

### **ANGTA Certificate and Right-of-Way Options**

ANGTA Section 7(a)(4) provided for a natural gas pipeline that followed a particular route and had a designated operator, Alaskan Northwest Natural Gas Transportation Company. A conditional certificate and right-of-way were issued to the applicant. Both were surrendered by Alaskan Northwest Natural Gas Transportation Company in 2009 as part of TransCanada's efforts to secure the state's Alaska Gasline Inducement Act license. The question has been posed; can ANGTA still be used to construct the Alaska gas pipeline?

#### **Options**

- 1) ANGTA is not an option – As mentioned above, ANGTA called on the president to select a specific project and applicant to construct the Alaska gas pipeline. The president selected the project proposed by Alaskan Northwest Natural Gas Transportation Company. In 2009 Alaskan Northwest Natural Gas Transportation Company surrendered all project permits stating it was not able to construct the project. ANGTA and the President's Decision could be interpreted as the only project that could be built under ANGTA was the project proposed by Alaskan Northwest Natural Gas Transportation Company that was conditionally certificated and that if any other applicant were to proceed under ANGTA they would have needed the previously conditioned certificate transferred to them versus surrendered by Alaskan Northwest Natural Gas Transportation Company.
- 2) Use previously issued ANGTA certificate and right-of-way – The previously issued conditioned certificate and right-of-way were surrendered in 2009. However, ANGTA created the Office of the Federal Inspector and the reorganization plan transferred all federal agency enforcement authorities to the federal inspector as they relate to pre-construction, construction and operation of a pipeline. The reorganization plan further directed the federal agencies to select authorized officers that would work for the Office of the Federal Inspector. The President's Decision outlined how to implement the federal inspector provisions of ANGTA, the reorganization plan and then an agreement between the federal inspector and the agencies clarified it further. Instead of the agencies transferring authorities to the federal inspector, each agency would house one of their own staff at the Office of the Federal Inspector. The agency retained the authority to

issue permits. However, the agency authorized officer coordinated all agency activities from within the office of the federal inspector and the activities were only allowed to occur with the permission/approval of the federal inspector. It could be interpreted that the FERC and BLM were not able to accept the surrender of the conditional certificate and right-of-way without the approval of the federal inspector. However, the agencies would not agree with this interpretation. The agencies believe the federal inspector had authority over enforcement not granting or rescinding permits. In addition, the right-of-way grant is more complicated because the grant specifically stated the applicant could surrender their right-of-way by providing notice to the Secretary of the Interior, not the federal inspector. Also, even if we determined the federal inspector is the only entity that could process the relinquishment, the right-of-way grant expired last year so a new one would likely need to be processed.

- 3) Issue new ANGTA certificate and right-of-way – If a determination was made that DOI and FERC rightfully accepted the surrendered conditional certificate and relinquished right-of-way, there is the opportunity for a new certificate and right-of-way to be issued. The President’s Decision specifically allowed for a “successor” of the Alaskan Northwest Natural Gas Transportation Company and ANGPA Section 110 does not prevent the issuance of a new certificate or right-of-way under ANGTA. So, if a determination was made that the Alaska Pipeline Project was the “successor” to the Alaskan Northwest Natural Gas Transportation Company for purposes of building the project the agencies could reassume permitting responsibilities as established under ANGTA. There may need to be an official determination by the president or the federal coordinator that the Alaska Pipeline Project fits the parameters of the President’s Decision and will become the “successor” to the project. If the Alaska Pipeline Project wants to look further into an ANGTA option and the office decides to pursue this option, I recommend we discuss immediately with the White House to see if they are willing to go down this path and ensure the counsel’s office agrees with the position of the agency. If they are comfortable with this option, we should discuss with the FERC, BLM, and the DOE how to implement the provisions of ANGTA, the President’s Decision and ANGPA.
- 4) Issue ANGPA/ANGTA shared right-of-way – Prior to Joe’s departure, he suggested that the Alaska Pipeline Project could apply for the certificate and other permits under both

ANGPA and ANGTA. The agencies could apply ANGTA only for the portion of the route going through Tetlin National Wildlife Refuge. I am not sure how this would work given the President's Decision outlined a route that went from the North Slope to the lower 48 states. It may be that the application for a route under ANGPA would be filed to the Tetlin National Wildlife Refuge border and then after that application is filed, file for the route through the refuge under ANGTA citing the ANGPA line and the pre-built lines into the lower 48 as the completion of the entire ANGTA route as described in the President's Decision. This is just an assumption and Joe would have to give us his official position on how this option could work.

### **Referenced Materials**

- ANGTA Section 7(a)(4)

If the President determines to designate for approval a transportation system for delivery of Alaska natural gas to the contiguous states, he shall in such decision-

  - (A) describe the nature and route of the system designated for approval;
  - (B) designate a person to construct and operate such a system, which person shall be the applicant, if any, which filed for a certificate of public convenience and necessity to construct and operate such system;
  - (C) identify those facilities, the construction of which, and those operations, the conduct of "construction and initial operation" for purposes of defining the scope of the directions contained in Section 9 of this Act, taking into consideration any recommendation of the Commission with respect thereto; and
  - (D) identify those provisions of law, relating to any determination of a Federal officer or agency as to whether a certificate, permit, right-of-way, lease or other authorization shall be issued or be granted, which provisions he finds (i) involve determinations which are subsumed in his decision and (ii) required waiver pursuant to Section 8(g) in order to permit the expeditious construction and initial operation of the transportation system.
- ANGTA Section 7(a)(5)
  - (B) monitor compliance with applicable laws and the terms and conditions of any applicable certificate, rights-of-way, permit, lease, or other authorization issued or granted'

(C) monitor actions to assure timely completion of construction schedules and the achievement of quality of construction, cost control, safety, and environmental protection objectives and the results obtained therefrom

- President's Decision Section VI Organization of Federal Involvement after System Selection  
"While the Federal Inspector can "monitor" the enforcement and compliance actions of the various Federal agencies, he does not have any specific enforcement powers. A coordinated regulatory approach will be elusive unless the Federal Inspector has the necessary supervisory authority at the field level over enforcement of terms and conditions to ensure that coordination occurs.

Therefore, as set forth in the Presidential decision, the President will submit to Congress upon approval of the Decision a limited executive reorganization plan for the very specific purpose of transferring to the Federal inspector field-level supervisory authority over the enforcement of stipulations and terms and conditions from those Federal Agencies having statutory responsibilities over various aspects of an Alaska natural gas transportation system. This coordinated field level authority over compliance and enforcement activities of the respective Federal agencies is essential to avoid project delays and minimize cost overruns. However, the Federal Inspector will be subject to the ultimate policy direction and supervision of an Executive Policy Board, made up of the Secretaries of Interior, Energy and Transportation, the Administrator of the Environmental Protection Agency and the Chief of the Army Corps of Engineers. Furthermore, all Federal agencies will retain their existing authorities, pursuant to section 9(a) of ANGTA, to issue original certificates, permits, rights-of-way and other authorizations, and to prescribe any appropriate stipulations and terms and conditions to such authorizations that are permissible under existing law. Finally, the Agency Authorized Officers, who will exercise the delegated authorities of their respective agencies, will directly enforce the stipulations and terms and conditions – subject to the field-level supervisory direction of the Federal Inspector."

- President's Decision Section IV Finance  
4. The Alcan Pipeline Company, or its successor, and the Northern Border Pipeline, or its successor, shall be publicly held corporations or general or limited partnerships, open to ownership participation by all persons without discrimination, except producers of Alaskan natural gas.

- Reorganization Plan No. 1 of 1979 Part 1 Section 101
 

(c) Each Federal agency having statutory responsibilities over any aspect of the Alaska Natural Gas Transportation System shall appoint an Agency Authorized Officer to represent that authority on all matters pertaining to pre-construction, construction, and initial operation of the system.
- Reorganization Plan No. 1 of 1979 Part 1 Section 102
 

Subject to the provisions of Sections 201, 202, and 203 of this Plan, all functions insofar as they relate to enforcement of Federal statutes or regulations and to enforcement of terms, conditions, and stipulations of grants, certificates, permits and other authorizations issued by Federal agencies with respect to pre-construction, construction, and initial operation of an "approved transportation system" for transport of Canadian natural gas and "Alaskan natural gas," as such terms are defined in the Alaska Natural Gas Transportation Act of 1976 (15 U.S.C. 719 et seq.), hereinafter called the "Act", are hereby transferred to the Federal Inspector. This transfer shall vest in the Federal Inspector exclusive responsibility for enforcement of all Federal statutes relevant in any manner to pre-construction, construction, and initial operation. With respect to each of the statutory authorities cited below, the transferred functions include all enforcement functions of the given agencies or their officials under the statutes as may be related to the enforcement of such terms, conditions, and stipulations, including but not limited to the specific sections of the statute cited. "Enforcement", for purposes of this transfer of functions, includes monitoring and any other compliance or oversight activities reasonably related to the enforcement process.
- Agency Authorized Officer Responsibilities (attached)
- ANGDA Section 110
 

(a) SAVINGS CLAUSE- Nothing in this division affects—

  - (1) any decision, certificate, permit, right-of-way, lease, or other authorization issued under section 9 of the Alaska Natural Gas Transportation Act of 1976 (15 U.S.C. 719g);
  - or
  - (2) any Presidential finding or waiver issued in accordance with that Act.

(b) CLARIFICATION OF AUTHORITY TO AMEND TERMS AND CONDITIONS TO MEET CURRENT PROJECT REQUIREMENTS- Any Federal agency responsible for granting or issuing any certificate, permit, right-of-way, lease, or other authorization under

section 9 of the Alaska Natural Gas Transportation Act of 1976 (15 U.S.C. 719g) may add to, amend, or rescind any term or condition included in the certificate, permit, right-of-way, lease, or other authorization to meet current project requirements (including the physical design, facilities, and tariff specifications), if the addition, amendment, or rescission—

(1) would not compel any change in the basic nature and general route of the Alaska natural gas transportation system as designated and described in section 2 of the President's decision; or

(2) would not otherwise prevent or impair in any significant respect the expeditious construction and initial operation of the Alaska natural gas transportation system.

(c) **UPDATED ENVIRONMENTAL REVIEWS-** The Secretary shall require the sponsor of the Alaska natural gas transportation system to submit such updated environmental data, reports, permits, and impact analyses as the Secretary determines are necessary to develop detailed terms, conditions, and compliance plans required by section 5 of the President's decision.