Pan-Alberta subsidiary which is now known as Pan-Alberta Gas (U.S.) Inc.; NATGAS succeeded to United's transportation capacity on Northern Border; and Northern Natural agreed to purchase certain volumes from NATGAS. On December 21, 1989, the FERC approved the comprehensive settlement, recognizing once again the unique nature of the ANGTS and the necessity of protecting the minimum revenue stream which generally underpins the project.

The FERC has also reaffirmed the special treatment of the ANGTS Prebuild Project in various proceedings in which it has considered generic rules or policies. In Order No. 380-A, for example, the FERC exempted the Prebuild contracts from a generic rule which prohibits minimum take or minimum purchase obligations in pipeline tariffs\(^3\). Explaining its action, the Commission stated:

"The ANGTS is a unique international project whose ultimate success has always rested on a framework of mutual trust and cooperation between the governments of the U.S. and Canada. It is abundantly clear that the assurances made by the Commission, the Congress, and the President collectively comprise a commitment to protect the stream of revenue underpinning the financing of the Canadian segment of the ANGTS, that the Government of Canada relied on those assurances, and that any subsequent action that could adversely affect that stream of revenue would constitute a breach of faith in our nation's relationship with Canada."\(^2\)

The FERC's exemption of the Prebuild tariffs from the minimum commodity bill rule, as well as numerous other aspects of that rule, were appealed to the United States Court of Appeals for the District of Columbia Circuit. The court ringingly affirmed the Prebuild exemption, however, noting that the Commission's 1980 orders had "crafted a contract formula that
guaranteed the Canadian suppliers an adequate revenue stream generated from United States sales ... to support the financing of the ANGTS ... More importantly, the court emphasized that "[a]pplications of the rule to ... [the Prebuild tariffs] would have placed the United States in breach of its explicit commitments to Canada."  

The FERC also agreed in Opinion No. 256-A that its general policy against as-billed flow-through of Canadian gas costs would not apply to the Prebuild Project. Specifically, the FERC stated:

"[W]e do not intend to 'depart from previous orders of the Commission regarding the assurances for the revenue stream of the ANGTS pre-built project...[W]e believe special treatment for Alaskan gas and Canadian gas related to the protected stream of revenue is fully warranted by the sui generis nature of ANGTS as we have fully discussed in other Commission orders."  

In addition, in Order No. 636-A, the Commission explained that nothing in its new regulations relating to the restructuring of the natural gas industry was intended "to disturb the United States government's commitment to the ANGTS Prebuild." Furthermore, in an order updating the Commission's filing requirements in light of Order No. 636, the Commission proposed to delete certain regulations applicable to the ANGTS, explaining that they were obsolete in the post-Order No. 636 environment. In doing so, however, the Commission stated that:

"Nonetheless, the Commission remains ready to facilitate the construction of ANGTS, which Congress has found to be in the public interest. Hence, if action is warranted in the future to facilitate financing and progress on the ANGTS and the recovery of ANGTS costs, the Commission will act expeditiously. What
was stated in Order No. 636-A applies here as well: 'nothing in the rule [Order No. 636] is intended to disturb the United States government's commitment to the ANGTS prebuild.'

As to Northern Border, the Commission has stated that it "continues to view the Northern Border prebuild segment as remaining subject to the various agreements between the United States and Canadian governments and subsequent findings in Commission orders certificating Northern Border Pipeline Company's system." In addition, the Commission stated that "[t]he United States, like Canada, is bound by the 'Agreement on Principles' concerning the ANGTS. By virtue of the 'Agreement' which has the force and effect of a treaty, the Commission may not alter the viability of the ANGTS by changes in previously granted orders."

In 1998, the Commission reaffirmed its commitment to the ANGTS project in an order approving a settlement to implement the restructuring of gas sales and transportation arrangements among various parties regarding the Western Leg of the Prebuild system. There, the Commission continued to recognize the unique status of the Prebuild Project and specifically cited to the Commission's reaffirmation of its commitment to the project stated in Order No. 636-A, discussed above.

In short, while the ANGTS, including the Prebuild, has continued to evolve in light of market realities, the contracts underpinning the project, as well as the government approvals of those contracts, have continued to ensure the financial integrity of the project.
V. PRESIDENTIAL FINDING ON ALASKAN GAS EXPORTS

In the summer of 1987, the Canadian government was apprised that the U.S. President was considering the issuance of a finding in favor of exports of Alaskan gas. Thereafter, at the request of the Canadian government, consultations were held between Canadian and U.S. officials where Canadian officials expressed deep concern about the impact of such a finding on the ANGTS and the Agreement.

On January 13, 1988, the U.S. President issued a finding relating to potential exports of Alaskan gas. Significantly, however, the President took that opportunity to reaffirm his support for unique regulatory treatment of the ANGTS Prebuild Project. Specifically, the President stated: "... I want to reaffirm our support for the special regulatory treatment of the Prebuild portion of the ANGTS, including the minimum revenue stream guarantees."

With this finding, the U.S. President has continued a policy which has been applied to the Prebuild Project since its inception. In short, the Prebuild Project remains an integral part of a unique system — i.e., the ANGTS — and, therefore, it is entitled to unique regulatory protection.

The President also stated he did not believe that this finding should hinder the completion of the ANGTS.

VI. COMPLETION OF THE ANGTS

Since the project's inception, the ANGTS sponsors have made substantial progress toward the completion of Phase II of the project. Among other things, right-of-way permits for the Alaskan segment have been issued by the U.S. Department of Interior, a broad array of design approvals and
environmental authorizations have been issued by U.S. and Canadian authorities; the FERC has established rules and regulations for the tracking of Canadian ANGTS charges; and Congress has approved waivers of law.

In addition, an easement agreement was executed in 1983 between the Government of Canada and the Foothills subsidiary responsible for construction of the segment of the ANGTS in Yukon Territory. The term of the easement is for 25 years with a renewal at the option of the company for an additional 24-year period. The easement agreement is subject to obtaining the consent of the Minister responsible for the Northern Pipeline Agency prior to commencing construction activity. On November 4, 1992, the timeframe within which the consent is to be obtained was extended to September 20, 2012.

Notwithstanding this regulatory progress, the financing and construction of Phase II of the ANGTS has been temporarily delayed as a result of the market conditions in the lower 48. It now appears that the project will be required this decade. The ANGTS sponsors remain committed to completing the project in a timely manner. The sponsors continue to take appropriate actions and expend funds necessary to maintain the ANGTS regime in a state of readiness, including the federal right-of-way grant, Section 404 permits and the broad array of legal and regulatory authorizations and treaties that have been issued by Canadian and U.S. authorities. Furthermore, the sponsors have continued to expend effort toward significantly reducing the cost of transporting Alaskan Northern Slope gas to market.

Recent years have seen a decline in both inflation and the cost of capital, and advancements in pipeline technology have also occurred. In 1987, in response to these changes and the need to update the earlier cost estimate developed in 1982, Foothills and Alaskan Northwest agreed to complete a detailed re-estimate of Phase II of the ANGTS. On June 6, 1988, this re-

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Obtained and made public by the Natural Resources Defense Council, March/April 2002
estimate was publicly released showing an approximate 45% reduction in the project capital costs. In 1999, Foothills again significantly reduced the capital cost estimate for the Project. Foothills continues to examine further opportunities for cost reductions and efficiencies toward achieving the most cost effective transportation of northern frontier gas reserves.

While the precise date for moving forward with the financing and completion of Phase II remains to be finalized with stakeholders, for several reasons Foothills believes that Alaskan gas will be needed in the lower forty eight states much sooner than many have anticipated. First, Alaskan gas is a secure U.S. domestic resource which can reduce dependence on imported oil. The proven gas reserves exceed 30 trillion cubic feet and estimates of potential reserves are approximately 100 trillion cubic feet. Second, there is increasing uncertainty in the ability of existing basins to keep pace with gas demand which is estimated to reach 30 trillion cubic feet per year in this decade. This demand may well occur earlier in that time frame, hastening the requirement for Alaskan gas to serve energy needs in southern markets. With its advanced state of readiness, the ANGTS is positioned to meet an expeditious delivery timeframe.

To further underscore its commitment to the ANGTS, Foothills is a partner in Alaskan Northwest Natural Gas Transportation Company, the U.S. partnership which is responsible for the construction and operation of the Alaskan segment of the project. In 1990, Foothills purchased the outstanding shares in United Alaska Fuels Corporation, a subsidiary of United. At the end of 1994, Foothills increased its partnership share. TransCanada PipeLines Ltd. holds the other active partnership interest. Foothills' participation in the Alaskan Northwest partnership is expected to improve U.S.-Canadian cooperation and coordination in the completion of the project.
Foothills remains prepared to proceed with the financing and completion of Phase II as soon as Alaskan gas is required by the markets in the lower forty-eight states and is taking active steps to further the progress of the Project. In the meantime, the continuing commitments by the governments of both Canada and the United States to the international Agreement provide an important foundation for the early completion of this important bilateral project.

VII. THE BAYER REPORT

On January 24, 1992, Mr. Michael J. Bayer, the U.S. Federal Inspector for the ANGTS, sent President Bush a report which recommended that the United States abandon support for the completion of the ANGTS. Among other things, Mr. Bayer's recommendations included: 1. "Repeal the Alaskan Natural Gas Transportation Act"; 2. "Eliminate the exclusive ANGTS route to transport Alaskan North Slope gas to the lower 48"; 3. "Eliminate the ANGTS project sponsors unique legal monopoly status"; 4. Withdraw the President's 1977 decision under the Act; 5. Terminate all bilateral agreements with Canada relating to the ANGTS; and 6. Abolish the Office of Federal Inspector ("OFI"). None except the last recommendation was accepted.

The ANGTS sponsors did not oppose the abolition of OFI. They strongly opposed, however, the implementation of Mr. Bayer's other recommendations. The sponsors believed it is in the best interests of both the United States and Canada to retain ANGTA, the President's 1977 Decision, and the bilateral agreements relating to the ANGTS. These core ANGTS authorities are vital to the completion of the project as soon as warranted by the market.

On February 14, 1992, the Government of Canada also objected to most of Mr. Bayer's recommendations. In a diplomatic note sent to the U.S. Department of State, the Canadian government stated that implementation of
certain recommendations - such as the repeal of ANGTA, the withdrawal of the President's 1977 decision, and the termination of U.S.-Canadian agreements relating to the ANGTS - would be unacceptable to Canada and contrary to the obligations of the United States.

On March 12, 1992, Senator Bennett Johnston, Chairman of the Senate Committee on Energy and Natural Resources, sent a letter to the President expressing his opposition to the Bayer recommendations. Senator Johnston emphasized that, while the ANGTS has been delayed as a result of current market conditions, it is clear that American consumers will eventually need access to North Slope gas. He further emphasized that the ANGTS is still the most economic and environmentally sound means of providing that access. While the Office of the Federal Inspector ("OFI") has been dismantled, the OFI authority resides with the Department of Energy and the other recommendation to abandon the ANGTS legal infrastructure was rejected.

VIII. 1999 NORTHERN BORDER RATE CASE

On June 30, 1999, the Federal Energy Regulatory Commission issued an "Order Accepting and Suspending Tariff Sheets, Subject to Refund and Hearing" in the 1999 Northern Border Pipeline Company rate case. The June 30 Order included a statement that the "ANGTS is no longer viable." Foothills subsequently requested clarification of that statement, arguing that it is not only factually incorrect, but is counter to important commitments which have been made by the United States government to the Canadian sponsors and the Canadian government regarding the ANGTS.

Specifically, Foothills argued that there is no evidence in this or any prior record to support the Commission's statement. Significantly, no party raised the assertion in this case. As reported in ANNGTC's 1999 FERC Form No. 2,
"[T]he [ANGTC] Partnership intends to continue to take steps 'necessary in order to advance its project in a timely fashion.' Furthermore, the United States government has repeatedly and consistently supported the ANGTS and acknowledged the unique status of the project. Accordingly, Foothills argued that the Commission's statement that the "ANGTS is no longer viable" breaches Section 9(d) of the Alaska Natural Gas Transportation Act, 15 U.S.C. § 719g(d) (1994), and violates the "Agreement on Principles Applicable to a Northern Natural Gas Pipeline" consummated by the U.S. and Canada ("U.S.-Canadian Agreement"). As the Commission has recognized, "both governments [i.e., the U.S. and Canada] remain bound by the 'Agreement on Principles' concerning the ANGTS. The 'Agreement on Principles' has the force and effect of a treaty between the two nations. The U.S. government (in this instance the Commission) is bound to not alter the project's viability by changes in previously granted orders." The Commission had no basis in law or fact to conclude that the ANGTS is no longer viable.

Foothills requested that the Commission clarify this statement or, should the Commission decide that clarification is not the appropriate remedy, reverse this finding on rehearing. The Canadian Government also requested that the FERC clarify its statement to avoid creating uncertainty with respect to the U.S. commitments to its treaty with Canada and the ANGTS. On August 31, 1999, the FERC expeditiously issued a clarification to its earlier order. Among other things, the Commission stated that its intent was to indicate the immediate conditions surrounding Northern Border's cost-of-service tariff and that in no way did it intend to indicate that the ANGTS project would not be fully implemented. This clarification is the latest in a long history of intergovernmental cooperation and support for the ANGTS.
IX. THE DEMPSTER LATERAL PROJECT

In its 1977 Reasons for Decision selecting the Foothills alternative for transportation of Alaskan gas, the NEB recommended to the Governor-In-Council that Foothills be required to execute an agreement to provide for a Dempster Lateral to interconnect with the ANGTS in order to accommodate the transportation of Northern Canadian gas when required. In this respect, the Canada/U.S. Agreement not only provides for the Dempster Lateral, but stipulates that a significant portion of the costs of the Dempster Project can be rolled-in to the ANGTS.

On May 4, 1978, Foothills, its subsidiaries, and its parent companies entered into two agreements with the Government of Canada. The Dempster Link Agreement requires Foothills to cause the construction of the Dempster Lateral as expeditiously as possible following leave to open Phase II of the Canadian segment of the ANGTS, subject to the issuance of a certificate of public convenience and necessity and a determination that financing can be achieved without undue financial burden. Foothills has fulfilled its obligations to date under this agreement, including the filing of an application with the NEB for a certificate to construct the Dempster Lateral. The Natural Gas Throughput Agreement requires Foothills and its subsidiaries to provide, upon notice from the Minister of Energy, Mines and Resources, sufficient throughput capacity in the ANGTS to accommodate volumes of Northern Canadian gas.

X. THE MACKENZIE VALLEY PIPELINE PROJECT

In late 1988, three major producers in the Mackenzie Delta filed applications with the NEB for licences to export 9.2 TCF of Canadian frontier gas to the United States over 20 years commencing as early as 1996. These
applications raised the possibility that Mackenzie Delta natural gas reserves could be marketed in advance of Alaskan reserves in the U.S. lower 48 states.

As part of Foothills' ongoing commitment to transport both Alaskan and Canadian Mackenzie Delta gas reserves to market, in October 1989 an application was filed with the NEB for a pipeline from the Mackenzie Delta along the Mackenzie River and then south to connect with an extended Prebuild at Boundary Lake, British Columbia. The Mackenzie Valley Pipeline is an alternative to the Dempster Lateral.

The application remains before the NEB. In the interim, Foothills, the Delta producers and two other pipeline companies signed an agreement to form a joint venture for the further development of the Mackenzie Valley Transportation System. The joint venture agreement terminated in 1998.

XI. OTHER DEVELOPMENTS
ALASKA NORTH SLOPE PROJECT

In 1998, Foothills became a participant in a joint venture with four other sponsors to examine the viability of a project for the delivery of liquefied natural gas from reserves on the North Slope of Alaska to markets in East Asia. The project contemplates that natural gas would be shipped by pipeline across Alaska to the southern coast, liquefied and delivered by tankers. Foothills believes this initiative is wholly consistent with the transportation of gas via the ANGTS and may provide synergies for both projects, thus further reducing the cost of transportation.
XIII. LIST OF FOOTNOTES


2 At the time of the Recommendation, the FPC was constituted of only four members; the fifth position was vacant.


5 President's Decision, p. xii.

6 Id. at 93.

7 Senate Joint Resolution 82, 95th Congress, 1st Session (1977).

8 Alcan Pipeline Company, et al., 1 F.E.R.C. Para. 61,248 (December 16, 1977).

9 Alaskan Northwest Natural Gas Transportation Company, 3, F.E.R.C. Para. 61,290 (June 30, 1978).

11 Metzenbaum v. F.E.R.C., 675 F.2d 1282 (D.C. Cir. 1982).

12 Northwest Alaskan Pipeline Company et al., 10 F.E.R.C. Para. 61,032 (January 11, 1980).

13 Id. at pp. 61,079-80.

14 Ibid.

15 Northwest Alaskan Pipeline Company et al., 11 F.E.R.C. Para. 61,088 (April 28, 1980).

16 Id. at p. 61,138.

17 The April 28 order stated: "The Commission can accept that the Canadian producers have a legitimate requirement for an assured cash flow. By way of analogy to the role of the ship-or-pay obligation between the shipper and the transporter [Foothills] in obtaining financing for the transportation system, the Canadian producer needs to establish what amounts to an accounts receivable from U.S. importers at an assured minimum value. Like the transporter [Foothills], the producer needs from his customers an unconditional obligation to pay sufficient to enable him to attract financing." 11 F.E.R.C. at p. 61,162 (emphasis added).

18 To determine the amount of revenue which Northwest Alaskan and the U.S. purchasers would be required to generate annually and daily, the FERC established a formula under which a base price of $3.45 per MMBtu (the uniform border price which was in effect when the record in the prebuild import proceeding was closed) would be multiplied times the quantities of gas specified in the prebuild contracts. For example, using an unescalated base price of $3.45, Northwest Alaskan's obligation under the Eastern Leg contract would be limited to $1,380,000 daily (800,000 Mcf/d x 3.45/MMBtu x 50%) and $856,290,000 annually (800,000 Mcf/d x 365 days x $3.45/MMBtu x 85%). In its June 20, 1980 order on rehearing, the FERC modified this formula so as to
permit the base price of $3.45 to be adjusted monthly for inflation by using the escalator mechanism contained in Section 101(a) of the Natural Gas Policy Act. 11 F.E.R.C. Para. 61,302, pp. 61,606-607.

19 11 F.E.R.C. Para. 61,088, pp. 61,162-163.

20 Id. at p. 61,163.

21 11 F.E.R.C. Para. 61,088, p. 61,165.

22 Condition 12 of the ANGTS construction certificate granted to Foothills by the Northern Pipeline Act originally provided that, "before the commencement of construction," Foothills shall establish to the satisfaction of the Minister responsible for the Northern Pipeline Agency and the NEB that "financing has been obtained for the pipeline." In order to permit construction of the prebuild phase, however, the Canadian government subsequently amended Condition 12 to require that Foothills, prior to the commencement of construction, establish to the satisfaction of the Minister and the NEB that, among other things, financing has been obtained for the prebuilt sections and can be obtained for the completion of the remainder of the system.

22 See NEB's statement of May 9, 1980, in a proceeding entitled "In the Matter of the National Energy Board Act and the Northern Pipeline Act; and In the Matter of a Public Hearing with Respect to Condition 12(1) of Schedule III of the Northern Pipeline Act; File No. 1045-4."

24 Id. at p. 8.


26 Northwest Alaskan Pipeline Company, et al., 11 F.E.R.C. Para. 61,302 (June 20, 1980), p. 61,607.

27 Id. at p. 61,605.
23 Ibid.

29 See note 26, supra.

30 See e.g., DOE/ERA Opinion and Order No. 67, 1 E.R.A. Paragraph 70,579 (December 13, 1984), and Northwest Alaskan Pipeline Company (Eastern Leg), 29 F.E.R.C. Paragraph 61,302 (December 14, 1984).


32 Id. at p. 31,062 (emphasis added, footnotes omitted). The Commission's exemption of the prebuild tariffs was reaffirmed in Order No. 380-B, 29 F.E.R.C. Paragraph 61,076 (October 24, 1984), at p. 61,157, wherein the Commission emphasized, inter alia, that "the exemption is based on the Commission's repeated assurances of a stream of revenues for the construction and operation of the 'pre-built' segments of the ANGTS," and "[t]hose assurances, in turn, reflect the mutual trust and cooperation between the governments of the U.S. and Canada with respect to the ANGTS." (footnote omitted). See also Order No. 380-C, F.E.R.C. Statutes and Regulations Paragraph 30,607 (October 24, 1984), at p. 31,195-96.


34 Id. at 1163


see also, Northern Border Pipeline Co., 63 FERC ¶ 61,289, at p. 62,954 (1993); Northern Natural Gas Co., 62 FERC ¶ 61,075, at p. 61,397 (1993).


38 Id, at p. 32,947 (footnote omitted and emphasis added)

39 Id, at pp. 32,947-48.

40 Northern Border Pipeline Co., 65 FERC ¶ 61,179, at p. 61,892, n.19 (1993).

41 Pacific Interstate Transmission Co., 85 FERC ¶ 61,378, at p. 62,451 (Dec. 17, 1998) ("The Commission has recognized the unique status of PITCO [which is part of Western Leg Prebuild system] on numerous occasions . . . and the arrangements related to the sale of Canadian gas to SoCal Gas are unique."); see also, Pacific Interstate Transmission Co., 77 FERC ¶ 62,053, at p. 61,196 (1996) ("Approval of the PITCO request will approximately balance two Commission policies – the Commission's longstanding commitment to the ANGTS and the open-access conditions of Order No. 636.")

42 ANNGTC's FERC Form No. 2, for year ending December 31, 1998, at p. 123.0.

Concurrent Resolution Expressing the Sense of Congress
Regarding the Importance of the
Alaska Natural Gas Transportation System

Whereas, the Alaska Natural Gas Transportation System is a
critically important energy project that will tap Alaska's
North Slope natural gas reserves which constitute more than ten
percent of this nation's entire proven natural gas reserves;

Whereas, the System, when complete, will supply the United States
with five percent of its annual natural gas demand, displacing
over 400,000 barrels of oil, thereby greatly reducing this
nation's excessive dependence on foreign oil;

Whereas, the Congress has already expressed its overwhelming
support for the System in approving by joint resolution the
President's 1977 Decision on the Alaska Natural Gas
Transportation System;

Whereas, a portion of the System known as prebuild can be
constructed by the end of 1981 to bring Canadian gas to this
nation until the entire system is complete in 1985;

Whereas, prebuild will contribute to completion of the entire
system by spreading demand for capital, labor and materials
over several years, and will enable this nation to obtain
Canadian natural gas to displace 200,000 barrels of foreign oil
a day;
Whereas, the Federal Energy Regulatory Commission has issued decisions granting certificates for the prebuild facilities in the United States.

Whereas, the Sponsors of the Alaskan segment of the system and the North Slope natural gas producers have entered into an agreement to fund and manage jointly the design, engineering and cost estimation for the Alaskan segment and have made a joint Statement of Intention to work to develop a financing plan for the Alaskan segment with the object of completing construction by the end of 1985; Now, therefore, be it

Resolved by the Senate (the House of Representatives concurring) that it is the sense of Congress that the System remains an essential part of securing this nation's energy future and, as such, enjoys the highest level of Congressional support for its expeditious construction and completion by the end of 1985.
July 17, 1980

Dear Mr. Prime Minister:

Since you last wrote to me in March, the United States Government has taken a number of major steps to ensure that the Alaska Natural Gas Transportation System is completed expeditiously.

Most significantly, the Department of Energy has acted to expedite the Alaskan project. The North Slope producers and Alaskan segment sponsors have signed a joint statement of intention on financing and a cooperative agreement to manage and fund continued design and engineering of the pipeline and conditioning plant. The Federal Energy Regulatory Commission recently has certified the eastern and western legs of the system.

The United States also stands ready to take appropriate additional steps necessary for completion of the ANGTS. For example, I recognize the reasonable concern of Canadian project sponsors that they be assured recovery of their investment in a timely manner if, once project construction is commenced, they proceed in good faith with completion of the Canadian portions of the project and the Alaskan segment is delayed. In this respect, they have asked that they be given confidence that they will be able to recover their cost from U.S. shippers once Canadian regulatory certification that the entire pipeline in Canada is prepared to commence service is secured. I accept the view of your Government that such assurances are materially important to insure the financing of the Canadian portion of the system.

The Right Honorable
Pierre Elliott Trudeau, P.C., Q.C., M.P.,
LL.L., M.A., F.R.S.C.,
Prime Minister of Canada,
Ottawa

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DOE002-0988

Obtained and made public by the Natural Resources Defense Council, March/April 2002
Existing U.S. law and regulatory practices may cast doubt on this matter. For this reason, and because I remain steadfastly of the view that the expeditious construction of the project remains in the mutual interests of both our countries, I would be prepared at the appropriate time to initiate action before the U.S. Congress to remove any impediment as may exist under present law to providing that desired confidence for the Canadian portion of the line.

Our Government also appreciates the timely way in which you and Canada have taken steps to advance your side of this vital energy project. In view of this progress, I can assure you that the U.S. Government not only remains committed to the project; I am able to state with confidence that the U.S. Government now is satisfied that the entire Alaska Natural Gas Transportation System will be completed. The United States' energy requirements and the current unacceptable level of dependence on oil imports require that the project be completed without delay. Accordingly, I will take appropriate action directed at meeting the objective of completing the project by the end of 1985. I trust these recent actions on our part provide your government with the assurances you need from us to enable you to complete the procedures in Canada that are required before commencement of construction on the pre-build sections of the pipeline.

In this time of growing uncertainty over energy supplies, the U.S. must tap its substantial Alaskan gas reserves as soon as possible. The XTI trillion cubic feet of natural gas in Prudhoe Bay represents more than ten percent of the United States' total proven reserves of natural gas. Our governments agreed in 1977 that the Alaska Natural Gas Transportation System was the most environmentally sound and mutually beneficial means for moving this resource to market. Access to gas from the Arctic regions of both countries is even more critical today as a means of reducing the dependence on imported petroleum.

Successful completion of this project will underscore once again the special character of cooperation on a broad range of issues that highlights the U.S./Canadian relationship.
I look forward to continuing to work with you to make this vital energy system a reality.

Sincerely,

(Signed: Jimmy Carter)

N.B.: A signed copy of this statement is held in NES File No. 1045-4
The Secretary,  
Federal Energy Regulatory Commission,  
825 North Capitol Street, N.E.,  
Washington, D.C. 20426  

Dear Sir:  

Subject: Elimination of Variable Costs from  
Certain Natural Gas Pipeline Minimum  
Commodity Bill Provisions  
Order No. 380 - Docket No. EM 83-71-000  

The National Energy Board has examined from a Canadian public interest point of view, within the regulatory framework, the direct and particularly the indirect effects of Order No. 380 on Canadian exports of natural gas, on Canadian pipelines, and on Canadian producers. It has carried out a survey of the views of Canadian exporters. On the basis of both its own assessment and the information drawn from the survey, the National Energy Board has grave concerns about the effects on Canada of Order No. 380. The views of Alberta & Southern, Pan-Alberta, TransCanada Pipelines and Mobil Oil Canada Ltd., are attached as examples of the major concerns expressed in the survey.  

The Board understands that the latest date for filing submissions for clarification or modification of the Order is 25 June 1984. The Board further understands that the order, in its original form or modified, may then come into effect as early as 31 July 1984. Accordingly, the Board is taking the unusual step of making its views known directly by this submission to the Commission. Additionally, Canadian pipelines and producers may not be entirely aware of all of the implications of Order No. 380. In fact, the Order acts on tariffs between U.S. pipeline companies and their buyers, and the indirect effects were only peripherally reviewed in it. Commissioner Sousa himself states, "It is unclear to me the extent of the impact that this rule may have on imported natural gas, the vast portion of which comes from Canada."
It should be pointed out at this juncture that the NEB is not questioning the underlying objective of Order No. 380, namely that natural gas become competitively priced in United States markets. On the contrary, it emphasizes that it believes the concerns of Canada can be accommodated without affecting this objective. It believes that the alleviation of Canadian concerns will ensure the ability of Canada to be a reliable supplier of natural gas to the United States for many years into the future.

The Board believes the Commission would wish to examine the implications of the issues in this submission before implementing the Order with respect to Canadian imports.

The four concerns of the NEB are outlined below:

1. Uncertainties arising from the Order

   There are numerous uncertainties relating to the interpretation and application of the order. We understand that they will be addressed in various submissions for clarification and modification to be made to the Commission. They are not, therefore, identified in this submission. In addition, it is unclear to this Board to what extent producer fixed costs are exempted from the effect of the Order.

   The NEB recognizes the Commission will wish to address these uncertainties before the Order takes effect.

2. Similar Treatment of Canadian fixed costs (Pipelines and Producers) to those accorded to the United States fixed costs.

   The FERC Order requires that in the tariffs of United States pipelines, fixed costs should be separated from variable costs and purchased gas costs. The non-incurred variable costs, i.e., for gas not taken, are then excluded from minimum bills. The Order is silent on such costs in Canada. The NEB requests similar treatment for these costs in Canada since the pipeline system from supplier to market is, for all intents and purposes, one continuous transmission system.

   Likewise, Canada would request similar treatment to the extent that the fixed costs of U.S. producers are identified and included in minimum bills. (Producer fixed costs related to ANGTS prebuild facilities are a special case dealt with in Section 3 below.)
The present export price of Canadian natural gas at the international boundary does not separate pipeline and producer fixed costs from variable costs of the pipeline and those for purchased natural gas. The Board would be pleased to make available to the Commission information on what the Board considers these fixed costs to be.

3. Special Considerations Required for Gas Transmitted on ANGTS Prebuild Facilities

Phase I of the Alaska Highway Natural Gas Pipeline to carry Alberta gas to United States markets pending the arrival of Alaska gas - or, as it is usually referred to, the pre-built section of the pipeline - was constructed under the framework of the Canada-United States Agreement on Principles Applicable to a Northern Natural Gas Pipeline. The Canadian Government approved changes in the terms and conditions of the Northern Pipeline Act made by the National Energy Board. These changes were necessary to enable construction to proceed. They were made on the basis of certain assurances by President Carter about the completion of the pipeline to Alaska as well as resolutions by Congress, and after the National Energy Board and the responsible Canadian Minister were satisfied that the pre-built sections could be financed, essential to these private financing arrangements was the approval by the FERC in 1980 of a minimum bill to protect both the Canadian pipeline and producer investments and the related contractual arrangements among the participating pipeline companies.

The FERC will therefore understand the concern of the Board about the effect of Order 380 upon these financial arrangements.

Although Order 380 does not apply directly to the contracts between the Canadian seller of Canadian gas and the initial United States buyer, it can be interpreted as applying to cost of service contracts between the initial United States buyer and its customers; these cost of service contracts were an integral part of the structure upon which the financing of the pre-built sections was based. The Order, by reducing the cash flow from buyers to pipeline companies, would weaken the ability of the pipeline companies to pay their minimum bills. Furthermore, since the buyers may have access to lower priced gas, Pan-Alberta could be cut off as a supplier of the gas, and the Canadian producer investments protected by the minimum bill would be impaired. If that interpretation is sustained, Order 380 could constitute a breach of the U.S. Government commitments upon which the National Energy Board and the Canadian Government relied in 1980.

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The Board expresses the view that there are special circumstances surrounding the pre-built sections of the ANGTS which would justify FERC's reconsidering the provisions of Order 380 and seeking means to avoid serious and unwarranted damage to a project undertaken in good faith in the interests of both Canada and the United States.

The Board also draws attention to the fact that tariffs on the pre-built sections of the ANGTS are abnormally high. They are high for two reasons: first, because Canada was required to size the pipeline for very large volumes of Alaska gas expected to flow in this decade, rather than for more limited quantities of Canadian gas licensed for export and, second, because depreciation rates are high to enable the costs to be amortized over the short term of export and import licenses.

In the circumstances, it appears to the Board to be unfair and unreasonable if Canadian producers were to have to absorb the full burden of these extra costs.

4. The Removal of Take or Pay Protection

In its present form, the FERC Order does not appear to address the following two fundamental issues.

First, the Order points out that if the cash flow from the buyers is removed from the subsequent chain of contracts to the suppliers, then the carrying costs of funds required to be borrowed to pay commitments to producers and importers will be allowable for rate-making purposes. The Order does not, however, address the issue of whether the pipeline could then in fact finance the obligations to its suppliers. The results of our survey indicated doubts on this point. We believe the Commission would wish to address this issue.

Second, the Commission does not address the fact that there could be merit in take-or-pay clauses in circumstances where the gas is competitively priced. We would ask the Commission to examine the ability of pipeline companies to finance the construction of pipelines to transmit the gas to market if there are no underpinning throughput arrangements similar to those contained in take-or-pay clauses. We believe this may be particularly true for large new pipelines and is referred to on page 18 of the DOE New Policy Guidelines. We would ask the Commission to consider this point in relation to the capability of sustaining the supply of gas to the U.S. markets over the long term. Is there any reason to interfere with freely negotiated take-or-pay clauses in circumstances where the natural gas is competitively priced in the marketplace?
In regard to submissions that the Commission will be receiving, the Board would point out that export/import contracts underpin the NEB licences and cannot be changed without NEB approval if the licence is to remain valid. The NEB has been flexible in relaxing take-or-pay conditions in the present abnormal market conditions. Long-term contracts have for decades underpinned the financing of pipeline and producer investments. Any abrogation of a contract which forms part of the series of interlocking contracts, including the export/import contract, could have serious consequences.

In summary, competitively priced Canadian gas and a regulatory system which fosters high load factor operation of pipelines appear to be the twin pillars on which the long range mutually beneficial gas trade between our two countries can prosper.

The National Energy Board wishes this submission to form part of the public record in the FERC proceedings in the rehearing of matters related to Order No. 380.

Yours sincerely,

G. Yorke Slader, Secretary