Paragraph 4: Financing

Subparagraph (a) states the understanding of both Governments that the project will be privately financed. It is also recognized that both Governments have to assure themselves that the project can be so financed before construction is allowed to begin.

Subparagraph (b) commits both Governments to use a variable rate of return on pipeline company equity capital as an incentive device to avoid cost overruns and to minimize costs consistent with sound pipeline management. Under this device, a higher-than-usual rate of return on pipeline company equity capital is allowed in the cost of service if the company is able to meet or better its estimates of capital costs for the project. Conversely, a lower-than-usual rate of return on equity is included in the cost of service if the project overruns its capital cost estimates. The base capital cost estimates which will be used for administering the variable rate of return device in Canada are set forth in the Agreement as Annex III.

Although the details of the variable rate of return device remain to be worked out by the Federal Power Commission and the Canadian National Energy Board, it will have the effect of insulating the consumer somewhat from the effect of cost overruns in project construction. If the amount of capital costs reflected in the cost of service is relatively low, then the return-on-equity component of that cost is allowed to be higher than usual. On the other hand, if the total capital costs are higher than estimated, the increased cost of service can be offset by reducing that portion of it which is included for return on pipeline company equity capital. The overall effect on the cost of service is to narrow somewhat the expected range by trading off return to the pipeline company against performance by the company in holding down capital costs. Additional information on the variable rate of return concept is given in the section of the Decision dealing with financing.

Subparagraph (c) states that neither the variable rate of return on equity nor any unusual provisions in the debt instruments concluded in financing the main line will be allowed to interfere with the financing of the Dempster Line.

Paragraph 5: Taxation and provincial undertakings

Subparagraph (a) reiterates commitments of the two Governments under the Transit Pipeline Treaty and attaches statements by the Governments of the three western provinces expressing their agreement with the principles in the Treaty. In addition to guarantees against interruptions in flow, the Treaty covers fees, duties, taxes or other monetary charges, and assures that such charges will be the same for transit pipelines as for similar pipelines located within the jurisdiction of the responsible public authorities within each country.

As there are no similar pipelines in the Yukon Territory, it was desirable to reach an understanding on the taxation regime applicable to the Pipeline in that Territory. Subparagraph (b) lays out the principles of that taxation regime, which is comparable to that in the State of Alaska. Those principles are as follows:
1. The Yukon Property Tax is defined as property taxes and all other direct taxes\textsuperscript{33} which are levied exclusively or virtually exclusively on the Pipeline. (Clause i)

2. Prior to authorization of initial operation of the Pipeline, the Yukon Property Tax will not exceed the following:
   1980—$5 million Canadian;
   1981—$10 million Canadian;
   1982—$20 million Canadian; and
   Any year after 1982 during which operation of the Pipeline is not yet authorized—$25 million Canadian. (Clause ii)

3. From the first full year that the Pipeline is authorized to open operation through 2008 (or until the Dempster Line is authorized to open, if that occurs earlier), the Yukon Property Tax will not exceed $30 million Canadian, adjusted for inflation after 1983 using the Canadian Gross National Product price deflator (the GNP deflator). (Clause i)

4. The $30 million maximum level of taxation applies to the Pipeline at a throughput of 2.4 bcf/d of U.S. gas and 1.2 bcf/d of Canadian gas. If the capacity of the Pipeline is increased for U.S. gas prior to the connection of the Dempster Line, the $30 million base figure could be increased by the same proportion as the increase in gross asset values of the Pipeline facilities. (Clause vi)

5. If at the end of 1987 it is found that the per capita revenues received from property taxes, other than the Pipeline, plus grants to local governmental units, have increased during the period 1983 through 1987 at a faster rate than the GNP deflator, the Yukon Property Tax may undergo a one-time adjustment for the year 1987 to raise the permitted maximum to the level it would have been, had it been increasing at the rate of increase of other YTG per capita revenue. (Clause iv)

6. After January 1, 1988, the Yukon Property Tax is permitted to rise either with the GNP deflator or with the rate of increase in YTG per capita revenue (excluding tax on the Pipeline), whichever is greater. (Clause v)

7. If the Alaska property tax rate on pipelines increases between now and 1983 at a rate faster than the Canadian GNP deflator, an adjustment in the permitted $30 million maximum is allowed; and after leave to open the Pipeline in the Yukon is granted, the permissible Yukon property tax may be adjusted to reflect increases of Alaska property tax on the Pipeline greater than increases otherwise permitted in the Yukon Property Tax. (Clauses vii and viii)

8. Clause ix provides that the Yukon socioeconomic fund costs will not be reflected in cost of service to U.S. shippers. No other special fund having an effect on cost of service will be permitted in the Yukon unless such a fund is required by the State of Alaska.

9. If the Dempster Line is connected, the Yukon Property Tax will be governed by the tax treatment applied to the Dempster Line, under the terms of the Transit Pipeline Treaty (clause iii). In Subparagraph (c) the Canadian Government will endeavor to ensure that tax treatment of the Dempster Line in the Northwest

\textsuperscript{33}Under Canadian law, the Yukon Territorial Government can impose only direct taxes. Indirect taxes can only be levied by the Canadian Federal Government, and are, therefore, governed adequately by the Transit Pipeline Treaty.
Territory is reasonably comparable to that in the Yukon Territory. (Clause iii and Subparagraph (e))

10. If the Dempster Line is not connected, the permissible limit of the Yukon Property Tax will expire on December 31, 2008 (25 years after the date when the Alaska gas is expected to begin flowing), at which time it will be renegotiated. (Clause iii)

Paragraph 6: Tariffs and cost allocation

Subparagraph (a) outlines the general methods of cost allocation for the portions of the Pipeline in Canada. The Pipeline will be divided into zones (Annex II contains the description of the zones) corresponding to segments of the system delineated by any of the following boundaries:

- Gas input and takeout points.
- Changes in Pipeline ownership.

Cost of service to each shipper in each zone will be determined by allocating the total costs of constructing and operating the Pipeline in that zone among the shippers transporting gas through it in proportion to the volumes of gas transported for each shipper.

Subparagraph (b) describes the cost allocation method for Zone 11 (the extension of the Dempster Line from Dawson to Whitehorse known as the “Dawson Spur”) if and when the Dempster Line is constructed. In general, the cost of service for the Dawson Spur is to be shared by Canadian and U.S. shippers. The proportionate sharing is to be linked to the degree of cost overruns sustained in constructing the Canadian segments of the Pipeline. In no event is the share to be paid by U.S. shippers less than the fraction of the U.S. gas transported by the system after Canadian gas has been connected to the system. The cost service to U.S. shippers will be affected more by reduced cost overruns than by the U.S. share of the cost of service for the Dawson Spur.

For a case with system transportation of 2.4 bcf/d of U.S. gas and 1.2 bcf/d of Canadian gas, the U.S. shippers' share of the Dawson Spur cost of service would be two-thirds if cost overruns were 45 percent. If cost overruns are reduced from 45 percent, the U.S. shippers' share of the cost of service increases on a straight-line basis, until at an overrun level of 35 percent, the U.S. shippers' share is 100 percent.

If U.S. gas is a larger proportion than two-thirds of the total gas carried in the Pipeline, the minimum proportion of the cost of service on the Dawson Spur to be paid by U.S. shippers is correspondingly higher. If the system is carrying three-quarters U.S. gas, for example, then the minimum proportion of the cost of service on the Dawson Spur which will be paid by U.S. shippers is 75 percent. From that minimum, the U.S. shippers' share of the cost of service increases with reduced cost overruns until their share reaches 100 percent at the 35 percent cost overrun level. The de-

— In order to assure full Federal Government jurisdiction over the Pipeline, the Canadian National Energy Board required the sponsoring companies to restructure their corporate form. The pipeline company sponsors are to form a Federally-chartered umbrella company, Foothills Pipe Lines, Ltd., which will own 51 percent of subsidiaries which will construct and operate segments of the Pipeline within the different provinces. The other 49 percent of each subsidiary will be owned by the respective parent companies of Foothills in their traditional business areas.

— Volumes of commingled gas streams will be adjusted to reflect the original Btu content of the source gas and such volumes will be used for allocating costs.
gree of cost overrun between 35 and 45 percent always corresponds to the same U.S. shippers' share of the cost of service on the Dawson Spur; only the minimum U.S. shippers' share varies with the proportion of total gas transported which is U.S. gas.

This cost-sharing arrangement is intended to provide benefits to transportation of Canadian gas which would have been provided by diverting the Pipeline north through Dawson City and along the Klondike Highway as required by the National Energy Board. Had the diversion been implemented, U.S. shippers would have been paying a volumetric proportion of the cost of service of the main line between Dawson and Whitehorse after the Dempster Line was connected, and all of the cost of service for that segment if the Dempster Line was never connected. Under the agreed arrangement, U.S. shippers will pay a volumetric proportion of the cost of service on a smaller, less expensive pipeline from Dawson to Whitehorse only after the Canadian gas is connected, and will pay nothing for that segment if the Dempster Line is never built. The agreed arrangement provides the same transportation benefits to Canadian gas at lower cost to both Canadian and U.S. shippers.

The agreed arrangement also imposes a ceiling on U.S. liability for the Dawson Spur at 35 percent above filed costs. The Canadians, in turn, can credit savings achieved on the main line system against cost overruns on the Dawson Spur prior to applying the ceiling. The savings that can be credited against the cost overruns on the Dawson Spur may be either of the following:

A volumetric proportion of savings achieved in segments through which joint volumes will be transported; and

100 percent of savings achieved in segments which will carry only U.S. gas.

However, at a minimum, the U.S. shippers' share of the cost of service on the Dawson Spur will be the fraction of the total gas carried in the Pipeline which is U.S. gas. More detail on the specifics of cost allocation for the Dawson Spur is given in Annex III to the Agreement.

Subparagraph (c) of this Paragraph in general provides for review and subsequent agreement by both Governments on cost allocation methods in the event that volumes of gas to be shipped exceed the efficient transmission capacity of the Pipeline. Subparagraph (d) limits costs for the Dawson Spur allocated to U.S. shippers to those that would be incurred for installation of a 42-inch system, plus those installed within 3 years of the date when the system commences operation. Subparagraph (d) also requires the system installed for the Dawson Spur to be the same as that for the Dempster Line, in order to prevent loading of costs onto the Dawson Spur.

Paragraph 7: Supply of goods and services

Subparagraph (a) ensures that contracting for supply of goods and services to the Pipeline will be on generally competitive terms. This provision is intended to prevent cost overruns and time delays due to Canadian source restrictions on procurement for pipeline projects constructed within Canada.

Subparagraph (b) provides a mechanism for presenting grievances when the objectives with regard to competitive terms in Sub-
paragraph (a) are not being met. Subparagraph (b) also specifies possible actions to be taken in the event of a favorable determination on a plaintiff's grievance including:

Renegotiation of contracts, or
Reopening of competitive bidding.

Paragraph 8: Coordination and consultation

This paragraph provides for appointment by both Governments of a senior official to represent that Government in periodic consultations on progress in implementing this Agreement. The respective senior officials may, in turn, designate additional representatives to work out any particular problems which may arise in the course of constructing and operating the Pipeline.

Paragraph 9: Regulatory authorities—consultation

This paragraph provides for consultation between the respective regulatory authorities in the U.S. and Canada, primarily the U.S. Federal Power Commission and the Canadian National Energy Board. In particular, the two authorities will need to work out matters relating to financing, tariffs, taxation and cost allocation as they relate to determination of the cost of service for the Pipeline.

Paragraph 10: Technical study group on pipe

The two Governments are agreed that a higher-capacity pipeline system than was proposed by the sponsoring companies is to be installed south of the interconnection point for the Dempster Line at Whitehorse, in order to carry joint gas volumes more efficiently. However, there is some reservation, particularly on the part of the Canadian Government and the Canadian pipeline company sponsors, about the technical feasibility of a higher-pressure system, such as had been proposed by the Arctic Gas consortium. Although Canadian Government representatives are agreed on the need for a higher-capacity system, their preference on the grounds of expected safety and reliability is for larger-diameter pipe, which has many of the same advantages in increased efficiency as the higher-pressure system.

Subparagraph (a) establishes a joint technical study group for the purpose of evaluating the relative merits of the larger-diameter and higher-pressure systems which have been suggested, as well as any other combinations of pressure and pipe size which might achieve objectives of increased efficiency. The 48-inch, 1,260 pounds per square inch (psi) design which was proposed by the applicant and will likely be installed from Whitehorse north to the Frudhoe Bay field will also be evaluated by the group. Final decisions based on the results of the testing program will remain the responsibility of the respective regulatory authorities in the two countries.

Subparagraph (b) states that whatever higher-capacity system is chosen will be installed from the interconnection point near Whitehorse to the point near Caroline, Alberta, where the Pipeline bifurcates into a western and an eastern leg.

Paragraph 11: Direct charges by public authorities

Subparagraph (a) provides that either Government can request consultations in the event that any public authority seeks to im-
pose a direct charge on the Pipeline which might be considered properly the responsibility of the sponsoring company, rather than an item which should be included in the cost of service.

Subparagraph (b) identifies generally the types of direct charges by public authorities which will be permitted to be included in the cost of service. Such charges will include only:

Those considered by the appropriate regulatory authority to be just and reasonable on the basis of accepted regulatory practice, and

Those normally imposed on natural gas pipelines in Canada.

A list of examples of direct charges is attached to the Agreement as Annex IV and includes:

- Extraordinary highway maintenance due to heavy vehicle traffic,
- Airfield and airstrip repairs,
- Drainage maintenance, and
- Erosion control, etc.

Direct charges will be subject to the tests in the appropriate legislation prior to inclusion in the cost of service.

Paragraph 12: Other costs

This Paragraph provides that no charges will be considered for inclusion in the cost of service other than those:

- Imposed by a public authority under the terms of the Agreement or the Transit Pipeline Treaty,
- Normally paid by natural gas pipelines in Canada under accepted regulatory practice, or
- Caused by Acts of God or other unforeseen circumstances.

Paragraph 13: Compliance with terms and conditions

This Paragraph provides that each Government will implement the principles directly applicable to construction, operation and expansion of the Pipeline through imposition of terms and conditions on the authorizations it issues. In the event that a Pipeline owner does not fulfill one or more of the terms and conditions, the Government will not be held responsible for that nonfulfillment, but will take appropriate action to cause the owners to remedy or interrogate the adverse consequences of that nonfulfillment.

Paragraph 14: Legislation

This Paragraph commits both Governments to seek expeditiously all legislative authorities which might be required to implement the Agreement and to facilitate timely and efficient construction of the Pipeline. This provision specifically refers to legislation to remove delays to construction of the Pipeline.

Paragraph 15: Entry into force

This paragraph provides that the Agreement will become effective upon signature, and will continue in effect for 35 years and thereafter until terminated on 12 month’s notice by either Government. The provisions of the Agreement which required legislative action will become effective when the required legislative action has been completed.
At the end of the agreement there are several Annexes which append specific information or explain a particular feature of the Agreement in more detail.

Annex I: Description of the route
(Self-explanatory).

Annex II: Zones for the pipeline in Canada

This Annex specifically identifies the zones for cost allocation under the method described in Paragraph 6. It gives the boundaries of the zones.

Annex III: Cost allocation in Zone 11

This Annex describes the cost allocation agreement for the Dawson Spur, which was outlined in Paragraph 6, in more detail. In particular, the computation of the ceiling on U.S. shippers' liability for the cost of service on the Dawson Spur is set forth in some detail.

The Annex also contains detailed specification of the filed capital costs for Canadian portions of the system which will be used to determine cost overruns for the purposes of cost allocation for the Dawson Spur. Possible adjustments of those costs in limited circumstances are also covered.

Annex IV: Direct charges by public authorities

This Annex is a list of typical direct cost items for use with the limitation on direct charges by public authorities in Canada; the limitation is in Paragraph 11 of the Agreement.

Annex V: Statements by the provincial governments

Public statements by the Governments of the three western provinces are attached in which they agree to the principles of the Transit Pipeline Treaty. Each also undertakes to work out with the Canadian Government a Federal-Provincial Agreement.

CHAPTER XII—SUMMARY OF COMMENTS RECEIVED

Throughout the period during which an Alaska natural gas transportation system has been under consideration, many comments concerning the decision have been sent to the various Federal agencies involved in the decision process. Comments have come from all parts of the American public, including private citizens, businesses, labor unions, municipalities, legislators and Governors. They ranged from expressions of support for a specific proposal to suggestions of alternative and often innovative methods of building a gas delivery system.

By far, the majority of comments were received within the past few months in response to a Federal Register notice on June 14, 1977, advising the public of Section 6(b) of the Alaska Natural Gas Transportation Act of 1976 which invites comments from Governors, municipalities, and other interested parties. Letters soliciting comments were written to the Governors of all the States, and
meetings were held on several occasions with a committee of State Public Utility Commissioners.

The comments received in the period since the FPC's Recommendation to the President have been of two basic types—those supporting a specific proposal, and those commenting on certain aspects of the FPC recommendations. Almost all the letters received favored the delivery of the North Slope gas to the lower-48 states. Very few suggested that construction of a delivery system be significantly delayed or that no system be built.

COMMENTS ON SPECIFIC PROJECTS

Arctic gas

The supporters of Arctic Gas most often cited Arctic's claims of lower cost of service and fuel use; ability to connect Prudhoe Bay and Mackenzie Delta reserves with one pipeline; and the opportunity to maintain Canadian gas exports once the Mackenzie Delta reserves were connected. The unfavorable comments generally concerned the environmental impacts of crossing the Arctic National Wildlife Range (ANWR); higher potential for delay and cost overrun due to winter construction, use of snowroads, and regulation by two countries. The unsettled status of the Canadian native land claims was stressed as a factor which would cause delays or preclude construction.

Before the July 4th Canadian NEB decision, the Arctic Gas proposal received support from municipalities and businesses in the Midwest and California; the Governors of Arkansas, Kansas, Wisconsin, Minnesota, Massachusetts, Ohio, Maryland, Illinois; and many private citizens from all parts of the country. The Governors of California and Montana also supported an overland route.

El Paso

Support for the El Paso proposal was primarily based on the fact that El Paso would lie entirely within the United States. According to its supporters, this fact would result in greater domestic employment, higher tax payments, better security of supply, and regulatory control by one country. Another favorable point for El Paso cited was that it used the existing Alyeska transportation corridor and facilities.

The principal negative comments concerned El Paso's higher cost of service; the location of its LNG plant in active seismic zones; difficulty of siting the regasification plant in Southern California; and the possibility that it would foreclose delivery of additional Canadian gas supplies.


Alcan

Alcan's supporters often cited this proposal as an example of the success of the National Environmental Policy Act (NEPA) because the proposal developed as an alternative which achieved the
economies of scale of a pipeline while avoiding the environmentally sensitive ANWR and Arctic regions. Alcan also received support because it generally follows existing transportation corridors. It seemed even greater after the NEB selected the Alcan proposal and stated that construction of a Trans-Canadian pipeline would facilitate maintenance of Canadian gas exports.

The negative comments on Alcan were that it had a less developed hearing record; would incur more delays by being subject to regulation by two countries; would lack adequate pre-construction planning; would require settlement of Canadian Native claims in southern Yukon; and would need additional environmental studies. Concerns were raised about the conditions imposed by the NEB, such as the socioeconomic impact fund and the requirement to increase capacity to carry Canadian gas in the system.

Support for the Alcan proposal has come from the major environmental organizations and the Governors of Wyoming, Nevada, Oregon, Colorado, and Utah.

COMMENTS ON SPECIFIC FPC RECOMMENDATIONS

Formula wellhead pricing

The producers and the State of Alaska strongly opposed the FPC recommendation for "formula pricing" of the wellhead price. They contended that this approach forced the producers to share the risk of the project—even if they were not investors. This would serve to inhibit further exploration for gas in northern Alaska. They also argued this proposal would reduce the sponsor's incentive to manage the project properly.

Minimum throughput requirements

The producers also opposed this recommendation because contending that throughput should be established by the behavioral characteristics of the reservoir and by the State of Alaska.

Widespread distribution of gas

The members of the Arctic Gas Consortium strongly opposed this recommendation. They argued that this requirement would be a disincentive for prospective members to join the consortium; would be unfair and discriminatory to companies who could purchase more than the maximum; and would result in discriminatory treatment of Alaskan gas compared with other fuel sources. Alcan, however, supported the widespread distribution requirement.

Western Leg

The FPC recommendation to delay the decision on the Western Leg was opposed by Arctic, Alcan and the State of California. It was argued that this recommendation is inconsistent with the requirements of Alaska Natural Gas Transportation Act. They also felt that new facilities will be required to deliver Alaska gas to the West.
ALASKA NATURAL GAS TRANSPORTATION SYSTEM:
WAIVERS OF LAW

Waivers of Law.—The President submitted to the Congress findings and proposed waivers of law on October 15, 1981. The President’s proposed waiver was approved by Public Law 97-93 (Dec. 15, 1981; 95 Stat. 1204) pursuant to the procedures of section 8 of the Alaska Natural Gas Transportation Act of 1976.
MESSAGE TO THE CONGRESS SUBMITTING A PROPOSED WAIVER OF LAW. OCTOBER 15, 1981

To the Congress of the United States:

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

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

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

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

RONALD REAGAN.

THE WHITE HOUSE, October 15, 1981.

FINDINGS AND PROPOSED WAIVER OF LAW


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

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

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

Section 2, Paragraph 3, First Sentence, of the President's Decision, to include the gas conditioning plant in the approved transportation system and in the final certificate to be issued for the system; and the application of Section 5, Condition IV–2 of the President's Decision to the gas conditioning plant; and

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

(a) to permit recovery of the full cost of service for the pipeline in Canada to commence—

(1) upon completion and testing, so that it is proved capable of operation; and

(2) not before a date certain, as determined (in consultation with the Federal Inspector) by the Federal Energy Regulatory Commission in issuing a final certificate for the approved transportation system, to be the most likely date for the approved transportation system to begin operation; and

(b) to permit recovery of the actual operation and maintenance expenses, actual current taxes and amounts necessary to

†See: Executive Office of the President, Energy Policy and Planning, Decision and Report to Congress on the Alaska Natural Gas Transportation System (September 1977) (hereinafter referred to as President's Decision); and see H.J. Res. 621, Pub. L. No. 95–158 (1977), wherein the President's Decision was incorporated and ratified by Congress pursuant to Section 8(a) of ANGTA.

service debt, including interest and scheduled retirement of
debt, to commence—
(1) for the Alaska pipeline segment—
   (A) upon completion and testing of the Alaska
   pipeline segment so that it is proved capable of
   operation; and
   (B) not before a date certain, as determined (in
   consultation with the Federal Inspector) by the Fed-
   eral Energy Regulatory Commission in issuing a final
   certificate for the approved transportation system, to
   be the most likely date for the approved transpor-
   tation system to begin operations; and
(2) for the gas conditioning plant segment—
   (A) upon completion and testing of the gas condi-
   tioning plant segment so that it is proved capable of
   operation; and
   (B) not before a date certain, as determined (in
   consultation with the Federal Inspector) by the Fed-
   eral Energy Regulatory Commission in issuing a final
   certificate for the approved transportation system, to
   be the most likely date for the approved transpor-
   tation system to begin operation.

Waive Pub. L. No. 688,* 75th Cong., 2d Sess. [Natural Gas
Act] in the following particulars:
Section 7(c)(1)(B) of the Natural Gas Act to the extent that sec-
  tion can be construed to require the use of formal evidentiary hear-
  ings in proceedings related to applications for certificates of public
  convenience and necessity authorizing the construction or operation
  of any segment of the approved transportation system; Provided,
  however, that such waiver shall not preclude the use of formal evi-
  dentiary hearing(s) whenever the Federal Energy Regulatory Com-
  mission determines, in its discretion, that such a hearing is neces-
  sary; and
Sections 4, 5, 7, and 16 of the Natural Gas Act to the extent
that such sections would allow the Federal Energy Regulatory
Commission to change the provisions of any final rule or order ap-
proving (a) any tariff in any manner that would impair the recov-
er of the actual operation and maintenance expenses, actual cur-
rent taxes, and amounts necessary to service debt, including inter-
est and scheduled retirement of debt, for the approved transpor-
tation system; or (b) the recovery by purchasers of Alaska natural
gas of all costs related to transportation of such gas pursuant to
an approved tariff; and
Sections 1(b) and 2(6) of the Natural Gas Act to the extent nec-
essary to permit the Alaskan Northwest Natural Gas Transpor-
tation Company or its successor and any shipper of Alaska natural
gas through the Alaska pipeline segment of the approved transpor-
tation system to be deemed to be a "natural gas company" within
the meaning of the Act at such time as it accepts a final certificate
of public convenience and necessity authorizing it to construct or
operate the Alaska pipeline segment and the gas conditioning plant
segment of the approved transportation system or to ship or sell

gas that is to be transported through the approved transportation system; and

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

(1) the exportation of Alaska natural gas to Canada (to the extent that such natural gas is replaced by Canada downstream from the export); and

(2) the importation of natural gas from Canada (to the extent that such natural gas replaced Alaska natural gas exported to Canada); and

(3) the exportation from Alaska into Canada and the importation from Canada into the lower 48 states of the United States of Alaska natural gas.

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

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

(1) the exportation of Alaska natural gas to Canada (to the extent that such natural gas is replaced by Canada downstream from the export); and

(2) the importation of natural gas from Canada (to the extent that such natural gas replaced Alaska natural gas exported to Canada); and

(3) the exportation from Alaska into Canada and the importation from Canada into the lower 48 States of the United States of Alaska natural gas.

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*42 U.S.C. §6201, et seq.
February 5, 2001

The Honorable Frank Murkowski
Chairman
Committee on Energy and Natural Resources
United States Senate
Washington, DC 20510

The Honorable Jeff Bingaman
United States Senate
Washington, DC 20510

Dear Chairman Murkowski and Senator Bingaman:

We are writing to express our strong support for passage of S. 60, the "National Electricity and Environmental Technology (NEET) Act" as part of comprehensive energy legislation to be considered by the 107th Congress. A copy of the NEET bill is attached.

The Coal-Based Generation Stakeholders Group is a diverse group of investor-owned utilities, rural electric cooperatives, public power entities, coal producers, and railroads. The group believes that the option to generate electricity from coal – which remains America's most abundant energy resource – should be preserved and enhanced in order to (1) sustain our strong economy; (2) ensure the generation of affordable and reliable electricity; (3) maintain a diverse fuel supply; (4) continue to reduce emissions; and (5) provide secure jobs for American workers.

Overall emissions from U.S. coal-fired generating plants have fallen by more than 20 percent over the last 30 years, at the same time that electricity produced from coal has tripled. To continue this dramatic environmental improvement and to preserve the option for new coal-based generating plants, the development and commercialization of even more efficient and lower emitting clean coal technologies must be encouraged.

The purpose of the NEET Act is to establish a comprehensive coal-based technology program to reduce emissions by improving efficiency in existing coal-based generating plants, and to stimulate the deployment of advanced technologies to further reduce emissions and improve efficiency in new generating facilities.

The measure would accomplish this goal by enhancing funding for coal-based research and development, providing a measure of burden-sharing to improve the operational and environmental performance of existing coal-based generating facilities, and adopting financial incentives and risk sharing arrangements for a limited number of advanced clean coal technology demonstration projects.
We look forward to working closely with you on the NEET legislation and the other vital components of a comprehensive national energy strategy.

Sincerely,

Stephen Addington, President, AEI Resources
Don Blankenship, President and COO, A.T. Massey Coal Company
Travis Bowden, President and CEO, Gulf Power Company
Wayne Brunetti, President and CEO, Xcel Energy
Peter Burg, Chairman and CEO, FirstEnergy Corporation
James Crawford, Chairman and CEO, James River Coal Company
Richard K. Davidson, Chairman and CEO, Union Pacific
E. Linn Draper, Chairman, President and CEO, American Electric Power
Anthony Earley, Chairman and CEO, DTE Energy Company
Irl Engelhardt, Chairman and CEO, Peabody Group
Glenn English, CEO, National Rural Electric Cooperative Association
Dwight H. Evans, President and CEO, Mississippi Power Company
Thomas Farrell II, CEO, Dominion Energy
Jack Gerard, President and CEO, National Mining Association
Gary Goldberg, President and CEO, Kennecott Energy
David Goode, Chairman, President and CEO, Norfolk Southern
Thomas Grennan, Executive Vice President, Western Resources
Edward Hamberger, President and CEO, Association of American Railroads
Elmer Harris, President and CEO, Alabama Power Company
J. Brett Harvey, President and CEO, CONSOL Energy
Michael Haverty, President and CEO, Kansas City Southern
William Hecht, Chairman, President and CEO, PPL Corporation
G. Edison Holland, Jr. President and CEO, Savannah Electric Power Company
James Jura, General Manager, Associated Electric Cooperative
Thomas Kuhn, President, Edison Electric Institute
Steven Leer, President and CEO, Arch Coal
Bill McCormick, Chairman and CEO, CMS Energy Corporation
Charles McClary, President, Southern Company Generation
Stephen Miller, President, Center for Energy and Economic Development
Charles Muller, Chairman, President and CEO, Ameren Corporation
Robert Murray, President and CEO, Ohio Valley Coal Company
Alan Noia, Chairman, President, and CEO, Allegheny Energy
Erle Nye, Chairman and CEO, TXU Corporation
Paul Oakley, Executive Director, Coalition for Affordable and Reliable Energy
Roy Palik, President and CEO, East Kentucky Power Cooperative
James Pignatelli, Chairman, President and CEO, UniSource Energy Corporation
Gary Rainwater, President and CEO, AmerenCIPS
David Rafcliffe, President and CEO, Georgia Power Company
Alan Richardson, Executive Director, American Public Power Association
Rob Ritchie, President and CEO, Canadian Pacific Railway
James Roberts, President and CEO, RAG American Coal Holding
James Rogers, Chairman, President and CEO, Cinergy
Matthew Rose, President and CEO, Burlington Northern Santa Fe
Edwin Russell, Chairman, President and CEO, ALLETE
Richard Silverman, General Manager, Salt River Project
Peter Skrgic, President, Allegheny Energy Supply
John Snow, Chairman and CEO, CSX Corporation
Wesley Taylor, President, Generation Business Unit, TXU Corporation
Paul Tellier, President and CEO, Canadian National
diversity

key to affordable and reliable electricity
Enact a National Energy Program Based on Fuel Diversity.

Maintaining a diversity of supply options is key to affordable and reliable electricity. Policymakers and regulators should work together to reconcile conflicting energy, environmental, or other public policy goals. They should promote initiatives that capitalize on all of our nation's abundant natural resources. They should address challenges that limit the development and viability of fuel sources. Finally, they should implement a national energy program that:

- Maximizes the diversity of fuels and technology options available for the generation of electricity.
- Examines a comprehensive approach to the implementation of environmental regulations in order to reduce compliance costs and regulatory uncertainty.
- Promotes the development of technologies to improve energy efficiency, to enhance energy conservation, and to increase the environmental performance of fuels in the generation mix.
- Places an emphasis on market-based approaches (e.g., trading programs or results-based approaches), rather than on specific technology or prevention processes, to achieve important environmental or other societal goals.
- Removes barriers to siting electric generating stations, transmission lines, and gas pipelines.
- Revamps the process for licensing and relicensing hydropower facilities.
- Focuses the nation's tax policy on bringing new and advanced energy technologies, including electricity generation technologies, to the marketplace.
- Establishes clearly defined decision making processes that will ensure the timely resolution of conflicting policies among various government agencies.

Now more than ever, a sound energy policy that promotes stability, affordability, and reliability of electricity requires a diversity of fuels and technology options and the adoption of policies that better achieve low-cost electricity supplies, attainment of environmental goals, and economic prosperity.
Electricity powers the world.

It is the cleanest, most flexible, most controllable, and most adaptable form of energy. Electricity operates homes, offices, and industries; provides communications, entertainment, and medical services; powers computers, technology, and the Internet; and runs various forms of transportation. Electricity enhances the quality of life for its users, and contributes to the progress and success of our nation.

Our nation's economic prosperity is closely linked to electricity growth.

Since the end of World War II, growth in electricity use has been tied with growth in the gross domestic product (GDP)—our nation's gauge of economic health. Today, the U.S. economy relies more than ever on reliable, affordable supplies of electricity, as evidenced by the ongoing growth of the digital revolution. Electricity intensity in our economy shows a close relationship between electricity and the general level of economic activity. Since 1980, the intensity of electricity use in the economy, measured by electricity consumption per dollar of real GDP, has increased by more than 25 percent. In comparison, the overall intensity of energy use has increased by more than 40 percent over the same time period.

According to the Energy Information Administration (EIA), electricity demand is growing strongly. The agency projects that electricity demand will grow by 1.8 percent per year through 2020. To meet these projected increases in demand and to offset the retirements of existing power plants, the EIA forecasts that 310 new power plants, with a total of 598,000 megawatts of capacity, will be needed by 2020. To provide some perspective, the large coal-fired plants needed to maintain electricity to provide power to 380 homes during non-peak demand times.

Despite the growing demand for electricity, the 2002-2020 period will likely be one of slower economic growth. The average annual real GDP growth forecast for the United States during 2002-2020 is 2.1 percent.
Electric companies use a diverse mix of fuels to generate electricity.

America's electricity prices are substantially lower than most of our international competitors, giving our businesses and industries a significant competitive advantage in international markets. The U.S. has enjoyed low electricity prices, in part, because we rely on a variety of fuels to generate electricity. The resulting competition among these fuels keeps prices in check.

The combination of fuel sources used is referred to as the generation mix. Today, more than half of the nation's electricity supply is generated from coal. Nuclear energy produces nearly twenty percent of the supply, while natural gas provides sixteen percent. Hydropower and, to a lesser extent, other renewable resources—such as biomass, geothermal, solar, and wind—provide nearly eleven percent of the supply. Fuel oil provides nearly three percent of the generation mix.

Electric companies consider numerous factors in determining their generation mix. These include the costs to construct a power plant that will utilize a particular fuel, and the degree of risks and uncertainties associated with the use of that fuel. In addition, the price, the availability, and the reliability of different fuel supplies are important factors taken into consideration.

A diverse generation mix helps to protect companies and consumers from contingencies such as fuel unavailability, price fluctuations, and changes in regulatory practices. It also helps ensure stability and reliability in electricity supply. Finally, our reliance upon abundant, North American sources of energy to generate electricity strengthens national security.

The fuels used to generate electricity...

Certain fuels in the electricity generation mix are better suited than others for particular applications. Typically, companies use coal-based, hydropower, nuclear, and, to a lesser extent, natural gas plants to meet "base load" electricity demand because these plants are more cost-effective and most efficient when run at full output on a continuous basis. On the other hand, pumped storage hydropower, natural gas, and oil-based units may be stopped and started quickly, making them ideal fuel sources during peak periods—the hours of the day when demand hits its highest levels.

No individual fuel is capable of providing the energy required to meet all of our nation's electricity demands. Rather, a variety of fuels—as well as increasingly more cost-effective and efficient ways to use, and conserve, energy—are needed. Indeed, different regions of our country rely upon different generation mixes, depending upon the availability and costs of fuels within those regions. For example, hydropower use is prevalent in the Pacific Northwest, natural gas in the Southwest, and coal in the Midwest. By maintaining these fuel options, consumers are provided with affordable and reliable supplies of electricity.
Here's a look at the fuels in our current generation mix:

- **Coal** is an abundant domestic resource. Recoverable U.S. coal resources total more than 296 billion tons—enough to last over 300 years at current levels of use. Coal is among the cheapest energy options available. Widespread availability and reliable transportation systems make the use of coal common in many areas throughout the U.S.

- **Nuclear energy** uses a secure fuel source (enriched uranium). In the U.S., 31 states have operating nuclear reactors. Nuclear energy offers important environmental benefits, allowing utilities to produce electricity with little or no air emissions, including carbon dioxide (CO₂). Use of nuclear energy is especially dominant in the northeastern portion of the U.S.

- **Natural gas** has become the primary fuel used to power new electricity generating plants. Of the fossil fuels, natural gas produces less CO₂ than coal or oil and smaller amounts of nitrogen oxide (NOₓ). In addition to electricity generation, natural gas is also used in residential, commercial, and industrial applications. The Southwest uses the largest percentage of natural gas to generate electricity.

**Hydropower and Other Renewables** together produce nearly 11 percent of U.S. electricity. Hydropower's operational flexibility—its unique ability to change output quickly—is highly valued. Hydropower also produces no greenhouse gases or other air pollutants. The Pacific Northwest relies on hydroelectric power for a large percentage of its electricity needs.

Using **non-hydropower renewable energy** sources, such as solar power, wind, geothermal, and biomass, to generate electricity produces minimal environmental impact. Certain renewable resources (wind and solar) represent inexhaustible, though intermittent, supplies of energy. These sources of energy currently supply less than one percent of U.S. electricity.

**Oil-based** electricity generation offers many advantages as a peaking fuel. Oil's use, though, has declined steadily over the last two decades, decreasing by almost two-thirds since 1978. The Northeast and Alaska use the largest amounts of oil to generate electricity.

**Public policies can restrict fuel generation options.**

The mix of fuels used to generate electricity has shifted dramatically over the past 20 years. Changes in government policies and regulatory practices have influenced many of these shifts. For example, in the late-1970's—during the midst of a worldwide oil embargo—new utility plants were prohibited from using natural gas or petroleum products to generate electricity. Instead, to meet demand, decisions were made to build more coal-based plants. Today, natural gas is re-emerging as the fuel of choice for new electricity generation.

Recent events—such as electricity price spikes, volatile foreign crude oil prices, higher gasoline prices, and rising natural gas and home heating oil prices—underscore that America is facing yet another energy chal-
lenge. As a result, changes in government policies are again likely. When addressing these new energy challenges, policymakers and regulators are asked to consider the following:

**Coal**-based generators face a variety of environmental regulations aimed at reducing power plant air emissions. These include at least eleven regulatory programs affecting NOx controls and eight programs affecting sulfur dioxide (SO2) emissions. In December 2000, the U.S. EPA issued a determination to regulate mercury emissions by 2004. EPA's proposed regulations to further restrict coal-based emissions can be duplicative, contradictory, complex, and unnecessarily costly, and create enormous uncertainty.

**Nuclear** power's future in the U.S. remains uncertain despite its advantages as a source of electricity free of air emissions. High initial construction costs, operating and maintenance expenses, long lead times, and regulatory uncertainty for new plants restrict the utilization of this generation option. In addition, unresolved questions about how to dispose of low-level nuclear waste and spent fuel (high-level radioactive waste) from nuclear power plants constrain further utilization of this fuel source. Currently, spent fuel is being stored on-site at nuclear energy plants around the nation. Legislation to establish a permanent high-level waste storage facility has not been enacted.

**Natural gas** is facing rapidly escalating demand both from the electricity sector and traditional end-use residential, commercial, and industrial customers. Regulatory policies—including siting and drilling limitations, delays in gaining rights-of-way for delivery systems, and restrictions on access to natural gas supplies on public lands—constrain natural gas supply and delivery.

**Hydropower** projects, while not emitting air pollutants, have become a source of controversy with certain recreational users and environmental organizations. Owners and operators of hydropower projects face a federal relicensing process that has become very costly, time-consuming, and uncertain. Relicensing typically requires eight to ten years to complete, and federal legislation to streamline the relicensing process has been delayed. By 2010, 228 hydropower projects—accounting for nearly 19,000 megawatts of hydro capacity—will face relicensing. Federal legislation to streamline the relicensing process has been introduced but not enacted into law.

Many **non-hydropower renewable energy** projects face the same siting hurdles encountered by other electricity generation facilities. Also, the costs for generating electricity from certain renewables remain high relative to other available fuels. Unlike most other fuels, many renewable energy sources, such as solar and wind, are intermittent—that is, not available at all times or not readily available if demand for electricity is required immediately. In addition, geothermal energy for electricity production is limited to a very few regions around the country. Electricity produced from biomass resources—unless the biomass is a waste product (timber, urban, animal, or agricultural waste)—will require vast quantities of land to replenish the fuel.

While ongoing research, federal tax incentives, and the development of technologies to utilize renewable resources have reduced the costs to generate renewable electricity significantly, debate continues over how best to address the higher costs involved in the production of useful energy from renewables.