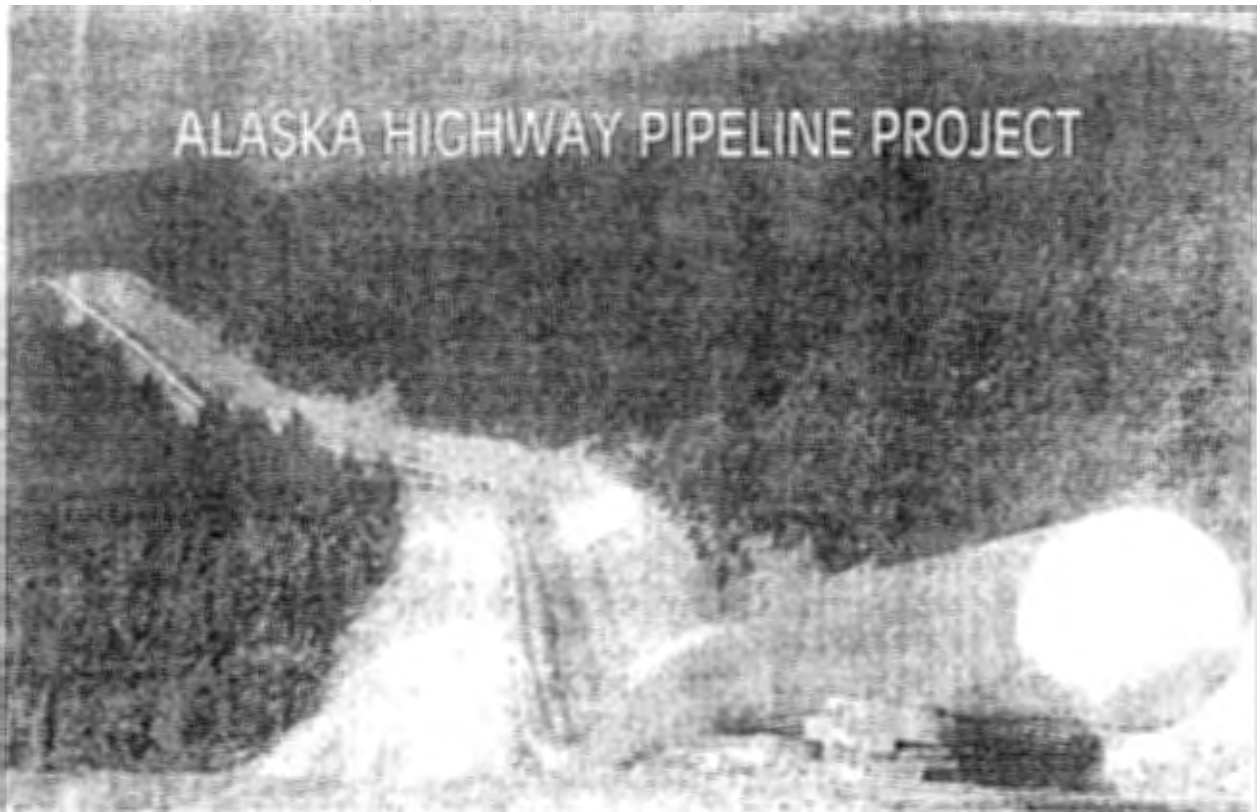


Governor's Alaska Highway Natural Gas Policy Council



April 5, 2001

Presentation by

John Ellwood
Vice President, Engineering & Operations



Foothills Pipe Lines Ltd.

Foothills Pipe Lines Ltd. / Alaska Highway Gas Pipeline Project

My name is John Ellwood. I am Vice President, Engineering and Operations at Foothills Pipe Lines Ltd. ("Foothills"). We appreciate your invitation to discuss the transportation of Alaska North Slope natural gas to markets in the lower-48 states through the Alaska Natural Gas Transportation System ("Alaska Highway Project").

Let me begin by telling you about Foothills. Our Company is jointly owned by Westcoast Energy Ltd. ("Westcoast") and TransCanada PipeLines Limited. ("TransCanada"), the two major players in the Canadian gas pipeline business. Our corporate mission is very specific: to build and operate the Alaska Highway Pipeline Project. We were leaders in the project that was conceived twenty-five years ago, and we are just as committed today.

Between Westcoast and TransCanada, we have nearly 100 years of experience in developing, building and operating gas pipeline projects. We have been involved with every major Canadian gas pipeline project built in the last fifteen years.

Our existing pipeline systems provide access to five of North America's largest natural gas markets. Together, these systems have the capability to move fifteen billion cubic feet per day of gas from Western Canada to the consuming markets. Canadian gas accounts for almost 20% of all gas consumed in the United States and all of that gas currently moves through pipelines owned in whole or in part by TransCanada and Westcoast.

Attachment 1 shows the existing and planned pipeline network of Westcoast and TransCanada.

TransCanada, Westcoast and Foothills have developed leading edge gas pipeline design, construction and operating technology, including expertise in dense phase designs. We are also well known for our development of environmentally sound design, construction and operation practices. We believe that our expertise in northern, remote and difficult terrain gas pipeline construction and operations is second to none.

Building and operating pipelines is our core business.

The Alaska Highway Project is the Alaskan gas pipeline project approved in accordance with the Alaska Natural Gas Transportation Act of 1976 ("ANGTA") in the U.S., the 1978 Northern Pipeline Act in Canada, and the 1977 Agreement Applicable to a Northern Natural Gas Pipeline between the two countries ("U.S./Canada Agreement"). The project is shown in green on Attachment 2. As approved, the Alaska Highway Project is a 4,800-mile international pipeline project commencing at Prudhoe Bay and terminating in the Midwest and California market areas. It is important to note that the southern part of this pipeline has been constructed and is in full operation. The route for this system parallels the Trans Alaska Pipeline System ("TAPS") to Fairbanks, where it angles southeast, following the Alcan Highway to the Alaska-Yukon border with Canada, down through the Yukon Territory and northern British Columbia, and into Alberta. In Alberta, the pipeline splits into two legs. The Eastern Leg proceeds southwest, crossing the U.S.-Canada border at Monchy, Saskatchewan and terminating near Chicago. The Western Leg proceeds southwest, crossing the U.S.-Canada border near Kingsgate, British Columbia and terminating at a point near San Francisco, California.

Foothills and TransCanada are the two remaining partners of the Alaska Northwest Natural Gas Transportation Company (Alaska Northwest), a partnership formed to construct and operate the Alaska portion of the Alaska Highway Project. In addition, Foothills is the Canadian sponsor of the Alaska Highway Project, and the majority owner and operator of the Canadian portions of the Eastern and Western Legs of the Alaska Highway Project.

Foothills has continuously championed the Alaska Highway Pipeline Project from the very beginning.

The Project is back **"on the list"** of possible solutions to the current North American concerns about high energy prices and the adequacy of natural gas supplies.

At the outset, there are some basic points that we should delineate:

- It is important to remember that this pipeline crosses the territory of two countries with different regulatory and political regimes.
- The Project has a long history, which adds unique attributes. The permits which have been issued are a product of this history and to understand the former requires an appreciation of the latter. Significantly, ANGTA in the U.S. and the Northern Pipeline Act in Canada create expedited procedures for completing the chosen system, the Alaska Highway Project.
- The pipeline permitting process can be very time consuming. In addition to the substantial work already completed on both the Alaskan and Canadian portions of the Alaska Highway Project, the special legislative and regulatory procedures in place in the U.S. and Canada will assist in expediting the construction and initial operation of the Project and keeping unnecessary delays to a minimum.

Historical Background

As I indicated, there are important historical dimensions associated with this project. We might focus on the time frame 1976-1982. Originally, there were three competing Alaskan natural gas pipelines proposed. As shown on Attachment 3, two of the projects were overland pipelines through Alaska and Canada. The third project would have transported gas by pipeline to tidewater, following the route of the "TAPS" pipeline, where the gas would be liquefied and transported to California by liquefied natural gas ("LNG") tankers.

The U.S Congress enacted the Alaska Natural Gas Transportation Act of 1976 with a purpose to provide an expedited process with respect to the selection of a single transportation system for the delivery of Alaska natural gas to the lower forty-eight states and to expedite construction and initial operation of the chosen transportation system.

With respect to the transportation of Alaska North Slope gas to markets in the lower 48 states, ANGTA superseded the usual Natural Gas Act ("NGA") process for granting Federal regulatory authorization to construct and

operate a pipeline. ANGTA assigned the responsibility for the overall Alaska pipeline agenda to the President and Congress. Much the same approach was followed in Canada, where the Government took an active role in the decision regarding the Alaska natural gas pipeline. The reason for the creation of this extraordinary authority was that the governments wanted to expedite a cumbersome regulatory approval process in order to move more quickly to a solution.

Prior to 1978, a Canadian Board of Inquiry (The Berger Inquiry) examined a proposal to move Alaska gas across the North Slope and along the Mackenzie Valley. At the same time the National Energy Board ("NEB") held a hearing to determine which of the two overland pipeline routes was acceptable to Canada. Both processes rejected the North Slope route (primarily for environmental reasons) and the NEB recommended the Alaska Highway (Alaska Highway Project) option, being promoted by Foothills. The Berger Inquiry recommended that no pipeline should be built along the Mackenzie Valley for at least a decade and that a pipeline across the northern Yukon should never be built.

During this same period of time the Federal Power Commission (later to become the Federal Energy Regulatory Commission ("FERC")) came to a split decision on the question of which route should be selected.

Following the enactment of the ANGTA, the President selected the Alaska Highway route and the Alaska Highway Project with his Decision and Report to Congress on the Alaska Natural Gas Transportation System ("President's Decision" or "Decision").

In 1977 just prior to the President issuing his Decision, the U.S. and Canada signed the U.S./Canada Agreement. This agreement or treaty, established the route, chose the companies who would build and operate the system, established tolling principles, and set the terms and principles to be followed in facilitating the construction and operation of the Alaska Highway Project pipeline. The President's Decision reflected the U.S./Canada Agreement. The Decision and the Agreement were subsequently approved by the U.S. Congress.

In 1978 Canadian Parliament enacted the Northern Pipeline Act. The Act:

- 1) incorporated all of the terms of the U.S./Canada Agreement
- 2) issued statutory certificates of public convenience and necessity to the respective subsidiaries of Foothills Pipe Lines Ltd.,
- 3) created the Northern Pipeline Agency to “*facilitate the efficient and expeditious planning and construction of the pipeline*”
- 4) established the methodology and rules for setting the Canadian tolls and tariffs for the pipeline
- 5) selected the route for the pipeline across Canada and
- 6) established Terms and Conditions respecting the socio-economic, environmental, construction and operations matters.

The complete Alaska Highway Project is shown on Attachment 2.

The President's Decision designated Alcan Pipeline, a subsidiary of Northwest Pipeline Company (Northwest), as the party who would construct and operate the Alaska pipeline segment of the Alaska Highway Project. This authority was later assigned to Alaska Northwest, a partnership assembled by Northwest. At one time Alaska Northwest consisted of eleven (11) partners, all subsidiaries of U.S. or Canadian pipeline companies.

Given the magnitude of the pipeline undertaking Alaska Northwest sought to recruit the North Slope Producers to join the project and assist the financing of the pipeline. The Producers expressed a willingness to join but were restricted by the President's Decision that disallowed the producers taking an equity position in the pipeline. In 1981, President Reagan submitted and Congress approved a Waiver of Law package allowing producer participation and including in the project, the North Slope gas conditioning facility.

In 1980, before the Waiver of Law was passed, Alaska Northwest and the Alaska Producers entered into a Cooperation Agreement providing for joint funding of the design and engineering of the Alaska Highway pipeline and

the gas conditioning facility. Following the approval of the Waiver of Law, the scope of the Cooperation Agreement was expanded to encompass efforts to achieve the remaining regulatory approvals and to jointly pursue financing arrangements. The two sides anticipated that affiliates of the Producers would join the Alaska Northwest Partnership.

Design, engineering, environmental, financing and regulatory work proceeded along parallel tracks in Alaska and in Canada during this period of time.

As world wide energy supply and demand came back into balance and the "energy crisis" eased, the focus of the pipeline shifted to the pre-building of the southern portions of the Alaska Highway Project as shown on Attachment 4. There was a disagreement between Canada and the United States over this issue, primarily as it related to the export of Canadian natural gas to the U.S. market.

The Canadian Government was unwilling to authorize the Pre-build or the gas exports without further assurance from the United States that the entire Alaska Highway Project, including the Alaska segment, would eventually be completed. This assurance was forthcoming in a letter from President Carter to Prime Minister Trudeau, along with a Congressional resolution. As a result the southern Pre-build pipeline section was completed by 1982. This involved constructing 650 miles of 36 and 42 inch pipeline from Caroline, Alberta to Monchy and Kingsgate on the US border. The Pre-build and subsequent expansions were constructed pursuant to the Northern Pipeline Act and it's regulatory regime managed by the Northern Pipeline Agency.

When the Pre-build construction began it was widely anticipated that North American natural gas demand would quickly resume its upward trend. However the market did not recover as anticipated and demobilization of the Alaska Highway Project soon began.

In order to remobilize, we will be required to make modifications and enhancements to various elements of the Alaska Highway Project regime. Pipeline designs will have to be modified so that that the Project can respond to capacity and gas quality requirements of the shippers. We will have to incorporate the latest technology and techniques necessary to ensure that the maximum environmental protection measures are in place. We do not

expect any difficulty in introducing these revisions which are so obviously of benefit to all parties.

Clearly there is a lot of work still to be done. It is very important to understand is that the advantages that come with the unique ANGTA and NPA regulatory regimes far outweigh the alternative of starting from scratch. Using the existing statutes and treaty we can assist in having Alaska natural gas into the U.S. market sooner, with competitive transportation costs and at the same time reducing project risks for all stakeholders.

In our capacity as the managing partner of Alaska Northwest we have maintained the Alaska Highway Project in good standing. We have kept the project alive to ensure that the advantages and benefits of the Project could be used in remobilization plans to expedite construction of the pipeline. We particularly wished to preserve what we see as the "special and unique fast track" regulatory regime.

Foothills and its shareholders have expended time and effort to keep the permits current and to optimize the project design. We do not intend to quit the field now that success is within sight.

The Alaska Permits – Federal

A substantial amount of work has been completed by the Alaska Highway Project sponsors to date. Before discussing the specific permits held by Alaska Northwest it is important to better understand the unique regulatory and legislative framework under which these permits were issued, namely ANGTA.

ANGTA and the President's Decision remain in effect and can be terminated only by another act of Congress. ANGTA does not create a perpetual priority for the Alaska Highway Project. Rather, it establishes a priority designed to ensure that the Alaska Highway Project will be completed and begin initial operation in accordance with the decision of the President and Congress. Once the Alaska Highway Project is in operation additional projects may be considered under the Natural Gas Act.

In implementing this priority, ANGTA requires that Federal agencies and officers expedite and issue "at the earliest practicable date" all permits and authorizations required by the Alaska Highway Project. In addition, ANGTA provides that applications and requests with respect to permits and authorizations required by the approved system "shall take precedence" over any similar applications and requests. Furthermore, ANGTA limits the discretion of Federal agencies and officers to include in certificates and permits for the Alaska Highway Project any conditions that would obstruct the system's expeditious construction and initial operation.

As required by ANGTA, the FERC in 1977 expeditiously issued a conditional certificate of public convenience and necessity for the Alaska Highway Project. That certificate contains no expiration date and is still in effect today.

In addition, Alaska Northwest holds a federal right-of-way grant issued in 1980 by the Department of Interior's Bureau of Land Management. That grant does not expire until December 2010, and may be renewed at the request of Alaska Northwest.

Furthermore, Alaska Northwest holds two recently extended Clean Water Act wetlands permits issued by the Army Corps of Engineers in coordination with many other agencies. Those permits were extended through September of 2007.

While these various federal permits were issued some time ago, they all are valid today. Indeed, nothing in ANGTA or in the certificates and authorizations issued for the Alaska Highway Project thereunder provides for the expiration of the chosen system's priority because completion of the Alaska segment was postponed until the U.S. domestic market could support it. Rather, the Alaska portion of the Alaska Highway Project has been held in reserve until the need for additional natural gas arises in the Lower 48 states is such that this section can be completed. As sponsors we have actively protected the preserved Alaska segment by maintaining all necessary certificates and permits and actively overseeing the rights-of-way.

We recognize that these certificates and permits need to be "updated" to capture changes in technology, markets and environmental requirements. We will do such updating, and it can be done within the ANGTA

framework. To that end, a couple of additional points need to be emphasized before I move on to the State permits.

- First, ANGTA clearly envisions and provides for the ability to condition and to amend these permits. These powers are subject only to the limitation prohibiting changes in the “basic nature and general route” and actions that will “otherwise” prevent or impair in any significant respect the expeditious construction and initial operation of the Alaska Highway Project.
- Second, the Alaska Highway Project sponsors’ requests for both new permits and amendments to existing permits must be given priority under ANGTA. This priority translates into a timing advantage for the Alaska Highway Project.
- Third, the authority of the Office of Federal Inspector, as transferred to the Secretary of Energy, also continues in effect today to expedite and coordinate federal permitting, enforcement of permit conditions, and facilitation and oversight of the construction and initial operation of the U.S. portion of the Alaska Highway Project.
- Fourth, ANGTA also provides for expedited and limited judicial review of actions taken by Federal agencies and officers.
- Finally, the Alaska Northwest Partnership is well along in permitting the Alaska Highway Project.

The Alaska Permits – State of Alaska

On the state side, Alaska Northwest has a pending State of Alaska right-of-way lease application. Recently, we have initiated discussions with the State officials regarding perfecting and processing the pending application. Also at the state level, Alaska Northwest holds certificates of reasonable assurances issued pursuant to Section 401 of the Clean Water Act and a determination of consistency with the Coastal Zone Management Act.

Additional Alaska Permits

While Foothills already holds the major permits necessary to construct the remainder of the Alaska Highway Project, there are additional permits and authorizations that will need to be obtained. For example, the Alaska Highway Project sponsors will need to acquire a permit under the Clean Air Act. However, these additional permits will be procured as the Project proceeds, and such procurement will not cause a delay in the expeditious construction of the Alaska Highway Project.

The Canadian Permits

On the Canadian side, Foothills holds two unique certificates or permits:

- Certificate of public convenience and necessity.
- Yukon right-of-way.

Certificate of Public Convenience and Necessity

The certificate of public convenience and necessity ("certificate") is the Order issued following a successful hearing before the National Energy Board (NEB) of a pipeline application. The information that is required to be filed for hearing purposes is delineated in regulation and includes details about supply and markets, environmental impact assessment, engineering, construction and operations plans and details about connecting pipeline facilities.

The preparation of the required hearing information generally takes one to two years to complete and the length of the hearing will be proportional to the level of controversy surrounding the issues.

Foothills has completed this phase of the process. We have the "certificates" that entitle us to build a pipeline, subject only to terms and conditions set out in the Alaska Highway Project regime.

The "certificates" are statutory. They were issued by the Parliament of Canada when it enacted the Northern Pipeline Act and are in keeping with the principles and intent of the U.S./Canada Agreement.

We acknowledge that the "certificates" were legislated 20 years ago and that some have raised questions about their scope and validity. Others suggest that the certificates are dated and accordingly must be reissued. The "certificates" are valid. We are on solid legal ground in this regard.

Changes to the pipeline design to accommodate new technical issues and improvements have previously have been granted by the Northern Pipeline Agency both at the time of the construction of the original Pre-build facilities and later during the facility expansion.

However, fundamental changes to the Canadian "certificates" would require changes to both the legislation and the treaty. For example, another project could not be approved under the Alaska Highway Project regime. Further, the Northern Pipeline Act (incorporating the U.S. /Canada Agreement) provides that the route for Alaska natural gas will be along the route set forth in Annex 1 to the U.S. /Canada Agreement i.e. the Alaska Highway route. In the face of the provision of the Northern Pipeline Act and the U.S. /Canada Agreement, a treaty with the force of law, it is difficult to see how the National Energy Board could entertain applications either for alternative pipeline routes for delivery of Alaska gas through Canada or applications by companies other than Foothills following the Foothills highway route for delivery of Alaska gas through Canada.

Given the above, we may well ask what remains to be done before the project can proceed?

First of all, we do not have a commercial arrangement negotiated with the Alaska North Slope producers or other shippers. Achieving this commercial arrangement is our number one priority. We are confident that the mutual interests of all sides will ultimately lead to satisfactory arrangements.

Following the successful completion of such a commercial agreement, there are a number of terms and conditions that must be satisfied. These are set out in the Northern Pipeline Socio-economic and Environmental Terms and Conditions. It is our view that the terms and conditions are broad enough to accommodate modern environmental, engineering and construction practices. In fact, we addressed this issue when we pre-built the southern portion of the Alaska Highway Project pipeline.

Detailed design and engineering work also must be completed and approvals must be obtained from the Northern Pipeline Agency. It is this mechanism that I referred to when I indicated that we had a "fast track" regulatory process.

The Yukon Right-of-Way

I will take a few minutes to describe the status of our right-of-way through the Yukon. Foothills has been granted an easement in the Yukon. The current term of the easement is September 2012 and provisions are in place to renew the easement for a further term of 24 years. It is important to note that the easement is protected under the Encumbering Rights provisions of the Umbrella Final agreement which has been signed by the Government of Canada, the Government of the Yukon and all of the Yukon First Nations. The Final Settlement Agreements that have been negotiated with the Yukon First Nations contain specific provisions relating to the easement. In addition, the compressor stations locations and permanent access to the proposed stations are protected.

What does this mean? From our perspective this translates into certainty of land tenure and a significant timing advantage. Foothills has developed an excellent working relationship with the Yukon First Nations over the years and we are building on that relationship. Like the Canadian "certificates" the easements also constitutes an important asset. An asset not easily replicated.

Conclusion

Let me summarize and focus on some of the key points.

Foothills is a Company with real pipelines and real customers.

When combined with our shareholders TransCanada and Westcoast, we transport 20% of all the natural gas consumed in the United States. And we have the know-how and the where-with-all to build the Alaska Highway Pipeline.

We have been involved in this project for 25 years.

We and our former partners have invested heavily to achieve the permits, certificates, rights-of-way and much of the engineering on the Alaska Highway pipeline.

A basic message that I want to leave with you is this, we have a...very unique and solid regulatory framework, it is a very valuable framework in terms of saving money and avoiding costly delays when building a pipeline. It is more than a collection of permits. It is a package, designed specifically to expedite building the Alaska Highway pipeline.

This framework can neither be duplicated nor terminated easily. It is a one-of-a-kind regime. I urge all Alaskans to take full advantage of it.

Finally let me raise one other issue and that is the matter of the pipeline route decision. Before we can move from discussion to action this must be resolved.

Ultimately all stakeholders must find some common ground and go forward.

So where do we go from here?

A commercial agreement between pipelines and producers is the next major mile post for the Project.

Once a satisfactory commercial arrangement is achieved ... the flag drops; from that point on we believe that our regulatory framework will allow "shovels to be in the ground" within 24 months.

This is a very large project. It will involve many companies. It will cost a lot of money and there will be lots of issues to address and benefits to share.

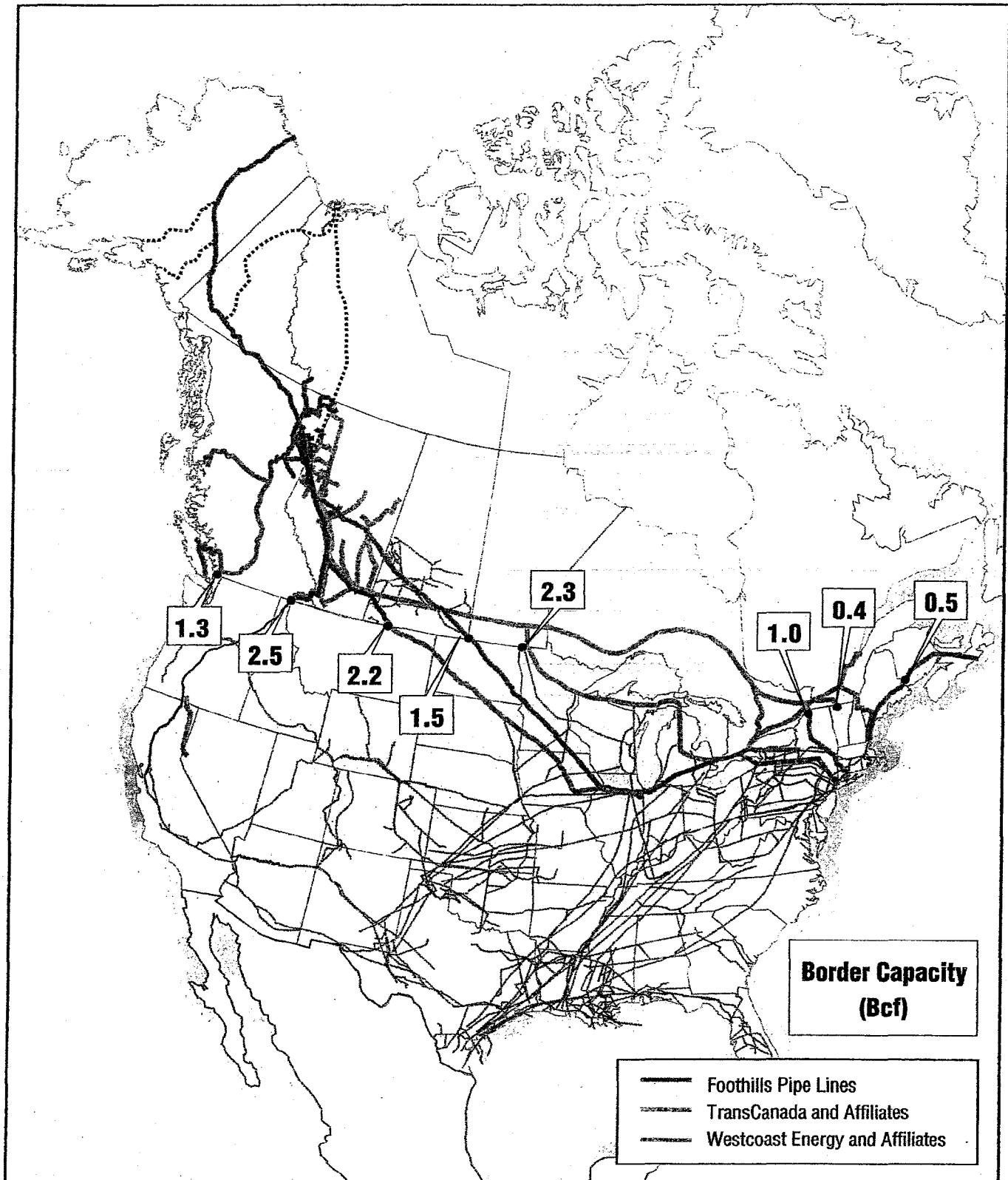
Foothills and its shareholders intend to be major players in the development and operation of this important pipeline and we believe that we bring value to the Project and value to Alaska.

Thank you, and I am now prepared for questions.



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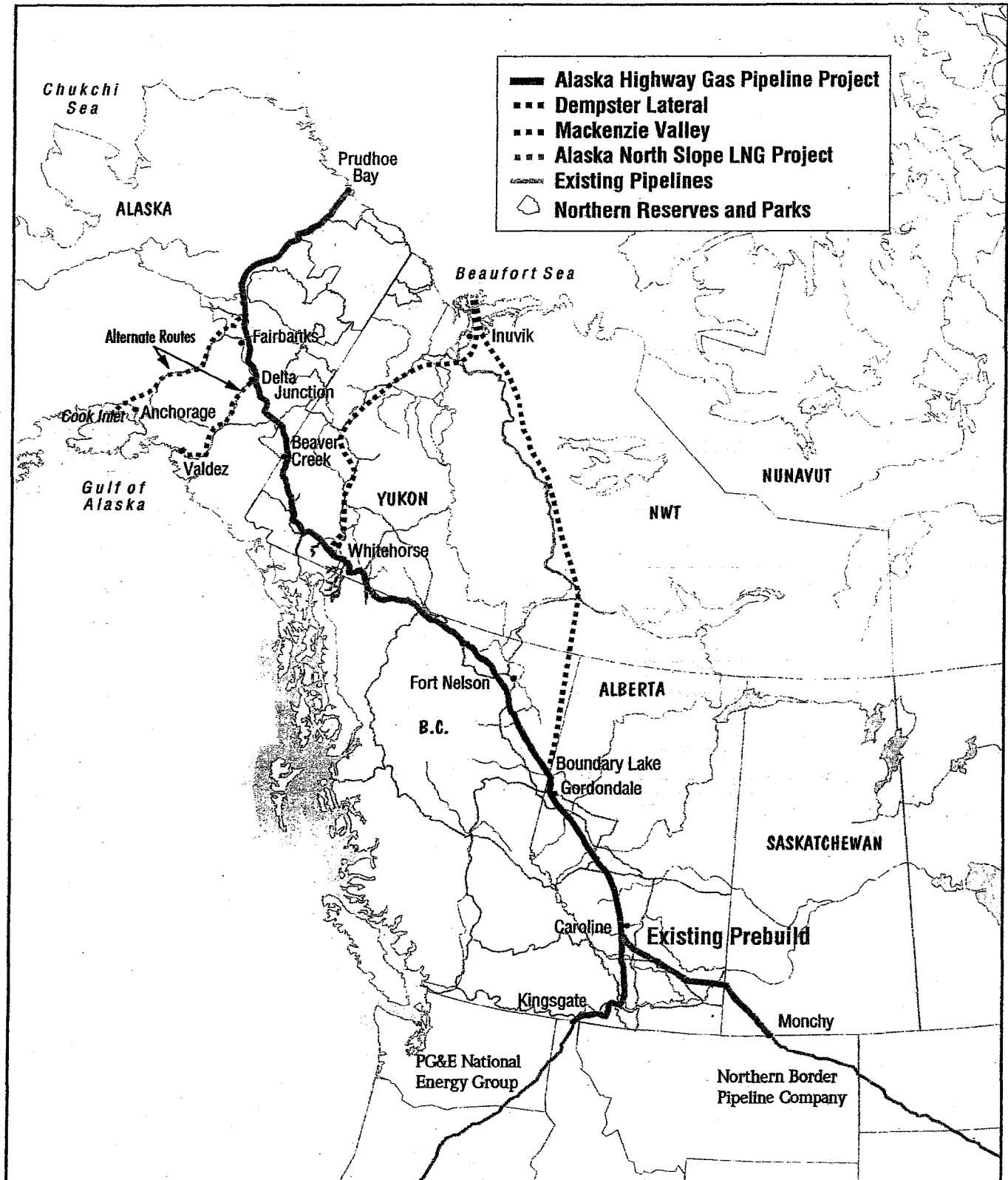
NORTH AMERICAN PIPELINE INFRASTRUCTURE





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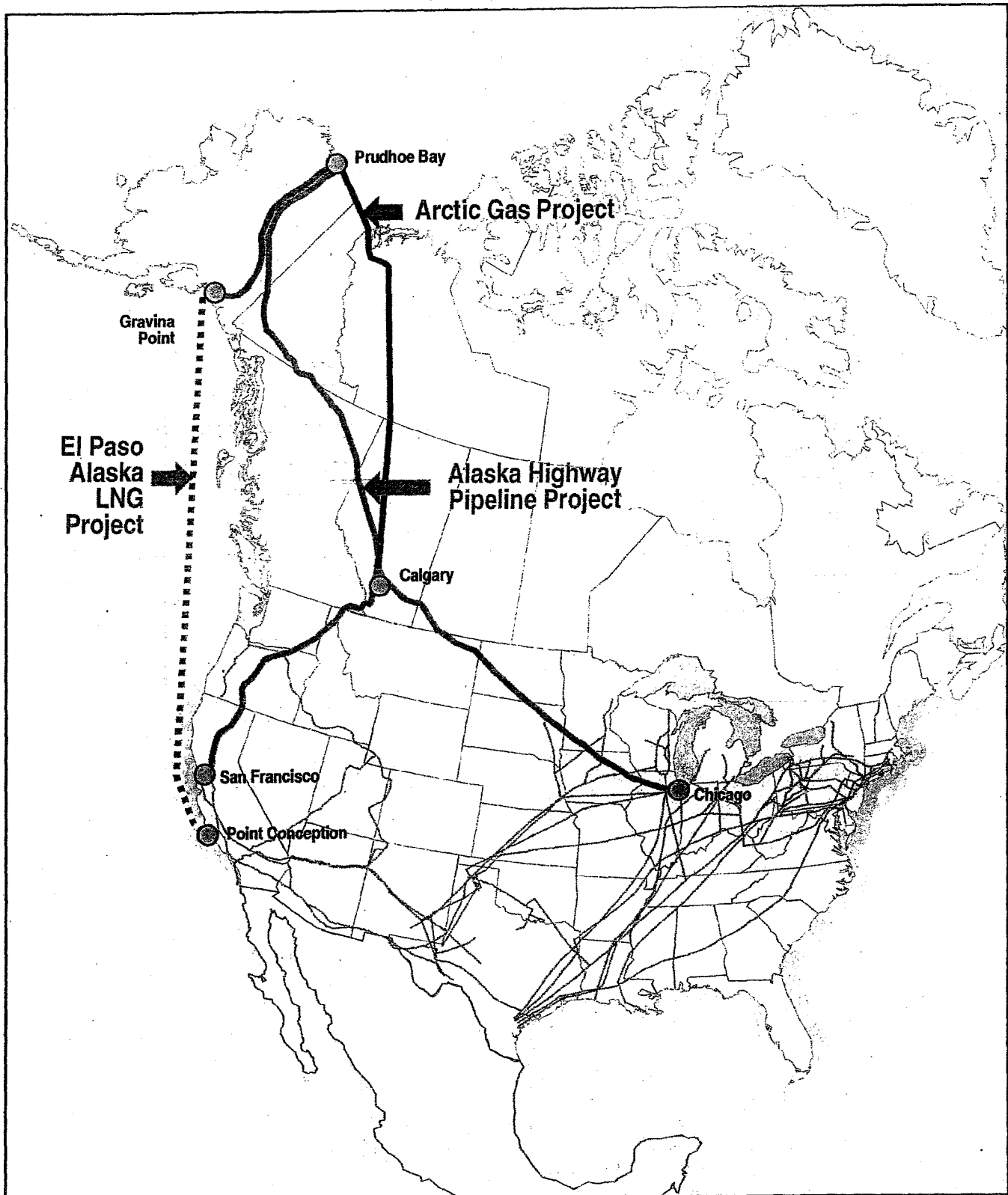
TRANSPORTATION SYSTEMS





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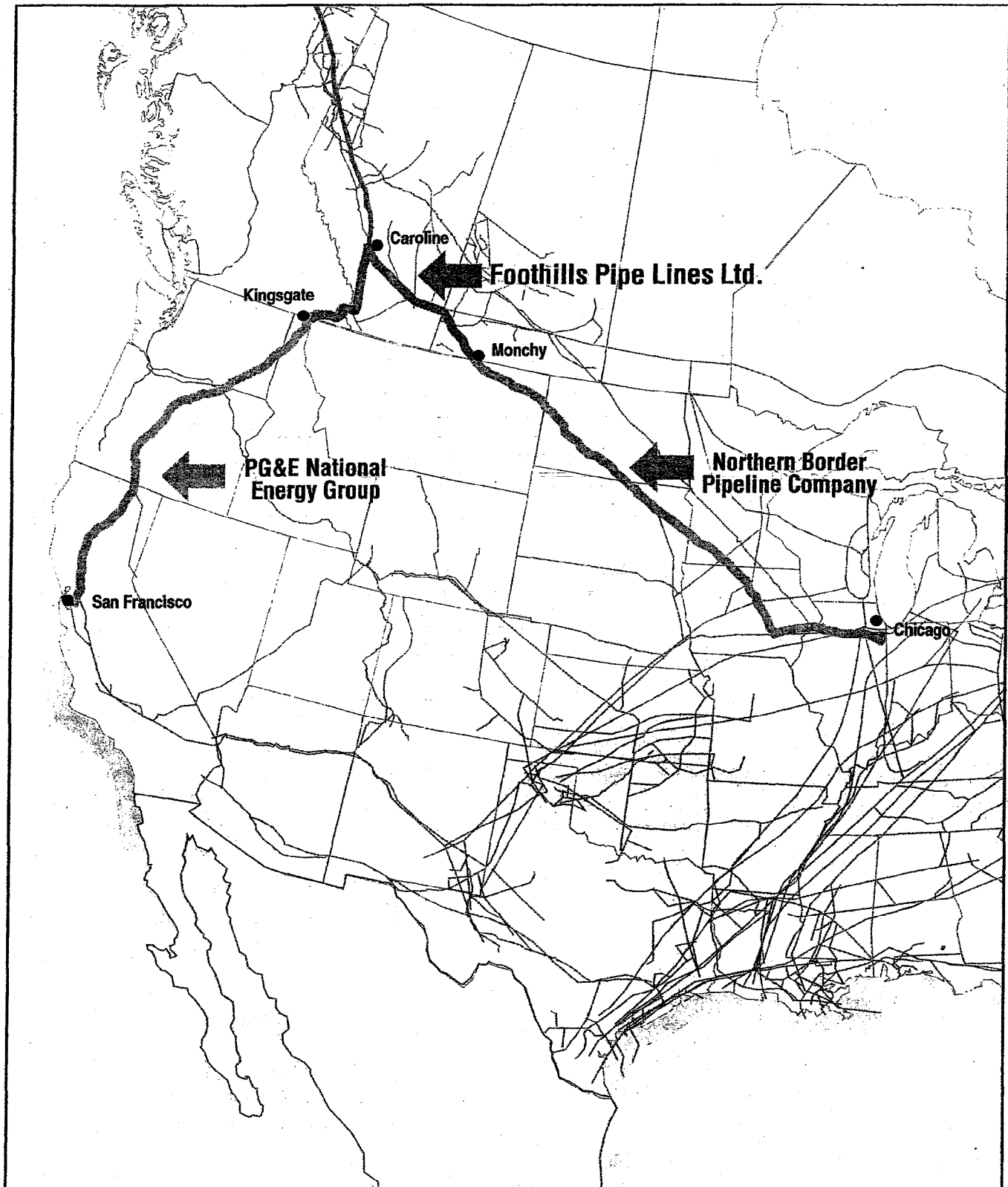
ORIGINAL COMPETING PROJECTS





FOOTHILLS PIPE LINES LTD.

PREBUILD SYSTEM



APPENDIX A

TEXT OF THE FINDINGS AND PROPOSED WAIVER OF LAW

Pursuant to the provisions of the Alaska Natural Gas Transportation Act of 1976 (ANGTA) 15 U.S.C. § 719, *et seq.*, a transportation system to transport Alaska natural gas to consumers in the continental United States was selected and approved by Congress in 1977.

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 hereby 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 Section 8(g)(2), 8(g)(3), and 8(g)(4) of ANGTA.

Waive Public Law 95-158¹ [Joint Resolution of approval,² 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

¹ 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.

² 15 U.S.C. § 719f nt.

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 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 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

(2) for the gas conditioning plant segment—

(A) upon completion and testing of the gas conditioning 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 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.

Waive Public Law 688,³ 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 section can be construed to require the use of formal evidentiary hearings 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 evidentiary hearing(s) whenever the Federal Energy Regulatory Commission determines, in its discretion, that such a hearing is necessary; 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 approving (a) any tariff in any manner that would impair the recovery of the

actual operation and maintenance expenses, actual current taxes, and amounts necessary to service debt, including interest and scheduled retirement of debt, for the approved transportation 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 necessary to permit the Alaskan Northwest Natural Gas Transportation Company or its successor and any shipper of Alaska natural gas through the Alaska pipeline segment of the approved transportation 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 Public Law 94-163 ⁴ [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.

APPENDIX B

SYNOPSIS OF WAIVER

(Submitted by the Administration to Accompany the Waiver)

PRODUCER OWNERSHIP PARTICIPATION

President Carter's 1977 Decision recognized that "(P)roducer participation in the financing of the project is warranted due to the beneficiary status and their financial strength." However, it limited that participation by prohibiting producers from having an equity interest in the project. The prohibition was based upon antitrust concerns, as expressed by the Department of Justice. A more thorough analysis of the antitrust issues reveals that the producers' ability to exert monopoly control over the project, or to inhibit further development of North Slope reserves by controlling the sole transportation available to natural gas markets, would most likely stem from their ability to limit access to the system or restrict its expansion. By requiring the Commission, in consultation with the Attorney General, to address the access and expansion issues at the time of the final ANGTS certificate issuance, the proposed waiver provides sufficient antitrust protection to meet the express concerns.

CONDITIONING PLANT

President Carter's 1977 Decision excludes the conditioning plant from the description of the approved transportation system. The exclusion stems from the original certificate application which requested certification of facilities commencing at the discharge side of the conditioning plant facilities. The system described in the Decision was necessarily limited to the facilities for which certification was requested. As a practical matter, the economic effect of including the conditioning plant in the system is the same as treating the plant as a separately certificated facility and providing a conditioning cost allowance sufficient to provide for the recovery of the gas conditioning cost.

BILLING COMMENCEMENT DATE

The proposed waiver is designed to address two interrelated tariff issues which are not dealt with in President Carter's 1977 Decision. Part (a) will enable the Commission to conform the tariff provisions to the tariff approved by the Canadian National Energy Board. The Canadian tariff provides for recovery of the full cost of service for the pipeline in Canada. The proposed waiver recognizes the Canadian decision, while protecting United States natural gas customers from the possibility that the Canadian segment of the pipeline would be completed in advance of the time it would be necessary. Part (b) will enable the Commission to fashion a tariff

that will provide an assured source of revenue for the payment of a minimum bill tariff. Such a tariff could conceivably go into effect in advance of completion and commissioning of all parts of the system. The minimum bill tariff would not go into effect before a date determined by the Commission to be the most likely date for the entire pipeline system to begin operation.

EVIDENTIARY HEARING REQUIREMENT

The Natural Gas Act may be construed to require a formal, on the record, evidentiary hearing by the Commission on each application for a certificate of public convenience and necessity to construct or operate any segment of the ANGTS. The proposed waiver simply eliminates the requirement that such a hearing be held, leaving the Commission with discretion to determine whether such a hearing is necessary. The waiver is consistent with the purpose of the 1976 ANGTS to expedite decision-making on the project. The Commission would most likely substitute streamlined rulemaking procedures, with complete opportunity for public participation, on the remaining certificate issues.

AUTHORITY TO MODIFY OR RESCIND ORDERS

The proposed waiver is intended to assure lenders for the project that the income stream which serves as security for their loans will not be reduced below the level necessary to retire the principal of the loan and to pay the interest thereon. It would accomplish this purpose by precluding the Commission from changing the rules of the game, so to speak, in a manner which would undercut the security of the loan. This objective would be achieved by withdrawing from the Commission its authority under the Natural Gas Act to change the project tariffs in such a manner as to reduce project revenues below the level necessary to service project debt.

REGULATORY STATUS AS A NATURAL GAS COMPANY

This waiver is technical in nature.

IMPORT AND EXPORT AUTHORITY

This waiver is technical in nature.

APPENDIX C

TEXT OF THE PRESIDENT'S MESSAGE TO THE CONGRESS

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.

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