

ALASKA LEGISLATURE SPECIAL COMMITTEE / SUBJECT FILES 8672

1064 SCOMM 28: JOINT GAS PIPELINE COMMITTEE, 1981-82

The Producers, together with their advisers, will work with Alaskan Northwest in an effort to develop its financing plan in such time and manner so that necessary governmental approvals may be obtained and construction commenced and completed as scheduled by Alaskan Northwest.

It is recognized that in order for the financing plan to be acceptable to the financial community the project must be economically sound and the financing plan must accommodate reasonably desired protections for the interests of potential lenders. If the parties, or any of them, conclude that alternate approaches in financing, or waivers of law under the Alaskan Natural Gas Transportation Act are necessary to effectuate a feasible and effective plan of financing, such party or parties may develop alternatives and advise appropriate authorities of their conclusions.

This Statement of Intention shall be signed after approval hereof by the Department of Energy.

IN WITNESS WHEREOF, the parties have executed this
19th day of June, 1980.

Alaskan Northwest Natural Gas Transportation Company,
Acting By and Through its "Operator", Northwest Alaskan
Pipeline Company

By J. L. McMillan

Atlantic Richfield Company

By Eric Benson

Exxon Corporation

By L. C. Anderson

The Standard Oil Company (Ohio)

By G. D. Phillips

APPENDIX I

August 28, 1981

Mr. John G. McMillian
Chairman & Chief Executive Officer
Northwest Alaskan Pipeline Company
P. O. Box 1526
Salt Lake City, UT 84111

Dear Mr. McMillian:

In our letter of June 18, 1981, submitting our proposal to assist you in structuring financing for the Alaska Segment of the Alaska Natural Gas Transportation System (ANGTS) (the "Project"), we (the "Banks") indicated that, in the first phase of our work, we would complete a preliminary review of capital markets and funding sources for the Project and present to you our initial assessment, not only of the amounts, but also of the basic terms on which we believe funds from these sources might be available. We also undertook to develop an approach to reviewing the technical and marketing aspects of the Project and to determine how we could obtain satisfactory access to a financial model to assist us in analyzing the financing plan.

On August 6, 1981 we wrote to you to report on the first phase of our work. In subsequent conversations you asked for certain clarifications and amplifications of statements in that letter. In response, we are submitting this letter which replaces and supercedes our earlier letter.

We have conducted our investigations and analysis on the basis of information furnished by you, contained in the presentations you gave to each of the Banks in late May, the Project Overview you supplied to each of the Banks at that time, your letter to Exxon, Sohio, and Arco (the "Producers") dated May 21, 1981 outlining the terms of the pipeline sponsors' (the "Sponsors") agreement with the Producers, a number of financial cases prepared by the Sponsors, and information you provided in connection with certain legislative waivers in order to facilitate financing and construction of the Project.

Concurrently with this phase of our work we have been considering the legislative waivers. We wrote to you on this subject on June 3, 1981, and on July 14, 1981 we made available to you a memorandum which was distributed to a number of Administration officials and Congressional staff. We continue to support the views expressed in those communications, and would emphasize the need for a flexible approach to "billing commencement" until a more definite financing plan is developed.

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The principal focus of our efforts to date has been to address the funding availability and related credit aspects of the Project, and this letter deals almost entirely with these subjects. However, a few brief comments are also included on the work of our task forces which have been addressing the issues of Gas Marketability, Engineering, and Financial Modeling. These groups have been developing approaches to their respective aspects of the Project to be pursued in detail in subsequent phases of our work. While the scope of their work is more appropriately covered in a later proposal dealing with parameters and premises that should govern the next phase of our work, several of their conclusions are relevant to this report and form Appendix A.

Inter-Relationship of ANGTS Segments

One tariff page all

We were asked to focus our analysis of the Project on the Sponsors' share of the financing for the Alaska Segment. However, upon reflection, it became apparent to us that it would be necessary to broaden our consideration to take into account the impact on the capital markets of the aggregate financing requirements of both the Sponsors and Producers in Alaska as well as the financing requirements for the overall ANGTS project, including Canada and the "lower 48".

- a) We understand that it is the intent of both the Sponsors and Producers that, after completion, all financing for the Alaska Segment is to rely on a common source of repayment, i.e. the tariff arrangements. Therefore, we could not ignore the Producers' share of the Financing for the Alaska Segment and did not attempt to consider separate and discrete financings for the Sponsors and Producers.
- b) Since, to the best of our knowledge, the post-completion sources of repayment for the Alaska Segment, the financing of the expansion of the "lower 48" facilities and the refinancing of the prebuilt segments will rely on common payment arrangements through the tariffs, we expect that lenders would consider those financings one credit for risk and funding allocation purposes.
- c) While the Canadian segment will have available to it additional Canadian loan sources, there is a substantial overlap both in the available funding sources and in the risks, given that all segments rely on related tariffs.

Funding Availability Study

Appendix B contains our initial assessment of funds availability, together with preliminary indications of the basic terms on which funds might be made available for the Project. Although our

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estimates are based on conversations with a relatively small number of potential lenders, the results conform with our own views and we believe are an accurate reflection of availability of funds in world capital markets under current market conditions.

* For reasons described below, the review was undertaken on the basis that the loans would be the risk equivalent of debt with an A/Baa credit rating. Given the equivalent of an A/Baa credit, the maximum amount of Project credit available for the Alaska segment is estimated to be between \$12 billion and \$18 billion. For reasons described above, this amount will be affected by the funding strategy for the Canadian segment and for the expansion of the "lower 48" facilities. This total amount includes loans from domestic and foreign banks, foreign export credit agencies, and institutional lenders, all of whom are assumed to commit in early 1982. This assumes the satisfactory negotiation of acceptable terms with foreign export credit agencies, i.e. their willingness to accept the same credit support as the banks and longer than usual maturities, and the current reluctance of insurance companies to make forward commitments. We expect, however, that insurance companies might be willing to lend additional amounts beyond those contemplated in the funding study as the Project progresses.

We anticipate that the typical final maturity for the financing would be ten years with a grace period of five years and an average life of 7.5 years. There would, of course, be tranches with final maturities of 5-7 years from the smaller U.S. and European banks and of 12-15 years from certain larger banks and institutional lenders. The bulk of the bank financing would, however, have a ten year final maturity and a 7-8 year average life.

> Without a dramatic improvement in credit quality, neither the availability of funds nor the average life of the financing would increase significantly. A reduction in credit quality below the equivalent of an A/Baa would, however, have a material adverse impact on both the amount and average life of the financing.

Basic Financing Conditions

The Banks have given considerable thought to the question of the basic financing conditions for the Project based on the assumptions you have provided:

1. Capital costs on an "as spent" basis of \$21 billion for the pipeline and \$6 billion for the conditioning plant, with a completion assurance pool of an additional \$3 billion.

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2. A debt equity ratio of 75%/25%, and an equity split of 70%/30% between Sponsors and Producers.
3. Your request that the Banks consider a completion pool of funds concept, i.e., irrevocable commitments from lenders and no formal undertakings from creditworthy parties to assure debt repayment in the event of non-completion by a date certain and/or pre-completion abandonment.

While we used these basic premises in our Phase I review and have drawn certain conclusions regarding their acceptability we suggest that any premises to be used in Phase II will need to be thoroughly tested as the Project's financial structure is developed.

Given the results of our funding study, and our review and consideration of the Project information forwarded to us, we have come to the following conclusions:

1. Our funding study clearly indicates that the overwhelming bulk of the financing will be available only if lenders perceive the credit structure to be the risk equivalent of debt of A/Baa quality.

We believe that for the Project to be considered of this credit quality and, therefore, for commitments in the necessary amounts to be arranged prior to commencement of construction, the following basic criteria would have to be met:

- a) The ANGTS project must be economically and technically feasible.
- b) The debt must be supported by repayment assurances involving
 - (i) during the pre-completion phase, a combination of
 - acceptable debt assumption arrangements by Sponsors, Producers and possibly other beneficiaries, and
 - acceptable commencement of billing provisions prior to the completion of the overall System;
 - (ii) acceptable post-completion, cost of service transportation tariffs providing for debt service in all events;
 - (iii) acceptable tracking provisions; and
 - (iv) all tariff arrangements relating to debt service to have assurance of regulatory certainty mandated by law.

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- c) Sufficient funding must be considered by lenders to be available to meet potential overrun requirements.
- d) The cash flow from the Project for debt repayment must be sufficient so that a substantial refinancing risk would not be present, particularly if the economics of the Project are potentially marginal in early years (see later discussion on refinancing risk).

It is our judgment that loans based on the completion pool of funds concept as presented will not be perceived by lenders generally to be of A/Baa quality. Consequently the bulk of the funds needed for the construction of the Project cannot be raised on that basis. Only a relatively small number of banks are capable of assessing and prepared to assume engineering-based risks as required under a completion pool of funds concept. We cannot ascertain the exact amount, if any, which might be raised for this Project on a completion pool of funds basis without having further developed the credit structure for all the financing. However, we strongly believe that: (i) the small number of banks prepared to provide financing on this basis would commit only a small part of their lending limits to such a credit and in the aggregate that amount would be a relatively small part of the total debt required, and (ii) such banks would require substantial inducements and difficult-to-achieve conditions precedent to any drawings under their commitments.

2. Although we have focused our analysis principally on the problem of funding availability and on basic conditions of the initial debt financing, several points relating to post-completion financing problems should be noted:

- a) There could be substantial refinancing requirements in the early years of operation and perhaps in the later years of construction.
- b) Once completed, the Project, assuming a properly functioning FERC-approved tariff, regulatory certainty, and demonstrated gas marketability, may command an investment grade rating for private placements and public issues.
- c) On these assumptions, and with the understanding that not all refinancing requirements will have to be satisfied at one moment after completion, we believe that it should be possible to raise the amounts needed to refinance maturing loans.

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3. We have not had an opportunity to review the bases on which the capital cost estimates are calculated, and therefore, are not in a position to comment on their appropriateness under modified debt financing concepts. Thus, we do not know the exact level of required funding for the Project and the overall ANGTS. To the extent that the debt requirements at the outset exceed the amount considered available for one credit, funds will have to be raised as entirely separate and discrete credits, under the full financial responsibility of creditworthy parties. Such commitments would be additional to any credit responsibility assumed by such parties in connection with debt repayment assurances for financings in the pre-completion phase of the Project.

Based on our conclusions and rather than pursuing the "completion pool of funds" concept as the primary method of raising debt financing (and it is our judgment that it cannot be relied upon) we suggest consideration of the following:

- a) primary reliance on conventional project completion/debt assumption arrangements providing for an assured source of repayment by the equity owners in the event of non-completion and/or abandonment;
- b) to the extent available, debt, which while not supported by debt assumption arrangements from equity owners in the event of non-completion, would be subject to conditions precedent to usage; these conditions would provide assurance that completion will occur and that the Project remains economically feasible;
- c) debt support and/or debt from other beneficiaries of the Project; and
- d) to the extent required, commencement of billing prior to completion of the overall system.

Given the capital cost estimates we have reviewed and based on the relevant financing parameters you have provided us, it is our considered opinion that all the debt support mechanisms outlined above in a), b), c), and d) will have to be aggressively pursued. We would strongly suggest that at this time the Sponsors place primary emphasis on the project completion/debt assumption arrangements.

In view of the Banks' conclusion that "the bulk of the funds needed for the construction of the project cannot be raised on a completion pool of funds basis" it may be desirable for the Sponsors to review the contingency provision in the capital cost estimates premised on the "completion assurance pool of funds" concept. This would yield a

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reduction of at least \$3 billion in the \$30 billion financing requirements as presented to us. Further reductions are, of course, dependent on the level of contingencies thought to be necessary including the rates of inflation and interest that are selected. We would encourage your review of the capital cost estimate to develop a base case for lender review of the total funding requirements under modified project financing concepts.

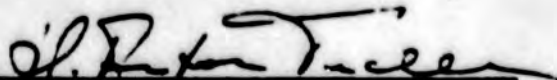
In summary, if the required credit support can be arranged, the Banks are of the opinion that a modified plan may well provide the basis for private sector financing of the Project. The nature of the modifications required are essentially, although not completely, covered in the suggestions we have recommended for your consideration. The way in which these suggestions are implemented will, of course, be instrumental, along with other conditions we have noted in this letter, in actually achieving the funding commitments that will be required.

We recognize that there are practical limits to the resources the Sponsors and Producers can and will commit to the Project, as well as limits to the extent of pre-completion consumer participation. We have not attempted to determine these limits, believing as we do, that these limits are best determined by negotiations within the partnership and by the regulatory and political process. The early determination of the relative interests of each equity participant will be a necessary precondition to the timely development of a financing plan.

While we have tried to provide you in this letter with our considered opinions on certain fundamental aspects important to the development of the financing, we feel that a forum for discussion of our views would be extremely helpful. We appreciate that the magnitude and complexity of the Project will necessitate a great deal of thought and discussion by all parties to arrive at a mutually agreeable financing plan. We would like to assure you of our enthusiastic support for and readiness to participate in such a discussion.

Sincerely,

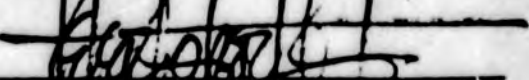
BANK OF AMERICA NATIONAL TRUST
& SAVINGS ASSOCIATION

By 
Vice President

CITIBANK, N.A.

By 
Vice President

THE CHASE MANHATTAN BANK
(NATIONAL ASSOCIATION)

By 
Vice President

MORGAN GUARANTY TRUST COMPANY
OF NEW YORK

By 
Vice President

APPENDIX B

ANGTS PROJECT FUNDING SUMMARY

The Funding Committee has been requested to assess the availability of funds from all significant sources for the Alaskan portion of the Alaska Natural Gas Transportation System (ANGTS). Given the size of the capital requirements and the complexity of the project the study has been divided into the geographic areas of the United States, Canada, Middle East, Europe, Asia, and Latin America. Assessing the overall appetite of the worldwide capital markets involved an in-depth study of the legal and policy limits of the banking community in each geographic area, the potential interest of non-bank institutional lenders, and the historical lending policies of the suppliers and export credit agencies in each country based on the potential equipment sources submitted by the Company.

In order to insure consistency in the findings of each of the studies and to maximize the amount of credit which could be raised from each market, it was necessary to establish certain common assumptions. In assessing the available credit within each country several major financial institutions were contacted. They were informed that their names would not be revealed in order to avoid a feeling of moral commitment and thus an overly conservative response. The fundamental assumptions utilized in conducting the survey were as follows:

- (1) The borrower would be the risk equivalent of debt with a medium grade investment rating (A/Baa). If the project is not equivalent to this credit the amount of funds available to the project will drop significantly.
- (2) The pricing would be fully commensurate with the risk involved.

- (3) Within each country it is important to coordinate and segregate the individual financings with each category of financial institution in order to provide high visibility and thus motivation for strong participation. The coordination must not only extend to each individual financing for the Alaskan segment of ANGTs, but to the financing plans for the other segments of the pipeline system.
- (4) Each financial institution must be approached correctly and at the appropriate level.
- (5) It is important to give the financial institutions adequate time to analyze the material submitted in order to conduct their own assessments of the viability of the project. In this regard, presentations should be organized for the various countries.
- (6) Specific presentations should be organized for the U.S. institutional market by the commercial bank advisory group due to their involvement in the project through an advisory role and as direct lenders. This would supply further credibility and maximize the funds available from this source.

Although the survey had been initially structured to segment the market in terms of the amounts available for 5 year commitments, 5-10 year commitments and 10-15 year commitments, the final conclusion reached was that 10 years (and in a few instances 12 years) would be the maximum overall term available except for the U.S. institutional market, but that within each individual financing one may need to offer a variety of commitment tenors and average lives in order to obtain the largest amounts. Therefore, the

amounts listed for each geographic area take this into consideration. Two columns have been included for conservative and relatively aggressive estimates. These numbers are based on the optimal blend between local currency and U.S. dollars for each geographic area although the local currency content would relate principally to export facilities. The incremental sums from institutional lenders which could be raised in later construction phases have not been assessed in detail. To the extent that the sponsors are successful in maintaining the construction program on a timely basis within cost parameters it is certainly probable that additional funds from these sources would be available. Also to the extent that an investment grade rating were obtained, the incremental sums which could be obtained from the public markets in the U.S. and abroad could be substantial. The preliminary estimates for the amounts which could be raised under the above assumptions are as follows:

FUNDING ESTIMATE SUMMARY
IN THOUSANDS OF U.S. DOLLARS

U.S.

Commercial banks	\$3,000,000	\$3,500,000
Institutional lenders	1,500,000	2,500,000

Canada

Commercial banks	2,500,000	3,000,000
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Europe

Commercial banks	3,500,000	4,000,000
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Middle East

Commercial banks	500,000	500,000
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Asia

Commercial banks	1,800,000	2,400,000
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Latin America

Commercial banks	<u>150,000</u>	<u>250,000</u>
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	\$12,950,000	\$16,150,000
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Export Credit Facilities

	<u>1,700,000</u>	<u>1,700,000</u>
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	\$14,650,000	\$17,850,000
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APPENDIX J

FEDERAL ENERGY REGULATORY COMMISSION
WASHINGTON, D. C. 20426

August 18, 1981

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

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

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

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

Questions Presented

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

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

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

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

Authority to Modify or Rescind Orders

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

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

Discussion

1. Background

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

2. Nature of the Financing

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

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

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

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

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

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

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

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

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

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

3. Reason for the Proposed Waiver

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

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

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

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

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

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

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

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

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

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

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

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

4. Regulatory Risk

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

5/ Footnote continued from prior page

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

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

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

5. Constitutional Question

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

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

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

6/ Footnote continued from prior page

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

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

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

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

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

(Footnote 6 continued on next page)

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, 503 (1943). As the subsequent discussion reveals, short

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.

5/ Footnote continued from prior page

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 Seatrain 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

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.)

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 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,

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

^{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

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.

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.

Honorable Philip R. Sharp and
Honorable Clarence J. Brown

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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.

APPENDIX K

TO THE CONGRESS OF THE UNITED STATES:

The Alaska Highway Pipeline route for the Alaska Natural Gas Transportation System was chosen by President Carter and approved by Congress in 1977. There was a strong Congressional endorsement that the pipeline should be built if it could be privately financed. That has been my consistent position since becoming President, as communicated on numerous occasions to our good neighbors in Canada and I am now submitting my formal findings and proposed waiver of law.

As I stated in my message to Prime Minister Trudeau informing him of my decision to submit this waiver:

My Administration supports the completion of this project through private financing, and it is our hope that this action will clear the way to moving ahead with it. I believe that this project is important not only in terms of its contribution to the energy security of North America. It is also a symbol of U.S.-Canadian ability to work together cooperatively in the energy area for the benefit of both countries and peoples. This same spirit can be very important in resolving the other problems we face in the energy area.

This waiver of law, submitted to the Congress under Section 8(g) of the Alaska Natural Gas Transportation Act, is designed to clear away governmental obstacles to proceeding with private financing of this important project. It is critical to the energy security of this country that the Federal Government not obstruct development of energy resources on the North Slope of Alaska. For this reason, it is important that the Congress begin expeditiously to consider and adopt a waiver of those laws that impede private financing of the project.

Ronald Reagan

THE WHITE HOUSE,

October 15, 1981.

FINDINGS AND PROPOSED WAIVER OF LAW

Pursuant to the provisions of the Alaska Natural Gas Transportation Act of 1976 (ANGTA) 15 U.S.C. § 719, et sec., a transportation system to transport Alaska natural gas to consumers in the continental United States was selected and approved by Congress in 1977.

I find that certain provisions of law applicable to the federal actions to be taken under Subsections (a) and (c) of Section 9 of ANGTA require waiver in order to permit expeditious construction and initial operation of the approved transportation system. Accordingly, under the provisions of Section 8(g)(1) of ANGTA, I hereby propose to both Houses of Congress a waiver of the following provisions of law, such waiver to become effective upon approval of a joint resolution under the procedures set forth in Section 8(g)(2), 8(g)(3), and 8(g)(4) of ANGTA.

Waive P.L. 95-158 [Joint Resolution of approval,* pursuant to Section 8(a) of ANGTA, incorporating the President's Decision] in the following particulars:

Section 1, Paragraph 3, and Section 5, Conditions IV-4 and V-1, of the President's Decision, in order to permit producers of Alaska natural gas to participate in the ownership of the Alaska pipeline segment and the gas conditioning plant segment of the approved transportation system; provided, however, that any agreement on producer participation may be approved by the Federal Energy Regulatory Commission only after consideration of advice from the Attorney General and upon a finding by the Federal Energy Regulatory Commission that the agreement will not (a) create or maintain a situation inconsistent with the antitrust laws, or (b) in and of itself create restrictions on access to the Alaska segment of the approved transportation system for nonowner shippers or restrictions on capacity expansion; and

Section 2, Paragraph 3, First Sentence, of the President's Decision, to include the gas conditioning plant in the approved transportation system and in the final certificate to be issued for the system; and the

* See: Executive Office of the President, Energy Policy and Planning, Decision and Report to Congress on the Alaska Natural Gas Transportation System (September 1977) (hereinafter referred to as President's Decision); and see H. J. Res. 621, Pub. L. No. 95-158 (1977), wherein the President's Decision was incorporated and ratified by Congress pursuant to Section 5(a) of ANGTA.

* 15 U.S.C. § 719f et.

application of Section 5, Condition IV-2 of the President's Decision to the gas conditioning plant; and

Section 5, Condition IV-3, of the President's Decision; provided, however, that such waiver shall not authorize the Federal Energy Regulatory Commission to approve tariffs except as provided herein. The Federal Energy Regulatory Commission may approve a tariff that will permit billing to commence and collection of rates and charges to begin and that will authorize recovery of all costs paid by purchasers of Alaska natural gas for transportation through the system pursuant to such tariffs prior to the flow of Alaska natural gas through the approved transportation system --

- (a) to permit recovery of the full cost of service for the pipeline in Canada to commence --
 - (1) upon completion and testing, so that it is proved capable of operation; and
 - (2) not before a date certain, as determined (in consultation with the Federal Inspector) by the Federal Energy Regulatory Commission in issuing a final certificate for the approved transportation system, to be the most likely date for the approved transportation system to begin operation; and
- (b) to permit recovery of the actual operation and maintenance expenses, actual current taxes and amounts necessary to service debt, including interest and scheduled retirement of debt, to commence --
 - (1) for the Alaska pipeline segment --
 - (A) upon completion and testing of the Alaska pipeline segment so that it is proved capable of operation; and
 - (B) not before a date certain, as determined (in consultation with the Federal Inspector) by the Federal Energy Regulatory Commission in issuing a final certificate for the approved transportation system, to be the most likely date for the approved transportation system to begin operation; and
 - (2) for the gas conditioning plant segment --
 - (A) upon completion and testing of the gas conditioning plant segment so that it is proved capable of operation; and
 - (B) not before a date certain, as determined (in consultation with the Federal Inspector) by the Federal Energy Regulatory Commission in issuing a final certificate for the approved transportation system, to be the most likely date for the approved transportation system to begin operation.

Waive Pub. L. No. 688, 75th Cong., 2nd Sess. [Natural Gas Act] in the following particulars:

Section 7(c)(1)(B) of the Natural Gas Act to the extent that section can be construed to require the use of formal evidentiary hearings in proceedings related to applications for certificates of public convenience and necessity authorizing the construction or operation of any segment of the approved transportation system; provided, however, that such waiver shall not preclude the use of formal evidentiary hearing(s) whenever the Federal Energy Regulatory Commission determines, in its discretion, that such a hearing is necessary; and

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

Sections 1(b) and 2(6) of the Natural Gas Act to the extent necessary to permit the Alaskan Northwest Natural Gas Transportation Company or its successor and any shipper of Alaska natural gas through the Alaska pipeline segment of the approved transportation system to be deemed to be a "natural gas company" within the meaning of the Act at such time as it accepts a final certificate of public convenience and necessity authorizing it to construct or operate the Alaska pipeline segment and the gas conditioning plant segment of the approved transportation system or to ship or sell gas that is to be transported through the approved transportation system; and

Section 3 of the Natural Gas Act as it would apply to Alaska natural gas transported through the Alaska pipeline segment of the approved transportation system to the extent that any authorization would otherwise be required for ---

- (1) the exportation of Alaska natural gas to Canada (to the extent that such natural gas is replaced by Canada downstream from the export); and
- (2) the importation of natural gas from Canada (to the extent that such natural gas replaced Alaska natural gas exported to Canada); and
- (3) the exportation from Alaska into Canada and the importation from Canada into the lower 48 states of the United States of Alaska natural gas.

Waive P.L. 94-163* [Energy Policy and Conservation Act] in the following particulars:

Section 103 as it would apply to Alaska natural gas transported through the Alaska pipeline segment of the approved transportation system to the extent that any authorization would otherwise be required for --

- (1) the exportation of Alaska natural gas to Canada (to the extent that such natural gas is replaced by Canada downstream from the export); and
- (2) the importation of natural gas from Canada (to the extent that such natural gas replaced Alaska natural gas exported to Canada); and
- (3) the exportation from Alaska into Canada and the importation from Canada into the lower 48 states of the United States of Alaska natural gas.

* 42 U.S.C. § 6201, et seq.

SCOMM

28:24

McMillian Says Gas Pipeline Is Set Firmly in Place *2/13/81*

"With the advent of construction in the U.S. and Canada, the Alaskan Natural Gas Transportation System is set firmly in place and well along the road toward completion."

So said John G. McMillian, chairman and chief executive officer of Northwest Alaskan Pipeline Company at a ceremony held at Spokane, Washington on Feb. 9 commemorating construction of the first U.S. portion of the 4,800-mile pipeline system that will extend from Alaska's North Slope through Canada to markets in lower 48 states.

According to McMillian, "regulatory approvals from both U.S. and Canadian agencies in 1980 authorized construction of approximately 1,500 miles, or more than 30 percent, of the total Alaskan system. These portions have been financed and construction is underway."

Western leg segments in Canada and the U.S. will be completed by the fall of 1981. The new facilities will transport up to 300 million cubic feet of Alberta gas per day to con-

sumers in southern California, he said.

McMillian noted that construction also has begun on the initial phase of the eastern leg of the pipeline system which, when completed in the fall of 1982, will deliver daily approximately 800 million cubic feet of Canadian gas to pipelines in the midwest, south and east.

Both systems will transport natural gas from Alaska's Prudhoe Bay field beginning with the 1985-86 winter heating season, he said.

"Early construction of the western and eastern legs will provide several advantages to the overall Alaskan project," McMillian said. "It will allow an increase in needed near-term gas supplies to U.S. markets, avoid higher inflation in construction costs and provide a lower cost of service via earlier depreciation of facilities."

"In addition, this construction will help reduce the project's impact on labor materials and capital by spreading the demand for those items over a greater period of time," he said.

The initial phase of the U.S. western leg involves construction by the Pacific Gas Transmission Company (PGT) of 160 miles of 42-inch diameter pipeline paralleling its existing system between Kingsgate, British Columbia, on the U.S.-Canada border, and Stanfield, Oregon. Estimated cost of this construction is \$186 million.

From Stanfield the Canadian gas will be delivered through the expanded facilities of Northwest Pipeline Corporation. Pacific Interstate Transmission Company, a unit of Pacific Lighting Corporation, Los Angeles, has contracted to purchase an average of 240 million cubic feet per day of the imported gas over a 12-year period for the southern California market.

Highlight of the Spokane ceremony was a banquet attended by U.S. and Canadian government officials, project sponsors, and state, county and civic leaders from throughout the Pacific Northwest. The keynote speaker was Idaho Senator James A. McClure, chairman, U.S. Senate Committee on Energy and Natural Resources.

Canada wants U.S. gas line commitment

by Betty Mills
Times Washington Bureau

Washington — The Canadian government is seeking assurances from President Reagan that the U.S. is committed to the completion of the Alaska Highway natural gas pipeline, Canadian Ambassador Peter Towe said today.

At a breakfast briefing with reporters here, Towe said the Canadians would like a letter from the White House that emphasizes its support for the project, similar to the one provided by former President Carter.

"President Carter wrote a letter to Prime Minister Trudeau indicating he is in favor of the (pipeline) agreement and the construction of

the pipeline, and its conclusion before 1985," Towe said.

"We would like, and the financial markets and private industry would like, that same kind of commitment from President Reagan. We want to make sure this executive branch is as interested as the previous administration."

The 4,800-mile gas pipeline project will be among the topics discussed by Reagan and Trudeau when they confer in Ottawa next week, Towe said. President Reagan will make a two-day state visit to Canada on March 10-11.

Towe said the Canadians "want the project as much as we ever did, and we want it even more because we went ahead with the pre-build-

ing."

After receiving the letter from Carter and a joint resolution from Congress expressing support for the project, the Canadian government gave the go-ahead last summer for construction of the southern pre-built segments of the line.

That will allow the export of surplus natural gas from Alberta through 1987 until the pipeline is completed and Alaskan gas is flowing.

"If the main pipeline is not built, we're stuck with a stub," Towe said. "And that makes no economic or political sense."

Towe noted that a decision by the White House to decontrol natural gas immediately "would be very detri-

mental to the project."

Towe said he saw the Reagan administration of a disposition that would be a "backstop" from the administration.

He said he has been in ongoing talks between the sponsors and the administration regarding the financing plan for the project.

Towe added, "The Reagan administration's commitment to completion is no less binding as the commitment of the Carter administration. I don't think the administration has a better view as to the need to have access to Alaska gas."

Endorsement of gasline urged

by Betty Mills
Times Washington Bureau

Washington — President Reagan is continuing to receive pressure to express the commitment of his administration to the Alaska gas pipeline project, from Alaska's congressional delegation and in a Washington Post editorial today.

On Monday, Canadian Ambassador Peter Towe called on Reagan to issue a letter reinforcing the commitment of the U.S. government to completion of the pipeline project.

In a letter to the President Tuesday, the Alaska delegation echoed Towe's plea, saying: "The success-

ful completion of this project depends in large part on the cooperation and support of both the United States and Canadian governments.

"While details as to the financing of this project have not as yet been worked out, and while the appropriate involvement of the federal government remains unclear, we believe it is important for the new administration to reiterate the strong expression of support for this project given to the Canadian government by the previous administration," the Alaskans said.

Both Towe and a White House spokesman confirmed that the gas

line project is on the agenda for discussions between President Reagan and Prime Minister Pierre Trudeau when the two confer in Ottawa next week.

In an editorial today, the Washington Post expresses support for the gas pipeline, and urges Reagan to focus attention on the project.

"The Alaskan gas pipeline ought to be built," the editorial said. "Although the risks and the doubts are real and worth noting, the decision has already been made. The United States has committed itself to the project. It cannot change its mind now without severely damaging its

standing in Canada, and diminishing the value of pledges on more subjects than energy."

The editorial notes the expensive nature of the project, with a price tag estimated at \$25 billion, and the thorny nature of the financial negotiations now under-way between the sponsors and the North Slope producers.

In another development, Energy Secretary James B. Edwards Tuesday reiterated the federal government's belief that the project must be privately financed.

Edwards said that if the prospect of federal aid was even proposed, "it would hold up the project for years."

The statement came at a House hearing on an unrelated energy matter, in response to a question from Rep. Bruce Vento, D-Minn.

A state of mind like Spenard deserves notice on maps

Let's put Spenard right where it belongs — back on the map.

For the past 10 years, whenever I gazed at my Kroll Map Co. map of Alaska, I could always count on my heart being warmed when I saw the black dot that represented Spenard. Ah, such comfort to see it sitting there just south of Anchorage, a civilized landmark in the wilds of the last frontier.

It was a good-sized black dot, too, not one of those nearly invisible little dots that represent your smaller no-account communities. The Spenard black dot was a bold, robust black dot, firmly planted on the landscape of our state. It was a bigger black dot than the black dots allotted Palmer, Wasilla, Nenana or Big Delta, and that was only fitting, I thought.

Then how come they took it off the map? I am not using my words carelessly, either. I say "took it off" because I do not believe that the absence of Spenard from my present map was a sin of omission. No way. I think somebody with a misguided sense of civic pride got to the cartographer and persuaded him to leave Spenard off the map on purpose. Shocking, I know, but probably true.

The problem is one of image. Many people think of Spenard as nothing more than a combination of Sodom and Gomorrah with no zoning laws. These people, most of whom live in



mark godwin

split-entry homes on the east side of town, think Spenard is Spenard Road and nothing more. They think Spenard is a ramshackle hodgepodge of trailer courts, sleazy bars and massage parlors, and they probably thought they were doing Anchorage a favor by taking Spenard off the map.

In fact, they were doing Anchorage a great disservice, because Spenard is much more than a hood-filled neighborhood. Spenard is a way of life. Spenard is a state of mind.

Spenard is also a real good chunk of Anchorage, and if Anchorage is your basic All-American City, then Spenard is certainly your All-Anchorage community.

Consider the boundaries of Spenard and then decide if it should be on the map. Spenard is bounded on the north by Fireweed Lane and West High, on the east by the New Seward Highway, on the south by International Airport Road and on the west by Cook Inlet. Takes in a lot of territory, doesn't it?

It takes in Turnagain, the creme de la creme of subdivisions. It takes in the Sears Mall and University Center. It takes in our burgeoning business district, midtown Anchorage. It even takes in Anchorage International Airport.

Ha! The truth finally comes out. Spenard is the crossroads of the air world, and now it's not even on the map.

Sure, the folks in Turnagain wince when you mention Spenard. Sure the folks in the midtown business district ignore Spenard in hopes it will go away. Sure Spenard sometimes appears to be the Old Pickup Truck Burial Ground of the greater Northwest. Sure Spenard is the place that all stray cats and dogs originally called home.

But hey, Spenard has even worked its way into the Alaska dialect, which is something that Oceanview, Muldoon and College Village haven't been able to do. There is the chic "Spenard tuxedo," which some people mistakenly think is nothing more than an unfashionable down vest. There is the "Spenard divorce," which elimi-

nates the need for lengthy property settlements. There is even a special brand of "Spenard urban renewal," in which a huge fire converts a dilapidated eyesore into a charred landmark in a matter of minutes. Yes, Bobby McGee's was in Spenard.

Spenard has the best bar in town. Spenard has the best Mexican restaurant in town. Spenard has the best racquetball courts in town. Spenard has just about ALL the lumberyards in town. Spenard had the FIRST McDonald's in town. Spenard has the ONLY "class" strip joint in town.

Spenard has a green elementary school. Spenard has the largest float-plane base in the world. Spenard has the municipal sewage treatment facility. Spenard has the community mental health center. Spenard will even have a golf course, again, in the near future. Spenard has discos and roller rinks, bowling alleys and antique shops. There's an ad agency in Spenard. There's even a combination Oriental grocery/tailor shop in Spenard. A library too.

Doesn't that sound like a vibrant, exciting neighborhood? Doesn't that sound like a thriving community? Doesn't that sound like a place where there are things to do, places to go and people to see?

Doesn't that sound like a place that should be on the map?

Study of gas line alternatives suggested

By JON MATTHEWS
Daily News reporter

JUNEAU — The Alaska Legislature should be prepared for possible failure of efforts to get private financing for the Alaska natural gas pipeline, says an internationally known energy consultant.

The state should study alternatives to the pipeline — possibly including construction of an in-state gas liquids pipeline — so it can make a more knowledgeable decision if it is again

asked to provide financial help for the natural gas pipeline project, said consultant Milton Lipton.

Otherwise, Lipton told lawmakers, state leaders eventually might feel they were faced with either supporting the natural gas pipeline, or having no pipeline at all.

One possible alternative to the natural gas project, the consultant said, could be converting the North Slope natural gas to gas liquids, piping the liquids to Alaska's southern coast via

in-state pipelines, and then shipping the product to market.

"The decision could better be made if you see the alternatives," Lipton said.

Lipton, of the New York-based W.J. Levy Consultants Corp., is appearing this week before various legislative committees tackling the gas pipeline and other major oil and gas issues looming in Alaska's future. Lipton has advised the state and many nations on oil and gas matters for years.

The Alaska natural gas pipeline, according to a recent Wall Street Journal article, may cost up to \$35 or \$40 billion, and more and more state officials are questioning whether the line can be built without private financing — if it can be built at all.

House Finance Chairman Sam Cotten, D-Eagle River, told Lipton Tuesday that the widely publicized start-up of construction of the Lower 48 segments of the 4,800-mile natural gas pipeline had led many to believe that the Alaska segment of the project

would now be built.

"But now you suggest there's a great likelihood it will never come to pass," Cotten said.

But Lipton told the committee that the Lower 48 "pre-built" segments of the pipeline system could operate without the Alaska segment ever being built, by carrying Canadian natural gas to the Lower 48.

"The pre-built segments can survive — albeit with some financial problems — if the Alaska segment is never built," Lipton said.

Anticipating the gas line project

Alaskans have held their breath in anticipation of gas pipeline construction for some time now. Even before the frenzied era of oil pipeline construction was concluded, we began looking forward — with varying levels of trepidation and anticipation — to another massive construction project.

The coming gas line has been a major assumption about life in Alaska, despite nagging worries over financing, marketing and construction. Every so often a minor roadblock is cleared — a permit granted, a tariff determined, a contract negotiated — and the project seems a bit closer to fruition. Not everyone wants to see another period of upheaval like the one surrounding the oil pipeline boom, but somehow it has always seemed inevitable.

Construction already has begun, in fact, on the Canadian and some Lower 48 portions of the line; the Canadians are understandably eager for further assurances of American commitment to the project. For a long time now, we've been assuming that commitment was sure; only the details seemed in doubt.

That's why reports that the line's price tag could reach \$40 billion — according to the Wall Street Journal — give cause to stop and think. The legislature is doing so this week, with briefings from consultants and industry officials on the likelihood of prompt construction. What was scheduled to be the biggest private construction project in history may now be beyond the capacity of private sources to finance.

"It's very likely that the people of Alaska may be counting on a project that may never happen," says Sen. Ed Dankworth, R-Anchorage.

The situation makes evident the wisdom of legislators who counseled restraint two years ago, when the state was pressured to contribute to the financing package. To be stuck with such commitments now clearly would reduce the state's options for other uses of the money. Alaskans will continue their skepticism toward contributing to a project that private industry so far cannot finance itself.

At any rate, we'll be watching to see what the legislature learns this week. Sen. Dankworth suggests the state should set a time limit on its efforts to support the current trans-Canada pipeline project — after which the state could pursue alternate projects. Such a time limit may be wise.

There also may be hidden value to the current re-examination of gas line prospects: consideration of an Alaska *without* a gas line forces consideration of other opportunities and challenges still at hand.

And that endeavor will shed light on the shape of things to come regardless of the gas line project. For whether this project comes to fruition or not, the day will come when Alaska cannot plan on further gigantic construction projects to sustain it. Our assumptions then will focus on making good of long-run, sustainable opportunities — not breathless anticipation of another boom.

Somehow that prospect doesn't seem so bad.

Consultant: all-liquids line a possibility

by Dave Carpenter

Times Juneau Bureau

Juneau — The Legislature should consider the possibility of an all-liquids pipeline from Prudhoe Bay to tidewater in case financing for the natural gas pipeline doesn't work out, a New York-based consultant told lawmakers Monday.

Milton Lipton of Walter J. Levy and Associates said legislators and the oil and gas industry might even want to build the all-liquids line if the gas line is built but turns out to be uneconomical.

"If for some reason the pipeline should fail, the state of Alaska is in a dire situation," Lipton told a joint meeting of House and Senate Resources members. He urged them to consider alternatives now.

"If you don't look at it (an all-liquids line) as an alternative, then everything hinges on the completion of the gas line" and extreme cost increases would have to be met.

An all-liquids line would transport methanol — not liquefied natural gas — to the Valdez area and then to the Lower 48 by ship. Lipton said there would be no point in taking a liquids line through Canada, like the proposed gas line, so costs would be much cheaper.

"You lose something in the conversion process but you gain something in the transportation process."

The longtime oil and gas consultant to the Legislature stressed that an all-liquids line "would not be inconsistent with petrochemical development" since all the liquids needed for petrochemical processing would still be present.

The consultant said the value of Alaska gas is bound to be "very, very much higher" in the future, both because it's underpriced now and because development of coal as an alternate to gas will drive the price up.

Lipton also said the Legislature,

in addressing its immediate \$7.5 billion risk involved in its legal battle with the oil industry, will be leaving itself open to more court challenges if it tries to make up that potential loss by hiking other oil taxes.

"I would expect any intelligent and alert corporation that objects to paying four times as much in taxes (under the oil tax law being litigated) is going to test the legality of any variation you introduce," Lipton said.

However, he recommended that lawmakers try to resolve the tax battle with the oil industry before the courts do, which could be another six years.

"That's a hell of a thing" for the oil companies to face if they win the legal battle but have their billions in contested tax dollars extracted by the state in another fashion, he said.

"The uncertainty is as devastating for the industry as it is for the state."

Legislature to zero in on gas line issues

by Jean Kizer
Associated Press Writer

Juneau — Amid growing doubts about financing, the proposed natural gas pipeline will take center stage in the Legislature this week as lawmakers hear from oil and gas consultants and Northwest Alaskan Pipeline Co. officials.

Several joint hearings have been scheduled by House and Senate committees to touch on a range of pipeline-related issues, including the all-important question: Can the multi-billion dollar project be built with private financing?

As cost estimates for the line continue to soar, state and industry officials are growing increasingly skeptical that the project can be built without federal loan guarantees or some other kind of aid.

"I think they're going to need everything to make it go — the companies putting in equity . . . possibly state equity participation . . . and they may need some kind of federal guarantee for the line," said Rep. Terry Gardiner, D-Ketchikan, co-chairman of the House-Senate Joint Gas Pipeline Committee.

"The financial community has never forgotten the Alyeska line and the huge cost overruns."

Gardiner said this week's hearings are intended to "bring us up to date" on the project. Although the subject of state financial aid will be discussed, Gardiner does not foresee any action this session.

Senate President Jalmar Kerttula, D-Palmer, co-chairman of the

gasline panel, agreed. Kerttula said today he thinks most Alaskans remain "skeptical" of state involvement in financing the line.

Lawmakers will hear testimony from the Legislature's longtime oil and gas consultant, Milton Lipton of the firm of Walter J. Levy and Associates of New York and two Washington D.C.-based consultants hired by the gasline committee.

Two Northwest Alaskan officials — Darrell McKay, vice president for government and regulatory affairs, and Harold Moles, vice president in charge of Alaska operations — are scheduled to appear before the committee Friday.

The existing plan approved by Congress in 1977 for building the gasline precludes federal financial assistance. It also prohibits equity investment in the project by the oil companies that control the vast natural gas reserves at Prudhoe Bay.

A recent Wall Street Journal article now making the rounds of the state capitol said cost estimates for the project have reached \$35 billion to \$40 billion, up from \$25 billion last year. The newspaper quotes supporters of the line saying they believe it cannot be built without substantial financial assistance from the federal government.

Gardiner said the state must answer two key questions before deciding whether to help finance the project: Would state financial assistance be a good business deal for the state, and would it make a difference in helping get the beleaguered project

underway?

The questions will be difficult to answer, Gardiner said, until the Reagan administration indicates what approach the new president will take toward the line. "Reagan really hasn't taken a position on it. That's going to be a key," said Gardiner.

Whatever financing package is worked out must be submitted to Congress, where some lawmakers have questioned the feasibility of the project. Rep. John Dingell, the Michigan Democrat who heads the House Energy Committee, recently asked congressional researchers to study a number of possible alternative methods of moving the gas out of Alaska.

Such methods could include shipment by tankers and on-site conversion to methanol or other products, which could then be shipped to the West Coast.

The 4,800-mile gasline is proposed to run south from Prudhoe Bay parallel to the trans-Alaska oil pipeline to Delta Junction, south of Fairbanks. From there the gasline will head southeast into Canada, following the Alaska Highway to the Lower 48. Just north of Calgary the line will split, with one leg going to California and the other heading east to Illinois.

Northwest proposes to complete the pipeline by 1985, with gas scheduled to flow beginning in 1986. But most state officials say continued financing problems likely will delay the timetable. The line is designed to carry 2.5 billion cubic feet of gas daily.

Gas pipeline

Alternatives suggested

By The Associated Press

Alaska should study alternatives to the proposed natural gas pipeline, such as converting the gas to liquids at Prudhoe Bay for transportation to tidewater, an international oil and gas consultant has told lawmakers.

Because the gasline represents "a tremendous risk" to finance, the state likely will be called on to provide some type of loan guarantee, in which case "that decision should be better made in the light of knowledge about alternatives," said Milton Lipton.

Although he did not discuss

various alternatives in detail, Lipton mentioned the possibility of converting the gas to liquids at Prudhoe Bay, building a line to tidewater and then shipping the liquified natural gas south. "It's worth very, very careful consideration," he said.

Lipton's New York based firm of W.J. Levy Consultants Corp. has been advising the state — any many foreign nations — on oil and gas matters for several years.

Lipton briefed lawmakers today and Monday on the international oil situation and answered questions on a number of topics.

On the subject of the state's

current legal battle with the oil industry over Alaska's oil and gas corporate income tax enacted in 1978, Lipton recommended the state negotiate a settlement with the oil companies.

"This a a devastating thing for the state to live with...the uncertainty. It's as devastating for the oil industry as it is for the state," he said of the pending litigation.

If the state loses the case, officials estimate the state could be forced to repay the major Prudhoe Bay producers \$7 billion — the amount of money the state is expected to earn from the tax by 1985, when litigation may be complete.

"I would be very surprised if anyone gains by leaving this so long unresolved," he said.

However, Lipton said he doubts statements made by the oil companies that they are confident of winning the case. "They are not really so certain as I think their public statements insist," Lipton said.

He also noted that any attempts to rewrite Alaska's corporate income tax likely will be subject to litigation.

Lipton expressed doubt that the refinery proposed by Alaska Oil Company (formerly Alpetco) ever will be built.

Legislators wait joint gas line hearings

By JEAN KIZER
Associated Press Writer

JUNEAU—Amid growing doubts about financing, the proposed natural gas pipeline will take center stage in the Legislature this week as lawmakers hear from oil and gas consultants and Northwest Alaskan Pipeline Co. officials.

Several joint hearings have been scheduled by House and Senate committees to touch on a range of pipeline-related issues, including the all-important question: Can the multi-billion dollar project be built with private financing?

As cost estimates for the line continue to soar, state and industry officials are growing increasingly skeptical that the

project can be built without federal loan guarantees or some other kind of aid.

"I think they're going to need everything to make it go—the companies putting in equity, possibly state equity participation, and they may need some kind of federal guarantee for the line," said Rep. Terry Gardiner, D-Ketchikan, co-chairman of the House-Senate Joint Gas Pipeline Committee. "The financial community has never forgotten the Alyeska line and the huge cost overruns."

Gardiner said this week's hearings are intended to "bring us up to date" on the project. Although the subject of state financial aid will be discussed, Gardiner does not foresee any action this session.

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A recent Wall Street Journal article now making the rounds of the state capitol said cost estimates for the project have reached \$35 billion to \$40 billion, up from \$25 billion last year. The newspaper quotes supporters of the line saying they believe it cannot be built without substantial financial assistance from the federal government.

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whether to help finance the project: Would state financial assistance be a good business deal for the state, and would it make a difference in helping get the beleaguered project under way.

The questions will be difficult to answer, Gardiner said, until the Reagan administration indicates what approach the new president will take toward the line. "Reagan really hasn't taken a position on it. That's going to be a key," said Gardiner.

Whatever financing package is worked out must be submitted to Congress, where some lawmakers have questioned the feasibility of the project. Rep. John Dingell, the Michigan Democrat who heads the House Energy

Committee, recently asked congressional researchers to study a number of possible alternative methods of moving the gas out of Alaska.

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● Lawmakers question gas line funding

By JON MATTHEWS
Daily News reporter

JUNEAU — Some key Alaska lawmakers say too many crucial questions remain unanswered for the state to invest this year in the proposed Alaska Highway natural gas pipeline project.

And some legislative leaders question whether the gas pipeline — with its skyrocketing cost estimates — can be built without federal loan guarantees or other aid, or built at all. A few say the state should consider investing in possible alternative in-state pipeline projects.

The statements Monday came as legislative committees prepared to sit down this week for a series of meetings with consultants, officials and industry representatives to discuss the current status of the gas pipeline project.

Construction on Lower 48 segments of the 4,800-mile pipeline system already is underway, but Northwest Alaskan Pipeline Co. has yet to obtain massive private financing

needed to build the Alaska portion of the line to carry Prudhoe Bay natural gas south.

A recent Wall Street Journal article said some cost estimates of the project have mushroomed to between \$35 billion and \$40 billion, up from \$25 billion a year ago.

"If the cost is running into numbers like that, then there are some real questions" about financing the project, said Rep. Hugh Malone, D-Kenai.

"It's very likely that the people of Alaska may be counting on a project that may never happen," said Sen. Ed Dankworth, R-Anchorage and co-chairman of the Senate Finance Committee, also citing high cost estimates.

Malone and Dankworth said Monday that the state should look at possible investment in other natural gas projects. Malone said the state could study converting the natural gas at Prudhoe Bay into gas liquids, then shipping the liquids through the existing oil pipe-

See Back Page, LAWMAKERS

Lawmakers question state involvement

Continued from Page A-1

line. Dankworth said he would favor a look at state investment in the once-defeated all-Alaska natural gas pipeline route.

The federal legislation authorizing Northwest to build the Alaska Highway pipeline prohibits federal aid for the project, or direct investment by the major North Slope producers of the natural gas.

Rep. Terry Gardiner, D-Ketchikan and co-chairman of the joint House-Senate gas pipeline committee, said the state should not be "the first one into the (project financing) game."

Gardiner said the state needs to know if private investors are willing to put up money for the line, and whether the Reagan administration would consider changes in the federal law before Alaska agrees to offer any direct investment. Those questions probably won't be answered in time for legislative action this year, he said.

Senate President Jay Kerttula, D-Palmer and co-chairman of the committee, agreed, say-

ing he was "skeptical" of whether the state should invest in the Northwest pipeline and whether state residents favored such a move.

"The state is not an expert at building pipelines," Gardiner said. "We have to look at whether state investment would be a good business deal for the state and whether the timing is appropriate."

Gardiner recalled previous attempts by Northwest to get state investment in the line. "Look what's happened to the cost of building of the project since then. If we had put a couple billion in two years ago ... we'd sure look silly now, wouldn't we?"

"We should wait and see and stay on top of the issue. This week's hearings are a basic review," Gardiner said.

Chuck Kleeschulte, press secretary to Gov. Jay Hammond, said Northwest officials have not approached Hammond recently for state aid.

Two Northwest officials are scheduled to appear before the legislature this week to detail the status of the project.

Sen. Frank Ferguson, D-Kotzebue, said he believes the legislature should consider investment in the Northwest gas pipeline, but only after Northwest and federal officials make clear their position on the project.

Ferguson said he had not yet made up his mind on the question.

Cautioning that he still has to hear out various officials during this week's hearings, Dankworth said he seriously questions state investment in the Northwest project.

Dankworth said he questions whether Northwest can get the needed financing and whether the gas could be transported at a reasonable cost to the Lower 48.

Dankworth said he would favor a time limit on Northwest's attempts to get the project built, after which the state might be able to concentrate on an alternative project.

"I would entertain a proposal to use state funds to finance a good portion of an all-Alaska pipeline," he said.

CITIZENS PARTICIPATION CONFERENCE

TENTATIVE AGENDA

MONDAY, March 16

- 8:00 to 9:30 a.m. Registration (Baranof Hotel Lobby)
- 9:30 to 10:00 a.m. Welcome! Introductions, Opening Remarks (Gold Room)
- 10:00 to 10:30 a.m. Governor Hammond (tentatively) with Questions and Answers
- 10:30 to 11:30 a.m. Introduction to issues by workshop spokespersons; Other announcements.
- 11:30 to 1:00 p.m. LUNCH
- 1:00 to 5:00 p.m. WORKSHOPS
- Alcoholism, Nugget Room
 - Child Development, Gastineau Suite
 - Energy, Gold Room
 - Subsistence & Natural Resources, American Legion Hall
- 7:00 to 9:00 p.m. Introduction/Training on Legislative Process

TUESDAY, March 17

- 8:45 to 9:00 a.m. Conference Announcements (Gold Room)
- 9:00 to 9:30 a.m. Guest Speaker (To Be Announced)
- 9:30 to 12:00 noon Workshops Continue (As assigned above)
- 12:00 to 1:00 p.m. LUNCH
- 1:00 to 5:00 p.m. Workshops Continue

WEDNESDAY, March 18

- 8:45 to 9:00 a.m. Conference Announcements (Gold Room)
- 9:00 to 9:30 a.m. Guest Speaker (To Be Announced)
- 9:30 to 1:00 p.m. Workshops finalize recommendations
- 1:00 to 2:00 p.m. LUNCH
- 2:00 to 5:00 p.m. Individuals meet with Legislators and attend Committee Meetings of Legislature

Aim for 'balance,' says oil consultant

An international oil consultant said today that resource-rich Alaska must balance economic necessity with environmental concern.

Milton Lipton, president of Walter J. Levy and Associates of New York, said unique development opportunities exist here in the wake of escalating world oil prices, but they must be compatible with maintaining a healthy environment.

Speaking before a Commonwealth North breakfast gathering, Lipton said: "By all means make haste, but with deliberate speed."

To drive his point home, Lipton recalled an Arab parable: "Even with nine wives, you can't make a baby in a month."

Lipton, who has long served as an adviser to the Legislature on oil policy matters, said Alaska will be forging its own direction this decade "in a world whose major source of energy — oil — is going to be in tight supply."

World oil prices, Lipton said, will continue to rise. However, the consultant predicted that energy consumption is likely to slow down. Further, coal, nuclear energy — at least outside the U.S. — and other alternative energy sources will be used widely as substitute for oil.

However, Lipton said the world still will consume 20 billion barrels of oil each year for the foreseeable future.

Consequently, Alaska will continue to reap the benefits of world energy shortages.

Ironically, had the oil shortage not become so pronounced in the mid-1970s with the ensuing political instability in the Middle East, Alaska could have remained resource rich but economically poor, Lipton said.

During a question and answer period, Lipton said the future of the



MILTON LIPTON
Legislative adviser

Alaska natural gas pipeline remains clouded.

Inflation, financing and deciding which route the pipeline should take are the biggest problems, Lipton said.

Lipton said Alaska must soon decide "whether the candle is worth burning." Although the value of natural gas will continue to increase as the price of oil spirals upward, Lipton said the financial risk for potential pipeline investors is going up disproportionately.

Lipton suggested pipeline financing may be impossible without the help of the federal government.

The consultant also said that perhaps the Legislature should explore alternative ways to tap its vast supply of natural gas.

On Tuesday, Lipton told lawmakers in Juneau to consider the possibility of an all-liquids pipeline from Prudhoe Bay to tidewater in case financing for the natural gas pipeline falls through.

Consultant paints rosy picture of gas line prospects

by Dave Carpenter
Times Juneau Bureau

Juneau — The proposed Alaska natural gas pipeline will "almost certainly" be built but construction won't start before 1983 and probably not until 1984, according to a Washington, D.C., consultant.

Joseph H. Chomski, in remarks prepared for delivery before the Joint Natural Gas Pipeline Committee, painted a fairly rosy picture of gas line prospects.

"The Alaska gas pipeline project has had its problems, as all will admit," said the legislative panel's legal counsel.

"It still faces many tough ones, but the events of the last year cast an undeniable aura of optimism," he

said. "In no year has progress been greater than the last one."

Chomski, a partner in the Alaska-based law firm of Birch, Horton, Bittner and Monroe, is one of several consultants and officials appearing before lawmakers this week for briefings on oil and gas matters.

The attorney said negotiations between North Slope producers and Northwest Alaskan Pipeline Co. officials in New York may result in an agreement on gas line financing within the next month.

In the meantime, he said, most of the federal governmental bodies involved with the pipeline are in a "watching and waiting" posture.

Chomski said it will be at least late 1981 and probably early next

year before the Federal Energy Regulatory Commission's Alaska Gas Pipeline Office recommends whether to approve Northwest's application for final certification — thus clearing the way for construction.

The consultant also said:

— The Legislature probably will face in next year's session a proposal by the producers and sponsors of the gas line for the state to aid with the financing.

While not making recommendations on whether the state should invest in the line, Chomski indicated the consortium would need a loan more than equity participation. Estimates have placed the cost of the pipeline as high as \$40 billion.

— In order to maintain the gas line's current construction and completion schedule, "significant progress on the conditioning plant must occur this year." Northwest says that purchase orders must be made by this summer or a year will be lost.

— It's too early to say what the Reagan administration stand on the pipeline is, but it's clear that it would provide many benefits in harmony with Reagan's domestic policies.

"... No one can yet possibly speculate whether he will break from his philosophical commitment of keeping government out of the hair of private business — as well as his budget austerity program — to provide financial support if that is essential to make the line occur," said

Chomski.

"It would be hard for the president to sanction federal participation, but it would also be difficult to stand by and watch the project abandoned."

— Deregulation of natural gas, which could occur, could pose an "extremely serious" problem for the state.

"It is quite possible that North Slope gas will be higher priced than competitive gas and that state public utility commissions will not sanction rates including the high-priced Alaskan gas if cheaper gas can be purchased. In this event, North Slope gas will have to be discounted to be sold."

In other words, the state would be

in "great jeopardy" of having to sell a couple of years' worth of royalty gas at a substantial discount or for perhaps almost no wellhead price at all.

— The gas line can "under no reasonable circumstances" be built, given current law. The realities of pipeline development now make amendment of President Carter's gasline guidelines "an apparent necessity."

— The issue of federal participation in financing the gasline will not be presented to Congress this year "unless producer-sponsor negotiations fall apart or unless Wall Street adamantly turns thumbs down on the proposal that may be made to them by the producers and sponsors."

Gas line financing doubts surface

By GEORGE BRYSON
Daily News reporter

WASHINGTON — President Reagan's desire to decontrol the price of natural gas this year has raised "serious questions" about the wisdom of private investment in the Alaska natural gas pipeline, congressional and industry sources say.

It also has prompted a new show of concern by the Canadian government — now increasingly nervous that the \$20 billion American portion of the gas line may falter for want of private financing.

During his trip to Ottawa Tuesday, President Reagan offered small comfort for those fears — endorsing the continent-spanning project, but sidestep-

ping any offer of federal dollars to help finance the American share of the pipeline.

"We strongly favor prompt completion of this project based on private funds," the president said in an address to the Canadian House of Commons.

Later Tuesday, Secretary of State Alexander M. Haig Jr. — pressed on the issue by Canadian journalists — refused to say the U.S. would be willing to consider a financial stake in the pipeline.

"We're going to do all within our power to see that (private financing) is available," Haig said.

In the meantime, Republican support on Capitol Hill for decontrolling natural gas appears to be growing. And as it does, pipeline investors are considering what

implications decontrol — and a predicted three-to-four-fold increase in the price of gas — will hold for the gas line.

Industry observers say three potential implications are worth noting:

- Higher prices may be good news for oil and gas producers (whose profits are based on price), but bad news for gas transporters, the principle financiers of the pipeline (whose profits are based on consumption). Decontrol of gas would likely cut gas consumption in America and, with it, the profits of the transporters.

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- Pipeline investors had originally planned on averaging the cost of Alaska's "expensive gas" with less expensive Lower 48 fuel, thereby providing a winning price for natural gas at the marketplace. But with decontrol there will be expensive gas at both ends of the pipeline and that sort of subsidy will no longer be possible.

- There are possible solutions to both of the preceding arguments. But the overriding factor for the private investor, who is being asked to plunk down a cool \$50 million, is the uncertainty that now prevails concerning the future of natural gas:

No one seems to know what the Reagan administration plans to do, or what the price of natural gas will be in 1984, when pipeline construction is supposed to begin. Such uncertainty is bound to have a dampening effect on private investment in the pipeline, at least for the short term.

Alaska Gov. Jay Hammond, meeting in Washington Friday with Idaho Sen. James McClure, chairman of the Senate Energy and Natural Resources Committee, emerged from that meeting with a similar opinion.

"Deregulation does not appear to enhance the viability of the pipeline," Hammond said. He added that decontrol now

conclusion, that the question now is simply when it will occur.

Hammond said he is philosophically opposed to the federal government subsidizing the project. But if worse comes to worst, he added, the state will probably lobby in favor of federal assistance.

Following a front-page story in the Washington Post this week about the Reagan administration's zeal for decontrolling gas this year, the general nervousness over the implications for the pipeline has spread.

"Everybody on the Hill this week wants to know what deregulation is going to do to the gas pipeline," said Joyce Morrison, a public information officer for the Federal Inspector's office that oversees the pipeline. "... The phone has really been ringing."

But congressional and industry sources say decontrol is unlikely this year, regardless of the wishes of some of Reagan's advisers. Congress, they say, is not in the mood to approve it so closely on the heels of the deregulation of crude oil prices.

McClure echoed that sentiment last week during a meeting with western reporters.

"Any prospect of the deregulation of natural gas evaporated," the Senate Energy committee chairman said, "when the oil companies raised the price of gas immediately after the decontrol (of crude oil) last

No assurances given on gas line firm

By NANCY SHUTE
States News Service

WASHINGTON—Gov. Jay Hammond quizzed Senate Energy Committee Chairman James McClure today on the future of the Alaska gas pipeline, but he didn't get the assurances he wanted.

In a meeting with reporters after the morning session, Hammond said there was "simply speculation" on Capitol Hill about the progress of efforts to

obtain private financing for the \$25 billion project.

Hammond also voiced concern over the impact on the pipeline's financing of President Reagan's plan to decontrol natural gas, and said McClure, as Republican head of the Senate committee that sets energy and environmental policy, offered no administration time frame for decontrol.

"Decontrol does not appear to

enhance the viability of the pipeline," Hammond said, noting that most of his information came from speculation by political figures, not industry sources.

Decontrol of natural gas is expected to nearly triple Lower 48 gas prices from their current average of \$1.65 to \$4.50 per thousand cubic feet, about as much as the current cost of imported Canadian gas.

Hammond again voiced support for

private sector funding for the gas line, and said McClure gave no hint of Senate intentions for legislative changes in the pipeline's enacting legislation. Both items have been the center of speculation in the face of continuing uncertainty over financing.

McClure also told Hammond the Senate is taking a dim view of major changes in the Alaska lands act this session.

"He felt they weren't interested in opening up that can of worms again," the governor said. "But they might consider critical, exclusive amendments" focusing on specific issues, he said.

Hammond lobbied McClure on the state's concerns about accelerated offshore drilling schedules proposed by Interior Secretary James Watt, but got no commitments from the senator on a slowdown of drilling schedules proposed in environmentally sensitive areas.

Hammond and Alaska's Washington delegation have argued that areas like

Hammond says state is not to blame for delays in gas pipeline construction

By JEAN KIZER

Associated Press Writer

Gov. Jay Hammond fired off a telegram to the chairman of Northwest Alaska Pipeline Co. Wednesday warning Northwest not to blame the state for delaying completion of the proposed natural gas pipeline.

In a related development, a Washington D.C.-based gasline consultant to the Legislature has predicted that gasline construction probably will not start until 1984 — a year later than scheduled — and that decontrol of gas prices could cause serious problems for the line.

Hammond's telegram was the latest in a series of exchanges between the state and Northwest Chairman John McMillian resulting from a dispute over a site lease for a gas conditioning plant at Prudhoe Bay.

"I must emphasize that we are all aware of the state of progress with respect to" the gasline, Hammond said. "It is for that reason that we insist the state not be singled out for causing a year's delay in the scheduled completion date of the system when we all know that there are many causes for such delay if it should occur."

Hammond's telegram was in response to one from McMillian in which Northwest said "we perceive the state continues to refuse to process our application, which is ready to file... and we are effectively blocked by the state from proceeding

further at this time."

Northwest wants a long-term lease for 2,000 acres at Prudhoe Bay. But Commissioner of Natural Resources Robert LeResche has said the state will grant a temporary site permit now — which he says would allow Northwest to do any needed work this summer — and then convert it to a long-term lease as part of the right-of-way lease the state grants for the entire project.

LeResche told the Legislature's Joint Gas Pipeline Committee that it is crucial to the state for the conditioning plant and the gasline to be considered as one project. Otherwise, there is a greater possibility that costs of conditioning the gas will be deducted from the wellhead price, which could cost the state between \$4 billion and \$8 billion over the life of the field, LeResche said.

LeResche has proposed granting a temporary site lease that would terminate if a gasline financing plan is not completed this year or if an acceptable agreement is not reached on conditioning costs.

LeResche and a lawyer from Washington D.C. briefed the committee on the status of the gasline project, and both said

considerable progress has been made during the past year.

"...the events of the last year cast an undeniable aura of optimism. In no year has progress been greater than the last one," said Joseph Chomski of the law firm of Birch, Horton, Bittner

and Monroe. The firm has been advising the committee since 1978.

Chomski said the gasline "will almost certainly become reality some day," in part because of U.S. commitments to Canada.

Senators offer no assurances of help for getting gasline going

Empire Washington Bureau

WASHINGTON — Gov. Jay Hammond quizzed Senate Energy Committee Chairman James McClure today on the future of the Alaska gas pipeline, but didn't get the assurances for which Alaskans have been hoping.

In a meeting with reporters after the morning session, Hammond said there has been "simply speculation" on Capitol Hill about the progress of efforts to obtain private financing for the \$25 billion project.

Hammond also voiced concern over the affect on the pipeline's financing of Presi-

dent Reagan's plan to decontrol natural gas, and said McClure, as Republican head of the Senate committee that sets energy and environmental policy, offered no time for decontrol.

"Decontrol does not appear to enhance the viability of the pipeline," Hammond said, noting most of his information came from speculation by political figures.

Decontrol of natural gas is expected to nearly triple Lower 48 gas prices from their average of \$1.65 to \$4.50 per thousand cubic feet, about as much as the current cost of imported Canadian gas.

Hammond again voiced support for

private funding for the gas line, adding McClure gave no hint of Senate intentions for legislative changes in the gas pipeline's enacting legislation. Both items have been the center of speculation in the face of continuing uncertainty over financing.

McClure also told Hammond the Senate is taking a dim view of major changes in the Alaska lands act this session.

"He felt they weren't interested in opening up that can of worms again," the governor said. "But they might consider critical, exclusive amendments focusing on specific issues," he said.

Hammond lobbied McClure about ac-

celerated offshore drilling schedules proposed by Interior Secretary James Watt, but got no commitments from the senator on a slowdown of drilling schedules proposed for environmentally sensitive areas.

Hammond and Alaska's Washington delegation have argued areas like Bristol Bay should be taken off the accelerated list until after onshore areas like the National Petroleum Reserve-Alaska are developed.

McClure "seemed to feel all areas (on the accelerated OCS schedule) would be explored," Hammond said. "It won't play

very well with this Congress to remove (the contested Alaska area) from the schedule totally."

As to Thursday's meeting between the Alaska delegation and Secretary of Interior James Watt, Hammond characterized its mood as "cautiously respectful."

At the session, Watt issued a series of policy statements on implementation of the Alaska lands act and elimination of work on a U.S.-Canadian caribou treaty.

The governor was "surprised" at the secretary's degree of sensitivity to environmental issues, he said, citing Watt's

decision to shift responsibility for oil and gas exploration studies in the Arctic Wildlife Refuge from the Fish and Wildlife Service to the more resource production-oriented U.S. Geological Survey.

"He really took great pains to see that the studies in the Arctic Wildlife Refuge are done in accordance with the Wildlife Refuge Management Act," Hammond

said, adding environmental groups seemed to be "painting a one-dimensional portrait" of Watt due to his ardent support of states' rights in his former capacity as head of the conservative Mountain States Legal Foundation.

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NORTHWEST ALASKAN SETS 1981 ALASKAN FIELD PROGRAM:

MOVES TO LARGER QUARTERS IN FAIRBANKS

Fairbanks, March 13 -- Northwest Alaskan Pipeline Company recently relocated its Alaskan project headquarters to the North Star Terminal facilities in Fairbanks, according to Harold Moles, vice-president, operations for Northwest Alaskan.

Northwest Alaskan is the lead partner in a consortium of eleven pipeline companies who will build and operate the 745-mile Alaskan segment of the 4,800-mile Alaska Highway Natural Gas Pipeline Project.

"Northwest Alaskan and Fluor (the gasline project management contractor) are expanding Alaskan operations in anticipation of increased Alaskan field activities and employees in 1981. Completion of this year's field work would allow us to basically finalize our project design," Moles stated.

Offices for both companies moved to a larger building at the North Star Terminals on 701 Douglas Avenue in Fairbanks. In addition, four temporary 78-man fly camps set up last year along the Haul Road have been reopened to support the 1981 field work.

According to Moles, there are currently 550 persons working on the project in Alaska: 51 Northwest Alaskan employees, 86 Fluor personnel, and 413 contractor personnel. "More than 81 percent of these have been local Alaska hires," Moles stated. Alaska employment on the gasline is expected to peak at more than 700 this year and approximately 250 of these would be located in Fairbanks, with the remaining in field locations along the pipeline route.

ALASKA FIELD STUDIES

The largest gasline field activity in 1981 in terms of employment in Alaska is route surveying. The survey program will employ approximately 150 people in Alaska. Fluor, Gulf Interstate/Michael Baker, Joint Venture, and International Technology Limited (Itech), Anchorage, will be doing most of the hiring on this program. The survey will provide data necessary for design of the pipeline, compressor and metering stations and temporary facilities. Pipeline centerline surveys will be done on 293 miles of the proposed alignment not completed in 1980. Other surveys include realignments, areas which may require additional data, compressor and metering station surveys, access roads, and material sites.

The second largest field activity in 1981 is the borehole drilling program to determine subsurface soil and frost conditions along the proposed route of the gasline. Two Alaskan firms, The Drilling Company (TDC), Anchorage, and a joint venture between Reading & Bates, Houston, and Doyon, Ltd., the Fairbanks-based regional native corporation, are conducting this program. Other firms working on the drilling program are Gulf Interstate/Michael Baker, Joint Venture, and Arctic Test Lab, Fairbanks.

Over the past six years, more than 2,600 boreholes have been drilled in Alaska for the gasline project. An additional 1,400 holes will be drilled this year. Approximately 125 people will be employed at the peak of the drilling program in Alaska during 1981. Drilling crews will be working in four separate spreads from Prudhoe Bay to the Canadian Border.

CHILL PIPE TESTS

Another major field activity is the frost heave testing program. At a test facility just outside of Fairbanks, tests are being conducted to demonstrate the behavior of chilled pipe buried in unfrozen soils. In addition, several, smaller test sites are being constructed along the proposed gasline route from Wiseman to the Canadian Border. A majority of the smaller sites will be operational by mid-April of this year and will require about ten people to operate all six sites. Each of the smaller sites consists of two 80-foot sections of 48-inch diameter pipe.

Contractors on the frost heave program include Doyon Construction Company, Inc./Reading and Bates Construction Company, Joint Venture, Fairbanks; Professional Contractors, Inc., Anchorage; Modern Construction/Tamak, J.V., Fairbanks; C.R. Lewis Company, Inc., Anchorage; and Earthmovers, Fairbanks. Other Alaskan companies that received contracts on certain segments of the testing program include H.C. Price Company, Fairbanks and Doyon Construction Company, Inc./Ghemm Company, Inc., Joint Venture, Fairbanks.

Additional field studies to be continued this year in Alaska include controlled blasting and trench excavation, river and stream crossing surveys, weld testing, fault studies, work pad assessment, fisheries studies, cathodic protection studies, material site exploration, airport and temporary facility surveys, micro-earthquake monitoring, soil resistivity, terrain stability, bedrock study, hydrographic survey, water resources survey, and solid waste and hazardous waste disposal studies.