

ALASKA LEGISLATURE SPECIAL COMMITTEE / SUBJECT FILES 8672

1050 SCOMM 28: JOINT GAS PIPELINE COMMITTEE. 1981-82

6/ Footnote continued from prior page

The following cases support Professor Schwartz's policy proposal: Brandt v. Hickel, 427 F.2d 53, 56-57 (9th Cir. 1970); Chapman v. El Paso Natural Gas Co., 204 F.2d 46, 53-54 (D.C. Cir. 1953); United States v. Lazy FC Ranch, 481 F.2d 985, 988-989 (9th Cir. 1973); Oil Shale Corp. v. Morton, 370 F. Supp. 108, 124-127 (D. Colo. 1973).

The decision in the Lazy FC Ranch case, supra, indicates that a line of federal estoppel cases may be emerging, and that such is required by elementary notions of fairness. 481 F.2d at 989. The Chairman advises that his view is consistent with that of Professor Schwartz and the Court in Lazy FC Ranch. However, absent an authoritative pronouncement on the matter by the United States Supreme Court, or specific federal legislation, I cannot render an opinion as General Counsel of the Commission that the Commission would in all or substantially all cases be estopped by its orders from changing the ANGTS tariffs in such manner as to impair the underlying security for the financing of the ANGTS. In my judgment, the best opinion that could be rendered would simply agree that the Commission is constitutionally prohibited from setting a confiscatory rate of return. As stated by the Supreme Court in Bluefield Water Works & Improvement Co. v. Public Service Commission of West Virginia, 262 U.S. 679, 690 (1923):

Rates which are not sufficient to yield a reasonable return on the value of the property used at the time it is being used to render the service are unjust, unreasonable and confiscatory, and their enforcement deprives the public utility company of its property in violation of the Fourteenth Amendment.

See also, F.P.C. v. Hope Natural Gas Co., 320 U.S. 591, 603 (1943). As the subsequent discussion reveals, short

(Footnote 6 continued on next page)

6. Statutory Question

The foregoing is not to suggest that there are no Supreme Court cases dealing with regulatory estoppel. To the contrary, there are two cases of considerable relevance; however, both are based on interpretations of the enabling legislation of other agencies. In the first of these, United States v. Seatrain Lines, 329 U.S. 424 (1946), the Court held that the Interstate Commerce Commission lacked the authority to alter the certificate of a water carrier on its own motion. The holding was based on the express statutory language which permitted such action with respect to motor carriers, and the absence of correlative statutory authority in the case of water carriers, in the Interstate Commerce Act.

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of this constitutional limitation, the Commission has considerable latitude in the exercise of its jurisdiction under Sections 4, 5, 7 and 16 of the Natural Gas Act.

The fact that the lenders have induced the project sponsors to ask for the waiver may well indicate that an unqualified legal opinion cannot be obtained from lenders' counsel to the effect that a constitutional bar exists to provide an estoppel defense. A similar conclusion may be deduced from the request for estoppel admissions in the Great Plains case, supra, note 5.

In Civil Aeronautics Board v. Delta Air Lines, Inc., 367 U.S. 316 (1961), the Supreme Court considered a similar question. The Court determined that Section 401(g) of the Federal Aviation Act prohibited the CAB from altering a certificate of public convenience and necessity, even where the certificating order purported to reserve jurisdiction prior to certification to make summary modifications pursuant to petitions for reconsideration. Reaching this result, the Court's analysis was founded on the plain meaning of the language in the enabling statute and its legislative history.

The Delta case is of particular importance to the subject of this memorandum for two reasons. First, the Court clearly explained the nature of the problem with the following statement:

Whenever a question concerning administrative, or judicial, reconsideration arises, two opposing policies immediately demand recognition: the desirability of finality, on the one hand, and the public interest in reaching what, ultimately, appears to be the right result on the other [footnote omitted]. Since these policies are in tension, it is necessary to reach a compromise in each case Id. at 321.

The second key element of the Delta case is the recognition by the Court that the limitations placed on the CAB under the Federal Aviation Act resulted from Congressional concern during the passage of its predecessor, the Civil Aeronautics Act of 1938, over the reliance on, and consequent expenditure by airlines of large sums of money on the basis of the CAB's certificate (route) decisions. In this connection, the Court stated:

In short, our conclusion is that Congress wanted certificated carriers to enjoy 'security of route' so that they might invest the considerable sums required to support their operations; and, to this end, Congress provided certain minimum protections before a certificated operation could be cancelled. We do not think it too much to ask that the Board furnish these minimum protections as a matter of course, whether or not the Board in a given case might think them meaningless. It

might be added that some authorities have felt strongly enough about the practical significance of these protections to suggest that their presence may be required by the Fifth Amendment. See Seatrains Lines v. United States, 64 F. Supp. 156, 161; Handlon v. Town of Belleville, 4 N.J. 99, 71 A. 2d 624; see also 63 Harv. L. Rev. 1437, 1439. Id., at 331-332.

7. The Natural Gas Act

The Seatrains and Delta cases teach that the starting point in determining the practical necessity of the waiver as a security device is the language of the relevant enabling statute, the Natural Gas Act. Sections 4 and 7 are relevant, but the key provisions are Sections 5(a) and 16. Section 16 reads in pertinent part:

The Commission shall have power to ... prescribe, issue, make, amend, and rescind such orders, rules or regulations as it may find necessary or appropriate to carry out the provisions of this act.

Section 5(a) provides, in pertinent part, that if the Commission:

... [S]hall find that any rate, charge, or classification demanded, observed, charged, or collected by any natural gas company in connection with any transportation or sale of natural gas, subject to the jurisdiction of the Commission, or that any rule, regulation, practice or contract affecting such rate, charge, or classification is unjust, unreasonable, unduly discriminatory, or preferential, the Commission shall determine the just and reasonable rate, charge, or classification rule, regulation, practice, or contract to be thereafter observed and in force, and shall fix the same by order. [emphasis supplied]

These statutory pronouncements are mandatory as opposed to precatory. The broad language of Section 16, when employed in conjunction with Section 5, has permitted the Commission to alter and amend conditions to certificated service with full approval by the

courts. Section 5(a) has been interpreted as giving the Commission authority to alter the terms and conditions of certificated service even though the affected parties, acting alone, could not have changed them. F.P.C. v. Louisiana Power and Light Co., 406 U.S. 621, 646-647 (1972). In Opinion No. 754-A, Docket No. RP71-119, issued August 17, 1976, aff'd on other grounds, Hercules, Inc. v. F.P.C., 559 F.2d 1208 (3rd Cir. 1977), the F.P.C. concluded, with court approval, that it could exercise its Section 5 authority to promulgate new terms and conditions attached to certificates authorizing initial service.

The combined effect of Sections 5(a) and 16 is to require the Commission to amend terms and conditions of a certificate if those terms and conditions prescribe tariff provisions subsequently found to result in rates or charges which are not just and reasonable. As the United States Court of Appeals for the District of Columbia Circuit stated in American Smelting and Refining Company v. F.P.C., 494 F.2d 925, 940-941 (1974), cert. denied sub nom., Southern California Gas Co., et al., v. F.P.C., 419 U.S. 882 (1974), once the Commission finds that an existing rate or charge is unjust or discriminatory, 7/ it "must prescribe the remedy for that condition." 8/ If the existing illegal rate or charge is the result of the operation of a certificate condition, the remedy clearly will lie in the revocation or alteration of the order prescribing that condition, and thus the certificate itself.

7/ The Commission's authority to find that a tariff (previously determined to be just and reasonable) no longer functions in a reasonable manner has been upheld by the U.S. Court of Appeals for the District of Columbia Circuit in Pacific Gas Transmission Co. v. F.P.C., 536 F.2d 393 (1976).

8/ The D.C. Circuit has also taken this position in Pacific Gas Transmission Co. v. F.P.C., supra., where it stated at page 396 that "[a]fter such a finding, the Commission had not only the power but a solemn duty to take immediate action."

Furthermore, the unique nature of the Alaskan Northwest tariff provisions may subject them to amendment on another basis. Because they were developed in a rule-making, the provisions of Order No. 31 arguably are not the result of the Commission acting in a judicial capacity, but in a legislative one, formulating and applying policy. The distinction is important because where the Commission acts in the former capacity, applying law or policy to past facts, a decision on the merits as to a disputed, and litigated issue of fact becomes final. United States v. Utah Construction and Mining Co., 384 U.S. 354, 421-422 (1966); Davis, Administrative Law Treatise, §18.09 (1970 Supp.). In the latter case, the Commission is free to take appropriate steps without being bound by its prior actions. Permian Basin Area Rates Cases, 390 U.S. 747, 789 (1968); Public Service Commission, State of New York v. F.P.C., 511 F.2d 338, 353 (D.C. Cir. 1975). The policy determination in this case has been that the public convenience and necessity required the assurances to investors in the ANGTS provided for by the tariff provisions of Order No. 31. Arguably, the Commission has determined that as a matter of policy, at least under present circumstances, a tariff designed to meet the conditions of Order No. 31 will be just and reasonable. The same reasoning might also apply to the shipper tracking provisions in the event that such provisions are adopted by the Commission through rule-making procedures. Although it is questionable whether the rulemaking-adjudication distinction would be given great weight in the context of the facts at hand, it might be enough to convince a future Commission that it could, within the law, conclude that a different policy determination better serves the public interest.

From the foregoing it is clear that there is a plausible case for Commission authority to subsequently alter the tariff conditions of Alaskan Northwest's certificate, relying on Sections 16 and 5(a) of the Natural Gas Act and judicial pronouncements authorizing agencies to make changes in policy. The foundation for that case is the general principle that a policy determination made by a present Commission cannot preclude a future Commission from making a policy determination to the contrary, provided that in doing so it adequately explains the reasons for its new position, Consolidated Gas Supply Corp. v. F.P.C., 520 F.2d 1176 (D.C. Cir. 1975), whether or not there has been a change of circum-



stances. Greater Boston Television Corp. v. F.P.C., 444 F.2d 852 (D.C. Cir. 1970). A corollary to that principle is that a present Commission cannot bind a future Commission so as to preclude the prospective operation of Section 5. Optional Procedure for Certifying New Producer Sales of Natural Gas, 48 F.P.C. 218, 223 (1972); Pacific Gas Transmission Co. v. F.P.C., supra. These rules are analogous to those applicable to the legislature: namely, this Congress cannot preclude legislation, or amendments to legislation, by the next Congress.

8. Reasonableness of the Waiver Request

This line of analysis suggests several important conclusions, which bear ultimately on the recommendation of this memorandum. First, the presence or absence of a constitutional ban to the impairment by this or a future Commission of the tariffs upon which the lenders will rely is unclear. Second, there appears to be no statutory bar, such as was found to exist in the Seatrail and Delta cases, which would preclude the Commission from changing the tariffs. Even though it is clear that commentators, the Courts, at least by way of dictum, and the past and probably current Commissions accept the principle that elementary notions of justice should allow the project lenders to rely in good faith on the decisions of the Commission in making their loans, the request of the project sponsors indicating their "desires . . . to have these provisions waived" appears to be based on a concern as to the certainty of the federal estoppel doctrine under the Natural Gas Act. The questions that remain are those that are directly raised by your letter. They ask in essence whether there are either historical or predictable future facts which support or impugn the legislative request. That is, assuming that the waiver request is not patently unreasonable, is there a historical legal perspective from which the Congress could judge the future and find sound public reasons to grant or deny the waiver.

9. Past Commission Actions

For the moment I will defer to subsequent paragraphs the question of "the full implications of the waiver" and turn to your second specific question: whether there have been past Commission actions which justify the desires of the sponsors to have the subject sections of the Natural Gas Act waived. In this connection, the following contains a summary of recent cases, representative of past Commission actions, which involved issues of claimed detrimental reliance. Having done so I will leave it to the Subcommittee to conclude from these decisions whether or not the project sponsors' request is justified.

- A. Jurisdiction: Distrigas Corporation, et al. v. F.P.C., et al., 495 F.2d 1057 (D.C. Cir. 1974), cert. denied, 419 U.S. 834 (1974).

This proceeding involved, in pertinent part, a filing by Distrigas Corporation and its affiliates, Distrigas of New York Corporation and Distrigas of Massachusetts, (Distrigas) which requested the Federal Power Commission to grant Distrigas the authority under Section 3 of the Natural Gas Act to import liquefied natural gas (LNG) from Algeria. 9/ The filing also contained a request by Distrigas for the FPC to issue a disclaimer of the Commission's jurisdiction under Section 7 of the Natural Gas Act. 10/

9/ Following regasification, more than 80 percent of the gas was to be sold in the state of importation to distributors and direct customers and the remainder to distributors in neighboring states.

10/ The imported LNG was to be delivered and regasified at facilities at Staten Island, New York and Everett, Massachusetts.

The Commission in a three to two vote granted the requested Section 3 authorization without condition but, noting that this was a novel situation, reserved the right to add conditions in the future if circumstances should change. The Commission noted that Section 3 of the Natural Gas Act specifically provided for such future amendments. However, the Commission did not find Section 7 jurisdiction over the regasification facilities and service nor over the facilities and services involved in the sale of the regasified LNG in the state of importation. 11/ The result of the decision was that there was no jurisdiction under Section 7 or Section 3 (by way of conditions to the import authorization) over the regasification facilities and service nor over the intrastate facilities and service. The Commission indicated its hope that this disclaimer of jurisdiction would make the project more attractive to private investors and "lead to more gas at a lower price to the consumer than if [the Commission] controlled every detail and decision related thereto." Two Commissioners dissented, arguing that the Commission should take jurisdiction under Sections 3 and 7 of the Natural Gas Act over the regasification facilities and the "intrastate" facilities.

Following the Commission's decision, Distrigas "assertedly in reliance on the Commission's limited jurisdictional disclaimer, . . . proceeded to construction of its Everett and Staten Island facilities, expending very substantial sums on each." In a new filing, Distrigas also applied for Section 3 authorization to import significant additional quantities of natural gas and for Section 7 authorization to sell these additional volumes, as well as certain of the originally authorized volumes, in interstate commerce.

11/ The Commission did take jurisdiction under Section 7 of the Natural Gas Act over the sales of gas which was ultimately destined for resale in interstate commerce. However, it found that jurisdiction over such sales attached only at the tailgate of the regasification plant.

Meanwhile, at the Commission two of the original three person majority had left and had not been replaced. Therefore, the two dissenting Commissioners were now a majority. In response to Distrigas' applications, they found that circumstances had changed since Distrigas' original application had been acted upon by the Commission. Specifically, they stated that the original Distrigas application proposed new and increased sales for resale in interstate commerce. Therefore, the Commission held that Section 7 certification was mandated for all of Distrigas' facilities.

On appeal, Distrigas argued, among other things, that once the Commission's previous decision on the jurisdictional issue was final and Distrigas had subsequently acted in reliance on that decision by (1) contracting with its customers and (2) constructing its facilities, the Commission was foreclosed from changing its mind and asserting jurisdiction where it had previously declined to do so. Distrigas cited the Seatrain case, ^{12/} where the Supreme Court had overturned the Interstate Commerce Commission's attempt to revoke a certificate previously granted to a water carrier.

The Court found that the Commission had the authority to issue the order it had issued under Section 3 of the Natural Gas Act but remanded for additional proceedings before imposition of any requirements to certification under Section 7. The Court distinguished Seatrain on the basis of lack of statutory authority in that case, and noted that both Section 3 of the Natural Gas Act as well as the Commission's previous order specifically contemplated changes and amendments. The Court further found that if Distrigas had relied on an interpretation of the original Commission order to the contrary (i.e., that the original Commission order granted Distrigas a permanent immunity from regulation), Distrigas' reliance was misplaced.

^{12/} Supra, at 15.

As part of its basis for rejecting the estoppel argument, the Court concluded that Distrigas' claim of injury was at that point hypothetical in nature since Distrigas had not demonstrated that the Commission would not ultimately authorize Distrigas' proposal.

On remand, the Commission granted Distrigas' application subject to certain conditions.

The Distrigas case is one where the Court approved a changed Commission's reversal of a previous Commission's ruling upon which the company and its lenders had arguably relied to their detriment. As a basis for that approval the Court stated, "any 'right' to non-regulation that the Commission's previous decision can be supposed to have vested in Distrigas was entirely contingent on the Commission's continuing to view such non-regulation as in the public interest." However, two facts tend to distinguish Distrigas from the ANGTS. One is the conditions cited by the Court in the original Section 3 authorization, which arguably placed Distrigas and its lenders on notice that the rule could change. The other distinguishing fact was that the Court found that the Commission's decision had not yet injured Distrigas and that it might not in the future. Presumptively, the matter was resolved at the Commission level in a way which did not adversely affect Distrigas or its lenders. Nonetheless, one could conclude that the uncertainty caused by the Commission's reversal is the type of action the ANGTS lenders seek to protect themselves against.

B. Cost of Service Tariff: Pacific Gas Transmission Co. v. F.P.C., et al., 536 F.2d 393 (D.C. Cir. 1976), cert. denied, 429 U.S. 999 (1976).

This case involved a Commission order which, pursuant to Section 5(a) of the Natural Gas Act, changed in

part Pacific Gas Transmission Company's (PGT) cost-of-service tariff after a full hearing. Prior to the Commission decision, PGT had been permitted to adjust its rates automatically on a monthly basis to reflect all changes in its costs, including amounts for gas purchased from Canadian producers for resale in the United States. This tariff had been in effect since PGT was first authorized to import gas from Canada in 1960. 13/

In 1974 and 1975, after a hearing under Section 5(a) of the Natural Gas Act, the Commission modified PGT's cost-of-service tariff to provide that changes in the cost of gas purchased by PGT from Canadian suppliers could be passed on to PGT's customers only after PGT had applied for the rate increase pursuant to Section 4 of the Natural Gas Act, and after any suspension period imposed by the Commission thereunder. The Commission revised the tariff to provide that such filings would be subject to suspension by the Commission pursuant to Section 4 of the Natural Gas Act and, if suspended, subject to refund and possible reduction as provided in Section 4 of the Natural Gas Act. The Commission justified the revised tariff by stating that Canadian authorities had recently begun to require that significantly increased prices be charged for Canadian gas sold for resale in the United States. Furthermore, Canadian authorities had changed their pricing policy by referencing it to prices for alternate energy sources (primarily oil products) in markets served by Canadian gas. This formula change signaled further significant increases in the cost of gas purchased by PGT from Canadian producers (as much as four times higher than prior to the Section 5 proceeding). The Commission found that these changed circumstances rendered PGT's existing tariff "unjust and unreasonable" and required prior Commission review of rate increases for Canadian gas before they could be passed on to consumers in the United States.

13/ See Pacific Gas Transmission Company, 24 FPC 134 (1960).

On appeal, PGT argued in part that the Commission-ordered modification of its tariff could result in delay or outright denial of its recovery of increased Canadian purchased gas costs which, in turn, would financially destroy PGT. PGT also argued that the Commission was without power to modify the cost-of-service tariff which a previous Commission had approved in 1960 when PGT was originally authorized to commence the importation of Canadian natural gas.

The Court denied all of PGT's claims and affirmed the Commission order and its action revising the tariff under Section 5(a). In support of its holding, the majority noted that the Commission had granted prompt authorization under Section 4 for Canadian gas rate increases which took effect after the disputed tariff change. The majority opinion indicated that failure of the Commission to include such increases might well be to "abdicate" its responsibilities under Section 4. However, Judge Bazelon in a dissenting opinion directed considerable criticism towards the Commission for injecting uncertainty into PGT's financial position. As the dissent stated: ". . . the FPC concedes that had PGT been required to absorb even the initial 32 cent price increase for a short period of time it would have been driven out of business, and 2,000,000 consumers would have been deprived of 40% of their gas supply." (536 F.2d at 397.)

- C. Advance Payments (30 day rule): Tennessee Gas Pipeline Co., et al. v. F.E.R.C., et al., 606 F.2d 1094 (D.C. Cir. 1979), cert. denied, 447 U.S. 922 (1980); Natural Gas Pipeline Co. v. F.E.R.C., 590 F.2d 664 (7th Cir. 1979); United Gas Pipe Line Co. v. F.E.R.C., 597 F.2d 581 (5th Cir. 1979); Trunkline Gas Co. v. F.E.R.C., 608 F.2d 582 (5th Cir. 1979).

These cases involve interstate natural gas pipelines which, pursuant to a series of Commission rulemakings, including most notably Order Nos. 465 and 499, made interest-free loans (advance payments) to natural gas

producers as exploration and development investments which were to be repaid by future delivery of gas. Pursuant to these Commission Orders the pipelines were allowed to include such advances in their rate bases, for rate of return purposes, as exploration and development investments. This policy was advanced by the Commission as an incentive for the addition of gas supplies. The Commission's rulemaking orders spelled out in detail the requirements for inclusion of advance payments in Account 166. However, insofar as the "timing" of the expenditures by the producers versus the date of the pipelines investment, the Commission was silent, except to the extent the orders stated that amounts included in Account 166 could receive favorable rate base treatment where they were found to be "reasonable and appropriate." Subsequent to these Orders, pipelines invested at least \$5.5 billion in "advance payments" with producers. However, after these investments had been made, the Commission, acting under FPC Order No. 465, pursuant to the "reasonable and appropriate" language, disallowed rate base treatment for certain advances because they were made to the producers and included in the pipelines' rates more than "thirty days" before they were spent by the producers. As a result large amounts of advance payments were retroactively disallowed on a deferral basis for inclusion in pipeline companies' rate bases.

On appeal to three different Circuit Courts, the pipelines claimed serious injury and voiced loud complaints that the general language of Order Nos. 465 and 499 had offered no notice of the new specific timing rule imposed by the Commission. As acknowledged by the D.C. Circuit Court, ". . . substantial sums were involved and deferral has resulted in considerable losses for the pipelines' stockholders." (606 F.2d at 1108.)

The pipelines argued that, at the invitation of the Commission rulemaking orders, pipelines were encouraged to make advance payments to promote exploration and development of natural gas reserves for the interstate market. Pursuant to those orders, the pipelines argued, they had invested substantial sums of money in the advance payment program. Thus, they argued that it was unfair and illegal for the Com-

mission, pursuant to the reasonable and appropriate standard, to establish in individual pipeline rate cases decided after the rulemaking orders had issued and after the advance payments contracts had been executed, that rate base treatment of advance payments would not be allowed more than thirty days in advance of when they were spent by the producers.

The three separate circuit courts reversed the Commission orders decided on this basis. However, the D.C. Circuit in Tennessee rejected the pipelines' claims of retroactive ratemaking and detrimental reliance and directed the Commission on remand to develop a timing relationship supported by substantial evidence. The Fifth Circuit in the United and Trunkline cases and the Seventh Circuit in the Natural case found that it was impermissible retroactive ratemaking to impose a timing requirement on Order No. 465 advances and that the pipelines had relied to their detriment on the absence of a timing requirement in the Order when they made advances to producers. Therefore, they reversed the Commission decision on the Order No. 465 advances and directed inclusion of the designated amounts in the respective pipelines' rate bases. Since Order No. 499 contained at least an ambiguously general reference to a timing relationship, those portions of the Commission decision were remanded because of a lack of substantial evidence supporting that portion of the Commission orders. Although the Commission was reversed in these cases, language from the Court's opinion in Tennessee is illustrative of the "regulatory risk" inherent to an industry subject to the Commission's jurisdiction.

We find that petitioners' arguments in support of their interpretation (of estoppel facts) are undercut by consideration of the character of the advance payment program as an experimental departure from well accepted and understood regulatory law. (606 F.2d at 1108.)

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One of the risks incurred by the pipelines has been the 'regulatory risk' that an experimental program such as advance payments might miscarry, and that administrative readjustment would not prevent substantial adverse impact. (606 F.2d at 1120.)

D. Dedication of Gas Reserves: Air Products & Chemicals, Inc. v. F.E.R.C., F.2d (5th Cir. 1981), Case No. 78-2011, decided July 16, 1981.

This case involves a Commission order which ended a prior Commission policy under the "Chandeleur incentive doctrine" (of approximately seven years duration) which allowed offshore natural gas producers to reserve for their own use a portion of gas reserves which otherwise would have been dedicated to the interstate market. The prior policy had allowed these reservations as an incentive to producers to expedite the exploration and development of offshore reserves of natural gas. The Commission, in its final order, found that the reservation incentive was no longer needed because, among other things, the interstate market was suffering severe curtailments and thus the gas which would be reserved by the producers was needed to serve the interstate market.

On appeal the producers argued, among other things, that they relied to their detriment on the prior FPC policy allowing reservations and that it was unfair and illegal for the Commission to reverse its policy in an adjudicated case instead of a rulemaking proceeding to be applied prospectively.

The Court remanded the case to the Commission because of the improper way in which the Commission relied on extra-record evidence to support its decision, but it rejected the producers' arguments of detrimental reliance on the prior Commission policy. The Court noted that the old Commission policy was continually attacked by consumer groups in various cases and that it was, at its inception, described by the FPC as experimental. In sum, the Court found that the policy was

never "well established" enough to have caused detrimental reliance thereon by producers or anyone else. The Court noted further that the producers were not precluded from selling the gas in interstate commerce for a fair price but rather were prohibited from reserving the gas for their own use.

E. Unsuccessful Project Costs: Tennessee, et al. v. F.E.R.C., 606 F.2d 1094 (D.C. Cir. 1979), cert. denied, 447 U.S. 922 (1980).

This proceeding involved, among other things, an attempt by Transcontinental Gas Pipe Line Corporation (Transco) to recover costs associated with four unsuccessful projects related to the production of synthetic natural gas (SNG). The Commission denied recovery of these costs because they were not "used and useful" in providing service and could not be charged to rate-payers. 14/

On appeal, Transco argued that it had spent \$22 million on these ultimately unsuccessful projects in purported reliance on a Commission policy allowing recovery of the costs of the projects if they proved to be unsuccessful. The Court found that the Commission had no policy allowing recovery of these costs and then affirmed the Commission's decision.

14/ A possible concern of the lenders is that a dogmatic application of the "used and useful" maxim would result in similar treatment of the ANGTS if the project were to suspend operation after completion or, through no fault of the sponsors they were unable to commence operation after completion. The need for assurances to the contrary (the minimum bill) provides a major impetus for project financing as opposed to conventional financing.

Other cases in which the Commission is currently under criticism for assertedly changing policies to the detriment of jurisdictional companies include (i) applications for rehearing of Commission Opinion No. 90 15/ and Order No. 94, 16/ and (ii) the oil pipeline cases where revision of the ratemaking methodology formerly employed by the Interstate Commerce Commission is under consideration. 17/

However, these cases should not be taken as a suggestion that the Commission never accords finality to its orders. In Texaco, et al., Docket No. CI77-329, et al., 13 FERC ¶ 61,222 (1980), for instance, a United States Senator filed a pleading on July 21, 1980, seeking to reopen a case settled on February 10, 1978. Part of the Senator's argument was that changed circumstances justified reopening the case, but the Commission refused to grant the intervention and declined to disturb its earlier order.

Arguably, cases such as those described above represent a possible "justification" or reason why the sponsors have now sought the waiver from Congress. At the same time, however, these decisions and others of a similar nature have generated some sympathy in the courts and have begun to establish the proposition that estoppel is available as a defense against the government if the government's wrongful conduct threatens to work a serious injustice and if the public's interest would not be unduly damaged by the imposition of estoppel. Lazy FC Ranch, supra, 481 F.2d at 989. Nevertheless, because the estoppel doctrine has not been fully developed under the Natural Gas Act, it is fair to state that only a waiver would provide the lenders with the same sense of legal certainty that a firmly established "regulatory estoppel doctrine" would afford these investors. Whether this legal uncertainty "justifies" the requested waiver is a value judgment best left to Congress. With this in mind, it is appropriate to consider your questions as to hypothetical situations creating injury to project participants.

15/ 12 FERC ¶ 61,080 (1980).

16/ 12 FERC ¶ 61,080 (1980); FERC Statutes and Regulations, ¶ 30,178 (1980).

17/ Trans Alaska Pipeline System (TAPS) (Phase I), Docket Nos. OR78-1, et al.; Williams Pipe Line Company (Phase I), Docket Nos. OR79-1, et al.

10. Hypothetical Injuries to Project Participants

Our analysis has produced four general sets of hypothetical circumstances which might induce a Commission response changing the tariff provisions related to the project, absent the waiver. They are:

- (1) a changed economic environment resulting in materially different costs of capital (i.e., interest rates and return on equity) from those extant at the time of initial approval;
- (2) changed amounts of natural gas available to be transported resulting in a materially different economic life for the transportation system;
- (3) changed economics of the gas to be delivered by the system, relative to other sources of energy supplies, warranting an altered revenue pattern in order to avoid more serious economic dislocations; and
- (4) premature project failure.

As a consequence of these general events, the following hypothetical Commission actions might take place:

(a) Upon a finding of changed circumstances the Commission could determine, pursuant to Sections 5, 7 and 16 of the Natural Gas Act, that the cost-of-service tariff (which provides that Alaskan Northwest's rates will be adjusted twice a year by a formula that requires Alaskan Northwest to change its rates to reflect actual costs in its charges to shippers) was no longer appropriate. The Commission could then require Alaskan Northwest to charge a stated rate, such as a flat rate per MMBtu of natural gas transported, and require a filing pursuant to Section 4 of the Natural Gas Act to be made prior to the effectuation of any increase in that stated rate. The rate increase filing could be suspended for up to five months, and the proposed rates thereafter collected could be subject to possible reduction and refund with interest.

The risks to Alaskan Northwest in the event of a Commission-ordered change to a stated rate form of tariff involve the adverse economic impacts resulting from the regulatory lag attendant to putting into effect a proposed

rate increase under Section 4 of the Natural Gas Act. The regulatory lag consists of the sum of: (1) the time necessary to prepare a Section 4 rate filing plus (2) the one-month notice requirements between the time the filing is made and the earliest possible effective date (absent a waiver of the notice requirements) plus (3) a suspension period of up to 5 months beyond the proposed effective date. During the lag period, Alaskan Northwest sponsors would not be able to recover all of the costs previously covered by operation of the cost-of-service tariff.

As noted previously, the FPC modified in part the cost-of-service tariff of Pacific Gas Transmission Company to require Section 4 filings to recover increased Canadian purchased gas costs. However, the Court concluded that the result was justified inasmuch as the Commission had, pursuant to Section 4, allowed a "non-niggardly" flow-through by the company of increased gas costs, notwithstanding the dissent's concern that delay would have resulted in adverse consequences.

(b) Alternatively, the Commission could decide at a future time to leave the cost-of-service tariff intact but remove the minimum bill (which guarantees recovery of actual operation and maintenance expenses, actual current taxes and debt costs). 18/ The consequence of this action could

18/ The minimum bill provides for the recovery of actual operation and maintenance expenses, actual current taxes, and all amounts necessary to service debt including interest and scheduled retirement of debt. Under no circumstances would debt service be impaired.

Recovery of equity investment and return on equity investment is, however, treated differently. The "90 percent billing adjustment ratchet" reduces charges to eliminate return on equity investment and associated taxes for any service diminution below 90 percent of tendered gas. This tariff provision would be applicable in instances when the reduction in service for any one month was greater than 10 percent. The reduction in charges to reduce the return on equity and

be that during periods of interruption exceeding thirty days Alaskan Northwest would bear all of the financial consequences of the interruption because it would not be able to charge the shippers for any costs incurred during the period of interruption. 19/

(c) Another hypothetical involves a situation wherein the ANGTS project fails some time after the date construction had commenced. Assume further that upon review of

18/ Footnote continued from prior page

associated taxes would be proportional to the percentage of volumes tendered but not transported. The pipeline would be permitted to recoup any such billing adjustments by transporting volumes in excess of the contract level in subsequent months. The charge for such "Billing Adjustment Gas" transportation would be computed by using the same billing adjustment (i.e., the same dollar per Dekatherm). Any service reduction below 100% but more than 90% would be accounted for as "No Billing Adjustment Gas." As such, this gas would be transported in subsequent months at no added charge to the shipper.

The "90 percent billing adjustment ratchet" also operates during periods of interruption of service. It ceases to be operative, however, for any period of total cessation of service for more than 30 days. Beginning with the thirty-first day of any total cessation of service, the portion of the charges attributable to "equity costs" would be collected subject to refund pending a showing by Alaskan Northwest that it should be permitted to retain equity costs collected during the period of cessation of service. Equity costs, in this context, are defined to be "that portion of depreciation expense not necessary for debt service and associated taxes." (Order No. 31, at 181-182.)

The above discussed ANGTS tariff provisions differ substantially from lower-48 pipeline tariff provisions in a number of important respects. It is fair to state that the ANGTS tariff contains unique, "first-of-a-kind", provisions which have not been previously granted by the Commission.

19/ This assumes that in eliminating the minimum bill the Commission would also eliminate the opportunity to collect equity costs subject to refund and to make a showing pursuant to the provisions described in note 18, supra.

the circumstances surrounding the project failure, a future Commission decided, pursuant to Sections 5, 7 and 16 of the Natural Gas Act, to reverse a previous decision in principle to require consumers to pay all debt costs regardless of the circumstances once final certification had been granted and debt servicing obligations had commenced. Thus, the partners of Alaskan Northwest (including sponsor-shippers) would be required to absorb all Alaskan Northwest debt costs as well as other (such as equity) Alaskan Northwest costs. Such a Commission decision would have an immediate severe financial impact on Alaskan Northwest, with the degree of severity being a function of the financial health of its partners.

(d) The Commission could decide several years in the future, pursuant to Section 5 of the Natural Gas Act, to direct the shippers of the gas to remove from their respective tariffs the rate adjustment (tracking) provisions which permit the shippers to flow through increases in transportation costs without the necessity of making a full filing under Section 4 of the Natural Gas Act (reflecting all current costs and revenues, not merely the increased costs of transportation). 20/ In these

20/ While the Commission has decided (in principle) to allow the shippers to track in a timely manner amounts reflecting transportation costs paid to the ANGTS sponsors under tariffs approved by the Commission, the Commission has not yet decided what kind of tracking of these costs by the shippers would be permitted. For example, the tracking provision could require a periodic rate filing under Section 4 reflecting only the change in transportation cost, similar to the shipper's current purchased gas cost adjustment clauses. Or the provision could permit the shippers to adjust their rates automatically on a simultaneous basis to reflect changes in ANGTS transportation costs. Such a provision would be similar to fuel cost adjustment clauses permitted in rate schedules and tariffs of electric utilities for transactions which are subject to this Commission's jurisdiction.

It should also be noted that no decision has yet been made by the Commission governing pass-through by the shippers of transportation costs incurred under tariffs subject to the jurisdiction of Canadian authorities.

circumstances, the shippers could be subject to under recovery of the Alaskan Northwest transportation costs because of the same regulatory lag discussed above.

(e) If additional reserves of natural gas were found in Alaska sufficient to lengthen the economic life of the ANGTS beyond the 25-year life now inherent in the proposed depreciation rate, the Commission might at some future time reduce the depreciation rate so as to more accurately spread the recovery of the plant investment over the useful life of the project. 21/ Alaskan Northwest might oppose such a change on the ground that the resultant reduced amount of depreciation expense recovered on an annual basis would impair their ability to service debt having a shorter term.

(f) In the event of a premature end to the viability of the project after it had commenced operation (because of physical, market or other forces), the Commission might find that a faster write-off of debt was appropriate, rather than continued operation of the minimum bill provisions. This could cause financial harm to Alaskan Northwest if the debt-holder refused to allow Alaskan Northwest to accelerate repayment of its debt, particularly if the interest rate to be paid to the lenders on the debt is higher than the general level of interest rates being paid for comparable investments. Alternatively, absent a waiver, a future Commission could determine, based on either a change in policy perception or based on facts attributing fault to the sponsors for the project failure, that the sponsor-investors (as opposed to the consumers) should bear some part, or all, of the risk of loss of recovery of debt, and then appropriately adjust the tariff or minimum bill provisions.

(g) In the event that Alaskan Northwest transportation costs and the costs of Prudhoe Bay and other natural gas, increase significantly, a shipper's resale rate could be increased so as to adversely affect the marketability of a shipper's gas. Under this scenario, the shippers (particularly the non-sponsor shippers) might argue for a reduction in the Alaskan Northwest transportation charges so that the shippers could continue to market their gas. Absent a waiver the Commission would have the power to

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21/ See, Memphis, Light, Gas and Water Division v. FPC,
504 F.2d 225 (D.C. Cir. 1974).

order some sort of temporary or indefinite reduction to Alaskan Northwest's charges. In response, Alaskan Northwest, or some other party, might argue that the reduction in Alaskan Northwest's charges (regardless of the reason therefor) impaired the recovery of Alaskan Northwest's "minimum bill" costs and thus jeopardized the financial health of the project.

(h) Another hypothetical involves the pipeline-shippers' current purchased gas cost adjustment (PGA) clauses, which, as now written, would permit the shippers to pass through Alaskan purchased gas costs to their customers. If the Commission should decide to revoke or modify the PGA clauses, the shippers would be subject to regulatory lag in recovering Alaskan and possibly other purchased gas cost increases. To the extent that such a lag caused a financial strain on the shippers, it could affect the cash flow to the ANGTS.

(i) In Order No. 31, the Commission stated its intention to periodically review Alaskan Northwest's rate of return on common equity. Absent the waiver, the Commission's authority to conduct such periodic reviews would provide a basis to adjust the return on common equity downward to reflect any lowering of the cost of common equity to Alaskan Northwest. Such a lowering of common equity costs would most likely result from a general overall improvement in the economy resulting in an improvement in the financial markets, leading to a reduction in the return on equity needed by Alaskan Northwest to continue to render adequate service in the public interest. The argument that a reduction in equity return could impair collection of all debt costs in violation of the proposed waiver language would presumably be an argument by lenders and others that the interest coverage must be greater than one (i.e., 1.5, 2.0, etc.) in order to ensure that Alaskan Northwest's ability to pay debt is not impaired. ✓

11. Hypothetical Injuries to Consumers

You have asked "what hypothetical situations there might be which would work to the injury of resale customers and consumers should the waiver be granted." At bottom the most injurious risk that could be borne by the consumer is that the project might be abandoned either before or after completion, and that the consumer, through the resale customer, would be surcharged for the investment in the project ①

but would not receive gas from it. Next most injurious is the risk that the consumer will have to pay for gas not received during sustained periods in which the pipeline is out of service. Arguably, for each risk which would exist to the sponsors and/or shippers in the absence of a waiver, there would exist a concomitant risk to the resale customers and/or consumers in the event a waiver is granted. However, in fairness these risks should be properly placed in the context of the facts of the proceeding and the legal status of the ANGTS project to date. (2) * *

President Carter in his formal Decision, the Congress in its approval of the President's Decision and international agreements, and the Commission in its Recommendation to the President and in existing orders, have each concluded that this project is in the public interest. These approvals have led to the existing tariff, minimum bill and other provisions applicable to the ANGTS as described above. The project sponsors and lenders have nonetheless responded by seeking further assurance that the unique features of these determinations, as well as the Commission's final orders and rules, will not be altered or modified after adoption. Relevant here are the existing decisions of various authorities that the ANGTS may be project financed and that certain portions of the investment should be recoverable from consumers in events, including project interruption, where consumers do not receive the benefit of delivered gas. Thus, decisions have been made that impose risk on the consumers regardless of the waiver. Further, the Commission's ultimate orders and rules will allocate the remaining risks among the parties after consideration of all factors consistent with or affecting the public interest. Accordingly, an argument can be made that once the legal foundation for the ANGTS places the risks, the waiver would impose no substantial additional risk on the consumers, but only provide a method for assuring implementation of the federal decisions made. The extent to which a waiver would place additional onus on the consumers would include the implications of removing the "regulatory risk" from the sponsors. In other words, the consumers would then face the risk that a future Commission could not, based on changed circumstances or different policy perception, modify the ultimate ANGTS orders or rules within the parameters of their final issuance. VII

12. Reasonable Likelihood of These Events Occurring

From a legal standpoint, the likelihood that a future Commission would take or decline to take action of the type inquired about in your letter would appear to depend upon (a) whether a reconsideration of past policy determination occurs, and/or (b) the future existence of facts which would produce a policy response by the Commission. The likelihood of such facts occurring is a prediction or assessment that, presumably, has been made in connection with all federal determinations to date. In issuing the final orders and rules, the Commission is legally charged with the responsibility of weighing the risks, to both the sponsors and consumers, attendant to investing the sums necessary to complete the project. The risks are exceptionally difficult to quantify because of the infinite set of variables that exist, and in the end the question is one of judgment. Either the risks are too great for the consumers to be asked to bear (i.e., the project is not in the public interest), or they are not. The Commission may well be required to make that determination as part of its final certification of the project. 22/ Appropriately, the Congress must decide, through adoption or rejection of the waiver, whether to eliminate the "regulatory risk" inherent in continued Commission jurisdiction after final certification.

I am advised by the Chairman that he will support passage of a waiver designed to assure project financing of the ANGTS consistent with the positions expressed in this memorandum. 23/

22/ See President's Decision, Finance Condition No. 2, at pages 36-37.

23/ In this connection, the text of the ultimate waiver language, if any, is a matter of continuing interest to the Chairman, myself and the Office of the General Counsel. Without addressing any of the complexities involved with the final language, please be advised that we would welcome the opportunity to provide your Committee and other interested persons with any technical assistance or advice that may be requested.

Honorable Philip R. Sharp and
Honorable Clarence J. Brown

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Hopefully the foregoing provides you with an adequate response to your inquiry given the length of time taken and the resources available to prepare this memorandum. Please understand that this response is not intended, nor should it be taken, as an official Commission position. Rather, this memorandum represents the combined efforts of the Office of the General Counsel and other Commission staff members, as well as opinions of the Chairman and myself.

Alaskan Northwest Natural Gas)
Transportation Company) Docket No. CP80-435

The State of Alaska ("Alaska") submits this memorandum in support of its position that certain costs of mitigating the socio-economic impacts of the Alaska Natural Gas Transportation System ("ANGTS" or "the project") in Alaska, as further described below, are properly included in the Certification Cost Estimate ("CCE") and borne by the project. As an appendix to this legal memorandum, the State is submitting a summary of its most current budgetary information describing the cost and nature of the monitoring and socio-economic impact assistance programs that the ANGTS will be asked to support.^{1/} The budgetary information does not include data as to highway impact costs which are still being formulated nor does it include any costs associated with the socio-economic impact of the conditioning plant which, according to Order 45, is not part of ANGTS.^{2/} Generally stated, Alaska's position is that the Commission has already ruled that prudent socio-economic impact costs should be included in

- 1/ Alaskan Northwest Natural Gas Transportation Company ("Northwest") will formally submit this material as an amendment to its cost estimate as a substitute for the earlier information now in that application. Alaska will supply to the Commission Staff, Northwest, and the Office of the Alaskan delegate a copy of the basic budgetary data from which the impact cost figures are drawn. Should any other party on the restricted service list request a copy, Alaska will supply a copy of this data.
- 2/ Any costs associated with these issues will be formulated and supplied at an appropriate time.

the cost estimate and hence that they are properly borne by the ANGTS; that the recovery of such costs from the project is well supported legally, economically, and socially; and that the objection of the Commission staff to the recovery in principle of such costs is neither timely nor well-founded.

Alaska's concerns with the socio-economic impacts of the ANGTS are neither newfound nor casual. They spring directly from Alaska's traumatic experience with the construction of the TransAlaska oil pipeline. Dramatic increases in almost every category of undesirable economic and social behavior occurred. These included but were not limited to housing shortages, rampant inflation in the local cost of goods and services, an explosion in domestic problems such as divorce and child- and spouse-abuse, an increase in crime generally as well as the importation of crimes not seen before in Alaska, and destruction, at least short-term, of some of the amenities that attracted many early Alaskans to the State. The shock of this activity was amplified by its occurrence over a small period of time -- the construction years -- but, several years later, the wound has not healed completely and the scar tissue of Alaskans is tender.

That is not to say that there are not benefits to Alaskans from petroleum development. Alaska's wealth has increased and the State government has attempted to bring the benefit of this new wealth directly to its citizens although these efforts have met at least temporary obstacles.^{3/}

^{3/} In 1980, Alaska enacted legislation providing for the distribution of "dividends" to Alaska residents to be paid from part of the Permanent Fund. The Fund is comprised of a percentage of the State's rentals, royalties and lease sale proceeds received from oil and gas development in the State. Although all dividends are of equal amount, the number of dividends received by each Alaska resident corresponds to the number of years he or she has been a resident since statehood. The Alaska Supreme Court upheld the dividend program in a challenge to its constitutionality on equal protection grounds. Williams v. Zobel, No. 2201 (Alaska Sup. Ct., Oct. 24, 1980). However, distribution of the dividends was stayed by the U.S. Supreme Court pending disposition of an appeal from the Alaska Supreme Court's decision. Zobel v. Williams, No. 80-1146 (U.S. Sup. Ct., Order of November 17, 1980).

Money alone is not the answer; the answer is a concentrated effort to avoid or mitigate the impact of any new major projects in Alaska.

For these reasons, when proceedings were initiated before the Federal Power Commission to consider the competing proposals for the transportation of Alaska natural gas to the Lower Forty-Eight states, Alaska did not stop with announcing its favored proposal but identified as one of its critical concerns the socio-economic impacts of any Alaska gas pipeline and asked that the costs of preventing and remedying those social ills be placed on the pipeline. Alaska said that, "unless ... they are internalized to the project, natural gas consumers in the Lower Forty-Eight states would have an undeserved bargain at the expense of the taxpayers and residents generally of Alaska." Statement of Position of the State of Alaska, El Paso Alaska, et al., docket number CP75-96 et al. at 2 (April 7, 1975).^{4/} This statement of concern was made quite apart from the issue of selection of a particular pipeline proposal. It is a concern that Alaska maintains to this day.

The question of the recovery of socio-economic impact costs was next raised in the Commission's Incentive Rate of Return rulemaking (RM78-12). The Upper Tanana Development Corporation proposed that socio-economic expenditures should constitute a fifth category of change in scope events. The Commission chose a different approach:

"For the reasons discussed below, prudent expenditures of that nature should be included in the certification cost estimate at the outset, and should not be included in the change in scope mechanism." Order 31, at 125 (June 8, 1979).

The Commission staff applied for rehearing of this order on many points but nowhere in its 78 page application did it raise or even mention the Commission's determination on socio-economic costs. See generally, Application for Rehearing of the Commission Staff, Docket RM78-12 (July 24, 1979). Moreover, the Commission did not modify its determination in any regard in Orders 31-A or 31-B.

^{4/} In the El Paso Alaska proceeding, Alaska presented testimony on the socio-economic impact of TAPS and the projected impact of ANGTS.

For that reason, when Alaska Northwest Natural Gas Transportation Company was in the process of preparing its certification cost estimate, it approached Alaska through the State Pipeline Coordinator's Office and asked for an estimate of third party monitoring and socio-economic impact assistance costs. Since the formal State budgetary process that would generate and review such costs had not begun, Alaska's Pipeline Coordinator asked the various state agencies what their best estimate was of the socio-economic impact costs of the ANGTS. These estimates were compiled and supplied to Northwest and they were included in Northwest's application.

When these figures became a point of controversy in the informal proceedings conducted by the Office of the Federal Inspector and the Alaskan Delegate with regard to the certification cost estimate (Docket CP80-435), Alaska informed all parties that revised figures would be filed upon completion of the State budgetary process. By letter of November 24, 1980, Alaska informed all parties that it would supply revised figures no later than December 15, 1980, following the State budget process. By subsequent letter of December 14, 1980, the parties were informed that the budget process was still continuing and a new target date early in January was projected. Now the process is complete and revised numbers are available. Alaska regrets the delay but believes the additional time it spent will ultimately advance the process in which the Commission is engaged.

The revised figures, explained further below, are in 1980 dollars, \$51,255,900 for surveillance, and \$19,784,100 for socio-economic impact assistance in the nature of specific programs, as opposed to the creation of a general fund, for a total of \$71,040,000.^{5/} Socio-economic impact assistance costs have been requested only for impact costs incurred directly as a result of pipeline construction workers and their families, not for the induced impact that will be caused by those attracted to Alaska but not employed by the project. These numbers do not include highway indemnification costs nor do they include such socio-economic impact assistance costs as may be associated with the construction of the conditioning plant.

The Staff position is asserted in its comments of November 7, 1980, which state that third party monitoring (surveillance) costs should remain in the cost estimate unless the statutory basis for those costs is upset by the federal or state courts. Beyond that, the Staff objects to the inclusion of socio-economic impact mitigation costs as

^{5/} In actual dollars (as spent), these figures are \$72,697,100 for surveillance, \$28,312,700 for socio-economic impact assistance, and a total of \$101,009,800.

"not required by statute and may be more properly supported by tax and royalty revenues from the project" and asks that they be deleted from the CCE. Staff Comments, Docket CP80-435, at 4 (November 7, 1981).

Northwest's position is that both monitoring and socio-economic costs should be retained in the CCE but, as to the latter, assets that they be retained in the CCE pending a determination by the FERC of their "allowability." As to both costs, Northwest agrees that the cost performance ratio should be adjusted to reflect actual costs. Report of Alaskan Northwest Natural Gas Transportation Company on Its Understanding of Agreements Reached With the Commission Staff Regarding the Certification Cost and Schedule Estimate, at 1-2 (December 22, 1980).

ARGUMENT

1. The Commission Has Already Ruled That Socio-Economic Impact Costs Should Be Included in the Certification Cost Estimate.

At the outset, Alaska does not believe that, in principle, the propriety of inclusion of socio-economic costs in the cost estimate is unresolved. Order 31 is quite definite in directing that prudent costs of this nature be included in the cost estimate. Order 31 at 125. A fortiori, this is a determination that in principle such costs are properly assignable to the project. Alaska recognizes that a determination whether particular categories of socio-economic expenditures are prudent requires further rulings but the principle of recovery of certain of these costs from the project has been decided. That order is final, both as to rehearing and as to judicial review. The Commission staff had its opportunity to seek rehearing on this point but did not do so. Thus, the principal issue raised by Staff -- whether such costs should be part of the CCE -- is decided and the Staff's arguments should not be heard now except perhaps insofar as they relate to the recovery of particular costs rather than to the permissibility of including any costs of this nature. Further, the appropriate time to address the prudence of such costs would not appear to be this proceeding since determinations of prudence generally are made after, not before, expenditures of funds by a natural gas company. Nonetheless, given the special nature of this proceeding, Alaska will endeavor to address this issue now.

2. That Alaska Will Suffer Adverse Socio-Economic Impact Is Indisputable.

There is and can be no dispute that Alaska will suffer substantial socio-economic impact from construction

of the ANGTS. Construction will last only a few years but it will attract to Alaska not only thousands of construction workers and their families but many others seeking work in peripheral activities related to the project or opportunities in Alaska they may never realize. According to the budget information developed by the State government, more than 35,000 job seekers will come to Alaska in hopes of finding project related employment. As many as 13,171 workers are expected to be employed directly on construction. Yet Alaska's entire population is only 400,481. (1980 census, Preliminary Count). Much of its population is located in the Anchorage SMSA (173,992, 1980 Census, Preliminary Count). But the communities that will experience the most impact are much smaller and nearer the pipeline corridor. For these, the effect of a sudden increase in activity and population from the pipeline can be a severe and immediate shock. Moreover, the level of services necessary to accommodate the impact is not generally that which state and local government are typically called upon to provide, for it is necessary for the few years of the construction period only. It makes no sense for Alaska governments to expand staff and construct permanent facilities for an impact of but a few years duration.

Population increases, housing shortages, local economic changes and sudden and heavy demands on limited public services as a result of increased crime, alcoholism and family problems are all expected as a result of construction of the Alaskan Natural Gas Transportation System. These effects were addressed in the environmental impact statements for ANGTS and more recent studies by the State continue to document their occurrence. No party, not even Staff, disputes that these effects will occur and that they will occur as a result of construction of the ANGTS. Thus, the basic question is of responsibility for mitigating the acknowledged impact.

3. Reimbursement of Socio-Economic Impact Costs Is Prudently Undertaken By The ANGTS

The duty to identify and mitigate socio-economic impact, and to expend funds to that end, is no different in principle than the now well accepted responsibility to identify and mitigate harm to the physical environment. 18 C.F.R. Sections 2.69, 2.80, 2.82. This duty arises not only from the National Environment Policy Act (NEPA) but from the public interest standard itself. No one today would suggest that any major project licensed by the Commission could leave impact to the physical environment unredressed by saying it belonged to the landowners and governments at the site of the project. Injury to the social environment, while less

tangible, also properly comes within the duty to mitigate harm to the "environment."^{6/}

That there is an obligation by Commission licensees to address socio-economic impact^{7/} is recognized in Commission precedent. In Virginia Electric and Power Company (VEPCO), the presiding Administrative Law Judge referred to the requirements of NEPA as "[carrying] with . . . [them] a duty to take reasonable steps within the agency's jurisdiction to ensure that adverse impacts [on the social environment] are mitigated as far as possible." See Limited Decision Issuing License for the Bath County Pumped Storage Project, issued September 20, 1976, Project No. 2716, at p. 48, approved and adopted by the Commission, Opinion 785, January 10, 1977. At issue was whether an applicant for a license to construct power-generation facilities could be required by the Federal Power Commission to bear certain costs associated with the socio-economic impacts anticipated from a large influx of construction-related people. The Administrative Law Judge was persuaded that the applicant should bear some of those costs and that it was the obligation of the Commission to ensure that such impacts were properly mitigated. The Administrative Law Judge ruled that:

the license should be conditioned to require the licensee to extend financial assistance to Highland County to mitigate the impact upon the County's fisc resulting from the influx of project workers, their families and others who accompany them . . . during the period of project construction. The assistance is necessary in the following areas of additional costs, to the extent they are not covered by increased tax revenues and fees attributable to the presence of project workers or increased financial assistance from other levels of government: (1) education; (2) law enforcement; (3) solid waste disposal; (4) general

^{6/} The nature of socio-economic impact from a particular project will vary according to its size, nature, and location. Nonetheless, Alaska knows, based upon its TAPS experience, that such impact can be identified and predicted, especially in as unique a social environment as Alaska.

^{7/} NEPA is not limited to concern with the physical environment. Hanley v. Mitchell, 460 F.2d 640, 647 (2d Cir.), cert. denied, 409 U.S. 990 (1972). Accord, Chelsea Neighborhood Associations v. U.S. Postal Service, 516 F.2d 378, 388 (2d Cir. 1975); Monarch Chemical Works, Inc. v. Exxon, 466 F.Supp. 639, 655-56 (D.Neb. 1979).

government costs; and (5) welfare and other social services. VEPCO Limited Decision, at 56.

This decision does not stand alone. See, e.g., Appalachian Power Company, Opinion and Order of the Commission Granting a License for the Construction of the Blue Ridge Project, issued June 14, 1974, Project No. 2317 (mitigation measures required in the form of financial assistance for moving expenses, personal property losses, and increased mortgage interest costs); Pacific Alaska LNG Company, et al., initial decision, issued August 13, 1979, Docket No. CP75-140 (applicant required to establish experimental bus program and identify and protect cultural values of native Americans). In fact some of the costs that are recognized by the Commission's rules and regulations as standard pipeline cost items are properly characterized as socio-economic impact costs.^{8/}

Thus, Commission precedent recognizes a duty to address socio-economic impact although the particular means that the applicant must select naturally varies according to the circumstances.

The effect of this duty is to ensure that socio-economic costs are "internalized" to a major energy project such as the ANGTS. The "costs" of a major energy project are not limited to impact upon the physical environment alone and mitigation costs also should not be so limited. The "internalization" of social costs is comparable to, and makes just as much sense as, the inclusion of the costs of environmental mitigation, which the President has identified as part of the cost of pipeline construction. See as to environmental costs, President's Decision, at pp. 33-36; 18 C.F.R. Section 2.69, 18 C.F.R. Section 2.80; 18 C.F.R. Section 2.82.

On economic policy grounds, socio-economic costs are also properly a responsibility of the project. Recent Congressional enactments requiring the conservation and efficient use of our natural resources establish that the price of energy resources provided to the public actually

^{8/} See, e.g., The Instructions for Carrier Property Accounts, "3-3, Cost of Property Constructed" include as costs: (6) protection, including "amounts paid to municipal corporations for fire protection ... and analogous items;" (8) privileges and permits, including "compensation for ... use of private or public property or of streets, in connection with construction work;" (10) rent, "including quarters used for construction work;" and (5) cost of contract work performed by others.

should reflect the full cost of their production and transportation, including social and environmental costs. See, e.g., National Energy Conservation Policy Act, Title I, Section 102, 42 U.S.C. Section 8201; Powerplant and Industrial Fuel Use Act of 1978, Title I, Section 102, 42 U.S.C. Section 8301; Public Utility Regulatory Policies Act of 1978, Section 2, 16 U.S.C. Section 2601. Unless these costs are included in the price to the consumer, the result will be an artificially low price which does not reflect actual costs or conform to national policy. Stated more succinctly, "if external social costs are not somehow incorporated in the costs of production, demand may be distorted by reason of incorrect price signals reflecting only internalized costs." Energy Law Service, M5A.74 (Callahan & Co. 1979). Thus, the price to consumers should reflect a true cost of producing a depleting resource. Artificially reducing the price by excluding these costs tends to distort the price signal consumers receive. Conservation and efficient use of our natural resources require that all costs, including the cost of mitigating socio-economic impacts, be included in the "rate base" for the computation of the pipeline tariffs. Only in this manner will the true cost of an energy resource be spread among its recipients.

These policy considerations support the Commission's determination in Order 31 that prudent socio-economic costs be included in the certification cost estimate. Having made that determination, the question pending in this proceeding is the appropriateness of the particular programs as a means of addressing the socio-economic impact of ANGTS. And it is to that question we now turn.

4. The Costs Alaska Has Described Are A Reasonable Response to ANGTS' Duty To Mitigate Socio-Economic Impact

Once the duty to address socio-economic impact is acknowledged, a question of prudence may still arise as to the particular expenditures that are proposed. The programs must be reasonably related to the objective of mitigating impact and likely to achieve that goal. Also relevant may be the scope of the programs --are they focused on project impact or are they aimed at the population at large? Scrutiny of Alaska's programs demonstrates that they meet these tests.

Funds requested are limited to those necessary to address solely impact associated with construction workers and their families, not that from the far larger population attracted to Alaska because of real or perceived opportunities on the pipeline. Stated another way, the State seeks funds only to cover those socio-economic costs directly related to providing natural gas to the Lower Forty-Eight.

The nearly twenty million dollars^{9/} that ANGTS will bear is for programs to be administered by the Departments of Natural Resources, Public Safety, Health and Social Services, and Labor.

Approximately 30% of these funds will be expended by the Department of Natural Resources. It will establish Impact Information Centers and a Citizen's Socio-Economic Advisory Council as a means of informing citizens along the pipeline corridor of the expected impacts and to assist communities and citizens in meeting those impacts as well as providing a channel for Northwest, State, and local officials to work together on meeting the common problem of socio-economic impact. These activities are aimed at preventing sudden shocks from pipeline construction by providing those most likely to be affected with adequate advance information and guidance so that they can anticipate and perhaps avoid the worst part of negative socio-economic impact. These centers are regarded by the State as a direct response to avoiding the surprises of the Alyeska experience and it is believed that they will be effective in implementing ANGTS's duty to mitigate adverse socio-economic impact.

The programs of the Department of Labor to address socio-economic impact are directed to the more than 13,000 workers who will be employed directly on the pipeline in the peak period. It is estimated by the Department of Labor that more than 35,000 job seekers will come to Alaska in search of employment on the project. Department of Labor impact assistance funds will be spent for safety inspections, to enforce occupational and health regulations, to process and, as necessary, adjudicate employment compensation claims for work-related injuries, and for retraining workers injured on the gas line. The balance of the Department of Labor funds will be used to handle administrative services for pipeline-related applications such as unemployment claims.

Department of Public Safety funds would be expended on additional personnel and equipment necessary to enforce vehicle size and weight laws and to license the additional vehicles of workers coming into the State as a result of the pipeline construction. This increased activity will directly benefit ANGTS because it will promote the free flow of truck traffic essential to pipeline construction.

^{9/} Since there has been no significant controversy regarding reimbursement for permitting, monitoring and surveillance programs, this memorandum focuses on the socio-economic programs question principally. The twenty million dollars is for socio-economic mitigation only, not monitoring, as is made clear above.

The Department of Health and Social Services would expend its impact assistance funds for health services, such as inspection of x-ray equipment, monitoring for communicable diseases in pipeline camps and emergency medical services along the pipeline corridor, and for alcoholism and drug abuse programs along the pipeline corridor. Funds will also be expended for social services. The Department estimates that the influx of pipeline workers and their families will give rise to 500 additional cases of child abuse and child neglect. It expects related needs for foster care (29,200 days per year) and institutional care (7,300 days per year), all for pipeline workers and their families. Finally, a small pipeline liaison office will be created to assist in the administration of these programs.

It bears emphasis that the funds sought are but a small fraction of the socio-economic impact costs identified in the State budget process^{10/} and likewise much less than the impact in quantifiable terms that the State expects from construction of the Alaska Natural Gas Transportation System. Alaska is prepared to absorb the cost of the more general, "Type II", impacts.

What this means is that there will be a sharing of the burden of socio-economic impact between ANGTS and the responsible governments in Alaska. Such a sharing is not only consistent with the principles established by VEPCO, supra, but is also a recognition that the problem is mutual. The actual division of expenditures between the project and the Alaska government, while soundly based in this case, is less important than the assumption by the project of at least some of the impact it is causing. It is fitting that the impact most directly caused by, and identified with, the project -- that of the pipeline construction workers and their families -- is the share of the burden that ANGTS is asked to assume.

Also, none of these dollars will go toward the creation of a special fund or funds to be distributed as grants to Alaska citizens as general "compensation" for project-caused disruption. Instead, specific programs have been designed, consistent with the mandate of NEPA and the Commission's responsibility to serve the public interest, to mitigate or avoid adverse socio-economic impact.

^{10/} The Type I impact funds described herein are about 20% of the total impact funds needed to respond to total pipeline impact, according to State agencies.

5. Payment Of These Funds Would Not Trigger The
U.S. - Canadian Agreement On Principles

The specific programs for impact caused by construction workers and their families, described above, are quite different in nature than the general fund or funds which the U.S. - Canadian Agreement on Principles is intended to guard against.^{11/} That agreement limits inclusion in the cost of service to U.S. shippers of indirect socio-economic costs for the Yukon Territory and bars public authorities from requiring a special fund or funds in connection with the construction of the pipeline in the Yukon. The exception to that agreement is what may be thought to raise a question. It states: "should public authorities in the State of Alaska require creation of a special fund or funds, financed by contributions not fully reimbursable, in connection with construction of the pipeline in Alaska, the Governments of Canada or the Yukon Territory will have the right to take similar action." President's Decision at 56-57.

The question is the meaning of a "special fund" as used in the Agreement on Principles.^{12/} The meaning of the limitation on "special funds" is best understood by reference to the Canadian proposals -- pre-dating the Agreement on Principles -- for the creation of special funds to be borne by the pipeline and passed on to United States consumers to mitigate Canadian socio-economic impact. Specifically, Dean Kenneth M. Lysyk had conducted an inquiry into the social and economic impact of a gas pipeline through the southern Yukon at the direction of the Canadian Government. Dean Lysyk filed the report of his board on July 29, 1977. The report, which followed the decision of the Canadian National Energy Board, specifically recommended that \$200 million be paid by the pipeline to capitalize a Yukon Heritage Fund to be administered by and for Yukoners. The \$200 million was to meet "unquantifiable socio- and economic costs and for changes following in the wake of the pipeline that would detract from the quality of life in the Yukon." The fund was not directed at mitigating pipeline related projects nor "as a response to any specific impact, but to improve aspects

^{11/} "Agreement between the United States of America and Canada on Principles Applicable to a Northern Natural Gas Pipeline," see President's Decision at 47-66.

^{12/} The term "fully reimbursable" is also ambiguous because it conceivably could refer to reimbursement from the cost of service.

of the quality of life in the Yukon." Lysyk Report, 149.13/ The fund was in addition to "regulatory measures and responsive government programs" directed at minimizing the negative impacts of the project. Id.

Thus, prior to the negotiations with Canada, United States gas consumers appeared to be facing the prospect of supporting new general purpose funds in the Yukon which would be in the nature of a bonus payment to Yukon residents for the disruption caused to their life by the pipeline. Thus, the subsequent provisions of the agreement between the United States and Canada limiting special funds can fairly be read as aimed at preventing the sort of general fund proposed by the Lysyk inquiry unless the State of Alaska should require such a fund to be established.

As is demonstrated by the specific socio-economic costs which have been described above, Alaska is not seeking such a general purpose fund. It is seeking to recover in a limited way some, but by no means all, of the costs of the expanded State services necessary to accommodate construction workers and their families during the period of construction of the ANGTS. As such, Alaska's proposals do not fall within the literal language or intent of Section 5(b)(ix) of the Agreement on Principles.14/

6. The Staff Position Is Not Well-Founded

Despite the clear and unequivocal order of the Commission that "socio-economic expenditures" be included in the Certification Cost Estimate, the trial staff has commented that the socio-economic costs described by the State are not

13/ The earlier decision of the NEB had also recommended a \$200 million fund, exclusive of the costs of the monitoring authority, to encompass identifiable indirect socio- and economic costs of the pipeline project north of the 60th parallel. NEB, Reasons For Decision, 1-147-48. Although the details were vague, this fund appeared to be somewhat more closely related to specific impact assistance needs.

14/ Annex IV of the Agreement contains examples of direct charges by public authorities that are permissible within the meaning of Paragraph 11 of the Agreement, a related provision. These include "other items specified in environmental stipulations." The socio-economic assistance programs to be funded by the pipeline will be required by the environmental stipulations attached to the right-of-way lease of the State of Alaska and so may be considered direct rather than prohibited indirect charges.

required by statute and "may be more properly supported with tax and royalty revenues from the project." Staff Comments, Docket CP80-435, at 4 (November 7, 1981). In fairness to the Staff, Alaska notes that these comments were made with respect to the early estimates of the State and incorporated by Northwest in its application. The Staff may well reconsider its position in light of the revised information and authority contained in this memorandum. The Staff should reconsider its position for the following reasons.

First, the Staff has not responded to the direct command of Order 31 that socio-economic costs be included in the cost estimate. That Order is a sufficient answer to the Staff's request that such costs not be included in the CCE.

Second, the reliance upon a statutory requirement vel non is misplaced. An expenditure can be prudently incurred regardless of whether a statute requires its payment. An example would be expenditures to mitigate damage to the physical environment such as those for revegetation. No one would assert a statutory requirement as a test for the prudence of such expenditures. Alaska has, on repeated occasions, indicated to Northwest that the ANGTS will be required to assume a share of socio-economic impact costs. If nowhere else, these expenditures could be required as part of the right-of-way leasing process. Alaska could enact legislation directed to this subject but it is plainly not necessary to do so.^{15/}

Third, staff does not give fair recognition to the fact that Alaska, its citizens, and its subordinate governments will bear a large share of the socio-economic impact costs of this project and are seeking from the project only a small share of the total impact caused by the project. Thus, some Alaska tax revenues inevitably will be devoted to ameliorating the impact caused by ANGTS despite the Northwest contribution. The question is whether ANGTS should stand a share of impact costs.

Further, Staff's suggestion that royalty revenues should support these costs is misdirected. Royalties are paid for the privilege of occupying or exploiting the property of the State. Magruder v. Supplee, 316 U.S. 394 (1942). The royalties to be paid by the producers constitute consideration to the State as the landowner of mineral rich property. To require the State to expend its royalty revenues for the mitigation of socio-economic impacts is to take from the State the only

^{15/} If the issue were presented to the Alaska legislature, it is quite likely, although not certain, that ANGTS would be required to bear a far greater share of the impact it causes.

compensation it is to receive for allowing the exploitation of its natural resources. Mitigation of such impact is not the purpose of royalties generally nor is it consistent with the purposes for which those lands were given to Alaska.

A major purpose of the Statehood Act was to enable Alaska "to achieve full equality with existing States, not only in a technical juridical sense, but in practical economic terms as well." H.R. Rep. No. 624, 85th Cong., 1st Sess. 2 (1957). One of the ways this was to be achieved was by "making the new State master in fact of most of the natural resources within its boundaries." Id. at 2. It was expected that Statehood would

the economy of the Territory than would be possible under territorial status. Many witnesses have testified to the Committee regarding the wealth of untapped resources in Alaska." (Id. at 10).

The Senate shared the purposes expressed in the quotations above from the House Report. Alaska was to be admitted into the Union "as a full and equal sovereign State." The lands and resources transferred from Federal to state ownership were intended "to permit the new State to earn its continuing economic independence and growth." Sen. Rep. No. 1163, 85th Cong. 1st Sess. 1 (1957). A national interest in Alaska's self-sufficiency is thus well established. And the dedication of vast national resources to Alaska was implicitly a commitment to Alaskan economic self-determination: Alaskans would be allowed to decide how best to use those resources for their own healthy growth in the manner that they saw fit.^{16/}

^{16/} The policy encapsulated in Section 13(b) of the Alaska Natural Gas Transportation Act of 1976, P.L. 94-586, is but another expression of the national interest in Alaskan self-sufficiency and economic self-determination. Section 13(b) is a Congressional recognition of Alaska's proper entitlement to use its gas for its own purposes. Congressman Young of Alaska explained the rationale for including this provision in the Act:

"Use of Alaska's royalty gas within Alaska may help end Alaska's status as a ward of the Federal government. The national interest in the self-sufficiency of Alaska was expressed in the Alaska Statehood Act as well as in other declarations of national policy. Under that Act, Alaska was permitted to select large quantities of land from the Federal domain with the hope that the land so selected -- and the minerals which it contained -- would provide a basis for building a healthy economic order in Alaska." Cong. Rec. E5808 (October 26, 1976).

It cannot be said that dedicating Alaska's royalty or even severance tax revenues to alleviating short term impact from this national project is consistent with the purposes of the severance and royalty taxes or the grant of ownership of public lands to the State of Alaska. For these revenues would be expended upon a social service infrastructure, which would have outlived its usefulness upon the completion of the project. They would not contribute to Alaska's self-sufficiency nor return a long range benefit to its citizens.

That is not to say Alaska and subordinate governments will not receive tax revenues from the ANGTS. Tax revenues probably will be generated although their amount and nature are uncertain because of pending litigation involving the corporate income tax and the possibility of changes in Alaska's tax regime generally.^{17/} But, revenues from such taxes as then may exist will help meet the cost of impact from the ANGTS that it is not being asked to fund and the unfunded amount is, according to today's best estimates, far larger than what the ANGTS is asked to bear. See p. 11, n. 10 supra. Thus, Alaska's government and citizens will bear a large share of the impact this project will create. But, Alaska's extraction taxes and revenues properly should not be diverted to this purpose and a share of the direct socio-economic impact costs of the ANGTS is properly borne by it.

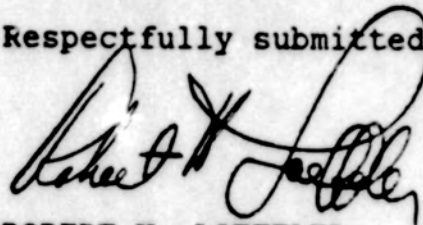
CONCLUSION

For the foregoing reasons, the ANGTS properly should bear a share of the burden of mitigating the adverse socio-economic impact it will cause, inclusion of the State's

^{17/} State severance taxes are also being challenged in a case pending before the U.S. Supreme Court.

revised estimate of such costs in the Certification Cost Estimate is procedurally correct, and the costs of the programs therein described are prudently incurred.

Respectfully submitted,



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February 13, 1981.

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REA-81-1026
February 13, 1981

Mr. John Adger
Alaskan Delegate
Federal Energy Regulatory Commission
Room 3004
941 North Capitol Street, N.E.
Washington, D.C. 20426

RE: Docket No. CP80-435, Alyeska Pump Station Camp Number 1

Dear Mr. Adger:

On November 6, 1980, the Federal Energy Regulatory Commission's Staff propounded the following interrogatory (No. 25):

"Does Applicant intend to remove the \$1.548 million entry from the CCSE as filed now that it no longer intends to purchase Pump Station No. 1?"

This interrogatory was raised primarily as a result of discussion between Northwest Alaskan Pipeline Company (Northwest Alaskan) and the Staff, at the October 22, 1980 Certification Cost Estimate technical conference (see transcript summaries at pp. 12, 13, and 18), in the above-referenced docket. Northwest Alaskan indicated at such conference that the Alyeska Pump Station Camp No. 1 had been sold to others and was not going to be acquired by Alaskan Northwest Natural Gas Transportation Company (Alaskan Northwest).

By this letter Northwest Alaskan is informing the Alaskan Delegate, Staff and the parties to the instant proceeding that Alyeska Pump Station Camp No. 1 has not been sold to others. Such camp is physically in the Pump Station Camp inventory and included in the agreement 1/ that is near consummation between Alaskan Northwest and Alyeska for the acquisition of nine (9) Pump Station Camps and sixteen (16) Pipeline Camps.

1/ This agreement is for the acquisition of Alyeska camps only. Alaskan Northwest is still in the process of negotiating for the acquisition of certain Alyeska Data. Upon the execution of that agreement, Alaskan Northwest will be presenting the agreement with attendant costs to the Office of the Federal Inspector for his review and approval as a design change. It is respectfully requested that the Alaskan Delegate's report recognize this likelihood.

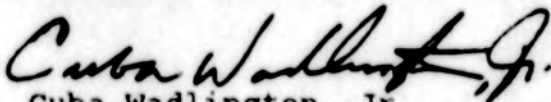
Previous discussions during the technical conferences wherein it was indicated that Pump Station Camp No. 1 was not going to be purchased by Alaskan Northwest are incorrect. Therefore, the \$1.5 million (\$900,000 in 1980 dollars) cost should appropriately remain in the CCE.

As established during the technical conferences, Alaskan Northwest will require all of the acquired Alyeska camps in order to assure that adequate bed space is available for overall camp requirements, including any loss or damage that might be incurred during the relocation and renovation of such camps.

If there are any questions relative to this matter, please contact me.

Very truly yours,

NORTHWEST ALASKAN PIPELINE COMPANY



Cuba Wadlington, Jr.
Director, Regulatory Affairs

cc: Richard Berman, Division Director/OFI
Restricted Service List, Docket No. CP80-435

CW:paw

UNITED STATES OF AMERICA
FEDERAL ENERGY REGULATORY COMMISSION

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

RESPONSE OF
COLUMBIA GAS TRANSMISSION CORPORATION
TO ORDER TO SHOW CAUSE

Columbia Gas Transmission Corporation (Columbia), pursuant to the Commission's order to show cause, issued December 15, 1980, in the above-captioned proceedings, hereby responds to such order, to urge that the Commission approve Columbia's pre-partnership expenditures made through its membership and participation in the Gas Arctic/Northwest Project Study Group (Gas Arctic) for reflection in the capital account of its affiliate, Columbia Alaskan Gas Transmission Corporation (Columbia Alaskan) and inclusion in the rate base of Alaskan Northwest Natural Gas Transportation Company (Alaskan Northwest). In support hereof, Columbia respectfully states as follows:

Columbia is an interstate pipeline making sales of gas to some 71 customers for resale in the States of Kentucky, Maryland, New Jersey, New York, Ohio, Pennsylvania, Virginia, West Virginia and in the District of Columbia. As noted in Exhibit No. 3 to the First Audit Report of the Office of the Chief Accountant, attached to this Show Cause Order, Columbia was a participant and sponsor of the Gas Arctic project which applied to the Commission and to the National Energy Board of Canada for certificates to construct a pipeline to transport Alaskan gas to the United States. Columbia's contributions to Gas Arctic amounted to \$8,004,329.

In Columbia Gas Transmission Corp., Opinion No. 101, Docket No. RP78-20, issued November 6, 1980, the Commission found that Columbia was not entitled to recover in its own rates approximately \$6,000,000 which Columbia contributed to Gas Arctic for expenditures subsequent to Gas Arctic's filing for a certificate with the Commission. However, the Commission held that:

"The decision herein is without prejudice to Columbia's status as a successful participant in the Alaska [sic] Northwest Natural Gas Transportation Company, the successor in interest to Alcan. The same expenses may be recovered where it can be demonstrated that they contribute to the project and are, therefore, analogous to successful project costs." (p. 10)

By order issued in these proceedings on December 15, 1980, the Commission approved amendments to the partnership agreement which permitted Columbia Alaskan to join the Alaskan Northwest partnership. Therefore, Columbia has become a successful participant in the Alaskan Northwest project.

Alaskan Northwest is filing today a Fourth Supplemental Application to its Application of February 2, 1979 (Exhibit No. 4 to the First Audit Report) seeking, inter alia, Commission approval, for inclusion in rate base, of qualified expenditures made by Columbia in Gas Arctic. If approved, these qualified expenditures will become part of Columbia Alaskan's equity contribution into the Alaskan Northwest partnership.

By this response, Columbia seeks an expansion of the Commission's Show Cause Order to cover the expenditures made by Columbia in Gas Arctic. Further, the Commission's ultimate determination of this Show Cause proceeding must permit Columbia's Gas Arctic expenditures to be included in the Alaskan Northwest rate base to the same extent as the expenditures made by other former Gas Arctic participants who are now partners in the Alaskan Northwest project.

In order to avoid undue repetition and duplication, Columbia adopts and supports the response submitted herein by Alaskan Northwest insofar as it demonstrates that all of the Gas Arctic expenditures made by the Alaskan Northwest partners should be reflected in the capital accounts of these partners and included in Alaskan Northwest's rate base.

WHEREFORE, for the foregoing reasons, Columbia submits that the Commission should expand this Show Cause proceeding to cover Columbia's Gas Arctic expenditures, and approve

the inclusion of all such expenditures in Alaskan Northwest's rate base.

Respectfully submitted,

COLUMBIA GAS TRANSMISSION CORPORATION

By /s/ Stephen J. Small
Stephen J. Small
Its Attorney

Post Office Box 1273
Charleston, West Virginia 25325

OF COUNSEL:

John M. Hill
Giles D. H. Snyder

Post Office Box 1273
Charleston, WV 25325

February 13, 1981

CERTIFICATE OF SERVICE

I hereby certify that I have this day served the foregoing document upon each person designated on the Restricted Service List compiled in this proceeding in accordance with the requirements of Section 1.17 of the Rules of Practice and Procedure.

Dated at Charleston, West Virginia, this 13th day of February, 1981.

/s/ Stephen J. Small

Stephen J. Small

UNITED STATES OF AMERICA
BEFORE THE
FEDERAL ENERGY REGULATORY COMMISSION

Alaskan Northwest Natural Gas) Docket No. CP80-435
Transportation Company)

COMMENTS OF THE COMMISSION STAFF

At the unrecorded prehearing conference of September 3 and 4, 1980, the presiding officer directed the applicants and requested any other interested party and the staff to submit comments on two issues related to the subproceeding established in the Commission Order of August 1, 1980. The two related issues concern identifying outstanding major design issues not resolved in the July 1, 1980, filing or subsequent to it, and whether or to what extent the Incentive Rate of Return (IROR) mechanism may be altered to allow the proceeding to progress under a situation not contemplated by Commission Orders creating the IROR. 1/ Pursuant to the request, the staff respectively submits the following comments.

The staff will first address the issue of the IROR mechanism and will be prepared to expand its comments at the conference to be held on October 7, 1980, to discuss IROR issues. Part two of these comments is comprised of a list of those major design issues which the staff believes have not, as yet, been resolved and should at this time be discussed.

I.

The staff believes a general recitation of how the mechanism, as ordered, would operate concerning the determination of the Certification Cost and Schedule Estimates (CCS) and Center Point (CP) values, is appropriate prior to detailing the options the staff believes may be available, should the Commission determine a need exists to amend the IROR mechanism.

A) The staff believes that a five step procedure was contemplated with regard to the CCSE and CP.

Step one would be the determination of final design criteria and parameters submitted by the applicants. These criteria

1/ Order No. 17 issued December 1, 1978; Order No. 17A issued January 17, 1979; Order No. 31 issued June 8, 1979; Order No. 31B issued September 6, 1979; in Docket No. RM78-12.

would address normal and probable events as well as reasonably expected abnormal events. 2/

Following a fairly firm design being set, a Certification Cost Estimate is prepared. 3/ In this regard, the Commission has stated that "it is vital that the Commission have the most accurate and realistic set of cost estimates that can be obtained." (Order No. 31, mimeo at 46).

After the CCE is established, the Center Point should be determined based on the best current estimate of the actual costs of the project including overruns relative to the CCE. (Order No. 31, mimeo at 41). The determination of the CCE and CP should take place simultaneously at a point which appears to have been intended to be the time of final Commission certification.

Following certification, the Office of the Federal Inspector is to oversee the development of final design and construction plans. 4/ It is the staff's understanding that what is to be determined by OFI is the final engineering and construction plan based on the detailed criteria certificated by the Commission. Should design changes during construction be suggested, the Federal Inspector can increase the base CCE for the cost of such design change without impacting the Center Point. 5/ The changes to be treated in such a manner must be related to design changes and not involve matters such as increases in the prices of labor, material, or services not directly tied to an approved design change. (Order #31, Ordering Paragraph 9, mimeo at 244)

Any change to the final design submitted subsequent to approval of said design by the Federal Inspector, will not be added to the base CCE for rate of return purposes and will affect the Center Point determination unless it is approved subject to the Change in Scope mechanism. 6/ Such changes in scope would be generally applicable to changes caused by war, natural disaster, design changes ordered by state or Federal legislation or regulation, major routing changes ordered by state or Federal governments, and delay in

2/ See Order No. 31, mimeo at 46, and Order No. 31B mimeo at 5.

3/ See Order No. 31, Ordering Paragraph 7, mimeo at 243.

4/ Reorganization Plan No. 1 of 1979.

5/ Order No. 31, mimeo at 123, 124.

6/ Order No. 31, Ordering Paragraph 10, mimeo at 245, 246.

the issuance of government permits or certificates. (Order No. 31, mimeo at 120 to 121, and Order No. 31B, mimeo at 32 to 40). This mechanism is to protect the applicants from reduction in their rates due to events beyond their control.

B) As requested, the direction of these comments is to address, in part, the issue of the treatment of major design changes under the IROR. ^{7/} Such a discussion would be unnecessary if the filing of July 1, 1980, with which we now concern ourselves, had not been deficient and had conformed to the terms of the Commission's orders regarding the CCE, Center Point, and Incentive Rate of Return mechanism in general.

The staff believes, as the Commission has stated, that the IROR provides for "truly generous rates of return", and that special attention and expedited regulatory and administrative arrangements have been provided for this proceeding. (Order No. 31, mimeo at 20).

The IROR Orders provide for a final design with its costs, schedule, and risks being determined, prior to the issuance of a final Commission certificate. Risks and costs associated with truly abnormal occurrences are to be covered by the Center Point. However, the application, for which this subproceeding was created, does not provide a complete initial design. It does not provide a basis for determining normal occurrences, much less abnormal events. It has a minimum of fourteen (14) major design issues outstanding (See Part II, *infra*), some of which will not be addressed for some weeks. The filing also does not contain an accurate route corridor. Thus despite the sponsor's views as stated in their submission of September 29, 1980, to the contrary, the filing really isn't a valid basis for study at this time.

The IROR mechanism calls for a CCE and CP based on the best current estimate of the actual costs of the project including overruns relative to the CCE. The Commission felt that the CCE that would be filed would include "detailed planning and design" that would resolve most of the inadequacies of the 1977 filed data (Order No. 31, mimeo at 41 to 46)

While the staff strongly opposed certain elements of the IROR mechanism, it believes that there is a required and logical nexus between the relevant parts. The staff believes that the IROR mechanism should not be altered due to failings in the application. The staff believes that while the Commission states ^{8/} that it does not know how to deal with the question of outstanding design issues at the time of approval of the CCE and CP, the orders creating the CCE, CP, and IROR, declare that there are to be no major outstanding

^{7/} Notice of Technical Conference, issued September 23, 1980, in Docket No. CP80-435.

^{8/} Order of August 1, 1980, mimeo at 10.

design issues at that time. Therefore, the easy and correct answer is that the Commission should not attempt to set the CCE and CP until those major design issues are resolved and a generally accurate cost estimate and risk assessment can be developed.

(C) Should the Commission wish to consider setting a Certification Cost Estimate and Center Point based on such a paucity of necessary information as now exists, the staff believes that few reasonable options are available.

An example of one possibility previously offered, in part, to the Commission, is an analysis of the entire distribution of probable costs and potential overruns to establish a center point and a subsequent incentive rate of return. 9/

The use of several estimates or a probability analysis has severe pitfalls and has not, in the past, been deemed feasible. Under this theory, a series of hypothetical situations could be determined which would allow a center point to be developed based upon which situation which eventually occurs. The hypotheticals could contain minimum, maximum, and median cost estimates analyses based on the conservatism or liberalism of what is included in the various estimates. 10/

If a work breakdown structure (WBS) is used, each of several hundred cost elements would have to be supplied with a distribution for each. Each element could involve simple division or a complex mathematical formula to determine the various center points. This could result in the applicants having to prove the validity of three or more cost estimates and center points.

Should probability distributions or multiple estimates and Center Points be utilized, it could also increase the problem of potential abuse of the mechanism to maximize the outcome. 11/ The Commission has already expressed its concern over this possibility under the existing IROR mechanism. 12/

9/ James D. McCullough, Institute for Defense Analysis Study, Order 31, mimeo at 9, fn. 11.

10/ In this regard, it is important to note the Commission's inclination to avoid contingency and rely on inclusion of such risk in the center point. Order 31B, mimeo at 6, 7.

11/ McCullough Study, supra, fn. 9, mimeo at S-12 to S-13.

12/ See Order of August 1, 1980, mimeo at 10, 11, and fn. 15.

It is apparent that under an approach such as generally described above, an enormous additional workload will result beyond that expected for a single accurate and detailed cost estimate and potential overruns. The inherent inaccuracies of a probability approach is recognized. Studies have indicated that in the Defense industry, which is quite sophisticated with such analyses, a "perfect" cost estimate is still subject to at least a variance of + 20 percent. ^{13/} This would create a center point of between 0.8 to 1.2 in the best of circumstances.

The staff believes that if any recommendations were made to the Commission concerning changes in the IROR to include additional elements of ignorance and risk in the Commission's certificate, three changes must be specified and ordered (listed below).

The Commission has shown a willingness to reward the applicants for design changes that reduce costs, to set a Center Point at a minimum of 1, and to not allow changes in scope to be submitted by parties other than applicants even if such changes could result in a net reduction of the cost of the project. The order allowing this treatment indicates that the intent was to encourage a reduction in construction costs in the belief that it would result in a net benefit to consumers. Such instances were believed to arise rarely.

On three separate occasions, the Commission has recognized that there is a potential for abuse. ^{14/} The concern was that design and resulting cost estimate changes would not be submitted until after Commission certification. If the changes were delayed, the cost estimate and the Center Point would not reflect actual costs but could encourage inflated estimates. If the inflated estimates were accepted, design changes that resulted in a reduction in the CCE would not be reflected and would not impact the center point and therefore result in an unforeseen and unacceptable increase in the actual rate of return.

Should the Commission decide to adopt a CCSE and CP with major design issues outstanding, it could create the situation it most fears. As the intent of IROR was, in greatest part, to protect the consumers, the Commission must order:

(1) Design changes requested or ordered by OFI that would result in a reduction of the CCE will reduce the CCE to the extent of its savings, 2) the Center Point may be less than or equal to one

^{13/} McCullough Study, supra, fn. 9, mimeo at 48.

^{14/} See Order of August 1, 1980, mimeo at 10, 11, in Docket No. CF80-435; Order of April 28, 1980, mimeo at 100-101, fn. 121, and Order of June 20, 1980, mimeo at 23-25, both in Docket Nos. CP78-123, et. al.

and 3) provide that changes in scope can be submitted by anyone and approved if they result in a net reduction of project costs.

II.

As the staff stated, at the conference of September 3, supra, 1980, the presiding officer detailed four major unresolved design issues and directed the applicant and requested other parties and the staff to submit any additional possibilities.

The four listed issues were generally; 1) re-alignments necessitated by the Department of the Interior Grant of Right-Of-Way, 2) trench over or tunnel through Atigun Pass, 3) use of snow pads and snow roads, and 4) use of any different design mode particularly above-ground or bermed pipeline.

In addition, the staff believes the following ten major design change possibilities should be considered.

1. A decrease in the design pressure of the pipeline from 1260 psig to 1000 psig or less allowed by removal of all natural gas liquid components at Prudhoe Bay for use as petrochemical feed-stock.

2. The requirement for a thermal workpad over the Alyeska fuel gas pipeline.

3. The requirement for a thermal workpad adjacent to the haul road to prevent thaw degradation.

4. The elimination of workpads in major portions of Spreads 5 and 6.

5. A buried or aerial crossing of the Yukon River, or a possible trade-off with Alyeska of Atigun tunnel space for Yukon River bridge space.

6. A less conservative frost heave mitigative design based on frost heave test results.

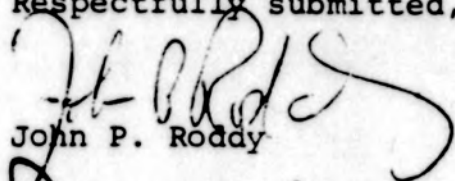
7. A change to an ambient temperature pipeline in Spreads 5 and 6.

8. An increase of one year in the construction schedule because of a delay in the Sales Gas Conditioning Facility until July, 1986.

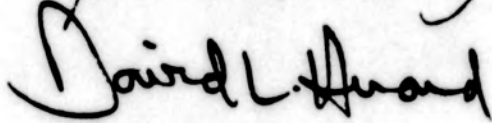
9. A Communications System design based on specific equipment as opposed to the present performance criteria-scope design.

10. The use of new construction camps instead of refurbished Alyeska camps.

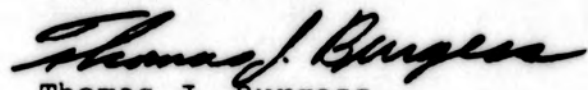
Respectfully submitted,



John P. Roddy



David L. Huard

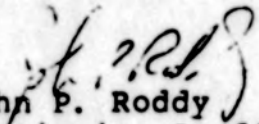


Thomas J. Burgess
Commission Staff Counsel

CERTIFICATE OF SERVICE

I hereby certify that I have this day served the foregoing document upon each person designated on the official restricted service list compiled by the Secretary in Docket No. CP80-435, in accordance with the requirements of Section 1.17 of the Rules of Practice and Procedure.

Dated at Washington, D.C. this 3rd day of October, 1980.


John P. Roddy
Commission Staff Counsel

MARIC

Docket No. CP80-435

FILM
PRC

1/ While the present proceeding is a "subproceeding", the Commission has not in any way limited the trial staff from performing its traditional role. Therefore, the staff has actively investigated the issues within the subproceeding as well as the many areas that must be addressed before final certification can issue.

design alternatives under consideration by the project sponsors, whether or not such design alternatives are identified in the application." (Ordering Paragraph C, mimeo at 12).

At the request of the presiding officers, the staff has previously provided: 1) A list of outstanding, unresolved design alternatives; in addition to the four mentioned in the right-of-way grant material and the interim report of the presiding officers dated September 26, 1980; 2) Comments of how or whether such outstanding design issues may be handled in determining the CCE and CP consistent with Commission Orders 31 and 31B. (Comments filed October 3, 1980).

III) At the technical conference of October 23, 1980, (Tr 37, 38), the presiding officer requested that trial staff provide by November 7, 1980, a summary document concerning the various outstanding design issues. Each such issue was to be discussed delineating the staff's understanding of the potential for resolution of the issue by stipulation or more formal proceedings such as cross-examination of witnesses where information is deficient.

The staff agreed to provide such a document on the understanding that it be deemed a preliminary statement of the staff's position. (Tr. 40). The lack of requested information and time to review that which was provided on the design issues, renders certain the need for revision should long-sought and essential information be provided in the future conferences or as answers to Interrogatories.

The staff believes that its outstanding design issues fall roughly into three categories: 1) Those issues where sufficient information has been received for adequate analysis and where an atmosphere exists for some formal stipulation to be entered into by the parties when a proper vehicle for entering such stipulation presents itself; 2) Those substantial issues where sufficient information exists to presume the need for full hearing or other formal inquiry by the Commission prior to addressing the granting of final certification; 3) Those issues where essential information is still lacking to such an extent as to preclude a determination by the staff as to which approach to resolution is appropriate.

The staff's tentative positions on those matters are listed below (see VI infra).

IV) The technical conferences to date have addressed many elements of the CCE and CP. At times, certain areas were discussed through question and answer in great detail. However, the staff has not taken a position, even tentatively, on the many areas discussed and no opportunity to do so has appeared.

Therefore, for the purposes of a complete record as well as informing the presiding officers and all parties, the staff has in-

cluded its tentative position on as many additional areas of disagreement herein as time would allow.

Staff has two major concerns with the Certification Cost Estimate (CCE) of \$8.79 billion filed by Alaskan Northwest Natural Gas Transportation Co. (NWA) on July 1, 1980, and amended to \$9.1 billion on October 27, 1980. The first concern is with the methodology of the estimates, the embedded contingencies, and the appropriate contingency and Center Point given the estimate content. The second concern is with major design changes identified by the parties and the appropriate treatment of these changes. The potential cost impact of the staff concerns with sufficient information to estimate costs amount to an aggregate reduction in the CCE of \$929 million and/or to an aggregate increase in excess of \$846 million excluding contingency and finance charge. The Staff finds the methodology of engineering and design to be conservative and a minimum risk approach. The Staff will explore the appropriate contingency and Center Point values in the final technical conference in the subproceeding on November 10-20, 1980.

V) Two additional items should be stressed at this time:

First, the application of July 1, 1980, was substantially amended on or about October 27, 1980, reflecting the rerouting of the proposed pipeline consistent with the terms of the right-of-way grant issued by the Department of the Interior. In addition to the change in location, the amendment reflects the additional costs associated with the changes. The material is some 10 volumes in length and effects nearly half the proposed route.

Second, at the conference of October 7, 1980, the staff made an offer of settlement to NWA potentially to resolve part of the list of outstanding design issues. (Tr. 59-61). In sum, the offer addressed those outstanding design issues known prior to certification but as to which NWA either does not wish to or cannot provide design, cost, and risk which will result in a net reduction in project costs. The staff suggested that if such design alternatives are later adopted, NWA would request a reduction of its CCE to the extent of the savings. The staff continues to believe that major design alternatives known prior to certification should be analyzed for design, cost, and center point effect prior to the determination of the CCE and CP.

VI) TENTATIVE STAFF POSITIONS

1. PROJECT DIRECTORATE ESTIMATE ISSUES

The issues involved in third party monitoring costs were discussed by the parties in the technical conference of October 27-29, 1980. Only \$75.2 million of the \$278.6 million estimated for third party monitoring are required by Federal and Alaska statutes. Staff notes that the Federal statute, the Mineral Leasing Act, is

being challenged in court by Pacific Gas Transmission Co. and Northern Border Pipeline Co., and as a result \$53.6 million of the \$75.2 million at least has a possibility of not being expended.

The remaining \$203.4 million in costs to the State of Alaska is not required by statute and may be more properly supported with tax and royalty revenues from the project. These costs appear to be related to financing participation by Alaska which is not presently at issue or filed with the Commission in this subproceeding.

NWA has requested that third party monitoring costs not be included in the project Cost Performance Ratio since they are not under the control of NWA. Staff could possibly agree to such a position provided that costs caused by fault or non-performance on the part of NWA not passed through, a procedure to which NWA has given preliminary consent.

Project Directorate costs include pre-certification costs for which approval is pending before the Commission in Docket No. CP78-123, et al. Staff believes that CP78-123, et al., is the appropriate forum for approval of pre-certification costs and that the CCE should be adjusted accordingly.

The parties have noted the absence of costs for a minority training program and an EEO compliance program in the CCE. All parties agreed to the immediate requirement for these programs. Accordingly, the staff believes that costs should be immediately included in the CCE for such programs.

All remaining Project Directorate costs will be examined in the Technical Conference of November 10-20, 1980.

2. DOI REROUTE

NWA filed an amended design and CCE on October 27, 1980, for the reroute mandated by the DOI right of way grant. The increase in cost of \$200 million in pipeline, of \$402.2 million in temporary facilities, and of \$12.3 million in project directorate will be examined during the technical conference of November 10-20, 1980.

3. EMBANKMENT CONSTRUCTION MODE

NWA was to provide cost estimates to the parties by November 7, 1980, for alternative embankment construction modes.

4. SNOW PAD - SNOW ROAD CONSTRUCTION

NWA was to provide cost estimates to the parties by November 7, 1980, for snow pad and snow road construction.

5. ATIGUN PASS TUNNEL

NWA was to provide a cost estimate for the 22,000 foot Atigun Pass Tunnell alternative to the parties by October 27, 1980. NWA declined to develop this information by letter dated October 28, 1980. Staff independently estimates that a tunnel to carry a road

and four pipelines, but excluding the costs of constructing the road and the pipeline, at a range of \$100 million to \$700 million. Any split of costs proposed between Alaska, Alyeska, and NWA is unknown. At the very least, all costs associated with Atigun Pass should be deleted from the CCE until the tunnel option is decided.

6. THERMAL WORKPAD

Staff believes that concerns of Alyeska and of the State of Alaska relating to thaw degradation of the Prudhoe Bay haul road and of the soil surrounding the Alyeska Fuel Gas Pipeline will force NWA to use a thermal workpad adjacent to the haul road. NWA has proposed only a structural workpad.

Staff estimates a cost increase of \$73 million for installing 1.5 inches of insulating board in the workpad on Sections 1 through 4.

7. AERIAL CROSSING OF YUKON RIVER

Alyeska presently holds the rights to use the vacant easterly Yukon River Bridge pipeline crossing carriage. NWA's estimate is based on obtaining the rights to use this existing crossing. If NWA fails to obtain those rights, an aerial crossing of the Yukon River would be required. The staff estimates the cost of this crossing at \$18.5 million. A reduction of \$10 million in crossing royalty cost would give a net cost estimate increase of \$8.5 million for the crossing excluding reroute costs.

8. REDUCTION OR ELIMINATION OF WORKPAD IN SPREADS 5 & 6

The staff has designed a minimum workpad in Spreads 5 and 6 based on considerations of equipment movement and the proprietary geotechnical data of the sponsors. The staff design would result in a cost reduction of \$1 million. The staff notes that NWA has reduced the average workpad thickness from 42 inches to 36 inches for these spreads in the amended CCE "filing" of October 27, 1980.

9. AMBIENT TEMPERATURE PIPELINE IN SPREADS 5 & 6

The staff has studied the proprietary data provided by NWA that indicates the existence of a thaw bulb along the Haines Pipeline right of way, and delineates the soil types encountered. The staff notes the thaw bulb is so extensive that NWA is studying moving the chilled gas pipeline 12 to 15 feet off the stripped right of way in order to reach non-thawed soil.

Based on the proprietary data, the staff believes that an ambient temperature pipeline extending from the discharge of Compressor Station 13 to the Canadian Border is technically feasible. Two alternate pipeline designs are feasible depending on the

assumptions:

1. Conventional buried pipeline assuming that any thaw settlement has already occurred along the Haines right-of-way. This option would result in a cost savings of \$221 million.
2. Conventional buried pipeline alternating with gravel embankment construction over permafrost soils containing greater than 7 percent silt and greater than 50 percent passing 200 mesh. The embankment made of construction material should mitigate thaw settlement in the permafrost soils. This option would result in a cost savings of \$171 million.

Operating (fuel) costs would decrease by 40 percent for a non-chilled pipeline in that an increase in compression horsepower is more than offset by elimination of refrigeration horsepower.

10. LESS CONSERVATIVE FROST HEAVE MITIGATION

NWA expects that insulation thickness may be reduced from the CCE design based on test results from the frost heave test facilities. It is probably impossible to quantify these savings without data from the facilities. It may be possible to prove that any re-

duction in rate base from cost savings in this area would be of more benefit to the ratepayer than any gain in the rate of return on equity.

11. INCREASE OF ONE YEAR IN CONSTRUCTION SCHEDULE

NWA takes the position that the pipeline and conditioning plant will be available for service on schedule despite some indications to the contrary. Presumably NWA is willing to accept the risk of a 6 month to 1 year delay in the conditioning plant, and a mechanism could be crafted to allocate the risk properly.

12. COMMUNICATIONS SYSTEM DESIGN

As previously stated, the communications system design is based on two alternate scopes and is not equipment specific. Presumably a less expensive system or a more expensive, but more reliable, system may emerge in final design.

13. NEW CONSTRUCTION CAMPS

Staff has been unable to obtain the cost of new construction camps from NWA in order to compare with purchase, renovation, and relocation of Alyeska camps.

14. PIPELINE LAY RATE

The pipeline lay rate of 3200 feet (40 joints) per day for bare pipe and 2800 feet per day for insulated pipe forms the basis of the entire estimate. This lay rate was determined by a panel of experienced Execution Contractors (EC's) and represents their collective best judgement based on Alaskan and worldwide experience with pipeline construction. However, this lay rate of 3200 ft. (40

joints) contrasts with the March, 1977, estimate of 4000 feet or 50 joints per day, with the projected Foothills lay rate of 3600 feet or 54 joints per day, and with a Williams Brothers estimated lay rate of 4000 feet or 50 joints per day. Thus, the filed lay rate contains some embedded contingency for Alaskan experience which must be accounted for in establishing the values of contingency and Center Point.

15. PIPELINE CONSTRUCTION CONTINGENCY FOR WEATHER AND DELAY

The cost estimate for pipeline construction is based on a ten percent factor for weather and a two and one half percent factor for delay. This is applied to the Line Up/Hot Pass welders and all other pipeline operations are coordinated and staffed to this central function. This twelve and one half percent factor is further stated in the workpapers supplied for "Haul and String" and for "Haul and String Weights". Although NWA claims that this is a standard estimating practice, the staff maintains that it represents, rather, a contingency for weather embedded in the estimate that must be taken into account when setting values for contingency and Center Point.

16. DITCH GRAVEL QUANTITY ERROR

The estimated gravel requirements for ditch backfill in the amended cost estimate is approximately three times the ditch volume available to be backfilled. Correcting this error for material site stripping, crushing, hauling, and indirect costs results in approximately a \$200 million reduction in the amended estimate. Although NWA stated that this error in the original estimate would be corrected, the staff notes that an incomplete correction was made in NWA's submission of October 27, 1980.

17. LINE PIPE SPECIFICATIONS AND PRICE

The staff has requested the exact specification provided to the line pipe manufacturers as a basis of bid quotation, but NWA has not provided this information to date. A general statement is made that one half the pipe will have a Charpy Impact specification of 70 ft.-lb. and one half will have a specification of 105 ft.-lb. and that these two toughness levels will be randomly placed in the pipeline for crack propagation resistance. The staff believes that such a random placement would not be realistic, and that costs for planned placement logistics and control should be added to the estimate. At this time the staff has insufficient information to estimate the costs of planned-versus-random placement.

NWA has also stated that a lower toughness specification and the use of crack mechanical arrestors is still under active study. The staff, again, has insufficient information to evaluate the cost impact of such a design change. The staff understands that the cost of the higher toughness pipe is substantial and any approval of the CCE should stipulate that the associated costs should be lowered should the arrestor approach be eventually chosen.

Finally, the line pipe price in the estimate is based on an average of prices from six suppliers, five foreign and one domestic. This procedure presumes that equal amounts of pipe will be purchased from each supplier, whereas freight is estimated (temporary facilities) on the basis of 75 percent foreign and 25 percent

domestic. A further complication is the inability of the domestic manufacturer to meet the toughness specification at present although NWA, without demonstrated justification estimated on the basis that adequate toughness specifications could be met at the future time of purchase.

Purchase of the pipe from the low bidder rather than the average price would result in a cost savings of \$133 million. Purchase of 75 percent of the pipe from the low bidder and 25 percent domestic would result in a cost savings of \$84 million. Should a strong "Buy American Act" be legislated, assuming that the domestic manufacturer can meet the delivery and specifications, costs would increase by \$64.7 million.

18. MISCELLANEOUS UNSPECIFIED MATERIALS

Pipeline materials segment of the estimate contains a line item for miscellaneous unspecified material equal to 25 percent of all specified miscellaneous materials. This line item, stated to be based on current estimating practice, may contain some inherent contingency.

19. COMPRESSOR AND METERING STATION ESTIMATE CONCERNS

The refrigeration capacity requirement calculated by the FERC-AGPO computer model is 40 percent of the refrigeration capacity specified by NWA. The staff is continuing to investigate this anomaly and its potential for a cost estimate reduction of \$70 million as well as substantial operating cost savings.

It should be noted that the NWA specified refrigeration capacity increased by 25 percent from the March, 1977, Estimate to the current CCE and is based on bare pipe heat transfer whereas much of the pipe will be insulated. Taking a credit for the insulation should reduce costs further.

The material price for compressors and turbine drivers was established by averaging four of ten quotations received. The staff has requested, but has not received, a quotation summary for all ten quotations. Staff also requested the quotation for the refrigeration equipment used for the \$20 million estimate for testing equipment; the same has not been received. In addition, the NWA estimate included certain allowances in the material takeoffs. The staff believe the \$20 million and the material takeoff allowances and definite factors in the consideration in the consideration of contingency and should be discussed at the November conference.

The staff has also requested information concerning Fluor's cost overrun experience in constructing the TAPS pump stations but has not yet received the information although the Morrison-Knudsen study would indicate that it is available. This information would be very helpful in analyzing the validity of NWA's contingency estimates for the compressor and metering stations.

20. TEMPORARY FACILITIES AND SERVICES ESTIMATE CONCERNS

The purchase of compressor station construction camps from Alyeska is a confused issue with NWA claiming during the sub-proceeding that it plans to purchase eight pump station camps whereas the workpapers in support of the estimate show the purchase of nine

pump station camps. The additional camp in question has already been sold to ARCO by Alyeska, but it remains in the CCE at an average cost of \$10.8 million to purchase, relocate and refurbish. If NWA requires eight pump station camps, the \$10.8 presently shown for the ninth camp million should be removed from the estimate. If NWA requires nine camps, the cost of constructing a new station camp should be included in the estimate.

The staff has requested NWA to supply information on the cost of new camps, but NWA has refused to do so until negotiations with Alyeska are completed. NWA has stated that negotiation should be concluded by Mid-November and information will then be promptly provided to the staff. The cost of new camps is required to compare with purchase, relocation, and renovation of the 24 or 25 camps to be obtained from Alyeska. These costs are also required to evaluate the appropriate values for contingency and Center Point in the event that purchase negotiations with Alyeska are not successful.

NWA has estimated that 40 percent of the camp sewage treatment facilities must be replaced and 60 percent can be renovated. The latest NWA consultant study on the treatment facilities cannot be made available to the staff until December, 1980. The staff observation of some of the facilities indicates a requirement for 100 percent replacement.

The cost for restoring and revegetating the Alyeska camp sites after purchase and relocation of the camps is included in the NWA estimate. The staff believes that this cost properly should remain the responsibility of Alyeska or that a transfer of the responsibility to NWA should reduce the purchase price of the camps.

Finally, the staff notes that an office space leasing figure of \$2.10 per square foot per month for the Fairbanks area has been utilized in the temporary facilities and in the communications system estimates. This cost compares to a Fairbanks average of \$1.36/sq. ft./month and a lowest rate of \$.75. Although the total amount of money is not worth argument, this rate is an additional and cogent example of the conservative approach in the estimate.

21. COMMUNICATIONS AND SUPERVISORY SYSTEM ESTIMATE

The estimate filed by NWA is based on an average of two quotations for a microwave-based, terrestrial system and two quotations for a satellite-based system. These systems were quoted to satisfy performance specifications, and do not provide quantities or prices of materials from which the Office of the Federal Inspector would be able to track design changes. The quoted facilities do not include costs for an interface with the Foothills facility at the Canadian border.

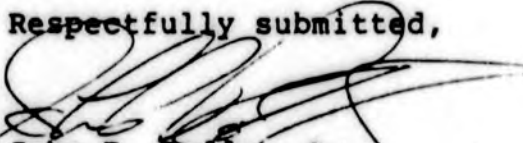
A Support Service line item for \$236 thousand is for an undefinable consulting service if required. This amount certainly appears to fit the category of contingency. The Staff believes the design basis to be overly conservative; any approval of the CCE should stipulate the associated costs should be lowered should the existing system be utilized.

22. ENVIRONMENTAL CONCERNS

At present there are three areas of concern to the staff. First is the the roughly 300 miles of rerouting around the Fairbanks area. No environmental baseline material has been provided for this segment nor has there been any discussion of access to this area. Secondly, the staff remains concerned about the increasing quantities of gravel estimated to be needed. To what extent will new material sites be required? What is the magnitude of the anticipated extensions to existing sites over and above the original proposal? What environmental baseline data is available for the new sites and/or what efforts are being taken to obtain such information? Lastly, the Atigun Pass tunnel is also of concern. The primary items of interest are the locations and extent of the adit points and construction work areas, the quantity of excavated material and the method and locations of disposal or use of this large volume of material, and disruption of the environment by disposal of excavated material and by blasting at the adits.

The currently proposed pipeline design involves many modifications in mile-by-mile design and routing which are markedly different from the design and routing contemplated in the original proposal. Many of these modifications go beyond the scope of the environmental impact statements prepared for the project. The staff believes that there must be an assessment of the environmental significance of the filed modifications as well as future major modifications to avoid delays based on environmental considerations.

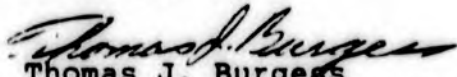
Respectfully submitted,



John P. Roddy



David L. Huard



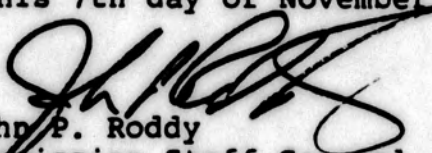
Thomas J. Burgess

Commission Staff Counsel

CERTIFICATE OF SERVICE

I hereby certify that I have this day served the foregoing document upon each person designated on the official service list compiled by the Secretary in Docket No. CP80-435, in accordance with the requirements of Section 1.17 of the Rules of Practice and Procedure.

Dated at Washington, D.C. this 7th day of November, 1980.


John P. Roddy
Commission Staff Counsel

SCOMM

28:19

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

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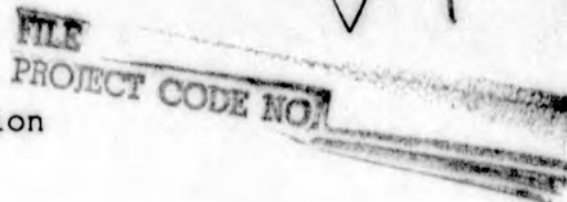
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October 27, 1980

[Handwritten signature]

Honorable Kenneth F. Plumb
Secretary
Federal Energy Regulatory Commission
825 North Capitol Street, N.E.
Washington, D.C. 20426



Re: Northwest Alaskan Pipeline
Company - Docket No. CP78-
123

Dear Mr. Plumb:

Northwest Alaskan Pipeline Company and Alaskan Northwest Natural Gas Transportation Company submit herewith, for filing, pursuant to the Alaska Natural Gas Transportation Act and the Natural Gas Act, an original and 19 copies of Notice of Amendment to Partnership Agreement notifying the Commission of an amendment to the Partnership Agreement for the purpose of admitting Columbia Alaskan Gas Transmission Corporation, Tetco Four, Inc., Texas Gas Alaska Corporation, and TransCanada Pipeline Alaska Ltd. to the Partnership. Together with said Notice, there is also submitted:

1. A copy of Amendment No. 3 (effective August 1, 1980) to the Alaskan Northwest Natural Gas Transportation Company Partnership Agreement.
2. A proposed Notice of Filing of Notice of Amendment to Partnership Agreement.

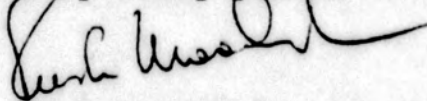
AKIN, GUMP, HAUER & FELD

Honorable Kenneth F. Plumb
October 27, 1980
Page Two

3. A certificate of service.

Copies are being served on parties designated by the
Commission on the service list for Docket No. CP78-123.

Very truly yours,

A handwritten signature in dark ink, appearing to read "Rush Moody, Jr.", with a stylized, flowing script.

Rush Moody, Jr.

Enclosures

UNITED STATES OF AMERICA
BEFORE THE
FEDERAL ENERGY REGULATORY COMMISSION

In the Matter Of:	)	
	)	Docket No. CP78-123, <u>et al.</u>
Alaskan Northwest Natural	)	
Gas Transportation Company	)	

NOTICE OF
AMENDMENT TO PARTNERSHIP AGREEMENT

Comes now Alaskan Northwest Natural Gas Transportation Company (Alaskan Northwest), 1/ a partnership, having heretofore received a conditional certificate 2/ for the construction and operation of the Alaska Natural Gas Transportation System (ANGTS), and respectfully advises the Federal Energy Regulatory Commission (Commission) of the following:

I

Effective August 1, 1980, the Partnership Agreement of Alaskan Northwest was amended (Amendment No. 3) 3/ to admit

1/ A general partnership organized under the laws of the State of New York and comprised of Northern Arctic Gas Company, Northwest Alaskan Pipeline Company, Pan Alaskan Gas Company, Calaska Energy Company, Pacific Interstate Transmission Company (Arctic), United Alaska Fuels Corporation, and American Natural Alaskan Company.

2/ Alcan Pipeline Company, et al., Docket Nos. CP78-123, et al. (December 16, 1977). The certificate issued to Alcan was transferred to Alaskan Northwest by order of June 30, 1978.

3/ Amendment No. 1 pertained to the discount schedule set forth in Section 5.2 of the Partnership Agreement. The amendment was noted at mimeo p. 7, fn. 6 of the Commission order issued in the captioned docket on June 30, 1978. Amendment No. 2 was filed February 6, 1980 and was the subject of a notice and order requesting comments issued in the above-captioned docket on August 1, 1980. This Amendment No. 3 is the third amendment to the Partnership Agreement, and is attached hereto as Appendix A.

four additional partners: Columbia Alaskan Gas Transmission Corporation, an affiliate of Columbia Gas Transmission Corporation; Tetco Four, Inc., an affiliate of Texas Eastern Transmission Corporation and Transwestern Pipeline Company; Texas Gas Alaskan Corporation, an affiliate of Texas Gas Transmission Corporation; and TransCanada PipeLine Alaska Ltd., an affiliate of TransCanada PipeLines Limited. Affiliates of each of these new participants operates a major pipeline transportation network, the first three in the United States subject to regulation by the Commission, and the latter in Canada subject to regulation by the National Energy Board (NEB).

II

On January 31, 1978, the Alaskan Northwest Partners entered into a general partnership agreement for the purposes of constructing and operating the Alaskan segment of the ANGTS. The terms of this agreement were accepted by the Commission in an order issued June 30, 1978. Section 11 of the Partnership Agreement provides for the admission of additional partners after the formation of the Partnership upon terms and conditions of admission determined by the Partnership.

Pursuant to that section, effective January 1, 1980, the Partnership and American Natural Alaskan Company (American Natural Alaskan) agreed that American Natural Alaskan would become a Partner according to the following terms and conditions:

1. American Natural Alaskan agrees to abide by all conditions and obligations of the Partnership Agreement, unless specifically waived.
2. American Natural Alaskan will make a cash contribution to the capital account of the Partnership in an amount equal to that contributed by any individual Partner for the period between the formation of the Partnership and January 7, 1980. This contribution will be paid-off in increments with each future cash call so that the total paid by American Natural Alaskan will be twice that of any other Partner until the full amount has been equalized.
3. American Natural Alaskan will have the right to submit to the Board of Partners for inclusion in the American Natural Alaskan Capital Account certain sums, called Qualified Expenditures, expended prior to admission that the Partners determine to be of value to the project.
4. American Natural Alaskan will be entitled to a representative on the following committees of the Partnership: Executive, Audit, and Compensation.

5. For purposes of the admission of American Natural Alaskan, the Partnership agrees that solely for purposes of Section 5 of the Partnership Agreement, American Natural Alaskan will be deemed to have been a Partner on or before March 17, 1978. This acts to waive the requirement of Section 5.2 that a Partner admitted after that date is subject to a special allocation of profits, losses and credits.

6. The admission of American Natural Alaskan is conditioned upon the approval by the Commission of the terms and conditions of admission.

These terms and conditions were incorporated into Amendment No. 2 to the Partnership Agreement, which was filed with the Commission on February 6, 1980. Accompanying this submittal was an expression by the Partnership of its willingness to offer the same terms and conditions of membership to any other eligible person for a period of thirty (30) days following the issuance by the Commission of the notice of Amendment No. 2.

The Commission notice was issued August 1, 1980 and included a request for comments and reply comments with respect to certain areas of concern. ^{4/} Although comments were requested on these specific points, the Commission stated that it was inclined to approve the admission of American Natural Alaskan as a partner, the waiver of the discount schedule for that purpose, the use of the thirty-day grace period for admittance of new partners without penalty, and the use of a discount schedule for new partners entering after the grace period.

The Partnership filed initial comments on August 22, 1980 and reply comments on September 5, 1980. In the initial comments, the Partnership explained further the reasoning in support of Amendment No. 2 and the offer of a grace period. By the time the reply comments were due, the Partnership was able to advise the Commission that four companies (Columbia Alaskan, Tetco Four, Texas Gas Alaska, and TransCanada-Alaska) had responded favorably to the Partnership offer and agreement had been reached on the terms and conditions of their admittance.

^{4/} The notice and order of the Commission issued August 1, 1980 invited comments on the following: (1) the waiver of the discount schedule (Section 5.2 of the Partnership Agreement) for the purpose of admitting American Natural Alaskan as a partner; (2) the acceptance of the thirty-day grace period for possible additional membership, (3) the appropriate level of discount to put into effect at the end of the grace period (assuming the grace period is approved), and (4) the appropriateness of using particular events to determine changes in the discount schedule.

The formal agreement expanding the Partnership Agreement to include the four new members is the attached Amendment No. 3 (Appendix A). In addition to the acceptance of the terms and conditions agreed on between the Partnership and American Natural Alaskan, as set forth previously, the Partnership, including American Natural Alaskan, and the four new Partners agreed to further condition membership on the following:

- (1) Commission approval of the thirty-day grace period as tendered in the February 6, 1980 filing,
- (2) Commission approval of Amendment No. 3,
- (3) an understanding that Section 4.3.1 of the Partnership Agreement is not intended to require, and will not be construed to require, any Partner to assume a Partnership interest greater than that interest elected under Section 4.3.1.

The above matters are incorporated into Amendment No. 3.

The Commission will note that in the letter agreement between Columbia Alaskan and the Partnership whereby Columbia Alaskan agreed to become a Partner, which was filed with the Commission on September 5, 1980, a condition was added providing for a waiver of the last sentence of Section 3.6 and waiver of Section 11.1.4 of the Partnership Agreement, together with the receipt by Columbia Alaskan of an order or orders from the Securities and Exchange Commission (SEC) authorizing Columbia Alaskan's participation in the Partnership and the performance of its obligations thereunder. The cause of this condition is the Public Utility Holding Company Act of 1935, which is administered by the SEC, and which is applicable to Columbia Alaskan. Section 3.6 of the Partnership Agreement requires each Partner to represent that it is not subject to that Act, and Section 11.1.4 requires that the admission of any new Partner will not result in the Partnership becoming subject to the Act. As previously stated, the Partnership has agreed to the waiver of these requirements.

III

The instant filing serves to notify the Commission that four more companies have joined the Partnership. The Partnership is now comprised of the original six members, whose participation was approved by the order of June 30, 1978, and five new members (American Natural Alaskan, Columbia Alaskan, Tetco Four, Texas Gas Alaska, and TransCanada-Alaska), whose joinder has not yet

received Commission acceptance. The Partnership does not believe the Commission 5/ or any interested person 6/ has or could have any objection to the proposed expansion of the Partnership.

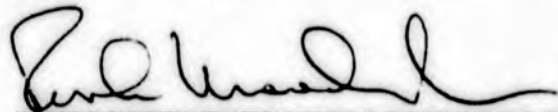
The admission of new Partners is a positive step toward the successful completion of the ANGTS. Additional Partners will facilitate project financing by broadening the base of equity support, spreading the risk of the current investment, and committing greater resources to the Project. Although much of the regulatory risk has been or is about to be overcome, substantial risks remain after Commission certification. The willingness of the new Partners to commit considerable resources to the ANGTS demonstrates their faith in the viability of the Project, reinforces the determination and foresight of the original Partners, and justifies the Partnership's offer of a thirty-day grace period to attract new members. Under these circumstances, the Partnership strongly suggests that the public interest will best be served by Commission approval of both Amendment Nos. 2 and 3.

WHEREFORE, Alaskan Northwest respectfully advises the Commission of the amendment to its Partnership Agreement and petitions the Commission to review and accept the amendment, as offered, and the joinder of the new Partners in accordance therewith.

Respectfully submitted,

Of Counsel:

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Attorney for Alaskan Northwest
Natural Gas Transportation
Company

Northwest Alaskan Pipeline Company

5/ In the August 1, 1980 notice and order, the Commission stated in footnote 7 at page 5 that it was inclined to find the admission to the Partnership of American Natural Alaskan was not inconsistent with the requirements of the President's Decision and Report to Congress on the Alaska Natural Gas Transportation System.

6/ In response to the August 1, 1980 notice and order, no person filed a comment objecting to American Natural Alaskan becoming a Partner. The Partnership anticipates that the instant submittal will not engender any opposition.

APPENDIX A

AMENDMENT NO. 3
AGREEMENT DATED AS OF AUGUST 1, 1980
BETWEEN
ALASKAN NORTHWEST NATURAL GAS TRANSPORTATION COMPANY
AND
COLUMBIA ALASKAN GAS TRANSMISSION CORPORATION,
TETCO FOUR, INC., TEXAS GAS ALASKA CORPORATION,
AND TRANSCANADA PIPELINE ALASKA LTD.

THIS AGREEMENT dated as of August 1, 1980 (Amendment No. 3) by and among ALASKAN NORTHWEST NATURAL GAS TRANSPORTATION COMPANY, a New York general partnership, ("Partnership") formed pursuant to the Alaskan Northwest Natural Gas Transportation Company General Partnership Agreement effective as of January 31, 1978 ("Partnership Agreement"), and Columbia Alaskan Gas Transmission Corporation, a Delaware corporation ("Columbia Alaska") and a wholly-owned subsidiary of Columbia Gas System, Inc., a Delaware corporation; Tetco Four, Inc., a Delaware corporation ("Tetco Four") the capital stock of which is owned fifty percent by Texas Eastern Transmission Corporation and fifty percent by Transwestern Pipeline Company, Delaware corporations; Texas Gas Alaska Corporation, a Delaware corporation ("Texas Gas Alaska") and a wholly owned subsidiary of Texas Gas Transmission Corporation, a Delaware corporation; and TransCanada PipeLine Alaska Ltd., a Nevada corporation ("TransCanada-Alaska") all of whose capital stock is owned indirectly by TransCanada PipeLines Limited, a Canadian corporation.

WITNESSETH THAT:

WHEREAS, on February 6, 1980 by a filing in Docket No. CP78-123, et al., the Partnership gave notice to the Federal Energy Regulatory Commission ("Commission") of Amendment No. 2 to the Partnership Agreement, which set forth the terms and conditions agreed to for the admission into the Partnership of American Natural Alaskan Company ("American Natural Alaskan"), and the Partnership further notified the Commission that for a period of thirty days ("grace period") following the issuance by the Commission of a notice of the filing of Amendment No. 2 that membership in the Partnership would be available to other eligible, interested persons on the same terms and conditions agreed to with American Natural Alaskan; and

WHEREAS, on August 1, 1980 the Commission issued its Notice Of The Filing Of A Notice Of Amendment To Partnership Agreement, And Order Inviting Comments setting forth the terms of Amendment No. 2 and the offer of a grace period for additional membership, and requesting comments; and

WHEREAS, in response to the Partnership offer of a grace period, Columbia Alaskan, Tetco Four, Texas Gas Alaska, and TransCanada-Alaska have separately requested to be admitted as a Partner on the terms and conditions set forth in this Amendment No. 3, and the Partnership is willing to admit each one as a Partner on such terms and conditions; and

WHEREAS, the terms of the admission of Columbia Alaskan, Tetco Four, Texas Gas Alaska, and TransCanada-Alaska to the Partnership, as set forth in Amendment No. 3, require the amendment or waiver of certain terms, conditions, or provisions in the Partnership Agreement, and the Partnership is willing to agree to such amendments or waivers;

WHEREAS, Columbia Alaskan, Tetco Four, Texas Gas Alaska, and TransCanada-Alaska are ready, willing and able to abide by and comply with all the terms, conditions, and provisions of the Partnership Agreement, as amended hereby; and

NOW, THEREFORE, the Partnership and Columbia Alaskan, Tetco Four, Texas Gas Alaska, and TransCanada-Alaska, intending to be legally bound hereby, agree as follows:

I

In accordance with the provisions of this Amendment No. 3, and the Partnership Agreement as amended hereby, Columbia Alaskan, Tetco Four, Texas Gas Alaska, and TransCanada-Alaska shall each become a Partner in the Partnership as of August 1, 1980 (hereinafter called the "Admission Date"). In consideration of becoming a Partner, Columbia Alaskan, Tetco Four, Texas Gas Alaska, and TransCanada-Alaska shall each make capital contributions to the Partnership on the terms and subject to the conditions of Section 4 of the Partnership Agreement, as amended by Amendment No. 2, and as further amended by this Amendment No. 3.

II

Section 1 of the Partnership Agreement is amended, effective as of the Admission Date, to add new sections 1.8 through 1.11 to read as follows:

"1.8 COLUMBIA ALASKAN GAS TRANSMISSION CORPORATION, (hereinafter called 'Columbia Alaskan'), a corporation organized under the laws of the State of Delaware, with its principal corporate offices at 20 Montchanin Road, Wilmington, Delaware 19807. Columbia Alaskan

represents that: (a) all of its capital stock is owned by Columbia Gas System, Inc., a Delaware corporation; and (b) Columbia Alaskan or an Affiliate intends to become a Shipper."

"1.9 TETCO FOUR, INC. (hereinafter called ('Tetco Four')), a corporation organized under the laws of the State of Delaware with its principal corporate offices at One Houston Center Houston, Texas 77002. Tetco Four represents that: (a) fifty percent of its capital stock is owned by Texas Eastern Transmission Corporation and fifty percent by Transwestern Pipeline Company, Delaware corporations; and (b) Tetco Four or its Affiliates intend to become Shippers."

"1.10 TEXAS GAS ALASKA CORPORATION, (hereinafter called 'Texas Gas Alaska'), a corporation organized under the laws of the State of Delaware, with its principal corporate offices at 3800 Frederica Street, Owensboro, Kentucky 42301. Texas Gas Alaska represents that: (a) all of its capital stock is owned by Texas Gas Transmission Corporation, a Delaware corporation; and (b) Texas Gas Alaska or an Affiliate intends to become a Shipper."

"1.11 TRANSCANADA PIPELINE ALASKA LTD., (hereinafter called 'TransCanada-Alaska'), a corporation organized under the laws of Nevada, with its principal corporate offices at 54 Commerce Court, Toronto, Ontario, Canada M5L 1C2. TransCanada-Alaska represents that: (a) all of its capital stock is owned indirectly by TransCanada PipeLines Limited, a Canadian corporation; and (b) TransCanada-Alaska or an Affiliate may become a Shipper."

III

Section 3.6 of the Partnership Agreement is amended, effective as of the Admission Date, to read as follows:

"3.6 Representations and Warranties Concerning Formation of Partnership: Each Partner represents and warrants that, subject to the receipt of all necessary regulatory approvals relating to this Agreement and the investment of the Partners in this Partnership, the execution and delivery of this Agreement, the formation of the Partnership and the performance hereof will not contravene

any provision of, or constitute a default under, any indenture, mortgage or other agreement of such Partner or any Affiliate of such Partner or any order of any court, commission or governmental agency having jurisdiction, and this Agreement is a valid and enforceable Agreement against such Partner except insofar as enforcement hereof may be limited by bankruptcy, insolvency or other similar laws related to or affecting the enforcement of creditors' rights. Each of the Parties to this Agreement, other than Columbia Alaskan, represents that it is not subject to or is exempt from the jurisdiction of the SEC as a public utility holding company within the meaning of the Public Utility Holding Company Act of 1935."

IV

Section 4.2 of the Partnership Agreement is amended by changing Section 4.2.5 and by including new sections 4.2.7 and 4.2.8, effective as of the Admission Date, to read as follows:

"4.2.5 On or before December 1, 1979, and on or before each succeeding December 1 in the event the Commitment Date is estimated to occur after such succeeding December 1, the Board of Partners shall determine, taking into account budgeted costs and contractual commitments which will accrue if the Project is suspended, the anticipated cash requirements of the Partnership for the period from January 1, 1980 (or from any succeeding January 1) through the date then estimated to be the Commitment Date. Immediate notice of each such determination shall be given to all Partners. Each Partner agrees, subject to the withdrawal rights specified in Section 4.4.3, to contribute to the Partnership, for the period commencing January 1, 1980 and ending with the Commitment Date, an amount equal to (i) the amount by which the anticipated cash requirements of the Partnership during such period exceeds the total of the amount contributed by American Natural Alaskan pursuant to Section 4.2.6, Tetco Four, Texas Gas Alaska, and TransCanada-Alaska pursuant to Section 4.2.7, and Columbia Alaskan pursuant to Section 4.2.8, divided by (ii) the number of Partners.

4.2.7 Tetco Four, Texas Gas Alaska, and TransCanada-Alaska severally agree, notwithstanding anything to the contrary in Section 4.4.3, which Section shall not be applicable to this Section 4.2.7, to contribute to the Partnership that amount which is equal to the amount contributed by any Partner named in Sections 1.1 through 1.6 pursuant to Section 4.2 from the Formation Date through August 12, 1980. Until Tetco Four, Texas Gas Alaska, and TransCanada-Alaska shall have each contributed to the Partnership the entire amount required to be contributed by it pursuant to this Section 4.2.7, each shall, notwithstanding anything to the contrary in Section 4.4, contribute to the Partnership pursuant to this Section 4.2.7, on each date on which a capital contribution pursuant to Section 4.2.5 shall become due and payable, an amount equal to the lesser of (i) the highest amount contributed by any Partner named in Sections 1.1 through 1.6 pursuant to Section 4.2.5 on such date or (ii) the balance remaining to be contributed separately by Tetco Four, Texas Gas Alaska, and TransCanada-Alaska pursuant to this Section 4.2.7. The contributions made by Tetco Four, Texas Gas Alaska, and TransCanada-Alaska pursuant to this Section 4.2.7 shall be in addition to the contributions of Tetco Four, Texas Gas Alaska, and TransCanada-Alaska pursuant to Section 4.2.5.

4.2.8 Upon the receipt by Columbia Alaskan of authorization from the SEC to participate in the Partnership pursuant to the Public Utility Holding Company Act of 1935, which shall occur after the Admission Date and subsequent to one or more requests for cash contributions pursuant to Section 4.2.5, as of the next such request for a cash contribution, Columbia Alaskan shall contribute an amount equal to the sum of (i) the amount previously paid by a Partner subject to both Sections 4.2.5 and 4.2.7 plus (ii) the cash contribution then requested, computed as if Columbia Alaskan were subject to the provisions of Section 4.2.7. Thereafter, for the purposes of cash contributions under Section 4.2.5, the contribution of Columbia Alaskan shall be calculated according to the provisions of Section 4.2.7 as if Columbia Alaskan were included therein on an equal basis with Tetco Four, Texas Gas Alaska, and TransCanada-Alaska."

V

Notwithstanding anything in the Partnership Agreement, as amended, that may be to the contrary, the Partnership and Columbia Alaskan, Tetco Four, Texas Gas Alaska, and TransCanada-Alaska agree that Section 4.3.1 of the Partnership Agreement is not intended to require, and will not be construed to require, any Partner to assume a Partnership interest greater than that interest which such Partner has elected pursuant to Section 4.3.1.

VI

Notwithstanding anything in the Partnership Agreement, as amended, to the contrary, each Partner agrees that solely for purposes of Section 5 of the Partnership Agreement, Columbia Alaskan, Tetco Four, Texas Gas Alaska, and TransCanada-Alaska shall be treated as if they had executed the Partnership Agreement on or before March 17, 1978.

VII

Section 8.3.1 of the Partnership Agreement is amended, effective as of the Admission Date, to read as follows:

"8.3.1 The Executive Committee shall consist of a Chairman and ten members. Each Partner named in Sections 1.1 through 1.11 (or any substitute Partner succeeding to its interest hereunder) shall designate a representative to serve on the Executive Committee, and the Chairman of the Board of Partners shall also be the Chairman of the Executive Committee. Any vacancy on the Executive Committee occasioned by the withdrawal of a Partner named in Sections 1.1 through 1.11 (or any substitute Partner succeeding to its interest hereunder) shall be filled by the Board of Partners."

VIII

Section 8.4.1 of the Partnership Agreement is amended, effective as of the Admission Date, to read as follows:

"8.4.1 The Audit Committee shall consist of ten members. No member of the Audit Committee shall be affiliated in any manner with Northwest, and each Partner (other than Northwest) admitted

to the Partnership prior to September 1, 1980 shall have one representative on the Audit Committee. The Board of Partners shall designate one member of the Audit Committee to serve as Chairman of the Audit Committee. Decisions of the Audit Committee shall be by a majority vote of the members. The members shall serve on the Committee at the will of the Board of Partners."

IX

Section 8.5.1 of the Partnership Agreement is amended, effective as of the Admission Date, to read as follows:

"8.5.1 The Compensation Committee shall consist of ten members. No member of the Compensation Committee shall be affiliated in any manner with Northwest, and each Partner (other than Northwest) admitted to the Partnership prior to September 1, 1980 shall have one representative on the Compensation Committee. The Board of Partners shall designate one member to serve as Chairman of the Compensation Committee. Decisions of the Compensation Committee shall be by majority vote of the members. The members shall serve on the Committee at the will of the Board of Partners."

X

For the purposes of Section 11.1 of the Partnership Agreement, execution of this Amendment No. 3 shall (a) satisfy the requirement that a new Partner execute a counterpart of the Partnership Agreement, and (b) except for Columbia Alaskan with respect to Section 11.1.4, constitute a warranty and representation by Columbia Alaskan, Tetco Four, Texas Gas Alaska, and TransCanada-Alaska that each has satisfied the conditions for admission to the Partnership set forth in Sections 11.1.2 through 11.1.4, and (c) constitute satisfaction of the requirements of Section 11.1.1.

XI

This Amendment No. 3 shall be governed by and interpreted in accordance with the laws of New York. Terms used in this Amendment No. 3 which are defined in the Partnership Agreement are, unless the context otherwise requires, used herein as therein defined.