

ALASKA LEGISLATURE SPECIAL COMMITTEE/SUBJECT FILES 8672

2919 SCOMM 128 : HOUSE SPEC. COMM. ON OIL AND GAS, 2001-02



Fact Sheet: Cook Inlet Oil & Gas Production

◆ ALASKA COOK INLET PRODUCING FIELDS & PRODUCTION

Seven producing oil fields on the Kenai Peninsula produce 30,000 barrels of oil per day. There are 17 gas fields which currently produce more than 485 million cubic feet of gas per day. In 1999, nearly 11 million barrels of oil and 177 billion cubic feet of natural gas were produced from Cook Inlet gas fields.

Offshore fields in Cook Inlet are tapped by 15 production platforms. Operations at three of the platforms have been temporarily suspended due to market conditions and low production volumes.

Fields on the Kenai Peninsula and offshore in the Cook Inlet have produced a cumulative total of 1.2 billion barrels of crude oil and 5.6 trillion cubic feet of natural gas.

◆ OIL & GAS PROCESSING

All oil from Cook Inlet is refined at a Nikiski refinery producing gasoline, propane, butane, jet fuel, heating fuel and asphalt for Alaska markets.

A chemical plant in Nikiski uses Cook Inlet natural gas as a feedstock to manufacture more than 5,000 tons of fertilizer per day. The plant is the largest fertilizer complex on the West Coast and is a major supplier to the agriculture industry in the Western United States.

A gas liquefaction plant at Nikiski, the only one of its type in North America, supplies 1.3 million barrels of liquefied natural gas to Japan each month.

◆ NEW PROJECTS, PLAYERS & ACTIVITY

Independents are new "players" which have recently entered Alaska's oil and gas scene in the Cook Inlet. Companies like Anadarko Petroleum, Forcenergy, Frontier Petroleum Corp. and Cross Timbers Oil Company are bringing a renewed vitality and new concepts to revitalize this very mature province.

New developments in Cook Inlet include: drilling at the Torn Cat "wild cat prospect" by Forcenergy; drilling of the Lone Creek #2 and #3 by Anadarko Petroleum; continued drilling at Cannery Loop by Marathon Oil Company; and development of the Redoubt Shoal reservoir by Forcenergy.

◆ RESERVES & PRODUCTION FORECAST

Ninety percent of the region's recoverable oil reserves have been produced.

Remaining oil reserves are estimated at about 76 million barrels. Natural gas reserves exceed more than 3 trillion cubic feet.

Cook Inlet oil production, which peaked at 230 thousand barrels per day in 1970, declined to 30 thousand barrels per day by 1999. Cook Inlet fields probably will continue to produce well into the next century, however, production is estimated to decline to seven thousand barrels per day by 2003. Cumulative production between 1999 and 2003 will be an estimated 50.8 million barrels. (Source: *Historical and Projected Oil and Gas Consumption, May, 1999 by Alaska Department of Natural Resources*)

◆ BENEFITS OF COOK INLET OIL & GAS DEVELOPMENT

Southcentral Alaskans have benefited from oil and gas development in the Cook Inlet area for more than 40 years.

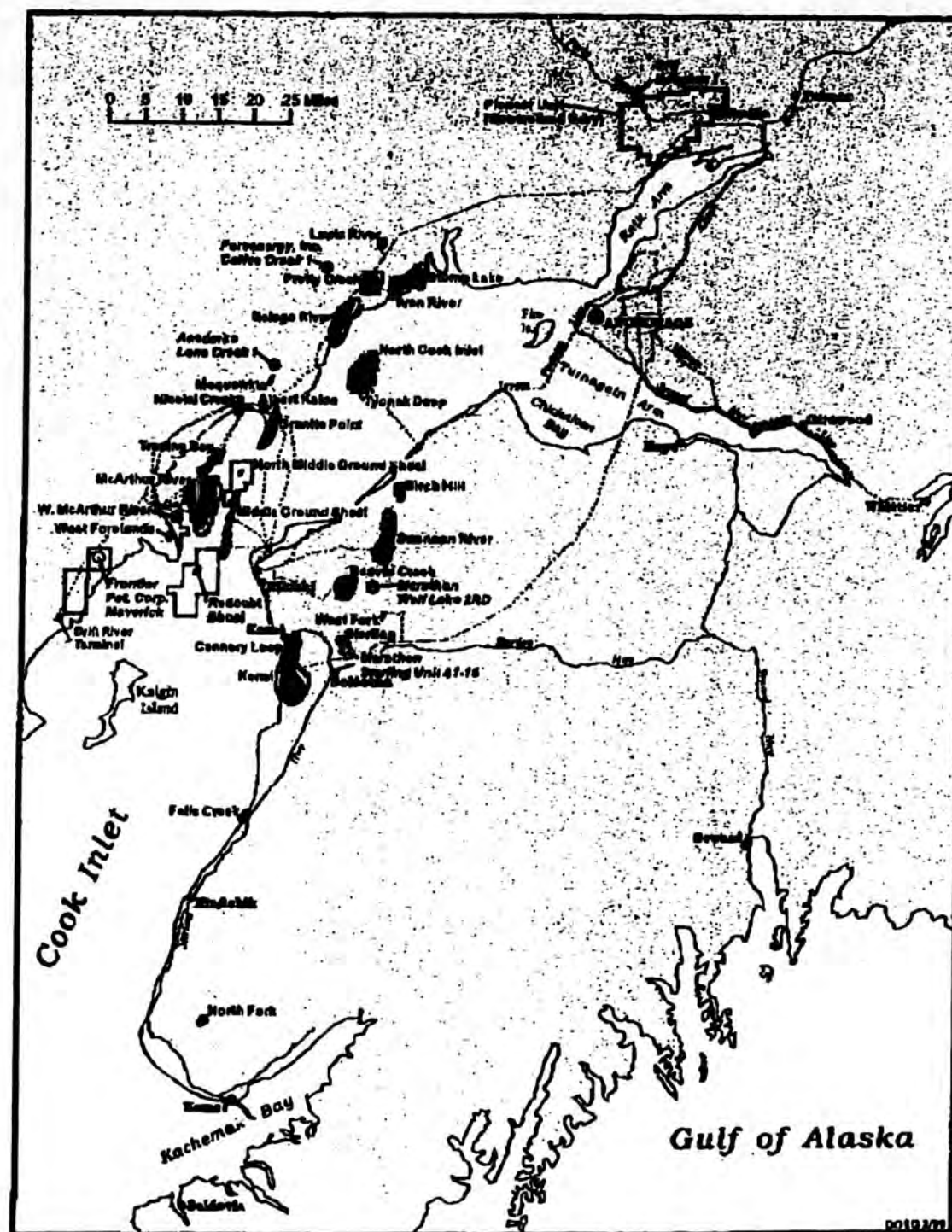
The oil and gas industry in Cook Inlet employs more than 1,500 workers and hundreds more on contract. It contributes hundreds of millions of dollars annually to the economy of Southcentral Alaska, through salaries, taxes, royalties and investments. Cook Inlet oil, all of which is refined at Tesoro's Nikiski refinery, produces gasoline, propane, diesel, jet fuel and heating fuel for Alaska markets and promotes continuation of one of Alaska's few value-added industries.

Oil and gas property accounts for a substantial segment of the tax base within the Kenai Peninsula Borough and local communities. In Nikiski, the oil industry pays about 70 percent of the area's property taxes. Kenai area residents have counted on this tax base, from oil and gas production property, to pay for essential local services, including police protection, firefighters, schools and for recreational programs and facilities.

Cook Inlet natural gas provides heat to Kenai, Anchorage and Mat-Su area homes and businesses at a cost 40 percent less than the national average. More than 80 percent of the electricity for communities from Homer to Talkeetna is generated from Cook Inlet natural gas.

Map Legend

- Unit Boundary
- Oil Field / Accumulation
- Gas Field / Accumulation
- Selected Wells
- Proposed / Active Wells
- Platform
- Pipelines
- Production Facility





Fact Sheet: North Slope Oil & Gas Production

♦ ALASKA NORTH SLOPE PRODUCING FIELDS & PRODUCTION

There are more than a dozen producing fields on Alaska's North Slope including Prudhoe Bay, Kuparuk, Endicott, Milne Point, Niakuk and Point McIntyre.

Prudhoe Bay, discovered in 1968, is the largest field ever discovered in North America. Total recovery from Prudhoe Bay is expected to exceed 13 billion barrels. To date, more than 10 billion barrels of oil have been produced.

The Kuparuk field, located west of Prudhoe Bay, is the second largest field in North America. Production from the Kuparuk field has totaled approximately 1.6 billion barrels with an expected total recovery of nearly 3 billion barrels.

In 1999, North Slope fields produced 372 million barrels of oil and 32 million barrels of natural gas liquids. Cumulative oil production from the North Slope is 12.6 billion barrels of oil, 37 billion cubic feet (bcf) of natural gas and 345 million barrels of natural gas liquids. Most of the gas has been re-injected to maintain reservoir pressure and increase oil production.

♦ NEW FIELDS & PROJECTS UNDER DEVELOPMENT

Badami - Located 35 miles east of Prudhoe Bay, Badami began production in August, 1998. Badami is the first extension of pipeline infrastructure east of the Prudhoe Bay area.

Northstar - Construction on the production island began in January, 2000 and production is expected in 2001. Peak production is expected to be 60 thousand barrels per day with recoverable reserves estimated at 145 million barrels.

Alpine - Field construction work is underway with start-up of production expected in 2000. Enhanced recovery methods used from start-up are estimated to increase recoverable reserves to 45 percent of the original oil in place, boosting recoverable reserves to 429 million barrels of oil.

West Sak/Schrader Bluff - Heavy oil production was halted in late 1998. Development of these heavy oil accumulations requires new technology and substantial cost breakthroughs. Economically recoverable reserve

estimates for "core areas" are 279 million barrels in West Sak and 281 million barrels in Schrader Bluff.

Prudhoe Bay/Kuparuk Satellites - Delineation and development of satellite fields continues. Production from these satellite fields is expected to contribute 65 thousand barrels per day at peak production.

♦ NORTH SLOPE PRODUCTION FORECAST

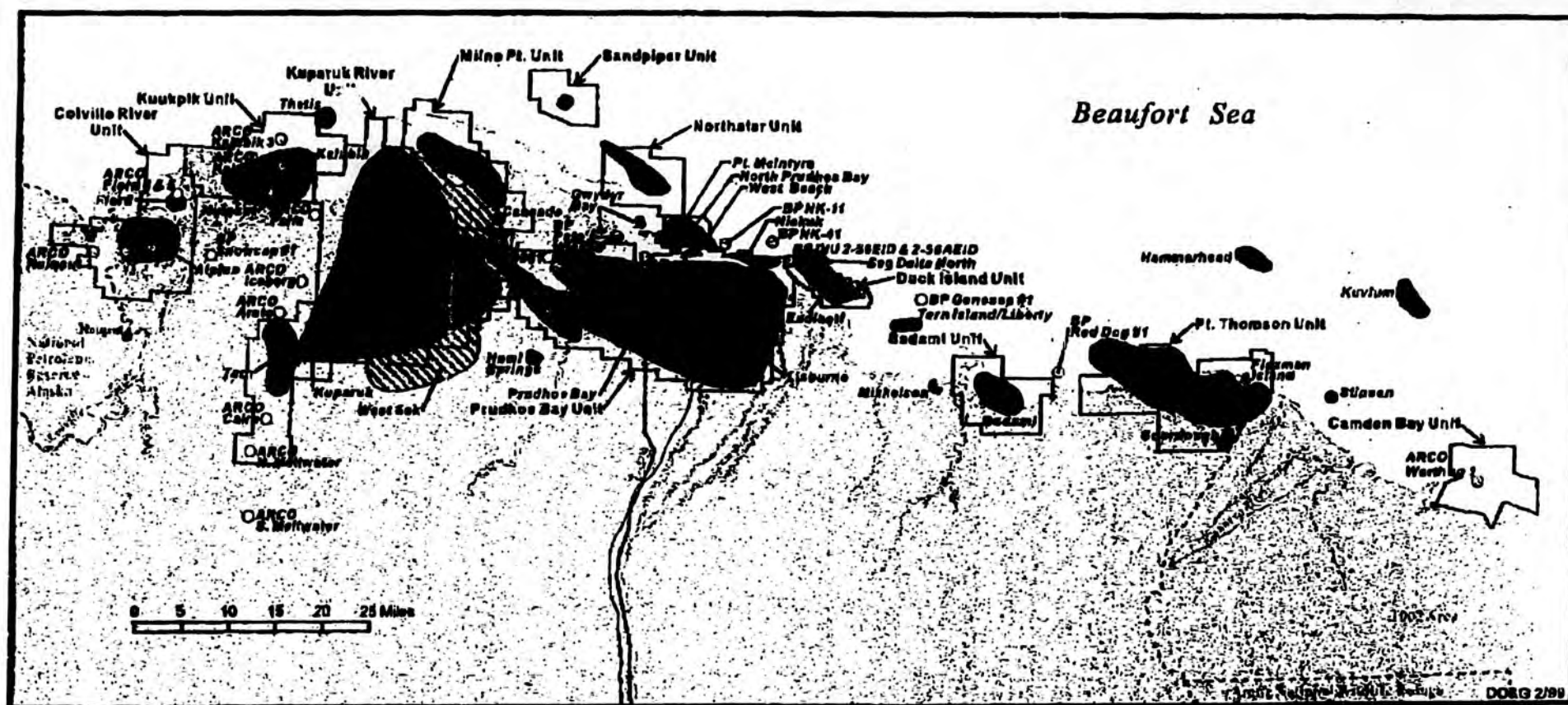
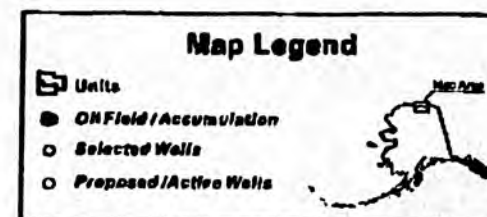
North Slope production of oil, condensate and natural gas liquids, which peaked at 2 million barrels per day in 1988, declined to 1 million barrels per day in 1999 and is currently running at about a million barrels per day. Cumulative production between 1999 and 2020 is estimated to be 5.9 billion barrels. This estimate is a projection of production histories of existing fields and the expected production from fields under development. It also includes a few planned and probable field developments.

Natural gas reserves on the North Slope total more than 30 trillion cubic feet. North Slope fields are so isolated that the only current economic use for their gas is to fuel the region's oil field equipment and operations and for enhanced oil recovery efforts. Since production began, a large amount of dissolved and free gas has been produced with the oil, separated and re-injected back into the reservoir. Efforts are under way to find ways to commercialize Alaska North Slope gas reserves.

♦ NORTH SLOPE OUTLOOK

State areawide lease sales, which make all unleased lands available for leasing on an annual basis, will encourage continued exploration and development on Alaska's North Slope. Efforts will continue to find and develop satellite fields close to existing infrastructure. Development of the Alpine field and renewed leasing in the Northeast portion of the National Petroleum Reserve will continue to spur westward expansion of oil and gas exploration and production activities. More oil will be discovered on Alaska's North Slope. However, overall North Slope production is expected to continue to decline with the decline of its largest field, Prudhoe Bay. According to the Alaska Division of Oil & Gas, North Slope production is expected to fall below 1 million barrels per day by 2004 and will fall to 316 thousand barrels per day by 2020.

North Slope Activity





Fact Sheet: Economic Benefits of Oil & Gas Development

◆ OIL & GAS REVENUES: A MAJOR SOURCE OF ALASKA INCOME

Oil revenues are a significant source of income to the State of Alaska. Last year, the state received more than \$1.1 billion dollars in total petroleum revenues and nearly a billion dollars in unrestricted revenues, representing 70 percent of the state's total unrestricted income. The Alaska Department of Revenue projects that petroleum revenues will exceed \$1.5 billion in FY 2000.

The state receives millions of dollars in royalty revenues each year which are deposited directly into the Permanent Fund. The Permanent Fund was established in 1976 as the state's savings account for a portion of its petroleum income. The Fund currently totals more than \$27 billion. Permanent Fund earnings are used to inflation-proof the Fund and are paid to Alaska residents in the form of dividends. Last year, each Alaskan received a dividend of \$1,769.84.

Petroleum revenue has provided more than 70 percent of the state's general fund unrestricted revenue since FY 1978, Prudhoe Bay's first full year of production. The Alaska Department of Revenue projects that petroleum revenue will continue to comprise the majority of Alaska's general fund unrestricted revenue through FY 2000 - 78 percent in FY 2000 and nearly 79 percent in FY 2001.

Since oil development began on Alaska's North Slope, the state has received more than \$46 billion in taxes and royalties. The state currently receives more revenue from oil operations every three days than the \$7.2 million the United States paid Russia to purchase Alaska in 1867.

◆ LOCAL GOVERNMENTS BENEFIT FROM OIL & GAS DEVELOPMENT

Oil and gas revenues paid to the state also benefit municipalities and boroughs. General fund revenues are allocated to municipalities and boroughs through municipal assistance, revenue sharing, community development grants, special operating grants, capital project funding and education funding.

State general funds pay for a portion of public services and capital projects, such as medical clinics, community centers, recreation complexes, habitat enhancements, parks and recreation, public waste disposal sites and public sewer and water systems.

Local communities also receive petroleum property revenues. In FY 1999, local communities received \$222.3 million in petroleum property taxes: North Slope Borough, \$212 million; Valdez, \$13.3 million; Kenai \$8.5 million; Fairbanks \$6.1 million; Anchorage \$2.4 million; Mat-Su Borough \$500,000 and unorganized areas received \$28.1 million.

◆ IN-STATE OIL & GAS PROCESSING ADDS VALUE TO ALASKA'S RESOURCES

One of Alaska's few "value-added" industries is the in-state processing of its oil and gas resources -- at two refineries located in North Pole near Fairbanks and at refineries in Nikiski and Valdez. Cook Inlet natural gas is processed at a liquefied natural gas plant in Kenai for export to Japan. Natural gas also is used as feedstock for a chemicals plant in Kenai which manufactures 5,000 tons of fertilizer per day. Natural gas from Cook Inlet heats homes and businesses in Southcentral Alaska at a cost of 40 percent less than the national average.

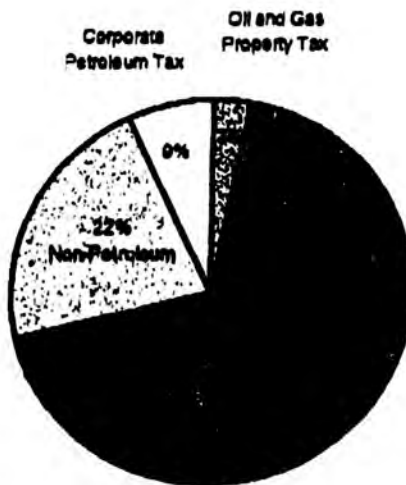
◆ ALASKA'S OIL & GAS -- GENERATING INCOME & EMPLOYING ALASKANS

In addition to direct revenues, Alaska's oil and gas industry provides employment and indirect income to Alaskans. Nearly 8,000 Alaskans are currently employed in oil and gas production and service and supply sectors. According to University of Alaska economists, oil revenue contributes substantially to Alaskans' personal income.

♦ PETROLEUM REVENUE OVERVIEW

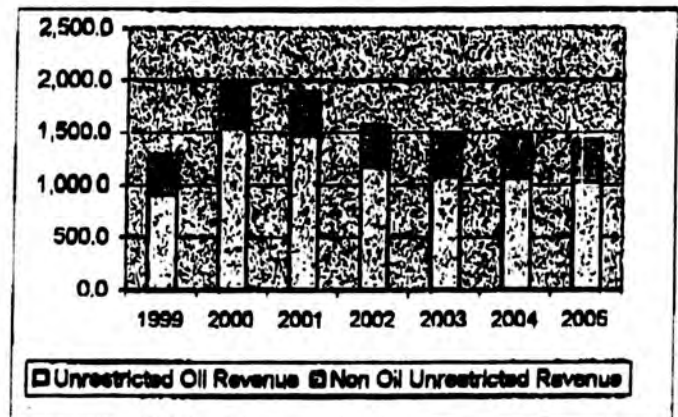
Petroleum revenue comes in the form of: (1) severance (or production) taxes; (2) oil and gas royalties on state and federal land; (3) petroleum corporation income tax; (4) petroleum property tax; and (5) petroleum rents and lease bonuses. The majority of the state's unrestricted revenue comes from the oil and gas revenues which are expected to account for 78 percent of the state's unrestricted revenues in FY 2000. The illustration below shows the break-out of FY 2000 projected petroleum and non-petroleum General Fund unrestricted revenue.

**FY 2000 FUNDS
UNRESTRICTED REVENUE**
Petroleum and Non-Petroleum Revenue



Petroleum revenue has provided more than 70 percent of the state's general fund unrestricted revenue since FY 1978, Prudhoe Bay's first full year of production. In FY 1999, petroleum revenue made up about 70 percent of the total general fund unrestricted revenue. It is anticipated that petroleum revenue will continue to comprise the majority of Alaska's general fund unrestricted revenue: 78 percent in FY 2000; 79 percent in FY 2001, 75 percent in FY 2002; 73 percent in FY 2003; 73 percent in FY 2004; and 72 percent in FY 2005. Source: Alaska Department of Revenue, Spring 2000 Revenue Sources Book.

**UNRESTRICTED
GENERAL PURPOSE REVENUE**
Projected FY 2000-2005





Fact Sheet: Alaska Oil & Gas Taxes & Royalties

♦ OIL AND GAS TAXES

The oil and gas industry is the state's top taxpayer. Oil and gas taxes and royalties make up the state's largest source of unrestricted revenue. Last year, the state received nearly a billion dollars in taxes and royalties from oil and gas production accounting for about 70 percent of all unrestricted revenues received by the state.

In FY 1999, the state received about \$323 million in royalties, \$565 million in taxes and \$25 million in bonuses and rents from the oil and gas industry - totaling about \$913 million. State unrestricted revenue from all other sources totaled only \$439 million. Oil and gas revenues in FY 1999 were down considerably due to a sustained period of record-setting low oil prices. In FY 1998, the state received \$1.3 billion in petroleum taxes and royalties.

♦ PROPERTY TAX

The oil and gas industry is the only entity in Alaska subject to a statewide property tax. Oil and gas property tax is levied at 20 mills on the value of oil and gas production and transportation property. In FY 1999, the oil and gas industry paid \$271 million in property taxes - \$48.5 million went to the state and \$222 million was paid directly to local communities - North Slope Borough - \$212.3 million; Valdez - \$13.3 million; Kenai - \$8.5 million; Fairbanks - \$6.1 million; Anchorage - \$2.4 million; Mat-Su - \$500,000; and unorganized areas received \$28.1 million.

♦ CORPORATE INCOME TAX

Alaska's oil and gas income tax is derived from a corporation's worldwide net income apportioned to Alaska under a three factor formula - the percentage of corporate sales and tariffs from Alaska operations; the percentage of production from Alaska; and the percentage of property represented by Alaska holdings. The maximum marginal rate is 9.4 percent.

Income taxes on Alaska's oil and gas industry account for more than 70 percent of all corporate industry taxes received by the state. In FY 1999, the state received \$199 million in corporate income taxes - \$145 million from the oil and gas industry and \$54 million from all other businesses.

♦ SEVERANCE TAX

Severance tax is levied on all oil and gas produced except for state royalty production. The rate varies depending on the vintage of the field and is subject to the economic limit factor (ELF). The ELF varies depending on field size and well productivity.

The severance tax rate on oil is 12.25 percent of production value for the first 5 years of production and 15 percent thereafter for fields coming into production after June, 1981, and 15 percent for fields in production prior to June, 1981. (There is a minimum tax of \$0.80/bbl.) The severance tax rate on gas is 10 percent. (There is a minimum tax of \$.064/mcf.) Both the percent of value and the cents per barrel tax rates are subject to the ELF.

The ELF was originally designed in 1977 to differentiate the tax rate on the supergiant Prudhoe Bay field and the older declining fields in Cook Inlet. Subsequent changes in 1981 and 1989 focused on keeping taxes higher on Prudhoe Bay while lowering taxes on new and smaller fields on the North Slope. If a field produces 300 barrels of oil per day per well or less, the ELF is zero and no severance taxes are assessed.

In the last 15 years, the state has received more than \$13 billion in oil and gas severance taxes. In FY 1998, the state received \$578 million, down from \$922 million the year before. In FY 1999, oil and gas severance taxes totaled more than \$371 million.

♦ PRODUCTION TAX SURCHARGE

The state levies a 5 cents per barrel surcharge on each barrel of oil to fund the Oil and Hazardous Substance Prevention and Response Fund. The 5 cents per barrel is charged until a \$50 million cap is reached. When the \$50 million cap is reached, the surcharge drops to 3 cents per barrel.

♦ ROYALTIES

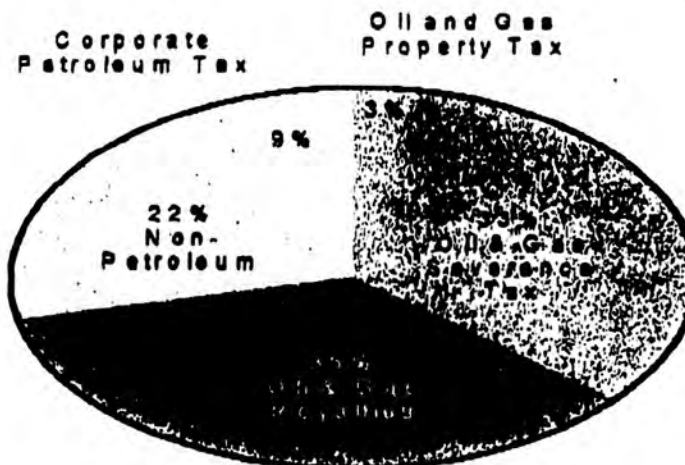
The State of Alaska receives royalties from the production of oil and gas on state owned lands. Most currently producing leases pay a fixed royalty rate of 12.5 percent. However, some production is subject to a net profit share in addition to a fixed royalty and some royalty rates are as high as 20 percent.

In FY 1999, the state received approximately \$323 million in oil and gas royalty revenue. Royalty revenues were down significantly from FY 1998, when the state received \$480 million in unrestricted revenues from royalties on oil and gas production. In addition, in 1998 the state received more than \$156 million in petroleum royalty revenues which were deposited directly into the Permanent Fund.

♦ **PROJECTED FY 2000 PETROLEUM TAXES & ROYALTIES**

The Alaska Department of Revenue projects higher revenues for FY 2000 than it received in 1999. State revenues are expected to total \$1.4 billion in taxes and royalties from oil and gas production - \$46 million in property taxes, \$175 million in income taxes, \$577 million in severance taxes and nearly \$584 million in oil and gas royalties.

FY 2000 FUNDS UNRESTRICTED REVENUE Petroleum and Non-Petroleum Revenue



The figure above shows the break-out of FY 2000 petroleum and non-petroleum General Fund unrestricted revenue: severance tax, 33% percent; oil & gas royalties, 35% percent; non-petroleum tax, 22% percent, corporate petroleum tax, 9 percent; oil & gas property tax, 3 percent.

Alaska's
Oil & Gas
Industry



Fact Sheet: Alaska-America's Largest Land Reserve

ALASKA NOT ONLY IS AMERICA'S LARGEST STATE, ENCOMPASSING 365 MILLION ACRES, IT ALSO IS AMERICA'S FEDERAL LAND RESERVE

More than 65 percent of Alaska lands are federally-owned and more than 30 percent of all federal lands in the United States are located within Alaska.

Federal lands in Alaska total nearly 240 million acres, more than any other state in the nation.

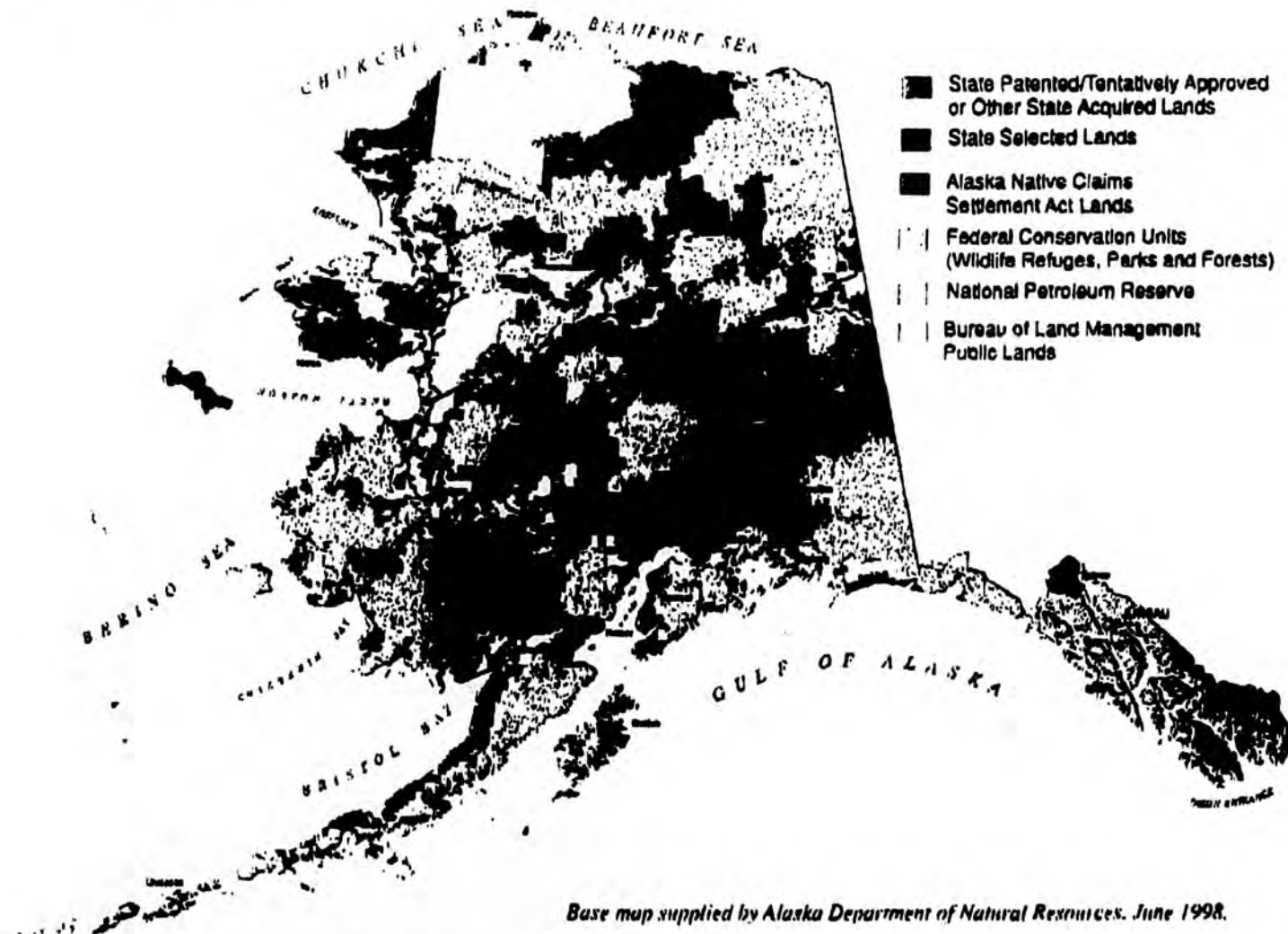
National wildlife refuges, parks and forest lands in Alaska alone total nearly 150 million acres, comprising 40 percent of Alaska lands.

Alaska contains 85 percent of America's wildlife refuges and 68 percent of all national park lands.

THERE IS MORE DESIGNATED WILDERNESS IN ALASKA THAN IN ANY OTHER STATE IN THE NATION

Alaska has 57 million acres of designated wilderness — lands that have been put off-limits to resource development.

Nearly 19 percent of the land in Alaska has been designated as or is recommended for wilderness. In contrast, less than four percent of federal land outside of Alaska has been designated as wilderness or is recommended for wilderness designation.



Base map supplied by Alaska Department of Natural Resources, June 1998.

STATE OF ALASKA AND NATIVE CORPORATIONS RANK SECOND AND THIRD IN LAND OWNERSHIP

The State of Alaska owns 90 million acres or approximately 25 percent of the state. Under the Alaska Native Claims Settlement Act (ANCSA) native corporations have been given title to about 36 million acres. Less than one percent is in private ownership.

The State of Alaska's park system of 3.5 million acres constitutes the largest park system in the United States.

ALASKA HAS THE LOWEST POPULATION DENSITY IN THE NATION AND IS THE THIRD LEAST POPULOUS STATE

There is approximately one person per square mile in Alaska versus more than 71 people per square mile for the entire U.S.

Alaska has a total population of 606,000 which makes it the third least populous state in the country.

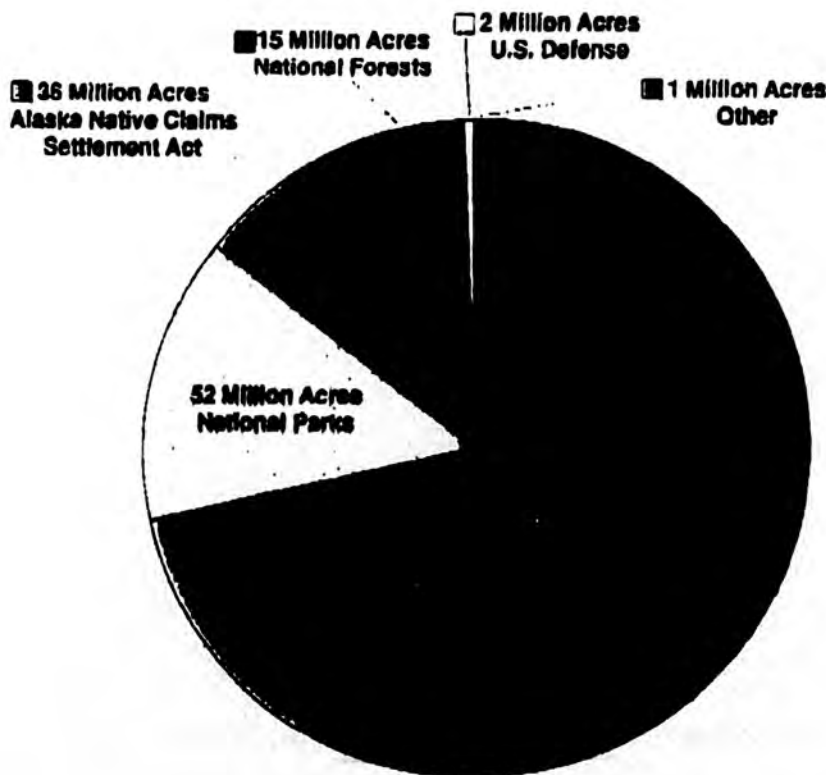
ALASKA LANDS, FEDERAL AND STATE, CONTAIN SUBSTANTIAL RESOURCE POTENTIAL

Prudhoe Bay, located on state lands on Alaska's North Slope, along with other North Slope oil fields currently produce 20 percent of all oil produced in the United States today.

Alaska lands contain 31 percent of current U.S. proved crude oil reserves and 18 percent of all U.S. gas reserves.

Federal lands in Alaska, including those in the National Petroleum Reserve-Alaska and the Arctic National Wildlife Refuge, are considered to contain some of the nation's best prospects for substantial new oil and gas reserves.

Because the majority of Alaska land is owned by either the federal or state governments, public policy decisions affecting land management are critical to Alaska's economic future.



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House Special Committee on Oil & Gas

MEMORANDUM

DATE: January 22, 2001

TO: All Members of Oil & Gas Committee

FROM: Representative Scott Ogan
Chairman, Oil & Gas Committee

RE: Meeting Agenda

A handwritten signature, likely of Representative Scott Ogan, consisting of stylized, overlapping loops.

Enclosed you will find information as provided by the Alaska Oil & Gas Association in conjunction with the committee presentation on January 23rd and January 25th. Please retain this information for both meetings.

I anticipate that there will be additional handouts once they arrive in Juneau. Copies will be available to you prior to the beginning of the meeting.

We will be adjourning Tuesday's meeting at 11:30 a.m. in consideration of the AOGA Luncheon at the Baranof that begins at 11:45 a.m. I encourage all committee members to attend this function.

Representative Scott Ogan

SCOMM

128:3

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 Decision and Report to Congress on the Alaska Natural Gas Transportation System ("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 TransCanada 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.

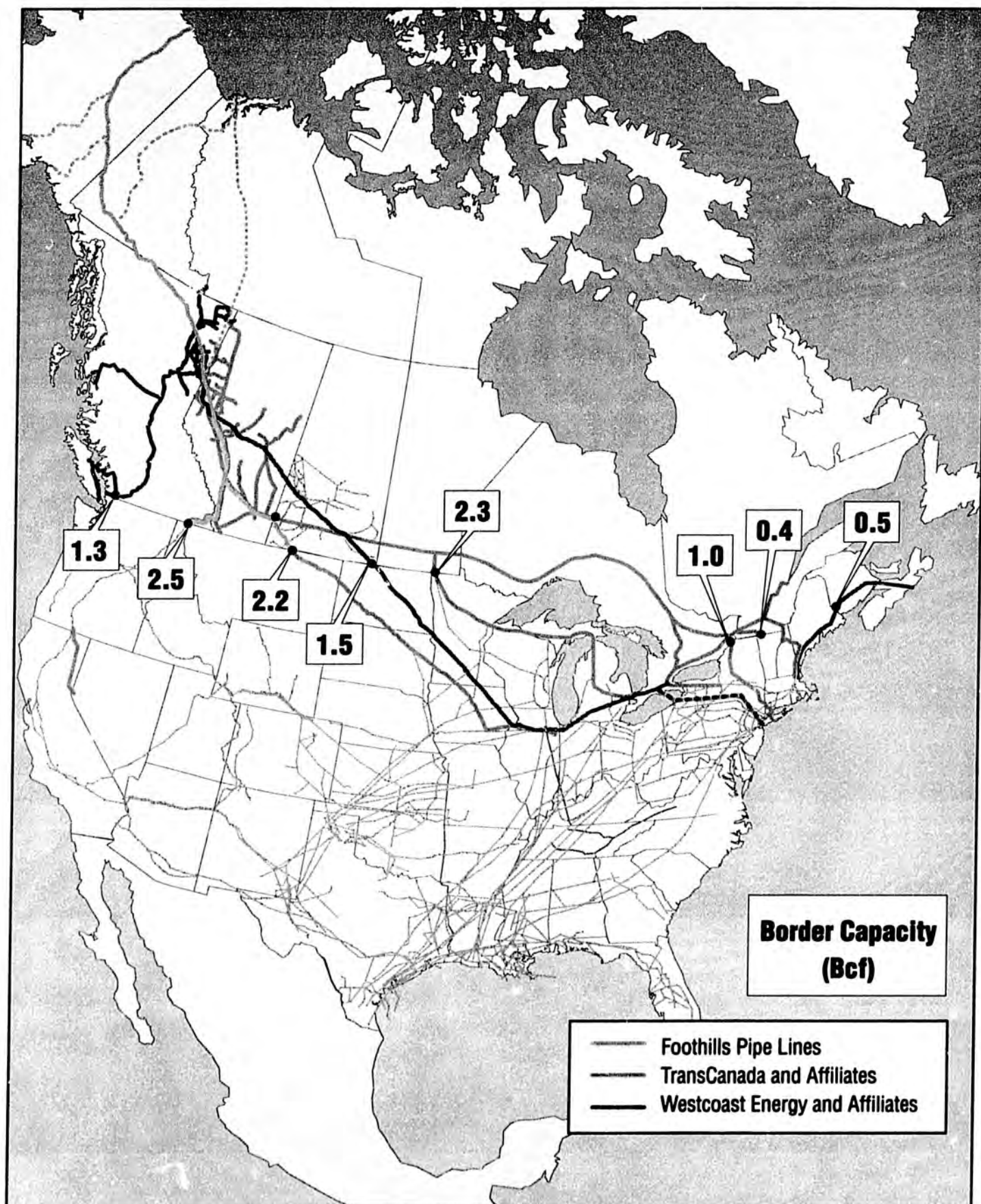
Foothills and its shareholders intend to be major players in the development and operation of this important pipeline and we believe that we bring value to the Project and value to Alaska.

Thank you, and I am now prepared for questions.



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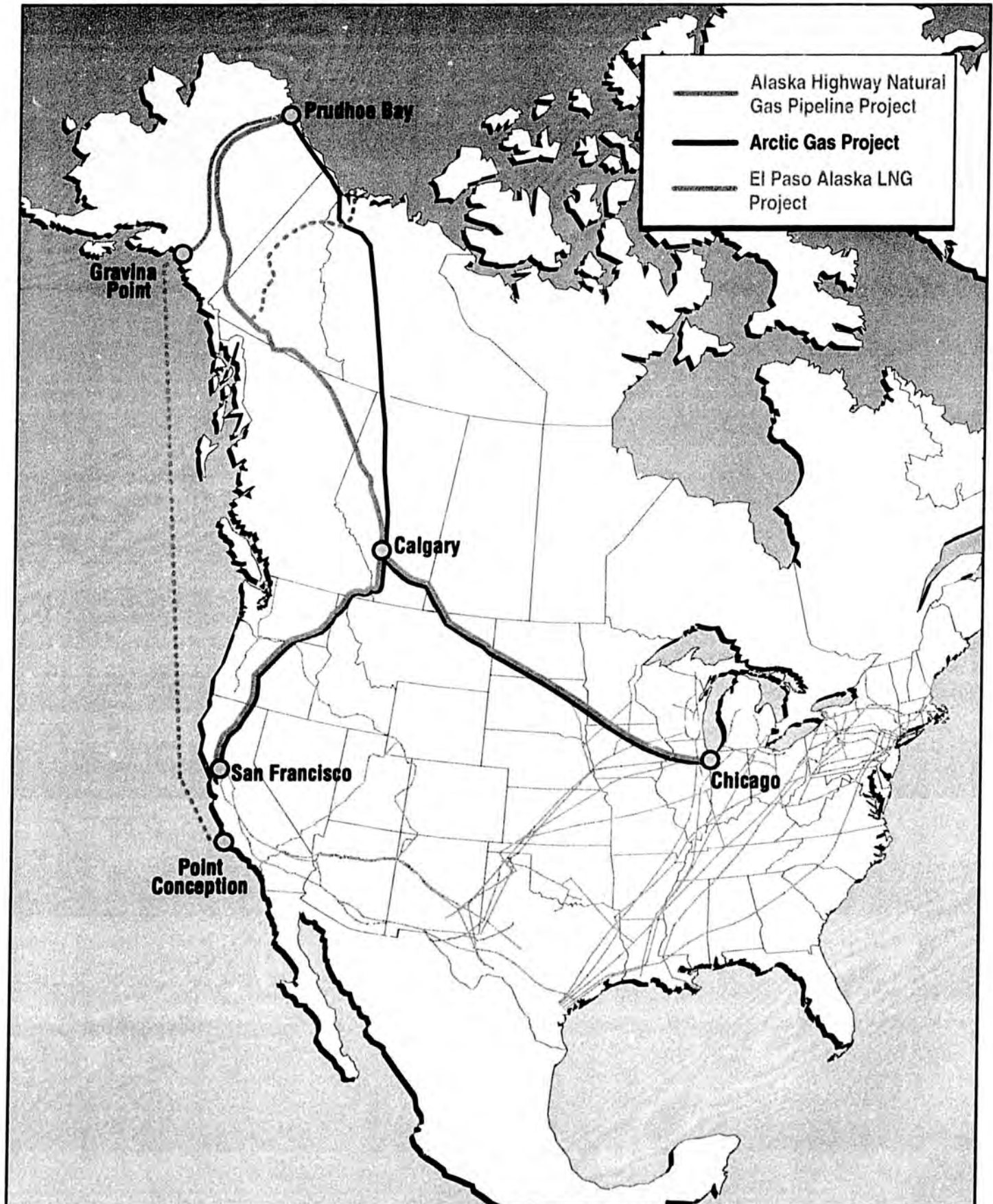
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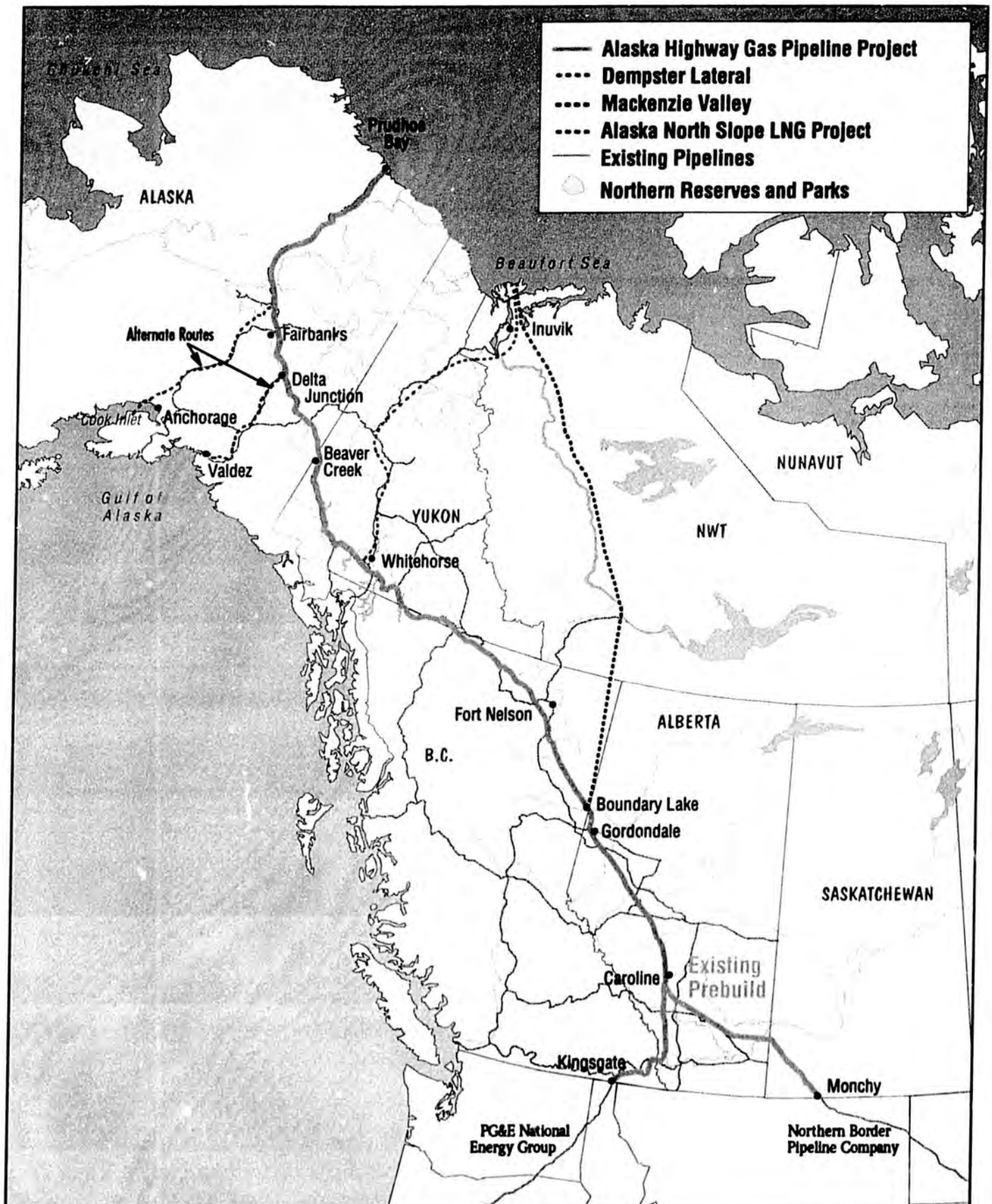
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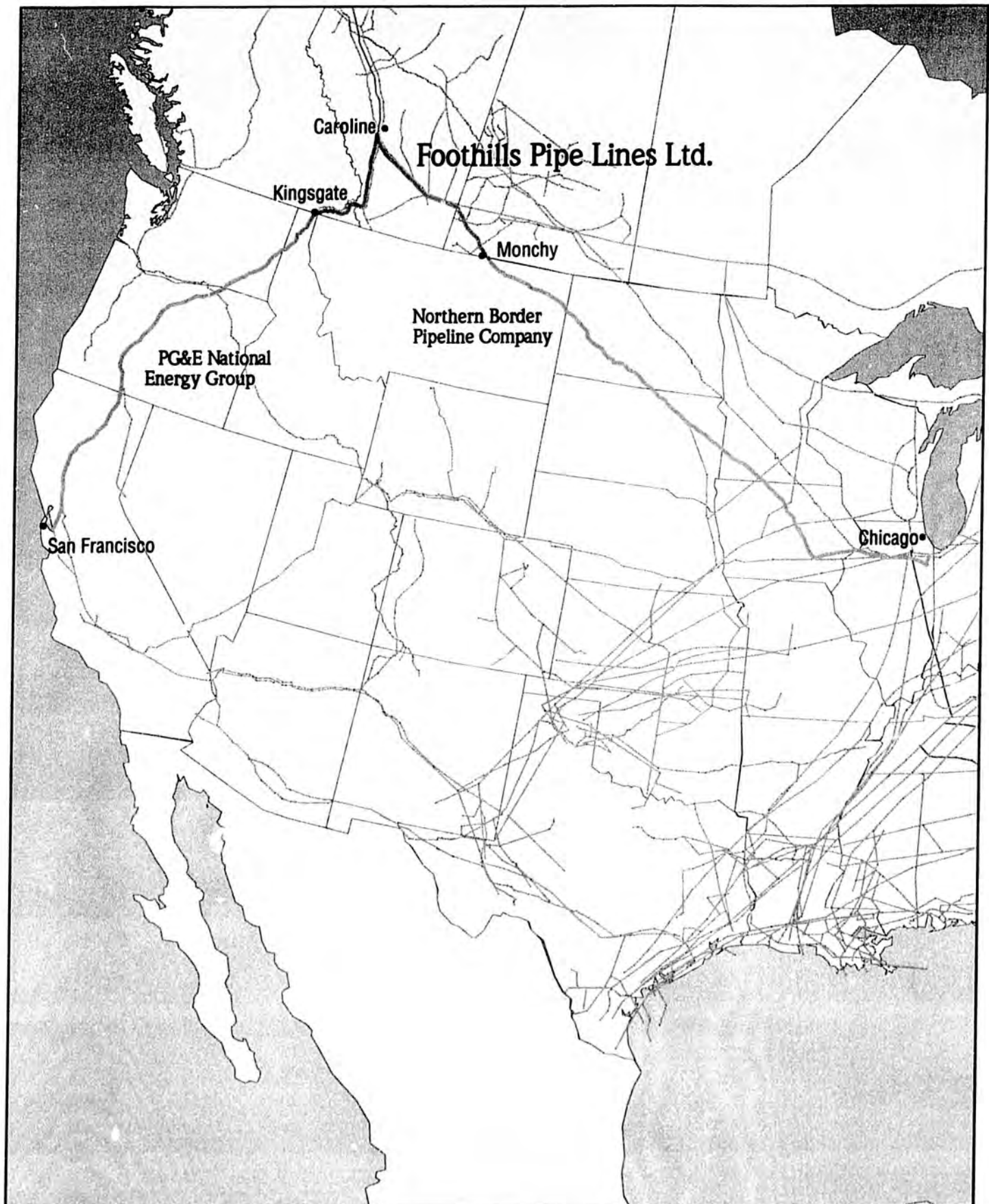
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Northern Backgrounder

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 MMcf/d, increasing system capacity to 1094 MMcf/d. 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 Bcf/d.
- 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 and 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 they would have to take and pay for enough gas to provide an assured minimum amount of revenue

Under this modification, the obligation of the U.S. purchasers to take gas would go down if the border price went up. However, the purchasers would always be obliged to take enough gas to provide the established minimum revenue." (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 even in the event that the delivered gas is not competitively priced." (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 system²⁹. 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 it 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 tariffs³¹. 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.

CORRECTION

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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. at 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 Transportation 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 ANGTIS. 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 pre-build 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 NES
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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Canada 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.

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?

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,

A handwritten signature in dark ink, appearing to read 'G. Yorke Slader', written in a cursive style.

G. Yorke Slader,
Secretary