

ALASKA LEGISLATURE COMMITTEE FILES

2007-2008

SJUD

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PACIFIC INTERSTATE COMPANY

720 WEST EIGHTH STREET
LOS ANGELES CALIFORNIA 90017

FEB 20 1985

VERNON T. JONES

February 15, 1985

HARRY L. LEPAPE
President and
Chief Executive Officer

Rec'd BY
VLS
2/21/85

Alaskan Northwest Natural Gas
Transportation Company
Post Office Box 1526
Salt Lake City, Utah 84110-1526

Attention: Mr. Vernon T. Jones

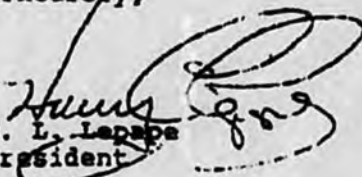
Re: Withdrawal Notice

Gentlemen:

Pacific Interstate Transmission Company (Arctic) hereby gives notice, pursuant to Sections 15 2 and 16 2 of the Alaskan Northwest Natural Gas Transportation Company General Partnership Agreement, as amended, of Arctic's withdrawal from the Partnership effective as of the close of business on February 26, 1985

Concurrent with Arctic's withdrawal, I will be resigning as chairman of the Compensation Committee and as a member of the Audit Committee.

Sincerely,


H. L. Lepape
President

Copy sent by Certified Mail this day to each of the following:

H Wayne Hodge
James R. Templeton
John Sproul
George W. Woods

APR 17 1989

TETCO Four, Inc.
P.O. Box 2521
Houston, Texas 77252

By Certified Mail

April 12, 1989

Alaskan Northwest Natural Gas
Transportation Company
P.O. Box 1526
Salt Lake City, UT 84110-1526

Attention: Mr. Vernon T. Jones

Re: Withdrawal Notice

Gentlemen:

TETCO Four, Inc. ("Tetco") hereby gives notice, pursuant to Sections 15.2 and 16.2 of the Alaskan Northwest Natural Gas Transportation Company General Partnership Agreement, as amended, of Tetco's withdrawal from the Partnership effective as of the close of business on April 13, 1989.

We understand that the partnership has received payment from the United States pursuant to the settlement of the partnership's fees paid to by it to the Federal Power Commission and its successor, the Federal Energy Regulatory Commission. As the partnership is aware, Tetco fully participated in the filing, prosecution, and settlement of this action and it is Tetco's position that, regardless of its withdrawal from the partnership, it is entitled to receive its prorata share of the settlement.

Sincerely,


H. Wayne Hodge
Vice President

Copy sent by Certified Mail this day to each of the following:

Mr. James M. Cameron - TransCanada Pipeline Alaska, Ltd.
Mr. Vernon T. Jones - Northwest Alaskan Pipeline Company
Mr. James R. Templeton - United Alaska Fuels Corporation
Mr. John A. Sproul - Calaska Energy Company

Pacific Gas and Electric Company

NO. 552
S. 11 1/2 1/2
1 - 1/2

January 11, 1993

VIA FACSIMILE, FEDERAL EXPRESS, AND CERTIFIED MAIL

Mr. Robert Pierce (403) 290-6739
United Alaska Fuels Corporation
3100-707 8th Avenue S.W.
Calgary, Alberta, Canada
T2P 3W8

Mr. George Hugh (403) 267-8502
TransCanada Pipeline Alaska, Ltd.
P.O. Box 1000
Station M
Calgary, Alberta, Canada
T2P 4K5
111 5th Avenue, S.W.
Calgary, Alberta, Canada
T2P 3Y6

Mr. Randy Randolph (918) 588-4512
Northwest Alaskan Pipeline Company
P.O. Box 3102
One Williams Center
Tulsa, OK 74101

Alaskan Northwest Natural (918) 588 4512
Gas Transportation Company
One Williams Center, Maildrop 46-5, P.O. Box 3102
Tulsa, OK 74101

TO THE ANNOTC PARTNERSHIP:

Effective immediately, pursuant to Sections 15.2, 16.2, and 4.4.3 of the General Partnership Agreement, Calaska Energy Company hereby gives its Withdrawal Notice from Alaskan Northwest Natural Gas Transportation Company. Pursuant to Section 4.4.3 of the Agreement, this Notice relieves Calaska Energy Company of any obligation to make further capital contributions.


DANIEL E. GIBSON
President and Chief Executive Officer
Calaska Energy Company

cc Travis

Jke.
Be

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

December 20, 1994

Mr. Michael Durnin
TransCanada Pipeline USA Ltd.
801-7th Avenue, S. W.
Calgary, Alberta, Canada T2P 3P7

Mr. R. L. Pierce
United Alaska Fuels Corporation
111-Fifth Avenue, S.W.
Calgary, Alberta, Canada T2P 3Y6

RE: Withdrawal Notice

Gentlemen:

Northwest Alaskan Pipeline Company (NWA) hereby withdraws, pursuant to Section 15.2 of the Alaskan Northwest Natural Gas Transportation Company ("ANNGTC") General Partnership Agreement, as amended from the ANNGTC Partnership effective as of the close of business on December 31, 1994.

Inasmuch as the ANNGTC Partnership believes that NWA, as an original member and Operator of the Partnership, has acquired extensive knowledge of the Partnership, including knowledge of the assets and documents that have been created during the Partnership's existence, Northwest Alaskan hereby agrees to cooperate in good faith to attempt to provide, when requested by the Partnership, any information it may have concerning the documents, assets, or other relevant matters which relate to the Partnership. The Partnership agrees to reimburse NWA for any and all reasonable administrative costs it incurs in providing such cooperation.

Additionally, to the extent any information about the Partnership is needed by NWA subsequent to its withdrawal, the Partnership agrees to provide such information in good faith except to the extent such information (a) is confidential or otherwise commercially sensitive and (b) had not been previously made available to, or known by, NWA. NWA agrees to reimburse the

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Partnership for any and all reasonable administrative costs it incurs in providing such assistance to NWA.

Sincerely,



Brian E. O'Neill
Title: PRESIDENT

Accepted and agreed this _____ day of December, 1994
by TransCanada Pipeline USA Ltd.

By _____
Title:

Accepted and agreed this 22 day of December, 1994 by United Alaska
Fuels Corporation.

By *Ramson*
Title:

G:\ORGL\1\NWA



STATE OF ALASKA

SARAH PALIN, GOVERNOR

DEPARTMENT OF NATURAL RESOURCES & DEPARTMENT OF REVENUE

ALASKA GASLINE INDUCEMENT ACT

February 6, 2008

Anthony (Tony) M. Palmer
Vice-President Alaska Development
TransCanada PipeLines Limited
450 - 1st Street S.W.
Calgary, AB, T2P 5H1
Canada

Dear Mr. Palmer:

This letter requests additional clarifying information related to your January 24 response to the State's Data Request dated January 16.

In accordance with Section 1.17 of the RFA, the Commissioners request that Co-Applicants (TransCanada Alaska Company, LLC and Foothills Pipe Lines Ltd., jointly) provide the information addressed in the attachment to this letter to assist the Commissioners in obtaining a clear and complete understanding of all aspects of the Co-Applicants' Application.

Please submit the additional clarifying information, in writing and signed by an official with authority to bind the Co-Applicants, at the address below by 5:00 PM AST on February 13, 2008.

Paper copies must be submitted to:
AGIA License Office
State of Alaska, Dept of Revenue
550 West 7th Ave. Suite 1820
Anchorage, AK 99501

E-mails or Fax copies must be submitted to:
Mr. Chris Rutz
E-mail: crutz@aidea.org
Facsimile: 907-771-3930

Please submit your response by e-mail or facsimile and mail or deliver the original paper copy to the address above. Please contact me at 907-771-3015, to confirm timely receipt of the information or if you have other questions concerning this request.

Sincerely,


Christopher Rutz C.P.M.
Procurement Manager

WRITTEN REQUESTS FOR ADDITIONAL DATA OR FOR CLARIFICATION
RFA Section 1.17

Confidentiality:

Co-Applicants may request that Proprietary or Trade Secret information submitted in response to this request for additional information be kept confidential. As set out in RFA Section 1.13.6, Co-Applicants must mark each page containing information that they request to be kept confidential, include a copy of the page with the Proprietary or Trade Secret information redacted, and provide a brief non-confidential summary for each section for which the Co-Applicants seek confidentiality (AS 43.90.160(b)).

In the January 24 response to the State's Data Request dated January 16 TransCanada states that its "AGIA application does not contemplate the use of any assets owned by the Partnership (such as the certificate ANNGTC obtained from FERC under ANGTA or proprietary intellectual property licensed to or developed by the Partnership)." In addition, TransCanada's AGIA application (at 2-2-84) states that:

The acquisition of ROW crossing lands under federal authority will be the subject of an application for a Federal ROW Grant by TransCanada to the Bureau of Land Management.

The acquisition of ROW crossing land under State authority will be the subject of a ROW application by TransCanada to the State of Alaska.

Inasmuch as Alaskan Northwest Natural Gas Transportation Company ("ANNGTC") presently holds a Federal ROW Grant ("existing federal right-of-way") and inasmuch as ANNGTC and TransCanada Alaska Company, LLC (one of the AGIA Co-Applicants) have made application for a ROW lease across State lands (which application is still pending) ("pending State right-of-way application"):

1. What plans do the Co-Applicants have with respect to the existing federal right-of-way?

- (a) Do the Co-Applicants intend to utilize the existing federal right-of-way grant that is held by ANNGTC?
- (b) Is it intended to let that right-of-way expire or in some other manner abandon that existing federal right-of-way authorization?
- (c) If "abandoning" the existing federal right-of-way authorization by some means is planned, please provide a discussion of those plans, including the timing for any such actions.
- (d) Do the Co-Applicants intend to submit a new application for a right-of-way grant from the Bureau of Land Management?
- (e) Do the Co-Applicants plan to acquire the existing federal right-of-way from ANNGTC?

- (i) If so, please state the means by which that transfer will be made, the legal authority under which such transfer will be made, and what rights, if any, ANNGTC will have to such right-of-way following such transfer.
 - (ii) What obligations (if any) will ANNGTC have if the existing federal right-of-way is transferred to the Co-Applicants?
 - (iii) What guarantees, bonding and/or insurance, if any, will be provided by the Co-Applicants in the event that the existing federal right-of-way is transferred to the Co-Applicants?
- 2. Please state whether the Co-Applicants intend to submit a new application for a right-of-way lease across State lands or intend to utilize the pending State right-of-way application.
 - (a) If the Co-Applicants plan to acquire any State right-of-way that may result from the pending State right-of-way application please state the means by which that transfer will be made, the planned timing of such transfer, and the legal authority under which such transfer will be proposed.
 - (b) If the Co-Applicants intend to submit a new application for a right-of-way across State lands please indicate when it is planned that such application will be filed.
 - (c) Please state how the Co-Applicants intend to deal with the intellectual property and data acquired or prepared by ANNGTC that forms part of the basis for the pending State right-of-way application (e.g., alignment sheets, engineering work, geotechnical work, etc.).
 - (i) If the Co-Applicants intent to purchase the intellectual property and data, please state whether the costs of acquisition are included in the AGIA application and specify where that cost is identified in the application.
 - (ii) Do any withdrawn ANNGTC partners have any rights that could delay acquisition of intellectual property and data from the partnership?
 - (iii) Will the acquisition of any intellectual property or data from the partnership trigger any potential liability to withdrawn ANNGTC partners?
- 3. To the extent not otherwise provided, please state what role, if any, ANNGTC will have with respect to the existing federal right-of-way and any State right-of-way that may be granted based on the pending application.
- 4. Please set forth the Co-Applicants' view as to whether, assuming new Federal and State rights-of-way are obtained, any crossing of or use of the route covered by the existing Federal right-of-way or any State right-of-way granted based on the pending State right-of-way application will trigger any rights by the withdrawn partners in ANNGTC following the actions that are planned by the Co-Applicants.

5. The ANNGTC Partnership Agreement refers to a "Partnership Commitment Agreement." Please provide a copy of that Agreement and all amendments thereto.
6. There has been public discussion of the risk of potential liabilities to withdrawn partners on: (A) Potential shippers on a TransCanada project; (B) Potential new associates advancing a project with TransCanada; (C) Potential financiers of a TransCanada project; and (D) The State of Alaska.
 - (a) Please reply to and comment on these issues and specify how the Co-Applicants will assure that there are no risks of exposure to liability from withdrawn partners of ANNGTC with respect to potential shippers, potential new associates, potential financiers and the State of Alaska.
 - (b) What guarantees, indemnifications or other assurances can TransCanada PipeLines Limited, TransCanada Corporation or the Co-Applicants provide that the potential liability of ANNGTC to withdrawn partners:
 - (i) Will not impact rates for service on any AGIA Licensed pipeline project;
 - (ii) Will not affect potential new associates advancing an AGIA Licensed project;
 - (iii) Will not affect the financing of any project that TransCanada may pursue pursuant to any AGIA License that might be issued by the State; and
 - (iv) Will not otherwise affect the State of Alaska.
 - (c) Assuming TransCanada PipeLines Limited, TransCanada Corporation, or the Co-Applicants has or have any liabilities to withdrawn partners; would those liabilities extend to companies that co-venture with any of the TransCanada entities in an Alaska gas pipeline project? Please explain your answer in detail, and identify all of the withdrawn partner liability risks that exist, if any.
 - (d) To the extent not otherwise provided, what guarantees, indemnifications or commitments will TransCanada PipeLines Limited, TransCanada Corporation and/or the Co-Applicants make to assure potential co-venturers that potential co-venturers will not be exposed to liability to withdrawn partners of ANNGTC?
 - (e) To the extent not otherwise provided, please specify the assurances that TransCanada PipeLines Limited, TransCanada Corporation and/or the Co-Applicants are willing to provide to the State and to potential co-venturers to assure that TransCanada will be a viable co-venturer notwithstanding the potential liability to withdrawn partners.
 - (i) What, if any, steps will the TransCanada-owned partners in ANNGTC take to remove or settle the claims of withdrawn partners; and
 - (ii) When will such steps be undertaken.

- (f) To the extent that any potential liability to withdrawn ANNGTC partners exists, do the Co-Applicants commit that there will be no impact on rates to potential shippers from such liability in the event that an AGIA-Licensed project is built by the Co-Applicants?**

- (g) To the extent not otherwise provided, please describe the extent, if any, of TransCanada's liabilities to withdrawn partners as well as the liabilities (if any) of the Co-Applicants to the withdrawn partners.**



TransCanada

In business to deliver

TransCanada PipeLines Limited
450 - 1st Street S.W.
Calgary, Alberta, Canada T2P 5H1

tel 403.920.2035
fax 403.920.2318
email tony_palmer@transcanada.com
web www.transcanada.com

February 13, 2008

AGIA License Office
State of Alaska, Dept of Revenue
550 West 7th Ave. Suite 1820
Anchorage, AK 99501

Attention: Mr. Christopher Rutz
AGIA License Office

Subject: Alaska Gasline Inducement Act
TransCanada Application for License
Additional Clarifying Information

Dear Mr. Rutz:

TransCanada acknowledges receipt of your correspondence dated February 6, 2008 in which TransCanada is asked to provide additional clarifying information to its November 30, 2007 Application for License. In that regard, please find attached our responses to the six requests you forwarded.

We are submitting this reply document to the State by two means:

- we are today e-mailing an electronic copy to the attention of Mr Chris Rutz at crutz@aidea.org; and
- we are today forwarding the originally signed document by courier to the AGIA License Office, attention Chris Rutz.

Thank you for your ongoing consideration of our Application and I remain available to provide further information or participate in discussions that the State may wish to initiate.

Sincerely,

A. M. (Tony) Palmer
Vice President, Alaska Development

State of Alaska Preface

In the January 24 response to the State's Data Request dated January 16 TransCanada states that its "AGIA application does not contemplate the use of any assets owned by the Partnership (such as the certificate ANNGTC obtained from FERC under ANGTA or proprietary intellectual property licensed to or developed by the Partnership)." In addition, TransCanada's AGIA application (at 2-2-84) states that:

The acquisition of ROW crossing lands under federal authority will be the subject of an application for a Federal ROW Grant by TransCanada to the Bureau of Land Management.

The acquisition of ROW crossing land under State authority will be the subject of a ROW application by TransCanada to the State of Alaska.

Inasmuch as Alaskan Northwest Natural Gas Transportation Company ("ANNGTC") presently holds a Federal ROW Grant ("existing federal right-of-way") and inasmuch as ANNGTC and TransCanada Alaska Company, LLC (one of the AGIA Co-Applicants) have made application for a ROW lease across State lands (which application is still pending) ("pending State right-of-way application"):

State of Alaska Request #1

What plans do the Co-Applicants have with respect to the existing federal right-of-way?

- (a) Do the Co-Applicants intend to utilize the existing federal right-of-way grant that is held by ANNGTC?
- (b) Is it intended to let that right-of-way expire or in some other manner abandon that existing federal right-of-way authorization?
- (c) If "abandoning" the existing federal right-of-way authorization by some means is planned, please provide a discussion of those plans, including the timing for any such actions.
- (d) Do the Co-Applicants intend to submit a new application for a right-of-way grant from the Bureau of Land Management?
- (e) Do the Co-Applicants plan to acquire the existing federal right-of-way from ANNGTC?
 - (i) If so, please state the means by which that transfer will be made, the legal authority under which such transfer will be made, and what rights, if any, ANNGTC will have to such right-of-way following such transfer.
 - (ii) What obligations (if any) will ANNGTC have if the existing federal right-of-way is transferred to the Co-Applicants?
 - (iii) What guarantees, bonding and/or insurance, if any, will be provided by the Co-Applicants in the event that the existing federal right-of-way is transferred to the Co-Applicants?

TransCanada Response

- (a) No. The Co-Applicants do not intend to utilize the existing Federal right-of-way grant that is held by ANNGTC. (In fact, as we explained in our response to the State's January 16, 2008 request for information, ANNGTC is not a participant in our AGIA application and none of its assets have been, or will be, used in bidding for, designing or constructing the pipeline project that the Co-Applicants are pursuing.) The existing Federal right-of-way grant is an asset of ANNGTC, and it does not belong to either of the Co-Applicants. ANNGTC is an entirely separate and distinct legal entity. Accordingly, the Co-Applicants have no rights in or to the existing Federal right-of-way grant.
- (b) ANNGTC's Federal right-of-way grant expires, by its terms, in December 2010. ANNGTC has not yet decided what other action, if any, it might take with respect to the grant.
- (c) As explained in our response to question 1(b), no decision has been made at this time as to what action, if any, ANNGTC will take with respect to its existing Federal right-of-way grant.

- (d) Yes. The Co-Applicants intend to submit a new application at the appropriate time to the Bureau of Land Management to obtain their own Federal right-of-way grant for the pipeline project proposed in their AGIA application.
- (e) No. The Co-Applicants do not plan to acquire the existing Federal right-of-way grant from ANNGTC.
 - (i) Not applicable.
 - (ii) Not applicable.
 - (iii) Not applicable.

State of Alaska Request #2

Please state whether the Co-Applicants intend to submit a new application for a right-of-way lease across State lands or intend to utilize the pending State right-of-way application.

- (a) If the Co-Applicants plan to acquire any State right-of-way that may result from the pending State right-of-way application please state the means by which that transfer will be made, the planned timing of such transfer, and the legal authority under which such transfer will be proposed.
- (b) If the Co-Applicants intend to submit a new application for a right-of-way across State lands please indicate when it is planned that such application will be filed.
- (c) Please state how the Co-Applicants intend to deal with the intellectual property and data acquired or prepared by ANNGTC that forms part of the basis for the pending State right-of-way application (e.g., alignment sheets, engineering work, geotechnical work, etc.).
 - (i) If the Co-Applicants intent to purchase the intellectual property and data, please state whether the costs of acquisition are included in the AGIA application and specify where that cost is identified in the application.
 - (ii) Do any withdrawn ANNGTC partners have any rights that could delay acquisition of intellectual property and data from the partnership?
 - (iii) Will the acquisition of any intellectual property or data from the partnership trigger any potential liability to withdrawn ANNGTC partners?

TransCanada Response

The Co-Applicants intend to submit a new application to obtain their own right-of-way lease across State lands for the project that the Co-Applicants are pursuing. In light of ANNGTC's determination that its contingent liabilities to Withdrawn Partners make it impossible for it to complete the pipeline project it was formed to pursue, and the fact that the existing State right-of-way lease application has been pending since 2004, the pending application will be withdrawn.

- (a) Not applicable.
- (b) The Co-Applicants intend to file a new application for a State right-of-way lease for the project proposed in their AGIA application. The AGIA application we submitted in November 2007 anticipates that the new application will be filed in late 2011, during the project phase described in the AGIA application as the "Definition Sub-Phase."
- (c) The Co-Applicants do not intend to utilize any confidential intellectual property or data owned by ANNGTC (such as alignment sheets, engineering work or geotechnical work) that was used in generating the pending State right-of-way lease application. ANNGTC's confidential intellectual property and data are assets owned by the Partnership, and they do not belong to either of the Co-Applicants.

- (i) The Co-Applicants do not intend to purchase any of ANNGTC's intellectual property or data. The estimated costs to the Co-Applicants of developing their own intellectual property and data to support their proposed pipeline project are included in the Co-Applicants' pending AGIA application.
- (ii) Not applicable. But we believe that if (hypothetically) the Co-Applicants had elected to acquire any of ANNGTC's intellectual property or data from the Partnership after it concluded that it could not build the pipeline it was formed to pursue, ANNGTC's Withdrawn Partners would not have had any right to object to that acquisition. Section 7.10 of the ANNGTC Partnership Agreement expressly provides in several places that, upon withdrawal, a Withdrawn Partner forfeits any ownership rights the Withdrawn Partner might have had in the Partnership's proprietary intellectual property prior to withdrawal.
- (iii) Not applicable.

State of Alaska Request #3

To the extent not otherwise provided, please state what role, if any, ANNGTC will have with respect to the existing federal right-of-way and any State right-of-way that may be granted based on the pending application.

TransCanada Response

The Co-Applicants do not intend to utilize either the existing Federal right-of-way grant held by ANNGTC or any State right-of-way that may be granted based on the pending State right-of-way lease application. The existing Federal right-of-way grant is an asset of the Partnership, and neither of the Co-Applicants has any rights in or to it. For the reasons outlined above, the pending State right-of-way lease application is being withdrawn.

As we have explained, the Co-Applicants intend to submit new applications to obtain their own Federal and State rights-of-way for the project proposed in their AGIA application. ANNGTC will not be involved in any way in pursuing the new right-of-way applications that will be filed by the Co-Applicants, and it will have no rights in or to any rights-of-way that may be granted to the Co-Applicants based on those applications.

State of Alaska Request #4

Please set forth the Co-Applicants' view as to whether, assuming new Federal and State rights-of-way are obtained, any crossing of or use of the route covered by the existing Federal right-of-way or any State right-of-way granted based on the pending State right-of-way application will trigger any rights by the withdrawn partners in ANNGTC following the actions that are planned by the Co-Applicants.

TransCanada Response

The fact that the Co-Applicants obtain new Federal and State rights-of-way will not trigger any obligations to, or rights of, ANNGTC's Withdrawn Partners. The Withdrawn Partners have no rights with respect to the project being proposed by the Co-Applicants.

Request #4 also seems to seek our view as to whether there is any potential "overlap" between the new Federal and State rights-of-way that the Co-Applicants intend to apply for and either the existing Federal right-of-way grant held by ANNGTC or the pending State right-of-way lease application that could conceivably trigger a claim by the Withdrawn Partners. The answer to that question is also "no."

As explained above, there is no possibility of any "overlap" with any State right-of-way that may be granted based on the pending State right-of-way lease application because the pending application is being withdrawn. There is also not likely to be any overlap with the existing Federal right-of-way grant held by ANNGTC. By its terms, that right-of-way grant is scheduled to expire in December 2010, which is before the Co-Applicants expect even to file an application seeking their own Federal right-of-way grant.

For argument's sake, if (hypothetically) the existing Federal right-of-way grant were still in effect at the time a new Federal right-of-way were granted to the Co-Applicants, there would be an overlap. But that overlap would not trigger any obligations to the Withdrawn Partners. ANNGTC's Federal right-of-way grant is not exclusive; by its terms, it grants ANNGTC a "nonpossessory, nonexclusive right" to use certain Federal lands for ANNGTC's pipeline project. If both Federal right-of-way grants were to be in existence at the same time, the Co-Applicants might be required to make certain accommodations to ensure that ANNGTC's right to use its Federal right-of-way grant was not adversely affected. But the issuance of a subsequent Federal right-of-way grant would not give ANNGTC any right to preclude the Co-Applicants from proceeding or give the Partnership the right to seek damages from the Co-Applicants.

In any event, even if ANNGTC somehow had some rights against the Co-Applicants as a result of an "overlap" in Federal right-of-way grants, that would not provide the Withdrawn Partners with any claims against the Co-Applicants or against ANNGTC. As we explained in our response to the State's January 16 request for information, each Withdrawn Partner forfeited all rights (if any) it may have had in any of ANNGTC's assets when the Withdrawn Partner chose to withdraw from the Partnership. The Withdrawn Partners' only remaining right *vis-à-vis* ANNGTC is a contingent payment obligation that cannot be triggered unless (among other things) ANNGTC itself builds the pipeline it was formed to pursue.

State of Alaska Request #5

The ANNGTC Partnership Agreement refers to a "Partnership Commitment Agreement." Please provide a copy of that Agreement and all amendments thereto.

TransCanada Response

The "Partnership Commitment Agreement" referred to in the ANNGTC Partnership Agreement does not exist. It was an agreement that the original Partners in ANNGTC intended to enter into subsequent to the formation of the Partnership to memorialize their understanding as to each "Partner's Percentage" for the period commencing on the "Commitment Date" and to document their commitment after such Commitment Date to make additional equity infusions into the Partnership sufficient to fund estimated costs of completing the Partnership's pipeline project. (See Section 2.26 of the ANNGTC Partnership Agreement)

In effect, the Partnership Commitment Agreement represented a "third step" in the development phase of ANNGTC's pipeline project that the Partners who formed ANNGTC thought would occur within a few years (late '70s to early '80s) of forming the Partnership. The first step was forming the Partnership; the second step was for ANNGTC to issue debt pursuant to "Financing Commitment Agreements" (a term that is defined in Section 2.14 of the Partnership Agreement and used in the definition of "Partnership Commitment Agreement"); and the third step was for the Partners to confirm their commitment to fund ANNGTC with whatever additional capital the Partnership would need (in excess of the debt financing) to complete its pipeline project.

But ANNGTC never got to the second or third steps of its evolution. The Partnership's project never advanced to the stage of entering into Financing Commitment Agreements and, accordingly, the circumstances that would have warranted the ANNGTC Partners taking the next step and entering into a Partnership Commitment Agreement never occurred. The Partnership Commitment Agreement (like the Financing Commitment Agreements) became irrelevant and was never executed.

State of Alaska Request #6

There has been public discussion of the risk of potential liabilities to withdrawn partners on: (A) Potential shippers on a TransCanada project; (B) Potential new associates advancing a project with TransCanada; (C) Potential financiers of a TransCanada project; and (D) The State of Alaska.

- (a) Please reply to and comment on these issues and specify how the Co-Applicants will assure that there are no risks of exposure to liability from withdrawn partners of ANNGTC with respect to potential shippers, potential new associates, potential financiers and the State of Alaska.
- (b) What guarantees, indemnifications or other assurances can TransCanada PipeLines Limited, TransCanada Corporation or the Co-Applicants provide that the potential liability of ANNGTC to withdrawn partners:
 - (i) Will not impact rates for service on any AGIA Licensed pipeline project;
 - (ii) Will not affect potential new associates advancing an AGIA Licensed project;
 - (iii) Will not affect the financing of any project that TransCanada may pursue pursuant to any AGIA License that might be issued by the State; and
 - (iv) Will not otherwise affect the State of Alaska.
- (c) Assuming TransCanada PipeLines Limited, TransCanada Corporation, or the Co-Applicants has or have any liabilities to withdrawn partners; would those liabilities extend to companies that co-venture with any of the TransCanada entities in an Alaska gas pipeline project? Please explain your answer in detail, and identify all of the withdrawn partner liability risks that exist, if any.
- (d) To the extent not otherwise provided, what guarantees, indemnifications or commitments will TransCanada PipeLines Limited, TransCanada Corporation and/or the Co-Applicants make to assure potential co-venturers that potential co-venturers will not be exposed to liability to withdrawn partners of ANNGTC?
- (e) To the extent not otherwise provided, please specify the assurances that TransCanada PipeLines Limited, TransCanada Corporation and/or the Co-Applicants are willing to provide to the State and to potential co-venturers to assure that TransCanada will be a viable coventurer notwithstanding the potential liability to withdrawn partners.
 - (i) What, if any, steps will the TransCanada-owned partners in ANNGTC take to remove or settle the claims of withdrawn partners; and
 - (ii) When will such steps be undertaken.
- (f) To the extent that any potential liability to withdrawn ANNGTC partners exists, do the Co-Applicants commit that there will be no impact on rates to potential shippers from such liability in the event that an AGIA-Licensed project is built by the Co-Applicants?

- (g) To the extent not otherwise provided, please describe the extent, if any, of TransCanada's liabilities to withdrawn partners as well as the liabilities (if any) of the Co-Applicants to the withdrawn partners.

TransCanada Response

- (a) We acknowledge that there has been some public discussion of ANNGTC's contingent obligations to Withdrawn Partners, including vague references by third parties to "risks" that those contingent obligations supposedly pose to the success of the Co-Applicants' proposed project. Given that public discourse, we understand the State's desire to seek clarification and further comment from the Co-Applicants on the subject, and we welcome this opportunity to publicly dispel a few myths and correct some inaccurate statements and half-truths that unfortunately seem to have surfaced.

The fact is that the AGIA license application submitted by the Co-Applicants on November 30, 2007 has absolutely nothing to do with ANNGTC, its long history or its contingent obligations to Withdrawn Partners of the Partnership. ANNGTC is neither an applicant for the AGIA license nor in any way involved in the Co-Applicants' bid. We do not want simply to repeat in this response what we said in our response to the State's January 16 request for information, but we do think that several points are worth repeating and expanding on in this response:

- The Co-Applicants are not now, and never have been, partners in ANNGTC. They are entirely separate and distinct legal entities, and their AGIA application does not contemplate the use of any assets owned by the Partnership.
- The notion that ANNGTC's contingent obligations will result in any liability to the Co-Applicants – let alone any other TransCanada entity – is simply not supported by the facts or the law. We certainly are not aware of any Withdrawn Partner who has expressed that view. And we know of no one else who has even attempted to explain why or how the contingent obligations of a Partnership that has no future and will never be able to build the ANGTA pipeline it was created 30 years ago to pursue is in any way relevant to the pipeline project that the Co-Applicants are pursuing.
- Under the terms of the ANNGTC Partnership Agreement, contingent obligations to Withdrawn Partners are only triggered if (among other things) the Partnership itself builds the pipeline it was created to pursue—namely, the pipeline authorized under the Alaska Natural Gas Transportation Act of 1976. There is no plausible explanation as to why or how ANNGTC's contingent obligations could somehow attach to a pipeline project being pursued decades later, under an entirely different statutory regime, by an entirely separate and distinct project proponent that is not in any way using the Partnership or any of the Partnership's assets to advance its project.

- The notion that ANNGTC's contingent obligations represent some sort of "risk" to the State of Alaska, potential shippers on the Co-Applicants' project, potential new associates advancing the project with the Co-Applicants or potential financiers of the project is even more perplexing. As a preliminary matter, if there is no liability to the Co-Applicants or any other TransCanada entity, then it logically (and legally) follows that there cannot possibly be any liability to the State or to a completely unrelated third party who might hereafter join the Co-Applicants' efforts to pursue an AGIA-licensed project.
- Even assuming for argument's sake that there were a "risk" to the Co-Applicants or another TransCanada entity, we do not know of any credible theory under which the State or any third party could be held liable for the contingent obligations of ANNGTC to the Withdrawn Partners.

We do not dispute that the potential amount of ANNGTC's contingent obligations to Withdrawn Partners is staggering at first blush; as we stated in our response to the State's January 16 request for information, the Partnership's contingent obligations had grown to approximately \$8.9 billion as of December 31, 2006. But the potential size of ANNGTC's contingent obligations is just a red herring that detractors seem to be using to obfuscate a very important question—under what circumstances could ANNGTC's contingent obligations be triggered? We believe that there is absolutely no credible contractual or other basis to support a claim that the Co-Applicants—or any other TransCanada entity, the State of Alaska or any potential shipper, co-venturer or financier, for that matter—should be required to pay ANNGTC's contingent obligations if the pipeline project proposed in our AGIA application is placed into service.

- (b) (i) The Co-Applicants have already unconditionally and unequivocally committed (in our response to the State's January 16 request for information) not to include in the rates for an AGIA-licensed project any amounts that the Co-Applicants or any other TransCanada entity might somehow be required to pay as a result of ANNGTC's contingent obligations to Withdrawn Partners. We believe that commitment is full assurance that any such payment (however unlikely) will not impact rates to potential shippers for services on an AGIA-licensed project.
- (ii)(iii) We are fully committed to advancing the project contemplated by the Co-Applicants' pending AGIA application, and we are prepared to use all commercially reasonable efforts to obtain any debt or equity financing required to complete that project. However, at this point we do not know whether any concerns relating to the Withdrawn Partners will be raised by potential sources of financing or equity capital or, if so, what those concerns might be. TransCanada cannot answer this question with any greater degree of specificity in the abstract.
- (iv) As we have explained, it is not clear to us how the State of Alaska could ever be affected by the contingent obligations ANNGTC has to Withdrawn Partners. Even assuming for argument's sake that the Withdrawn Partners

were to make a claim against the State, we believe that the State has sovereign immunity in this context.

- (c) Please see our response to question 6(a).
- (d) Please see our response to questions 6(b)(ii) and (iii).
- (e) (i)(ii) As we have explained, we do not believe that there is any credible contractual or other basis to support a claim that the Co-Applicants or any other TransCanada entity would be required to pay ANNGTC's contingent obligations to Withdrawn Partners if the pipeline project proposed in the Co-Applicants' AGIA application is placed into service.

To the best of our knowledge, no such claim has ever been made or even threatened by a Withdrawn Partner. For that reason, the TransCanada entities that are the two remaining Partners in ANNGTC have no intention of taking any action to "remove" or "settle" ANNGTC's contingent obligations. But we can assure the State that, in the unlikely event a Withdrawn Partner ever did assert a claim against the Co-Applicants, we would defend ourselves vigorously. We are confident that any such claim could be dealt with expeditiously in litigation—in the unlikely event it ever came to that—and that our position would prevail.

- (f) Please see our response to question 6(b)(i).
- (g) Please see our response to question 6(a) and our response to the State's January 16 request for information regarding ANNGTC.

LEGAL SERVICES

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MEMORANDUM

February 22, 2008

SUBJECT: Questions regarding piercing the corporate veil and subsidiaries
(Work Order No. 25-LS1542)

TO: Senator Hollis French

FROM: *JB*
Theresa Bannister
Legislative Counsel

You have asked two questions regarding piercing the corporate veil.

1. Explain the phrase, "piercing the corporate veil." Corporate law allows incorporation to create a "veil" (a barrier) between a corporation and its shareholders. This veil protects shareholders (whether individuals, corporations, partnerships, or other types of persons) from being liable for the acts (and liabilities) of the corporation. However, in certain circumstances a court may allow this veil to be pierced so that corporate liabilities become shareholder liabilities.

Although the test to be applied in a particular case varies from state to state, reviewing what this state has said may provide you with guidance of what would happen if the corporation were incorporated here¹ and will give you some idea of what may happen in other jurisdictions.

In this state, mere control of a corporation's activities by an individual is not sufficient to justify piercing the corporate veil.² Under one test it can be pierced if the corporate form is used to defeat public convenience, justify wrong, commit fraud, or defend crimes.³ However, in several cases involving the potential liability of a parent corporation for the conduct of its subsidiary, the court has held that the corporate status of the subsidiary can be disregarded when the subsidiary is a mere instrument of the parent:

¹ I have found some indication that the law of the state of incorporation may be the law to be applied when determining whether to pierce the corporate veil, but I have not researched this.

² Uchitel Co. v. Telephone Co., 646 P.2d 229, 234 (Alaska 1982).

³ See Uchitel at 234.

The parent corporation may also be liable for the wrongful conduct of its subsidiary when the subsidiary is the mere instrumentality of the parent. Liability is imposed in such instances simply because the two corporations are so closely intertwined that they do not merit treatment as separate entities.⁴

When piercing the veil of a subsidiary, the court stated that the following criteria should be considered in determining whether the subsidiary should be treated as a mere instrument of the parent:

(a) The parent corporation owns all or most of the capital stock of the subsidiary. (b) The parent and subsidiary corporations have common directors or officers. (c) The parent corporation finances the subsidiary. (d) The parent corporation subscribes to all the capital stock of the subsidiary or otherwise causes its incorporation. (e) The subsidiary has grossly inadequate capital. (f) The parent corporation pays the salaries and other expenses or losses of the subsidiary. (g) The subsidiary has substantially no business except with the parent corporation or no assets except those conveyed to it by the parent corporation. (h) In the papers of the parent corporation or in the statements of its officers, the subsidiary is described as a department or division of the parent corporation, or its business or financial responsibility is referred to as the parent corporation's own. (i) The parent corporation uses the property of the subsidiary as its own. (j) The directors or executives of the subsidiary do not act independently in the interest of the subsidiary but take their orders from the parent corporation in the latter's interest. (k) The formal legal requirements of the subsidiary are not observed.⁵

Where the dominant shareholder is an individual, the court has used a similar approach. The piercing of the corporate veil is appropriate if the corporation functions as a "mere instrumentality" of the dominant shareholder:

When . . . the corporation is so operated that it is a mere instrumentality or alter ego of the sole or dominant shareholder and a shield for his activities in violation of the declared public policy or statute of the State, the corporate entity will be disregarded and the corporation and the shareholder treated as one and the same person. . . .⁶

⁴ See Uchitel at 234.

⁵ See Uchitel at 235, quoting from Jackson v. General Electric Co., 514 P.2d 1170, 1173 (Alaska 1973).

⁶ Uchitel at 235.

Then the court applied a somewhat shorter test for piercing the corporate veil when through to a dominant shareholder who is an individual:

(a) whether the shareholder sought to be charged owns all or most of the stock of the corporation; (b) whether the shareholder has subscribed to all of the capital stock of the corporation or otherwise caused its incorporation; (c) whether the incorporation has grossly inadequate capital; (d) whether the shareholder uses the property of the corporation as his own; (e) whether the directors or executives of the corporation act independently in the interest of the corporation or simply take their orders from the shareholder in the latter's interest; (f) whether the formal legal requirements of the corporation are observed.⁷

It is not altogether clear that the court would continue to apply the longer subsidiary test when dealing with subsidiaries, but the language seems to suggest this.⁸

2. In general, under what circumstances might a subsidiary of a corporation be liable for the obligations of another subsidiary of the corporation? I will address the corporate veil issue here first on the assumption that you are jumping off to some extent from the previous question.

Generally, the corporate veil approach does not appear to apply to the situation you propose. The nature of a corporate subsidiary is that it is controlled (usually by ownership of a majority of shares) by another corporation (the "parent" corporation--the majority shareholder). When two corporations are subsidiaries of the same corporation, each is owned by the same parent corporation. That generally means that the two subsidiaries do not control each other. Therefore, if you pierce the corporate veil of either one, it will lead back to the majority shareholder, the parent corporation. That parent corporation, not the other subsidiary, will be held liable for the obligations of the subsidiary.

However, under a different arrangement of the subsidiaries, if one subsidiary is a subsidiary of a subsidiary (therefore, a sub-subsubsidiary) of the corporation (not a direct subsidiary of the corporation itself), the corporate veil of the sub-subsubsidiary could be pierced through to the subsidiary that is the parent of the sub-subsubsidiary.

Taking another approach to liability, one subsidiary of a corporation may be liable to another subsidiary of the corporation if the subsidiary assumes by contract the liabilities of the other subsidiary or guarantees a liability of the other subsidiary.

⁷ Uchitel at 235.

⁸ See Uchitel at 235; and Casciola v. F.S. Air Service, Inc., 120 P.3d 1059, 1063 fn. 12 (Alaska 2005).

Using another approach, there may be liability between subsidiaries of the same corporation under AS 10.06.378 (in the state's for-profit corporations code). If one subsidiary has a minority shareholder who is another subsidiary of the corporation, and if the first subsidiary makes an improper distribution of its assets to the minority shareholder subsidiary, the subsidiary receiving the improper distribution may be liable to the creditors and other shareholders of the distributing corporation if it received the distribution knowing that it was prohibited. The creditors and other shareholders of the distributing corporation may, if they satisfy the conditions of AS 10.06.378, bring a court action to recover an amount allowed by AS 10.06.378.

There may be other circumstances under which one subsidiary may be liable for the obligations of another subsidiary of the same corporation, but these are all I could determine at this time.

If I may be of further assistance, please advise.

TLB:ljw
08-106.ljw

TransCanada Obligations to Withdrawn Partners

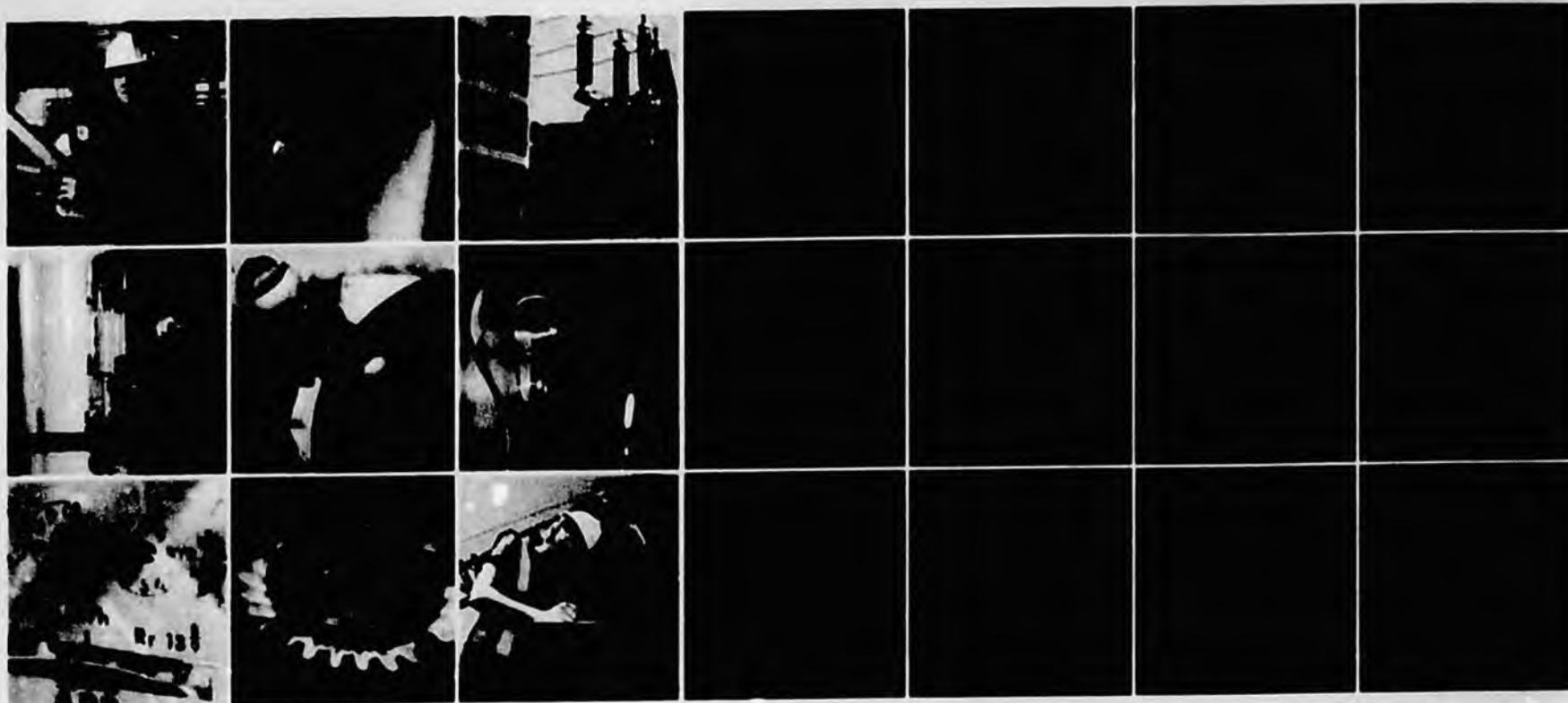
FERC Financial Reports

1995-2006

USD

	1995	1996	1997	1998	1999	2000	2001	2002	2003	2004	2005	2006
Payments Claimed to be Owed to Withdrawn Partners	1,931,533,828	2,219,969,479	2,551,612,568	2,932,708,219	3,370,850,233	3,874,139,597	4,452,864,081	5,122,545,383	5,867,968,119	6,767,338,718	7,777,933,298	8,939,465,938
Interest Expense on Payments	250,841,462	288,328,651	331,410,087	380,834,863	437,842,014	503,255,364	578,450,484	665,047,087	764,912,214	879,186,588	1,010,512,078	1,161,437,142
Net Income	48,089,417	55,293,631	63,575,163	73,099,928	84,034,514	98,608,684	111,073,778	127,799,653	147,440,924	169,508,910	194,836,938	223,848,848

Prepared by Bill Mogel, Saul Ewing



**TransCanada's AGIA Application – ANNGTC Issues
Presentation to Senate Judiciary Committee**

February 25, 2008



Background

- ANNGTC is a partnership certificated some thirty years ago under ANGTA to construct the Alaskan section of the project
- Prior to the AGIA deadline for submitting applications, the ANNGTC partnership considered whether it could, or should, submit an application for the AGIA License
- ANNGTC concluded that the uncertainties created by its historical contingent liabilities would preclude it from making a viable proposal
- Accordingly, ANNGTC has not made any application, and has played no role in the AGIA application filed by the TransCanada AGIA co-applicants

ANNGTC

- Formed in 1970s to construct Alaska Section
 - 11 original partners
 - All have withdrawn except two TransCanada subsidiaries
 - Non-TransCanada partners began withdrawing in 1981, last withdrawal in 1994
 - Withdrawn partners forfeited rights to be treated as a partner
 - They have no right to anything unless ANNGTC builds the pipeline
 - Entitled only to contractual right to payment
 - If and when ANNGTC builds the pipeline, and
 - If payment would not pose undue hardship on ANNGTC

ANNGTC (cont'd)

- Remaining TransCanada partners in ANNGTC are not AGIA applicants
 - They have no current or future duties to Withdrawn Partners
 - Neither the two remaining TransCanada partners, nor any other TransCanada entity, owes any duty to the Withdrawn Partners
 - No duty to pursue the project on behalf of Withdrawn Partners
 - No non-compete clause in ANNGTC agreement
- No TransCanada entity is prohibited from pursuing a different project

TransCanada's AGIA Applicants

- Two separate entities to pursue the project in each country
 - Foothills Pipe Lines Ltd. in Canada under the Northern Pipeline Act
 - TransCanada Alaska Company, LLC in Alaska under ANGPA
- The co-applicants are not now, and never have been, partners in ANNGTC
 - Entirely separate and distinct legal entities
 - AGIA Application does not contemplate the use of any assets owned by ANNGTC

Canada - Foothills Pipe Lines Ltd.

- Foothills Pipe Lines Ltd. was certificated under Canada's Northern Pipeline Act for the section of pipeline in Canada
- Foothills is an entirely separate entity from ANNGTC
- No Withdrawn Partner issues in Canada
- Foothills has no potential future contingent liability
- ANNGTC does not hold any authorizations under the Northern Pipeline Act or otherwise for any facilities in Canada
- Foothills Pipe Lines Ltd. does not hold any authorizations for facilities in the U.S. under ANGTA

Alaska – TransCanada Alaska Company, LLC

- No liability to ANNGTC or Withdrawn Partners
- New start in Alaska, TransCanada Alaska Company, LLC will develop entirely new assets for the project – no utilization of any ANNGTC assets (certificate, Right-of Way, permits, engineering, geotechnical, etc.)
- Additional safeguard - TransCanada's AGIA application commits to never including any potential ANNGTC liability in AGIA project tolls.

State / Federal ROW in Alaska

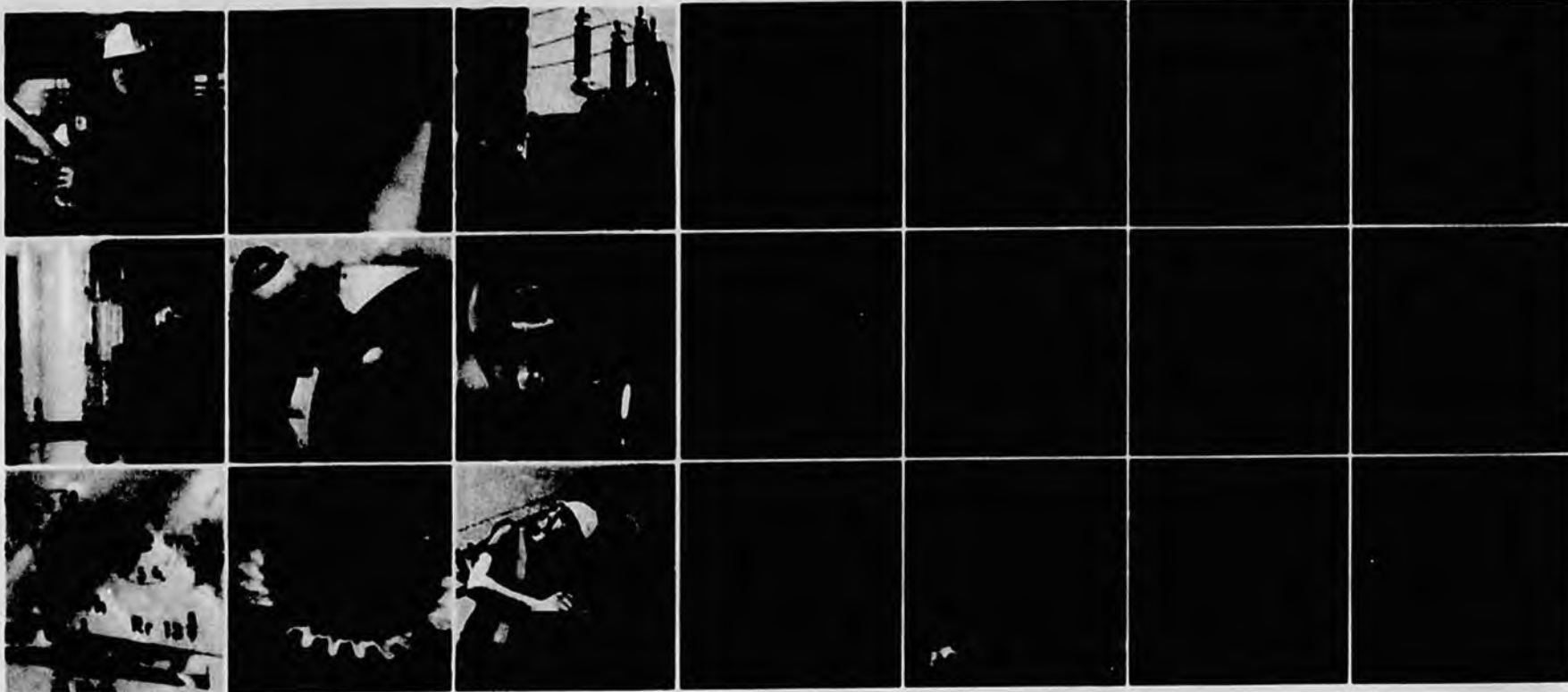
- **State ROW**
 - The 2004 application has been withdrawn
- **Federal ROW**
 - ANNGTC holds an existing Federal ROW which will expire in December 2010
 - TransCanada's AGIA co-applicants have no rights in ANNGTC's Federal ROW, nor was it used for their AGIA Application
- TransCanada Alaska Company, LLC intends to submit new applications in late 2011 for both Federal and State ROWs for the pipeline project proposed in the AGIA Application

Potential for ANNGTC Claims Against Third Parties

- TransCanada does not believe there would be any merit in a claim that any TransCanada entity would be required to pay ANNGTC's contingent obligations to Withdrawn Partners if the pipeline project proposed in our AGIA Application is placed in service
- Since the TransCanada entities have no liability, it necessarily follows that other parties involved with the project would not either
- TransCanada's AGIA co-applicants have already unconditionally and unequivocally committed not to include in the project rates any amounts that any TransCanada entity might somehow be required to pay as the result of ANNGTC's contingent obligations to Withdrawn Partners
- No claim has ever been made or even threatened by Withdrawn Partners

Summary

- **TransCanada's AGIA Application has nothing to do with ANNGTC, its long history or its contingent obligations to Withdrawn Partners**
- **No claim has ever been made or threatened by Withdrawn Partners**
- **Additional safeguard – TransCanada's AGIA Application commits to never including any potential ANNGTC liability in AGIA project tolls**



Thank You



**PRIVILEGED AND CONFIDENTIAL
ATTORNEY CLIENT PRIVILEGE**

MEMORANDUM

VIA E-MAIL

To: Ms. Cheryl Sutton
Staff to Rep. Ralph Samuels, Chair LB&A Committee

From: William A. Mogel

Date: January 25, 2008

Subject: The \$8.9 Billion Obligation to Withdrawn Partners

ANNGT made a filing at FERC on April 12, 2007 which showed \$8.9 billion as "Obligations to Withdrawn Partners". It must be assumed that the filing is accurate.

**PRIVILEGED AND CONFIDENTIAL
ATTORNEY CLIENT PRIVILEGE**

MEMORANDUM

VIA E-MAIL

To: Rep. Ralph Samuels
Ms. Cheryl Sutton

From: William A. Mogel
Shuchi Batra

Date: January 15, 2008

Subject: Payment Obligations of Alaskan Northwest Natural Gas Transportation Co. (ANNGT) to
Withdrawn Partners

I. SUMMARY

Despite representations made on behalf of TransCanada Alaska Co., LLC (TC Alaska), and Foothills Pipelines Ltd. (Foothills),¹ both subsidiaries of TransCanada Corporation, a question has been raised whether TC Alaska and/or Foothills² can recover those payments in the rates of their proposed "AGIA" pipeline.

¹ As to the obligation of withdrawn partners, it was reported that an attorney for Foothills stated on September 7, 2007 that the original investment of the partners was approximately \$250 million and the "current [un-named] partners ... are in negotiations with withdrawn partners over the sunk cost [which is not] a \$4 billion issue." Kristen Nelson, *Former Alaska Highway Gasline Partners Could Be Owed \$4 Billion*, Petroleum News, Vol. 6, No. 9. In a letter dated January 9, 2008 transmitting the ANNGT Partnership Agreement to the undersigned, TransCanada stated that TC Alaska does not "propose to rely upon any of the ANNGT assets."

² In an April 12, 2007 filing at FERC, ANNGT has asserted that it *inter alia* has an approximately \$9 billion obligation to withdrawn partner.

The 37-page ANNGT Partnership Agreement ("Agreement") provides that withdrawn partners may be entitled to a return of their investment "after the line becomes operational and ... when the payment may be made without undue hardship to the partnership" (Para. 4.4.4). Given the broad definition of "Line,"³ withdrawn partners could make a claim for return of their capital once the Alaskan segment becomes "operational."⁴

Notwithstanding the *in futuro* the obligation to withdrawn partners created by the ANNGT Partnership Agreement, TransCanada would not be allowed to recover those payments because they occurred in connection with another entity more than 30 years prior to the AGIA pipeline's operation and would not be considered "used or useful" in providing service to ratepayers.

II. FACTS

President Carter chose ANNGT in 1979 and his decision was ratified by the Congress to construct and operate an Alaskan pipeline.⁵ It has two general partners: 1) TransCanada

³"Line" is defined in Para. 2.22 of the Agreement as:

The gas pipeline and related facilities to be owned and operated by the Partnership, which shall initially extend from the Prudhoe Bay area to an interconnection with the Canada Pipeline on the Alaska-Canada border ...

⁴ TransCanada's License Application states:

Initial rate base of the pipeline will include, among other things, Actual Capital Cost, allowance for funds used during construction ("AFUDC"), property tax paid during construction, and initial working capital but excluding the Alaska portion of the \$500 million State reimbursement. (p. 2.2-65)

As to AFUDC, it has been observed:

The AFUDC is not included in the rate base until the time the facility is completed and placed into service. This allowance, ... is recovered through the useful life of the property in the form of depreciation and the rate of return on investment. Regulation of the Gas Industry § 29.04[3]

⁵ ANNGT is the successor to the Alcan Pipeline Co. project (Alcan). Alcan changed its name to Northwest Alaskan Pipeline Co., which consisted of Northwest Energy and Foothill Pipeline, Ltd. *Midwestern Gas Transmission Co. v. F.E.R.C.*, 589 F.2d 603, 610 (D.C. Cir. 1978). The Canadian portion of the pipeline was approved in 1978 by the Northern Pipeline Act Bill C-25 passed April 4, 1978 3rd Session, 30 Parl. ment, S.C. 1977-1978, C-20.

Pipelines USA Ltd., a subsidiary of TransCanada, and 2) United Alaska Corp., a subsidiary of Foothills, also a subsidiary of TransCanada.

In *Alcan Pipeline Co.*, 1 F.E.R.C. ¶ 61,248 (1977), FERC, pursuant to the Alaska Natural Pipeline Gas Transportation Act, 15 U.S.C. § 719 *et seq* (ANGTA), issued a "conditional" certificate of public convenience and necessity to Alcan Pipeline Co., Northern Border Pipeline Co. and Pacific Gas Transmission Co. ("Alcan Pipeline Project"). FERC stated:

the Alcan Pipeline Project is at too incipient a stage to warrant Commission acceptance of applications for permanent certificates. 1 F.E.R.C. at 61,641.

By subsequent Order issued in *Alaskan Northwest Natural Gas Transportation Co.*, 3 F.E.R.C. ¶ 61,290 (1978), FERC authorized the transfer of the conditional certificate to ANNGT. In its Order, FERC observed regarding the Partnership Agreement:

Subsection 4.1.4 recognizes the Commission's authority to rule on these Qualified Expenditures and to possibly disallow them from rate base of [ANNGT] ... if found to be unreasonable, unnecessary, or imprudent. 3 F.E.R.C. at 61,754-55.

In 2004, ANGTA was amended by the Alaska Pipeline Act, 15 U.S.C. §§ 720 *et seq.* which sought to expedite the development of an Alaskan gas pipeline. 15 U.S.C. § 720b(d). The Alaska Pipeline Act authorizes *inter alia* that the Secretary of Energy to issue a federal loan guarantee of up to \$18 billion to the developer of the pipeline. Significantly, the Alaska Pipeline Act did not affect any decision (i.e. the conditional FERC certificate held by ANNGT), authorization or Presidential action relating to ANGTA. It further stated that if no application for a certificate was filed by April 2006, the Secretary of Energy should study alternate approaches.

III. DISCUSSION

A. Partnership Agreement

ANNGT, a corporation, succeeded as of January 31, 1978⁶ to the Agreement entered into between United Fuels Corporation and TransCanada Pipelines USA Ltd. In addition to the foregoing, eleven other companies, including TC Alaska, were partners to the Agreement.⁷ It was contemplated by the Agreement that a natural gas pipeline would be designed and constructed "from the Prudhoe Bay area ... to an interconnection with the Canadian Pipeline on the Alaska-Canada border." (Para. 2.31). The Agreement specifically stated:

The Partnership is the successor to all of the rights, titles and interests of Alcan Pipeline Company ... to construct and operate a natural gas pipeline system in Alaska pursuant to ... the Alaska Natural Gas Transportation Act of 1976. The Partnership shall plan, design, obtain financing for and construct the Project, own and operate the Line and place the Line in service on January 1, 1983 or as soon thereafter as practicable. (Para. 3.3)

Each partner was required by the Agreement to fund "Qualified Expenditures" which were defined by Para. 2.32 as:

Expenditures to acquire information, knowledge, studies, tests, computer programs or governmental authorizations by any Partner or corporate Affiliate of a Partner, in the course of activities reasonably related to the selection of a transportation system for the delivery of Alaskan natural gas, if such

⁶ The Agreement has been amended four times. Curiously, Amendment No. 4 is "dated January 1, 1995, proposed December 19, 2000."

⁷ The partners are: Northern Arctic Co.; Northwest Alaskan Pipeline Co.; Pan Alaskan Gas Co.; Natural Gas Corporation of California; Pacific Interstate Transmission Co. (Arctic); United Alaska Fuels Corp.; American Natural Alaskan Co.; Columbia Alaskan Gas Transmission Co.; Tetco Four, Inc.; Texas Gas Alaska Corp.; and TC Alaska.

expenditures were made by such Partner or corporate Affiliate prior the Formation Date [January 31, 1978].

The Agreement also required that each partner make a capital investment prior to July 31, 1978 of its *per capita* share of \$24 million (Para. 4.2.2).⁸

As to whether a qualified expenditure could be included in the proposed Alaskan pipeline's rate base, Para. 4.1.4 provides:

Qualified Expenditures, and the value of assets generated thereby, shall be subject to review and verification by the FERC, and only those expenditures, and the values ascribed to such assets, found by the FERC to reflect reasonable and necessary expenditures, prudently incurred, shall be retained in the Capital Accounts, and then only to the extent that FERC authorizes the inclusion thereof as a capital expenditure appropriately made on behalf of the Partnership for inclusion in rate base. Any disallowance by the FERC of an amount included in any Capital Account ... shall be reflected forthwith in a retroactive adjustment of (i) the Capital Account from which such amount was so disallowed and (ii) all other Capital Accounts affected by such disallowance in accordance with this Agreement.

Significantly, Para 4.4.4 provides that no partner shall be "entitled to any return of their expenditures ... except":

after the line becomes operational and ... when [the] payment may be made without undue hardship to the partnership.⁹

B. Ratemaking Principles

A natural gas pipeline, subject to FERC's jurisdiction, may recover in rates its costs and a return of items properly included in its rate base.

⁸ Para. 4.4.4 (ii) states that:

No return shall be paid on any contribution to the capital of the Partnership to a withdrawing partner.

⁹ Under certain circumstances, a partner was permitted to transfer its interest. (Para. 10)

For ratemaking purposes, the primary cost components are operation and maintenance (O+M) expenses, depreciation and amortization, taxes other than income taxes, return on rate base, federal and state income taxes, and revenue credits. Generally, O+M expenses are not allowed to be recovered if shown to be unrepresentative, non-recurring, non-qualifying or imprudent. Energy Law and Transactions Ch. 80.¹⁰ To be included in a pipeline's rate base:

[The] utility's plant and property ... [must] provide service to the public [and] be "used and useful" to the consumer before the ratepayer will be required to pay a return on the capital invested by the utility's investors. Regulation of the Gas Industry §29.01 (citations omitted).¹¹

As part of the ratemaking process, FERC, in determining the value of a rate base, utilizes a "test period" to define the time period in which data covering operations is compiled.

¹⁰ Rate base treatment of a prudent investment also has been denied if a project is later abandoned. *Natural Gas Pipeline Company of America v. F.E.R.C.*, 765 F.2d 1155, 1163 (1985), *cert denied* 474 U.S. 1056 (1986). See also *Duquesne Light Co. v. Barasch*, 488 U.S. 299 (1989) (Cost of cancelled plant denied inclusion in rate base because it was not used and useful in service to the public).

¹¹ See, e.g., *Tarpon Transmission Co.*, 59 F.E.R.C. ¶ 61,241, at 61,820-21 (1992) which denied rate base treatment for carrying charges on extraordinary, non-recurring regulatory costs because "they are not an investment that is used and useful in providing utility services to the public and are no benefit to the pipeline's customers." FERC further stated:

the regulatory cost component of a pipeline's operating and maintenance expenses ordinarily does not include any authorization of *past* regulatory costs. Rather, normal Commission practice is to recover only those prudent costs which the pipeline projects it will occur in the *future*. 59 F.E.R.C. at 61,820 (emphasis added).

In *The Detroit Edison Co.*, 54 F.P.C. 3012 (1975) (DTE) FERC's predecessor denied the inclusion of \$8 million in rate base. That sum was a loan to a coal company intended to assure DTE a coal supply for 25 years. The Commission concluded that the loan "was made merely to assist the coal company with its initial investment ... not to promulgate exploration efforts." 54 F.P.C. at 3016. FERC also denied rate base treatment for an "acquisition premium" expended in separate transactions for facilities acquired to form a new pipeline. *Enbridge Pipelines (KPC)*, 100 F.E.R.C. ¶ 61,260 (2002).

A test period either may be historical or based upon future projections.¹² FERC's Regulations at 18 C.F.R. § 154.303(a)(1) provide that if a pipeline company has been in operation for 12 months as of the filing date, the test period "consists of 12 consecutive months of the most recently available actual expenses." If the pipeline has not been in operation for 12 months as of the filing date, a future test period using projections of costs of property devoted to public service is to be used. Pursuant to 18 C.F.R. § 154.303(b), the test period "must consist of 12 consecutive months ending not more than one year after the filing date."

In *Federal Power Commission v. Natural Gas Pipeline Co. of America*, 315 U.S. 575 (1942), the Supreme Court held that FERC's predecessor was correct in disallowing \$8.5 million from inclusion in a pipeline's rate base. The pipeline had argued:

[T]here are items of cost or expense incurred in the establishment and development of the business during the seven-year period prior to regulation ... [and] should be capitalized and added to the rate base to the extent of \$8,500,000 for going concern value. They include ... expenditures for securing new business; interest on money invested in non-productive plant capacity; taxes paid on non-productive capacity; fixed operating expenses attributable to non-productive capacity, and depreciation on non-productive capacity. 315 U.S. at 588 (footnote omitted; emphasis added).

This argument was rejected by the Supreme Court because it involved the pipeline company's financial history *preceding regulation* and because "the elements relied upon for that purpose could rightly be rejected as capital investment in the case of a regulated company..." 315 U.S. at 591.

¹² Advance payments made by a pipeline to participate in gas exploration and development projects have been included, as an exception, in rate base. In this regard, FERC explained:

their departure from the usual rule that current rates should reflect only the costs of supplying service to current rate payers was justified by the public interest in enlarging the field supply of natural gas. Regulation of the Gas Industry § 29.06 [3]

IV. CONCLUSION

Based on the foregoing, including the language in the ANNGT Partnership Agreement recognizing FERC's jurisdiction to disallow expenditures, TransCanada would not be allowed to recover in its rates any payments to withdrawn partners. This expense would be for period significantly preceding operations of the Alaskan segment by a different entity and would be neither construed as used or useful to ratepayers.

2/27/08

**DEPT.
CORREC-
TIONS**

LEGISLATIVE RESEARCH REPORT

MAY 19, 2008



REPORT NUMBER 08.266

METHOCILLIN RESISTANT STAPHYLOCOCCUS AUREUS (MRSA) IN ALASKA AND OTHER STATES

PREPARED FOR SENATOR HOLLIS FRENCH

BY TIM SPENGLER, LEGISLATIVE ANALYST

You asked for information on Methocillin Resistant *Staphylococcus aureus* (MRSA). Specifically, you wished to know the prevalence of MRSA in Alaska and other states. Additionally, we look at MRSA concerns in correctional facilities.

Briefly, *Staphylococcus aureus*, often referred to as "staph," are bacteria commonly carried on the skin or in the nose of healthy people. Approximately 25% to 30% of the population is colonized (when bacteria are present, but not causing an infection) in the nose with staph bacteria. Methocillin Resistant *Staphylococcus aureus* is a type of staph that is resistant to antibiotics. The Centers for Disease Control (CDC) estimates that approximately 1% of the population is colonized with MRSA.¹

Methocillin Resistant *Staphylococcus aureus* can cause skin infections that may look like a common pimple and can be red, swollen, painful or have pus or other drainage. The more serious variety of this bacteria—invasive MRSA—can cause pneumonia, bloodstream infections, and death.² Staph bacteria are almost always spread by direct physical contact. For example if an individual's hands come in contact with MRSA and are not washed thoroughly, the bacteria may be spread to others.³ Invasive MRSA is usually caused when the bacteria enters the body through a cut or other wound resulting in an infection in a normally sterile part of the body such as the blood stream.

¹ We found background information on MRSA at the Centers for Disease Control website www.cdc.gov.

² According to the CDC, a case of MRSA infection is defined as invasive if MRSA is found in the blood or cerebrospinal fluid of an individual.

³ Health care workers are in a high risk category of contracting MRSA. Others considered at high risk include hospital patients, prisoners, nursing home residents and others in long-term care facilities, children attending daycare, athletes, military recruits, and people with weakened immune systems. New Jersey Department of Health and Senior Services. www.nj.gov/health/cd/mrsa/ (Frequently asked questions).