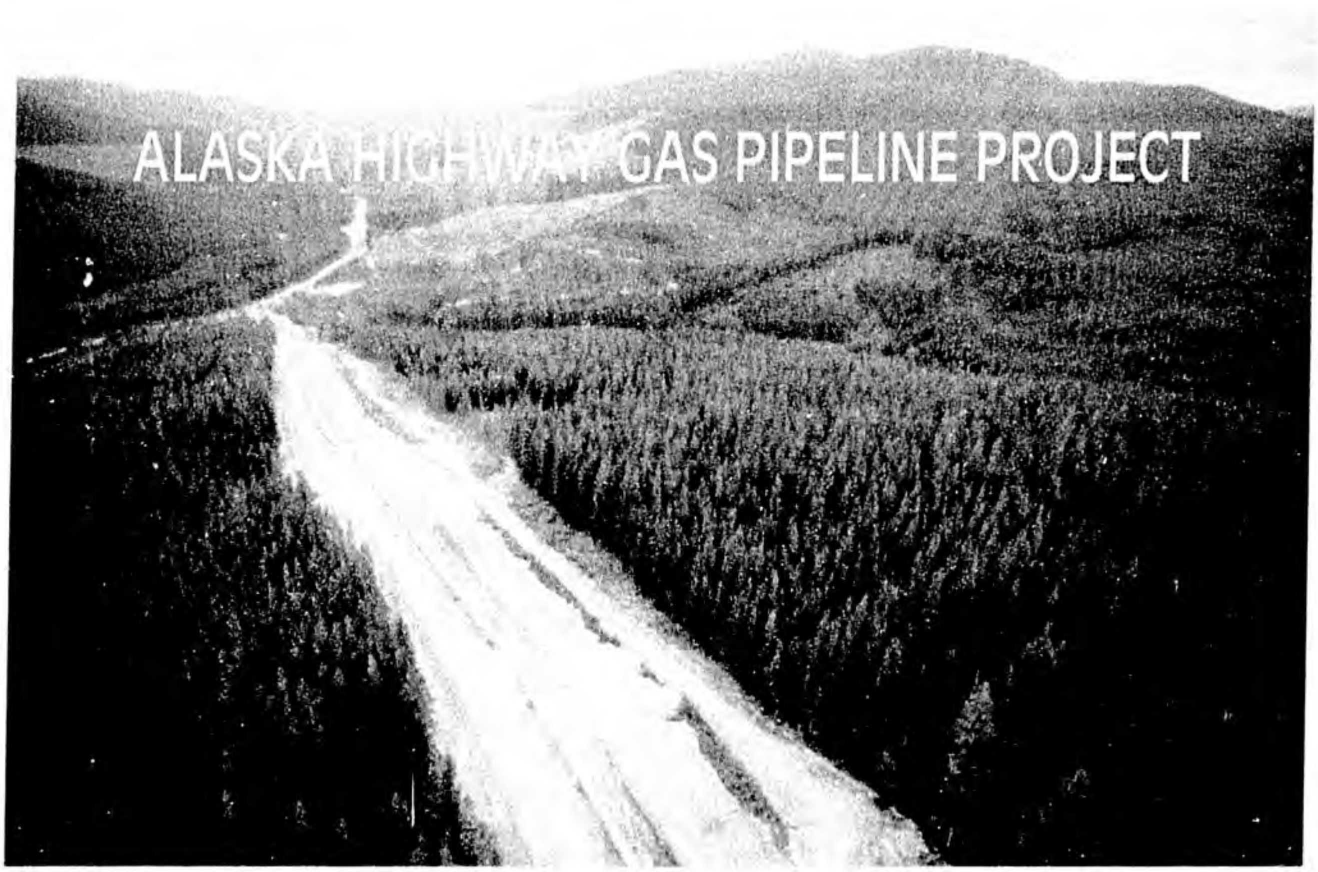
ALASKA SENATE LEGISLATURE

House Special Committee on Oil and Gas



February 6, 2001

Presentation by

John Ellwood
Vice President, Engineering & Operations

Foothills Pipe Lines Ltd.

Foothills Pipe Lines Ltd. / Alaska Highway Gas Pipeline Project

My name is John Ellwood. I am Vice President, Engineering and Operations at Foothills Pipe Lines Ltd. ("Foothills"). We appreciate your invitation to discuss the transportation of Alaska North Slope natural gas to markets in the lower-48 states through the Alaska Natural Gas Transportation System ("Alaska Highway Project"). I understand that your committee wishes to explore with us the current status of our pipeline project with a particular focus on our permits.

Let me begin by telling you about Foothills. Our company is jointly owned by Westcoast Energy Ltd. ("Westcoast") and TransCanada PipeLines Limited. ("TransCanada"), the two major players in the Canadian gas pipeline business. Our corporate mission is very specific: to build and operate the Alaska Highway Pipeline Project. We were leaders in the project that was conceived twenty-five years ago, and we are just as committed today.

Between Westcoast and TransCanada, we have nearly 100 years of experience in developing, building and operating gas pipeline projects. We have been involved with every major Canadian gas pipeline project built in the last fifteen years.

Our existing pipeline systems provide access to five of North America's largest natural gas markets. Together, these systems have the capability to move fifteen billion cubic feet per day of gas from Western Canada to the consuming markets. Canadian gas accounts for almost 20% of all gas consumed in the United States and all of that gas currently moves through pipelines owned in whole or in part by TransCanada and Westcoast.

This map shows the existing and planned pipeline network of Westcoast and TransCanada.

TransCanada, Westcoast and Foothills have developed leading edge gas pipeline design, construction and operating technology, including expertise in dense phase designs. We are also well known for our development of environmentally sound design, construction and operation practices. We believe that our expertise in northern, remote and difficult terrain gas pipeline construction and operations is second to none.

Building and operating pipelines is our core business.

The Alaska Highway Project is the Alaskan gas pipeline project approved in accordance with the Alaska Natural Gas Transportation Act of 1976 ("ANGTA") in the U.S., the 1978 Northern Pipeline Act in Canada, and the 1977 Agreement Applicable to a Northern Natural Gas Pipeline between the two countries ("U.S./Canada Agreement"). The project is shown in black and green on this map. As approved, the Alaska Highway Project is a 4,800-mile international pipeline project commencing at Prudhoe Bay and terminating in the Midwest and California market areas. It is important to note that the southern part of this pipeline has been constructed and is in full operation. The route for this system parallels the Trans Alaska Pipeline System ("TAPS") to Fairbanks, where it angles southeast, following the Alcan Highway to the Alaska-Yukon border with Canada, down through the Yukon Territory and northern British Columbia, and into Alberta. In Alberta, the pipeline splits into two legs. The Eastern Leg proceeds southwest, crossing the U.S.-Canada border at Monchy, Saskatchewan and terminating near Chicago. The Western Leg proceeds southwest, crossing the U.S.-Canada border near Kingsgate, British Columbia and terminating at a point near San Francisco, California.

Foothills and TransCanada are the two remaining partners of the Alaska Northwest Natural Gas Transportation Company (Alaska Northwest), a partnership formed to construct and operate the Alaska portion of the Alaska Highway Project. In addition, Foothills is the Canadian sponsor of the Alaska Highway Project, and the majority owner and operator of the Canadian portions of the Eastern and Western Legs of the Alaska Highway Project.

Foothills has continuously championed the Alaska Highway Pipeline Project from the very beginning.

The Project is back **"on the list"** of possible solutions to the current North American concerns about high energy prices and the adequacy of natural gas supplies.

At the outset, there are some basic points that we should delineate:

- It is important to remember that this pipeline crosses the territory of two countries with different regulatory and political regimes.

- The Project has a long history, which adds unique attributes. The permits which have been issued are a product of this history and to understand the former requires an appreciation of the latter. Significantly, ANGTA in the U.S. and the Northern Pipeline Act in Canada create expedited procedures for completing the chosen system, the Alaska Highway Project.

- The pipeline permitting process can be very time consuming. In addition to the substantial work already completed on both the Alaskan and Canadian portions of the Alaska Highway Project, the special legislative and regulatory procedures in place in the U.S. and Canada will assist in expediting the construction and initial operation of the Project and keeping unnecessary delays to a minimum.

Historical Background

As I indicated, there are important historical dimensions associated with this project. We might focus on the time frame 1976-1982. Originally there were three competing Alaskan natural gas pipelines proposed. As shown on this map two of the projects were overland pipelines through Alaska and Canada. The third project would have transported gas by pipeline to tidewater, following the route of the"TAPS" pipeline, where the gas would be liquefied and transported to California by liquefied natural gas ("LNG") tankers.

The U.S Congress enacted the Alaska Natural Gas Transportation Act of 1976 with a purpose to provide an expedited process with respect to the selection of a single transportation system for the delivery of Alaska natural gas to the lower forty-eight states and to expedite construction and initial operation of the chosen transportation system.

With respect to the transportation of Alaska North Slope gas to markets in the lower 48 states, ANGTA superseded the usual Natural Gas Act ("NGA") process for granting Federal regulatory authorization to construct and operate a pipeline. ANGTA assigned the responsibility for the overall Alaska pipeline agenda to the President and Congress. Much the same approach was followed in Canada, where the Government took an active role in the decision regarding the Alaska natural gas pipeline. The reason for the creation of this extraordinary authority was that the governments wanted to expedite a cumbersome regulatory approval process in order to move more quickly to a solution.

Prior to 1978, a Canadian Board of Inquiry (The Berger Inquiry) examined a proposal to move Alaska gas across the North Slope and along the Mackenzie Valley. At the same time the National Energy Board ("NEB") held a hearing to determine which of the two overland pipeline routes was acceptable to Canada. Both processes rejected the North Slope route (primarily for environmental reasons) and the NEB recommended the Alaska Highway (Alaska Highway Project) option, being promoted by Foothills. The Berger Inquiry recommended that no pipeline should be built along the Mackenzie Valley for at least a decade and that a pipeline across the northern Yukon should never be built.

During this same period of time the Federal Power Commission (later to become the Federal Energy Regulatory Commission ("FERC") came to a split decision on the question of which route should be selected.

Following the enactment of the ANGTA, the President selected the Alaska Highway route and the Alaska Highway Project with his <u>Decision and Report to Congress on the Alaska Natural Gas Transportation System</u> ("President's Decision" or "Decision").

In 1977 just prior to the President issuing his Decision, the U.S. and Canada signed the U.S./Canada Agreement. This agreement or treaty, established the route, chose the companies who would build and operate the system, established tolling principles, and set the terms and principles to be followed in facilitating the construction and operation of the Alaska Highway Project pipeline. The President's Decision reflected the U.S./Canada Agreement. The Decision and the Agreement were subsequently approved by the U.S. Congress.

In 1978 Canadian Parliament enacted the Northern Pipeline Act. The Act:

1) incorporated all of the terms of the U.S./Canada Agreement

2) issued **statutory certificates** of public convenience and necessity to the respective subsidiaries of Foothills Pipe Lines Ltd.,
3) created the Northern Pipeline Agency to "*facilitate the efficient and expeditious planning and construction of the pipeline*

4) established the methodology and rules for setting the Canadian tolls and tariffs for the pipeline

5) selected the route for the pipeline across Canada and

6) established Terms and Conditions respecting the socio-economic, environmental, construction and operations matters.

The complete Alaska Highway Project is shown on the attached map.

The President's Decision designated Alcan Pipeline, a subsidiary of Northwest Pipeline Company (Northwest), as the party who would construct and operate the Alaska pipeline segment of the Alaska Highway Project. This authority was later assigned to Alaska Northwest, a partnership assembled by Northwest. At one time Alaska Northwest consisted of eleven (11) partners, all subsidiaries of U.S. or Canadian pipeline companies.

Given the magnitude of the pipeline undertaking Alaska Northwest sought to recruit the North Slope Producers to join the project and assist the financing of the pipeline. The Producers expressed a willingness to join but were restricted by the President's Decision that disallowed the producers taking an equity position in the pipeline. In 1981, President Reagan submitted and Congress approved a Waiver of Law package allowing producer participation and including in the project, the North Slope gas conditioning facility.

In 1980, before the Waiver of Law was passed, Alaska Northwest and the Alaska Producers entered into a Cooperation Agreement providing for joint funding of the design and engineering of the Alaska Highway pipeline and the gas conditioning facility. Following the approval of the Waiver of Law, the scope of the Cooperation Agreement was expanded to encompass efforts to achieve the remaining regulatory approvals and to jointly pursue financing arrangements. The two sides anticipated that affiliates of the Producers would join the Alaska Northwest Partnership.

Design, engineering, environmental, financing and regulatory work proceeded along parallel tracks in Alaska and in Canada during this period of time.

As world wide energy supply and demand came back into balance and the "energy crisis" eased, the focus of the pipeline shifted to the pre-building of the southern portions of the Alaska Highway Project. There was a disagreement between Canada and the United States over this issue, primarily as it related to the export of Canadian natural gas to the U.S. market.

The Canadian Government was unwilling to authorize the Pre-build or the gas exports without further assurance from the United States that the entire Alaska Highway Project, including the Alaska segment, would eventually be completed. This assurance was forthcoming in a letter from President Carter to Prime Minister Trudeau, along with a Congressional resolution. As a result the southern Pre-build pipeline section was completed by 1982. This involved constructing 650 miles of 36 and 42 inch pipeline from Caroline, Alberta to Monchy and Kingsgate on the US border. The Pre-build and subsequent expansions were constructed pursuant to the Northern Pipeline Act and it's regulatory regime managed by the Northern Pipeline Agency.

When the Pre-build construction began it was widely anticipated that North American natural gas demand would quickly resume its upward trend. However the market did not recover as anticipated and demobilization of the Alaska Highway Project soon began.

In order to remobilize, we will be required to make modifications and enhancements to various elements of the Alaska Highway Project regime. Pipeline designs will have to be modified so that that the Project can respond to capacity and gas quality requirements of the shippers. We will have to incorporate the latest technology and techniques necessary to ensure that the maximum environmental protection measures are in place. We do not expect any difficulty in introducing these revisions which are so obviously of benefit to all parties.

Recently other parties have raised issues related to payments that might be due to withdrawn partners pursuant to the Alaska Northwest Partnership Agreement. We are confident that if any return of the withdrawn partners' original investment is required it can be resolved within the context of an economically viable project.

Clearly there is a lot of work still to be done. It is very important to understand is that the advantages that come with the unique ANGTA and NPA regulatory regimes far outweigh the alternative of starting from scratch. Using the existing statutes and treaty we can assist in having Alaska natural gas into the U.S. market sooner, with competitive transportation costs and at the same time reducing project risks for all stakeholders.

In our capacity as the managing partner of Alaska Northwest we have maintained the Alaska Highway Project in good standing. We have kept the project alive to ensure that the advantages and benefits of the Project could be used in remobilization plans to expedite construction of the pipeline. We particularly wished to preserve what we see as the "special and unique fast track" regulatory regime.

Foothills and its shareholders have expended time and effort to keep the permits current and to optimize the project design. We do not intend to quit the field now that success is within sight.

The Alaska Permits – Federal

A substantial amount of work has been completed by the Alaska Highway Project sponsors to date. Before discussing the specific permits held by Alaska Northwest it is important to better understand the unique regulatory and legislative framework under which these permits were issued, namely ANGTA.

ANGTA and the President's Decision remain in effect and can be terminated only by another act of Congress. ANGTA does not create a perpetual priority for the Alaska Highway Project. Rather, it establishes a priority designed to ensure that the Alaska Highway Project will be completed and begin initial operation in accordance with the decision of the President and

Congress. Once the Alaska Highway Project is in operation additional projects may be considered under the Natural Gas Act.

In implementing this priority, ANGTA requires that Federal agencies and officers expedite and issue "at the earliest practicable date" all permits and authorizations required by the Alaska Highway Project. In addition, ANGTA provides that applications and requests with respect to permits and authorizations required by the approved system "shall take precedence" over any similar applications and requests. Furthermore, ANGTA limits the discretion of Federal agencies and officers to include in certificates and permits for the Alaska Highway Project any conditions that would obstruct the system's expeditious construction and initial operation.

As required by ANGTA, the FERC in 1977 expeditiously issued a conditional certificate of public convenience and necessity for the Alaska Highway Project. That certificate contains no expiration date and is still in effect today.

In addition, Alaska Northwest holds a federal right-of-way grant issued in 1980 by the Department of Interior's Bureau of Land Management. That grant does not expire until December 2010, and may be renewed at the request of Alaska Northwest.

Furthermore, Alaska Northwest holds two recently extended Clean Water Act wetlands permits issued by the Army Corps of Engineers in coordination with many other agencies. Those permits were extended through September of 2007.

While these various federal permits were issued some time ago, they all are valid today. Indeed, nothing in ANGTA or in the certificates and authorizations issued for the Alaska Highway Project thereunder provides for the expiration of the chosen system's priority because completion of the Alaska segment was postponed until the U.S. domestic market could support it. Rather, the Alaska portion of the Alaska Highway Project has been held in reserve until the need for additional natural gas arises in the Lower 48 states is such that this section can be completed. As sponsors we have actively protected the preserved Alaska segment by maintaining all necessary certificates and permits and actively overseeing the rights-of-way.

We recognize that these certificates and permits need to be "updated" to capture changes in technology, markets and environmental requirements. We will do such updating, and it can be done within the ANGTA framework. To that end, a couple of additional points need to be emphasized before I move on to the State permits.

- First, ANGTA clearly envisions and provides for the ability to condition and to amend these permits. These powers are subject only to the limitation prohibiting changes in the "basic nature and general route" and actions that will "otherwise" prevent or impair in any significant respect the expeditious construction and initial operation of the Alaska Highway Project.

- Second, the Alaska Highway Project sponsors' requests for both new permits and amendments to existing permits must be given priority under ANGTA. This priority translates into a timing advantage for the Alaska Highway Project.

- Third, the authority of the Office of Federal Inspector, as transferred to the Secretary of Energy, also continues in effect today to expedite and coordinate federal permitting, enforcement of permit conditions, and facilitation and oversight of the construction and initial operation of the U.S. portion of the Alaska Highway Project.

- Fourth, ANGTA also provides for expedited and limited judicial review of actions taken by Federal agencies and officers.

- Finally, the Alaska Northwest Partnership is well along in permitting the Alaska Highway Project.

The Alaska Permits – State of Alaska

On the state side, Alaska Northwest has a pending State of Alaska right-of-way lease application. Recently, we have initiated discussions with the State officials regarding perfecting and processing the pending application. Also at the state level, Alaska Northwest holds certificates of reasonable assurances issued pursuant to Section 401 of the Clean Water Act and a determination of consistency with the Coastal Zone Management Act.

Additional Alaska Permits

While Foothills already holds the major permits necessary to construct the remainder of the Alaska Highway Project, there are additional permits and authorizations that will need to be obtained. For example, the Alaska Highway Project sponsors will need to acquire a permit under the Clean Air Act. However, these additional permits will be procured as the Project proceeds, and such procurement will not cause a delay in the expeditious construction of the Alaska Highway Project.

The Canadian Permits

On the Canadian side, Foothills holds two unique certificates or permits:

- Certificate of public convenience and necessity.
- Yukon right-of-way.

Certificate of Public Convenience and Necessity

The certificate of public convenience and necessity ("certificate") is the Order issued following a successful hearing before the National Energy Board (NEB) of a pipeline application. The information that is required to be filed for hearing purposes is delineated in regulation and includes details about supply and markets, environmental impact assessment, engineering, construction and operations plans and details about connecting pipeline facilities.

The preparation of the required hearing information generally takes one to two years to complete and the length of the hearing will be proportional to the level of controversy surrounding the issues.

Foothills has completed this phase of the process. We have the "certificates" that entitle us to build a pipeline, subject only to terms and conditions set out in the Alaska Highway Project regime.

The "certificates" are statutory. They were issued by the Parliament of Canada when it enacted the Northern Pipeline Act and are in keeping with the principles and intent of the U.S./Canada Agreement.

We acknowledge that the "certificates" were legislated 20 years ago and that some have raised questions about their scope and validity. Others suggest that the certificates are dated and accordingly must be reissued. The "certificates" are valid. We are on solid legal ground in this regard.

Changes to the pipeline design to accommodate new technical issues and improvements have previously have been granted by the Northern Pipeline Agency both at the time of the construction of the original Pre-build facilities and later during the facility expansion.

However, fundamental changes to the Canadian "certificates" would require changes to both the legislation and the treaty. For example another project could not be approved under the Alaska Highway Project regime. Further the Northern Pipeline Act (incorporating the U.S. /Canada Agreement) provides that the route for Alaska natural gas will be along the route set forth in Annex 1 to the U.S. /Canada Agreement i.e. the Alaska Highway route. In the face of the provision of the Northern Pipeline Act and the U.S. /Canada Agreement, a treaty with the force of law, it is difficult to see how the National Energy Board could entertain applications either for alternative pipeline routes for delivery of Alaska gas through Canada or applications by companies other than Foothills following the Foothills highway route for delivery of Alaska gas through Canada.

Given the above we may well ask what remains to be done before the project can proceed?

First of all, we do not have a commercial arrangement negotiated with the Alaska North Slope producers or other shippers. Achieving this commercial arrangement is our number one priority. We are confident that the mutual interests of all sides will ultimately lead to satisfactory arrangements.

Following the successful completion of such a commercial agreement, there are a number of terms and conditions that must be satisfied. These are set out in the Northern Pipeline Socio-economic and Environmental Terms and Conditions. It is our view that the terms and conditions are broad enough to accommodate modern environmental, engineering and construction practices. In fact, we addressed this issue when we pre-built the southern portion of the Alaska Highway Project pipeline.

Detailed design and engineering work also must be completed and approvals must be obtained from the Northern Pipeline Agency. It is this mechanism that I referred to when I indicated that we had a "fast track" regulatory process.

The Yukon Right-of-Way

I will take a few minutes to describe the status of our right-of-way through the Yukon. Foothills has been granted an easement in the Yukon. The current term of the easement is September 2012 and provisions are in place to renew the easement for a further term of 24 years. It is important to note that the easement is protected under the Encumbering Rights provisions of the Umbrella Final agreement which has been signed by the Government of Canada, the Government of the Yukon and the Yukon First Nations. The Final Settlement Agreements that have been negotiated with the Yukon First Nations contain specific provisions relating to the easement. In addition, the compressor stations locations and permanent access to the proposed stations are protected.

What does this mean? From our perspective this translates into certainty of land tenure and a significant timing advantage. Foothills has developed an excellent working relationship with the Yukon First Nations over the years and we are building on that relationship. Like the Canadian "certificates" the easements also constitutes an important asset. An asset not easily replicated.

Conclusion

Let me summarize and focus on some of the key points.

Foothills is a company with real pipelines and real customers.

When combined with our shareholders T ansCanada and Westcoast, we transport 20% of all the natural gas consumed in the United States. And we have the know-how and the where-with-all to build the Alaska Highway Pipeline.

We have been involved in this project for 25 years.

We and our former partners have invested heavily to achieve the permits, certificates, rights-of-way and much of the engineering on the Alaska Highway pipeline.

A basic message that I want to leave with you is this, we have a...very unique and solid regulatory framework, it is a very valuable framework in terms of saving money and avoiding costly delays when building a pipeline. It is more than a collection of permits. It is a package, designed specifically to expedite building the Alaska Highway pipeline.

This framework can neither be duplicated nor terminated easily. It is a one-of-a-kind regime. I urge all Alaskans to take full advantage of it.

Finally let me raise one other issue and that is the matter of the pipeline route decision. Before we can move from discussion to action this must be resolved. Anything this committee can do to bring clarity to the routing debate will be a positive development.

Ultimately all stakeholders must find some common ground and go forward.

So where do we go from here?

A commercial agreement between pipelines and producers is the next major mile post for the Project.

Once a satisfactory commercial arrangement is achieved ... the flag drops; from that point on we believe that our regulatory framework will allow "shovels to be in the ground" within 24 months.

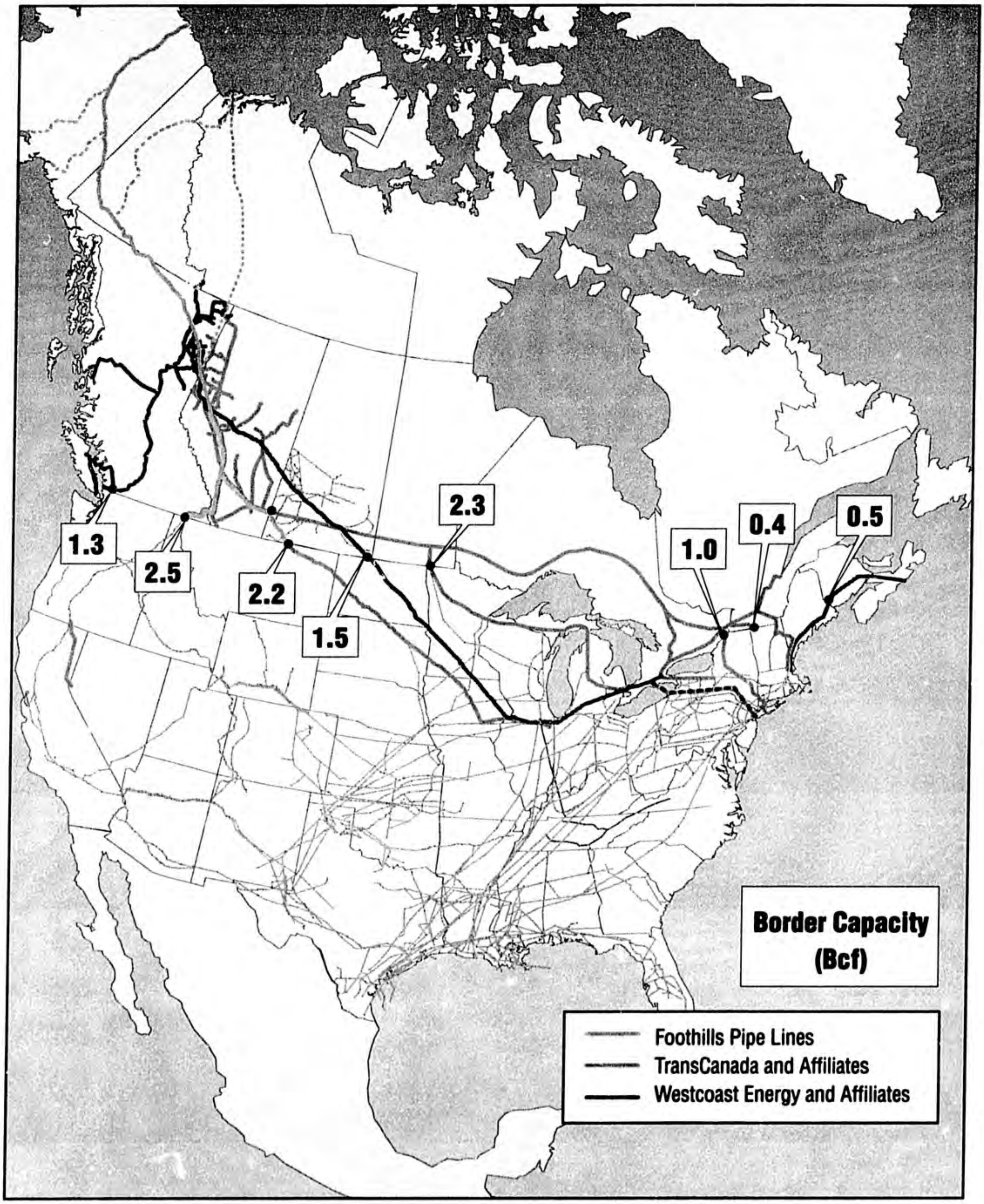
This is a very large project. It will involve many companies. It will cost a lot of money and there will be lots of issues to address and benefits to share.

Foothills and its shareholders intend to be major players in the development and operation of this important pipeline and we believe that we bring value to the Project and value to Alaska.

Thank you, and I am now prepared for questions.

FOOTHILLS PIPE LINES LTD.

NORTH AMERICAN PIPELINE INFRASTRUCTURE



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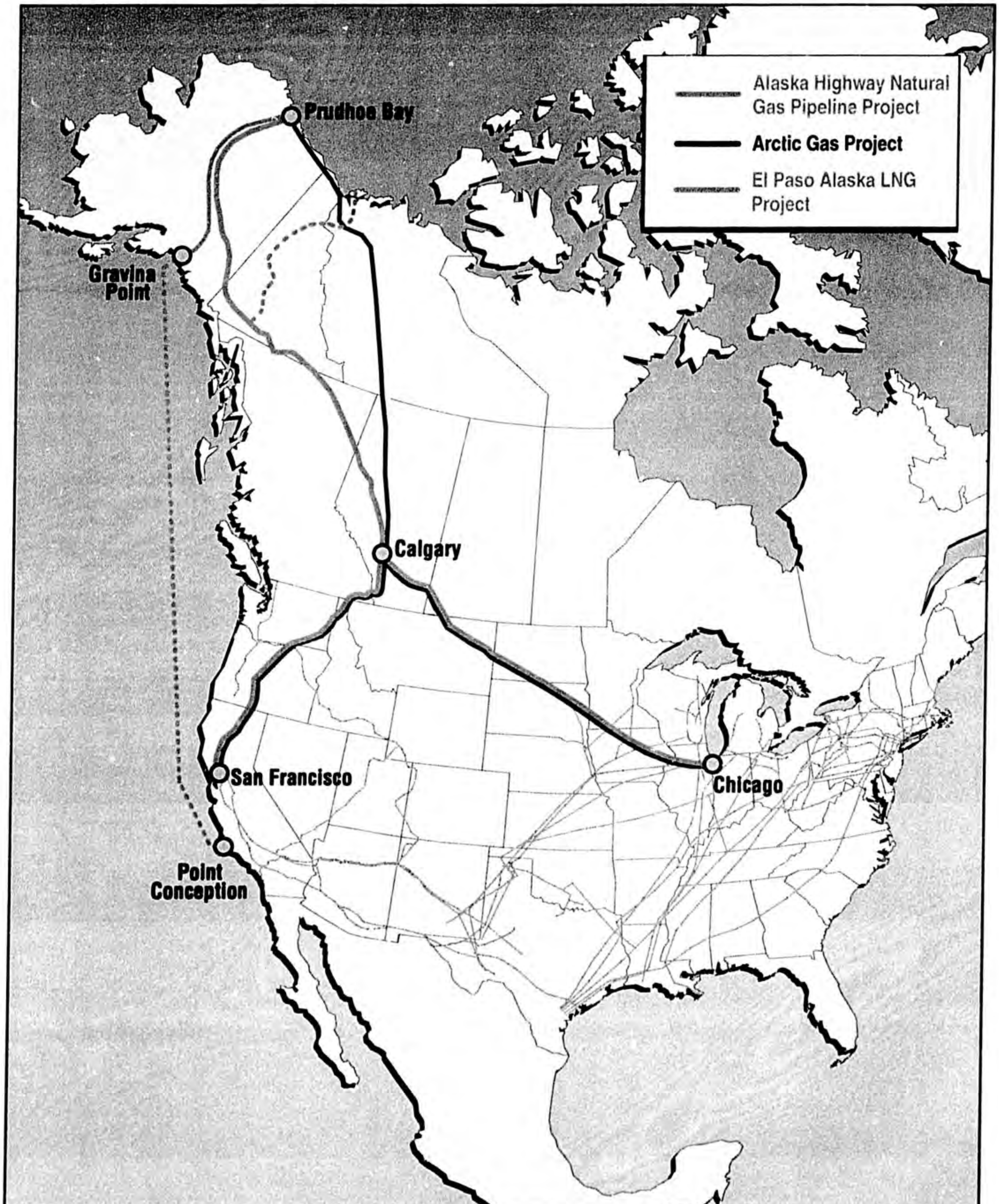
ORIGINAL COMPETING PROJECTS



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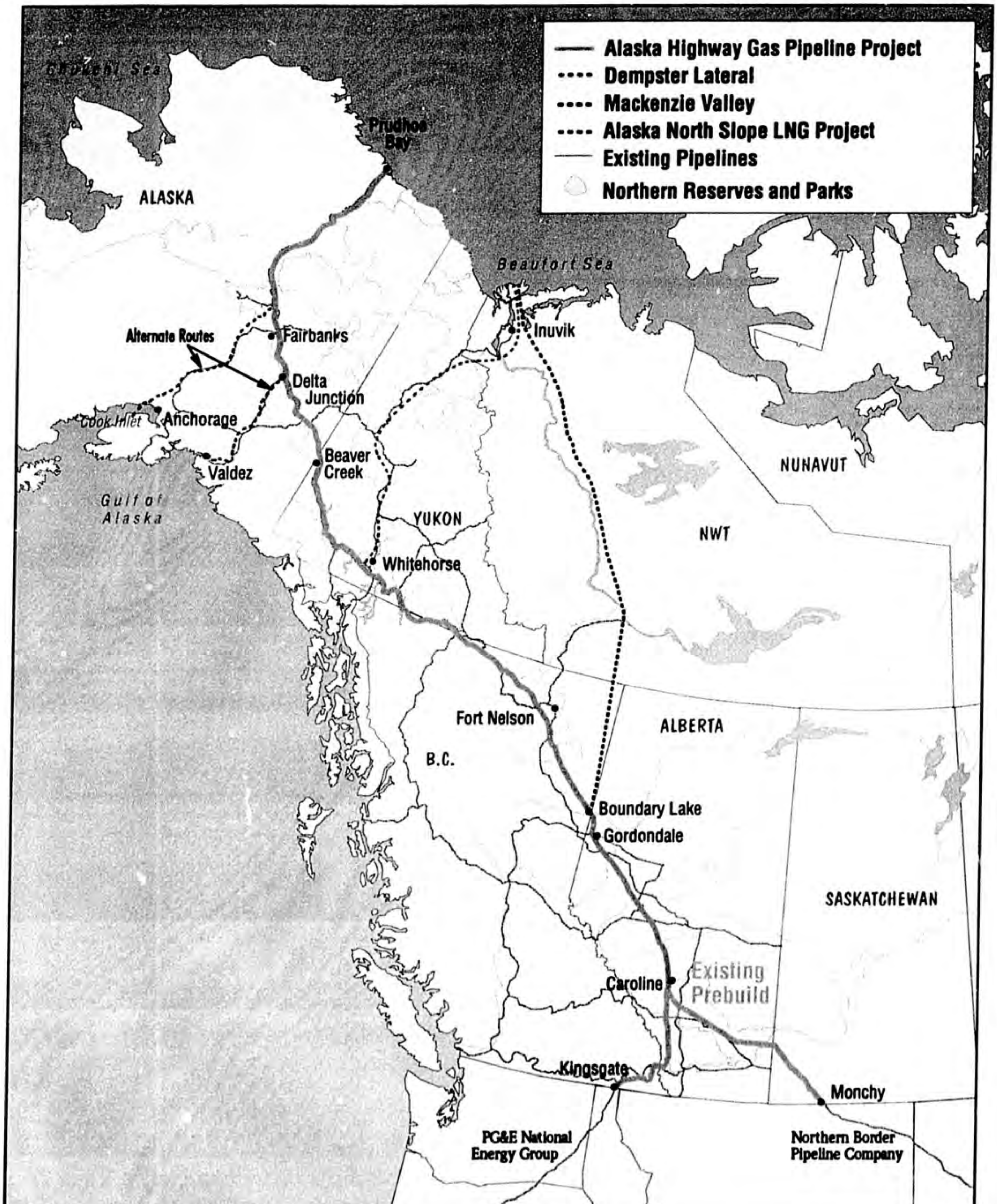
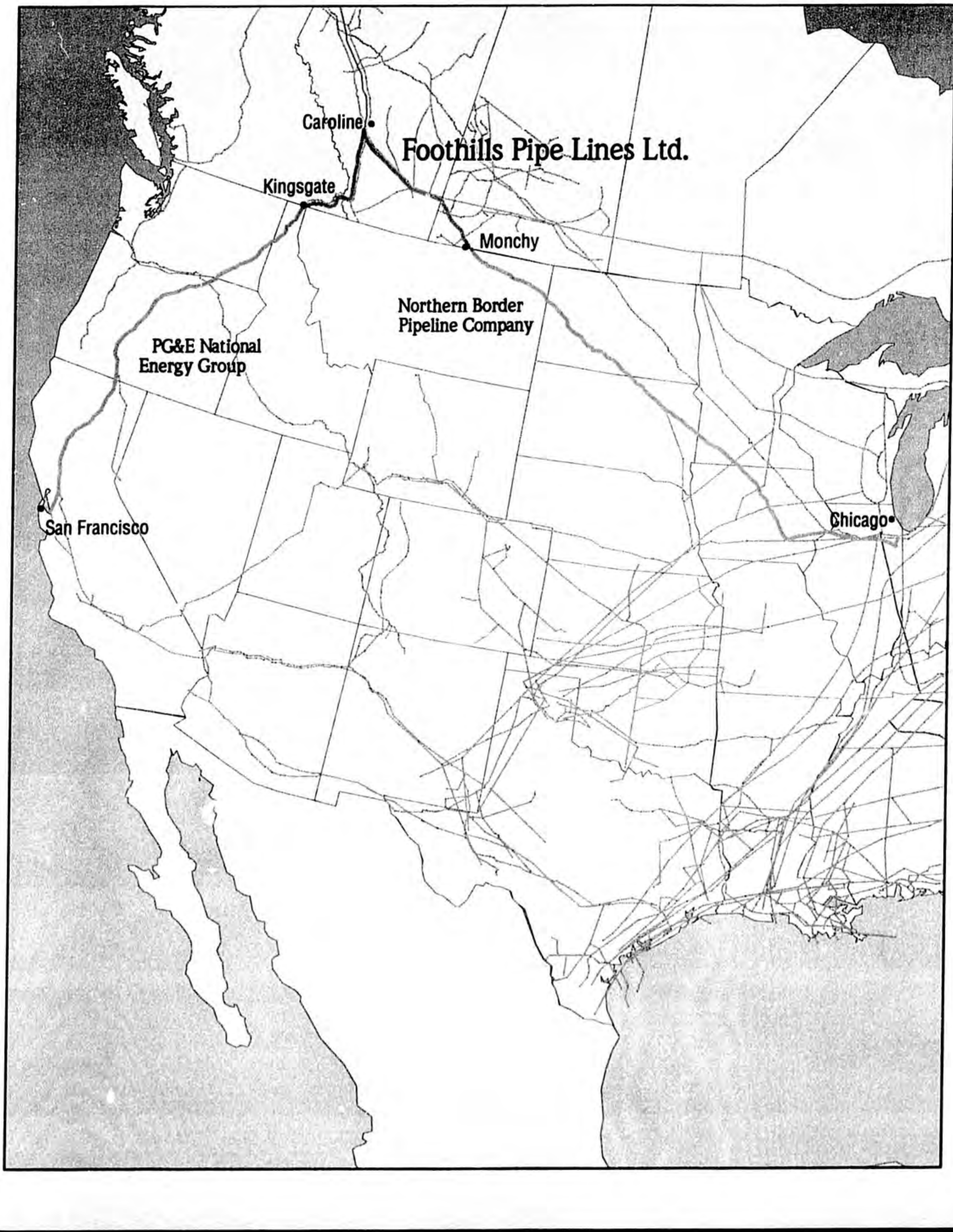
TRANSPORTATION SYSTEMS



FOOTHILLS PIPE LINES LTD.

PREBUILD SYSTEM



FOOTHILLS PIPE LINES LTD.

Northern Backgrounder

AUGUST 2000

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I. EXECUTIVE SUMMARY

- In 1977, Canada and the United States signed an Agreement for the construction and operation of the Alaska Natural Gas Transportation System ("ANGTS"), a 5,000-mile pipeline project which would traverse Canada and provide the U.S. with access to its Alaskan gas reserves.

- In the Agreement the two governments designated Foothills Pipe Lines Ltd. ("Foothills") as the company responsible for the construction and operation of the Canadian segment of the system and the U.S. sponsors.

- In September 1977, President Carter issued his Decision and Report to Congress on the Alaska Natural Gas Transportation System. In that decision, the ANGTS was found to be the most economic and environmentally sound means of transporting Alaskan gas to markets in the lower forty-eight states.

- The President's Decision and the Agreement were ratified by the U.S. Congress in late 1977, whereupon the U.S. Federal Energy Regulatory Commission ("FERC") issued certificates of public convenience and necessity to the U.S. sponsors for the construction and operation of the U.S. segments of the project subject to meeting certain conditions related to construction costs and schedule, finance and environment.

- In April 1978, the Canadian Parliament enacted the Northern Pipeline Act which granted certificates of public convenience and necessity to the Foothills subsidiaries responsible for the construction and operation of the 2,000-mile Canadian segment of the ANGTS. The Act also established the Northern Pipeline Agency and gave it authority to oversee the construction of the system in Canada.

- One of the main reasons for the United States' selection of the trans-Canadian ANGTS was the President's belief that it would "provide the opportunity to obtain additional gas at an earlier date by early construction of portions of the southern Canadian and lower 48 sections ... with delivery of gas from Alberta ... in advance of delivery of Alaskan gas."

- To make prebuilding a reality, Pan-Alberta Gas Ltd. ("Pan-Alberta"), a Canadian marketing company, signed two contracts in 1978 under which it agreed to supply Northwest Alaskan Pipeline Company ("Northwest Alaskan") approximately 800 MMcfd for delivery through the Eastern Leg of the ANGTS and approximately 240 MMcfd for delivery through the Western Leg. In addition, Pan-Alberta signed several gas sales and transportation contracts, including a transportation agreement with Foothills for delivery of gas to the Eastern and Western Leg delivery points on the international border.

- In 1980, the Federal Energy Regulatory Commission ("FERC"), as a successor to the Federal Power Commission ("FPC"), issued a series of orders approving the Prebuild phase of the ANGTS.

- On July 1, 1980, Congress passed a Joint Resolution which reaffirmed congressional support for the ANGTS. After finding, among other things, that prebuilding would "enable this Nation to obtain Canadian natural gas to displace two hundred thousand barrels of foreign oil a day," the Joint Resolution declared that "it is the sense of Congress that the [ANGTS] System remains an essential part of securing this Nation's energy future and, as such, enjoys the highest level of Congressional support for its expeditious construction and completion ..."

- On July 18, 1980, President Carter wrote Prime Minister Trudeau a letter expressing the United States' support for prebuilding and for completion of the remainder of the ANGTS.

- Based upon the commitments of the FERC, the President, and the Congress, the NEB issued a decision in July 1980 finding that the financing conditions of the Northern Pipeline Act, as amended, had been satisfied, and that prebuilding the Canadian segment of Phase I of the ANGTS could go forward.

- Subsequent to the Canadian government's approval of the Prebuild Project, and in reliance upon the U.S. commitments described above:

  - Foothills invested approximately one billion dollars in prebuilding 528 miles of the 2000-mile Canadian segment of the ANGTS;

  - Canadian producers invested approximately one billion dollars (Canadian) in the construction of production, plant, and gathering facilities; and

  - NOVA invested approximately $500 million in providing capacity within its intraprovincial pipeline system to transport the Prebuild volumes from numerous Alberta fields to interconnections with the Foothills system.

- Since the initiation of gas deliveries through the ANGTS Prebuild Project, which occurred in 1981 on the Western Leg and in 1982 on the Eastern Leg, the Prebuild contracts have been renegotiated in response to changing conditions in the U.S. gas market while remaining consistent with the integrity of the ANGTS regime. Consistent with the ANGTS regime, the new amendments have been expeditiously approved by regulatory agencies in both Canada and the United States.

- Foothills has invested approximately $500 million in expansions to the Prebuild during the 1990's under the ANGTS regime. Of particular note, in 1993, Foothills expanded its Western Leg facilities in South B.C. which added roughly 850 MMcfd, increasing system capacity to 1094 MMcfd. In 1998, Foothills completed an expansion of its Eastern Leg facilities in Saskatchewan which represented the largest system expansion, increasing contract capacity to 2.2 Bcfd.

- As a result of market conditions in the U.S. lower 48, the completion of Phase II of the ANGTS has been deferred. Recent events and prospects for higher gas demand in the lower 48 make construction of the northern segments of the project more likely than at any time since the early 1980's. The ANGTS sponsors remain committed to completing Phase II in a timely manner. Sponsors continue to take appropriate actions and expend funds necessary to maintain the ANGTS regime in a state of readiness including efforts focused upon substantially reducing the cost of transporting Alaskan North Slope gas to market.

- Since the inception of the project, the ANGTS sponsors have made substantial progress toward the eventual completion of the ANGTS. Right-of-way permits and easements have been granted and their terms extended where necessary for much of the system; a broad array of regulatory authorizations have been issued by Canadian and U.S. regulatory authorities; and the U.S. Congress has approved waivers of law. In 1992, the Canadian government and Foothills extended the term of the Easement Agreement in Yukon for twenty years at a minimum.

- In January, 1988, President Reagan issued a finding that exports of Alaskan gas would not decrease the quantity, nor increase the price, of energy available to the United States. However, the finding reaffirmed the President's support for the unique regulatory treatment of the Prebuild Project. The finding also indicated that the President still supported the completion of the ANGTS.

- In January, 1992, the U.S. Federal Inspector for the ANGTS, sent the President a report which recommended abandonment of the entire ANGTS legal infrastructure, including the bilateral agreement with Canada. While the ANGTS sponsors did not object to abolition of the Office of the Federal Inspector, they strongly opposed abrogation of the core ANGTS authorities – i.e., the Alaska Natural Gas Transportation Act, the President's 1977 decision, and the bilateral agreement with Canada. Although the Office of the Federal Inspector was dismantled, that authority now resides with the Department of Energy. The recommendation to abandon the ANGTS legal infrastructure was rejected.

- On June 30, 1999, the Federal Energy Regulatory Commission issued an "Order Accepting and Suspending Tariff Sheets, Subject to Refund and Hearing" in the 1999 Northern Border Pipeline Company Rate Case. The Order included a statement that the "ANGTS is no longer viable". Foothills requested clarification of that statement, arguing that it was not only factually incorrect, but counter to important commitments which have been made by the United States government to the Canadian sponsors and the Canadian government regarding the ANGTS. The

Canadian Government also requested that the FERC clarify its statement to avoid creating uncertainty with respect to the U.S. commitments to its treaty with Canada and the ANGTS. The FERC subsequently clarified the order consistent with the request of Foothills and Canada in an expeditious manner.

- The Canadian and U.S. governments and their agencies have consistently supported the Prebuild and completion of the ANGTS in accordance with the Canada/U.S. Agreement.

- As the Canadian sponsor of the ANGTS and a partner in the Alaskan segment of the Project, Foothills believes that it is important for public and private parties to be familiar with the history of the project, the benefits of the Prebuild Phase, and the steps to complete the remainder of the system in the years ahead. Accordingly, this briefing document has been prepared.

II. BACKGROUND

Controversy over the best means of transporting Alaskan gas to markets in the lower forty-eight states began as early as the late 1960's, when extensive oil and gas reserves were first discovered in the area of Prudhoe Bay. For purposes of this discussion, however, it is sufficient to begin with the Alaska Natural Gas Transportation Act ("ANGTA"), which was passed by the U.S. Congress and signed into law in 1976.[1]

Through ANGTA, Congress sought to ensure that the construction and operation of an Alaska natural gas transportation system would not be delayed by the type of administrative and judicial problems which had plagued the trans-Alaskan oil pipeline and other major energy projects during the early 1970's. To that end, ANGTA established a special procedural framework which would permit the U.S. President and the Congress to make a final decision on an Alaska natural gas transportation system, but only after substantial input from other U.S. agencies and interested parties. Among other things, the Act specifically provided for:

(a) a recommendation to the President from the Federal Power Commission ("FPC"), which was the predecessor to the Federal Energy Regulatory Commission ("FERC");

(b) an opportunity for other U.S. agencies, states, and interested parties to comment on the recommendation;

(c) a Presidential decision and report to Congress on an Alaskan natural gas transportation system; and

(d) Congressional review of the Presidential decision.

ANGTA also established specific procedures to prevent undue governmental delay in achieving the most expeditious completion of the transportation system ultimately approved by the President and Congress. In particular, U.S. regulatory agencies are required to expedite all proceedings relating to the construction and initial operation of the system; U.S. officials are prohibited from taking any action which would either change the basic nature and general route of the chosen system or impair its expeditious completion; and the scope of judicial review of regulatory actions relating to the chosen system is severely limited.

III. THE DECISIONAL PROCESS IN CANADA AND THE UNITED STATES

At the time of ANGTA's enactment, comparative hearings were in progress before the FPC on three competitive proposals for an Alaska natural gas transportation system. Specifically, those proposals were:

(1) the Arctic Gas Project, which proposed an overland pipeline extending from Prudhoe Bay, across the North Slope of Alaska to the Canadian Mackenzie Delta, and thence southerly through Canada to the lower forty-eight states;

(2) the El Paso LNG Project, which proposed an overland pipeline extending from Prudhoe Bay to southern Alaska, where the gas would have been liquefied and transported by tankers to terminals in the western United States; and

(3) the Alcan Pipeline Project -- referred to in Canada as the Alaska Highway Pipeline Project -- which proposed an overland pipeline extending from Prudhoe Bay to Fairbanks, Alaska, and thence southeasterly through western Canada to the lower forty-eight states.

Two of these proposals -- namely, the Arctic Gas Project and the Alaska Highway Pipeline Project (or Alcan Pipeline Project) -- were also pending before the Canadian National Energy Board ("NEB") at the time of the enactment of ANGTA. The El Paso LNG Project was not before the NEB because it was an "all American" project which did not propose a pipeline across Canada.

However, Canadians were concerned about a LNG route along the west coast of Canada.

A. The Recommendation of the FPC

On May 1, 1977, following extensive hearings in which every facet of the competitive proposals was explored, the FPC issued its Recommendation To The President. In that recommendation, the four sitting commissioners unanimously agreed that it would be in the public interest of the United States to construct an overland pipeline for the transportation of Alaskan gas to markets in the lower forty-eight states.[2] As to which overland system should be selected, however, there was initially a split of opinion. Two commissioners unconditionally recommended the Alcan project. The other two stated that if the Government of Canada selected the Alcan route, the Alcan project should be approved.

B. The Reasons For Decision Of The Canadian NEB

On July 4, 1977, following two years of competitive hearings which had paralleled the hearings before the FPC, the NEB issued its Reasons for Decision, Northern Pipelines. In that decision, the NEB rejected the Arctic Gas proposal and recommended an overland pipeline to the Canadian Governor-in-Council.

The NEB's decision was also important because it indicated that international approval of the Alaska Highway Pipeline Project might provide a basis for making additional Canadian gas available to the United States prior to the flow of Alaskan gas. Specifically, the NEB stated:

> "Assuming ... that Alaska gas is to be connected to markets by a land bridge through Canada, it could be

> possible to pre-build some of the southern Canada and northern United States pipeline capacity to market gas which may be surplus to Canada's requirements in the late 1970's and early 1980's."[3]

As discussed more fully below, this concept of "pre-building" certain portions of the system, in order to provide the United States with early deliveries of Canadian gas to satisfy lower 48 market needs, was considered to be one of the principal advantages of the Alaska Highway Pipeline Project when it was approved by the United States.

C. The Transit Pipeline Treaty

The large discoveries of hydrocarbon supplies in Alaska and the anticipated use of pipelines across Canada to access these reserves as well as Canada's use of U.S. pipelines as a conduit to connect Canadian markets led Canadian and U.S. authorities to develop a treaty providing for non-discriminatory treatment. In September, 1977, the "Transit Treaty" was signed which effectively provides that neither country will interfere with the transportation of hydrocarbons regardless of source or market and will not impose any discriminatory tax or monetary charge which does not apply to similar pipelines used for domestic transportation.

D. The Agreement Between Canada And The U.S.

Following the consummation of the Transit Pipeline Treaty and the issuance of the FPC and NEB recommendations, officials of the Canadian and United States governments began negotiations in the summer of 1977 to determine whether an overland pipeline through Canada could be finally approved on terms and conditions acceptable to both countries. As a result of these negotiations, the two countries, on September 20, 1977, signed an

"Agreement Between Canada and the United States of America Applicable to a Northern Natural Gas Pipeline."[4] This agreement endorsed the Alaska Highway Pipeline Project, set out the general routing for the Project and designated Foothills Pipe Lines Ltd. ("Foothills") as the Canadian sponsor and the ANNGTC as the sponsor of the Alaskan segment. Northern Border Pipeline Company and the Pacific Gas Transmission Company were identified as lower 48 sponsors. It also committed the United States and Canadian governments to discharge their regulatory responsibilities in a manner that would facilitate the expeditious construction of the project in accordance with the terms of the agreement. The Agreement has an initial term of 35 years anu continues beyond 2012 unless terminated on one year's notice by either party.

E. The U.S. President's Decision and Report to Congress

On September 22, 1977, as required by ANGTA, the President issued his Decision and Report to Congress on the Alaska Natural Gas Transportation System. In that decision, the President determined that it was in the best interest of the American people to have the Alaskan gas reserves transported to market at the earliest possible date. He further determined that the project identified in the Canada/U.S. Agreement was the most economic and environmentally sound means of accomplishing this goal.

In its discussion of the advantages of the ANGTS as compared to the other competing proposals, the President's Decision emphasized that the system would:

> " ... provide the opportunity to obtain additional gas at an earlier date by early construction of portions of the southern Canadian and lower 48 sections of [the system] ... with delivery of gas from Alberta (where

> there is a temporary excess supply) in advance of the delivery of Alaska gas."[5]

The Decision further recognized that:

> "A pre-delivery arrangement involving Alberta gas would provide stimulus to exploration for additional supplies in that province by providing producers with additional markets for their gas."[6]

Having selected the ANGTS, the President's Decision specifically identified the facilities to be constructed by the sponsors of the project. In accordance with the Agreement, Foothills was identified as the company responsible for the construction and operation of the Canadian segment of the project.

F. U.S. Congressional Approval Of The ANGTS

On November 2, 1977, the U.S. Congress passed a joint resolution which ratified the President's Decision.[7] With the signing of this resolution by the President on November 8, 1977, the complicated process of selecting an Alaskan natural gas transportation system came to an end in the United States.

G. Certification Of The ANGTS By The FERC

In view of the President's Decision and the ratification of that decision by Congress, the FERC issued an order on December 16, 1977, which, among other things, granted certificates of public convenience and necessity to Alcan Pipeline Company, Northern Border Pipeline Company ("Northern Border"), and Pacific Gas Transmission Company ("PGT").[8] These certificates were subject to the satisfaction of certain conditions related to construction costs and schedule, finance and environment. Alcan's certificate for the Alaskan segment of the ANGTS was subsequently transferred to its successor-in-interest, Alaskan Northwest Natural Gas Transportation Company ("Alaskan Northwest"),[9] which has remained the sponsor of the Alaskan segment of the project.

H. The Canadian Northern Pipeline Act

On April 4, 1978, the Northern Pipeline Act was passed by the Canadian Parliament and proclaimed on April 12, 1978.[10] Among other things, the Act granted certificates of public convenience and necessity to the Foothills subsidiaries responsible for constructing the Canadian segment of the ANGTS. In addition, the Act established the Northern Pipeline Agency, with the authority to oversee the construction of the system in Canada. The Agency was established as a single window for regulatory oversight of the project in order to co-ordinate and facilitate expeditious project approvals.

Similar to the United States, conditions were placed on the certificate. These conditions exhibit the inherent flexibility necessary for the certificates to be responsive to conditions which exist at the time the project proceeds. Again, as in the United States, the certificates do not have a sunset clause.

I. The 1981 Waiver of Law

By 1981, it had become increasingly apparent that the 1977 Presidential Decision and the U.S. Natural Gas Act contained certain provisions which were obstacles to the private financing of the ANGTS. In keeping with its commitments to the project, however, the U.S. Congress, at the request of the President, passed a resolution in late 1981 which waived these provisions, thereby paving the way for the remainder of the project to be financed as soon as the U.S. market requires Alaskan gas. Subsequently, the waiver of law was challenged, but it was upheld by the United States Court of Appeals.[11]

In summary, the 1981 waiver of law eliminated essentially four hurdles at that time to the financing of the remainder of the ANGTS. First, it permitted the North Slope producers to participate in the ownership of the ANGTS. Second, it included the North Slope conditioning plant as an integral part of the overall ANGTS, which is entitled to special protections under ANGTA. Third, it authorized the FERC to approve payment of Foothills' cost of service as soon as the Canadian segment of the project is capable of operation provided that such date is not before a date certain established in FERC's final certificate for the completion of the entire system. Finally, the waiver prohibited the FERC from changing the provisions of final rules and orders approving any tariff in any manner that would impair the recovery of operation and maintenance expenses, actual current taxes, and amounts necessary to service debt for the ANGTS. The Waiver is permissive in nature, allowing the implementation of these provisions, while not precluding the negotiation of alternative commercial arrangements.

IV. THE ANGTS PREBUILD PROJECT

A. The Prebuild Contracts

Consistent with the desire to have the southern portions of the ANGTS prebuilt in order to transport Canadian gas in advance of Alaskan gas, Pan-Alberta signed two contracts in 1978 under which it agreed to supply Northwest Alaskan Pipeline Company ("Northwest Alaskan") with approximately 1.04 Bcf of new Canadian gas exports per day over a twelve-year period. Under the Eastern Leg contract, Pan-Alberta agreed to sell Northwest Alaskan approximately 800,000 Mcf per day, to be delivered at a point on the international border near Monchy, Saskatchewan. Northwest Alaskan, in turn, contracted to resell 200,000 Mcf per day of this volume to Northern, a Division of Enron Corporation, 150,000 Mcf per day to Panhandle, and 450,000 Mcf per day to United. Under the Western Leg contract, Pan-Alberta agreed to sell Northwest Alaskan approximately 240,000 Mcf per day, to be delivered at a point on the border near Kingsgate, British Columbia, for resale to PIT. PIT, in turn, contracted to resell the Western Leg volumes to SoCal.

To assemble the necessary gas supply for the eastern and Western Leg sales, Pan-Alberta entered into over 800 gas purchase contracts with approximately 420 Alberta producers, who, collectively, committed over 5 Tcf of proven Alberta gas reserves to the project. In addition, Pan-Alberta contracted with NOVA for the construction of certain Prebuild-related pipeline facilities, and for the transportation of the Prebuild volumes from numerous Alberta gas fields to various interconnections with the Foothills system. Pan-Alberta also contracted with Foothills for the transportation of the gas from NOVA's facilities to the eastern and Western Leg delivery points on the U.S. border.

The Prebuild import and resale contracts were designed from the outset to provide a constant source of assured revenue from which Pan-Alberta would be provided with sufficient funds to satisfy its financial obligations to Foothills, NOVA, and the hundreds of producers whose participation was vital to the project. To this end, the gas sales contracts between Pan-Alberta and Northwest Alaskan required Northwest Alaskan to take and pay annually for 85% of the annual contract quantities, and to take and pay daily for 50% of the daily contract quantities. In addition, identical take-and-pay levels were included in the resale contracts between Northwest Alaskan and its downstream pipeline purchasers (Northern, Panhandle, United, and PIT). For all practical purposes, Northwest Alaskan's resale contracts were mirror images of its import contracts with Pan-Alberta.

B. Canadian And U.S. Prebuild Regulatory Approvals

In 1978, applications for approval of the Prebuild project were filed with the NEB in Canada and FERC in the United States. Soon thereafter, the NEB and FERC conducted extensive hearings in which every facet of the project, including the terms and conditions of the gas sales and resale contracts, was examined in detail.

Based upon the record established in these hearings, the FERC issued an order on January 11, 1980, approving the Prebuild imports and related sales and tariff arrangements for the Western Leg of the ANGTS.[12] Striking a theme that would be repeated subsequently in virtually every FERC order regarding the matter, the FERC found that the Prebuild Project was not only related to the construction and initial operation of the ANGTS, within the meaning of ANGTA, but would also create substantial benefits with respect to the financing and ultimate completion of the entire system.[13] Among other things, the FERC concluded that prebuilding would (1) reduce the future transportation costs of Alaskan gas; (2) get the ANGTS project started sooner than would otherwise be the case; (3) spread the demand for labor, capital, and material over a longer period; and (4) facilitate the financing of the ANGTS.[14]

On April 28, 1980, the FERC issued an order approving the Prebuild imports and related sales and tariff arrangements for the Eastern Leg of the ANGTS.[15] Reaffirming its prior findings regarding the tangible benefits of prebuilding the Western Leg, the FERC stressed that the benefits would "be even greater with respect to prebuilding a portion of the Eastern Leg, since more of the Eastern Leg of the ANGTS is to be prebuilt ...."[16]

In the April 28 order, however, the FERC determined that the annual and daily minimum take provisions in the Prebuild contracts should be limited by an appropriate condition, because these provisions would otherwise constrain the ability of the U.S. purchasers to reduce their takes during periods, if any, when the gas was not priced competitively with alternate fuels. At the same time, however, the FERC recognized that a guaranteed minimum revenue stream was absolutely essential to the financing of production, plant, gathering, and pipeline facilities required for the Prebuild Project.[17] To reconcile these dual objectives, the FERC simply required, as a condition to its import authorizations, that the minimum take provisions of the contracts be modified in a manner that would limit the financial exposure of the U.S. purchasers to a fixed amount of money per year or per day, as appropriate.[18] Explaining this "limiting mechanism", the FERC stated:

> "Rather than specify that the U.S. purchasers must take and pay for minimum quantities of gas, the Commission's alternative would specify that <u>they would have to take and pay for enough gas to provide an assured minimum amount of revenue</u> ....
>
> Under this modification, the obligation of the U.S. purchasers to take gas would go down if the border price went up. <u>However, the purchasers would always be obliged to take enough gas to provide the established minimum revenue</u>." (emphasis added).[19]

Significantly, the FERC went so far as to emphasize that its condition:

> " ... effectively assure[d] the Canadian producers of sufficient revenue to finance gathering and conditioning facilities <u>even in the event that the delivered gas is not competitively priced</u>." (emphasis added).[20]

While the April 28 order was thus replete with statements that the minimum revenue stream would be assured or guaranteed, the discussion on tracking of project costs in the shippers' rates contained an anomalous statement which appeared to contradict the FERC's assurances. Specifically, that section of the order stated:

> " ... [A]n evaluation for consistency with the public interest should be made each time there is a price change for a particular source of imported gas. ... [T]he Commission would expect that different terms and conditions would be appropriate to govern a particular source of gas imports at different levels of the price for that source.[21]

With the uncertainty created by this statement, the financial viability of the ANGTS Prebuild Project was placed in jeopardy. Moreover, without proof of financing, Foothills could not obtain the necessary authorizations from the NEB to proceed with construction of the Canadian segment of the project. On May 9, 1980, the NEB publicly announced that the uncertainty created by the FERC's April 28 order ("it could cause doubts in the perceptions of investors") precluded the NEB at that point from making the requisite findings under Condition 12 of the Northern Pipeline Act, as amended,[22] that financing had been obtained for the Prebuild Project and could be obtained for the remainder for the ANGTS.[23] For this reason, the NEB emphasized that it would be desirable for the FERC to reconsider the minimum payment condition of the April 28 order, particularly in light of the Canadian investments which would be required for the project.[24]

In view of these concerns, Foothills and Pan-Alberta filed a joint petition for rehearing on May 28, 1980, urging, among other things, that the FERC renounce any right to unilaterally modify the pricing regime of the Prebuild imports on the basis of future developments. Referring to the above-quoted statement from the April 28 order, Pan-Alberta and Foothills stated:

> "This perplexing statement suggests that the Commission or ERA would not only be able to modify the terms and conditions of the import permit, but, indeed, 'would expect' such modifications, each time the Canadian border price is changed -- an event which could occur several times during the life of the exports. If this is the Commission's intent, the promise of an 'assured' revenue stream is empty and without significance. What is more important, it clearly provides no basis upon which the Canadian sponsors can secure the gas supply and financing *which are required for the project* ..."

> "To eliminate the uncertainty created by the April 28 order and to establish a proper frame-work for financing, the Commission's order on rehearing should state unequivocally that neither the principles upon which the revenue ceilings are calculated, nor any other provisions which are critical to financing, will be modified during the term of the exports." (emphasis added).[25]

In its June 20, 1980 order on rehearing, the FERC responded favorably to the request of Foothills and Pan-Alberta, and agreed that it would be inappropriate to periodically reconsider the minimum revenue stream. Accordingly, the FERC provided:

> " ... the assurances sought by Foothills and Pan-Alberta that it ... [would] not change the principles upon which the revenue stream is calculated during the authorized term of the imports reaffirmed herein." (emphasis added, footnote omitted).[26]

In response to the apprehensions expressed by the Canadian participants, the FERC emphasized that its minimum take condition should not be viewed as a "ceiling" or a "cap" on revenues, but, rather, as "a floor, beneath which the revenues will not be allowed to fall."[27] Moreover, the FERC reiterated its prior statement from the April 28 order that the condition would assure sufficient revenue to the Canadian participants "even in the event that the delivered gas is not competitively priced."[28]

With these commitments, the FERC's order of June 20, 1980 eliminated a major hurdle to the financing of the Prebuild phase of the ANGTS. However, under a proposed amendment to Condition 12 of the Northern Pipeline Act to take into account the financing of the Prebuild, construction of that segment of the overall project could not be authorized until the NEB and the Minister responsible for the Northern Pipeline Agency were satisfied that the Prebuild was financed and financing could be obtained for the remainder of the system[29]. In short, Canada indicated that it required assurances reaffirming the commitment of the United States government to the completion of the entire ANGTS in accordance with the 1977 Agreement.

The President and Congress acted swiftly to provide the assurances required for Canadian participation in the project. Specifically, on July 1, 1980, Congress passed a Joint Resolution which reaffirmed congressional support for the ANGTS (Appendix A). After finding that prebuilding would "enable this Nation to obtain Canadian natural gas to displace two hundred thousand barrels of foreign oil per day," the Joint Resolution declared that "it is the sense of the Congress that the [ANGTS] System remains an essential part of securing this nation's energy future and, as such, enjoys the highest level of Congressional support for its expeditious construction and completion ...". Moreover, on July 18, 1980, President Carter wrote Prime Minister Trudeau a letter expressing the United States' support for prebuilding and the completion of the remainder of the ANGTS. After briefly reviewing the progress achieved in the U.S. towards completion of the ANGTS, the President stated:

> "I trust these recent actions on our part provide your government with the assurances you need from us to

> enable you to complete the procedures in Canada that are required before commencement of construction on the Prebuild sections of the pipeline." (Appendix B).

Based upon the commitments of the FERC, the President, and the Congress, the NEB issued a decision in July 1980 finding that if the amended Condition 12 were approved by the Government, the NEB was satisfied its provisions could be met. With respect to the financeability of the Prebuild Project, the NEB placed great reliance on the guarantees set forth in the FERC's June 20, 1980 order on rehearing. Specifically, the NEB noted:

> " ... [T]he Board was concerned whether the F.E.R.C. requirement of a minimum payment for Alberta gas transmitted on Prebuild facilities, instead of the take and pay provisions in the Pan-Alberta contract, would adversely affect the financeability of the pipeline. ... It did not incorporate the current border price for Canadian gas exports in the formula, as the Board would have preferred, but it did provide for escalation in the U.S. $3.45 price and pointed out that it was a 'floor' and in no way precluded imports at higher prices. Foothills (Yukon) has now indicated that it is satisfied with the F.E.R.C. decision .... The Board also is satisfied that the F.E.R.C. decision is not an obstacle to financing. ... [O]n the basis of the foregoing the Board ... [finds that] ... the company has established to the satisfaction of the Board that financing has been obtained for that portion of the pipeline, hereinafter referred to as the prebuild sections ...." (emphasis added).

Following the NEB's decision, the Governor-In-Council approved the amendment to Condition 12 of the Northern Pipeline Act, an amendment which was required for the Prebuild Phase to go forward. In addition, the Minister responsible for the Northern Pipeline Agency concurred with the NEB's finding that the financing requirements of Condition 12, as amended, had been satisfied.

C. Construction Of The Prebuild

Subsequent to the Canadian government's approval of the Prebuild Project, Foothills invested approximately one billion dollars in prebuilding 528 miles of the 2000-mile Canadian segment of the ANGTS; NOVA invested approximately $500 million in providing capacity within its intraprovincial pipeline system to transport the Prebuild volumes from numerous Alberta gas fields to interconnections with the Foothills system; and Alberta producers invested approximately $1 billion in the construction of necessary production and gathering facilities. In total, approximately $2.5 (Can.) billion was invested by the Canadian natural gas industry in order to provide a service which had been found by the FERC, the Congress, and the President to be crucially required by the public interest of the United States.

There was also substantial Prebuild investment in the United States. Specifically, Northern Border invested approximately $1.3 billion (U.S.) in the construction of 823 miles of the Eastern Leg of the Prebuild Project. In addition, PGT and Northwest Pipeline Corporation ("Northwest") invested approximately $323 million (U.S.) in the construction of the Western Leg.

Significantly, the Prebuild Phase of Foothills' system was constructed within cost estimates and was completed on schedule. As a result, deliveries began on the Western Leg in late 1981 and on the Eastern Leg in 1982.

Foothills has continued to construct additions to the Prebuild to accommodate the demand for gas in the United States. In 1993, Foothills increased capacity on the Western Leg to roughly 1.1 Bcf/d and in 1998 expanded the Eastern Leg to approximately 2.2 Bcf/d. Both expansions were performed under the provisions of the Northern Pipeline Act, meeting all conditions under the Act including all socio-economic and environmental conditions existing at the time of the expansions. The ANGTS regime has exhibited its ability to respond to the "standards of the day".

D. Subsequent Prebuild Developments

Subsequent to its construction and placement into service, there have been numerous developments relating to the Prebuild Project. One of the most significant developments was the renegotiation of the Prebuild contracts in 1984, following the establishment of a new pricing policy by the Canadian government which granted Canadian exporters and their U.S. buyers greater freedom to agree upon the prices and other terms of their gas supply arrangements. The renegotiated contracts were designed to provide greater responsiveness to market conditions, while simultaneously preserving the minimum revenue stream which underpins the financial integrity of the Prebuild Project. These new arrangements were approved in the United States by both the Economic Regulatory Administration ("ERA") and the FERC. In both approvals, the agencies recognized the unique nature of the ANGTS and the necessity to protect the minimum revenue stream underpinning the Prebuild Project.[30].

These contracts have subsequently been renegotiated several times, each receiving approval in the United States. Another significant development occurred in 1989 when a multi-party settlement was consummated in order to relieve United of its contractual obligations relating to the Prebuild Project. As part of that settlement, United's equity interest in Northern Border was transferred to a subsidiary of Northern Natural; United's gas purchase obligation with Northwest Alaskan was assigned to NATGAS U.S. Inc. ("NATGAS"), a

Pan-Alberta subsidiary which is now known as Pan-Alberta Gas (U.S.) Inc.; NATGAS succeeded to United's transportation capacity on Northern Border; and Northern Natural agreed to purchase certain volumes from NATGAS. On December 21, 1989, the FERC approved the comprehensive settlement, recognizing once again the unique nature of the ANGTS and the necessity of protecting the minimum revenue stream which generally underpins the project.

The FERC has also reaffirmed the special treatment of the ANGTS Prebuild Project in various proceedings in which is has considered generic rules or policies. In Order No. 380-A, for example, the FERC exempted the Prebuild contracts from a generic rule which prohibits minimum take or minimum purchase obligations in pipeline tariffs[31]. Explaining its action, the Commission stated:

> "The ANGTS is a unique international project whose ultimate success has always rested on a framework of mutual trust and cooperation between the governments of the U.S. and Canada. It is abundantly clear that the assurances made by the Commission, the Congress, and the President collectively comprise a commitment to protect the stream of revenue underpinning the financing of the Canadian segment of the ANGTS, that the Government of Canada relied on those assurances, and that any subsequent action that could adversely affect that stream of revenue would constitute a breach of faith in our nation's relationship with Canada."[32].

The FERC's exemption of the Prebuild tariffs from the minimum commodity bill rule, as well as numerous other aspects of that rule, were appealed to the United States Court of Appeals for the District of Columbia Circuit. The court ringingly affirmed the Prebuild exemption, however, noting that the Commission's 1980 orders had "crafted a contract formula that guaranteed the Canadian suppliers an adequate revenue stream generated from United States sales ... to support the financing of the ANGTS ...[33]. More importantly, the court emphasized that "[a]pplications of the rule to... [the Prebuild tariffs] would have placed the United States in breach of its explicit commitments to Canada."[34].

The FERC also agreed in Opinion No. 256-A that its general policy against as-billed flow-through of Canadian gas costs would not apply to the Prebuild Project. Specifically, the FERC stated:

> "[W]e *do not intend to* 'depart from previous orders of the Commission regarding the assurances for the revenue stream of the ANGTS pre-built project'...[W]e believe special treatment for Alaskan gas and Canadian gas related to the protected stream of revenue is fully warranted by the sui generis nature of ANGTS as we have fully discussed in other Commission orders."[35].

In addition, in Order No. 636-A, the Commission explained that nothing in its new regulations relating to the restructuring of the natural gas industry was intended "to disturb the United States government's commitment to the ANGTS Prebuild."[36] Furthermore, in an order updating the Commission's filing requirements in light of Order No. 636, the Commission proposed to delete certain regulations applicable to the ANGTS, explaining that they were obsolete in the post-Order No. 636 environment.[37] In doing so, however, the Commission stated that:

> "*Nonetheless, the Commission remains ready to facilitate the construction of ANGTS, which Congress has found to be in the public interest.* Hence, if action is warranted in the future to facilitate financing and progress on the ANGTS and the recovery of ANGTS costs, the Commission will act expeditiously. What

> was stated in Order No. 636-A applies here as well: 'nothing in the rule [Order No. 636] is intended to disturb the United States government's commitment to the ANGTS prebuild.[38]

As to Northern Border, the Commission has stated that it "continues to view the Northern Border prebuild segment as remaining subject to the various agreements between the United States and Canadian governments and subsequent findings in Commission orders certificating Northern Border Pipeline Company's system."[39] In addition, the Commission stated that "[t]he United States, like Canada, is bound by the 'Agreement on Principles' concerning the ANGTS. By virtue of the 'Agreement' which has the force and effect of a treaty, the Commission may not alter the viability of the ANGTS by changes in previously granted orders."[40]

In 1998, the Commission reaffirmed its commitment to the ANGTS project in an order approving a settlement to implement the restructuring of gas sales and transportation arrangements among various parties regarding the Western Leg of the Prebuild system. There, the Commission continued to recognize the unique status of the Prebuild Project and specifically cited to the Commission's reaffirmation of its commitment to the project stated in Order No. 636-A, discussed above.[41]

In short, while the ANGTS, including the Prebuild, has continued to evolve in light of market realities, the contracts underpinning the project, as well as the government approvals of those contracts, have continued to ensure the financial integrity of the project.

V. PRESIDENTIAL FINDING ON ALASKAN GAS EXPORTS

In the summer of 1987, the Canadian government was apprised that the U.S. President was considering the issuance of a finding in favor of exports of Alaskan gas. Thereafter, at the request of the Canadian government, consultations were held between Canadian and U.S. officials where Canadian officials expressed deep concern about the impact of such a finding on the ANGTS and the Agreement.

On January 13, 1988, the U.S. President issued a finding relating to potential exports of Alaskan gas. Significantly, however, the President took that opportunity to reaffirm his support for unique regulatory treatment of the ANGTS Prebuild Project. Specifically, the President stated: " ... I want to reaffirm our support for the special regulatory treatment of the Prebuild portion of the ANGTS, including the minimum revenue stream guarantees."

With this finding, the U.S. President has continued a policy which has been applied to the Prebuild Project since its inception. In short, the Prebuild Project remains an integral part of a unique system – i.e., the ANGTS – and, therefore, it is entitled to unique regulatory protection.

The President also stated he did not believe that this finding should hinder the completion of the ANGTS.

VI. COMPLETION OF THE ANGTS

Since the project's inception, the ANGTS sponsors have made substantial progress toward the completion of Phase II of the project. Among other things, right-of-way permits for the Alaskan segment have been issued by the U.S. Department of Interior; a broad array of design approvals and environmental authorizations have been issued by U.S. and Canadian authorities; the FERC has established rules and regulations for the tracking of Canadian ANGTS charges; and Congress has approved waivers of law.

In addition, an easement agreement was executed in 1983 between the Government of Canada and the Foothills subsidiary responsible for construction of the segment of the ANGTS in Yukon Territory. The term of the easement is for 25 years with a renewal at the option of the company for an additional 24-year period. The easement agreement is subject to obtaining the consent of the Minister responsible for the Northern Pipeline Agency prior to commencing construction activity. On November 4, 1992, the timeframe within which the consent is to be obtained was extended to September 20, 2012.

Notwithstanding this regulatory progress, the financing and construction of Phase II of the ANGTS has been temporarily delayed as a result of the market conditions in the lower 48. It now appears that the project will be required this decade. The ANGTS sponsors remain committed to completing the project in a timely manner. The sponsors continue to take appropriate actions and expend funds necessary to maintain the ANGTS regime in a state of readiness, including the federal right-of-way grant, Section 404 permits and the broad array of legal and regulatory authorizations and treaties that have been issued by Canadian and U.S. authorities. Furthermore, the sponsors have continued to expend effort toward significantly reducing the cost of transporting Alaskan Northern Slope gas to market.

Recent years have seen a decline in both inflation and the cost of capital, and advancements in pipeline technology have also occurred. In 1987, in response to these changes and the need to update the earlier cost estimate developed in 1982, Foothills and Alaskan Northwest agreed to complete a detailed re-estimate of Phase II of the ANGTS. On June 6, 1988, this re-estimate was publicly released showing an approximate 45% reduction in the project capital costs. In 1999, Foothills again significantly reduced the capital cost estimate for the Project. Foothills continues to examine further opportunities for cost reductions and efficiencies toward achieving the most cost effective transportation of northern frontier gas reserves.

While the precise date for moving forward with the financing and completion of Phase II remains to be finalized with stakeholders, for several reasons Foothills believes that Alaskan gas will be needed in the lower forty eight states much sooner than many have anticipated. First, Alaskan gas is a secure U.S. domestic resource which can reduce dependence on imported oil. The proven gas reserves exceed 30 trillion cubic feet and estimates of potential reserves are approximately 100 trillion cubic feet. Second, there is increasing uncertainty in the ability of existing basins to keep pace with gas demand which is estimated to reach 30 trillion cubic feet per year in this decade. This demand may well occur earlier in that time frame, hastening the requirement for Alaskan gas to serve energy needs in southern markets. With its advanced state of readiness, the ANGTS is positioned to meet an expeditious delivery timeframe.

To further underscore its commitment to the ANGTS, Foothills is a partner in Alaskan Northwest Natural Gas Transportation Company, the U.S. partnership which is responsible for the construction and operation of the Alaskan segment of the project. In 1990, Foothills purchased the outstanding shares in United Alaska Fuels Corporation, a subsidiary of United. At the end of 1994, Foothills increased its partnership share. TransCanada PipeLines Ltd. holds the other active partnership interest. Foothills' participation in the Alaskan Northwest partnership is expected to improve U.S.-Canadian cooperation and coordination in the completion of the project.

Foothills remains prepared to proceed with the financing and completion of Phase II as soon as Alaskan gas is required by the markets in the lower forty-eight states and is taking active steps to further the progress of the Project. In the meantime, the continuing commitments by the governments of both Canada and the United States to the international Agreement provide an important foundation for the early completion of this important bilateral project.

VII. THE BAYER REPORT

On January 24, 1992, Mr. Michael J. Bayer, the U.S. Federal Inspector for the ANGTS, sent President Bush a report which recommended that the United States abandon support for the completion of the ANGTS. Among other things, Mr. Bayer's recommendations included: 1. "Repeal the Alaskan Natural Gas Transportation Act"; 2. "Eliminate the exclusive ANGTS route to transport Alaskan North Slope gas to the lower 48"; 3. "Eliminate the ANGTS project sponsors unique legal monopoly status"; 4. Withdraw the President's 1977 decision under the Act; 5. Terminate all bilateral agreements with Canada relating to the ANGTS; and 6. Abolish the Office of Federal Inspector ("OFI"). None except the last recommendation was accepted.

The ANGTS sponsors did not oppose the abolition of OFI. They strongly opposed, however, the implementation of Mr. Bayer's other recommendations. The sponsors believed it is in the best interests of both the United States and Canada to retain ANGTA, the President's 1977 Decision, and the bilateral agreements relating to the ANGTS. These core ANGTS authorities are vital to the completion of the project as soon as warranted by the market.

On February 14, 1992, the Government of Canada also objected to most of Mr. Bayer's recommendations. In a diplomatic note sent to the U.S. Department of State, the Canadian government stated that implementation of certain recommendations - such as the repeal of ANGTA, the withdrawal of the President's 1977 decision, and the termination of U.S.-Canadian agreements relating to the ANGTS -- would be unacceptable to Canada and contrary to the obligations of the United States.

On March 12, 1992, Senator Bennett Johnston, Chairman of the Senate Committee on Energy and Natural Resources, sent a letter to the President expressing his opposition to the Bayer recommendations. Senator Johnston emphasized that, while the ANGTS has been delayed as a result of current market conditions, it is clear that American consumers will eventually need access to North Slope gas. He further emphasized that the ANGTS is still the most economic and environmentally sound means of providing that access. While the Office of the Federal Inspector ("OFI") has been dismantled, the OFI authority resides with the Department of Energy and the other recommendation to abandon the ANGTS legal infrastructure was rejected.

VIII. 1999 NORTHERN BORDER RATE CASE

On June 30, 1999, the Federal Energy Regulatory Commission issued an "Order Accepting and Suspending Tariff Sheets, Subject to Refund and Hearing" in the 1999 Northern Border Pipeline Company rate case. The June 30 Order included a statement that the "ANGTS is no longer viable." Foothills subsequently requested clarification of that statement, arguing that it is not only factually incorrect, but is counter to important commitments which have been made by the United States government to the Canadian sponsors and the Canadian government regarding the ANGTS.

Specifically, Foothills argued that there is no evidence in this or any prior record to support the Commission's statement. Significantly, no party raised the assertion in this case. As reported in ANNGTC's 1999 FERC Form No. 2, "[T]he [ANNGTC] Partnership intends to continue to take steps necessary in order to advance its project in a timely fashion."[42] Furthermore, the United States government has repeatedly and consistently supported the ANGTS and acknowledged the unique status of the project. Accordingly, Foothills argued that the Commission's statement that the "ANGTS is no longer viable" breaches Section 9(d) of the Alaska Natural Gas Transportation Act, 15 U.S.C. § 719g(d) (1994), and violates the "Agreement on Principles Applicable to a Northern Natural Gas Pipeline" consummated by the U.S. and Canada ("U.S.-Canadian Agreement"). As the Commission has recognized, "both governments [*i.e.*, the U.S. and Canada] remain bound by the 'Agreement on Principles' concerning the ANGTS. The 'Agreement on Principles' has the force and effect of a treaty between the two nations. The U.S. government (in this instance the Commission) is bound to not alter the project's viability by changes in previously granted orders."[43] The Commission had no basis in law or fact to conclude that the ANGTS is no longer viable.

Foothills requested that the Commission clarify this statement or, should the Commission decide that clarification is not the appropriate remedy, reverse this finding on rehearing. The Canadian Government also requested that the FERC clarify its statement to avoid creating uncertainty with respect to the U.S. commitments to its treaty with Canada and the ANGTS. On August 31, 1999, the FERC expeditiously issued a clarification to its earlier order. Among other things, the Commission stated that its intent was to indicate the immediate conditions surrounding Northern Border's cost-of-service tariff and that in no way did it intend to indicate that the ANGTS project would not be fully implemented. This clarification is the latest in a long history of inter-governmental cooperation and support for the ANGTS.

IX. THE DEMPSTER LATERAL PROJECT

In its 1977 Reasons for Decision selecting the Foothills alternative for transportation of Alaskan gas, the NEB recommended to the Governor-In-Council that Foothills be required to execute an agreement to provide for a Dempster Lateral to interconnect with the ANGTS in order to accommodate the transportation of Northern Canadian gas when required. In this respect, the Canada/U.S. Agreement not only provides for the Dempster Lateral, but stipulates that a significant portion of the costs of the Dempster Project can be rolled-in to the ANGTS.

On May 4, 1978, Foothills, its subsidiaries, and its parent companies entered into two agreements with the Government of Canada. The Dempster Link Agreement requires Foothills to cause the construction of the Dempster Lateral as expeditiously as possible following leave to open Phase II of the Canadian segment of the ANGTS, subject to the issuance of a certificate of public convenience and necessity and a determination that financing can be achieved without undue financial burden. Foothills has fulfilled its obligations to date under this agreement, including the filing of an application with the NEB for a certificate to construct the Dempster Lateral. The Natural Gas Throughput Agreement requires Foothills and its subsidiaries to provide, upon notice from the Minister of Energy, Mines and Resources, sufficient throughput capacity in the ANGTS to accommodate volumes of Northern Canadian gas.

X. THE MACKENZIE VALLEY PIPELINE PROJECT

In late 1988, three major producers in the Mackenzie Delta filed applications with the NEB for licences to export 9.2 TCF of Canadian frontier gas to the United States over 20 years commencing as early as 1996. These applications raised the possibility that Mackenzie Delta natural gas reserves could be marketed in advance of Alaskan reserves in the U.S. lower 48 states.

As part of Foothills' ongoing commitment to transport both Alaskan and Canadian Mackenzie Delta gas reserves to market, in October 1989 an application was filed with the NEB for a pipeline from the Mackenzie Delta along the Mackenzie River and then south to connect with an extended Prebuild at Boundary Lake, British Columbia. The Mackenzie Valley Pipeline is an alternative to the Dempster Lateral.

The application remains before the NEB. In the interim, Foothills, the Delta producers and two other pipeline companies signed an agreement to form a joint venture for the further development of the Mackenzie Valley Transportation System. The joint venture agreement terminated in 1998.

XI. OTHER DEVELOPMENTS

ALASKA NORTH SLOPE PROJECT

In 1998, Foothills became a participant in a joint venture with four other sponsors to examine the viability of a project for the delivery of liquefied natural gas from reserves on the North Slope of Alaska to markets in East Asia. The project contemplates that natural gas would be shipped by pipeline across Alaska to the southern coast, liquefied and delivered by tankers. Foothills believes this initiative is wholly consistent with the transportation of gas via the ANGTS and may provide synergies for both projects, thus further reducing the cost of transportation.

XIII. LIST OF FOOTNOTES

In the following notes, "S.C." refers to the Statutes of Canada; "U.S.C." refers to the United States Code; "U.S.T." refers to the United States Treaties; "T.I.A.S." refers to U.S. Treaties and Other International Acts Series; "F.E.R.C." refers to the Federal Energy Regulatory Commission Reporter (Commerce Clearing House, Inc.); "F.2d" refers to the U.S. Federal Reporter, Second Series (West Publishing Co.); and "E.R.A." refers to the Federal Energy Guidelines, Energy Management (Commerce Clearing House, Inc.).

[1] 15 U.S.C. 719, et seq.

[2] At the time of the Recommendation, the FPC was constituted of only four members; the fifth position was vacant.

[3] Reasons for Decision, Northern Pipelines, Vol. I. pp. 161-162, issued by National Energy Board on July 4, 1977.

[4] 29 U.S.T. 3581, T.I.A.S. No. 9030. The Agreement on Principles is set forth in full on pp. 47-83 of the President's Decision and Report to Congress on the Alaska Natural Gas Transportation System, issued September 20, 1977; it is also set forth in the Canadian Northern Pipeline Act, Bill C-25, passed April 4, 1978, Third Session, Thirtieth Parliament, 26-27, Elizabeth II, 1977-78.

[5] President's Decision, p. xii.

[6] Id. at 93.

[7] Senate Joint Resolution 82, 95th Congress, 1st Session (1977).

[8] Alcan Pipeline Company, et al., 1 F.E.R.C. Para. 61,248 (December 16, 1977).

[9] Alaskan Northwest Natural Gas Transportation Company, 3, F.E.R.C. Para. 61,290 (June 30, 1978)

[10] Bill C-25, passed April 4, 1978, Third Session, Thirtieth Parliament. S.C. 1977-78, C. 20.

[11] Metzenbaum v. F.E.R.C., 675 F.2d 1282 (.C. Cir. 1982).

[12] Northwest Alaskan Pipeline Company, et al., 10 F.E.R.C. Para. 61,032 (January 11, 1980).

[13] Id. at pp. 61,079-80.

[14] Ibid.

[15] Northwest Alaskan Pipeline Company, et al., 11 F.E.R.C. Para. 61,088 (April 28, 1980).

[16] Id. a p. 61,138.

[17] The April 28 order stated: "The Commission can accept that the Canadian producers have a legitimate requirement for an assured cash flow. By way of analogy to the role of the ship-or-pay obligation between the shipper and the transporter [Foothills] in obtaining financing for the transportation system, the Canadian producer needs to establish what amounts to an accounts receivable from U.S. importers at an assured minimum value. Like the transporter [Foothills], the producer needs from his customers an unconditional obligation to pay sufficient to enable him to attract financing." 11 F.E.R.C. at p. 61,162 (emphasis added).

[18] To determine the amount of revenue which Northwest Alaskan and the U.S. purchasers would be required to generate annually and daily, the FERC established a formula under which a base price of $3.45 per MMbtu (the uniform border price which was in effect when the record in the prebuild import proceeding was closed) would be multiplied times the quantities of gas specified in the prebuild contracts. For example, using an unescalated base price of $3.45, Northwest Alaskan's obligation under the Eastern Leg contract would be limited to $1,380,000 daily (800,000 Mcf/d x 3.45/MMbtu x 50%) and $856,290,000 annually (800,000 Mcf/d x 365 days x $3.45/MMbtu x 85%). In its June 20, 1980 order on rehearing, the FERC modified this formula so as to

permit the base price of $3.45 to be adjusted monthly for inflation by using the escalator mechanism contained in Section 101(a) of the Natural Gas Policy Act. 11 F.E.R.C. Para. 61,302, pp. 61,606-607.

[19] 11 F.E.R.C. Para. 61,088, pp. 61,162-163.

[20] Id. at p. 61,163.

[21] 11 F.E.R.C. Para. 61,088, p. 61,165.

[22] Condition 12 of the ANGTS construction certificate granted to Foothills by the Northern Pipeline Act originally provided that, "before the commencement of construction," Foothills shall establish to the satisfaction of the Minister responsible for the Northern Pipeline Agency and the NEB that "financing has been obtained for the pipeline." In order to permit construction of the prebuild phase, however, the Canadian government subsequently amended Condition 12 to require that Foothills, prior to the commencement of construction, establish to the satisfaction of the Minister and the NEB that, among other things, financing has been obtained for the prebuilt sections and can be obtained for the completion of the remainder of the system.

[23] See NEB's statement of May 9, 1980, in a proceeding entitled "In the Matter of the National Energy Board Act and the Northern Pipeline Act; and In the Matter of a Public Hearing with Respect to Condition 12(1) of Schedule III of the Northern Pipeline Act; File No. 1045-4."

[24] Id. at p. 8.

[25] Petition of Foothills Pipe Lines (Yukon) Ltd. and Pan-Alberta Gas Ltd. for Rehearing, filed May 28, 1980, in Northwest Alaskan Pipeline Company, et al., FERC Docket Nos. CP78-123, et al. (p. 13).

[26] Northwest Alaskan Pipeline Company, et al., 11 F.E.R.C. Para. 61,302 (June 20, 1980), p. 61,607.

[27] Id. at p. 61,605.

[28] Ibid.

[29] See note 26, supra.

[30] See e.g., DOE/ERA Opinion and Order No. 67, 1 E.R.A. Paragraph 70,579 (December 13, 1984), and Northwest Alaskan Pipeline Company (Eastern Leg), 29 F.E.R.C. Paragraph 61,302 (December 14, 1984).

[31] Order No. 380-A, "Elimination of Variable Costs From Certain Natural Gas Pipeline Minimum Commodity Bill Provisions, "F.E.R.C. Statutes and Regulations Paragraph 30,584 (July 30, 1984), aff'd, Wisconsin Gas Company v. F.E.R.C., 770 F.2d 1144 (D.C. Cir. 1985), cert. denied, 476 U.S. 1114 (1986).

[32] Id. at p. 31,062 (emphasis added, footnotes omitted). The Commission's exemption of the prebuild tariffs was reaffirmed in Order No. 380-B, 29 F.E.R.C. Paragraph 61,076 (October 24, 1984), at p. 61,157, wherein the Commission emphasized, inter alia, that "the exemption is based on the Commission's repeated assurances of a stream of revenues for the construction and operation of the 'pre-built' segments of the ANGTS," and "[t]hose assurances, in turn, reflect the mutual trust and cooperation between the governments of the U.S. and Canada with respect to the ANGTS." (footnote omitted). See also Order No. 380-C, F.E.R.C. Statutes and Regulations Paragraph 30,607 (October 24, 1984), at p. 31,195-96.

[33] Wisconsin Gas Company et al. v. F.E.R.C., 770 F.2d 1114 (D.C. Cir. 1985), cert. denied, 476 U.S. 1144 (1986).

[34] id. at 1163

[35] Natural Gas Pipeline Company of America, Opinion No. 256-A, 39 F.E.R.C. Paragraph 61,218, p. 61,770 (May 27, 1987) (footnote omitted).

[36] *Pipeline Service Obligations and Revisions to Regulations Governing Self-Implementing Transportation and Regulation of Natural Gas Pipelines After Partial Wellhead Decontrol,* Order No. 636-A, 57 Fed. Reg. 36,128 (1992), 191-96 FERC Stats. & Regs., Regs. Preambles, ¶ 30, 950, at p. 360,674 (1992);

see also, Northern Border Pipeline Co., 63 FERC ¶ 61,289, at. P. 62,954 (1993); *Northern Natural Gas Co.,* 62 FERC ¶ 61,075, at p. 61,397 (1993).

[37] *Filing and Reporting Requirements for Interstate Natural Gas Company Rate Schedules and Tariffs; Notice of Proposed Rulemaking,* IV FERC, Proposed Regs. ¶ 32,511, at p. 32,947 (1994).

[38] *Id,* at p. 32,947 (footnote omitted and emphasis added)

[39] *Id,* at pp. 32,947-48.

[40] *Northern Border Pipeline Co.,* 65 FERC ¶ 61,179, at p. 61,892, n.19 (1993).

[41] *Pacific Interstate Transmission Co.,* 85 FERC ¶ 61,378, at p. 62,451 (Dec. 17, 1998) ("The Commission has recognized the unique status of PITCO [which is part of Western Leg Prebuild system] on numerous occasions . . . and the arrangements related to the sale of Canadian gas to SoCal Gas are unique."); *see also, Pacific Interstate Transmission Co.,* 77 FERC ¶ 62,053, at p. 61,196 (1996) ("Approval of the PITCO request will approximately balance two Commission policies – the Commission's longstanding commitment to the ANGTS and the open-access conditions of Order No. 636.")

[42] ANNGTC's FERC Form No. 2, for year ending December 31, 1998, at p. 123.0.

[43] *Northwest Alaskan Pipeline Co.,* 49 FERC ¶ 61,394, at p. 62,453 (1989); *see also, Northern Border Pipeline Co.,* 65 FERC ¶ 61,179, at p. 61892, n. 19 (1993).

Concurrent Resolution Expressing the Sense of Congress
Regarding the Importance of the
Alaska Natural Gas Transportation System

Whereas, the Alaska Natural Gas Transportation System is a critically important energy project that will tap Alaska's North Slope natural gas reserves which constitute more than ten percent of this nation's entire proven natural gas reserves;

Whereas, the System, when complete, will supply the United States with five percent of its annual natural gas demand, displacing over 400,000 barrels of oil, thereby greatly reducing this nation's excessive dependence on foreign oil;

Whereas, the Congress has already expressed its overwhelming support for the System in approving by joint resolution the President's 1977 Decision on the Alaska Natural Gas Transportation System;

Whereas, a portion of the System known as prebuild can be constructed by the end of 1981 to bring Canadian gas to this nation until the entire system is complete in 1985;

Whereas, prebuild will contribute to completion of the entire system by spreading demand for capital, labor and materials over several years, and will enable this nation to obtain Canadian natural gas to displace 200,000 barrels of foreign oil a day;

Whereas, the Federal Energy Regulatory Commission has issued decisions granting certificates for the prebuild facilities in the United States;

Whereas, the Sponsors of the Alaskan segment of the system and the North Slope natural gas producers have entered into an agreement to fund and manage jointly the design, engineering and cost estimation for the Alaskan segment and have made a joint Statement of Intention to work to develop a financing plan for the Alaskan segment with the object of completing construction by the end of 1985; Now, therefore, be it

Resolved by the Senate (the House of Representatives concurring) that it is the sense of Congress that the System remains an essential part of securing this nation's energy future and, as such, enjoys the highest level of Congressional support for its expeditious construction and completion by the end of 1985.

July 17, 1980

Dear Mr. Prime Minister:

Since you last wrote to me in March, the United States Government has taken a number of major steps to ensure that the Alaska Natural Gas Transporation System is completed expeditiously.

Most significantly, the Department of Energy has acted to expedite the Alaskan project. The North Slope producers and Alaskan segment sponsors have signed a joint statement of intention on financing and a cooperative agreement to manage and fund continued design and engineering of the pipeline and conditioning plant. The Federal Energy Regulatory Commission recently has certified the eastern and western legs of the system.

The United States also stands ready to take appropriate additional steps necessary for completion of the ANGTS. For example, I recognize the reasonable concern of Canadian project sponsors that they be assured recovery of their investment in a timely manner if, once project construction is commenced, they proceed in good faith with completion of the Canadian portions of the project and the Alaskan segment is delayed. In this respect, they have asked that they be given confidence that they will be able to recover their cost from U.S. shippers once Canadian regulatory certification that the entire pipeline in Canada is prepared to commence service is secured. I accept the view of your Government that such assurances are materially important to insure the financing of the Canadian portion of the system.

The Right Honorable
Pierre Elliott Trudeau, P.C., Q.C., M.P.,
LL.L., M.A., F.R.S.C.,
Prime Minister of Canada,
Ottawa

Existing U.S. law and regulatory practices may cast doubt on this matter. For this reason, and because I remain steadfastly of the view that the expeditious construction of the project remains in the mutual interests of both our countries, I would be prepared at the appropriate time to initiate action before the U.S. Congress to remove any impediment as may exist under present law to providing that desired confidence for the Canadian portion of the line.

Our Government also appreciates the timely way in which you and Canada have taken steps to advance your side of this vital energy project. In view of this progress, I can assure you that the U.S. Government not only remains committed to the project; I am able to state with confidence that the U.S. Government now is satisfied that the entire Alaska Natural Gas Transportation System will be completed. The United States' energy requirements and the current unacceptable level of dependence on oil imports require that the project be completed without delay. Accordingly, I will take appropriate action directed at meeting the objective of completing the project by the end of 1985. I trust these recent actions on our part provide your government with the assurances you need from us to enable you to complete the procedures in Canada that are required before commencement of construction on the prebuild sections of the pipeline.

In this time of growing uncertainty over energy supplies, the U.S. must tap its substantial Alaskan gas reserves as soon as possible. The XXVI trillion cubic feet of natural gas in Prudhoe Bay represents more than ten percent of the United States' total proven reserves of natural gas. Our governments agreed in 1977 that the Alaska Natural Gas Transportation System was the most environmentally sound and mutually beneficial means for moving this resource to market. Access to gas from the Arctic regions of both countries is even more critical today as a means of reducing the dependence on imported petroleum.

Successful completion of this project will underscore once again the special character of cooperation on a broad range of issues that highlights the U.S./Canadian relationship.

I look forward to continuing to work with you to make this vital energy system a reality.

Sincerely,

(Signed: Jimmy Carter)

N.B.: A signed copy of this statement is held in NEB File No. 1045-4

File No.: 782-13
25 June, 1984

The Secretary,
Federal Energy Regulatory Commission,
825 North Capitol Street, N.E.,
Washington, D.C. 20426

Dear Sir:

Subject: Elimination of Variable Costs from Certain Natural Gas Pipeline Minimum Commodity Bill Provisions
~~Order~~ No. 380 - Docket No. ~~RM~~ 83-71-000

The National Energy Board has examined from a Canadian public interest point of view, within the regulatory framework, the direct and particularly the indirect effects of Order No. 380 on Canadian exports of natural gas, on Canadian pipelines, and on Canadian producers. It has carried out a survey of the views of Canadian exporters. On the basis of both its own assessment and the information drawn from the survey, the National Energy Board has grave concerns about the effects on Canada of Order No. 380. The views of Alberta & Southern, Pan-Alberta, TransCanada PipeLines and Mobil Oil Canada Ltd., are attached as examples of the major concerns expressed in the survey.

The Board understands that the latest date for filing submissions for clarification or modification of the Order is 25 June 1984. The Board further understands that the order, in its original form or modified, may then come into effect as early as 31 July 1984. Accordingly, the Board is taking the unusual step of making its views known directly by this submission to the Commission. Additionally, Canadian pipelines and producers may not be entirely aware of all of the implications of Order No. 380. In fact, the Order acts on tariffs between U.S. pipeline companies and their buyers, and the indirect effects were only peripherally reviewed in it. Commissioner Sousa himself states, "It is unclear to me the extent of the impact that this rule may have on imported natural gas, the vast portion of which comes from Canada."

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PAN-ALBERTA GAS LTD.

It should be pointed out at this juncture that the NEB is not questioning the underlying objective of Order No. 380, namely that natural gas become competitively priced in United States markets. On the contrary, it emphasizes that it believes the concerns of Canada can be accommodated without affecting this objective. It believes that the alleviation of Canadian concerns will ensure the ability of Canada to be a reliable supplier of natural gas to the United States for many years into the future.

The Board believes the Commission would wish to examine the implications of the issues in this submission before implementing the Order with respect to Canadian imports.

The four concerns of the NEB are outlined below:

1. Uncertainties arising from the Order

There are numerous uncertainties relating to the interpretation and application of the order. We understand that they will be addressed in various submissions for clarification and modification to be made to the Commission. They are not, therefore, identified in this submission. In addition, it is unclear to this Board to what extent producer fixed costs are exempted from the effect of the Order.

The NEB recognizes the Commission will wish to address these uncertainties before the Order takes effect.

2. Similar Treatment of Canadian fixed costs (Pipelines and Producers) to those accorded to the United States fixed costs.

The FERC Order requires that in the tariffs of United States pipelines, fixed costs should be separated from variable costs and purchased gas costs. The non-incurred variable costs, i.e., for gas not taken, are then excluded from minimum bills. The Order is silent on such costs in Canada. The NEB requests similar treatment for these costs in Canada since the pipeline system from supplier to market is, for all intents and purposes, one continuous transmission system.

Likewise, Canada would request similar treatment to the extent that the fixed costs of U.S. producers are identified and included in minimum bills. (Producer fixed costs related to ANGTS prebuild facilities are a special case dealt with in Section 3 below.)

The present export price of Canadian natural gas at the international boundary does not separate pipeline and producer fixed costs from variable costs of the pipeline and those for purchased natural gas. The Board would be pleased to make available to the Commission information on what the Board considers these fixed costs to be.

3. Special Considerations Required for Gas Transmitted on ANGTS Prebuild Facilities

Phase I of the Alaska Highway Natural Gas Pipeline to carry Alberta gas to United States markets pending the arrival of Alaska gas - or, as it is usually referred to, the pre-built section of the pipeline - was constructed under the framework of the Canada-United States Agreement on Principles Applicable to a Northern Natural Gas Pipeline. The Canadian Government approved changes in the terms and conditions of the Northern Pipeline Act made by the National Energy Board. These changes were necessary to enable construction to proceed. They were made on the basis of certain assurances by President Carter about the completion of the pipeline to Alaska as well as resolutions by Congress, and after the National Energy Board and the responsible Canadian Minister were satisfied that the pre-built sections could be financed. Essential to these private financing arrangements was the approval by the FERC in 1980 of a minimum bill to protect both the Canadian pipeline and producer investments and the related contractual arrangements among the participating pipeline companies.

The FERC will therefore understand the concern of the Board about the effect of Order 380 upon these financial arrangements.

Although Order 380 does not apply directly to the contracts between the Canadian seller of Canadian gas and the initial United States buyer, it can be interpreted as applying to cost of service contracts between the initial United States buyer and its customers; these cost of service contracts were an integral part of the structure upon which the financing of the pre-built sections was based. The Order, by reducing the cash flow from buyers to pipeline companies, would weaken the ability of the pipeline companies to pay their minimum bills. Furthermore, since the buyers may have access to lower priced gas, Pan-Alberta could be cut off as a supplier of the gas, and the Canadian producer investments protected by the minimum bill would be impaired. If that interpretation is sustained, Order 380 could constitute a breach of the U.S. Government commitments upon which the National Energy Board and the Canadian Government relied in 1980.

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The Board expresses the view that there are special circumstances surrounding the pre-built sections of the ANGTS which would justify FERC's reconsidering the provisions of Order 380 and seeking means to avoid serious and unwarranted damage to a project undertaken in good faith in the interests of both Canada and the United States.

The Board also draws attention to the fact that tariffs on the pre-built sections of the ANGTS are abnormally high. They are high for two reasons: first, because Canada was required to size the pipeline for very large volumes of Alaska gas expected to flow in this decade, rather than for more limited quantities of Canadian gas licensed for export and, second, because depreciation rates are high to enable the costs to be amortized over the short term of export and import licenses.

In the circumstances, it appears to the Board to be unfair and unreasonable if Canadian producers were to have to absorb the full burden of these extra costs.

4. The Removal of Take or Pay Protection

In its present form, the FERC Order does not appear to address the following two fundamental issues.

First, the Order points out that if the cash flow from the buyers is removed from the subsequent chain of contracts to the suppliers, then the carrying costs of funds required to be borrowed to pay commitments to producers and importers will be allowable for rate-making purposes. The Order does not, however, address the issue of whether the pipeline could then in fact finance the obligations to its suppliers. The results of our survey indicated doubts on this point. We believe the Commission would wish to address this issue.

Second, the Commission does not address the fact that there could be merit in take-or-pay clauses in circumstances where the gas is competitively priced. We would ask the Commission to examine the ability of pipeline companies to finance the construction of pipelines to transmit the gas to market if there are no underpinning throughput arrangements similar to those contained in take-or-pay clauses. We believe this may be particularly true for large new pipelines and is referred to on page 18 of the DOE New Policy Guidelines. We would ask the Commission to consider this point in relation to the capability of sustaining the supply of gas to the U.S. markets over the long term. Is there any reason to interfere with freely negotiated take-or-pay clauses in circumstances where the natural gas is competitively priced in the marketplace?

... 5

In regard to submissions that the Commission will be receiving, the Board would point out that export/import contracts underpin the NEB licences and cannot be changed without NEB approval if the licence is to remain valid. The NEB has been flexible in relaxing take-or-pay conditions in the present abnormal market conditions. Long-term contracts have for decades underpinned the financing of pipeline and producer investments. Any abrogation of a contract which forms part of the series of interlocking contracts, including the export/import contract, could have serious consequences.

In summary, competitively priced Canadian gas and a regulatory system which fosters high load factor operation of pipelines appear to be the twin pillars on which the long range mutually beneficial gas trade between our two countries can prosper.

The National Energy Board wishes this submission to form part of the public record in the FERC proceedings in the rehearing of matters related to Order No. 380.

Yours sincerely,

G. Yorke Slader

G. Yorke Slader,
Secretary

Department of Energy
Washington, D.C. 20585

July 13, 1984

Honorable Raymond J. O'Connor
Chairman
Federal Energy Regulatory Commission
825 North Capitol Street, N. E.
Washington, D. C. 20426

Dear Mr. Chairman:

I am writing concerning Order No. 380 now pending before the Commission that appears to have ramifications for the natural gas trade framework we are working to establish. I write with an appreciation for the care and understanding that the Commission has given to this important ruling.

Although the ruling addresses the variable costs in minimum bill obligations between gas purchasers and pipeline suppliers, its possible effects on upstream contracts were recognized by the Commission. The potential impact on international gas contracts, particularly between U. S. buyers and Canadian sellers, has been the subject of comments submitted to the Commission by these parties. In addition, the Canadian National Energy Board has taken the unusual step of formally communicating its views to the Commission. Most of these comments reflect serious concern over the impact of Order 380 on existing import arrangements.

It is not my purpose to endorse these comments or to propose any particular course of action for the Commission. The comments speak well for themselves, and the Commission properly has the responsibility to weigh their merits along with other considerations on this issue. My purpose is to share information that may assist the Commission in evaluating the comments and that will ensure that this ruling supports our policy initiatives relating to natural gas trade.

From our perspective, the objectives of Order 380 appear consistent with the gas imports policy guidelines issued by the Secretary of Energy last February. These guidelines were established to promote and construct a gas trade framework in which natural gas imported into the United States is competitive in the markets served. Order 380 promotes competition and is a clear and positive step in support of a deregulated gas marketplace.

In issuing the policy guidelines, the Secretary recognized that gas import arrangements reflect the laws and regulations of the exporter's government as well as our own. The policy statement set forth the criteria to be employed by our regulatory authorities in authorizing future gas imports, and urged parties to current gas import contracts to voluntarily renegotiate their arrangements if necessary to bring them into conformity with the new policy. Implicit in the policy is the requirement that gas imported into the United States must be competitively priced.

As a result of the new policy, reinforced by the weakening of the markets for imported gas, Canadian and U. S. commercial parties have been actively renegotiating their gas purchase arrangements. The Economic Regulatory Administration received reports from U. S. importers on this activity in mid-April that indicated progress in achieving more competitive arrangements. Simultaneously, the Canadian federal government, in coordination with the gas producing provinces, undertook a comprehensive review of Canadian export pricing policy.

The price of Canadian gas has been government administered and has been significantly above the U. S. market-clearing levels. The inflexibility of this price has restricted the ability of our importers to renegotiate fully competitive arrangements with Canadian exporters. We were thus pleased with today's announcement by Canada's new energy minister of the change to market-oriented pricing for Canadian gas exports. This significant action frees U. S. buyers and Canadian sellers to begin renegotiating pricing components of their contracts, if necessary, to make their arrangements market competitive. This announcement has come in time that should be ample for the commercial parties to review their contracts before the beginning of the next contract year this fall.

Canadian authorities believe that Order 380, as issued, could adversely affect the orderly transition to the market-competitive gas trade framework being established. In view of the just announced action by Canada on gas export pricing, we believe this concern merits consideration. Our position is that Canadian gas must compete in the U. S. marketplace on an equal basis with domestic supplies, and that the transition should occur as soon as possible but in an orderly manner.

In addition to the possible effect of Order 380 on the transition to competitive gas import arrangements, there is special concern in Canada over the consequences of this ruling on the pre-built portions of the Alaska Natural Gas Transportation System (ANGTS).

The reasons for this concern have been expressed by the National Energy Board and the commercial parties involved in the ANGTS pre-build in communications to the Commission. We believe these concerns also merit consideration. As currently financed and utilized, the ANGTS pre-build poses challenging problems for both of our agencies as we work to further competition in the gas industry. We should ensure that our respective regulatory processes allow the commercial parties to find solutions for making this system more competitive.

I trust this information will be useful to the Commission in its deliberations. As stated before, it is not my purpose to propose any specific course of action for the Commission. It is appropriate, however, to share with you our perspective on the trade facet of this important ruling.

This letter reflects the views of the Department of State, as well as the Department of Energy.

Sincerely,

RAYBURN HANZLIK
Administrator
Economic Regulatory Administration

cc: Honorable Georgiana Sheldon
Honorable A. G. Sousa
Honorable Oliver G. Richard III
Honorable Charles Stalon

UNDER SECRETARY OF STATE
FOR ECONOMIC AFFAIRS
WASHINGTON

Dear Mr. Chairman:

I am writing to bring to your attention several Canadian expressions of concern received at the Department of State about the impact FERC Order 380 relating to minimum commodity bills could have on the export of Canadian gas to the United States.

We have been discussing with the Canadians for over a year in our bilateral Energy Consultative Mechanism (ECM) how to return our bilateral gas trade to a market-sensitive basis. At the last full meeting of the ECM we made good progress and our two Governments issued a joint statement which included the following paragraph:

> "The two sides reaffirmed the importance of a stable long-term natural gas relationship. They emphasized such a relationship provides the United States with security of supply and provides Canada with security of demand for the export of gas surplus to its foreseeable domestic requirements. They recognized that in the long run Canadian gas would have to be competitive in U.S. markets, taking into consideration the security provided by the long-term reserve-based nature of Canadian gas export contracts. They further acknowledged, however, that meeting the objective of competitive conditions may require flexibility and adjustments in response to changes occurring in U.S. gas markets. To this end, the two Governments recognized the importance of holding on-going consultations on the natural gas marketing issue and agreed to meet regularly to discuss common objectives, respective natural gas policies and policy developments."

The Honorable
Raymond O'Connor,
Chairman,
Federal Energy Regulatory Commission,
825 North Capitol Street, NE,
Washington, D.C.

As reflected in this joint statement, the goal of our discussions with the Canadians is the same as what we understand to be the goal of FERC Order 380, namely enhancing competition in the market place.

On June 22, Mr. Geoffrey Edge, Chairman of the Canadian National Energy Board, along with members of the Canadian Embassy, briefed Department of State officials on the adverse impact they fear Order 380 could have on Canadian gas exports. When Ambassador Gotlieb came to see me on June 29, he said the Canadian Government had been surprised by Order 380. He outlined Canadian concerns and left the attached letter. On July 3, at the request of the Canadian Government pursuant to Section 8 of the Agreement between Canada and the United States of America on principles applicable to a Northern Natural Gas Pipeline, Mr. Edge and Mitchell Sharp, Commissioner of the Northern Border Pipeline Agency, met with representatives of the Department of Energy and the Department of State to explain further their view that implementation of Order 380 in its present form could have potential adverse effects on our present and future bilateral gas trade.

I understand that the Canadians have also written FERC on this subject. I will not attempt to cover all the Canadian concerns, but during their meetings with us, the Canadians emphasized first the progress they believe they have made toward a market-sensitive gas export policy. Second, citing the 1980 FERC Prebuild orders, the Canadians made it clear they believe that if FERC Order 380 is put into effect in its present form, we will not be living up to what they regard as our commitments regarding the financing, construction, and operation of the Prebuild section of the Alaskan Natural Gas Transportation System (ANGTS). The Canadians emphasized in this regard the importance of special problems for the Prebuild, a project that has been supported by the U.S. Government based on private financing. (See letter of President Carter to Prime Minister Trudeau of July 17, 1980 and the waiver package submitted by President Reagan to Congress in October, 1981 and approved on December 15, 1981.) Finally, they said that, although they accept the objective of increased market competition inherent in FERC Order 380, they need time to renegotiate gas export contracts in order to put them on a more market-sensitive basis.

As a further step, just today, the new Canadian Government has announced what we consider a significant new gas export pricing policy based on negotiated prices between buyers and sellers reflecting market conditions, and subject to criteria set by the National Energy Board. We expect Canadian experts to brief us the week of July 16 through our bilateral Energy Consultative Mechanism on this new Canadian gas export policy, which will be in effect for the new gas contract year beginning November 1, 1984.

Since the Commission still has before it FERC Order 380, I wanted the record of Canadian concerns expressed to the Department of State to be available, so that you would be aware of them in the context of our foreign relations with Canada. You may include this letter and -- with the concurrence of Canadian authorities -- Ambassador Gotlieb's letter to me in the public record in any proceedings before the FERC.

Sincerely,

Allen Wallis

Allen Wallis

Enclosure:
As stated.

Canadian Embassy — Ambassade du Canada

1746 Massachusetts Ave., N.W.
Washington, D.C. 20036

June 29, 1984

Mr. W. Allen Wallis
Under Secretary for
Economic Affairs
Room 7256
Department of State
2201 C Street
Washington, D.C. 20520

Dear Mr. Wallis,

Our two governments have been consulting closely and constructively for over a year and a half on the future of our bilateral natural gas trade.

In light of this cooperation, the new U.S. gas import policy guidelines announced in February and aimed at ensuring that imports enter the United States on a competitive, market oriented basis were drafted so as to permit the kind of arrangements which are essential to Canada's remaining a reliable supplier. For its part, the Canadian Government affirmed that Canadian gas will be competitive in the long term in the U.S. market. A comprehensive review of Canadian gas export policy was undertaken and is now near completion.

I am writing to bring to your attention a recent development that could complicate further progress in this important endeavor.

On May 25 the Federal Energy Regulatory Commission issued Order 380 relating to minimum commodity bills between U.S. pipelines and their buyers. We recognize that this Order is not directed at imports, but that it seeks to address what the FERC has identified as an unnecessary restraint on competition within the U.S. natural gas industry. We have, may I emphasize, no reason to question this objective.

Close study of the Order and discussion with the Canadian industry have convinced my Government that, if implemented in its present form, the Order could have serious adverse effects on present and future bilateral gas trade.

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These effects go right to the heart of the basis on which Canadian companies are able to supply gas to the export market: the assurance of a revenue stream on which to finance the production and transport of surplus gas from the wellhead to the international border. The serious implications of this do not appear to have been addressed to date in the FERC proceedings.

Because of the potential seriousness of the matter, our National Energy Board has taken the unusual step of making a formal submission to the FERC proceeding on Order 380. I am attaching a copy of the Board's submission and hope you will examine carefully the concerns it raises. Moreover, as you know, in view of the special nature of the project, the Canadian Government has already requested consultations on the implications of Order 380 on the Prebuild, under article 8 of the Northern Gas Pipeline Agreement. These consultations are scheduled for July 3 in Washington, D.C. As well, we understand that several Canadian and U.S. companies have formally requested rehearing.

We are hopeful that Canadian concerns relating to Order 380 will be resolved through the FERC review proceedings and the Prebuild consultations. We believe that this should be possible without prejudicing the objectives of the rulemaking. At the same time, we are seeking your assurance that we will be given an opportunity for further high level discussions as necessary between our two governments before any final actions are taken on this Order, which could adversely affect our long term gas trade.

Yours sincerely,

ORIGINAL SIGNED BY
Allan Gotlieb
A SIGNÉ L'ORIGINAL

Allan Gotlieb
Ambassador

Foothills Pipe Lines Ltd.

ROBERT L. PIERCE, QC
CHAIRMAN AND CHIEF EXECUTIVE OFFICER

February 10, 1992

Mr. D.W. Campbell
Commissioner, Northern Pipeline Agency
Lester B. Pearson Bldg.
125 Sussex Drive
Ottawa, Ontario K1A 0G2

Dear Mr. Campbell:

On January 14, 1992, Mr. Michael J. Bayer, the U.S. Federal Inspector for the Alaska Natural Gas Transportation System ("ANGTS") sent President Bush a report which essentially recommends that the United States abandon its support for the completion of the project. Among other things, Mr. Bayer recommends (1) the repeal of the Alaska Natural Gas Transportation Act ("ANGTA"), which limits the ability of U.S. regulatory and agencies to interfere with the construction of the ANGTS; (2) termination of long-standing agreements with Canada relating to the project; (3) withdrawal of a 1977 presidential decision approving the project; and (4) abolition of the Office of the Federal Inspector.

While Foothills does not object to the abolition of the Office of the Federal Inspector, we believe the Canadian government must strongly protest Mr. Bayer's other recommendations. In our opinion, there is no justification for the United States to repudiate its commitments to Canada on the ANGTS, or to otherwise abandon its support for this important bilateral project.

As you are aware, one of the important cornerstones of the ANGTS is the 1977 "Agreement Between the United States of America and Canada on Principles Applicable to a Northern Natural Gas Pipeline." That agreement--which is still in full force and effect--was designated to provide benefits and protections to *both* the United States and Canada, with respect to the delivery of gas from *both* Alaska and Canada's Mackenzie Delta. Significantly, the agreement commits the United States and Canada to take all measures necessary, including legislative measures, to facilitate the construction and operation of the ANGTS.

When the Canadian government approved the "prebuilding" of the existing Foothills system in 1980, in order to provide new Canadian gas exports to the United States, it required additional assurances that the United States government would remain committed to the completion of the entire project. As a result, the U.S. Congress passed a resolution on July 1, 1980, declaring, among other things, that completion of the ANGTS "enjoys the highest level of Congressional support..." In addition, President Carter sent the Canadian Prime Minister a letter on July 17, 1980, stating:

> "I can assure you that the U.s. Government not only remains committed to the project; I am able to state with confidence that the U.S. Government now is satisfied that the entire Alaska Natural Gas Transportation System will be completed."

In light of these commitments, both the Canadian government and Foothills have frequently expressed their concern over the proposal of Yukon Pacific Corporation to export large volumes of North Slope gas to the Pacific Rim. In response, the United States has consistently asserted that its approval of such exports was not a retreat from the bilateral commitments on the ANGTS. For example, in his 1988 generic finding on Alaskan gas exports, President Reagan stated: "I do not believe this finding should hinder completion of the Alaska Natural Gas Transportation System ("ANGTS"). Moreover, the Department of Energy's 1989 decision authorizing gas exports by Yukon Pacific stated that "DOE does not believe approval of the proposed TAGS export to be inconsistent with the U.S. Government's commitment to ANGTS."

Similar representations have been made directly to Foothills through the years. For example, United States Trade representative Clayton Yeutter sent a letter to Foothills Chairman on July 31, 1987, stating:

> "...I am sensitive to existing commitments which could be adversely affected by a decision on ANS exports, and the Administration is pledged to meet certain commitments to the Government of Canada. *I can assure you we will meet our commitments fully.*" (emphasis added).

On the basis of the United States' commitments, which have been reaffirmed repeatedly during the past fifteen years, Foothills has invested approximately $1 billion in Phase I of the project -- *i.e.*, the "prebuild" phase, and many million additional dollars in Phase II, including AFUDC (allowance for funds used during construction).

These investments have been made with the understanding that the United States would continue to honour its commitments on the ANGTS, just as Canada has honoured its commitments. Under these circumstances, it would be patently unfair for the United States to now abandon the project, without regard to the impact on the project's sponsors.

We recognize that completion of the ANGTS has been delayed as a result of the gas surplus which has characterized North American gas markets during recent years. That is no reason, however, to destroy the important work which has been done in both countries. The foundation of the project has been laid, and it should remain intact, so that Alaskan gas can move to the lower forty-eight states when it is needed--as surely it will be.

Your assistance on this matter is appreciated. If you have any questions, do not hesitate to give me a call.

Yours sincerely,

R.L. Pierce
Chairman and
Chief Executive Officer

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NORTHWEST ALASKAN PIPELINE COMPANY
ONE OF THE WILLIAMS COMPANIES, INC.

February 7, 1992

The Honorable George Bush
The White House
Washington, D.C. 20500

Dear Mr. President:

On January 14, 1992, Mr. Michael J. Bayer, the Federal Inspector for the Alaska Natural Gas Transportation System, sent you a report containing certain recommendations with respect to ANGTS.

On behalf of Alaskan Northwest Natural Gas Transportation Company, the general partnership responsible for the Alaskan segment of the ANGTS project, we reiterate our continued support for the project. ANGTS represents the most economic and environmentally sound means of moving Alaskan North Slope gas to market, and the existing legislative and regulatory framework assures that ANGTS can be expeditiously completed when market conditions warrant.

As sponsor of the uncompleted U.S. segment of ANGTS, we urge you to continue honoring the assurances and the commitments made by the government of the United States to the Canadian government in respect to ANGTS. We believe it is important for the United States and Canada to maintain a cooperative working relationship in the energy area as well as other areas of common interest. Moreover, there is no need to burden Congress with the extensive legislative process that would result from a proposal to repeal ANGTA.

We certainly understand, however, the need for maintaining prudent and efficient budget procedures within the Executive Branch while at the same time fulfilling its oversight responsibilities under ANGTA. If the need for such efficiency suggests elimination of OFI and transfer or consolidation of oversight responsibility within an appropriate department of DOE then we encourage your consideration of appropriate legislative and executive action necessary to implement such reorganization.

We appreciate your attention to this matter and are available to discuss this matter with your staff if that is desired.

Respectfully,

V. T. Jones

Vernon T. Jones
Chairman of the Board of
Partners of Alaskan
Northwest Natural Gas
Transportation Company

cc: His Excellency
Derek H. Burney
The Ambassador of Canada

One Williams Center • P. O. Box 3102 • Tulsa, Oklahoma 74101
(918) 588-4592

Canadian Embassy Ambassade du Canada

No. 026

The Embassy of Canada presents its compliments to the Department of State and has the honour to draw to the Department's attention certain recommendations made to the President of the United States by the Federal Inspector of the Alaska Natural Gas Transportation System in his <u>Report on the Construction of the Alaska Gas Transportation System</u> dated January 14, 1992.

Among the Federal Inspector's ten recommendations are six that are relevant to Canada:

- repeal the Alaska Natural Gas Transportation Act;
- eliminate the exclusive ANGTS route to transport Alaska North Slope gas to the Lower 48;
- eliminate the ANGTS project sponsors' unique legal monopoly status;
- withdraw the President's Decision and Report, rescind Executive Order 12142 and withdraw Reorganization Plan No. 1 of 1979;
- terminate the 1977 Agreement of Principles with Canada;
- terminate the 1980 Procurement Procedures Agreement with Canada.

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The Canadian Government expects that the United States will continue to honour its obligations under the 1977 Agreement of Principles and subsequent assurances given to the Government of Canada with respect to the pipeline. Any action giving effect to the above-noted recommendations would be contrary to the obligations of the United States and would not be acceptable to Canada.

The Embassy of Canada avails itself of this opportunity to renew to the Department of State the assurances of its highest consideration.

Washington, D.C.

14 February 1992

United States Senate

COMMITTEE ON
ENERGY AND NATURAL RESOURCES
WASHINGTON, DC 20510-6150

March 12, 1992

President George Bush
Executive Office of the President
1600 Pennsylvania Ave., NW
Washington, DC 20500

Dear Mr. President:

On January 14, 1992, the Office of the Federal Inspector for the Alaska Natural Gas Transportation System (ANGTS) sent you a report which, among other things, recommends abrogation of the Alaska Natural Gas Transportation Act, the 1977 Presidential and Congressional decisions approving the ANGTS, and the U.S./Canadian agreements which underpin the project. According to an article which appeared in a recent edition of Inside F.E.R.C., the White House has decided to embrace these recommendations. More specifically, the article states that Nicholas Calio, Assistant to the President for Legislative Affairs, has sent a letter to the Chairman of the House Subcommittee on Energy and Power, stating that the "the president looks forward to working with you to repeal ANGTS authorities in a time frame consistent with the FY-93 budget."

If these press reports are correct, I strongly urge that you reconsider the actions which have been proposed by the Federal Inspector. While completion of the ANGTS has been delayed as a result of current market conditions, it is clear that the American consumers will eventually need access to Alaskan North Slope gas. It is likewise clear that the ANGTS -- which has been approved by both the United States and Canadian governments -- would be the most economic and environmentally sound means of providing that access.

Significantly, a repeal of the Alaska Natural Gas Transportation Act would expand the authority of the regulatory agencies and the courts to delay the completion of the ANGTS. Moreover, termination of the U.S.-Canadian agreements would leave the United States without any obligation by Canada to permit an overland pipeline across Canadian soil to provide access of Alaskan gas when it is needed. Termination of the U.S.-Canadian agreements would also leave U.S. consumers without agreed-upon protections on such matters as pipeline capacity, rates, tariffs, and taxes.

Finally, there is simply no reason at this point for the Administration, Congress, and the Canadian government to become involved in a debate on the future of Alaskan gas. There are more pressing problems, particularly the economy, which deserve our immediate attention.

Sincerely,

J. Bennett Johnston

Canadian Embassy — Ambassade du Canada

501 Pennsylvania Avenue, N.W.
Washington, DC

August 19, 1999

Mr. James J. Hoecker, Chairman
Federal Energy Regulatory Commission
888 First Street, NE
Room 11A-1
Washington, D.C. 20426

Dear Chairman Hoecker,

I am writing with regard to the "Order Accepting and Suspending Tariff Sheets, Subject to Refund and Hearing" on the Northern Border Pipeline Company (Docket No. RP99-322-0000), issued on June 30, 1999.

In this Order, the Commission states that the Alaska Natural Gas Transportation System (ANGTS) is "no longer viable". Given that the United States and Canada remain bound by the 1977 "Agreement Between the United States of America and Canada on Principles Applicable to a Northern Natural Gas Pipeline" and that the Commission cannot modify action which was approved by Congress, I suspect that it was not the Commission's intention to create uncertainty with regard to the ANGTS.

It would therefore be helpful if the Commission would clarify the meaning of the phrase in question so as to alleviate any concern which may have occurred among interested parties.

Best Regards.
RC.

Yours sincerely,

Raymond Chrétien

Raymond Chrétien

cc: All FERC Commissioners

UNITED STATES OF AMERICA
FEDERAL ENERGY REGULATORY COMMISSION

Before Commissioners: James J. Hoecker, Chairman;
Vicky A. Bailey, William L. Massey,
Linda Breathitt, and Curt Hébert, Jr.

Northern Border Pipeline Company) Docket Nos. RP99-322-001
) RP96-45-000

ORDER ON CLARIFICATION AND REHEARING
AND CONSOLIDATING PROCEEDINGS

(Issued August 31, 1999)

Northern Border Pipeline Company (Northern Border) filed tariff sheets proposing to increase its rates by $30 million and to make other changes. In an order issued June 30, 1999, the Commission accepted and suspended the tariff sheets for the maximum five-month period, to be effective December 1, 1999, subject to refund, conditions, and the outcome of a hearing. [1] Foothills Pipe Lines Ltd. (Foothills); Husky Gas Marketing Inc., ProGas U.S.A., Inc., and Renaissance Energy (U.S.) Inc. (collectively, Husky); Pan-Alberta Gas Ltd. and Pan-Alberta Gas (U.S.) Inc. (Pan-Alberta/PAGUS); Amerada Hess Corporation (Amerada Hess); and Northern Border ask for clarification or rehearing of various aspects of the June 30 order.

Northern Border was originally planned as part of the Alaskan Natural Gas Transportation System (ANGTS), which would transport gas from Alaska through Canada and into the lower 48 states of the U.S.[2] Northern Border was to be the eastern leg of the lower-48 state portion of the system, serving Midwest markets. In the early 1980s, the Canadian and lower-48 state portions of the system were built before the Alaskan portion, which has still not been constructed. Northern Border has subsequently expanded its system several times.

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[1] 87 FERC ¶ 61,380 (1999).

[2] Alaska Natural Gas Transportation Act of 1976, 15 U.S.C. 719 et seq.; Presidential Decision Designating Transportation System (September 22. 1977), approved by Public Law 95-158 (November 9, 1977; 91 Stat. 1268).

Discussion

For the reasons discussed below, the Commission grants in part and denies in part the requests for clarification or rehearing.

A. Cost-of-service tariff

Foothills, whose subsidiaries are responsible for owning, constructing, and operating the 2,000 mile Canadian segment of the ANGTS, filed a request for clarification, or in the alternative, rehearing of a statement concerning ANGTS that the Commission made in the context of its discussion of Northern Border's tariff.

Norther Border has what is known as a cost-of-service tariff. Its rates are not based on fully allocated costs or projected units of service during a test period, but rather on the pipeline's incurred costs which are allocated to its firm services with adjustments every six months. [3] As Northern Border explained, its cost-of-service tariff permits recovery of its cost of service on an actual monthly basis as opposed to designing rates on the basis of an historical, illustrative test year. [4]

In their protes's to Northern Border's filing, Husky and Pan-Alberta/PAGUS objected to Northern Border's continued use of a cost-of-service tariff, and requested the Commission set that issue for hearing. The June 30 order included the issue of Northern Border's continued use of its cost-of-service tariff in the hearing established on Northern Border's filing. The Commission observed that the original pipeline was 822 miles and commenced service in September, 1982, while currently, Northern Border's pipeline

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[3] 76 FERC ¶ 61,141 at 61,766 (1996). Revenues from interruptible transportation are credited prior to the allocation of incurred costs to firm service.

[4] Letter of Transmittal at 1, Docket No. RP99-322-000 (May 28, 1999). Thus, in Order No. 582, the Commission stated that "[b]ecause of the nature of cost-of-service tariffs, Northern Border would only file under section 154.314 when changes in an approved rate of return or services are proposed." Therefore, instead of the schedules required by section 154.312, Northern Border filed Statements L, M, O, and P, and other information under section 154.314 required to support its filing. At Northern Border's request, the Commission waived the filing requirements in waiver of sections 154.301(a), which concerns the filing of statements and schedules described in sections 154.312; 154.303, which requires statements filed pursuant to section 154.312 to be based on a test period; section 154.311, which requires the updating of certain filed statements; and sections 154.312(a) through (q), which concern the composition of required statements.

extends a total of 1,215 miles and Northern Border has plans for further expansion. The Commission concluded there should be an investigation into the continued viability of Northern Border's cost-of-service tariff under section 5 of the NGA "because the ANGTS is no longer viable and Northern Border has expanded beyond its original pipeline area." [5] In accordance with these findings, the Commission set the matter for hearing.

Foothills does not object to the Commission's decision to set the issue of whether Northern Border should retain a cost-of-service tariff for hearing. However, it asks the Commission to clarify its statement that ANGTS is no longer viable. Foothills asserts the Canadian segment was built in reliance on commitments and assurances given the Canadian government by the United States President and Congress and by the Commission regarding the ANGTS project. [6] Foothills asserts there is no factual evidence for the Commission's statement concerning viability and that the Commission has previously set this issue for hearing without making such a finding. [7]

The Commission grants the motion for clarification. The Commission's intent was to indicate that the immediate conditions surrounding Northern Border's cost-of-service tariff warrant review of that tariff. The Commission did not intend to indicate that the ANGTS project would not be fully implemented or that the Commission would not honor its commitments to that project. The only matter at issue here is Northern Border's rates. The Commission intended to find only that under current circumstances there should be an investigation as to whether Northern Border's current cost-of-service tariff is just and reasonable, and if not, what the just and reasonable tariff should be. The Commission is thus setting the cost-of-service tariff for hearing since the cost-of-service tariff is of primary importance to the determination of Northern Border's rates. Further, Foothills does not object to setting the issue for hearing. Also, circumstances on Northern Border such as its physcial configuration have changed over the years, and the intervenors have specifically protested this cost collection mechanism. Further, Foothills does not object to setting the issue for hearing. The intervenors may explore the justness and reasonableness of the cost-of-service tariff through discovery and at hearing.

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[5] 87 FERC at 62,412.

[6] Agreement on Principles Applicable to a Northern Natural Gas Pipeline (September 20, 1977) (included in Presidential Decision Designating Transportation System).

[7] 73 FERC ¶ 61,399 (1995), reh'g denied, 74 FERC § 61,214 (1996).

B. The Chicago Project costs

In this rate case, Northern Border has rolled costs of its expansion facilities known as the Chicago Project into its system rates. The Chicago Project consists of facility improvements to expand the capacity of the pipeline's mainline and to extend its existing terminus by 243 miles from Harper, Iowa, to a new terminus south of Chicago, Illinois. The Commission approved the facilities and certificated them on August 1, 1997.[8] The Commission analyzed the rate impact of rolling in the costs of the expansion facilities and found that it was nine percent. Since the rate impact was greater than five percent, the Commission stated that Northern Border was not entitled to a presumption of rolled-in rate treatment. However, on analyzing the benefits to system operations in relation to the nine percent rate impact, the Commission found that Northern Border should be permitted to roll the expansion costs into its existing rates.[9]

On August 1, 1997, the same day it issued the certificate for the Chicago Project, the Commission approved a settlement between Northern Border and its customers in Docket No. RP96-45-000, Northern Border's last general section 4 rate proceeding before this one.[10] The settlement included provisions governing the Chicago Project costs. It contained a "Project Cost Containment Mechanism" (PCCM) which established a "Target Cost" for the Chicago Project of $796.8 million[11] and provided for the treatment of cost overruns and cost savings. The PCCM capped overruns by providing that Northern Border could include the first $6 million of overruns in its rates; could recover 50 percent of the overruns between $6 million and five percent of the Target Cost, and was precluded from recovering overrun costs over five percent of the Target Cost.[12]

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[8]Preliminary Determination, 76 FERC ¶ 61,141 (1996); Order Issuing Certificate, 80 FERC ¶ 61,152 (1997).

[9]80 FERC at 61,631-32 applying "Pricing Policy Statement for New and Existing Facilities Constructed by Interstate Natural Gas Pipelines (Pricing Policy)," 71 FERC ¶ 61,241 (1995), order denying reh'g, 75 FERC ¶ 61,105 (1996).

[10]Order Approving Settlement as Modified, 80 FERC ¶ 61,150 (1997).

[11]This figure included adjustments for inflation and scope changes, $50 million for contingencies, and $75 million for project management costs. The estimated cost of the project in the certificate order issued August 1, 1997, was $792.6 million. 80 FERC at 61,625.

[12]80 FERC at 61,610.

In the settlement order, the Commission also required Northern Border to file revised cost estimates to be used as the Target Cost for the PCCM within 30 days after final certification of the project in order to reflect the final design changes and the routing approved in the certificate, as well as the inflation factor to be used. [13] The Commission gave the parties the opportunity to comment on the revised costs. The Commission stated that the final PCCM would be based on the revised cost projections approved by the Commission. On September 2, 1997, Northern Border filed a revised Target Cost of $839,579,123 [14] which the Commission accepted by Letter Order on April 6, 1998. The settlement also required Northern Border to file a final report on its costs of constructing the Chicago Project, to be served on all the parties in the settlement docket, after the expansion is completed.

The Chicago Project apparently was put in service in December, 1998. On December 22, 1998, Northern Border preliminarily advised the Commission that no adjustment to its rate base was warranted due to the PCCM. Intervenors in this proceeding state that on June 22, 1999, Northern Border made its final report describing the cost of the Chicago Project.

Several of the parties protesting or commenting on Northern Border's rate filing in this proceeding requested that issues concerning the application of the PCCM be addressed and resolved in this proceeding, rather than the settlement docket. However, the June 30 order concluded that, since the settlement provided for the final PCCM cost report to be filed in the settlement proceeding in Docket No. RP96-45-000, all issues pertaining to the PCCM should be pursued in that docket when the final report was filed.

On rehearing, Husky and Pan-Alberta/PAGUS ask the Commission to clarify or grant rehearing that the propriety of rolling in the Chicago costs is an issue in the hearing in this case despite the Commission's statement in the June 30 order that all issues pertaining to the PCCM mechanism to control those costs should be pursued in the settlement proceeding. Amerada Hess asks the Commission to consolidate Docket No. RP96-45-000 with this docket.

While the Commission approved rolling in the costs of the Chicago Project in the Order Issuing Certificate, the Commission also recognized in that order that circumstances could change when the Chicago Project was completed and put in service. Thus, the Commission expressly recognized that parties could challenge the rolled-in pricing in

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[13] 80 FERC at 61,614-15.

[14] Docket No. RP96-45-005.

Northern Border's next rate proceeding (i.e., this one) if there were changes in circumstances such as cost overruns resulting in a rate increase greater than the pipeline's projected rate increase, failure to realize claimed operational benefits, or inclusion of overrun costs in excess of the estimated costs in Northern Border's amended application. [15] Consequently, the issue of rolled-in rate treatment may be examined in the hearing in this docket.

The Commission also grants Amerada Hess's request that the settlement docket, Docket No. RP96-45-000, be consolidated with this docket. The Chicago costs or a portion of them are included in this rate filing. The amount of these costs that can be included in the rates in this filing is governed by the settlement in Docket No. RP96-45-000. That issue is also relevant to resolution of the issue whether rolled-in rate treatment of the Chicago Project is appropriate. Consequently, the resolution of the amount of Chicago Project costs to be included in the rates in this filing, as well as whether the roll-in of those costs is still appropriate, would be facilitated if the two dockets are considered together. For this reason, the Commission finds Docket Nos. RP96-45-000 and RP99-322-000 should be consolidated. The Commission also requires Northern Border to file a copy of the document referred to above that is dated June 22, 1999 and shows the total costs of the Chicago Project and other matters with the Commission within ten days of the issuance of this order. The presiding ALJ in this proceeding is to determine whether this document is the final report under the settlement and, if it is not, to set a date for the filing of the final report. The ALJ in this proceeding is to conduct any further proceedings appropriate to the PCCM and the settlement in Docket No. RP96-45-000.

D. Depreciation

Northern Border asks the Commission to clarify its statement in the June 30 order that there is not enough information concerning its depreciation rates and it should consider filing supplemental direct testimony to support those rates. It asserts it has made no change to its depreciation rates so that the burden of proof is on an opposing party to show that the existing depreciation rates are unjust and unreasonable.

Northern Border's depreciation rates were established in the settlement in Docket No. RP96-45-000, and there is no explanation in this docket as to how they were derived. The Commission recently considered a similar case in Northwest Pipeline Corp., 87 FERC ¶ 61,266 (1999). There the Commission held that the burden of proving that unchanged

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[15] 80 FERC at 61,633. The Commission also noted that under the settlement in Docket No. RP96-45-000, Northern Border agreed to absorb a portion of cost overruns pursuant to the PCCM. 80 FERC at 61,633 n.41.

depreciation rates are just and reasonable is on the pipeline, where the pipeline proposes an overall rate increase. . Here, as there, the pipeline had filed under Section 4 of the NGA to increase its rates. The Commission found the pipeline's burden of supporting its proposed rate increase includes the burden of supporting the dollar amount of each item in the cost of service since each item in the pipeline's proposed cost of service is a part of the pipeline's proposed rate increase.[16] The Commission stated this includes unchanged cost of service items, citing National Fuel Gas Supply Corp, 51 FERC ¶ 61,122 at 61,334 (1990), and Algonquin Gas Transmission Co., 64 FERC ¶ 61,293 at 63,029 n.16 (1993).

The Commission noted in Northwest that it has specifically held that it has authority to act under Section 4 of the NGA to reduce a depreciation rate and order refunds, even where the pipeline has not proposed a change in its depreciation rate, as long as the as-filed depreciation rate is a part of a proposed overall rate increase. Tennessee Gas Pipeline Co., 25 FERC ¶ 61,020 at 61,108 (1983), reh'g denied on this issue, 26 FERC ¶ 61,109 at 61,263-64 (1984). The Commission observed that it had distinguished a prior decision of the U.S. Court of Appeals for the District of Columbia Circuit holding that the Commission must proceed under NGA Section 5 to change existing cost allocation methods.[17] The Commission found the Court did not preclude a review under Section 4 of cost of service components integral to an overall rate increase.

The Commission also held in Northwest that its holding is consistent with the Court's statement in Western Resources, Inc. v FERC, 9 F.3d 1568, 1579 (D.C. Cir. 1993), that "[w]e appreciate that minor deviations from the pipeline's proposed rate based, for example, upon differences as to the extent of specific cost items, may be handled in a Section 4 proceeding." The Commission found there that the change in depreciation rate proposed by the opponents in Northwest had a relatively minor effect on the pipeline's overall cost of service, and so might the Commission find here.

Since the burden of proving that its depreciation rates are just and reasonable is on Northern Border, the pipeline must file direct testimony under 18 C.F.R. § 154.301(c) as part of its case-in-chief if it intends to sustain that burden.

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[16] See also 18 C.F.R. 154.301(c) (1999).

[17] Public Service Commission of New York v. FERC, 642 F.2d 1335 (D.C. Cir. 1980), cert. denied, 454 U.S. 879 (1981).

<u>The Commission orders</u>:

(A) The requests for clarification and rehearing are granted or denied as discussed in the body of this order.

(B) Docket No. RP96-45-000 is consolidated with this docket and the presiding ALJ in this docket is to take all appropriate actions with respect to Docket No. RP96-45-000 as discussed in the body of this order.

(C) Northern Border is required to file a copy of the document dated June 22, 1999 describing the total costs of the Chicago Project and other matters within ten days of this order.

By the Commission.

(S E A L)

David P. Boergers

David P. Boergers,
Secretary.