

ALASKA LEGISLATURE SPECIAL COMMITTEE / SUBJECT FILES 8672

1049 SCOMM 28: JOINT GAS PIPELINE COMMITTEE. 1981-82 / 1049

4. Corrective action be taken to permit the preparation of financial statements directly from the accounting records. Until such corrective action is implemented, ANNGTC should prepare reconciliations of differences between the recorded and reported actual expenditures. These reconciliations should list each reconciling amount, the source of original entry, and explain the reason for the reconciling item.

EXHIBIT

Alaskan Northwest Natural Gas Transportation Company
Adjusted Balance Sheet
As of January 1 and December 31, 1979
With Staff Adjustments Thereto

	Adjusted Balance 1-1-79 1/	Activity 1-1-79 Through 12-31-79	Staff Adjustments 3/	Adjusted Balance 12-31-79
Assets				
Plant in Service	\$ 587,147	\$ 381,453	\$ -	\$ 968,600
Less: Accum. Deprec. and Amort.	(54,519)	(103,823)	-	(158,342)
Construction Work in Progress	57,753,759	53,432,508 2/	(995,107)	110,191,160
Total Gas Plant	58,286,387	53,710,138	(995,107)	111,001,418
Cash and Other Assets	10,607,476	(5,137,625)	-	5,469,851
Total Assets	<u>\$68,893,863</u>	<u>\$48,572,513</u>	<u>(995,107)</u>	<u>\$116,471,269</u>
Partners' Equity and Liabilities				
Partners' Contributions Paid in:				
Calaska Energy Co.	\$ 5,675,000	\$ 5,061,667	\$ -	\$ 10,736,667
Pacific Interstate Trans. Co. (Arctic)	5,675,000	5,061,667	-	10,736,667
Pan Alaska Gas Company	5,675,000	5,061,667	-	10,736,667
Northern Arctic Gas Co.	5,675,000	5,061,667	-	10,736,667
United Alaska Fuels Corp.	5,675,000	5,061,667	-	10,736,667
Northwest Alaskan Pipeline Co.	20,865,609	5,061,667	-	25,927,276
Total Partners' Contributions.	<u>49,240,609</u>	<u>30,370,002</u>	<u>-</u>	<u>79,610,611</u>
Retained Earnings	12,494,252	12,301,507	(995,107)	23,800,652
Total Partners' Equity	<u>61,734,861</u>	<u>42,671,509</u>	<u>(995,107)</u>	<u>103,411,263</u>
Accounts Payable and Other Liabilities	7,159,002	5,901,004	-	13,060,006
Total Partners' Equity and Liabilities	<u>\$68,893,863</u>	<u>\$48,572,513</u>	<u>(995,107)</u>	<u>\$116,471,269</u>

- 1/ This is the adjusted balance, as shown in the second staff audit report on ANNGTC, after the proposed disallowance of \$42,224,461 pre-partnership expenditures and \$1,823,020 partnership expenditures.
- 2/ Includes AFUDC of \$11,920,788.
- 3/ Staff adjustments do not cover AFUDC for reasons explained in the introduction of this report.

**FEDERAL ENERGY
REGULATORY COMMISSION
WASHINGTON, D.C. 20426**

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MARIC

**UNITED STATES OF AMERICA
BEFORE THE
FEDERAL ENERGY REGULATORY COMMISSION**

**Alaskan Northwest Natural Gas
Transportation Company**

**Docket Nos. CP78-123
*et al.***

**RESPONSE OF ALASKAN NORTHWEST
NATURAL GAS TRANSPORTATION COMPANY
TO ORDER TO SHOW CAUSE**



February 13, 1981

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UNITED STATES OF AMERICA
BEFORE THE
FEDERAL ENERGY REGULATORY COMMISSION

Alaskan Northwest Natural Gas) Docket Nos. CP78-123, et al.
Transportation Company)

RESPONSE OF ALASKAN NORTHWEST
NATURAL GAS TRANSPORTATION COMPANY
TO ORDER TO SHOW CAUSE

Pursuant to Section 1.9(c) of the Commission's Regulations, Alaskan Northwest Natural Gas Transportation Company (Alaskan Northwest) hereby responds to the Commission's Order To Show Cause issued on December 15, 1980 in the above-captioned proceeding.

I. EXPENDITURES IN QUESTION

This proceeding began with the submission by Alaskan Northwest on February 2, 1979 of a request that the Commission review and approve for rate base purposes expenditures for the period prior to January 31, 1978 (Prepartnership expenditures) and from February 1, 1978 through July 31, 1978. Subsequent filings covered additional expenditures through March 31, 1980. In response to the original Alaskan Northwest filing, on April 18, 1979 the Commission issued Administrative Order No. 4 directing the Office of the Chief Accountant to conduct an audit of project expenses and report to the Commission. Three staff audit reports were attached to the above-referenced Order To Show Cause.

These reports summarized the auditor's recommendations with respect to the inclusion in the rate base of Alaskan Northwest of: (1) \$38.4 million expended by four of the participants in "Arctic Gas," whose affiliates or subsidiaries are now partners in Alaskan

Northwest 1/; (2) \$19.0 million expended by Northwest Alaskan Pipeline Company (Northwest Alaskan, now the operating partner of Alaskan Northwest) and its predecessor, Alcan Pipeline Company (Alcan); and (3) \$72.7 million expended by the Alaskan Northwest partnership itself.

The three audit reports cover expenditures made by members of Arctic Gas, Alcan and Northwest Alaskan prior to the formation of the Alaskan Northwest partnership on January 31, 1978 (Audit No. 1), and expenditures made by the Alaskan Northwest partnership between February 1, 1978 and December 31, 1978 (Audit No. 2), and from January 1, 1979 through December 31, 1979 (Audit No. 3). The table set forth below summarizes the recommendations of the three audit reports. The Prepartnership expenditures (Audit No. 1) are shown separately for Northwest Alaskan and Gas Arctic, the latter being the partners covered by the audit who were participants in Arctic Gas through their respective affiliates. 2/

1/ The four partners in Alaskan Northwest whose affiliates were participants in the Gas Arctic Northwest Project Study Group (Arctic Gas), are as follows: Pan Alaskan Gas Company, an affiliate of Panhandle Eastern Pipeline Company; Calaska Energy Company, a subsidiary of Pacific Gas and Electric Company; Pacific Interstate Transmission Company (Arctic), a subsidiary of Pacific Lighting Corporation; and, Northern Arctic Gas Company, an affiliate of Northern Natural Gas Company, a Division of InterNorth, Inc.

Three other partners in Alaskan Northwest also participated in Arctic Gas: American Natural Alaskan Company, an affiliate of Michigan Wisconsin Pipe Line Company; Tetco Four, Inc., an affiliate of Texas Eastern Transmission Corporation and Transwestern Pipeline Company; and, Columbia Alaskan Gas Transmission Corporation, an affiliate of Columbia Gas Transmission Corporation. While the three audit reports do not deal with the Arctic Gas expenditures of these three companies, on September 19, 1980 and February 13, 1981, the Alaskan Northwest partnership requested rate base approval for the Arctic Gas expenditures of these companies. Accordingly, the comments contained in this document relative to the Arctic Gas costs covered by the audit are also applicable to such costs of those three companies.

2/ The amounts listed for Audit No. 1 are amounts expended by the five companies prior to January 31, 1978, plus an allowance for funds used during construction (AFUDC) component through the January 31, 1978 formation date of the Alaskan Northwest partnership. The amounts listed for Audit Nos. 2 and 3 do not include AFUDC. Ultimately, all of the audit amounts approved for inclusion in rate base will reflect AFUDC to the date of operation of the ANGTS.

	<u>Accepted</u>	<u>Rejected</u>	<u>Needs Further Support</u>
Audit No. 1			
Northwest Alaskan Gas Arctic Members	\$15,190,609	\$ 193,236	\$3,664,342
	\$ -	\$38,366,833	\$ -
Audit No. 2	\$29,107,087	\$ 652,294	\$1,170,726
Audit No. 3	\$40,794,243	\$ 349,691	\$ 645,416

Subsequent to the issuance of the show cause order, the auditors advised Alaskan Northwest that further support had been provided to justify inclusion of \$4,387,770 in rate base, but that an additional \$509,082 would be recommended for rejection as a lobbying expense. In addition, the auditors have informed Alaskan Northwest that \$19,677 of the \$193,236 previously rejected in Audit No. 1 and \$130,931 of the \$652,294 previously rejected in Audit No. 2 would now be recommended for acceptance. With these revisions, the following amounts have been or will be recommended for acceptance, rejection, or still require further support:

	<u>Accepted</u>	<u>Rejected</u>	<u>Needs Further 3/ Support</u>
Audit No. 1			
Northwest Alaskan Gas Arctic Members	\$18,544,867	\$ 413,057	\$ 90,263
	\$ -	\$38,366,833	\$ -
Audit No. 2	\$29,905,309	\$ 655,962	\$ 368,836
Audit No. 3	\$41,180,141	\$ 484,677	\$ 124,532

II. SUMMARY OF POSITION

The projected capital cost of the Alaskan segment of the Alaska Natural Gas Transportation System is \$8.2 billion, in 1980 dollars. The audit reports involve the portion of such amount -- approximately \$130 million -- which was expended prior to 1980. That amount, and all amounts which must be expended to construct

3/ Alaskan Northwest is in the process of providing the materials which support inclusion in rate base of this amount. Alaskan Northwest has been advised that the auditors will submit a further report to the Commission covering the revisions set forth above, plus expenses not yet finally categorized.

the pipeline, are totally at risk until the ANGTS is ready for operation. Thus, the Commission's review and approval of these pre-1980 expenditures will establish a precedent for the rate base decisions to follow and, accordingly, is of great importance to the Alaskan Northwest partners. Because of the significance of this decision, it is imperative that the Commission keep in mind that the ANGTS is not a conventional pipeline which can be dealt with in a conventional manner.

The project is of great importance to the nation. It has encountered problems of unusual magnitude and unique nature; it has required many multinational approvals, including those by the President and Congress; and it has been the object of constant examination by a large number of public and private groups. Those unusual features have caused substantial expenditures. A decision allowing rate base treatment of such expenditures is appropriate for this unique venture. The treatment proposed here is consistent with the principles of just and reasonable ratemaking.

A. Expenditures By Arctic Gas Members

The expenditures of the former members of Arctic Gas, which as members of Alaskan Northwest continue to participate in the work necessary to complete the ANGTS, have made a direct contribution to ANGTS. Without such expenditures, the cost of that pipeline system would have been much larger, and its schedule delayed. Accordingly, inclusion of such expenditures in the rate base of Alaskan Northwest, and recovery of the expenditures by the Arctic Gas members, is just and reasonable.

The Arctic Gas expenditures were made for a broad scope of studies and presentations, as described in Section III below. The efforts to secure approval for a venture as huge and expensive as the Alaska gas pipeline were the subject of constant and active governmental and public attention. Full compliance with the requirements of all applicable statutes, regulations and judicial standards necessitated not only new, basic studies of the arctic environment, and of methods for the construction of pipelines and appurtenant facilities in such environment, but also the study and presentation for evaluation of all potentially feasible alternatives to the action proposed. Those requirements of a full examination of alternatives, and of detailed study of all aspects of the proposed project, were imposed by the National Environmental Policy Act, the Natural Gas Act, the Commission regulations under both Acts, and such court standards as those in City of Pittsburgh v. Federal Power Commission, 237 F.2d 741 (D.C. Cir. 1958). It was clear when Arctic Gas began its studies that the standards of those authorities would be strictly enforced by federal and state governmental authorities and the many private groups which participated in the decisional process. This proved to be even more true than anticipated, and the passage of the Alaska Natural Gas

Transportation Act of 1976 involved further requirements of study of alternatives and involvement of governmental agencies and other groups.

Accordingly, the work done by Arctic Gas was required, by law and legal processes, to be done before any Alaska gas pipeline could be approved. But the product of that work formed the basis of a thorough, searching decisional inquiry which resulted in the selection of a pipeline routing and configuration which will provide needed gas to consumers. The information developed and presented by Arctic Gas was used in the governmental examinations of an Alaska pipeline, and reduced the time and expense required for government studies. The adequacy of the decisional process met all legal standards. Thus, the Arctic Gas costs represent a portion of the necessary activities by the members of Alaskan Northwest which went into the process of selecting the route and other configurations of the Alaska gas pipeline, and of attempting to achieve the financing and construction of that pipeline. Those activities and costs have substantially contributed to the progress of the Alaska pipeline, and will continue to do so. They were prudent, good faith efforts and expenses of the companies involved, prudently undertaken to make possible the approval, financing and construction of an all-land pipeline to bring Prudhoe Bay gas to the contiguous states. The goal of the Arctic Gas members, like that of other participants in Alaskan Northwest, was and is to create such a pipeline in order to secure needed gas supply for the gas consumers which depend upon them.

The effort to build an Alaska pipeline continues and great progress has been made. A route and configuration for such pipeline has received federal governmental approvals in Canada and the United States, including such final federal approvals, and financing, necessary to construct portions of the southern Canadian and "lower 48" segments of the system on a "pre-built" basis. Construction has begun on these southern portions. The further steps necessary to secure final approvals and financing for the northern Canadian and Alaskan portions of the pipeline system are in progress. The costs which the Alaskan Northwest sponsors, including the Arctic Gas companies, have incurred and will hereafter incur, are part of the continuing efforts of those companies to secure gas from Alaska. Such costs are part of their continuing pipeline activities directed toward securing gas supplies for their customers. They have been, and will be, prudently incurred costs in legitimate, reasonable activities directed toward that goal.

It must be remembered that what Alaskan Northwest is seeking in this proceeding is inclusion of the subject expenditures in the rate base of the Alaska pipeline, which will only affect charges to consumers when that pipeline is ready to begin operations. That is the only request which has been made and thus is the only issue now involved in these proceedings. In view of the nature, quality and timing of the activities which

produced those costs, it is clear that it would be unjust and unlawful if the Arctic Gas companies were unable to recover the costs of the Arctic Gas activities. By having such recovery occur through inclusion of such costs in the rate base of the Alaska pipeline, those costs will be paid, as they should be, by those who purchase Alaskan gas. This is an entirely appropriate result.

Because of the process described in Section III, in which the early efforts of Arctic Gas, and then Alcan, each contributed to the necessary progress of the study, consideration and selection of a specific route and configuration of the Alaska pipeline, and the continuing efforts which those companies now are making to achieve the final approval, financing and construction of such pipeline, any past decision to disapprove unsuccessful project costs is not applicable here. This is not a situation in which efforts to build a pipeline to Alaska have been unsuccessful, with the result that the consumers of gas will not receive the benefits of gas from Alaska. Instead, the rate base treatment here requested will only occur when the Alaska pipeline is able to transport gas as a result of the efforts of the Alaskan Northwest sponsors.

The description of the course of efforts to achieve an Alaska pipeline which is set forth in succeeding sections of this document demonstrates that the efforts of the Arctic Gas companies, like those of Alcan, were a necessary part of, and prerequisite to, the work done by Alaskan Northwest to create the Alaska pipeline. The specific aspects of the way in which Arctic Gas met the requirements imposed by statutes and regulations of a full consideration of alternative routes for a pipeline to Alaska, and of methods alternative to pipelines for transporting gas from Alaska, will be shown fully below, as will the basic, generic research and planning carried on by Arctic Gas. Arctic Gas studied and presented the route proposed by Alcan, and it had been evaluated in an environmental impact statement and in hearings prior to the initial submission of the Alcan application in July, 1976. The result of the full compliance of Arctic Gas with all governmental requirements meant:

- a. Alcan was able to file its route proposal, which was ultimately selected, with a relatively short preapplication time, and it was only because of that timing that such application was able to be considered during the decisional process.
- b. Alcan was able to avoid the very large expense of study and documentation of the various alternative pipeline routes and transportation modes, so that the Prepartnership costs are much lower than they would have been if Alcan had done such work instead of Arctic Gas.
- c. Alcan was saved the necessity of immediately forming and funding a large group to perform the same functions, considering that only a group of companies could afford such an expensive venture.

- d. Alcan was not delayed in making its filing, due to the effort of Arctic Gas, which resulted in a substantial savings to consumers, as inflation and time value of money adds billions of dollars of cost. In relation to that, the rate base amounts here involved are small, indeed, and a very prudent investment in the Alaska pipeline.

The above examples, and those set forth in the subsections below, demonstrate two major factors in the issue here involved: (1) that the efforts of Arctic Gas, Alcan, the Arctic Gas companies, Northwest Alaskan and Alaskan Northwest, are all parts of the overall efforts to create an Alaska gas pipeline; and, (2) that the efforts of all of these parties made real and essential contributions to the vital national efforts to create such pipeline.

In both its Opinion No. 101, in Columbia Gas Transmission Corporation, Docket No. RP78-20, November 6, 1980, and its "Order Deciding Reserved Issues," Michigan Wisconsin Pipe Line Company, RP75-96 and RP76-100, December 19, 1980, the Commission considered the same costs incurred in Arctic Gas which are involved here. The Commission, in each case, stated a standard that would allow rate base inclusion of the Arctic Gas expenses by Alaskan Northwest: that such costs contribute to the project. The above discussion, and the more detailed description in Section III.A below, demonstrates that the activities of Arctic Gas, which produced such costs involved here, have contributed substantially to the progress of the ANGTS, and will continue to do so. Accordingly, it is just and reasonable that such costs be included in the rate base of Alaskan Northwest.

B. Prepartnership Expenditures Of Alcan And Northwest Alaskan, And The 1978 And 1979 Expenditures Of Alaskan Northwest

The Office of the Chief Accountant recommends that rate base treatment be rejected for approximately \$1.4 million of lobbying and public relations expenditures made by Alcan, Northwest Alaskan, and Alaskan Northwest. These expenditures relate primarily to the issuance of the President's September 1977 Decision and Report and Congressional ratification thereof, the passage of the Natural Gas Policy Act of 1978, and financial participation in the ANGTS by the State of Alaska.

The Chief Accountant's recommendation is based upon application of normal accounting practices to a project that, as shown below, is unique insofar as the regulatory process is concerned. First, the implementation of the project has been the result of the passage

of ANGTA, which drastically altered the selection process under the Natural Gas Act. The efforts of the ANGTS sponsors in the ANGTA selection process are no different than the regulatory expenses normally permitted in rate base by the Commission.

Second, legislation enacted by Congress in the past five years, including the ANGTA, the President's Decision and Report and Congressional ratification thereof, Reorganization Plan No. 1 of 1979, and the Alaskan National Interest Lands Conservation Act, has had and/or will have a major impact on the design, construction and operation of the ANGTS. Alaskan Northwest was required to participate in the legislative process leading to the passage of these Acts to protect not only its interests but those of the future gas consumers dependent upon the ANGTS. Finally, lobbying and public relations efforts were mandated by the multinational nature of the project, and the Congressional review and approvals required; and the sheer attention and controversy attracted by the project resulting in multiple and unusually extensive examinations and approvals by a variety of bodies.

In the context of all of the relevant factors, Alaskan Northwest submits that rate base inclusion of the amounts expended for lobbying and public relations is clearly justified. The Commission should also reject the recommendation that recovery be denied for charitable contributions made by the partnership. As will be demonstrated below, the partnership is entitled to recover these expenses under prior Commission precedent.

III. ARGUMENT

A. The Payments To The Gas Arctic-Northwest Project Study Group By The Members Of That Group Which Are Participants In Alaskan Northwest Are Appropriate For Inclusion In The Alaskan Northwest Rate Base

1. The Nature of the Arctic Gas Expenses in Question

Before demonstrating, in subsection III.A.2 below, the reasons why the Arctic Gas costs involved here meet the standards for inclusion in the rate base of Alaskan Northwest, it is useful to describe the nature, extent and use of the detailed studies and presentations for which those costs were incurred. Such discussion shows the strong contribution of the Arctic Gas activities to the prompt and economic development of the ANGTS.

Prior to the formation of Alaskan Northwest, Arctic Gas members were engaged in substantial studies over a period of about ten years to determine the feasibility of and to create an Alaska

gas pipeline. Study of a northern pipeline was begun by certain members of Arctic Gas in 1967, and expanded thereafter to focus upon a pipeline from Prudhoe Bay, Alaska. The Arctic Gas group expanded from three to twenty-eight members, and later was reduced by withdrawals to sixteen, at all times consisting of United States and Canadian gas pipeline, distribution, and production companies. 4/ The large amount of study, planning and presentation work which was directed by Arctic Gas to the Alaska gas pipeline required expenditures of \$154,849,500 (Canadian dollars). 5/ Only a portion of such costs are proposed to be included in the Alaskan Northwest rate base.

The Arctic Gas group made the first studies of the transportation of natural gas from Prudhoe Bay. The work involved in-depth studies of all aspects of the exceedingly complex gas transportation system. The application filed by Arctic Gas with the Federal Power Commission (FPC) in March, 1974, and accompanying applications filed with the Department of Interior and Canadian agencies, were the most extensive in history, and the hearing exhibits, testimony and data request responses filed thereafter, before, during and after the regulatory hearings, added huge additional amounts of information to the decisional process.

The Arctic Gas studies included the entire range of topics which were required to create a pipeline to transport natural gas from Prudhoe Bay to the "lower 48" states. Thus, the work included extensive studies of: (a) a large number of routes for a pipeline through Alaska and Canada to the contiguous states; (b) a large number of methods, other than such a pipeline, for transporting Alaskan gas to the contiguous states; (c) multiple environmental topics, some specific to the various alternative routes and transportation methods studied, but most of which are of a generic nature which involve questions and answers applicable to any arctic gas pipeline; (d) multiple engineering topics, applicable to northern pipelines and/or the other methods of gas transportation studied; (e) the gas reserves in the Prudhoe Bay field, and deliverability from such reserves; (f) contractual methods by which the services of an Alaska pipeline could be rendered and charged for under an appropriate tariff mechanism; and, (g) methods of securing the huge financial requirements of an Alaskan gas transportation system.

4/ From 1976 on, Arctic Gas consisted of eight United States pipeline and distribution systems, seven of which are members of Alaskan Northwest, and eight Canadian companies.

5/ Such expenditures paid the costs incurred by the four corporations through which Arctic Gas carried out its activities: Alaskan Arctic Gas Study and Pipeline Companies, and Canadian Arctic Gas Study and Pipeline Companies.

These studies formed the backbone of the Arctic Gas applications filed in 1974.

After the filing of such applications, the studies continued and were directed to: (a) making further progress toward demonstrating the feasibility of the primary method for the transportation of Alaskan gas selected by Arctic Gas, including further development and presentation of a large volume of engineering, construction, financing, tariff, gas reserve and environmental studies and testimony; (b) making further progress in determining the precise, detailed methods by which a gas pipeline from Alaska could be financed, designed and constructed, including the optimum specifications and construction techniques of the pipeline; (c) demonstrating the superiority of a land pipeline over the combined pipeline, LNG tanker method, including a detailed study of that method of transportation of the Alaskan gas; (d) further examination of the land route alternatives proposed; and, (e) gathering and distributing the information required by legislative, executive and regulatory bodies of the federal government and the states.

In mid-1976, an application was filed to build a pipeline from Prudhoe Bay, using the route which was ultimately approved by the U.S. and Canadian governments. The filing was by Alcan, in concert with Canadian filings by two Canadian companies. The applications of those companies utilized the same routing, in southern Canada and the "lower 48" United States, as did the Arctic Gas proposal, with different routing in Alaska and northern Canada. The Alcan route in Alaska and northern Canada had been previously studied and described in filings and evidence by Arctic Gas as one of its alternative routings. The result was that the Alcan route was familiar to decisionmakers and had already gathered some support. Therefore, that routing proposal was able to be considered and adopted within the time available within the constraints of the ongoing hearing schedule prescribed at the Commission and in the later decisional procedures.

The overall process by which a pipeline to transport Prudhoe Bay gas was approved was very extensive. The Arctic Gas proposal was the subject of extensive hearings before the Federal Power Commission (FPC), along with a pipeline plus LNG tanker proposal of El Paso Alaska Company (El Paso). At the same time, Arctic Gas pursued applications to the Department of the Interior and other agencies in the United States, and before the National Energy Board (NEB) and other agencies in Canada. After those processes had proceeded, and certain groups in Canada and the United States had expressed opposition to the Arctic Gas proposal, Alcan and its Canadian cooperating companies filed their applications before the FPC and Canadian agencies, respectively. Hearings and other governmental proceedings relative to such applications, and those then pending, followed in both nations. All these procedures required extensive preparation and expense.

On October 22, 1976, the Alaska Natural Gas Transportation Act of 1976 (ANGTA) became law. That Act provided that the selection of the transportation system for delivery of Alaska natural gas to the contiguous states would be made by the President of the United States, subject to approval of the Congress. Provision was made for a recommendation to the President by the FPC, and comments thereon by private parties and other governmental agencies. Following the passage of ANGTA, the Commission continued its ongoing proceedings, resulting in an Administrative Law Judge proposal that the Arctic Gas "prime" routing be selected. Thereafter, the Alcan proposal was modified in light of considerations raised, and the selection process proceeded pursuant to the requirement of ANGTA. The first step in the ANGTA selection process was the "Recommendation To The President" of the FPC on May 1, 1977, in which two of the four Commissioners then in office recommended selection of the Arctic Gas routing, and the other two Commissioners recommended the Alcan routing. Comments on such decision were thereafter made by various agencies.

On July 4, 1977, the NEB granted authorization for the construction of a pipeline on the Canadian portion of the route proposed by the Canadian companies supporting the Alcan route. On September 22, 1977, the President selected the Alcan route, and that selection was thereafter approved by the Congress.

Since that time, Alaskan Northwest has been formed to construct the Alaskan portion of the ANGTS. The partners of Alaskan Northwest are Northwest Alaskan, affiliated companies of the seven members of Arctic Gas which were named earlier and whose Arctic Gas costs are the subject of this section, and three other companies.

In the following subsections, a description of the various studies and expenditures of Arctic Gas is set forth which shows the way in which such studies met governmental requirements and formed a part of the approval and developmental process of the ANGTS. Such studies included examination of alternatives to the Arctic Gas proposal, since evaluation of alternatives is a specific requirement of the relevant statutes and regulations.

a. Alternative Pipeline Routes

To choose the best route, demonstrate that choice, and comply with statutory and regulatory requirements described above, Arctic Gas studied a large number of potential routings for an all-land pipeline. Those studies provided the basis for governmental analyses and avoided time consuming legal disputes over the question of whether alternatives had been sufficiently considered and legal requirements met. Those studies resulted in presentation of the major routings listed below, but there were also multiple variations for each of such major routes.

i. The route proposed by Arctic Gas across the Arctic-coastal plain and south along the MacKenzie River and on into Alberta. Several alternative variations of this route were among the required studies completed.

ii. A route offshore in the Beaufort sea, offshore Alaska and northern Canada, coupled with the MacKenzie River routing.

iii. A route through the Richardson Mountains south of the coastal plains in Alaska and northern Canada to a connection with the MacKenzie River route at a more southerly location.

iv. A routing south, rather than east, from Prudhoe Bay curving southeastward through the Yukon Flats, across into the Yukon and Northwest Territories, and into Alberta.

v. A routing south from Prudhoe Bay near the oil pipeline to a point near Fairbanks, then curving southeastward to the Alaska Highway and on into the southern Yukon, British Columbia and Alberta. This is basically the routing later urged as its primary route by Alcan and ultimately selected by the President and Congress as the route for the ANGTS, and was thus the subject of close examination by Arctic Gas.

vi. The pipeline routing south through Alaska to its southern coast, which was a part of the proposal to further transport the gas by LNG tanker from southern Alaska to California. This routing also was closely studied, since it was a focus of the first portion of the hearings, as proposed by El Paso.

These studies and the presentation of alternative routings were required and prudent for the Alaska pipeline and the decisional process related thereto. Such studies were particularly necessary under the requirements of the statutes and regulations described in section III.A.2 below, and under the requirements imposed in the hearing processes. Such factors, and the direct benefits of those studies to the governmental processes and to the choice of route ultimately made, will be described in subsequent sections.

b. Alternative Methods of Transporting
Prudhoe Bay Gas

The studies by Arctic Gas of methods for transporting gas, other than by gas pipeline, included the various methods which had been suggested and which seemed potentially feasible. Those "alternative modes" were: (i) separate studies of carrying liquid natural gas (LNG) by surface ship, by railroad, by submarine, by airplane, and by heliafloat; (ii) a LNG pipeline; (iii) a pipeline to carry gas in a "dense-phase" (but not as LNG); (iv) a pipeline

to carry methanol, and means to convert the gas to methanol; and, (v) a system to convert the gas to electricity and transport it in high voltage electric lines.

Each of the above studies were necessary under governmental requirements, and involved substantial expenditures, in order to produce enough detail to satisfy statutory and regulatory requirements.

c. Environmental Studies and Presentations

The Arctic Gas project carried on extensive environmental studies. In terms of subject matter, they included:

i. Zoological matters. These included studies of the types and extent of animal (bird, fish, ground mammals) populations in various relevant general areas, and also basic studies to determine what activities disturb the presence, breeding and feeding of various species, and methods by which the effects of such disturbing activities can be negated or mitigated. Such work involved experimental activities, as well as observational studies, many conducted over a period of years, which have contributed to the basic knowledge in these fields.

ii. Botanical matters. The activities in this category involved surveys of existing vegetation in the relevant general areas, extent of likely disturbance from planned activities, and ways to avoid such disturbance by route relocation, construction techniques and timing, and other means. Even more extensive and basic, however, were the lengthy experimental studies carried on to determine the best methods for revegetation of disturbed areas. This included not only testing of multiple existing species, but also experimental development, and then production, of new strains.

iii. Geological matters. Extensive surveys of soil and topography in the general areas of the various alternative routes were conducted. More basic and extensive, however, were seminal studies of the nature of northern soils, including permafrost, and methods of access to, and construction and maintenance of, pipelines in such soils. These studies were carried on at multiple locations, including four test sites in differing areas of Alaska and Canada.

iv. Meteorological matters. Studies of weather patterns were carried on relative to development of methods for avoidance of animal disturbance, and for carrying on supply, construction, operation, inspection and repair of the pipeline.

v. Water quality. Base line studies of water quality were made, as were studies of the extent to which various foreign substances could be introduced or increased without environmental damage. Water availability surveys were also made.

vi. Air quality. Similar base line and disturbance studies were carried on relative to air quality.

The above types of studies and presentations encompassed a wide variety of separate activities, most of which are of a basic scientific nature applicable to any northern pipeline project; indeed, to any human activity in the arctic, subarctic and other northern areas. The studies are original scientific work which made a substantial contribution to the nation's information and understanding relative to the arctic environment. Such information is not limited in applicability, and are available to arctic projects and activities, both private and governmental.

In summary, the environmental work, categorized by subject matter above, was directed to the following general purposes.

i. Basic, generic environmental work which is applicable to most, if not all, areas of the arctic and/or subarctic. This work was not site specific, but was applicable to problems occurring on all of the alternative routes studied, including the route ultimately approved for Alcan.

ii. Environmental work applicable mainly to one of the various "alternative routes" studied by Arctic Gas. As noted, it was necessary for such work to be done by someone, and Arctic Gas did it. One of such alternative routes was the Alcan route.

iv. Environmental work applicable to the route proposed by Arctic Gas. That route became an alternative to the Alcan route which was ultimately selected, and was extensively studied by Arctic Gas.

Study of each of the above topics was needed to secure and expedite the governmental evaluations of the ANGTS which were required, and also produced information beneficial to the decisional processes and to the ANGTS.

d. Design, Engineering and Construction

The pipeline design, engineering and construction studies were devoted to the same basic categories listed above relative to the environment. A substantial amount of the studies involved generic work devoted to optimization of pipeline sizing, pressure and materials. Arctic Gas did basic research on various

gradations of pipeline pressure, working with unprecedented pressures of 1260, 1440 and 1680 pounds per square inch absolute, and intermediate stages. This work involved the construction of test sites to test pipeline reaction at various pressures and sizes. It also involved the financing of pipe burst tests at established pipe testing installations, all to examine the interaction of pipe size, gas pressure and temperature. Seminal work on longitudinal fractures in high pressure pipelines was sponsored, and methods developed to prevent and/or limit such fractures. Study of methods of controlling slumping in pipeline operation in permafrost resulted in development of techniques for refrigeration of gas during transport. This in turn, required development of methods to avoid or control frost heave as a result of general conditions combined with the presence of the cold gas. Arctic Gas also did basic work with large pipe sizes, investigating sizes up to 56 inch O.D. and the metallurgical aspects.

Arctic Gas also carried on innovative studies in the areas of arctic logistics and construction. Various methods of transport of material to Prudhoe Bay and to portions of Canada were developed, as were methods for welding large diameter pipe in arctic conditions.

Many more examples of original work by Arctic Gas are available. The point here is that such work by Arctic Gas saved Alcan the substantial time and expense of performing such studies and is largely usable directly by Alaskan Northwest. Any work which related to routes not approved was also a necessary part of the study of alternatives, but the bulk of the work was not site specific.

e. Gas Reserves and Markets

In order to determine the capacity of the pipeline required, and to demonstrate the feasibility of an arctic pipeline, Arctic Gas expended substantial costs relative to study of Prudhoe Bay gas reserves and the U.S. markets for Alaskan and Canadian gas. Such work was required for the feasibility studies and net economic benefit studies which were required by the Commission hearings and Department of Interior evaluations, and was drawn on by the Alcan project, as well as Arctic Gas. The expenses were thus necessary for the governmental proceedings, and still provide an information base for the Alaskan Northwest project.

The expenses relative to Canadian, MacKenzie Delta gas reserves were necessary for the study of a pipeline to carry both Alaskan and Canadian arctic gas together jointly. MacKenzie Delta gas reserves are of importance to the ANGTS, since the Dempster lateral (for which an application has been filed in Canada) was an important aspect of U.S./Canadian negotiations relative to approval of the Alcan project.

f. Tariff and Financial Matters

Arctic Gas developed and proposed as part of its filing before the FPC, original and unusual tariff provisions, including a transportation tariff in cost of service form. The provisions of this tariff developed by Arctic Gas have been largely adopted by Alaskan Northwest to meet the needs of ANGTS. Similarly, Arctic Gas carried on extensive surveys of capital markets, and techniques to provide security assurances to debt owners, and cash flow to equity owners. The results of such surveys and studies were presented and explained extensively to the Commission, the Department of the Treasury, other governmental agencies and potential investors. All of this work made the necessary governmental evaluations and decisions feasible, and more economical. The principles, concepts and relationships were all related to the ANGTS, have been used by Alaskan Northwest, and help form a basis for further financing steps. Even specific, complex computer models developed by Arctic Gas were used relative to the Alaska pipeline by the Commission and other governmental bodies during and after the route selection phase, and provided the basis and foundation for the models now used by Alaskan Northwest.

g. Regulatory and Legal Work

In the course of presenting its project, and exploring alternative projects, including the route ultimately chosen, Arctic Gas incurred substantial regulatory and legal expenses. This was required to present the basic information and various alternatives which were required if any project is to be built. The governmental proceedings in which such expenses were incurred resulted in changes to proposals made and to the final selection of the routing and configuration for ANGTS which was ultimately decided upon.

h. Governmental, Civic and Public Relations

Because the Alaska gas pipeline proposals, and their consideration, were determined to be so important to the nation, they came to generate unique interest by governmental agencies in addition to the Commission. Thus, expenditures were incurred by Arctic Gas in dealing with various federal agencies, including the Interior Department, Department of Transportation, Environmental Protection Agency, Council on Environmental Quality, State Department and Department of the Treasury. Arctic Gas filed the initial application with the Department of Interior for a right of way across federal lands and thus activated that Department, as well as the Commission, to produce the Environmental Impact Statements which were the primary basis of compliance with the statutory requirements for such statements and of the decision made.

Arctic Gas also took the initiative in pressing for a pipeline-treaty between Canada and the United States, and expended funds in the drafting of proposals and other work to bring it to fruition.

The Alaska pipeline selection process was ultimately conducted pursuant to the provisions of legislation: ANGTA. Arctic Gas initially urged Congress to initiate the first legislation relative to the process, and worked for its passage. It developed into the statute which was ultimately passed. Substantial expense and effort was incurred in the work for such necessary legislation. Such expense was clearly justified, since that Act had the effect of greatly speeding the decisionmaking process for selection of the pipeline routing and configuration, and for securing necessary approvals, and substantially limited the scope of, and time required for, court review. This acceleration of schedule, particularly during current periods of high inflation, will avoid substantial additional costs to consumers.

The Alaska pipeline involves the traversal of multiple states and provinces, and thus involved communication and work by Arctic Gas with multiple citizen groups and governmental agencies. Such work was necessary in order for any project to be built in the states and provinces which will be traversed by the ANGTS, in view of the size and prominence of the project. This is explained more fully in Section III.2.d below, in specific relation to the audit report proposal.

Additionally, some of the costs incurred in this category were for the development of training programs for employees, and particularly for minority groups. Such programs have produced results valuable to Alaskan Northwest, and the techniques and methods developed in such programs are available and useful to that project. Similarly, the sociological studies and presentations of Arctic Gas removed the necessity for similar work by other projects, and provided the information to governmental decisionmakers on the various alternative routes of transportation which is necessary under law.

i. Other Costs

To direct and support the above described activities, Arctic Gas incurred administrative expenses, including executive salaries, massive reproduction costs of the work products described above, travel costs and other general expenses. Since the project was not an operating entity, most of the services of the persons whose salaries were charged to general or administrative categories were actually performed on the various activities described earlier. Staff salaries (as opposed to consultant costs) were generally not distributed to operating categories (such as environmental, engineering, legal, financial, etc.), simply as an accounting convenience, even though the work was largely performed for those categories.

Additional costs were incurred by necessary support personnel, such as secretaries, clerks, personnel workers and accountants, but that staff was small in size, and was essential to support the direct activities. Filing fees to governmental agencies were also included in this category. Finally, certain costs were incurred in termination of the Arctic Gas project after governmental decisions. Such termination costs were unavoidable and were either to make final payments for the specific activities described earlier, or were of the overhead variety necessary to support such activities.

2. The Costs Incurred By Arctic Gas Meet
All Standards For Inclusion In Rate Base

Alaskan Northwest submits that the above description of activities and costs shows that the Arctic Gas expenditures in question were prudently incurred, since, as described above and in Section d. below, they were made for necessary activities which benefited and greatly accelerated the selection process in both Canada and the U.S., and contributed to the Alcan project and the ANGTS itself, both in Alaska and in the "lower 48" states. As such, the costs meet the standards established by this Commission for inclusion in rate base and should be accorded such treatment.

a. The Arctic Gas Costs Were Prudent

The above description of the costs incurred by Arctic Gas demonstrate that such costs were prudently incurred in the effort to move from the general concept of an Alaska pipeline to an approved, completed pipeline. The larger part of the expenses were incurred to comply with governmental requirements, either to meet specific requirements of statutes and regulations, or to meet the information needs associated with the governmental approval process: to comply with data requests by government personnel and others, to provide required application information, and to meet the evidentiary requirements of the full hearing process. Those requirements were substantially increased by the huge size of the proposed project, and by the enactment of the National Environmental Policy Act and accompanying administrative supplementary action. The staffs of those agencies, and other parties, also participated actively in the proceedings, which contributed to the information testing and gathering process. Since multiple governmental approvals are necessary at both the federal and state (and provincial) levels, costs were also incurred in gathering and furnishing information needed to secure such approvals. The process of furnishing information for regulatory and other governmental processes involved work in depth to validate the plans made as being feasible and most appropriate, in practice as well as theory.

Unquestionably, the basic requirement for rate recovery -- that expenditures be prudently made for reasonable

activities -- has been met. It is appropriate that the recovery of such expenses be accomplished by inclusion of those expenditures in the rate base of Alaskan Northwest, since those expenditures were made as a part of the process of selection and ultimate approval of the routing of the ANGTS which will be utilized to bring Prudhoe Bay gas to markets in the lower 48 states.

b. The Benefits of the Arctic Gas Expenditures to the Decisional Process

The ultimate selection of the route proposed by Alcan came at the end of years of consideration of multiple alternatives: alternative methods of gas transportation and alternative routes and configurations for the gas pipeline method. As described earlier, all of those methods and routes were first presented by Arctic Gas. The other two proponents of projects alternative to the prime Arctic Gas proposal supported their individual projects, but Arctic Gas presented basic information on all of the reasonable alternatives. Thus, when governmental agencies were required to study the various possible methods and routes, their work was made substantially less extensive and expensive by the work done by Arctic Gas. This was true relative to the preparation of Environmental Impact Statements by the Department of Interior and the Commission, and of hearing presentations by the Commission staff on all of the topics covered, including environment, engineering, gas reserves, tariff and financing, markets and net economic benefits. Department of Interior economic studies utilized Arctic Gas developed costs and economic materials, and Treasury Department analyses used Arctic Gas presentations of facts and viewpoints. Submissions were also made by Arctic Gas to, and utilized by, the Department of Transportation, Department of State, Environmental Protection Agency and Council of Environmental Quality.

The Arctic Gas work was also used directly by decisional authorities, at the Commission and other agencies, and thus not only speeded the process but also contributed to the quality of the decisionmaking. The agencies which were aided by the Arctic Gas work, and related expenses, included not just the Commission, but also the Departments of Interior, Treasury, State and Transportation, the Environmental Protection Agency and the Council of Environmental Quality, and the Congress, plus state agencies in several states. The decisional processes of those agencies were also substantially improved to a very great extent by the unprecedented extensive efforts of the Arctic Gas project. The work -- and expenses -- of the Commission's staff was reduced as a result of the Arctic Gas work, as was the work of the other agencies. This saving of governmental expenses, to the taxpayers, is a very relevant factor here.

c. The Arctic Gas Activities and Costs Were
- and Continue to be a Necessary Ingredient
of the ANGTS

As previously noted, the route proposed by Alcan and its Canadian counterparts ultimately authorized for construction by the United States and Canadian governments had been studied earlier by Arctic Gas. The southern portion, in Canada and the contiguous United States, was the same routing and configuration proposed by Arctic Gas as part of its primary proposal, while the Alaskan and northern Canadian routing was the Arctic Gas "Fairbanks Alternative." It was the presentation by Arctic Gas which had allowed governmental agencies and other parties to examine that "alternative." It is clear that the Arctic Gas work contributed directly to the creation of the routing ultimately chosen, and the Alcan proposal of such routing was built upon the earlier study of that route as a result of the Arctic Gas work.

In addition, the Alcan filing of the ultimately selected route could not have been made as early as it was, and thus could not have been made in time to be considered in the limited time remaining in the decisional process, if the Arctic Gas work had not been done earlier. That fact rests only partly upon the earlier Arctic Gas consideration of the routing proposed by Alcan, as described above. Even more important was the work done and presentations made by Arctic Gas relative to all of the other alternative routes for pipelines, the alternative methods of gas transportation, the basic northern environmental, design, logistic and construction methods, gas reserves and deliverability, tariff and related methodology, and financing matters. If those matters had not already been studied by Arctic Gas, Alcan would have needed to do the work.

Since all of these materials had been developed and presented by Arctic Gas, the Alcan application was able to be prepared and presented in a relatively short time. Such timing would have been impossible if Alcan had been required to study alternative routes and methods, since Alcan simply did not have sufficient time to do that between the time of its decision to advocate the Alaskan Highway routing and the time it was necessary to file the applications in order to have them considered along with the application of Arctic Gas and El Paso in the hearings which were almost completed by that time. However, Arctic Gas had already complied with the legal requirements by insuring full consideration of all feasible alternative methods of gas transportation and pipeline routings, including the route it proposed and the route proposed by Alcan. Thus, Arctic Gas had insured that the decisional processes which selected the Alcan routing were able to be in compliance with:

- i. The requirement of the Alaska Natural Gas Transportation Act of 1976, P.L. 94-856, 90 Stat. 2904, 15

U.S.C. 719, et seq., that there be a full examination of the alternative methods of transporting Alaskan gas and other factors: volumes and deliverability of Alaskan gas, transportation costs, national gas supply and demand and alternative fuels, environmental impacts, safety and efficiency of design, construction schedules, financing feasibility, cost and expansibility of systems, impact on the national economy and national security, and international relations.

ii. The requirements of the National Environmental Policy Act of 1969, P.L. 91-190, 83 Stat. 852, 42 U.S.C. 4321, et seq., that the environmental consequences of major federal actions be fully evaluated, including an evaluation of the "alternatives to the proposed action."

iii. The requirements under the Natural Gas Act, 15 U.S.C. 717, that alternative proposals be considered, ^{6/} and under FPC regulations which require evaluation of all the factors relevant to pipeline location, design, construction and feasibility, including evaluation of the environmental consequences of proposals, and alternatives to proposals (18 C.F.R., Part 157, particularly Section 157.14).

In light of those requirements, the Arctic Gas activities were necessary and made a clear and major contribution to Alcan, and thus to the ANGTS, by enabling that routing to be selected. It was only because of the Arctic Gas activities earlier that the route ultimately selected was able to be presented for active consideration, and authorized.

The fact that Arctic Gas had done the large amount of work described above, so that Alcan avoided a duplicative effort, had a substantial effect upon the costs which Alcan was required to bear. The substantial amounts which Alcan expended would have been much larger if Alcan had been required to carry on the studies of alternative routes and alternative methods carried out by Arctic Gas, and the basic, generic work in environmental, design, construction, gas supply, financing, tariff and other relevant areas. Since the expenditures in the Alaskan Northwest rate base are much less than they would have been if Arctic Gas had not carried on its work, it is fair, and not burdensome to consumers, that the Arctic Gas costs be included in that rate base. The costs not only resulted from activities which reduced costs of others, but also made a major contribution to the selection and development of the Alaska pipeline, and will continue to do so.

^{6/} See, e.g., City of Pittsburgh v. Federal Power Commission, 237 F.2d 741 (D.C. Cir. 1958).

It also must be remembered that given the costs involved, a group of companies would have been required to do the Arctic Gas work if Arctic Gas had not done it. But formation of such a group at a later time, with subsequent performance of that work, would have delayed the Alaska pipeline substantially. And that delay, under the burden of constant inflation and money costs, would have added billions more dollars to the ultimate cost of the project.

The Arctic Gas costs thus clearly represent an economic savings in the construction of the Alaska pipeline, thus reducing the cost to gas consumers: incurrence of such costs avoided the addition of far larger sums to the ultimate cost of the project. Accordingly, it is equitable that the Arctic Gas costs included here, which are quite small relative to the total cost of the project, and are only a portion of the total Arctic Gas costs, be recovered by inclusion in the Alaskan Northwest rate base.

d. The Subject Audit Report Does Not Provide a Basis for Refusal to Include the Arctic Gas Costs in the Rate Base of Alaskan Northwest

The audit report states that the amounts which the Arctic Gas members expended and seek to include in the Alaskan Northwest rate base "were properly authorized in accordance with CAGSL (Arctic Gas) agreements, adequately documented and supported, and reasonably classified by cost categories." The report then goes on, however, to state its basic recommendation that not a single dollar of Arctic Gas costs should be allowed as rate base for the Alaskan Northwest pipeline.

The reasons why such audit report recommendation is wholly unjustified are apparent from the information set forth earlier in this document. It is also apparent, from a reading of the few relevant pages of the audit report, ^{7/} that incorrect factual conclusions have been reached, in part because of application of inappropriate policy and legal standards.

The table on page 13 of the report sets forth the total costs expended by Arctic Gas, divided into various "direct" and "general" cost categories, totaling almost \$155 million. Alaskan Northwest seeks to include in its rate base only that portion of such costs which were incurred by the former members of Arctic Gas which are now members of the Alaskan Northwest partnership. The table then purports to divide the total Arctic

^{7/} Only pages 13-16 and recommendation 4, page 27, deal with the basic subject of the Arctic Gas costs.

Gas costs into categories of "Possible Future Value or Usefulness" and "No Future Value," and to apply the overall relative percentages in each such category to the costs of the Arctic Gas members which are participants in Alaskan Northwest (table on page 15 of the subject report). Each of these steps is incorrect, as explained below.

The development of the two categories noted, which relate to "future value," shows a basic defect of the subject audit report. There is no requirement, in law or equity, that costs can only be recoverable if they are for activities which have future usefulness. Of what future use is a FERC filing fee, or an environmental impact statement for an already certificated project, or studies of rejected alternatives, or, for that matter, any costs expended for past activities? They have no "future value" if that term is erroneously interpreted as restrictively as the audit report does. More accurately, however, they all have the same future value: that the project in question, which will produce future value, would not have come into being, or would have been delayed and made more expensive, if the costs had not been incurred. The Arctic Gas costs fall into that latter category. As demonstrated fully above, they were expended for activities which were an integral and necessary part of the overall process of creation of the ANGTS. The governmental processes would have been delayed and more expensive if Arctic Gas had not done its work, which would have added to the cost of the Alaska pipeline. Further, a pipeline along the now approved routing would not have been certificated without the Arctic Gas activities, and if those activities had been less extensive than they were, the Alcan proposal would have not only been more expensive, but also delayed and not in time for consideration in the decisional processes. In this regard, the Arctic Gas studies required almost ten years, while the Alcan application, building upon Arctic Gas work, was prepared in a relatively short time. The Arctic Gas activities thus clearly, to use the Commission's formulation of the standard, "contributed" to the creation of the Alaskan Northwest pipeline. In that more accurate sense, those activities have both past and future value to the Alaska pipeline, so that when such pipeline comes into being, the costs in question should be included in its rate base.

The Audit Report does not define its "future value" standard. It is impossible to know just how the categorization of costs was done by the audit, since no detail has been presented in the report. 8/ However, examination of the four reasons given

8/ The auditors presumably made decisions as to the multitude of Arctic Gas cost items, to fit each into the audit report categories. Examination of those decisions, even if the information which would allow such examination were now available from the auditors, would not be productive, since those categories are not correct or appropriate, and thus not relevant.

at pages 14 and 15 of the report for viewing costs as having "no future-value" gives some indication of the rationale used. Those standards are not appropriate.

The first "disqualifying feature" discussed (a), rules out expenditures which "relate to the specific design, location, siting, and other items unique to the unsuccessful route." Such expenditures are alleged to "have no specific direct provable relationship or future benefit to the approved Alaskan section of ANGTS." That formulation rests upon the erroneously restrictive standard discussed above. As has been explained, it was legally necessary for any Alaska pipeline to be approved, that all feasible alternatives be examined and presented. The route later proposed by Alcan was earlier studied and presented by Arctic Gas. The Arctic Gas routing later became an alternative to the routing proposed by Alcan, which was ultimately selected, and like all the alternative routings presented by Arctic Gas, was necessary to the decisional process. No pipeline could have been approved without such presentation of alternatives, which allowed selection of the route chosen. Moreover, it must be recognized that if Alcan had had the time to do the work, the costs of such work would be in the Alaskan Northwest rate base on that basis, at the higher level of costs which the burden of inflation would have caused, with increased cost to the consumer. Thus, it is totally inappropriate to allege that Arctic Gas expenditures relative to the route it proposed, or any other route, had no "relationship or future benefit" to the Alaskan Northwest pipeline.

Such a conclusion also totally overlooks the basic scientific nature of much of the work done by Arctic Gas. Since the proportions of the costs which the audit report classifies as having "Possible Future Value" is so small, it is obvious, even without detailed information, that the cost of most, if not all, of such basic, generic work done by Arctic Gas has been classified as of "no future value." That conclusion is inaccurate, too, and also overlooks the contribution of such activities to the decisionmaking process.

The second allegedly "disqualifying feature" (b) listed by the audit report is that some expenditures are purportedly "duplicative to other expenditures specifically related to the approved Alaskan section of the ANGTS," and specific reference is made to "filing fees and related payments to the various U.S. and Alaskan governmental bodies." Again, this category does not recognize the historical development of the proceedings, nor the importance of the Arctic Gas activities to the final selection of an approved routing. As described above, the early filings by Arctic Gas, which produced the governmental fees in question, were a necessary part of the selection process, and made the approved route possible. Without Arctic Gas, the entire process would have

been greatly delayed, and different. For example, the environmental impact statement process centered very heavily upon the Arctic Gas-filing and the bulk of the governmental fees resulted from that activity. The result was that the time and fees relative to the Alcan proposal, when later filed, were vastly reduced. Thus, such necessary expenditures in the process of the approval of an Alaska pipeline -- paid by Arctic Gas, as well as Alcan and later Alaskan Northwest -- are valid rate base items for Alaskan Northwest.

The third category of "disqualifying features" (c) proposed by the audit report stems from a conclusion that "similar activities or task related expenditures have never been considered capitalizable items by the Commission in the past." The report states that such costs "are related to lobbying and public relations type of activities." It is not known what amount of Arctic Gas costs the report puts into each of those categories. What is clear is that the singling out of those activities discloses a lack of information as to the activities which it was necessary for Arctic Gas -- and Alcan and now Alaskan Northwest -- to carry out in order to have an Alaska pipeline approved and constructed. As discussed in more detail in Section III, Part B below, the ANGTS, like its oil predecessor, has been surrounded by publicity and controversy since it was conceived. Opposition to any Alaskan gas pipeline arose almost immediately, and remained active for an extended period. State agencies, including legislatures, held hearings and expressed interest in regulating and changing the line, or imposing requirements short of "regulation" in such areas as procurement and employment. Other private groups and state agencies wholly approved of an Alaska pipeline, but supported the Arctic Gas or Alcan or El Paso routings, and requested information from the project they favored. Those groups repeatedly contacted federal agencies and legislators, and multiple examinations of all aspects of the pipeline proposals were made by various federal agencies and legislative committees. The passage of ANGTA, which expressed congressional recognition of the critical need for Alaskan gas, and which altered the method for selecting a single project and route, heightened the need to deal with all the private and governmental groups and agencies which involved themselves in the decisional process. If such activities had been avoided there would be no Alaska pipeline; opposition and pressure for constant change would have smothered the effort, and governmental agencies which had a legal right to be informed would have been unsatisfied, and would not have acted. In this context, the public and governmental affairs expenditures of Arctic Gas, Alcan, Northwest Alaskan, and Alaskan Northwest were an essential part of the process of having approved and constructed the largest private construction project in history.

Arctic Gas also developed the concept of an agreement between the governments of Canada and the United States relative to the Alaska pipeline and provided initial drafts and worked for

adoption of the concept by the two governments. Such an agreement was devised and executed by the governments and forms a basis for the ANGTS. Finally, the governmental and public affairs expenses of Arctic Gas included efforts which led to and supported passage of the ANGTA. Effort was needed to achieve passage of such unique legislation to provide for a single gas project, and to assure that its terms did not make creation of the pipeline impossible. The selection and limited judicial review features of such act speeded the process of selection, and thus reduced the cost of the ANGTS. In fact, the existence of ANGTA emphasizes the point made here. The Alaska pipeline is a unique project, and the activities necessary to bring it into being -- and the costs therefor -- are unusual and extensive. The audit report does not take account of that fact.

The final "disqualifying feature" (d) proposed by the audit report relates to expenditures which the report states "specifically relate to Canadian: (1) line design or layout, (2) land or rights of way, (3) gas supply, (4) regulatory filings." Such a category is not justified, as will be explained here. But initially, it raises the question of whether there has even been an accurate identification of what Arctic Gas expenditures actually "relate to Canada." This is because in order to understand the funds expended by the Arctic Gas project "in Canada," it is necessary to understand the basic organization of that project. For reasons partly historical and partly relating to the relative mileages in Alaska and Canada, the Arctic Gas project was organized initially and mainly in Canada. The portion of the staff which was physically located in Canada was about five times as large as that located in the United States, while the major engineering and environmental consultants were also Canadians. Thus, Canadian staff and organizations did much of the work described above, relative to both the United States and Canada. This included pipeline design, including the nonsite specific (generally applicable) work done, as well as the generic and seminal environmental work described above. Financial planning was coordinated in Canada for both U.S. and Canadian portions, and substantial portions of the necessary executive and support personnel were in Canada. Canadian witnesses testified extensively before the Commission, relative to both Canadian and U.S. portions of the project, and before other executive agencies and before Congress. Most of the work performed and developed by the Canadian, as well as American, staff and consultants of Arctic Gas, was presented in both the Canadian and U.S. regulatory proceedings and was necessary for a full evaluation of the various alternative projects. What is necessary to note here is that the site of preparation of work, and the nationality of the worker, are irrelevant to the question of the necessity and usefulness of the work, and resultant work product, to the Alaska pipeline project and to the necessary processes which were required before such project could be approved.

Even if, however, there were an accurate, and not overstated, identification of work which actually was related "only" to Canada, such categorization would be illusory, because the Alaska pipeline is a joint United States, Canadian project, to carry Alaskan gas and later Canadian gas. The project could not exist without approval of the Canadian, as well as United States, portion of the line. Thus, the design, land rights, regulatory proceedings and approvals of the NEB and other governmental agencies, and all other aspects of the Canadian portion of the pipeline, are essential parts of the overall Alaskan project. Therefore, the planning work was essential, as were the extensive proceedings both before the NEB of Canada and the "Berger Commission," including comparative hearings, as in the United States. Just as the U.S. proceedings necessarily considered the Canadian, as well as U.S., portions of the pipeline, as well as the principles, information, and procedures common to both, so did the Canadian proceedings consider the U.S. parts of the project and the common matters.

The Arctic Gas proposal was not for the principal benefit of Canada. The proposal was to carry Alaskan gas to the United States, Canadian gas to Canada, and any surplus Canadian gas to the United States. There were benefits to Canada under the Arctic Gas proposal, just as there are from the ANGTS, but the United States is the primary beneficiary of both proposals, as is made clear by the net economic benefit studies presented by Arctic Gas and governmental agencies. That leads to another important fact. Consideration of the Canadian portions of the project by U.S. governmental authorities was necessary and extensive. United States authorities even took the position that the environmental effects of the project on Canada must be considered. In addition, the feasibility of the design, configuration, construction and financing, and the costs, of the Canadian portion of the pipeline were scrutinized as fully by U.S. authorities as were such features relative to the United States portions of the pipeline. Therefore, the work done relative to Canadian portions and aspects of the pipeline was as essential a prerequisite to the approval and construction of the U.S. portions of the pipeline as was examination of the U.S. portions (and as was examination of the U.S. as well as Canadian portions in Canada).

That is equally true relative to work done regarding routes in Canada other than the route ultimately selected, and regarding Canadian gas reserves and deliverability. Canadian gas was an essential element in the routes which were alternative to the route ultimately approved, since the plans for the "Dempster Lateral" connection in Canada to connect northern Canadian gas reserves to the Alaskan Northwest pipeline are an integral part of the approvals of the Alaska pipeline by Canada. All of the routings in Canada -- that ultimately chosen and the alternatives -- were a necessary part of the planning, selection and approval processes,

as explained earlier. It must again also be recognized that much of the generic, basic work done by Arctic Gas will be used on any arctic project and the location of the work done is irrelevant.

Finally, it should be noted that the table on page 13 of the audit report shows almost \$14 million of expenditures as having "Possible Future Value or Usefulness," while at page 16 of the audit report, it is stated that even though "the audit indicated that \$4,261,560 of prepartnership expenditures may have possible future value to the approved Alaskan section of the ANGTS, no value at all has yet been demonstrated." From that terse and unsupported statement, the audit report moves to the conclusion that none of the Arctic Gas costs should be included. It is totally unclear what kind of showing the audit report envisages to "demonstrate" "future value," so that it is unclear what the ultimate position of the audit staff on such amounts will be. However, as shown earlier in this document, the "future value" rationale is not applicable and the audit categorization of costs is not applicable or accurate.

3. Prior Recovery Of Arctic Gas Costs By
Arctic Gas Companies And Their Use Of
Such Costs As Tax Deductions

The treatment of Arctic Gas costs in the rates of the Arctic Gas companies has differed between companies and for differing periods of time. Some of the companies have recovered a portion of such costs, but none has recovered all of its Arctic Gas costs. The efforts of Arctic Gas companies to recover, in their own rates, some or all of the expenditures which they have made for Arctic Gas costs does not detract from the fact that it is appropriate that such costs be treated as a part of the rate base of Alaskan Northwest. However, the Arctic Gas members do not intend, nor have they ever intended, to attempt to recover more than their investment in Arctic Gas, plus AFUDC; and, they will take the necessary steps to avoid that result when it is possible to know what those steps are. They have been forced to pursue multiple methods for recovery of such costs, because it has never been certain that any one method would be successful. It is still not certain that the method proposed herein will be successful, and the method will only be effective when the Alaska segment of the ANGTS is ready for operation. Accordingly, certain Arctic Gas members have felt it necessary to continue to attempt to recover such costs in their own rate proceedings in the meantime, and still believe such is necessary, because to abandon such efforts could be to waive rights which they may have a duty to exercise.

For purposes of these proceedings, however, it is the following facts which are significant.

i. The Arctic Gas costs should be recoverable in gas rates, because they are the costs of prudent, necessary activities which were reasonably directed to the securing of natural gas supplies for gas consumers served by each Arctic Gas member. Thus, recovery in the rates of each of those companies would be appropriate.

ii. However, the most appropriate method of recovery is for Alaskan Northwest to include such costs in its rate base, so that such costs will be recovered in the rates paid for Alaskan gas by the consumers of such gas in proportion to their share of the Alaskan gas supply.

iii. When that occurs, and the Arctic Gas members are assured recovery of their costs, each of such Arctic Gas members or their affiliates will take such steps, by reduction of their own rates or refunds or both, as is appropriate to their circumstances, to return to their customers any amounts which the customers have paid relative to such Arctic Gas costs which are to be recovered through inclusion of the Arctic Gas costs in the Alaskan Northwest rate base. This assures no "double recovery" of the costs in question.

The Arctic Gas members would have no objection to the inclusion by the Commission, in any order approving inclusion of the Arctic Gas costs in the Alaskan Northwest rate base, of an appropriate condition which would direct that the steps discussed in iii. above be taken to avoid any over-recovery. Such condition would need to be flexible enough to provide for the individual circumstances of each Arctic Gas member. Such a condition would, in a different manner, achieve the goal of avoidance of "double recovery" which underlies Recommendation No. 7, at page 28, of the subject audit report.

The subject audit report recommends that the "tax benefits already realized" by certain Alaskan Northwest partners (the report lists "the parent companies of Pan Alaskan, Northern, and Pacific") which have "claimed the prepartnership CAGSL (Arctic Gas) expenditures as tax deductions for Federal income tax purposes, thereby reducing their tax liabilities for prior years" be reflected in Alaskan Northwest's rate base. The issue of the deductibility of such expenditures is being considered on a national basis by the Internal Revenue Service and the audit report recognizes that "the dispute has not yet been resolved" (footnote 13, page 26 of Show Cause Order). When there is a final resolution, the Arctic Gas companies will then propose appropriate steps for Commission consideration, if any are needed to avoid "double recovery."

4. Calaska Expenditures Exchange Rate

The audit report recommends disallowing rate base treatment for \$1.3 million of Calaska's Prepartnership expenditures on the theory that the wrong exchange rates were applied to value the investment in U.S. dollars. Alaskan Northwest opposes this recommendation for the following reasons. First, Calaska's percentage share of the investment in, and assets of, Arctic Gas is identical to that of the other Alaskan Northwest partners which are seeking recovery of their or their affiliates' respective investments in Arctic Gas through the partnership. All of the Arctic Gas participants, whether Canadian or U.S. companies, made their investment in Arctic Gas in Canadian dollars. The sole difference between Calaska and the other partners seeking recovery of their Arctic Gas investment is that unlike the other partners, the Arctic Gas investment claimed by Calaska was made through a Canadian affiliate (Alberta Natural Gas Company Ltd. [Alberta Natural]) in Canadian dollars and recorded on Alberta Natural's books in Canadian dollars. In the case of the other partners, the investment was made through U.S. affiliates -- also in Canadian dollars, but recorded on their books in U.S. dollars based on the exchange rate in effect at the time each Canadian dollar contribution was made.

Second, Alaskan Northwest proposes to value Calaska's share of the Arctic Gas investment on the same basis as that of the other partners seeking recovery of their Arctic Gas investment through the partnership -- i.e., based on the exchange rate in effect at the time each Canadian dollar contribution in Arctic Gas was made by Alberta Natural. This valuation methodology is justified by the fact that the investment in Arctic Gas attributable to Calaska and these other partners was shared in equal proportions among their affiliates as members of Arctic Gas, and the ownership of the Arctic Gas assets is still in such equal proportions.

Third, the audit report has ignored the fact of equally shared ownership and interest in Arctic Gas. The report looks solely to the question of the exchange rate in effect at the time a separate and distinct, albeit related, transaction concerning Alberta Natural's investment in Arctic Gas took place -- namely, the reimbursement of Alberta Natural in Canadian dollars by three U.S. companies (Pacific Gas and Electric Company, Pacific Gas Transmission Company and The Montana Power Company) for approximately 81.5% of the Arctic Gas contributions made by Alberta Natural, pursuant to a side agreement among the four companies. Contrary to the audit report, the timing of that reimbursement transaction, involving an exchange of U.S. to Canadian dollars, is not relevant to the proper valuation of Calaska's share of the investment in Arctic Gas.

Finally, adoption of the audit report recommendation would result in reducing the value of one partner's assets (i.e., Calaska's) solely because of the difference in the timing of U.S. to Canadian dollar exchange transactions that, in any case, were intended to accomplish different purposes (an investment in Arctic Gas in the case of the other partners versus partial reimbursement for that investment in Calaska's case). The audit report proposal would have the effect of arbitrarily transferring a part of the assets attributable to Calaska to the other partners affiliated with Arctic Gas and now seeking recovery of their investment through Alaskan Northwest. However, Calaska's share of the Arctic Gas investment is the same as that of each of the other similarly situated partners and should be so recognized.

5. Pacific's Interest Reimbursement

In their report to this Commission, the auditors recommended a reduction of \$23,375 in Pacific's Prepartnership, Alaskan Northwest accounts due to interest reimbursement received by Pacific. Inadvertently, such a reduction had not been previously recorded. Therefore, Pacific does not object to the proposed reduction of \$23,375 and its future Alaskan Northwest accounts will be adjusted accordingly.

6. Conclusion As To Arctic Gas Costs

The Arctic Gas companies undertook the original efforts to create an Alaskan gas pipeline. Those efforts have become part of a continuous effort of the Arctic Gas members of Alaskan Northwest, other companies, and governmental agencies to achieve that result. The costs of the Arctic Gas activities were prudently incurred for work which was essential to the planning and approval process, providing required information to government agencies and to other participants in Alaska pipeline efforts. Such work reduced the expenses of Alcan, and thus of Alaskan Northwest, and materially advanced the date that the ANGTS could be approved and constructed, thus reducing the cost of the pipeline.

By any standard, the Arctic Gas activities made a clear contribution to Alcan and the ANGTS. It is not only appropriate that the costs of such activities be included in the Alaskan Northwest rate base, but it would be totally unjust if the Arctic Gas members were required to bear such costs. They were expended in an effort to secure Alaskan gas for the nation, and that result has been approved by the government as a national goal. Those companies have never been recompensed in their rates for any risk of being forced to bear such costs: the limited, regulated return allowed to such companies does not allow them to undertake such risks. To require the Arctic Gas companies to bear such costs

themselves would not only be unlawful 9/ but would discourage the bearing of risks in their continuing contribution to the Alaska pipeline effort and to other innovative gas supply efforts.

It is only when the Alaska segment of ANGTS is ready for operation that the costs in question will be recovered under the proposal here in question. Recovery in that way will be no wind-fall: it will provide the companies with a much less favorable result than they could have achieved through an alternative investment. They have contributed to creating an Alaska gas pipeline, and it is fully justified that the consumers of Alaskan gas bear the costs of the Alaska pipeline, including the costs here involved.

Alaskan Northwest believes that the facts set forth above show that the Arctic Gas costs meet the standards for inclusion in its rate base. However, we stand ready to furnish further information relative to the nature and extent of such costs, and the reasons they were incurred, if the Commission so desires, and reserve the right to do so if the Commission believes that further information is required to grant the relief requested herein. Alaskan Northwest believes, however, that it has demonstrated that the Arctic Gas work constituted a very substantial contribution to the ANGTS, and that the costs of such work were prudently incurred. It is submitted that oral argument should be held before the Commission if there is any doubt on that question.

Accordingly, it is respectfully requested that Alaskan Northwest be allowed to include in its rate base the costs paid to Arctic Gas by the partners in Alaskan Northwest which are members of Arctic Gas, plus AFUDC.

9/ Since the costs paid by Arctic Gas members were prudently incurred in a reasonable effort to secure gas for their customers, they must be recoverable either from Alaskan Northwest, and thus from consumers of Alaskan gas, or from the consumers served by each of the Arctic Gas members. Recovery of such costs cannot be denied. See, e.g., *Mississippi River Fuel Corp. v. FPC*, 163 F.2d 433, 437 (D.C. Cir. 1947), *Pub. Serv. Comm'n. of N.Y. v. FPC*, 467 F.2d 361, 370 (D.C. Cir. 1972); *Bluefield Waterworks & Improvement Co. v. Pub. Serv. Comm'n. of W. Va.*, 262 U.S. 679, 692-93 (1923), *FPC v. Hope Natural Gas Co.*, 320 U.S. 591, 603 (1944), *Permian Basin Area Rate Cases*, 390 U.S. 747, 756-762 (1968).

B. Rate Base Treatment For The Prepartnership Expenditures Of Alcan, Northwest Alaskan, And The Alaskan Northwest Partnership Expenditures For 1978 And 1979 Should Be Allowed

1. Lobbying Activities

The Chief Accountant recommends that lobbying expenditures of Alcan, Northwest Alaskan and Alaskan Northwest, totalling \$1,056,587, be disallowed and recorded in Account 426.4, a non-utility expense account. These expenditures relate to: (1) the passage of ANGTA and the approval of the President's Decision; (2) passage of the Natural Gas Policy Act of 1978; (3) State of Alaska participation in financing the Alaskan segment of the ANGTS; and, (4) general efforts on behalf of the project before Congress, such as the Alaska Lands bill.

This recommendation fails to acknowledge the changes in the regulatory process brought about by ANGTA and other congressional actions, such as approval of the President's Decision, acceptance of Reorganization Plan No. 1 of 1979, and the special treatment accorded Alaskan gas and Alaskan gas costs in the NGPA. Part of this legislative process involved the preparation and presentation by the sponsors of considerable information, studies, reports, and briefings in response to requests from concerned legislators, their staffs, and congressional committees with oversight responsibilities. While these actions may have been before Congress, and were therefore categorized by the auditors as lobbying, the Commission should adopt a policy for the ANGTS which recognizes that expenditures on such matters should be allowed rate base treatment, just as if the sponsors had performed the same tasks in answer to questions posed by the Commission or its staff. In the unique situation of ANGTS, in which Congress plays such an important role either as a legislative body or through congressional staff inquiries and requests, these expenses should be perceived as the functional equivalent of Commission and Commission staff efforts during a certification proceeding. This is most certainly true of expenditures associated with the lobbying activities questioned by the Chief Accountant.

a. The Passage of ANGTA and Approval of the President's Decision

ANGTA was designed to ensure expeditious completion of the ANGTS, thereby reducing the cost of gas to consumers. In view of this end result, it is difficult to imagine a more acceptable type of cost for rate base treatment than the expenses associated with approval by Congress of the ANGTA. Additionally, because ANGTA drastically amended the normal certification process

by requiring a Commission recommendation, Presidential Decision, and Congressional approval, the outcome of the competitive application procedure was in doubt until Congress acted by Joint Resolution. Alaskan Northwest has no doubt that recovery of the costs incurred in pursuing the selection process to conclusion, had it taken place before the Commission instead of Congress, would be allowed. Congressional approval under ANGTA was the same type of procedure, only before a different forum, and this change of venue was the choice of Congress in ANGTA, not the election of the sponsors. Thus, since these lobbying costs were identical to precertification regulatory expenses normally allowed by the Commission, such costs should be permitted in rate base as legitimate rate base expenditures.

b. NGPA

Coincident with the ANGTS selection process before the Commission and the Congress in 1977, the Congress was engaged in a lengthy debate concerning the future price of natural gas, including sales from Alaska. Specifically, in April, 1977 the President submitted to Congress the National Energy Act, a portion of which dealt with natural gas matters. Because the two houses approved divergent pieces of legislation on this subject (H.R. 8444 and S.2104), the two bills were submitted to conference. After a protracted debate, the conferees were able to agree on a compromise proposal, and on November 9, 1978 Congress passed the Natural Gas Policy Act of 1978. Title I, Section 109(c)(4) of that Act established the price for the sale of natural gas produced at Prudhoe Bay, Alaska, and Title II, Section 203(a)(8) and (9) and Section 208 exempted for the most part the cost of producing, transporting and distributing Alaskan gas from the incremental pricing provisions of the NGPA. That Act also addressed the issue of Alaskan gas production-related costs, including establishing the parameters for Commission review and approval of the costs of processing and conditioning Alaskan gas. 10/

The Commission is well aware of the wide variety of natural gas pricing issues considered during the lengthy and far ranging debate that resulted in the enactment of the NGPA. Simply by referring to the economic analyses in the President's Decision (pp. 44-46, 174-180), it is obvious that any pricing question concerning Alaskan gas has a vital impact on the project. Consequently, since Congress was the forum in which this decision was to be made, and since the decisions affected the ANGTS, Alaskan Northwest found it necessary to participate in all aspects of the NGPA congressional debates. As shown below, the cost of this effort is a legitimate rate base expenditure under the Commission's accounting regulations.

10/ See 124 Cong. Rec. S. 16257 (daily ed. Sept. 17, 1978).

The Office of the Chief Accountant recommends disallowance of rate base treatment for the costs associated with the above lobbying effort, and the proposed assignment of such costs to Account 426.4. This ignores the fact that Account 426.4 provides that such account:

shall not include such expenditures which are directly related to appearances before regulatory or other governmental bodies in connection with the reporting utility's existing or proposed operations. (Emphasis added.)

This is a perfect description of Alaskan Northwest's lobbying activities on the NGPA. Furthermore, if the Commission, rather than Congress, had set a producer price for the sale of Alaskan gas, Alaskan Northwest would have participated fully in that proceeding to insure that the rate allowed would not adversely affect the marketability of the gas and the financeability of the project. The expenditures by the partnership before the Commission for this purpose would have been allowed rate base treatment. The fact that Congress exercised its authority to regulate sales of gas in interstate commerce, rather than delegating such authority to the Commission, should not cause a different result. Therefore, the lobbying costs connected with the NGPA should be capitalized.

c. State of Alaska

The Commission considers project financing when reviewing a certificate application under Section 7(c) of the Natural Gas Act. (18 C.F.R. § 157.14(a)(14).) In addition, Section 5(c)(8) of ANGTA, 15 U.S.C. § 719c(c)(8) required the Commission to discuss the "feasibility of financing" in making its May 2, 1977 Recommendation to the President, and also required other agencies to discuss the "sources of financing for capital costs," in their July 1, 1977 comments to the President on the Commission's formal recommendation. See ANGTA § 6(a)(5), 15 U.S.C. § 719d(a)(5). Taking these concerns into account, the President's Decision includes a direction that the successful applicant must "... make the final arrangement for all debt and equity prior to the initiation of construction." 11/ The Decision also found that a significant financial participation by the State of Alaska to the ANGTS would be "... in the interest of the State, the Nation and the expeditious construction of the project." 12/

11/ Decision at 36.

12/ Id. at 119.

In view of the President's findings, the project sponsors attempted to convince the State of Alaska, through the legislative process, to provide financial support in aid of project financing. Under Alaskan law, this type of activity may not be undertaken without approval of the state legislature. ^{13/} As with the lobbying costs discussed earlier, it seems apparent that the auditors would not have recommended inclusion of these costs in Account 426.4 if the Alaskan legislature had been a state regulatory body. The fact is, however, that a regulatory agency, as contrasted with a legislative body, is not normally empowered to ensure project financing guarantees. ^{14/} Therefore, the partnership attempted to satisfy the Presidential finding on debt support before the only forum with the requisite authority, the Alaskan state legislature. Actions in compliance with the President's Decision are not imprudent. Consequently, the expenses incurred in lobbying in Alaska for a state commitment of funds in aid of project funding should be included in rate base.

d. General

The Office of the Chief Accountant recommends that costs associated with lobbying efforts relating to matters of general interest to the ANGTS sponsors, specifically the Alaska lands bill, be disallowed. Consistent with the proper treatment for the other lobbying costs, these expenses should be given rate base treatment. The sponsors' participation in the Alaska lands bill debate focused on the preservation of the proposed pipeline route through Alaska. Section 1327 of the Alaskan National Interest Lands Conservation Act recites that the Act does not impose additional requirements on the ANGTS and, ^{15/} consistent with this provision, the Alaska right-of-way was granted by the Department of Interior on December 2, 1980.

Alaskan Northwest expects to incur similar costs during the course of completion of the Project. Congressional oversight will continue during both the construction and operation of the pipeline system. Alaskan Northwest should be encouraged not discouraged from complete and thorough involvement with the congressional process, and the costs associated therewith should be recoverable.

^{13/} Alaska Const., Art. 9, §13.

^{14/} See Office of Consumer's Counsel v. Federal Energy Regulatory Commission, No. 80-1303, D.C. Cir., decided December 8, 1980.

^{15/} Pub. L. 96-47.

2. Public Opinion/Public Relations

In its audit, the Office of the Chief Accountant has distinguished between costs for influencing public opinion (Audit 1) and expenditures for public relations (Audits 2 and 3). The staff recommends that neither cost be capitalized, but does suggest that the latter costs be expensed. It is important to first understand that the recommendation of different treatment is not warranted. "Influencing public opinion" involves \$115,406 expended by Northwest Alaskan for the preparation and dissemination of information concerning the three alternate proposals during the selection process. The staff accountants believe this material was used to influence public opinion and the opinions of public officials during the selection process, and recommends that the amounts involved be assigned to Account 426.4, a nonutility account. Public relations, by contrast, consists of \$197,897 for the preparation and distribution of information to the press, members of Congress and the public, for the preparation of films on the Alaska pipeline, and for media coverage. According to the Office of the Chief Accountant, this amount belongs in Account 930.1, "General advertising expenses," which is a utility expense account.

The purported distinction between costs associated with what the staff labels as "influencing public opinion" and public relation costs is wholly artificial. The purpose of the sponsors' activities was the same throughout -- to inform the public generally and governmental decisionmakers in particular of the nature of the Alaskan Northwest proposal, its progress through the approval process, and the prospects for future advancement. Thus, the costs for "influencing public opinion" should be placed in Account 930.1 as utility expenses. 16/

This resolution represents an accounting solution, not a rate-making decision. Alaskan Northwest believes that these expenses should be granted the base treatment, because in contrast to normal Commission practice, the ANGTA approval process, both for selection of a successful applicant and continued congressional oversight, involved many levels of Federal officials, including members of Congress. The sponsors had to make their case in a fashion that would convince the decisionmakers of the benefits of the Alaskan Northwest project. Since it was not always possible to obtain direct access to decisionmakers, other recognized methods of influencing opinion were utilized, such as the dissemination of brochures, pamphlets, films, newspaper advertisements and

16/ A natural gas pipeline company that had rates currently in effect would record all such costs in Account 930.1 and recover them in rates as operating and maintenance expenses.

articles. These activities were made necessary by the unique regulatory/decisionmaking process associated with this project -- a process that required the sponsors to prosecute their case in a manner that used less traditional means than the staff would accept without direction from the Commission. Alaskan Northwest urges the Commission to recognize these changed circumstances and accept the public opinion/relations costs for inclusion in rate base.

If the Commission elects not to allow full rate base treatment of these costs, and instead allows recovery as an operating expense, the Commission must take into account that unlike the normal operating pipeline that recovers its operating expenses on a timely basis through rate filings, ANGTS will not become operational until late 1985; and these types of costs will continue to occur throughout the engineering and construction stages of the project. Thus, an amount expensed in Account 930.1 cannot be recovered on a current basis. For this reason, if full rate base treatment is not afforded, Alaskan Northwest urges the Commission to permit Alaskan Northwest to record these expenditures in a deferred account, such as Account 186, and allow carrying charges on the amounts in such account at the equivalent AFUDC rate until the Alaskan segment of the ANGTS is ready for operation. At that time the total in the deferred account would be amortized over a period to be determined in the future, subject to Commission approval. 17/

3. Charitable Contributions

The Commission staff auditors have identified certain project expenditures as donations and recommended that these costs be assigned to Account 426.1, as a nonutility expense. 18/ This assignment should not determine the treatment of these costs for ratemaking purposes. Charitable contributions booked in Account 426.1 would normally be considered as operating expenses and recovered as an above-the-line figure. The instant expenditures should be treated the same, with the adjustment noted above to compensate Alaskan Northwest for the disparity between the timing of expenditure and recovery.

17/ Alaskan Northwest requests this treatment for all expenses where rate base treatment is denied but costs are still assigned to a utility expense account. Otherwise, the accounting designation would equate to disallowance.

18/ These items include contributions to: Hubert Humphrey Institute of Public Affairs (University of Minnesota Foundation), the Anchorage Community YMCA, Alaska Foundation of Native Youths, Iditarod Trail Committee, Inc., Alaskans for the Gas Pipeline, Citizens for Management of Alaskan Lands, Inc., and Close-Up Foundation.

Alaskan Northwest is entitled under Commission precedent to reimbursement for these contributions. The standard for judging charitable contributions was established by the Commission in Opinion No. 428, United Gas Pipe Line Company, 31 F.P.C. 1180, 1189 (1964):

[W]e believe that contributions of a reasonable amount to recognized and appropriate charitable institutions constitute a proper operating expense. Corporations have an obligation to the communities in which they are located and they are expected to recognize this obligation. It is our opinion that these contributions have an important relationship to the necessary costs of doing business. (Footnote omitted) 19/

The Commission went on to note that the type of charity contemplated as "recognized and appropriate" was one that met the criteria established in the Internal Revenue Code. 20/

The charitable contributions by the project sponsors set forth above meet the criteria established in United. Each is a recognized charity located in areas of importance to the ANGTS. For this reason, the Commission should permit Alaskan Northwest to record the amount of such contributions in a deferred account, and allow carrying charges on such amounts, until the Alaska segment of the ANGTS is ready for operation. At that time the accumulated total would be expensed under the terms of the Alaskan Northwest tariff.

4. Other Expenditures

The auditors recommend disallowance of \$69,613, comprised of expenditures for purposes other than those previously referenced in Section III.B. above. Alaskan Northwest does not oppose this recommendation. The costs of these activities were inadvertently included in the accounts of Alaskan Northwest and these types of costs will not appear in future Alaskan Northwest accounts.

19/ All of these organizations are recognized by the IRS as exempt from taxation under Section 501(c)(3) of the Internal Revenue Code.

20/ See also, Opinion No. 609, Union Electric Company, 47 F.P.C. 144 (1972).

IV. CONCLUSION

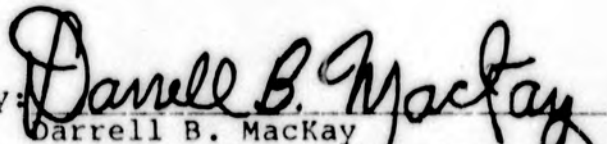
For the foregoing reasons Alaskan Northwest respectfully requests the Commission take the following action:

1. Approve the inclusion of the requested Arctic Gas expenditures in the Alaskan Northwest rate base.
2. Include in the rate base of Alaskan Northwest all lobbying expenditures of Northwest Alaskan and the Alaskan Northwest partnership.
3. Treat costs incurred by Northwest Alaskan for influencing public opinion the same as the expenses for public relations by Alaskan Northwest, and allow such amounts in the rate base. In the alternative, permit Alaskan Northwest to record these amounts in a deferred account, such as Account 186, that will accumulate carrying charges equivalent to the applicable AFUDC rate, until the Alaska segment of the ANGTS is ready for operation.
4. Treat all charitable contributions as in the alternative set forth immediately above.

Respectfully submitted,

ALASKAN NORTHWEST NATURAL GAS
TRANSPORTATION COMPANY

By:



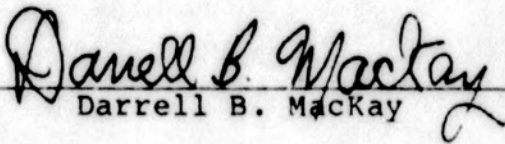
Darrell B. MacKay
Vice President - Regulatory and
Governmental Affairs
Northwest Alaskan Pipeline Company
1120 20th Street, N.W.
Suite S-700
Washington, D.C. 20036

February 13, 1981

CERTIFICATE OF SERVICE

I hereby certify that I have this day served the foregoing document upon all parties of record in Docket No. CP78-123, et al. in accordance with the requirements of § 1.17 of the Rules of Practice and Procedure.

Dated at Washington, D.C. this 13th day of February, 1981.


Darrell B. Mackay

VERIFICATION

UNITED STATES OF AMERICA)
) ss.
DISTRICT OF COLUMBIA)

DARRELL B. MACKAY, being duly sworn, on oath, says that he is a Vice President of Northwest Alaskan Pipeline Company, operating partner of Alaskan Northwest Natural Gas Transportation Company; that he has read the foregoing Response of Alaskan Northwest Natural Gas Transportation Company to Order To Show Cause and he is familiar with the contents thereof; that he has executed the same for and on behalf of said Company with full power and authority to do so; and that the matters set forth therein are true to the best of his information, knowledge and belief.

Darrell B. Mackay
Darrell B. MacKay

SUBSCRIBED AND SWORN TO
before me this 13th day
of February, 1981.

Patricia G. Walker
Notary Public

My Commission Expires:

My Commission Expires January 1, 1985

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AS A UNIT IN THE ORIGINAL DOCUMENT.**

**PLEASE NOTE: THE FOLLOWING PAGES WERE TREATED
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UNITED STATES OF AMERICA
FEDERAL ENERGY REGULATORY COMMISSION

Before Commissioners: Georgiana Sheldon, Acting Chairman;
Matthew Holden, Jr., George R. Hall
and J. David Hughes.

Northwest Alaskan Pipeline Company) Docket No. CP78-123, et al.

Northern Border Pipeline Company) Docket No. CP78-124

Pacific Gas Transmission Company) Docket No. CP79-60

ORDER PROPOSING CONDITIONS TO CERTIFICATES

(Issued December 19, 1980)

The Commission is proposing the adoption of a condition to be appended to the final certificates of public convenience and necessity (for construction and operation of the Alaska Natural Gas Transportation System) issued by the Commission to Pacific Gas Transmission Company (PGT) and Northern Border Pipeline Company (Northern Border) in its orders of January 11 and April 28, 1980 in Docket No. CP78-123, et al., 1/ as well as to the conditional certificates issued December 16, 1977 in the same docket.

In light of the limited number, nature and scope of the proposed conditions, as well as the statutory mandate of Section 9 of the Alaska Natural Gas Transportation Act (ANGTA), 15 U.S.C. §719g, that certification of the Alaska Natural Gas Transportation System (ANGTS) be expedited, the Commission has decided to use notice and comment procedures to consider the condition. In addition to other applicable law, this order is issued pursuant to Section 7(e) of the Natural Gas Act, 15 U.S.C. §717f(e), Section 9 of the ANGTA, the President's Decision and Report to Congress on the Alaska Natural Gas Transportation System (Decision), 2/ Paragraph 7 of the Agreement Between the United States of America and Canada on Principles Applicable to a Northern Natural Gas Pipeline, and Section 402(a) of the Department of Energy Organization Act, 42 U.S.C. §7172(a).

A. Background

The ANGTS is designed to transport natural gas from the North Slope of Alaska to the lower 48 states. The pipeline will be

1/ 10 FERC ¶61,032 and 11 FERC ¶61,088.

2/ Executive Office of the President, Energy Policy and Planning, September 1977.

constructed through Canada, and will separate into two legs (Western and Eastern) just north of Calgary, Alberta. The Western Leg will enter the United States near Kingsgate, British Columbia and terminate at Antioch, California. The Eastern leg will enter the United States near Monchy, Saskatchewan and terminate at Dwight, Illinois.

The April 28, 1980 3/ order authorized Northern Border to "pre-build" a portion of the Eastern Leg of the ANGTS, consisting of 809 miles of 42-inch pipeline from Monchy to Ventura, Iowa. The January 11, 1980 order 4/ authorized, inter alia, the early construction of a portion of the ANGTS by PGT, consisting of 160.5 miles of the Western Leg from the point of importation near Kingsgate, British Columbia to Stanfield, Oregon.

The Commission has found that the ANGTS is not a purely domestic project, but is an international project undertaken jointly by the U.S. and Canada. 5/ The Agreement between the United States of America and Canada on Principles Applicable to a Northern Natural Gas Pipeline (the Agreement on Principles) was signed by representatives of the two governments on September 20, 1977 (TIAS 9030). It was then incorporated into the Decision (at pages 47-83); inasmuch as the Decision was approved by a Joint Resolution of the Congress (on November 8, 1977), the Agreement on Principles, as a part of the Decision, has the legal force and effect of a federal statute.

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- 3/ 11 FERC ¶61,088. The April 28 order became effective June 20, 1980 when the Commission issued its Order Granting Applications for Rehearing in Part, in the above-referenced docket. 11 FERC ¶61,302.
- 4/ The January 11 order became effective June 13, 1980 when the Commission issued its "Supplemental Order Issuing Certificates of Public Convenience and Necessity and Authorizing the Importation of Natural Gas, and Order on Rehearing," in the above-referenced docket.
- 5/ "Supplemental Order Issuing Certificates of Public Convenience and Necessity and Authorizing the Importation of Natural Gas, and Order on Rehearing," Northwest Alaskan Pipeline Company, Docket No. CP78-123, et al., June 13, 1980, 11 FERC ¶61,279, mimeo at p. 45.

The Agreement on Principles states, in Paragraph 7(a), that "having regard to the objectives of this Agreement each Government will endeavor to ensure that the supply of goods and services to the Pipeline project will be on generally competitive terms." In weighing competitiveness, the elements to be considered include price, reliability, servicing capacity and delivery schedules. Paragraph 8 of the Agreement provides for consultation between senior officials of the two governments on the implementation of principles relating to the construction and operation of the pipeline.

The responsible U.S. ^{6/} and Canadian officials have been discussing methods of implementing Paragraph 7 of the Agreement on Principles. The result is a reciprocal arrangement between the United States and Canada on a procedure to govern the procurement of certain designated items by the pipeline companies before contracts are awarded. That agreement between the two governments is embodied in a formal exchange of diplomatic notes, signed June 10, 1980, and is effective subject only to the necessary regulatory action in each country.

By a letter dated August 4, 1980, the Federal Inspector has forwarded to the Chairman of the Commission an official copy of the diplomatic notes. A copy of the letter, including the diplomatic notes, is attached to this order for reference. In his letter, the Inspector requests the Commission to implement the notes by attaching appropriate conditions to the project sponsors' certificates.

In this regard, the exchange of notes provides that the agreed procurement procedures are subject to approval through regulatory processes of the two countries. Within the U.S., such approval is defined in terms of amending the project sponsors' certificates:

"In fulfillment of this agreement, the United States agrees to adopt the procurement procedures contained in the Annex to this note. It is understood that the procedures in the Annex are subject to regulatory approval in the United States, specifically the amendment of the conditional certificates of the Alaskan Northwest Natural Gas Transportation Company, of the Pacific Gas Transmission

^{6/} The responsible U.S. Official is the Office of the Federal Inspector (OFI). The OFI was created by Reorganization Plan No. 1 of 1979, which became effective July 1, 1979, pursuant to Executive Order 12142 of June 21, 1979, 44 F.R. 36927 (June 25, 1979).

Company, and of the Northern Border Pipeline Company by the Federal Energy Regulatory Commission of the United States. It is further understood that Canada will also adopt the procurement procedures contained in the Annex to this notice, and bring them into force with Canadian regulatory process."

Thus, attaching the proposed condition to the certificates would complete the process envisioned in the exchange of notes, thereby implementing the executive agreement set forth in the notes.

B. Proposed Condition

The text of the agreement set forth in the diplomatic notes is self-explanatory, and is the product of extensive deliberations and negotiations by the two governments. Accordingly, the Commission is reluctant to attempt to recast that language into detailed conditions of the style and form generally used in drafting certificate conditions. Instead, the Commission proposes to attach to the certificates a shorter and more generalized condition that simply requires the certificate holders to comply with all requirements in the agreement that are applicable to them, and to co-operate fully with the Federal Inspector in his interpretation and implementation of the agreement.

C. Comment Procedures

The Commission invites the parties of record in Docket Nos. CP78-123, et al., to submit written data, views, comments and other information concerning the matters set forth in this order. An original and 14 conformed copies should be filed by January 16, 1981, with service of copies on all parties. Parties of record may also file reply comments, pursuant to the same procedure, by February 6, 1981. Comments and reply comments should be submitted to the Office of the Secretary, Federal Energy Regulatory Commission, 825 North Capitol Street, N.E., Washington, D. C. 20426, and should reference Docket Nos. CP78-123, et al. All written submissions will be placed in the Commission's public files and will be available for public inspection in the Commission's Office of Public Information, 825 North Capitol Street, N.E., Washington, D. C., during regular business hours.

The Commission orders:

(A) Parties of record in Docket No. CP78-123, et al., may submit comments and reply comments on the condition that the Commission proposes to append to the certificates of public convenience and necessity issued (for construction and operation of the ANGTS) by the Commission to the ANGTS project sponsors in the Commission's orders of January 11 and April 28, 1980, as well as to the conditional certificates of public convenience and necessity issued December 16, 1977 in that docket, as described more fully above. The proposed condition is set forth in an attachment to this order. Comments may be filed on or before January 16, 1981, and reply comments may be filed on or before February 6, 1981. Copies of all comments and reply comments should be served on all parties of record in Docket Nos. CP78-123, et al.

(B) Copies of this order shall be served on all parties in Docket No. CP78-123, et al.

By the Commission.
(S E A L)

Kenneth F. Plumb
Kenneth F. Plumb,
Secretary.

Docket No. CP78-123, et al.

APPENDIX

PROPOSED CONDITION

The certificate holder shall comply with all of the requirements imposed on ANGTS project sponsors by the executive agreement set forth in the exchange of diplomatic notes between the United States and Canada, dated June 10, 1980, as those requirements are set forth in the "Procedures Governing the Procurement in Canada and the United States of America of Certain Designated Items for the Alaska Highway Gas Pipeline" adopted in said agreement. The certificate holder shall co-operate fully with the Federal Inspector in his interpretation and implementation of the agreement.

Docket No. CP78-123, et al.



THE FEDERAL INSPECTOR
ALASKA NATURAL GAS TRANSPORTATION SYSTEM
ROOM 2413, POST OFFICE BUILDING
1200 PENNSYLVANIA AVENUE
WASHINGTON, D.C. 20044

August 4, 1980

Honorable Charles B. Curtis
Chairman, Federal Energy
Regulatory Commission
825 N. Capitol Street, N.E.
Room 9000 Washington, D.C. 20426

Dear Chairman Curtis:

I have attached a copy of formal diplomatic notes, exchanged between the United States and Canada on June 10, 1980. This exchange of notes effectuates reciprocal procedures governing the procurement in Canada and the United States of designated items for the Alaska Highway Gas Pipeline, the U.S. portions of which represent the Alaska Natural Gas Transportation System. These procedures, by their terms, are to be administered by my office and the Northern Pipeline Agency.

Of particular interest to the Federal Energy Regulatory Commission is the following aspect of the U.S. diplomatic notes:

It is understood that the procedures in the Annex are subject to regulatory approval in the United States, specifically the amendment of the conditional certificates of the Alaskan Northwest Natural Gas Transportation Company, of the Pacific Gas Transmission Company, and of the Northern Border Pipeline Company by the Federal Energy Regulatory Commission of the United States.

In this regard the Office of the Federal Inspector, as the administering agency in the U.S., is requesting that the Commission incorporate these reciprocal procedures as conditions to the aforementioned conditional certificates issued by the Commission on December 16, 1977, in Docket Nos. CP78-123, et al. In this manner these officially established and currently effective procurement review procedures may be administered by this agency also through Section 102(d) of Reorganization Plan No. 1 of 1979.

Docket No. CP78-123, et al.

-2-

Thank you for your assistance in this manner.

Sincerely yours,


John T. Rhett
Federal Inspector

cc: John Adger
FERC
Michael Lucy
State Department
Darrell MacKay
Northwest Alaskan
Philip Reynolds
PGT
Carl Schulz
Northern Border
Trish Lortie
Canadian Embassy
Barry Yates
Northern Pipeline Agency

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ORIGINAL.

Enclosure 1

Docket No. CP78-123, et al.

Canadian Embassy



Ambassade du Canada

No. 274

10 June, 1980

Sir,

I have the honour to refer to your Note of today's date concerning procurement procedures designed to implement the provisions of the Agreement between Canada and the United States of America on Principles Applicable to a Northern Natural Gas Pipeline, signed at Ottawa on September 20, 1977.

I have the honour to inform you that these proposals are acceptable to the Government of Canada, and to confirm that your Excellency's Note, together with the attached statement on Procedures Governing the Procurement in Canada and the United States of America of Certain Designated Items for the Alaska Highway Gas Pipeline, and this reply, which is equally authentic in English and French, shall constitute an agreement between our two governments which shall enter into force on the date of this reply.

Accept, Sir, the renewed assurances of my highest consideration.

The Secretary of State
Washington, D.C.

13.5

DEPARTMENT OF STATE
WASHINGTON

June 10, 1980

Excellency:

I have the honor to refer to Paragraph 7 of the Agreement between Canada and the United States on the Principles Applicable to a Northern Natural Gas Pipeline (Pipeline Agreement) and the recent discussions between representatives of the Government of the United States of America and representatives of the Government of Canada regarding procedures to ensure procurement on a generally competitive basis for the Alaskan Natural Gas Transportation System.

As a result of these discussions, the Government of the United States agrees to enter into an agreement with the Government of Canada permitting the mutual and reciprocal implementation of procedures governing the purchase of specified items for the Alaskan Natural Gas Transportation System.

In fulfillment of this agreement, the United States agrees to adopt the procurement procedures contained in the Annex to this note. It is understood that the procedures in the Annex are subject to regulatory approval in the United States, specifically the amendment of the conditional certificates of the Alaskan Northwest Natural Gas

His Excellency,

Peter Tove,

Ambassador of Canada.

- 2 -

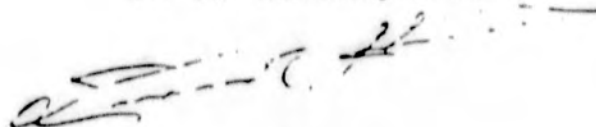
Transportation Company, of the Pacific Gas Transmission Company, and of the Northern Border Pipeline Company by the Federal Energy Regulatory Commission of the United States. It is further understood that Canada will also adopt the procurement procedures contained in the Annex to this note, and bring them into force with Canadian regulatory process.

In the event of disputes regarding implementation of the procurement procedure in the United States of America or in Canada, either country may request consultations in accordance with paragraphs 7 (b) and 8 of the Pipeline Agreement.

If the foregoing is acceptable to the Government of Canada, this note and its Annex, together with your note in reply, shall constitute an agreement between the two Governments with effect from the date of your reply.

Accept, Excellency, the renewed assurances of my highest consideration.

For the Secretary of State:



Enclosure:

Annex: Procurement Procedures for
the Alaskan Natural Gas
Transportation System

PROCEDURES GOVERNING THE PROCUREMENT IN
CANADA AND THE UNITED STATES OF AMERICA
OF CERTAIN DESIGNATED ITEMS
FOR THE ALASKA HIGHWAY GAS PIPELINE

Introduction

The Agreement between Canada and the United States of America on Principles Applicable to a Northern Natural Gas Pipeline, which was signed in Ottawa on September 20, 1977, states in its preamble that one of the principal objectives of the project is "to maximize related industrial benefits of each country." It further states in Clause 7(a) that "having regard to the objectives of this Agreement, each Government will endeavor to ensure that the supply of goods and services to the Pipeline will be on generally competitive terms." The same clause stipulates that the elements to be taken into account in weighing competitiveness will include price, reliability, servicing capacity and delivery schedules. Clauses 7(b) and 8 provide for coordination and consultation between the two governments with respect to the achievement of the objectives of the Agreement with respect to procurement.

In order to implement these principles, the Governments of Canada and the United States of America agree that the following procedures with respect to the procurement of certain designated items of supply for the Alaska Highway Gas Pipeline will be adopted on a reciprocal basis by the appropriate regulatory authority in each country, namely, the Northern Pipeline Agency in Canada (NPA) and the Office of the Federal Inspector in the United States (OFI).

1. Qualification of Bidders

The project companies in each country will submit a list of qualified bidders they propose to invite to tender

- 2 -

on any of the items designated in Schedule 1 to the appropriate domestic regulatory authority, which will expeditiously convey copies of any such lists to the regulatory authority of the other country both directly and through normal diplomatic channels. The regulatory authority of the other country will have 14 calendar days following its receipt in which to review the bidders' list and to propose to its counterpart the addition of any firm or firms which it considers should also be invited to tender. If any such modification is proposed, it is to be communicated to the originating project sponsor by the responsible regulatory authority in that country. Should the project sponsor not be prepared to accept the additional bidder or bidders proposed by the regulatory authority of the other country, the reasons for its position shall be communicated to that authority by the responsible domestic authority.

The project sponsors may, but are not required to, place advertisements inviting interested suppliers to prequalify as bidders for particular supplies. In the event that such advertisements are decided on for designated items, they shall be placed in appropriate trade journals or other publications in both Canada and the United States.

2. Technical Specifications and Tendering Documents

Prior to the actual solicitation of bids on designated items listed in Schedule 1, the project sponsors in each country will submit technical specifications and tendering documents to the appropriate domestic regulatory authority, which will first expeditiously review the solicitation information for possibly restrictive language that would prohibit open competition and then expeditiously convey

- 3 -

copies of such information on a confidential basis to the regulatory authority of the other country both directly and through normal diplomatic channels. The regulatory authority of the other country will have 14 calendar days following its receipt to review such information and to submit any proposed modifications in the technical specifications or tender document to the responsible regulatory authority, which in turn will communicate such representations to the originating project sponsor. Should the project sponsor not be prepared to accept the modification of the technical specifications or tender document proposed by the regulatory authority of the other country, the reasons for its position shall be communicated to that authority by the responsible domestic authority.

3. Recommended Decisions to Purchase or Negotiate

Following the receipt and evaluation of bids on designated items listed in Schedule I, the project sponsor will submit its conclusions in a report satisfactory to the domestic regulatory authority with respect to the purchase of supply, or of entering into negotiation with one or more firms for the purpose of reaching contract agreement, to the responsible domestic regulatory authority. After expeditiously reviewing these submissions for general competitiveness, the domestic regulatory authority shall prepare and submit to the regulatory authority of the other country a meaningful summary of the report and of its conclusions. Such information shall include an outline of the factors which were taken into account by the project sponsor in arriving at its conclusions, and, in cases where consideration of industrial benefit were involved, demonstrate that they came within the framework of general competitiveness.

- 4 -

While maintaining the confidentiality of proprietary commercial information, including the tender prices of individual bidders, such summaries should be designed to make possible an assessment of the extent to which the proposed procurement conforms with the stated objectives of the Canada-United States Agreement. In cases where bids submitted by either Canadian or United States firms on tenders called by sponsoring companies in the other country have been rejected or accepted only in part, the conclusions of the project sponsor and the reasons for them as outlined in the project sponsor's report will be communicated by the responsible domestic regulatory authority to the regulator authority of the other country as part of the meaningful summary.

In the event the regulatory authority in the other country wishes to raise questions with respect to the conclusions or the summary containing the factors which led to those conclusions, or wishes to initiate formal consultations as provided for under Clause 7(b) of the Canada-United States Agreement on Principles, it will be required to provide notification to the responsible domestic regulatory authority within a period of 14 calendar days.

Should consultations as provided for under the Agreement be invoked with respect to any aspect of the procurement process, it is recognized by the Governments of both Canada and the United States that they should proceed expeditiously so as to avoid causing any undue delay in the timely completion of the project.

4. Award of Contract

Although no specific requirement for consultation should be necessary at this time in view of the extensive provisions at earlier stages, a short delay may be required to advise the other country's regulatory authority of any significant changes that resulted during negotiations with the selected vendor(s).

Docket No. CP78-123, et al.

Schedule 1

Designated Items

1. Line Pipe - Main Line Pipe 36 inches and over.
2. Gas Turbine/Compressor Packages.
3. Valves - 20 inches interior diameter and over
(both block valves and station valves).
4. Pipe Fittings - 20 inches interior diameter and over.

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ORIGINAL.

**PLEASE NOTE: THE PRECEDING PAGES WERE TREATED
AS A UNIT IN THE ORIGINAL DOCUMENT.**

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FEDERAL ENERGY REGULATORY COMMISSION
WASHINGTON, D. C. 20426

August 18, 1981

MEMORANDUM TO: Honorable Philip R. Sharp
Chairman
Subcommittee on Fossil & Synthetic Fuels
Committee on Energy and Commerce
House of Representatives

Honorable Clarence J. Brown
Ranking Minority Member
Subcommittee on Fossil & Synthetic Fuels
Committee on Energy and Commerce
House of Representatives

FROM : Charles A. Moore
General Counsel
Federal Energy Regulatory Commission

RE : Proposal by Sponsors of the Alaskan
Natural Gas Transportation System (ANGTS)
for Congressional Waiver of Sections 4,
5, 7 and 16 of the Natural Gas Act in
Certain Respects Pursuant to Section 8g
of the Alaskan Natural Gas Transportation
Act of 1978

Questions Presented

By letter of July 24, 1981, to C. M. Butler III,
Chairman, Federal Energy Regulatory Commission, 1/ you
requested a legal memorandum addressing the following
questions:

1/ Hereinafter, the term "Commission" refers to the Federal
Power Commission at all times before October 1, 1977, and
the Federal Energy Regulatory Commission at all times
thereafter.

(a) ~~The full~~ implications of the proposed waiver quoted hereinbelow, (b) whether there have been past Commission actions which justify the desires of the sponsors to have Congress provide the waiver, (c) hypothetical situations which would work to the injury of the pipeline sponsors of ANGTS or other participants in the project should no such waiver be provided by Congress, (d) hypothetical situations which might work to the injury of resale customers and consumers should such a waiver be provided by Congress, and (e) the reasonable likelihood of the hypothetical situations actually occurring.

The text of the waiver request, as set forth in your letter, is as follows:

Authority to Modify or Rescind Orders

Waive Sections 4, 5, 7, and 16 of the Natural Gas Act to the extent that such sections would allow the Commission to change the provisions of any final rule or order approving (a) any tariff in any manner that would impair the recovery of the actual operation and maintenance expenses, actual current taxes, and amounts necessary to service debt, including interest and scheduled retirement of debt, for the approved transportation system; or (b) the recovery by shippers of Alaska gas of (1) all costs related to the purchase of such gas at just and reasonable rates, and (2) transportation of such gas pursuant to an approved tariff.

We are advised that this text is currently a topic of discussion at staff levels in the Administration and the Congress, and that the text may be revised in one or more respects. Accordingly, the memorandum is expressly limited to the preceding text, although I will be pleased to respond as expeditiously as possible to any questions you might have in connection with material changes in such text.

Discussion

1. Background

As you know, the ANGTS is an international project created to transport natural gas from the North Slope of Alaska, through Canada, to the lower 48 states. The United States portion of the system consists of three segments: (1) the Alaska segment, running from Prudhoe Bay on the North Slope to the Yukon border; (2) the Western Leg, running from the British Columbia border to California; and (3) and the Northern Border pipeline, running from a point on the Canadian border near Monchy, Saskatchewan, to Dwight, Illinois.

The ANGTS is unlike any other gas pipeline in the United States in that it is governed by a unique legal framework. The Alaska Natural Gas Transportation Act (ANGTA), 15 U.S.C. section 719, et seq., enacted by Congress in 1976, supplements (but does not replace) the Natural Gas Act; certificates are issued under the Natural Gas Act pursuant to procedures mandated by ANGTA.

Pursuant to Section 7 of ANGTA, the President, in September of 1977, submitted his Decision and Report to Congress on the Alaska Natural Gas Transportation System (Executive Office of the President, Energy Policy and Planning) which designated both the project sponsors and the route for the ANGTS as well as many conditions for its construction. Congress approved the President's Decision by Joint Resolution, which became law on November 8, 1977. H.R.J. Res. 621, Pub. L. No. 95-158, 91 Stat. 1268, 95th Cong., 1st Sess. (1977).

The ANGTS is also governed by two international agreements with Canada, both of which have the force and effect of law. The "Agreement Between the Government of the United States of America and the Government of Canada Concerning Transit Pipelines," entered in force October 1, 1977 after ratification by the Senate, applies to all pipelines in both countries whenever one country's pipeline carries the other country's gas or oil. The treaty mandates nondiscriminatory treatment.

The "Agreement Between the United States of America and Canada on Principles Applicable to a Northern Natural Gas Pipeline," signed by representatives of the two governments on September 20, 1977, is an executive agreement that was made part of the President's Decision (pages 47-83). Inasmuch as the Decision was approved by Congress, it (including the Agreement) has the legal status of a statute. The Agreement specifies the route of the ANGTS, and contains numerous conditions. Pursuant to the Agreement, our Commission has consulted with the National Energy Board of Canada in coordinating respective certification of the various ANGTS segments in the U. S. and Canada, including related imports of Canadian gas to support the "prebuilding" of the lower half of the system.

One other relevant item of legislation is Reorganization Plan No. 1 of 1979, which was submitted by the President to the Congress and not disapproved by the Congress. The Plan establishes the Office of the Federal Inspector, which reports directly to the President. The Inspector is responsible for monitoring the construction of the pipeline, and for coordinating all federal permitting and certification of it. The Plan transfers to the Inspector the Commission's Natural Gas Act Sections 3 and 7 jurisdiction to enforce the Commission's certificates and import authorizations issued to the ANGTS project sponsors.

continued
Two categories of tariffs are involved. The project sponsors will own and operate the various segments of the ANGTS, but will not buy or sell the gas transported through it. The shippers will buy the gas at the Prudhoe Bay Field, ship it through the sponsors' facilities, and sell it somewhere at the other end of the pipeline. The sponsors will have tariffs authorizing charges to the shippers. The shippers will in turn have tariff provisions authorizing charges to their customers for the sale of the gas, which charges will include in some form reimbursement of the shippers for the transportation charges paid by the shippers to the sponsors, as well as reimbursement for the costs of purchasing the Prudhoe Bay Field gas.

Thus, for example, if a shipper buys gas at Prudhoe Bay for sale in Detroit, the shipper would incur separate transportation charges billed by the respective sponsors of the Alaska segment, the Canadian segment, and the Northern Border segment of the system. That shipper would request

a tariff authorizing "flow through" to its customers of the full amount of transportation charges paid to the sponsors of each of the three pipeline segments through which the gas was transported, as well as the full cost of the gas itself.

The "flow through" issue is often referred to as "tracking" of charges. Tracking of gas purchase costs is authorized by the Commission's regulations, through purchased gas adjustment clauses. (See 18 C.F.R. 154.38.) Tracking of transportation charges has been authorized in certain instances on a case by case basis.

In Order Nos. 31 and 31-B, 2/ the Commission approved in principle the tracking by ANGTS shippers of transportation charges billed by U. S. certificated ANGTS project sponsors (i.e., the sponsors of the Alaska, Northern Border and Western Leg segments), but reserved for later resolution the issue of tracking the charges of Foothills Pipe Lines (Yukon) Ltd. (Foothills), the sponsor of the Canadian segment. The unresolved tracking issues (including tracking of Foothills' charges that have been approved by the National Energy Board of Canada) are currently under study by the Commission's Alaskan Delegate, who is preparing a report to the Commission.

The sponsors' and shippers' initial tariffs are approved by the Commission pursuant to Section 7 of the Natural Gas Act upon issuance of the certificates. Alaskan Northwest's pro forma tariff was approved in Order Nos. 31 and 31-B. Section 7 provides a "public convenience and necessity" standard. While the Commission may establish initial rates that meet the more rigorous "just and reasonable" standard in Sections 4 and 5 of the Act, it is not required by law to do so. The Commission must only find that the initial rates are in the "public convenience and necessity" and may reserve for later determination what the "just and reasonable" rate should be.

2/ Order No. 31, "Order Setting Values for Incentive Rate of Return, Establishing Inflation Adjustment and Change in Scope Procedures, and Determining Applicable Tariff Provisions," issued June 8, 1979 in Docket No. RM78-12; Order No. 31-B on rehearing, issued September 6, 1979, in the same docket.

Section 7(e) of the Natural Gas Act gives the Commission authority to attach conditions to certificates. The courts have construed broadly the Commission's responsibility under the Natural Gas Act to condition certificates with respect to rate terms and other matters affecting the public convenience and necessity. See, e.g., Atlantic Refining Co. v. Public Service Commission of New York, 360 U.S. 378 (1959); FPC v. Hunt, 376 U.S. 515 (1964). But see Panhandle Eastern Pipe Line Co. v. F.E.R.C., 613 F.2d 1120 (D.C. Cir. 1979), cert. denied, 101 S. Ct. 247 (1980).

Section 4 of the Act requires that all rates and charges be "just and reasonable." After certification, all changes in the initially approved tariffs and rates must be filed with the Commission pursuant to Section 4. The Commission, pursuant to prescribed standards and procedures, may "suspend" such changes for up to five months pending a hearing. If the changes are suspended, the prior approved tariffs and rates remain in effect during the period of suspension. The changes may take effect after the suspension period but subject to refund (with interest) depending on the outcome of the hearing process on contested issues or other disposition by the Commission.

Section 5(a) of the Act authorizes the Commission to institute a proceeding on its own initiative, to consider the justness and reasonableness of a certificate holder's rates and tariffs, and to determine new rates or tariff provisions if the existing ones are determined to be "unjust, unreasonable, unduly discriminatory, or preferential." Such changes can only be prospective; in a Section 5 proceeding the Commission cannot suspend rates or order refunds.

Section 16 of the Natural Gas Act authorizes the Commission to modify or rescind its orders after they have been issued. This authority, under appropriate circumstances, may be utilized for a variety of purposes, ranging from correction of mistakes to modification of certificate terms and conditions in light of changed circumstances.

2. Nature of the Financing

The subject waiver is sought from Congress by the project sponsors of ANGTS in connection with the financing of the project. The financing mechanism selected by the sponsors

has been referred to as "project financing." The propriety of project financing has been addressed by the Commission on a number of occasions, most recently in Ozark Gas Transmission System, FERC Opinion No. 125, Docket No. CP78-532 (July 28, 1981). In that opinion, the Commission described project financing generally as follows:

Project financing differs from conventional financing mainly in connection with loan security. Security generally takes one of two forms in a conventional financing. First, the project sponsor, or borrower, has sufficient unencumbered assets that the lender feels secure in making a loan on the basis of the borrower's general credit. The loan agreement, in such cases, may require any of a number of different undertakings on the part of the borrower to maintain his creditworthiness. Secondly, if the borrower does not have unencumbered assets sufficient to secure the borrowing, the lender may require the pledge of specific assets to be funded by the borrowing as collateral for the loan. As Judge Litt pointed out in his initial decision on the Alaskan Natural Gas Transportation System, this is itself a kind of project financing. In this case the lender is secure in the knowledge that the borrower has put enough money into the project that the economic value of the project, less equity and liquidation costs, will yield sufficient funds for the lender to recover the principal value of the loan and accrued interest. A convenient example of this kind of financing is the mortgage of a building.

A project financing, as it has come to be known in energy projects before the Commission, is a financing in which the general creditworthiness of the borrower is either insufficient or allegedly unavailable to secure the borrowing, and the underlying economic value of the assets to be financed are also insufficient to assure the lender that he will not lose his money. The latter inadequacy will presumptively obtain in the case of any pipeline financing, since the salvage value of the pipeline to be built should, in all cases,

be less than the loan obligation. 21/ In this case, an optional financing vehicle is the stream of income to be generated by the project. However, that vehicle is only available in the event that the income stream can be assured whether or not the project should fail. Such assurance is sought in this case in the form of the so-called minimum bill. The minimum bill has been structured in a fashion which will yield sufficient revenues to cover debt service (both principal and interest payments), whether the project is successful or not. In the event the project were to fail, the minimum bill would be levied on the customers of the shippers in the form of a surcharge for gas they do not receive.

21/ In this regard Ozark's witness, Gary, states, 'Today we all recognize a mortgage on a pipeline is virtually worthless, except for one aspect, in making a legal investment.' Tr. 12/1064

Slip opinion, at 10-11 (footnotes omitted in part).

As the Commission pointed out in the Ozark case, substantial policy justification should be found in certificate applications before the Commission pursuant to which project financing is sought. In the case of the ANGTS, such justifications have already been considered by both the Executive and Legislative Branches of the Federal Government, as well as the Commission, and have been found sufficient to permit the project financing of the ANGTS. 3/

Some of the justifications have included the substantial amount of natural gas to be delivered by the project, the potential for displacement of large quantities of foreign oil, reduction of pressure on the U. S. balance of payments, net national benefits to both the U. S. and Canada, and the anticipated average cost of gas over the project life.

3/ See, generally, Federal Power Commission, Recommendation to the President, Alaska Natural Gas Transportation Systems (May 1, 1977).

3. Reason for the Proposed Waiver

The waiver has a rather singular purpose. It is intended to assure lenders for the project that the income stream which serves as security for their loans will not be reduced below the level necessary to retire the principal of the loan and to pay the interest thereon. It would accomplish this purpose by precluding the Commission from changing the rules of the game, so to speak, in a manner which would undercut the security for the loan. This objective would be achieved by withdrawing from the Commission its authority under the Natural Gas Act to change the project tariffs in such a manner as to reduce project revenues below the level necessary to service project debt. The request for the waiver evidences that certainity of the security is essential, i.e., in this instance that the lenders will rely heavily and to their detriment on the orders of the Commission granting the certificate and establishing the tariffs as preconditions to the sponsors' take down of the construction loans.

All of the foregoing has been explicitly recognized by the Commission in FERC Order No. 31. 4/ In that order the Commission stated:

The project sponsors have earnestly sought that this Order, especially as it relates to the tariff structure, provide assurance to prospective equity investors and lenders. The concern of the sponsors is wellfounded. The Commission fully recognizes that equity investors and lenders will make critical decisions respecting the financing of the construction of ANGTS in reliance on this Order.

The Commission has articulated in great detail its rationale for this Order. Where reasoned alternatives were available, we have provided a thorough analysis of the issues and the basis for our conclusions. This thoroughness provides the investor's best security in relying on this Order.

4/ Supra, note 2, at 4 (mimeo).

The fact of the request for a waiver suggests that the project sponsors and the lenders feel that they need greater assurance than has been provided to date. The Chairman and I feel compelled to agree with that assessment. As the subsequent discussion and legal analysis shows, with the objective of "security" in mind, a waiver is clearly a far better assurance than an order of the Commission. For example, previous efforts by sponsors to secure additional certainty for lenders by attempting to obtain estoppel findings in Commission orders have been unsuccessful. 5/

5/ Applicants in the Great Plains case asked the Commission to make a very explicit estoppel case against itself by including certain statements in its order. Great Plains Gasification Associates, et al., FERC Opinion No. 69 (November 21, 1979) (reversed on other grounds, Office of Consumers' Counsel v. F.E.R.C., F.2d (D.C. Cir. 1980), Case No. 80-1303, decided December 8, 1980). The estoppel option will be discussed in the text, infra. In its initial brief to the Presiding Administrative Law Judge, Great Plains claimed the following:

"... The lenders have indicated that they will require that the authorizations obtained [from the Commission] by the project companies contain [as a condition to take down of the loan for the project]:

(1) A statement of the Commission's intention not to revoke or modify the tariff provisions approved by it for this project during the term of the bank loan;

(2) A statement of the Commission's understanding that the lenders would not commit funds for this project without assurances that these provisions would continue in effect without modification during the term of the bank loan;

(3) A statement of the Commission's intent to suspend the application as to this project of any future rule, order, or decision of general applicability which might affect the approved tariff provisions until after the conclusion of a full evidentiary hearing to determine the propriety and

(Footnote 5 continued on next page)

Important in the context of ANGTS financing is that a waiver would provide clear assurances and signals to foreign, as well as domestic, lenders. We are advised that a sizeable portion of the borrowing must be acquired from foreign investors because of legal lending limits and other institutional obstacles faced by domestic lenders.

4. Regulatory Risk

The regulatory risk perceived by lenders consists of two separate, but not unrelated, sets of events. They are: (1) that the Commission would change the tariffs initially approved on a claim of changed circumstances, and (2) that a subsequent Commission, composed of a majority with a different view of the public interest than the collective view of the Commission originally approving the tariffs, would change the tariffs to the detriment of the lenders in order to reflect their different views. The Commission's ability to change the tariffs in either of these events is not clear as a matter of law. It is not unlimited, but our analysis indicates that it is fairly broad. The effect of the proposed waiver would be to eliminate in material part the Commission's options -- to the extent they exist -- to change the tariffs in either of these cases.

5/ Footnote continued from prior page

lawfulness of such Commission action as it affects the tariff provisions on which the financing is based" Initial Brief of Great Plains Gasification Associates and the Customer Pipeline Companies, Docket Nos. CP78-391, et al., January 29, 1979, at 70-71.

Five other admissions were sought from the Commission, but those quoted are exemplary of what the lenders sought. Both the law judge and the Commission refused to provide them. See Opinion No. 69, at 63.

Similar estoppel findings were requested by the ANGTS sponsors in the proceeding that culminated in Order No. 31; however, they were refused in favor of the language quote at page 10, supra. As discussed hereafter, it is questionable whether such findings would achieve the desired or intended result.

5. Constitutional Question

Implicit in the questions articulated in your letter is the issue of whether the waiver is a reasonably necessary mechanism to provide the lenders with the certainty they seek. The threshold issue, in this respect, is whether there is any constitutional bar to the Commission taking the kind of action described in the subsequent paragraphs. If such a bar exists, the waiver would not be necessary. Our research indicates that this question has not been authoritatively answered by the courts. That is, there are no clear constitutional limits regarding the Commission's power to change tariffs, where parties have substantially changed position in reliance on such tariffs, and the Commission had prior, actual knowledge of such reliance. The Chairman and I believe that a respectable case could be made that it would violate basic constitutional principles of due process for the Commission to change tariffs not explicitly conditioned to permit change, when the Commission is fully aware that the tariffs form the basis of project financing, and the changes will in one way or another undercut that basis. However, there is an absence of authority to support such a proposition. 6/

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- 6/ The question whether legislative or quasi-legislative action with retroactive effect works to deprive an owner of property without due process is somewhat analogous. Unfortunately, there are no clear principles, and the cases go both ways. See generally, text and cases collected in Cong. Research Service of Library of Congress, The Constitution of the United States of America: Analysis and Interpretation (1972), at 1165, et seq.

A case strongly suggestive that the principles of estoppel do not apply to federal agencies is Federal Crop Insurance Corp. v. Merrill, 332 U.S. 380 (1947). In that case, certain farmers were assured by a local agent of the federal corporation that a certain type of crop could be insured. In fact, rules of the corporation provided that such crops could not be insured, although neither the agent nor the farmers had actual knowledge of the regulations. Relying on the agent's advice, the crops were planted and subsequently destroyed.

(Footnote 6 continued on next page)

6/ Footnote continued from prior page

In holding that the farmers could not collect insurance for the crops despite the payment of premiums therefor and the inducement of the local agent's assurances, the Court indicated that knowledge of the rules contrary to the agent's advice would be imputed to the farmers because the rules were published in the Federal Register. Despite the difference of the facts in the Merrill case (farmers had relied on apparent rather than actual authority), the Court used strong language to suggest in dicta that the government corporation would be treated as an agency of the United States and would be immune from doctrines like estoppel. Id. at 384-85.

These dicta have led one commentator to take the following position:

Merrill indicates that estoppel will not be used to protect an individual who has changed his position in reliance on administrative advice: 'It is settled law that no estoppel can arise against the government.' [Citing, Chapman v. Santa Fe Pac. R., 198 F.2d 498, 519 (D.C. Cir. 1951) (dissenting opinion), cert. denied, 343 U.S. 964 (1952).] B. Schwartz, Administrative Law (1976), at 133, et seq.

Professor Schwartz agrees with the Merrill-type result when the agency has acted in excess of its statutory authority. However, he goes on to say:

. . . Both reason and policy argue that prejudicial reliance warrants invoking the doctrine of estoppel against the government in other cases: 'when the sovereign becomes an actor in a court of justice, its rights must be determined upon those fixed principles of justice which govern between man and man in like situations.' Id., at 135 (footnote omitted), citing Ritter v. United States, 28 F.2d 265, 267 (3d Cir. 1928).

(Footnote 6 continued on next page)