July 13, 1984

Honorable Raymond J. O'Connor  
Chairman  
Federal Energy Regulatory Commission  
825 North Capitol Street, N. E.  
Washington, D. C. 20426  

Dear Mr. Chairman:

I am writing concerning Order No. 380 now pending before the Commission that appears to have ramifications for the natural gas trade framework we are working to establish. I write with an appreciation for the care and understanding that the Commission has given to this important ruling.

Although the ruling addresses the variable costs in minimum bill obligations between gas purchasers and pipeline suppliers, its possible effects on upstream contracts were recognized by the Commission. The potential impact on international gas contracts, particularly between U. S. buyers and Canadian sellers, has been the subject of comments submitted to the Commission by these parties. In addition, the Canadian National Energy Board has taken the unusual step of formally communicating its views to the Commission. Most of these comments reflect serious concern over the impact of Order 380 on existing import arrangements.

It is not my purpose to endorse these comments or to propose any particular course of action for the Commission. The comments speak well for themselves, and the Commission properly has the responsibility to weigh their merits along with other considerations on this issue. My purpose is to share information that may assist the Commission in evaluating the comments and that will ensure that this ruling supports our policy initiatives relating to natural gas trade.

From our perspective, the objectives of Order 380 appear consistent with the gas imports policy guidelines issued by the Secretary of Energy last February. These guidelines were established to promote and construct a gas trade framework in which natural gas imported into the United States is competitive in the markets served. Order 380 promotes competition and is a clear and positive step in support of a deregulated gas marketplace.
In issuing the policy guidelines, the Secretary recognized that gas import arrangements reflect the laws and regulations of the exporter’s government as well as our own. The policy statement set forth the criteria to be employed by our regulatory authorities in authorizing future gas imports, and urged parties to current gas import contracts to voluntarily renegotiate their arrangements if necessary to bring them into conformity with the new policy. Implicit in the policy is the requirement that gas imported into the United States must be competitively priced.

As a result of the new policy, reinforced by the weakening of the markets for imported gas, Canadian and U. S. commercial parties have been actively renegotiating their gas purchase arrangements. The Economic Regulatory Administration received reports from U. S. importers on this activity in mid-April that indicated progress in achieving more competitive arrangements. Simultaneously, the Canadian federal government, in coordination with the gas producing provinces, undertook a comprehensive review of Canadian export pricing policy.

The price of Canadian gas has been government administered and has been significantly above the U. S. market-clearing levels. The inflexibility of this price has restricted the ability of our importers to renegotiate fully competitive arrangements with Canadian exporters. We were thus pleased with today’s announcement by Canada’s new energy minister of the change to market-oriented pricing for Canadian gas exports. This significant action frees U. S. buyers and Canadian sellers to begin renegotiating pricing components of their contracts, if necessary, to make their arrangements market competitive. This announcement has come in time that should be ample for the commercial parties to review their contracts before the beginning of the next contract year this fall.

Canadian authorities believe that Order 380, as issued, could adversely affect the orderly transition to the market-competitive gas trade framework being established. In view of the just announced action by Canada on gas export pricing, we believe this concern merits consideration. Our position is that Canadian gas must compete in the U. S. marketplace on an equal basis with domestic supplies, and that the transition should occur as soon as possible but in an orderly manner.

In addition to the possible effect of Order 380 on the transition to competitive gas import arrangements, there is special concern in Canada over the consequences of this ruling on the pre-built portions of the Alaska Natural Gas Transportation System (ANGTS).
The reasons for this concern have been expressed by the National Energy Board and the commercial parties involved in the ANGTS pre-build in communications to the Commission. We believe these concerns also merit consideration. As currently financed and utilized, the ANGTS pre-build poses challenging problems for both of our agencies as we work to further competition in the gas industry. We should ensure that our respective regulatory processes allow the commercial parties to find solutions for making this system more competitive.

I trust this information will be useful to the Commission in its deliberations. As stated before, it is not my purpose to propose any specific course of action for the Commission. It is appropriate, however, to share with you our perspective on the trade facet of this important ruling.

This letter reflects the views of the Department of State, as well as the Department of Energy.

Sincerely,

[Signature]

RAIBURN HANZLIK
Administrator
Economic Regulatory Administration

cc: Honorable Georgiana Sheldon
    Honorable A. G. Sousa
    Honorable Oliver G. Richard III
    Honorable Charles Stalon

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Dear Mr. Chairman:

I am writing to bring to your attention several Canadian expressions of concern received at the Department of State about the impact FERC Order 380 relating to minimum commodity bills could have on the export of Canadian gas to the United States.

We have been discussing with the Canadians for over a year in our bilateral Energy Consultative Mechanism (ECM) how to return our bilateral gas trade to a market-sensitive basis. At the last full meeting of the ECM we made good progress and our two Governments issued a joint statement which included the following paragraph:

"The two sides reaffirmed the importance of a stable long-term natural gas relationship. They emphasized such a relationship provides the United States with security of supply and provides Canada with security of demand for the export of gas surplus to its foreseeable domestic requirements. They recognized that in the long run Canadian gas would have to be competitive in U.S. markets, taking into consideration the security provided by the long-term reserve-based nature of Canadian gas export contracts. They further acknowledged, however, that meeting the objective of competitive conditions may require flexibility and adjustments in response to changes occurring in U.S. gas markets. To this end, the two Governments recognized the importance of holding on-going consultations on the natural gas marketing issue and agreed to meet regularly to discuss common objectives, respective natural gas policies and policy developments."

The Honorable
Raymond O' Connor,
Chairman,
Federal Energy Regulatory Commission,
825 North Capitol Street, NE,
Washington, D.C.
As reflected in this joint statement, the goal of our discussions with the Canadians is the same as what we understand to be the goal of FERC Order 380, namely enhancing competition in the market place.

On June 22, Mr. Geoffrey Edge, Chairman of the Canadian National Energy Board, along with members of the Canadian Embassy, briefed Department of State officials on the adverse impact they fear Order 380 could have on Canadian gas exports. When Ambassador Gotlieb came to see me on June 29, he said the Canadian Government had been surprised by Order 380. He outlined Canadian concerns and left the attached letter. On July 3, at the request of the Canadian Government pursuant to Section 8 of the Agreement between Canada and the United States of America on principles applicable to a Northern Natural Gas Pipeline, Mr. Edge and Mitchell Sharp, Commissioner of the Northern Border Pipeline Agency, met with representatives of the Department of Energy and the Department of State to explain further their view that implementation of Order 380 in its present form could have potential adverse effects on our present and future bilateral gas trade.

I understand that the Canadians have also written FERC on this subject. I will not attempt to cover all the Canadian concerns, but during their meetings with us, the Canadians emphasized first the progress they believe they have made toward a market-sensitive gas export policy. Second, citing the 1980 FERC Prebuild orders, the Canadians made it clear they believe that if FERC Order 380 is put into effect in its present form, we will not be living up to what they regard as our commitments regarding the financing, construction, and operation of the Prebuild section of the Alaskan Natural Gas Transportation System (ANGTS). The Canadians emphasized in this regard the importance of special problems for the Prebuild, a project that has been supported by the U.S. Government based on private financing. (See letter of President Carter to Prime Minister Trudeau of July 17, 1980 and the waiver package submitted by President Reagan to Congress in October, 1981 and approved on December 15, 1981.) Finally, they said that, although they accept the objective of increased market competition inherent in FERC Order 380, they need time to renegotiate gas export contracts in order to put them on a more market-sensitive basis.

As a further step, just today, the new Canadian Government has announced what we consider a significant new gas export pricing policy based on negotiated prices between buyers and
sellers reflecting market conditions, and subject to criteria set by the National Energy Board. We expect Canadian experts to brief us the week of July 16 through our bilateral Energy Consultative Mechanism on this new Canadian gas export policy, which will be in effect for the new gas contract year beginning November 1, 1984.

Since the Commission still has before it FERC Order 380, I wanted the record of Canadian concerns expressed to the Department of State to be available, so that you would be aware of them in the context of our foreign relations with Canada. You may include this letter and -- with the concurrence of Canadian authorities -- Ambassador Gotlieb's letter to me in the public record in any proceedings before the FERC.

Sincerely,

Allen Wallis

Enclosure:
As stated.
Mr. W. Allen Wallis  
Under Secretary for  
Economic Affairs  
Room 7256  
Department of State  
2201 C Street  
Washington, D.C. 20520

Dear Mr. Wallis,

Our two governments have been consulting closely and constructively for over a year and a half on the future of our bilateral natural gas trade.

In light of this cooperation, the new U.S. gas import policy guidelines announced in February and aimed at ensuring that imports enter the United States on a competitive, market oriented basis were drafted so as to permit the kind of arrangements which are essential to Canada's remaining a reliable supplier. For its part, the Canadian Government affirmed that Canadian gas will be competitive in the long term in the U.S. market. A comprehensive review of Canadian gas export policy was undertaken and is now near completion.

I am writing to bring to your attention a recent development that could complicate further progress in this important endeavor.

On May 25 the Federal Energy Regulatory Commission issued Order 380 relating to minimum commodity bills between U.S. pipelines and their buyers. We recognize that this Order is not directed at imports, but that it seeks to address what the FERC has identified as an unnecessary restraint on competition within the U.S. natural gas industry. We have, may I emphasize, no reason to question this objective.

Close study of the Order and discussion with the Canadian industry have convinced my Government that, if implemented in its present form, the Order could have serious adverse effects on present and future bilateral gas trade.
These effects go right to the heart of the basis on which Canadian companies are able to supply gas to the export market: the assurance of a revenue stream on which to finance the production and transport of surplus gas from the wellhead to the international border. The serious implications of this do not appear to have been addressed to date in the FERC proceedings.

Because of the potential seriousness of the matter, our National Energy Board has taken the unusual step of making a formal submission to the FERC proceeding on Order 380. I am attaching a copy of the Board's submission and hope you will examine carefully the concerns it raises. Moreover, as you know, in view of the special nature of the project, the Canadian Government has already requested consultations on the implications of Order 380 on the Prebuild, under article 8 of the Northern Gas Pipeline Agreement. These consultations are scheduled for July 3 in Washington, D.C. As well, we understand that several Canadian and U.S. companies have formally requested rehearing.

We are hopeful that Canadian concerns relating to Order 380 will be resolved through the FERC review proceedings and the Prebuild consultations. We believe that this should be possible without prejudicing the objectives of the rulemaking. At the same time, we are seeking your assurance that we will be given an opportunity for further high level discussions as necessary between our two governments before any final actions are taken on this Order, which could adversely affect our long term gas trade.

Yours sincerely,

Allan Gotlieb
Ambassador

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DOE002-1013
Mr. D.W. Campbell
Commissioner, Northern Pipeline Agency
Lester B. Pearson Bldg.
125 Sussex Drive
Ottawa, Ontario KIA OG2

Dear Mr. Campbell:

On January 14, 1992, Mr. Michael J. Bayer, the U.S. Federal Inspector for the Alaska Natural Gas Transportation System ("ANGTS") sent President Bush a report which essentially recommends that the United States abandon its support for the completion of the project. Among other things, Mr. Bayer recommends (1) the repeal of the Alaska Natural Gas Transportation Act ("ANGTA"), which limits the ability of U.S. regulatory and agencies to interfere with the construction of the ANGTS; (2) termination of long-standing agreements with Canada relating to the project; (3) withdrawal of a 1977 presidential decision approving the project; and (4) abolition of the Office of the Federal Inspector.

While Foothills does not object to the abolition of the Office of the Federal Inspector, we believe the Canadian government must strongly protest Mr. Bayer's other recommendations. In our opinion, there is no justification for the United States to repudiate its commitments to Canada on the ANGTS, or to otherwise abandon its support for this important bilateral project.

As you are aware, one of the important cornerstones of the ANGTS is the 1977 "Agreement Between the United States of America and Canada on Principles Applicable to a Northern Natural Gas Pipeline." That agreement--which is still in full force and effect--was designated to provide benefits and protections to both the United States and Canada, with respect to the delivery of gas from both Alaska and Canada's Mackenzie Delta. Significantly, the agreement commits the United States and Canada to take all measures necessary, including legislative measures, to facilitate the construction and operation of the ANGTS.

When the Canadian government approved the "prebuilding" of the existing Foothills system in 1980, in order to provide new Canadian gas exports to the United States, it required additional assurances that the United States government would remain committed to the completion of the entire project. As a result, the U.S. Congress passed a resolution on July 1, 1980, declaring, among other things, that completion of the ANGTS "enjoys the
highest level of Congressional support..." In addition, President Carter sent the Canadian Prime Minister a letter on July 17, 1980, stating:

"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."

In light of these commitments, both the Canadian government and Foothills have frequently expressed their concern over the proposal of Yukon Pacific Corporation to export large volumes of North Slope gas to the Pacific Rim. In response, the United States has consistently asserted that its approval of such exports was not a retreat from the bilateral commitments on the ANGTS. For example, in his 1988 generic finding on Alaskan gas exports, President Reagan stated: "I do not believe this finding should hinder completion of the Alaska Natural Gas Transportation System ("ANGTS"). Moreover, the Department of Energy's 1989 decision authorizing gas exports by Yukon Pacific stated that "DOE does not believe approval of the proposed TAGS export to be inconsistent with the U.S. Government's commitment to ANGTS."

Similar representations have been made directly to Foothills through the years. For example, United States Trade representative Clayton Yeutter sent a letter to Foothills Chairman on July 31, 1987, stating:

"...I am sensitive to existing commitments which could be adversely affected by a decision on ANS exports, and the Administration is pledged to meet certain commitments to the Government of Canada. I can assure you we will meet our commitments fully." (emphasis added).

On the basis of the United States' commitments, which have been reaffirmed repeatedly during the past fifteen years, Foothills has invested approximately $1 billion in Phase I of the project -- i.e., the "prebuild" phase, and many million additional dollars in Phase II, including AFUOC (allowance for funds used during construction).

These investments have been made with the understanding that the United States would continue to honour its commitments on the ANGTS, just as Canada has honoured its commitments. Under these circumstances, it would be patently unfair for the United States to now abandon the project, without regard to the impact on the project's sponsors.

We recognize that completion of the ANGTS has been delayed as a result of the gas surplus which has characterized North American gas markets during recent years. That is no reason, however, to destroy the important work which has been done in both countries. The foundation of the project has
been laid, and it should remain intact, so that Alaskan gas can move to the lower forty-eight states when it is needed--as surely it will be.

Your assistance on this matter is appreciated. If you have any questions, do not hesitate to give me a call.

Yours sincerely,

R.L. Pierce
Chairman and
Chief Executive Officer
February 7, 1992

The Honorable George Bush  
The White House  
Washington, D.C. 20500

Dear Mr. President:

On January 14, 1992, Mr. Michael J. Bayer, the Federal Inspector for the Alaska Natural Gas Transportation System, sent you a report containing certain recommendations with respect to ANGTS.

On behalf of Alaskan Northwest Natural Gas Transportation Company, the general partnership responsible for the Alaskan segment of the ANGTS project, we reiterate our continued support for the project. ANGTS represents the most economic and environmentally sound means of moving Alaskan North Slope gas to market, and the existing legislative and regulatory framework assures that ANGTS can be expeditiously completed when market conditions warrant.

As sponsor of the uncompleted U.S. segment of ANGTS, we urge you to continue honoring the assurances and the commitments made by the government of the United States to the Canadian government in respect to ANGTS. We believe it is important for the United States and Canada to maintain a cooperative working relationship in the energy area as well as other areas of common interest. Moreover, there is no need to burden Congress with the extensive legislative process that would result from a proposal to repeal ANGTA.

We certainly understand, however, the need for maintaining prudent and efficient budget procedures within the Executive Branch while at the same time fulfilling its oversight responsibilities under ANGTA. If the need for such efficiency suggests elimination of OFI and transfer or consolidation of oversight responsibility within an appropriate department of DOE then we encourage your consideration of appropriate legislative and executive action necessary to implement such reorganization.

We appreciate your attention to this matter and are available to discuss this matter with your staff if that is desired.

Respectfully,

Vernon T. Jones  
Chairman of the Board of  
Partners of Alaskan  
Northwest Natural Gas  
Transportation Company

cc: His Excellency  
Derek H. Burney  
The Ambassador of Canada

One Williams Center • P. O. Box 3102 • Tulsa, Oklahoma 74101  
(918) 588-4592

DOE002-1017

Obtained and made public by the Natural Resources Defense Council, March/April 2002
The Embassy of Canada presents its compliments to the
Department of State and has the honour to draw to the
Department's attention certain recommendations made to the
President of the United States by the Federal Inspector of the
Alaska Natural Gas Transportation System in his Report on the
Construction of the Alaska Gas Transportation System dated

Among the Federal Inspector's ten recommendations are
six that are relevant to Canada:

- repeal the Alaska Natural Gas Transportation Act;
- eliminate the exclusive ANGTS route to transport Alaska
  North Slope gas to the Lower 48;
- eliminate the ANGTS project sponsors' unique legal monopoly
  status;
- withdraw the President's Decision and Report, rescinding
  Executive Order 12142 and withdraw Reorganization Plan No. 1 of
  1979;
- terminate the 1977 Agreement of Principles with Canada;
- terminate the 1980 Procurement Procedures Agreement with
  Canada.
The Canadian Government expects that the United States will continue to honour its obligations under the 1977 Agreement of Principles and subsequent assurances given to the Government of Canada with respect to the pipeline. Any action giving effect to the above-noted recommendations would be contrary to the obligations of the United States and would not be acceptable to Canada.

The Embassy of Canada avails itself of this opportunity to renew to the Department of State the assurances of its highest consideration.

Washington, D.C.

14 February 1992
March 12, 1992

President George Bush
Executive Office of the President
1600 Pennsylvania Ave., NW
Washington, DC 20500

Dear Mr. President:

On January 14, 1992, the Office of the Federal Inspector for the Alaska Natural Gas Transportation System (ANFTS) sent you a report which, among other things, recommends abrogation of the Alaska Natural Gas Transportation Act, the 1977 Presidential and Congressional decisions approving the ANFTS, and the U.S./Canadian agreements which underpin the project. According to an article which appeared in a recent edition of Inside E.P.A., the White House has decided to embrace these recommendations. More specifically, the article states that Nicholas Calio, Assistant to the President for Legislative Affairs, has sent a letter to the Chairman of the House Subcommittee on Energy and Power, stating that "the president looks forward to working with you to repeal ANFTS authorities in a time frame consistent with the FY-93 budget."

If these press reports are correct, I strongly urge that you reconsider the actions which have been proposed by the Federal Inspector. While completion of the ANFTS has been delayed as a result of current market conditions, it is clear that the American consumer will eventually need access to Alaskan North Slope gas. It is likewise clear that the ANFTS -- which has been approved by both the United States and Canadian governments -- would be the most economic and environmentally sound means of providing that access.

Significantly, a repeal of the Alaska Natural Gas Transportation Act would expand the authority of the regulatory agencies and the courts to delay the completion of the ANFTS. Moreover, termination of the U.S.-Canadian agreements would leave the United States without any obligation by Canada to permit an overland pipeline across Canadian soil to provide access of Alaskan gas when it is needed. Termination of the U.S.-Canadian agreements would also leave U.S. consumers without agreed-upon protections on such matters as pipeline capacity, rates, tariffs, and taxes.

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DOE002-1020

Obtained and made public by the Natural Resources Defense Council, March/April 2002
Finally, there is simply no reason at this point for the Administration, Congress, and the Canadian government to become involved in a debate on the future of Alaskan gas. There are more pressing problems, particularly the economy, which deserve our immediate attention.

Sincerely,

Bennett Johnston
Mr. James J. Hoecker, Chairman
Federal Energy Regulatory Commission
888 First Street, NE
Room 11A-1
Washington, D.C. 20426

Dear Chairman Hoecker,

I am writing with regard to the "Order Accepting and Suspending Tariff Sheets, Subject to Refund and Hearing" on the Northern Border Pipeline Company (Docket No. RP99-322-0000), issued on June 30, 1999.

In this Order, the Commission states that the Alaska Natural Gas Transportation System (ANGTS) is "no longer viable". Given that the United States and Canada remain bound by the 1977 "Agreement Between the United States of America and Canada on Principles Applicable to a Northern Natural Gas Pipeline" and that the Commission cannot modify action which was approved by Congress, I suspect that it was not the Commission's intention to create uncertainty with regard to the ANGTS.

It would therefore be helpful if the Commission would clarify the meaning of the phrase in question so as to alleviate any concern which may have occurred among interested parties.

Yours sincerely,

Raymond Chrétien

cc: All FERC Commissioners
ORDER ON CLARIFICATION AND REHEARING
AND CONSOLIDATING PROCEEDINGS

(Issued August 31, 1999)

Northern Border Pipeline Company (Northern Border) filed tariff sheets proposing to increase its rates by $30 million and to make other changes. In an order issued June 30, 1999, the Commission accepted and suspended the tariff sheets for the maximum five-month period, to be effective December 1, 1999, subject to refund, conditions, and the outcome of a hearing. ¹ Foothills Pipe Lines Ltd. (Foothills); Husky Gas Marketing Inc., ProGas U.S.A., Inc., and Renaissance Energy (U.S.) Inc. (collectively, Husky); Pan-Alberta Gas Ltd. and Pan-Alberta Gas (U.S.) Inc. (Pan-Alberta/PAGUS); Amerada Hess Corporation (Amerada Hess); and Northern Border ask for clarification or rehearing of various aspects of the June 30 order.

Northern Border was originally planned as part of the Alaskan Natural Gas Transportation System (ANGTS), which would transport gas from Alaska through Canada and into the lower 48 states of the U.S.² Northern Border was to be the eastern leg of the lower-48 state portion of the system, serving Midwest markets. In the early 1980s, the Canadian and lower-48 state portions of the system were built before the Alaskan portion, which has still not been constructed. Northern Border has subsequently expanded its system several times.


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Discussion

For the reasons discussed below, the Commission grants in part and denies in part the requests for clarification or rehearing.

A. Cost-of-service tariff

Foothills, whose subsidiaries are responsible for owning, constructing, and operating the 2,000 mile Canadian segment of the ANGTS, filed a request for clarification, or in the alternative, rehearing of a statement concerning ANGTS that the Commission made in the context of its discussion of Northern Border’s tariff.

Northern Border has what is known as a cost-of-service tariff. Its rates are not based on fully allocated costs or projected units of service during a test period, but rather on the pipeline’s incurred costs which are allocated to its firm services with adjustments every six months. As Northern Border explained, its cost-of-service tariff permits recovery of its cost of service on an actual monthly basis as opposed to designing rates on the basis of an historical, illustrative test year.

In their protests to Northern Border’s filing, Husky and Pan-Alberta/PAGUS objected to Northern Border’s continued use of a cost-of-service tariff, and requested the Commission set that issue for hearing. The June 30 order included the issue of Northern Border’s continued use of its cost-of-service tariff in the hearing established on Northern Border’s filing. The Commission observed that the original pipeline was 822 miles and commenced service in September, 1982, while currently, Northern Border’s pipeline

376 FERC ¶ 61,141 at 61,766 (1996). Revenues from interruptible transportation are credited prior to the allocation of incurred costs to firm service.

4Letter of Transmittal at 1, Docket No. RP99-322-000 (May 28, 1999). Thus, in Order No. 582, the Commission stated that "[b]ecause of the nature of cost-of-service tariffs, Northern Border would only file under section 154.314 when changes in an approved rate of return or services are proposed." Therefore, instead of the schedules required by section 154.312, Northern Border filed Statements L, M, O, and P, and other information under section 154.314 required to support its filing. At Northern Border’s request, the Commission waived the filing requirements in waiver of sections 154.301(a), which concerns the filing of statements and schedules described in sections 154.312; 154.303, which requires statements filed pursuant to section 154.312 to be based on a test period; section 154.311, which requires the updating of certain filed statements; and sections 154.312(a) through (q), which concern the composition of required statements.
extends a total of 1,215 miles and Northern Border has plans for further expansion. The Commission concluded there should be an investigation into the continued viability of Northern Border's cost-of-service tariff under section 5 of the NGA "because the ANGTS is no longer viable and Northern Border has expanded beyond its original pipeline area." In accordance with these findings, the Commission set the matter for hearing.

Foothills does not object to the Commission's decision to set the issue of whether Northern Border should retain a cost-of-service tariff for hearing. However, it asks the Commission to clarify its statement that ANGTS is no longer viable. Foothills asserts the Canadian segment was built in reliance on commitments and assurances given the Canadian government by the United States President and Congress and by the Commission regarding the ANGTS project. Foothills asserts there is no factual evidence for the Commission's statement concerning viability and that the Commission has previously set this issue for hearing without making such a finding.

The Commission grants the motion for clarification. The Commission's intent was to indicate that the immediate conditions surrounding Northern Border's cost-of-service tariff warrant review of that tariff. The Commission did not intend to indicate that the ANGTS project would not be fully implemented or that the Commission would not honor its commitments to that project. The only matter at issue here is Northern Border's rates. The Commission intended to find only that under current circumstances there should be an investigation as to whether Northern Border's current cost-of-service tariff is just and reasonable, and if not, what the just and reasonable tariff should be. The Commission is thus setting the cost-of-service tariff for hearing since the cost-of-service tariff is of primary importance to the determination of Northern Border's rates. Further, Foothills does not object to setting the issue for hearing. Also, circumstances on Northern Border such as its physical configuration have changed over the years, and the intervenors have specifically protested this cost collection mechanism. Further, Foothills does not object to setting the issue for hearing. The intervenors may explore the justness and reasonableness of the cost-of-service tariff through discovery and at hearing.

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5 87 FERC at 62,412.

6 Agreement on Principles Applicable to a Northern Natural Gas Pipeline (September 20, 1977) (included in Presidential Decision Designating Transportation System).

B. The Chicago Project costs

In this rate case, Northern Border has rolled costs of its expansion facilities known as the Chicago Project into its system rates. The Chicago Project consists of facility improvements to expand the capacity of the pipeline's mainline and to extend its existing terminus by 243 miles from Harper, Iowa, to a new terminus south of Chicago, Illinois. The Commission approved the facilities and certificated them on August 1, 1997. The Commission analyzed the rate impact of rolling in the costs of the expansion facilities and found that it was nine percent. Since the rate impact was greater than five percent, the Commission stated that Northern Border was not entitled to a presumption of rolled-in rate treatment. However, on analyzing the benefits to system operations in relation to the nine percent rate impact, the Commission found that Northern Border should be permitted to roll the expansion costs into its existing rates.

On August 1, 1997, the same day it issued the certificate for the Chicago Project, the Commission approved a settlement between Northern Border and its customers in Docket No. RP96-45-000, Northern Border's last general section 4 rate proceeding before this one. The settlement included provisions governing the Chicago Project costs. It contained a "Project Cost Containment Mechanism" (PCCM) which established a "Target Cost" for the Chicago Project of $796.8 million and provided for the treatment of cost overruns and cost savings. The PCCM capped overruns by providing that Northern Border could include the first $6 million of overruns in its rates; could recover 50 percent of the overruns between $6 million and five percent of the Target Cost, and was precluded from recovering overrun costs over five percent of the Target Cost.

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8 Preliminary Determination, 76 FERC ¶ 61,141 (1996); Order Issuing Certificate, 80 FERC ¶ 61,152 (1997).


10 Order Approving Settlement as Modified, 80 FERC ¶ 61,150 (1997).

11 This figure included adjustments for inflation and scope changes, $50 million for contingencies, and $75 million for project management costs. The estimated cost of the project in the certificate order issued August 1, 1997, was $792.6 million. 80 FERC at 61,625.

12 80 FERC at 61,610.
Docket No. RP99-322-001

In the settlement order, the Commission also required Northern Border to file revised cost estimates to be used as the Target Cost for the PCCM within 30 days after final certification of the project in order to reflect the final design changes and the routing approved in the certificate, as well as the inflation factor to be used.\(^\text{13}\) The Commission gave the parties the opportunity to comment on the revised costs. The Commission stated that the final PCCM would be based on the revised cost projections approved by the Commission. On September 2, 1997, Northern Border filed a revised Target Cost of $839,579,123\(^\text{14}\) which the Commission accepted by Letter Order on April 6, 1998. The settlement also required Northern Border to file a final report on its costs of constructing the Chicago Project, to be served on all the parties in the settlement docket, after the expansion is completed.

The Chicago Project apparently was put in service in December, 1998. On December 22, 1998, Northern Border preliminarily advised the Commission that no adjustment to its rate base was warranted due to the PCCM. Intervenors in this proceeding state that on June 22, 1999, Northern Border made its final report describing the cost of the Chicago Project.

Several of the parties protesting or commenting on Northern Border's rate filing in this proceeding requested that issues concerning the application of the PCCM be addressed and resolved in this proceeding, rather than the settlement docket. However, the June 30 order concluded that, since the settlement provided for the final PCCM cost report to be filed in the settlement proceeding in Docket No. RP96-45-000, all issues pertaining to the PCCM should be pursued in that docket when the final report was filed.

On rehearing, Husky and Pan-Alberta/PAGUS ask the Commission to clarify or grant rehearing that the propriety of rolling in the Chicago costs is an issue in the hearing in this case despite the Commission's statement in the June 30 order that all issues pertaining to the PCCM mechanism to control those costs should be pursued in the settlement proceeding. Amerada Hess asks the Commission to consolidate Docket No. RP96-45-000 with this docket.

While the Commission approved rolling in the costs of the Chicago Project in the Order Issuing Certificate, the Commission also recognized in that order that circumstances could change when the Chicago Project was completed and put in service. Thus, the Commission expressly recognized that parties could challenge the rolled-in pricing in

\(^{13}\)80 FERC at 61,614-15.

\(^{14}\)Docket No. RP96-45-005.
Docket No. RP99-322-001

Northern Border’s next rate proceeding (i.e., this one) if there were changes in circumstances such as cost overruns resulting in a rate increase greater than the pipeline’s projected rate increase, failure to realize claimed operational benefits, or inclusion of overrun costs in excess of the estimated costs in Northern Border’s amended application. Consequently, the issue of rolled-in rate treatment may be examined in the hearing in this docket.

The Commission also grants Amerada Hess’s request that the settlement docket, Docket No. RP96-45-000, be consolidated with this docket. The Chicago costs or a portion of them are included in this rate filing. The amount of these costs that can be included in the rates in this filing is governed by the settlement in Docket No. RP96-45-000. That issue is also relevant to resolution of the issue whether rolled-in rate treatment of the Chicago Project is appropriate. Consequently, the resolution of the amount of Chicago Project costs to be included in the rates in this filing, as well as whether the roll-in of those costs is still appropriate, would be facilitated if the two dockets are considered together.

For this reason, the Commission finds Docket Nos. RP96-45-000 and RP99-322-000 should be consolidated. The Commission also requires Northern Border to file a copy of the document referred to above that is dated June 22, 1999 and shows the total costs of the Chicago Project and other matters with the Commission within ten days of the issuance of this order. The presiding ALJ in this proceeding is to determine whether this document is the final report under the settlement and, if it is not, to set a date for the filing of the final report. The ALJ in this proceeding is to conduct any further proceedings appropriate to the PCCM and the settlement in Docket No. RP96-45-000.

D. Depreciation

Northern Border asks the Commission to clarify its statement in the June 30 order that there is not enough information concerning its depreciation rates and it should consider filing supplemental direct testimony to support those rates. It asserts it has made no change to its depreciation rates so that the burden of proof is on an opposing party to show that the existing depreciation rates are unjust and unreasonable.

Northern Border’s depreciation rates were established in the settlement in Docket No. RP96-45-000, and there is no explanation in this docket as to how they were derived. The Commission recently considered a similar case in Northwest Pipeline Corp., 87 FERC ¶ 61,266 (1999). There the Commission held that the burden of proving that unchanged depreciation rates were not justified.

1580 FERC at 61,633. The Commission also noted that under the settlement in Docket No. RP96-45-000, Northern Border agreed to absorb a portion of cost overruns pursuant to the PCCM. 80 FERC at 61,633 n. 41.
depreciation rates are just and reasonable is on the pipeline, where the pipeline proposes an overall rate increase. Here, as there, the pipeline had filed under Section 4 of the NGA to increase its rates. The Commission found the pipeline’s burden of supporting its proposed rate increase includes the burden of supporting the dollar amount of each item in the cost of service since each item in the pipeline’s proposed cost of service is a part of the pipeline’s proposed rate increase. The Commission stated this includes unchanged cost of service items, citing National Fuel Gas Supply Corp. v FERC, 51 FERC ¶ 61,122 at 61,334 (1990), and Algonquin Gas Transmission Co. v FERC, 64 FERC ¶ 61,293 at 63,029 n.16 (1993).

The Commission noted in Northwest that it has specifically held that it has authority to act under Section 4 of the NGA to reduce a depreciation rate and order refunds, even where the pipeline has not proposed a change in its depreciation rate, as long as the as-filed depreciation rate is a part of a proposed overall rate increase. Tennessee Gas Pipeline Co. v FERC, 55 FERC ¶ 61,020 at 61,108 (1983), reh’g denied on this issue, 26 FERC ¶ 61,109 at 61,263-64 (1984). The Commission observed that it had distinguished a prior decision of the U.S. Court of Appeals for the District of Columbia Circuit holding that the Commission must proceed under NGA Section 5 to change existing cost allocation methods. The Commission found the Court did not preclude a review under Section 4 of cost of service components integral to an overall rate increase.

The Commission also held in Northwest that its holding is consistent with the Court’s statement in Western Resources, Inc. v FERC, 9 F.3d 1568, 1579 (D.C. Cir. 1993), that “[w]e appreciate that minor deviations from the pipeline’s proposed rate based, for example, upon differences as to the extent of specific cost items, may be handled in a Section 4 proceeding.” The Commission found there that the change in depreciation rate proposed by the opponents in Northwest had a relatively minor effect on the pipeline’s overall cost of service, and so might the Commission find here.

Since the burden of proving that its depreciation rates are just and reasonable is on Northern Border, the pipeline must file direct testimony under 18 C.F.R. § 154.301(c) as part of its case-in-chief if it intends to sustain that burden.

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16See also 18 C.F.R. 154.301(c) (1999).

Docket No. RP99-322-001

The Commission orders:

(A) The requests for clarification and rehearing are granted or denied as discussed in the body of this order.

(B) Docket No. RP96-45-000 is consolidated with this docket and the presiding ALJ in this docket is to take all appropriate actions with respect to Docket No. RP96-45-000 as discussed in the body of this order.

(C) Northern Border is required to file a copy of the document dated June 22, 1999 describing the total costs of the Chicago Project and other matters within ten days of this order.

By the Commission.

(SEAL)

David P. Boergers,
Secretary.