



Lynn Powers <LRP@vnf.com>
10/31/2001 12:51:33 PM

Record Type: Record

To: Edward A. Boling Energy Task Force/CEQ/EOP@EOP
cc: See the distribution list at the bottom of this message
Subject: Comments of Foothills Pipe Lines Alaska Inc. (66 FR 43586)

Attn: V.A. Stephens, Energy Project Streamlining Task Force

Please find attached the comments of Foothills Pipe Lines Alaska Inc. in response to the Council on Environmental Quality's Notice and Request for Comments (66 FR 43586).

- Lynn Powers
Assistant to Theresa Zolet
Van Ness Feldman, PC
(202) 298-1947
lrp@vnf.com

STATEMENT OF CONFIDENTIALITY

The contents of this e-mail and its attachments are intended solely for the addressee(s) hereof. In addition, this e-mail transmission may be confidential and may be subject to privilege protecting communications between attorneys or solicitors and their clients. If you are not the named addressee, or if this message has been addressed to you in error, you are directed not to read, disclose, reproduce, distribute, disseminate or otherwise use this transmission. Delivery of this message to any person other than the intended recipient(s) is not intended in any way to waive privilege or confidentiality. If you have received this transmission in error, please alert the sender by reply e-mail; we also request that you immediately delete this message and its attachments, if any.



- VANDOC_111154_1.DOC

Message Copied To:

harry.hobbs@foothillspipe.com
john.ellwood@foothillspipe.com
marty.heeg@foothillspipe.com
rob.cohen@foothillspipe.com
dennis_mcconaghy@transcanada.com
tony_palmer@transcanada.com
Curt Moffatt <JCM@vnf.com>
Jonathan Simon <JXS@vnf.com>
Theresa Zolet <TIZ@vnf.com>
MBirch@wei.org
mstewart@wei.org



A PROFESSIONAL CORPORATION
1050 Thomas Jefferson Street N.W.
Washington, D.C. 20007-3877
(202) 298-1800 Fax (202) 338-2416
www.vnf.com

Theresa I. Zolet
(202) 298-1948

October 31, 2001

Chair
Council on Environmental Quality
Executive Office of the President
17th and G Streets, NW
Washington, DC 20503
Attn: V.A. Stephens, Energy Project Streamlining Task Force

Re: Energy Task Force, Notice and Request for Comments (66 FR 43586)

Dear Sir or Madam:

Please find enclosed, the comments of Foothills Pipe Lines Alaska Inc. in response to the Council on Environmental Quality's Notice and Request for Comments (66 FR 43586).

Please contact the undersigned immediately, if you should have any questions.

Sincerely,

\s\ Theresa I. Zolet
Theresa I. Zolet
Counsel for Foothills Pipe Lines Alaska Inc.

October 31, 2001

Chair
Council on Environmental Quality
Executive Office of the President
17th and G Streets, NW
Washington, DC 20503
Attn: V.A. Stephens, Energy Project Streamlining Task Force

Subject: Energy Task Force, Notice and Request for Comments (66 FR 43586)

On behalf of the Alaskan Northwest Natural Gas Transportation Company (the "ANNGTC"), Foothills Pipe Lines Alaska Inc. ("Foothills Alaska"), submits the following comments concerning the proposed nature and scope of activities of the federal interagency task force established by Executive Order 13212. The ANNGTC Board of Partners has delegated to Foothills Alaska the specific duty, on behalf of the ANNGTC, to prepare, file and prosecute with the appropriate U.S. Federal, State and local agencies and other governmental authorities such applications and requests for permits, authorizations and certificates as may be necessary for the further development of the ANGTS in Alaska.

I. Introduction

Foothills Pipe Lines Ltd. ("Foothills"), of which Foothills Alaska is a subsidiary, is jointly owned by Westcoast Energy Inc. and TransCanada PipeLines Limited ("TransCanada"), the two major participants in the Canadian gas pipeline business. The ANNGTC is a United States partnership formed to construct and operate the Alaska portion of the Alaska Natural Gas Transportation System ("ANGTS"). United Alaska Fuels Corporation, a subsidiary of Foothills Alaska, and TransCanada PipeLines USA Ltd., a subsidiary of TransCanada, are the two current partners of the ANNGTC. In addition, Foothills is the Canadian sponsor of the ANGTS, and the majority owner and operator of the Canadian portions of the Eastern and Western Legs of the ANGTS.

The ANGTS is the natural gas pipeline project approved in accordance with the Alaska Natural Gas Transportation Act of 1976 ("ANGTA")¹ in the United States, the Northern Pipeline Act ("NPA") in Canada, and the Agreement Applicable to a Northern

¹ Pub. L. 94-586, as amended, 15 U.S.C. §§ 719-719o.

Natural Gas Pipeline between the two countries (“U.S./Canada Agreement”).² As approved, the ANGTS is a 4,800 mile international pipeline project commencing at Prudhoe Bay and paralleling the Trans Alaska oil 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 southeast, crossing the United States-Canada border at Monchy, Saskatchewan and terminating near Chicago, Illinois. The Western Leg proceeds southwest, crossing the United States-Canada border near Kingsgate, British Columbia and terminating at a point near Antioch, California.

Much of the Eastern and Western Legs of the ANGTS has been constructed and are in operation to supply Canadian natural gas to the lower 48 states. These facilities now transport approximately one-third of total Canadian natural gas exports to the United States.

When market factors shifted in the early 1980s, however, the majority of the work on the northernmost portions of the ANGTS was suspended until market conditions improved. Now, given projected supply, demand, and price conditions, the ANNGTC and Foothills are preparing to move forward to complete the ANGTS.

On May 18, 2001, President George W. Bush signed Executive Order 13212, entitled “Actions to Expedite Energy-Related Projects.”³ Among other provisions, Executive Order 13212 established an interagency task force (“Task Force”) “to monitor and assist the agencies in their efforts to expedite their review of permits or similar actions, as necessary, to accelerate the completion of energy-related projects, increase energy production and conservation, and improve transmission of energy” and “to monitor and assist agencies in setting up appropriate mechanisms to coordinate Federal, State, tribal, and local permitting in geographic areas where increased permitting activity is expected.”⁴

In August 2001, the Council on Environmental Quality (“CEQ”) issued a notice and request for comments on “the proposed nature and scope of Task Force activities, specific suggestions, and examples of permitting or other decision making processes which should be improved or streamlined.”⁵ On September 28, 2001, CEQ extended the call for comments.⁶ Foothills Alaska appreciates the opportunity to comment on this effort.

² Agreement Between the United States of America and Canada on Principles Applicable to a Northern Natural Gas Pipeline, Sept. 20, 1977, U.S.-Can., 29 U.S.T. 3581.

³ Exec. Order No. 13212, 66 Fed. Reg. 28357 (May 18, 2001).

⁴ Id.

⁵ Energy Task Force, 66 Fed. Reg. 43586 (Aug. 20, 2001).

⁶ Energy Task Force, 66 Fed. Reg. 50434 (Oct. 3, 2001).

II. Summary of Position

In its notice, CEQ states that “[t]he Task Force will help manage the federal agency decisionmaking process for setting priorities, scheduling activities in accordance with these priorities, identifying staffing and resource needs, facilitating issue resolution, and measuring the achievements of federal agencies in implementing Executive Order 13212.” It further states that it will help “agencies create mechanisms to coordinate Federal, State, tribal and local permitting in geographic areas where increased permitting activity is expected.” Furthermore, CEQ states that “[t]he Task Force will use the experience gained in streamlining decisions about energy-related projects and resolving coordination issues to identify opportunities for systemic improvement and, where appropriate, regulatory or legislative change.”

The ANGTA framework—consisting of ANGTA itself, the President’s Decision thereunder,⁷ Congress’s Joint Resolution approving the President’s Decision,⁸ and certain other related legal and regulatory authorities—already reflects Congress’s and the President’s decision that the ANGTS is to be a priority for agencies, and that such agencies are to schedule activities in accordance with this priority in order to expedite federal activities required for the construction and initial operation of the ANGTS. The framework further established a centralized authority, the Office of the Federal Inspector (“OFI”), whose authorities are now vested in the Secretary of Energy, to facilitate and streamline interagency coordination with respect to Federal activities related to the ANGTS project. Maintaining and, to the extent it may be necessary, reinforcing the existing ANGTA framework offers the best opportunity to help ensure the expeditious construction and initial operation of the ANGTS project. Accordingly, in helping federal agencies to set and carry out priorities concerning energy-related projects, the Task Force must recognize, and should reinforce as necessary, existing law establishing the ANGTS as a priority for federal agencies. Further, the Task Force must remain mindful of the ANGTA framework and avoid any new legislative or regulatory change that could undermine the existing framework and delay, or even prevent, the construction and initial operation of the ANGTS.

III. Composition and Role of Task Force

A. The Federal Energy Regulatory Commission Should be Represented on the Task Force

As established by Executive Order 13212, the Task Force will be composed of representatives from the Departments of State, the Treasury, Defense, Agriculture, Housing and Urban Development, Justice, Commerce, Transportation, the Interior, Labor, Education, Health and Human Services, Energy, Veterans Affairs, the Environmental Protection Agency, Central Intelligence Agency, General Services

⁷ Executive Office of the President, Decision and Report to Congress on the Alaska Natural Gas Transportation System, September 22, 1977 (hereinafter “President’s Decision”).

⁸ Pub. L. No. 95-158, 91 Stat. 1268 (1977) (hereinafter “Joint Resolution”).

Administration, Office of Management and Budget, Council of Economic Advisers, Domestic Policy Council, and the National Economic Council. The Task Force will be chaired by the CEQ Chairman, who may, in his discretion, include other representatives on the Task Force.

Foothills Alaska believes that it is important for the Federal Energy Regulatory Commission ("FERC") to be represented on the Task Force. The FERC is the primary Federal regulatory agency with respect to interstate natural gas pipelines. Under the Natural Gas Act ("NGA"), the FERC regulates both the construction and operation of pipeline facilities and the transportation of natural gas in interstate commerce. In reviewing a proposed pipeline project's application for a certificate of public convenience and necessity under the NGA, the FERC considers a broad range of factors, including input from other federal agencies and government officials. Given the FERC's integral role in natural gas pipeline permitting decisions and significant experience in conducting multi-layered reviews, the FERC should be centrally involved in the Task Force's efforts to coordinate and streamline pipeline activities.

B. The Role of the Task Force Should be One of a Facilitator, Not a Regulator

Foothills Alaska believes that the role of the Task Force should be one of a facilitator, rather than of a regulator. While there may be a general role for the Task Force to play in assisting federal agencies in accelerating the completion of energy-related projects, the Task Force must be careful to avoid creating another layer of review on top of the many that already exist. Adding a new regulator to the mix would only exacerbate existing coordination problems and undermine the administration's efforts to streamline energy projects.

As more fully discussed below, the OFI, whose duties and authorities are now vested in the Secretary of Energy, provides an existing mechanism to coordinate governmental activities related to the ANGTS. Created as a means of streamlining and centralizing Federal involvement with the construction of the ANGTS, the OFI was vested with certain monitoring, approval, and enforcement authorities, as well as ultimately exclusive responsibility for the enforcement of all Federal statutes relevant in any manner to the pre-construction, construction, and initial operation of the ANGTS. With these functions now vested in the Secretary of Energy, the Task Force should lend its support and assistance to the efforts of the Secretary to expedite the construction and initial operation of the ANGTS.

C. The Task Force Should Not Propose and/or Advocate Additional New Regulations and/or Legislation

The Task Force should avoid proposing and/or otherwise advocating new regulations and/or legislation, particularly with respect to the ANGTS project. CEQ advises in its request for comments that "[t]he Task Force will work through an operational approach that facilitates interagency coordination and addresses impediments

to federal agencies' completion of decisions about energy-related projects" in a way that will increase the production, transmission, and conservation of energy. Furthermore, the CEQ states that "the Task Force will use the experience gained in streamlining decisions about energy-related projects and resolving coordination issues to identify opportunities for systemic improvement and, where appropriate, regulatory or legislative change."

As fully discussed below, the existing ANGTA framework and other related legal authorities expressly and sufficiently address these impediments and establish procedures to ensure the expeditious construction and initial operation of the ANGTS project. By establishing the OFI, whose authorities are now vested in the Secretary of Energy, the ANGTA framework has created a mechanism to facilitate and streamline interagency coordination with respect to federal activities related to the ANGTS project. Any new regulatory and/or legislative change to the extent such changes are applicable to the ANGTS project, especially given the authorizations that already have been obtained for the project and the significant investment in the project to date, could undermine this framework and delay, or even prevent, the construction and operation of the project. Such a result would be entirely inconsistent with the goals of the President's Executive Order and the mission and objectives of the Task Force, and must be avoided.

IV. Basic Information About the Alaska Natural Gas Transportation System

As part of its request for public comments, CEQ has asked for comments on specific energy projects. More specifically, CEQ has asked for "basic information about major pending projects or major projects under development that may be relevant to the Task Force efforts to streamline energy permitting decisions Foothills Alaska herein provides basic information about the ANGTS, presented in the format specified in the CEQ's request for public comment:

1. Name of the project: Alaska Natural Gas Transportation System ("ANGTS")
2. Entity proposing the project: Alaskan Northwest Natural Gas Transportation Company
3. Category of the project: International natural gas pipeline and appurtenant facilities
4. Brief description of the project:

The ANGTS is an international natural gas pipeline project approved in accordance with the Alaska Natural Gas Transportation Act ("ANGTA") in the United States, the Northern Pipeline Act ("NPA") in Canada, and the Agreement Applicable to a Northern Natural Gas Pipeline between the two countries ("U.S./Canada Agreement"). The ANGTA/NPA framework allows for the expeditious permitting and construction of the ANGTS. In addition, coordination of and consultation on necessary regulatory and commercial issues with respect to the ANGTS is enshrined in the U.S./Canada Agreement. Over the years, the two

governments have continuously supported and remained committed to Phase I and ("Prebuild") and to the completion of the ANGTS.⁹

As approved, the ANGTS is a 4,800-mile international pipeline project commencing at Prudhoe Bay and paralleling the Trans Alaska oil pipeline system 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 southeast, crossing the United States-Canada border at Monchy, Saskatchewan and terminating near Chicago, Illinois. The Western Leg proceeds southwest, crossing the United States-Canada border near Kingsgate, British Columbia and terminating at a point near Antioch, California. Much of the Eastern and Western Legs of the ANGTS has been constructed and is in operation to supply Canadian natural gas to the lower 48 states.

5. Agency or agencies that must be consulted and agencies from which approval is needed:

a. Federal

- Department of Energy / Office of the Federal Inspector: The Office of the Federal Inspector ("OFI") was established by ANGTA, the President's Decision, the Reorganization Plan No. 1 of 1979, and an Executive Order. The OFI was the central element of organization created to streamline and centralize the Federal involvement with the construction of the ANGTS and had the exclusive responsibility for monitoring the project and the enforcement of all Federal statutes relevant in any manner to the pre-construction, construction, and initial operation of the ANGTS. In addition, coordination by the OFI between the Federal government and the State of Alaska was essential to the regulatory process necessary for the construction and initial operation of the ANGTS. In 1992, the OFI was abolished and all of the functions and authorities of the OFI were vested in the Secretary of Energy.¹⁰
- Bureau of Land Management: The ANGTS already possesses a Federal right-of-way grant over federal lands along the pipeline route.
- Federal Energy Regulatory Commission: The ANGTS already has a conditional FERC certificate, but needs to procure a final certificate of public convenience and necessity and a Presidential Permit.

⁹ See attached "Overview of United States Governmental Actions in Support of ANGTS" and "Overview of Canadian Governmental Actions in Support of ANGTS."

¹⁰ Energy Policy Act of 1992, Pub. L. No. 102-486, 106 Stat. 3128, § 3012 (1992).

- United States Department of Defense, Army Corps of Engineers: The ANGTS already has Clean Water Act Section 404 permits.
- Council on Environmental Quality: Environmental impact statements have been obtained. The ANGTS is now in the phase of developing terms and conditions and compliance therewith to achieve effective mitigation of environmental issues.
- Bureau of Indian Affairs: Consultations/negotiations if native allotment issues arise.
- United States Department of Transportation, Federal Aviation Administration: Permits regarding airports and aircraft.
- United States Department of Transportation, United States Coast Guard: Permit for bridges over navigable waters.
- United States Department of the Treasury: Permit for use of explosives.
- United States Environmental Protection Agency: Clean Air Act compliance and Clean Water Act Section 402 permit.
- Federal Communications Commission: Radio / communications permits and authorizations.
- International Boundary Commission: Approval of facilities constructed at or near the United States-Canada border.

b. State

- Alaska Department of Natural Resources, Gas Pipeline Office: Foothills has entered into a memorandum of understanding with respect to the continued processing of its state right-of-way application. The State and Foothills are working very closely on the processing of this application.
- Alaska Department of Environmental Conservation: The ANGTS already has Clean Water Act Section 401 certificates of reasonable assurance. The Alaska Department of Environmental Conservation also is responsible for issuing air emission permits and waste disposal permits.
- Office of the Governor, Division of Governmental Coordination: Coastal Zone Management Act "consistency determination." The

ANGTS received, in conjunction with its Clean Water Act Section 404 permits, a determination of consistency with the Coastal Zone Management Act.

- Alaska Department of Fish and Game: Permits for activities obstructing or disturbing anadromous fish stream habitats and for activities undertaken in State game refuges and the like.

c. Local

- Cities and Boroughs: Land purchases, leases, or permits (necessity uncertain). Zoning or planning actions.

V. **The ANGTA Framework Already Establishes the ANGTS as a Priority for Federal Agencies**

In its notice, CEQ states that [t]he Task Force will help manage the federal agency decisionmaking process for setting priorities, scheduling activities in accordance with these priorities, identifying staffing and resource needs, facilitating issue resolution, and measuring the achievements of federal agencies in implementing Executive Order 13212. As fully explained below, the ANGTA framework already reflects Congress's and the President's decision that the ANGTS is to be a priority for agencies, and that they are to schedule activities in accordance with this priority in order to expedite federal activities required for the construction and initial operation of the ANGTS. In helping federal agencies to set and carry out priorities concerning energy-related projects, the Task Force must recognize, and should reinforce as necessary, the existing law already establishing the ANGTS as a priority for federal agencies.

In the mid-1970s, the Federal Power Commission ("FPC"), the predecessor to the FERC, was struggling to choose, under section 7 of the NGA,¹¹ the best among three mutually exclusive projects to deliver gas from the North Slope of Alaska to markets in the lower 48 states. While agreeing with the FPC that known gas reserves and anticipated market demand in the lower 48 states would support the financing and construction of only one transportation system, Congress recognized that the FPC's complex procedures for choosing the most suitable proposal, and the likelihood of judicial challenges to the FPC's final decision, threatened to increase the cost for, and delay the delivery of, much-needed North Slope natural gas to American consumers. In light of the urgent need to meet demand in the lower 48 states and to blunt rising energy prices, Congress enacted ANGTA. ANGTA superseded the NGA process and the then-pending multiple FPC proceedings to certificate a project to transport Alaska North Slope gas to markets in the lower 48 states. Instead, it empowered the President, subject to congressional approval, to choose a single project under the ANGTA's unique procedures. In addition, the ANGTA set forth various requirements intended to ensure that the system selected would be completed and in initial operation before any other

¹¹ 15 U.S.C. § 717f.

proposals for moving Alaska natural gas to markets in the lower 48 states could be considered under the usual provisions of the NGA.

Section 5 of the ANGTA specifically directed the FPC to suspend its pending comparative proceedings until either the President's decision took effect following congressional approval or no such decision took effect (either because Congress withheld its approval or the President decided not to designate a system). Once Congress approved the President's Decision, the FPC was then directed to vacate the suspended proceedings and to issue, in accordance with the President's Decision, a certificate of public convenience and necessity for the designated system and its sponsors. Under section 5, only if the President made no designation, or if the President's designation never became effective because it was not approved by Congress, could the certification of an initial Alaska natural gas transportation system thereafter be made under the normal NGA procedures.

In his Decision and Report under ANGTA, President Carter selected, for the Alaska portion of the ANGTS, the system and route proposed by the predecessor of the ANNGTC and incorporated in his Decision the U.S./Canada Agreement. The President's Decision, including the Agreement with Canada, was approved by Congress by Joint Resolution, Pub. L. No. 95-158, 91 Stat. 1268 (1977). ANGTA's procedures and limitations, and the President's decision as approved by Congress, remain in full force and effect today. The actions by the Chief Executive and the Congress confer a priority on the selected system that cannot constitutionally be revoked or undermined by administrative action of the FERC or any other Federal agency. Indeed, in Section 3012 of the Energy Policy Act of 1992 ("EPAAct"), Congress determined to retain the unique legal framework that confers priority on the selected system, despite recommendations that it repeal ANGTA and revert to the NGA certification process superseded by ANGTA.

The ANGTA also requires expedition and precedence for processing needed permits and authorizations, in order to facilitate construction and initial operation of the ANGTS. Section 9 of ANGTA expressly establishes the ANGTS as a priority for federal agencies and requires agencies to expedite all actions with respect to the consideration of certificates or other authorizations related to the construction and initial operation of the approved system. Section 9(a) directs all federal officers and agencies that issue a certificate, right-of-way, permit, lease, or other authorization required for "the taking of any action which is necessary or related to the construction and initial operation of the approved transportation system" to "issue or grant such certificates . . . and other authorizations at the earliest practicable date," to the "fullest extent" permitted by law.¹² Section 9(b) further directs each such federal officer and agency to expedite "[a]ll actions . . . with respect to consideration of applications or requests" for such authorizations and to give those authorizations "precedence over any similar applications or requests."¹³ In addition, Sections 9(c) and 9(d) authorize agencies to include terms and conditions in such authorizations, and to amend or abrogate any such terms and conditions, but with

¹² 15 U.S.C. § 719g(a).

¹³ 15 U.S.C. § 719g(b).

two important limitations: (1) the agencies may not take any action that would compel a change in the “basic nature” or “general route” of the approved system, as set forth in Section 2 of the President’s Decision; and (2) they may not take any action that would otherwise prevent or impair in any significant respect the expeditious construction and initial operation of the system.¹⁴

To further help expedite the construction and initial operation of the project, Congress, in Section 10 of ANGTA, significantly limited judicial review of agency actions relating to the ANGTS, replacing the usual judicial review provisions of the NGA with provisions allowing more restricted opportunities for judicial review.¹⁵ Under Section 10, review was limited to claims that agency actions taken under ANGTA either denied constitutional rights or were in excess of statutory rights. The purpose of this limitation was to prevent reviewing courts from assessing the reasonableness or the record basis for agency actions taken with respect to the ANGTS, and thus to expedite construction and initial operation of the chosen system.

In order to expedite even further construction of the ANGTS and avoid delays and cost overruns due to agency conflict, the ANGTA framework streamlined and centralized Federal involvement with the construction of the ANGTS through the creation of the OFI. Section 7(a)(5) of ANGTA, the President’s Decision, and other authoritative documents vested a variety of functions and authorities in the Federal Inspector, including, among others, monitoring functions, approval authorities, and enforcement authorities, and ultimately attributed to the OFI exclusive responsibility for the enforcement of all Federal statutes relevant in any manner to the pre-construction, construction, and initial operation of the ANGTS, as well as the authority to delegate to an authorized officer of each agency the authority to enforce the terms, conditions, and stipulations of each grant, permit, or other authorization issued by that agency.¹⁶ Furthermore, the regulatory framework developed in relation to the ANGTS identified the Federal Inspector as the officer generally responsible for providing the necessary coordination between the Federal government and the State of Alaska.

Unfavorable market conditions resulted in the majority of the work regarding the Alaska portion of the ANGTS being placed in a holding phase and led to the repeal of Section 7(a)(5) of ANGTA and the abolition of the OFI by Section 3012 of the Energy Policy Act of 1992 (“EPAct”).¹⁷ Section 3012 of EPAct was essentially a budgetary, government streamlining measure, aimed at the elimination of an office that by then had become largely inactive. It did not, however, repeal the regulatory framework related to the ANGTS, and transferred all functions and authorities of the OFI to the Secretary of Energy. Therefore, any responsibility that OFI would have had in relation to the ANGTS is now vested in the Secretary.

¹⁴ 15 U.S.C. §§ 719g(c), (d).

¹⁵ 15 U.S.C. § 719h.

¹⁶ Reorganization Plan, §§ 102, 202(a).

¹⁷ Pub. L. No. 102-486, 106 Stat. 3128 (1992).

ANGTA also included several provisions intended to ensure that the completion of the ANGTS was accelerated consistent with maintaining safety, public health, and environmental protections. ANGTA provided in Section 7(b) for the transmission to the Congress of the President's Decision and a report explaining in detail factors relating to the project, including environmental impacts. Specifically, Section 7(b) required that the President's Decision be accompanied by a report "explaining in detail the basis for his decision with specific reference to the factors set forth in sections 5(c) and 6(a)."¹⁸ ANGTA Section 5(c) required that the FPC's recommendation concerning the selection of the transportation system be accompanied by a report which included a discussion of the environmental impacts of each alternative considered.¹⁹ ANGTA Section 6(a) authorized any federal officer or agency to submit comments to the President on the FPC's recommendation and report. Such comments were to include information with respect to "environmental considerations, including air and water quality and noise impacts."²⁰

In addition, ANGTA Section 8(e) directed the President to "find that any required environmental impact statement relative to the Alaska natural gas transportation system designated for approval by the President has been prepared and that such statement is in compliance with [NEPA]." Section 8(e) further provided that the President's findings "shall be set forth in the report" of the President submitted under Section 7. Finally, the President could supplement or modify the EISs prepared by the FPC or other officers or agencies. Any such EISs were to be submitted to Congress with the President's Decision.²¹

ANGTA also made specific provision for the approval by Congress of the EISs submitted with the President's Decision. Section 10(c)(3) provided that: "The enactment of a joint resolution under section 8 approving the decision of the President shall be conclusive as to the legal and factual sufficiency of the [EISs] submitted by the President relative to the approved transportation system and no court shall have jurisdiction to consider questions respecting the sufficiency of such statements under [NEPA]."²²

Two final environmental impact statements ("EISs") and a supplemental EIS already have been prepared for the ANGTS project.²³ Pursuant to Sections 8(e) and 10(c)(3) of ANGTA, the President, in his Decision,²⁴ and Congress, in its ratification of

¹⁸ 15 U.S.C. § 719e(b).

¹⁹ 15 U.S.C. § 719c(c).

²⁰ 15 U.S.C. § 719d(a).

²¹ 15 U.S.C. § 719f(e).

²² 15 U.S.C. § 719h(c)(3).

²³ The ANGTS currently has an EIS prepared on the pipeline in support of the federal right-of-way grant. In addition, the project has EISs prepared by the FERC on the pipeline and conditioning facilities.

²⁴ Report Accompanying a Decision on an Alaska Natural Gas Transportation System, at 133 ("The President hereby determines pursuant to the direction of Section 8(e) of ANGTA, that the required environmental statements relative to an Alaska natural gas

the Decision,²⁵ found that the EISs were legally and factually sufficient under NEPA. In addition, the President, in Section 5 of his Decision, established a comprehensive mechanism under which Federal officers and agencies are to conduct further site-specific environmental review, mitigation, and compliance, and to include appropriate environmental terms and conditions in certificates, permits, rights-of-way, and other authorizations necessary to construct and initially operate the project. By approving the President's Decision, including the mechanism in Section 5, in the Joint Resolution, Congress modified NEPA's application for purposes of the ANGTS. The Joint Resolution was an express Congressional finding "that any environmental impact statements prepared relative to [the ANGTS] and submitted with the President's decision are in compliance with [NEPA]." Thus, any further environmental review would be conducted through the implementation of the requirements of Section 5 of the President's Decision.

ANGTA, the President's Decision thereunder, and Congress's Joint Resolution approving the President's Decision provide clear guidance to federal agencies that, in carrying out their decisionmaking process for setting priorities, the ANGTS must be a priority. In order to expedite federal activities required for the construction and initial operation of the ANGTS, as required by ANGTA, agencies must schedule activities in accordance with this priority. Therefore, in assisting federal agencies in establishing and carrying out their priorities, the Task Force must recognize the existing law setting the ANGTS as a priority for federal agencies, and, to the extent necessary and appropriate, ensure that federal agencies act accordingly.

VI. No New Regulatory or Legislative Change is Necessary to Streamline Decisions About the ANGTS or Resolve Coordination Issues With Respect to the Project

In its notice, CEQ states that "[t]he Task Force will use the experience gained in streamlining decisions about energy-related projects and resolving coordination issues to identify opportunities for systemic improvement and, where appropriate, regulatory or legislative change." Because of the ANGTA framework and the actions that already have been taken pursuant to this framework, no new federal regulations or legislation are needed to expedite construction of the Alaska gas pipeline.

The policies expressed in Executive Order 13212 with respect to which the CEQ is seeking recommendations already are well-reflected in the existing ANGTA

transportation system have been prepared, that they have been certified by the CEQ and that they are in compliance with [NEPA].").

²⁵ The Joint Resolution provides: "That the House of Representatives and Senate approve the Presidential decision on an Alaska natural gas transportation system submitted to the Congress on September 22, 1977, and find that any environmental impact statements prepared relative to such system and submitted with the President's decision are in compliance with [NEPA]." Pub. L. No. 95-158, 91 Stat. 1268 (1977).

framework. As discussed above, the existing ANGTA framework provides a statutory and regulatory scheme to ensure the expeditious construction and initial operation of the ANGTS project in a safe and environmentally sound manner. ANGTA is the governing law and is as viable today as it was twenty-five years ago, when it was enacted.

Significantly, much of the Eastern and Western Legs of the ANGTS in the United States (i.e., Northern Border Pipeline Company and Pacific Gas Transmission Company, predecessor to PG&E – Gas Transmission Northwest) and in Canada (i.e., Foothills) has been constructed and are in operation to supply Canadian natural gas to the lower 48 states. This prebuild of the ANGTS was authorized and constructed pursuant the ANGTA/NPA framework. In addition, Foothills has expanded its facilities in Canada five times pursuant to the NPA.

In addition, substantial work already has been completed with respect to obtaining the necessary authorizations for the completion of the remainder of the ANGTS. Using the framework developed under ANGTA, the ANNGTC already has obtained several of the needed regulatory approvals for the ANGTS, including a conditional certificate of convenience and necessity from the FERC and Clean Water Act Section 404 wetlands permits from the U.S. Army Corps of Engineers. In addition, the ANNGTC currently holds a Bureau of Land Management (“BLM”) right-of-way across all federal lands along the pipeline route in Alaska. Moreover, in Canada, the project has obtained certificates of public convenience and necessity, as well as a right-of-way across the entire Yukon Territory. In addition to the EISs that already have been completed, significant environmental work has been done by the ANGTS sponsors in support of its FERC certification, the Section 404 permits, the federal right-of-way, and the pending state right-of-way application.

ANGTA is viable, and any questions about its effectiveness can be addressed administratively or through the unique waiver of law process included in Section 8(g) of ANGTA. That section provides, in pertinent part, that “at any time after a decision designating a transportation system is submitted to the Congress pursuant to this section, if the President finds that any provision of law applicable to actions to be taken under subsection (a) or (c) of section 9 require waiver in order to permit expeditious construction and initial operation of the approved transportation system, the President may submit such proposed waiver to both Houses of Congress.” This waiver of law provision was used in 1981 to waive certain provisions of the President’s Decision and the NGA in order to facilitate the private financing of the project.

Furthermore, Paragraph 8 of the U.S./Canada Agreement directs each Government to designate a senior official “for carrying on periodic consultations on the implementation of these principles relating to the construction and operation of the Pipeline.” The designated officials may delegate the authority to other representatives who, “individually or as a group, may make recommendations with respect to particular disputes or other matters, and may take such other actions as may be mutually agree, for the purpose of facilitating the construction and operation of the Pipeline.” This

coordination and consultative process, in addition to ANGTA's waiver of law provision, provides the flexibility to address issues as they may arise.

As a result of this legal and regulatory framework, and the many actions that already have been taken with respect to the ANGTS pursuant to this framework, no new federal regulations or legislation are needed to expedite construction of the pipeline. The Task Force can best serve the Administration's policy of accelerating the completion of the ANGTS, and increasing the production and transmission of energy in a safe and environmentally sound manner, by maintaining this framework intact.

VII. The Office of the Federal Inspector, and Now the Secretary of Energy, Provides an Adequate Mechanism for Coordinating Governmental Activities With Respect to the ANGTS

The creation of the OFI, whose duties and authorities have since been transferred to the Secretary of Energy, provides an existing mechanism for coordinating governmental activities with respect to the ANGTS. As discussed above, the OFI was created as a way to streamline Federal activities related to the construction of the ANGTS. By centralizing many related functions in a single office, delays and cost overruns due to agency conflict would be avoided and construction of the project would be expedited. The OFI also was designed to provide a means of facilitating coordination between the Federal government and the State of Alaska.

One of the primary functions of the OFI was coordination among Federal agencies. In order to make such coordination effective, the President's Decision provided that the OFI would have supervisory enforcement authority over permits, certificates and other authorizations from other Federal Agencies. The Report accompanying the Decision characterized such authority as "essential to avoid project delays and minimize cost overruns" and suggested that, in absence of the OFI's enforcement authority, a "coordinate regulatory approach will be elusive."²⁶ The Reorganization Plan implemented the President's decision and vested in the Federal Inspector "exclusive responsibility for enforcement of all Federal statutes relevant in any manner to pre-construction, construction, and initial operation [of the ANGTS]."²⁷

The regulatory framework developed in relation to the ANGTS also identified the OFI as the office generally responsible for providing the necessary coordination between the Federal government and the State of Alaska. Section 7(a)(5) of ANGTA required the Federal Inspector to "establish a joint surveillance and monitoring agreement, approved by the President, with the State of Alaska similar to that in effect during construction of the trans-Alaska oil pipeline to monitor the construction of the approved transportation system within the State of Alaska." The agreement has not yet been finalized. Although Section 7(a)(5) of ANGTA was later repealed by the EPAct, its provisions are reiterated, almost verbatim, in Section 5 of the President's Decision, which has independent force and effect of law because it was approved by an Act of Congress. Therefore, the

²⁶ Report accompanying the President's Decision, at 198-199.

²⁷ Reorganization Plan, § 102.

obligation to establish a joint surveillance and monitoring agreement with the State of Alaska has an independent statutory basis and was not affected by the repeal of Section 7(a)(5) of ANGTA. When EPA transferred to the Secretary of Energy all functions and authorities of the OFI, it necessarily also transferred the still outstanding responsibility for the establishment of a joint surveillance and monitoring agreement with the State of Alaska.

The OFI concept could not be more consistent with the goals of Executive Order 13212 and the mission of the Task Force. Accordingly, to the extent that the Task Force aims to address coordination issues with respect to the ANGTS project, it should take advantage of this existing mechanism and lend its support and assistance to the efforts of the Secretary.

VIII. Conclusion

Foothills Alaska shares the President's and the CEQ's objective to expedite construction of energy projects, including the Alaska natural gas pipeline. In determining the scope and nature of its role, the Task Force should recognize the benefits that can be achieved by maintaining, and to the extent necessary, reinforcing, the existing ANGTA framework.

The existing ANGTA framework fully reflects the policies established in Executive Order 13212. Executive Order 13212 states that:

The increased production and transmission of energy in a safe and environmentally sound manner is essential to the well-being of the American people. In general, it is the policy of this Administration that executive departments and agencies (agencies) shall take appropriate actions, to the extent consistent with applicable law, to expedite projects that will increase the production, transmission, or conservation of energy.

The Executive Order further directs agencies, for energy-related projects, to "expedite their review of permits or take other actions as necessary to accelerate the completion of such projects, while maintaining safety, public health, and environmental protections." Accordingly, in its request for comments, CEQ specifically asks for "recommendations for improving agency activities, consistent with the purposes and policies of the National Environmental Policy Act, 42 U.S.C. 4321 et seq., (1) To accelerate the completion of energy-related projects; (2) to increase energy production and conservation; (3) to improve transmission of energy; and (4) to coordinate permitting in geographic areas where increased permitting activity is expected."

These policies will best be served with respect to the ANGTS by allowing the continuing development of the project in accordance with the existing ANGTA framework. The ANGTS, as it would be developed pursuant to the ANGTA framework,

would clearly contribute to increased production and transmission of energy, providing a mechanism to transport significant quantities of North Slope natural gas to the lower 48 states, and would do so in a safe and environmentally sound manner. Through its expedited permitting provisions, limits on agency discretion, and limited judicial review, ANGTA provides substantial regulatory certainty and expedition. By establishing the ANGTS project as a priority and directing agencies to expedite actions relating to the project, the existing ANGTA framework fully serves the policy of expediting energy projects as stated in the Executive Order. The creation of the OFI, whose authorities are now vested in the Secretary of Energy, provides an existing mechanism for the coordination of Federal activities related to the project, as well as for coordination between the Federal government and the State of Alaska.

The ANGTA/NPA framework was specifically adopted in the United States and Canada to expedite the construction of the Alaska Highway Project when market conditions justified the cost of delivering natural gas to the lower 48 states. Foothills Alaska believes those market conditions will soon be in place. Unlike any other project, the ANGTS has been designated and approved by the Congress and the Canadian government after careful consideration of competing projects and routes. By virtue of this status, the project proponents have available all of the expedited permitting provisions of the ANGTA framework. Foothills Alaska therefore urges the Task Force to take advantage of the existing framework as a means to ensure the increased production and transmission of energy in a safe and environmentally sound manner, in accordance with the Administration's new policy.

Respectfully submitted,

Foothills Pipe Lines Alaska, Inc.

By s\ Theresa I. Zolet

J. Curtis Moffatt

Theresa I. Zolet

Van Ness Feldman

A Professional Corporation

1050 Thomas Jefferson Street, N.W.

Seventh Floor

Washington, D.C. 20007

(202) 298-1800

Overview of United States Governmental Actions in Support of ANGTS

The U.S. government and its agencies have consistently supported Phase I (the "Prebuild") and completion of the Alaska Natural Gas Transportation System ("ANGTS"). The following are specific examples of direct actions by the U.S. government in support of the ANGTS regime:

- In 1977, the United States and Canada signed an Agreement (the Treaty) designating the ANGTS as the project to transport Alaska gas to the lower 48 States. The Treaty mandates the respective roles of both governments, governs the construction and operation of the ANGTS and designates the company responsible for the construction and operation of the U.S. segments of the system.
- Two days after signing the Treaty, the President issued his Decision under the Alaska Natural Gas Transportation Act. The Decision specifically identified the project route and sponsors.
- On January 11, 1980, the FERC issued an order approving the Prebuild imports and related sales and tariff arrangements for the Western Leg of the ANGTS. The FERC found that the Prebuild was an integral part of the ANGTS and would create substantial benefits for the completion of the entire system. Among other things, the FERC concluded that prebuilding would:

Reduce the future transportation costs of Alaskan gas
Start the ANGTS project sooner than would otherwise be the case
Facilitate the financing of the ANGTS

- Later the same year, prior to Canadian approval of the Prebuild, the United States government was requested to provide an assurance to Canada that the U.S. was committed to the completion of the entire ANGTS in accordance with the 1977 Agreement. On July 1, 1980, Congress passed a Joint Resolution that reaffirmed its support for the ANGTS.

"It is the sense of Congress that the [ANGTS] system remains an essential part of securing this nation's energy future and, as such, enjoys the highest level of Congressional support for its expeditious construction and completion."

- Seventeen days later, President Carter wrote Prime Minister Trudeau expressing the United States' support for prebuilding and the completion of the remainder of the ANGTS.

"The United States also stands ready to take appropriate additional steps necessary for completion of the ANGTS."

"Our Government also appreciates the timely way in which you and Canada have taken steps to advance your side of this vital energy project. In view of this progress, I can assure you that the U.S. Government not only remains committed to the project; I am able to state with confidence that the U.S. Government is now

satisfied that the entire Alaska Natural Gas Transportation System will be completed. “

“I trust these recent actions on our part provide your government with the assurances you need from us to enable you to complete the procedures in Canada that are required before commencement of construction of the Prebuild sections of the pipeline.”

- In late 1981, the U.S. Congress, at the request of the President, passed a resolution waiving, among other things, certain provisions of the U.S. Natural Gas Act. The waivers were necessary in order to remove obstacles to private financing of the ANGTS.

Subsequent to these commitments, the U.S. Government and its agencies have continually supported and preserved the ANGTS, the Prebuild and their underpinnings, including the following:

- On May 25, 1984, the Federal Energy Regulatory Commission in the United States issued a generic rule which prohibited minimum take or pay purchase obligations in pipeline tariffs. Following interventions by the Canadian Government and Foothills, the Prebuild arrangements were subsequently exempted from the generic rule. The FERC explained its action as follows:

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

- When Order 636 was issued, the Commission proposed to remove certain regulations applicable to ANGTS explaining that they were obsolete in the post-Order 636 environment. FERC stated:

“Nonetheless, the Commission remains ready to facilitate the construction of the ANGTS, which Congress has found to be in the public interest. Hence, if action is warranted in the future to facilitate financing and progress on the ANGTS and the recovery of ANGTS costs, the Commission will act expeditiously. What was stated in Order 636-A applies here as well: ‘nothing in the rule [Order 636] is intended to disturb the United States governments’ commitment to the ANGTS prebuild.’”

In addition, the FERC stated:

“The United States, like Canada is bound by the ‘Agreement on Principles’ concerning the ANGTS. By virtue of the ‘Agreement’ which has the force and effect of a treaty, the

Commission may not alter the viability of the ANGTS by changes in previously granted orders.”

- In January 1988, President Reagan issued a finding that the export of Alaskan gas would not decrease the quantity, nor increase the price of energy available to the United States. However, the finding reaffirmed the President’s support for the unique regulatory treatment of the Prebuild and the ANGTS.
- In January 1992, the U.S. Federal Inspector for the ANGTS, Michael Bayer, sent the President a report, which contained 10 recommendations including:

The repeal of the Alaska Natural Gas Transportation Act;
The termination of the 1977 Agreement on Principles with Canada;
The elimination of the “exclusive ANGTS route to transport Alaska North Slope gas to the Lower 48; and,
The elimination of the “ANGTS project sponsors’ unique legal monopoly status.”

On February 14, 1992, the Government of Canada sent a diplomatic note to the U.S. Department of State, stated that it opposed the implementation of six of the Federal Inspector’s recommendations, including the four listed above. “Any action giving effect to the above-noted recommendations would be contrary to the obligations of the United States and would not be acceptable to Canada.” The U.S. did not accept the recommendations in question. The one action taken was that Congress transferred the functions of the Federal Inspector to the Secretary of Energy.

- On June 30, 1999, the Federal Energy Regulatory Commission issued an Order in the 1999 Northern Border Pipeline Company Rate Case. The Order included a statement that the “ANGTS is no longer viable”. Canada, through its Ambassador, and Foothills requested that the FERC clarify its statement to avoid creating uncertainty with respect to the U.S. commitments to its treaty with Canada and the ANGTS. The FERC clarified its order stating

“The Commission did not intend to indicate that the ANGTS project would not be fully implemented or that the Commission would not honor its commitments to that project.”

August 13, 2001

Overview of Canadian Governmental Actions in Support of ANGTS

The Canadian government and its agencies have consistently supported Phase I (the "Prebuild") and completion of the Alaska Natural Gas Transportation System ("ANGTS"). The following are specific examples of direct actions by the Canadian government in support of the ANGTS regime:

- In 1977, Canada and the United States signed an Agreement (the Treaty) designating the ANGTS as the project to transport Alaska gas to the lower 48 States. The Treaty mandates the respective roles of both governments, governs the construction and operation of the ANGTS and designates Foothills as the company responsible for the construction and operation of the Canadian segment of the system.
- In April 1978, Parliament enacted the Northern Pipeline Act, which granted certificates of public convenience and necessity to Foothills for the Canadian segments of the ANGTS. The Act also established the Northern Pipeline Agency and gave it authority to oversee the planning and construction of the system in Canada.

There was no question that the ANGTS was the sole means for delivery of Alaskan gas. Since that time, there have been several affirmations of the ANGTS regime, including:

- In 1980, prior to agreeing to approve the Prebuild of the ANGTS, Canada indicated that it required assurances reaffirming the commitment of the United States government to the completion of the entire ANGTS in accordance with the 1977 Agreement. In May that year, the National Energy Board stated the following:

"The Northern Pipeline Act, in the opinion of the Board, requires the building of the whole pipeline in Canada; in other words, it is an integrated project. In the Board's view the Act does not prohibit the building of the pipeline in two stages; for example, the southern part first and the northern part later. It does require that there must be a commitment to the whole of the pipeline in Canada before construction could start on the prebuild facilities. This in turn means a commitment to the whole of the pipeline in both Canada and the United States."

Subsequently, in a letter to the U.S. President, the Prime Minister stated:

"[the] Canadian government cannot, under the Northern Pipeline Act, authorize the construction of any part of the line, including pre-build, until it is assured that the entire line will be completed."

"The Foothills Company...has expressed...grave concern about the delays and is reluctant to invest more money until the uncertainties are resolved."

On July 1, 1980, Congress passed a Joint Resolution that reaffirmed its support for the ANGTS. Seventeen days later, President Carter wrote Prime Minister Trudeau expressing the United States' support for prebuilding and the completion of the remainder of the ANGTS.

- Based upon these commitments, the NEB issued a decision in July 1980 finding that the financing conditions of the Northern Pipeline Act, as amended, had been satisfied, and that prebuilding the Canadian segment of Phase I of the ANGTS could go forward. Foothills invested approximately \$1 Billion to construct the Prebuild.
- On May 25, 1984, the Federal Energy Regulatory Commission in the United States issued a generic rule which prohibited minimum take or pay purchase obligations in pipeline tariffs. The Canadian Government requested consultations with the U.S. government under Article 8 of the 1977 Agreement to consider the implications of the Order on the Prebuild. The Prebuild arrangements were subsequently exempted from the generic rule.
- Foothills had made certain changes to its Prebuild business over time based upon the commitments to the overall Project.
- With respect to a 1989 expansion of the Foothills system to add a compression facility, the National Energy Board and the Northern Pipeline Agency obtained a Department of Justice opinion that found that the construction of the project was under the ambit of the Northern Pipeline Act, not the National Energy Board Act. Foothills was required to submit a filing pursuant to provisions of the Northern Pipeline Act, even though the Prebuild was in operation. This determination effectively limited Foothills to submissions for new facilities along the ANGTS route under the Northern Pipeline Act and established a clear determination that the ANGTS regime remains in place until the pipeline is completed.
- Subsequently, there have been four other expansions to the Foothills system; two of which were major expansions occurring in 1993 and 1998. All have been facilitated under the Northern Pipeline Act regime with no other environmental or certificate review other than meeting the comprehensive terms and conditions identified for the Project and obtaining approval of the Designated Officer.
- In February 1991, the National Energy Board and the Northern Pipeline Agency reaffirmed that a conclusive public interest determination had been made regarding the ANGTS as evidenced by the Foothills certificates. This was again reaffirmed by the Board in May when it rejected arguments made by Altamont Gas Transmission Company and Amoco Canada Petroleum Company which opposed the 1993 Expansion on the basis that that there needed to be public interest determination. The Board's decision made specific reference to the Prebuild expansion being an integral part to the overall project:

“The Board finds that the proposed amendment is consistent with the NPAct and that it reaffirms the integrated nature of the AHGP as established by the NPAct.... Further, the Board notes that Foothills' commitment to the whole of the pipeline was previously demonstrated prior to the start of construction of the prebuild facilities.”
- In January 1992, the U.S. Federal Inspector for the ANGTS, Michael Bayer, sent the President a report, which contained 10 recommendations including:

The repeal of the Alaska Natural Gas Transportation Act;
The termination of the 1977 Agreement on Principles with Canada;
The elimination of the "exclusive ANGTS route to transport Alaska North Slope gas to the Lower 48; and,
The elimination of the "ANGTS project sponsors' unique legal monopoly status."

- On February 14, 1992, the Government of Canada sent a diplomatic note to the U.S. Department of State, opposing six of the recommendations, including the four listed above. Canada stated that it opposed the recommendations because "Any action giving effect to the above-noted recommendations would be contrary to the obligations of the United States and would not be acceptable to Canada." The U.S. Congress did not accept the recommendations in question. Congress did transfer the functions of the Federal Inspector to the Secretary of Energy. (Foothills could come to no other conclusion than that Canada tacitly accepted the "unique legal monopoly status" and the "exclusive ANGTS route" characterizations as true.)
- In January 1997, the National Energy Board approved an expansion to the Empress Decompression/Recompression facility as part of the 1998 Eastern Leg Expansion project. In a news release, the Board explained the different regulatory treatment of the De/Re facilities compared to the remainder of the expansion project.

"[T]he planned 1998 Prebuild expansion [has] been considered to fall within the scope of the ANGTS project and hence within the ambit of the Northern Pipeline Act and the certificates contained therein. ... The de/re facility is considered to fall outside of the scope of the ANGTS project and hence outside of the scope of the Northern Pipeline Act, since Alaskan gas was not planned to be stripped of liquids at Empress. Accordingly, the application for the de/re expansion was made pursuant to the National Energy Board Act and a screening was performed pursuant to the Canadian Environmental Assessment Act."

No review under CEAA was required for the 1998 Prebuild expansion facilities as the Northern Pipeline Act Terms and Conditions were sufficient to meet environmental and socio-economic requirements.

- On June 30, 1999, the Federal Energy Regulatory Commission issued an Order in the 1999 Northern Border Pipeline Company Rate Case. The Order included a statement that the "ANGTS is no longer viable". The Canadian Government, through its Ambassador, requested that the FERC clarify its statement to avoid creating uncertainty with respect to the U.S. commitments to its treaty with Canada and the ANGTS. The FERC subsequently clarified the order consistent with the requests of Foothills and Canada.

August 13, 2001

VA

**VAN NESS FELDMAN
 A PROFESSIONAL CORPORATION
 1050 THOMAS JEFFERSON STREET, N.W.
 SEVENTH FLOOR
 WASHINGTON, D.C. 20007
 (202) 298-1800
 FACSIMILE
 (202) 338-2416**

Date: October 31, 2001

Time: 3:33 PM

PRIVILEGED AND CONFIDENTIAL information intended only for the use of the addressee(s) named below. If the reader of this message is not the intended recipient or the employee or agent responsible for delivering the message to the intended recipient(s), please note that any dissemination, distribution or copying of this communication is strictly prohibited. Anyone who receives this communication in error should notify us immediately by telephone and return the original message to us at the above address via the U.S. Mail.

TO:

FAX:

Attn: V.A. Stephens
 Energy Project Streamlining Task Force
 Council on Environmental Quality

(202) 456-2710

FROM: Theresa Zolet
 TEL: (202) 298-1948

TOTAL NUMBER OF PAGES, INCLUDING COVER SHEET: 24

IF YOU DO NOT RECEIVE ALL PAGES, PLEASE CALL
 (202) 298-1851 OR (202) 298-1853 AS SOON AS POSSIBLE

Confirmation record: Sent at (Time): _____ Sent by: Lynn Powers
 Confirmed by: _____ Time Confirmed: _____ File Number: 2570

SPECIAL INSTRUCTIONS

Enclosed please find the comments of Foothills Pipe Lines Alaska Inc. in response to the Council on Environmental Quality's Notice and Request for Comments (66 FR 43586), which we have also sent to you via email.

**VanNess
Feldman**
ATTORNEYS AT LAW

A PROFESSIONAL CORPORATION
1050 Thomas Jefferson Street N.W.
Washington, D.C. 20007-3877
(202) 298-1800 Fax (202) 338-2416
www.vnf.com

Theresa I. Zolet
(202) 298-1948

October 31, 2001

Chair
Council on Environmental Quality
Executive Office of the President
17th and G Streets, NW
Washington, DC 20503
Attn: V.A. Stephens, Energy Project Streamlining Task Force

Re: Energy Task Force, Notice and Request for Comments (66 FR 43586)

Dear Sir or Madam:

Please find enclosed, the comments of Foothills Pipe Lines Alaska Inc. in response to the Council on Environmental Quality's Notice and Request for Comments (66 FR 43586).

Please contact the undersigned immediately, if you should have any questions.

Sincerely,

\s\ Theresa I. Zolet
Theresa I. Zolet
Counsel for Foothills Pipe Lines Alaska Inc.

October 31, 2001

Chair
Council on Environmental Quality
Executive Office of the President
17th and G Streets, NW
Washington, DC 20503
Attn: V.A. Stephens, Energy Project Streamlining Task Force

Subject: Energy Task Force, Notice and Request for Comments (66 FR 43586)

On behalf of the Alaskan Northwest Natural Gas Transportation Company (the "ANNGTC"), Foothills Pipe Lines Alaska Inc. ("Foothills Alaska"), submits the following comments concerning the proposed nature and scope of activities of the federal interagency task force established by Executive Order 13212. The ANNGTC Board of Partners has delegated to Foothills Alaska the specific duty, on behalf of the ANNGTC, to prepare, file and prosecute with the appropriate U.S. Federal, State and local agencies and other governmental authorities such applications and requests for permits, authorizations and certificates as may be necessary for the further development of the ANGTS in Alaska.

I. Introduction

Foothills Pipe Lines Ltd. ("Foothills"), of which Foothills Alaska is a subsidiary, is jointly owned by Westcoast Energy Inc. and TransCanada PipeLines Limited ("TransCanada"), the two major participants in the Canadian gas pipeline business. The ANNGTC is a United States partnership formed to construct and operate the Alaska portion of the Alaska Natural Gas Transportation System ("ANGTS"). United Alaska Fuels Corporation, a subsidiary of Foothills Alaska, and TransCanada PipeLines USA Ltd., a subsidiary of TransCanada, are the two current partners of the ANNGTC. In addition, Foothills is the Canadian sponsor of the ANGTS, and the majority owner and operator of the Canadian portions of the Eastern and Western Legs of the ANGTS.

The ANGTS is the natural gas pipeline project approved in accordance with the Alaska Natural Gas Transportation Act of 1976 ("ANGTA")¹ in the United States, the Northern Pipeline Act ("NPA") in Canada, and the Agreement Applicable to a Northern

¹ Pub. L. 94-586, as amended, 15 U.S.C. §§ 719-719o.

II. Summary of Position

In its notice, CEQ states that “[t]he Task Force will help manage the federal agency decisionmaking process for setting priorities, scheduling activities in accordance with these priorities, identifying staffing and resource needs, facilitating issue resolution, and measuring the achievements of federal agencies in implementing Executive Order 13212.” It further states that it will help “agencies create mechanisms to coordinate Federal, State, tribal and local permitting in geographic areas where increased permitting activity is expected.” Furthermore, CEQ states that “[t]he Task Force will use the experience gained in streamlining decisions about energy-related projects and resolving coordination issues to identify opportunities for systemic improvement and, where appropriate, regulatory or legislative change.”

The ANGTA framework—consisting of ANGTA itself, the President’s Decision thereunder,⁷ Congress’s Joint Resolution approving the President’s Decision,⁸ and certain other related legal and regulatory authorities—already reflects Congress’s and the President’s decision that the ANGTS is to be a priority for agencies, and that such agencies are to schedule activities in accordance with this priority in order to expedite federal activities required for the construction and initial operation of the ANGTS. The framework further established a centralized authority, the Office of the Federal Inspector (“OFI”), whose authorities are now vested in the Secretary of Energy, to facilitate and streamline interagency coordination with respect to Federal activities related to the ANGTS project. Maintaining and, to the extent it may be necessary, reinforcing the existing ANGTA framework offers the best opportunity to help ensure the expeditious construction and initial operation of the ANGTS project. Accordingly, in helping federal agencies to set and carry out priorities concerning energy-related projects, the Task Force must recognize, and should reinforce as necessary, existing law establishing the ANGTS as a priority for federal agencies. Further, the Task Force must remain mindful of the ANGTA framework and avoid any new legislative or regulatory change that could undermine the existing framework and delay, or even prevent, the construction and initial operation of the ANGTS.

III. Composition and Role of Task Force

A. The Federal Energy Regulatory Commission Should be Represented on the Task Force

As established by Executive Order 13212, the Task Force will be composed of representatives from the Departments of State, the Treasury, Defense, Agriculture, Housing and Urban Development, Justice, Commerce, Transportation, the Interior, Labor, Education, Health and Human Services, Energy, Veterans Affairs, the Environmental Protection Agency, Central Intelligence Agency, General Services

⁷ Executive Office of the President, Decision and Report to Congress on the Alaska Natural Gas Transportation System, September 22, 1977 (hereinafter “President’s Decision”).

⁸ Pub. L. No. 95-158, 91 Stat. 1268 (1977) (hereinafter “Joint Resolution”).

Administration, Office of Management and Budget, Council of Economic Advisers, Domestic Policy Council, and the National Economic Council. The Task Force will be chaired by the CEQ Chairman, who may, in his discretion, include other representatives on the Task Force.

Foothills Alaska believes that it is important for the Federal Energy Regulatory Commission ("FERC") to be represented on the Task Force. The FERC is the primary Federal regulatory agency with respect to interstate natural gas pipelines. Under the Natural Gas Act ("NGA"), the FERC regulates both the construction and operation of pipeline facilities and the transportation of natural gas in interstate commerce. In reviewing a proposed pipeline project's application for a certificate of public convenience and necessity under the NGA, the FERC considers a broad range of factors, including input from other federal agencies and government officials. Given the FERC's integral role in natural gas pipeline permitting decisions and significant experience in conducting multi-layered reviews, the FERC should be centrally involved in the Task Force's efforts to coordinate and streamline pipeline activities.

B. The Role of the Task Force Should be One of a Facilitator, Not a Regulator

Foothills Alaska believes that the role of the Task Force should be one of a facilitator, rather than of a regulator. While there may be a general role for the Task Force to play in assisting federal agencies in accelerating the completion of energy-related projects, the Task Force must be careful to avoid creating another layer of review on top of the many that already exist. Adding a new regulator to the mix would only exacerbate existing coordination problems and undermine the administration's efforts to streamline energy projects.

As more fully discussed below, the OFI, whose duties and authorities are now vested in the Secretary of Energy, provides an existing mechanism to coordinate governmental activities related to the ANGTS. Created as a means of streamlining and centralizing Federal involvement with the construction of the ANGTS, the OFI was vested with certain monitoring, approval, and enforcement authorities, as well as ultimately exclusive responsibility for the enforcement of all Federal statutes relevant in any manner to the pre-construction, construction, and initial operation of the ANGTS. With these functions now vested in the Secretary of Energy, the Task Force should lend its support and assistance to the efforts of the Secretary to expedite the construction and initial operation of the ANGTS.

C. The Task Force Should Not Propose and/or Advocate Additional New Regulations and/or Legislation

The Task Force should avoid proposing and/or otherwise advocating new regulations and/or legislation, particularly with respect to the ANGTS project. CEQ advises in its request for comments that "[t]he Task Force will work through an operational approach that facilitates interagency coordination and addresses impediments

to federal agencies' completion of decisions about energy-related projects" in a way that will increase the production, transmission, and conservation of energy. Furthermore, the CEQ states that "the Task Force will use the experience gained in streamlining decisions about energy-related projects and resolving coordination issues to identify opportunities for systemic improvement and, where appropriate, regulatory or legislative change."

As fully discussed below, the existing ANGTA framework and other related legal authorities expressly and sufficiently address these impediments and establish procedures to ensure the expeditious construction and initial operation of the ANGTS project. By establishing the OFI, whose authorities are now vested in the Secretary of Energy, the ANGTA framework has created a mechanism to facilitate and streamline interagency coordination with respect to federal activities related to the ANGTS project. Any new regulatory and/or legislative change to the extent such changes are applicable to the ANGTS project, especially given the authorizations that already have been obtained for the project and the significant investment in the project to date, could undermine this framework and delay, or even prevent, the construction and operation of the project. Such a result would be entirely inconsistent with the goals of the President's Executive Order and the mission and objectives of the Task Force, and must be avoided.

IV. Basic Information About the Alaska Natural Gas Transportation System

As part of its request for public comments, CEQ has asked for comments on specific energy projects. More specifically, CEQ has asked for "basic information about major pending projects or major projects under development that may be relevant to the Task Force efforts to streamline energy permitting decisions. Foothills Alaska herein provides basic information about the ANGTS, presented in the format specified in the CEQ's request for public comment:

1. Name of the project: Alaska Natural Gas Transportation System ("ANGTS")
2. Entity proposing the project: Alaskan Northwest Natural Gas Transportation Company
3. Category of the project: International natural gas pipeline and appurtenant facilities
4. Brief description of the project:

The ANGTS is an international natural gas pipeline project approved in accordance with the Alaska Natural Gas Transportation Act ("ANGTA") in the United States, the Northern Pipeline Act ("NPA") in Canada, and the Agreement Applicable to a Northern Natural Gas Pipeline between the two countries ("U.S./Canada Agreement"). The ANGTA/NPA framework allows for the expeditious permitting and construction of the ANGTS. In addition, coordination of and consultation on necessary regulatory and commercial issues with respect to the ANGTS is enshrined in the U.S./Canada Agreement. Over the years, the two

governments have continuously supported and remained committed to Phase I and ("Prebuild") and to the completion of the ANGTS.⁹

As approved, the ANGTS is a 4,800-mile international pipeline project commencing at Prudhoe Bay and paralleling the Trans Alaska oil pipeline system 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 southeast, crossing the United States-Canada border at Monchy, Saskatchewan and terminating near Chicago, Illinois. The Western Leg proceeds southwest, crossing the United States-Canada border near Kingsgate, British Columbia and terminating at a point near Antioch, California. Much of the Eastern and Western Legs of the ANGTS has been constructed and is in operation to supply Canadian natural gas to the lower 48 states.

5. Agency or agencies that must be consulted and agencies from which approval is needed:

a. Federal

- Department of Energy / Office of the Federal Inspector: The Office of the Federal Inspector ("OFI") was established by ANGTA, the President's Decision, the Reorganization Plan No. 1 of 1979, and an Executive Order. The OFI was the central element of organization created to streamline and centralize the Federal involvement with the construction of the ANGTS and had the exclusive responsibility for monitoring the project and the enforcement of all Federal statutes relevant in any manner to the pre-construction, construction, and initial operation of the ANGTS. In addition, coordination by the OFI between the Federal government and the State of Alaska was essential to the regulatory process necessary for the construction and initial operation of the ANGTS. In 1992, the OFI was abolished and all of the functions and authorities of the OFI were vested in the Secretary of Energy.¹⁰
- Bureau of Land Management: The ANGTS already possesses a Federal right-of-way grant over federal lands along the pipeline route.
- Federal Energy Regulatory Commission: The ANGTS already has a conditional FERC certificate, but needs to procure a final certificate of public convenience and necessity and a Presidential Permit.

⁹ See attached "Overview of United States Governmental Actions in Support of ANGTS" and "Overview of Canadian Governmental Actions in Support of ANGTS."

¹⁰ Energy Policy Act of 1992, Pub. L. No. 102-486, 106 Stat. 3128, § 3012 (1992).

- United States Department of Defense, Army Corps of Engineers: The ANGTS already has Clean Water Act Section 404 permits.
- Council on Environmental Quality: Environmental impact statements have been obtained. The ANGTS is now in the phase of developing terms and conditions and compliance therewith to achieve effective mitigation of environmental issues.
- Bureau of Indian Affairs: Consultations/negotiations if native allotment issues arise.
- United States Department of Transportation, Federal Aviation Administration: Permits regarding airports and aircraft.
- United States Department of Transportation, United States Coast Guard: Permit for bridges over navigable waters.
- United States Department of the Treasury: Permit for use of explosives.
- United States Environmental Protection Agency: Clean Air Act compliance and Clean Water Act Section 402 permit.
- Federal Communications Commission: Radio / communications permits and authorizations.
- International Boundary Commission: Approval of facilities constructed at or near the United States-Canada border.

b. State

- Alaska Department of Natural Resources, Gas Pipeline Office: Foothills has entered into a memorandum of understanding with respect to the continued processing of its state right-of-way application. The State and Foothills are working very closely on the processing of this application.
- Alaska Department of Environmental Conservation: The ANGTS already has Clean Water Act Section 401 certificates of reasonable assurance. The Alaska Department of Environmental Conservation also is responsible for issuing air emission permits and waste disposal permits.
- Office of the Governor, Division of Governmental Coordination: Coastal Zone Management Act "consistency determination." The

ANGTS received, in conjunction with its Clean Water Act Section 404 permits, a determination of consistency with the Coastal Zone Management Act.

- Alaska Department of Fish and Game: Permits for activities obstructing or disturbing anadromous fish stream habitats and for activities undertaken in State game refuges and the like.

c. Local

- Cities and Boroughs: Land purchases, leases, or permits (necessity uncertain). Zoning or planning actions.

V. The ANGTA Framework Already Establishes the ANGTS as a Priority for Federal Agencies

In its notice, CEQ states that [t]he Task Force will help manage the federal agency decisionmaking process for setting priorities, scheduling activities in accordance with these priorities, identifying staffing and resource needs, facilitating issue resolution, and measuring the achievements of federal agencies in implementing Executive Order 13212. As fully explained below, the ANGTA framework already reflects Congress's and the President's decision that the ANGTS is to be a priority for agencies, and that they are to schedule activities in accordance with this priority in order to expedite federal activities required for the construction and initial operation of the ANGTS. In helping federal agencies to set and carry out priorities concerning energy-related projects, the Task Force must recognize, and should reinforce as necessary, the existing law already establishing the ANGTS as a priority for federal agencies.

In the mid-1970s, the Federal Power Commission ("FPC"), the predecessor to the FERC, was struggling to choose, under section 7 of the NGA,¹¹ the best among three mutually exclusive projects to deliver gas from the North Slope of Alaska to markets in the lower 48 states. While agreeing with the FPC that known gas reserves and anticipated market demand in the lower 48 states would support the financing and construction of only one transportation system, Congress recognized that the FPC's complex procedures for choosing the most suitable proposal, and the likelihood of judicial challenges to the FPC's final decision, threatened to increase the cost for, and delay the delivery of, much-needed North Slope natural gas to American consumers. In light of the urgent need to meet demand in the lower 48 states and to blunt rising energy prices, Congress enacted ANGTA. ANGTA superseded the NGA process and the then-pending multiple FPC proceedings to certificate a project to transport Alaska North Slope gas to markets in the lower 48 states. Instead, it empowered the President, subject to congressional approval, to choose a single project under the ANGTA's unique procedures. In addition, the ANGTA set forth various requirements intended to ensure that the system selected would be completed and in initial operation before any other

¹¹ 15 U.S.C. § 717f.

proposals for moving Alaska natural gas to markets in the lower 48 states could be considered under the usual provisions of the NGA.

Section 5 of the ANGTA specifically directed the FPC to suspend its pending comparative proceedings until either the President's decision took effect following congressional approval or no such decision took effect (either because Congress withheld its approval or the President decided not to designate a system). Once Congress approved the President's Decision, the FPC was then directed to vacate the suspended proceedings and to issue, in accordance with the President's Decision, a certificate of public convenience and necessity for the designated system and its sponsors. Under section 5, only if the President made no designation, or if the President's designation never became effective because it was not approved by Congress, could the certification of an initial Alaska natural gas transportation system thereafter be made under the normal NGA procedures.

In his Decision and Report under ANGTA, President Carter selected, for the Alaska portion of the ANGTS, the system and route proposed by the predecessor of the ANNGTC and incorporated in his Decision the U.S./Canada Agreement. The President's Decision, including the Agreement with Canada, was approved by Congress by Joint Resolution, Pub. L. No. 95-158, 91 Stat. 1268 (1977). ANGTA's procedures and limitations, and the President's decision as approved by Congress, remain in full force and effect today. The actions by the Chief Executive and the Congress confer a priority on the selected system that cannot constitutionally be revoked or undermined by administrative action of the FERC or any other Federal agency. Indeed, in Section 3012 of the Energy Policy Act of 1992 ("EPA Act"), Congress determined to retain the unique legal framework that confers priority on the selected system, despite recommendations that it repeal ANGTA and revert to the NGA certification process superseded by ANGTA.

The ANGTA also requires expedition and precedence for processing needed permits and authorizations, in order to facilitate construction and initial operation of the ANGTS. Section 9 of ANGTA expressly establishes the ANGTS as a priority for federal agencies and requires agencies to expedite all actions with respect to the consideration of certificates or other authorizations related to the construction and initial operation of the approved system. Section 9(a) directs all federal officers and agencies that issue a certificate, right-of-way, permit, lease, or other authorization required for "the taking of any action which is necessary or related to the construction and initial operation of the approved transportation system" to "issue or grant such certificates . . . and other authorizations at the earliest practicable date," to the "fullest extent" permitted by law.¹² Section 9(b) further directs each such federal officer and agency to expedite "[a]ll actions . . . with respect to consideration of applications or requests" for such authorizations and to give those authorizations "precedence over any similar applications or requests."¹³ In addition, Sections 9(c) and 9(d) authorize agencies to include terms and conditions in such authorizations, and to amend or abrogate any such terms and conditions, but with

¹² 15 U.S.C. § 719g(a).

¹³ 15 U.S.C. § 719g(b).

two important limitations: (1) the agencies may not take any action that would compel a change in the "basic nature" or "general route" of the approved system, as set forth in Section 2 of the President's Decision; and (2) they may not take any action that would otherwise prevent or impair in any significant respect the expeditious construction and initial operation of the system.¹⁴

To further help expedite the construction and initial operation of the project, Congress, in Section 10 of ANGTA, significantly limited judicial review of agency actions relating to the ANGTS, replacing the usual judicial review provisions of the NGA with provisions allowing more restricted opportunities for judicial review.¹⁵ Under Section 10, review was limited to claims that agency actions taken under ANGTA either denied constitutional rights or were in excess of statutory rights. The purpose of this limitation was to prevent reviewing courts from assessing the reasonableness or the record basis for agency actions taken with respect to the ANGTS, and thus to expedite construction and initial operation of the chosen system.

In order to expedite even further construction of the ANGTS and avoid delays and cost overruns due to agency conflict, the ANGTA framework streamlined and centralized Federal involvement with the construction of the ANGTS through the creation of the OFI. Section 7(a)(5) of ANGTA, the President's Decision, and other authoritative documents vested a variety of functions and authorities in the Federal Inspector, including, among others, monitoring functions, approval authorities, and enforcement authorities, and ultimately attributed to the OFI exclusive responsibility for the enforcement of all Federal statutes relevant in any manner to the pre-construction, construction, and initial operation of the ANGTS, as well as the authority to delegate to an authorized officer of each agency the authority to enforce the terms, conditions, and stipulations of each grant, permit, or other authorization issued by that agency.¹⁶ Furthermore, the regulatory framework developed in relation to the ANGTS identified the Federal Inspector as the officer generally responsible for providing the necessary coordination between the Federal government and the State of Alaska.

Unfavorable market conditions resulted in the majority of the work regarding the Alaska portion of the ANGTS being placed in a holding phase and led to the repeal of Section 7(a)(5) of ANGTA and the abolition of the OFI by Section 3012 of the Energy Policy Act of 1992 ("EPAAct").¹⁷ Section 3012 of EPAAct was essentially a budgetary, government streamlining measure, aimed at the elimination of an office that by then had become largely inactive. It did not, however, repeal the regulatory framework related to the ANGTS, and transferred all functions and authorities of the OFI to the Secretary of Energy. Therefore, any responsibility that OFI would have had in relation to the ANGTS is now vested in the Secretary.

¹⁴ 15 U.S.C. §§ 719g(c), (d).

¹⁵ 15 U.S.C. § 719h.

¹⁶ Reorganization Plan, §§ 102, 202(a).

¹⁷ Pub. L. No. 102-486, 106 Stat. 3128 (1992).

ANGTA also included several provisions intended to ensure that the completion of the ANGTS was accelerated consistent with maintaining safety, public health, and environmental protections. ANGTA provided in Section 7(b) for the transmission to the Congress of the President's Decision and a report explaining in detail factors relating to the project, including environmental impacts. Specifically, Section 7(b) required that the President's Decision be accompanied by a report "explaining in detail the basis for his decision with specific reference to the factors set forth in sections 5(c) and 6(a)."¹⁸ ANGTA Section 5(c) required that the FPC's recommendation concerning the selection of the transportation system be accompanied by a report which included a discussion of the environmental impacts of each alternative considered.¹⁹ ANGTA Section 6(a) authorized any federal officer or agency to submit comments to the President on the FPC's recommendation and report. Such comments were to include information with respect to "environmental considerations, including air and water quality and noise impacts."²⁰

In addition, ANGTA Section 8(e) directed the President to "find that any required environmental impact statement relative to the Alaska natural gas transportation system designated for approval by the President has been prepared and that such statement is in compliance with [NEPA]." Section 8(e) further provided that the President's findings "shall be set forth in the report" of the President submitted under Section 7. Finally, the President could supplement or modify the EISs prepared by the FPC or other officers or agencies. Any such EISs were to be submitted to Congress with the President's Decision.²¹

ANGTA also made specific provision for the approval by Congress of the EISs submitted with the President's Decision. Section 10(c)(3) provided that: "The enactment of a joint resolution under section 8 approving the decision of the President shall be conclusive as to the legal and factual sufficiency of the [EISs] submitted by the President relative to the approved transportation system and no court shall have jurisdiction to consider questions respecting the sufficiency of such statements under [NEPA]."²²

Two final environmental impact statements ("EISs") and a supplemental EIS already have been prepared for the ANGTS project.²³ Pursuant to Sections 8(e) and 10(c)(3) of ANGTA, the President, in his Decision,²⁴ and Congress, in its ratification of

¹⁸ 15 U.S.C. § 719e(b).

¹⁹ 15 U.S.C. § 719c(c).

²⁰ 15 U.S.C. § 719d(a).

²¹ 15 U.S.C. § 719f(e).

²² 15 U.S.C. § 719h(c)(3).

²³ The ANGTS currently has an EIS prepared on the pipeline in support of the federal right-of-way grant. In addition, the project has EISs prepared by the FERC on the pipeline and conditioning facilities.

²⁴ Report Accompanying a Decision on an Alaska Natural Gas Transportation System, at 133 ("The President hereby determines pursuant to the direction of Section 8(e) of ANGTA, that the required environmental statements relative to an Alaska natural gas

the Decision,²⁵ found that the EISs were legally and factually sufficient under NEPA. In addition, the President, in Section 5 of his Decision, established a comprehensive mechanism under which Federal officers and agencies are to conduct further site-specific environmental review, mitigation, and compliance, and to include appropriate environmental terms and conditions in certificates, permits, rights-of-way, and other authorizations necessary to construct and initially operate the project. By approving the President's Decision, including the mechanism in Section 5, in the Joint Resolution, Congress modified NEPA's application for purposes of the ANGTS. The Joint Resolution was an express Congressional finding "that any environmental impact statements prepared relative to [the ANGTS] and submitted with the President's decision are in compliance with [NEPA]." Thus, any further environmental review would be conducted through the implementation of the requirements of Section 5 of the President's Decision.

ANGTA, the President's Decision thereunder, and Congress's Joint Resolution approving the President's Decision provide clear guidance to federal agencies that, in carrying out their decisionmaking process for setting priorities, the ANGTS must be a priority. In order to expedite federal activities required for the construction and initial operation of the ANGTS, as required by ANGTA, agencies must schedule activities in accordance with this priority. Therefore, in assisting federal agencies in establishing and carrying out their priorities, the Task Force must recognize the existing law setting the ANGTS as a priority for federal agencies, and, to the extent necessary and appropriate, ensure that federal agencies act accordingly.

VI. No New Regulatory or Legislative Change is Necessary to Streamline Decisions About the ANGTS or Resolve Coordination Issues With Respect to the Project

In its notice, CEQ states that "[t]he Task Force will use the experience gained in streamlining decisions about energy-related projects and resolving coordination issues to identify opportunities for systemic improvement and, where appropriate, regulatory or legislative change." Because of the ANGTA framework and the actions that already have been taken pursuant to this framework, no new federal regulations or legislation are needed to expedite construction of the Alaska gas pipeline.

The policies expressed in Executive Order 13212 with respect to which the CEQ is seeking recommendations already are well-reflected in the existing ANGTA

transportation system have been prepared, that they have been certified by the CEQ and that they are in compliance with [NEPA].").

²⁵ The Joint Resolution provides: "That the House of Representatives and Senate approve the Presidential decision on an Alaska natural gas transportation system submitted to the Congress on September 22, 1977, and find that any environmental impact statements prepared relative to such system and submitted with the President's decision are in compliance with [NEPA]." Pub. L. No. 95-158, 91 Stat. 1268 (1977).

framework. As discussed above, the existing ANGTA framework provides a statutory and regulatory scheme to ensure the expeditious construction and initial operation of the ANGTS project in a safe and environmentally sound manner. ANGTA is the governing law and is as viable today as it was twenty-five years ago, when it was enacted.

Significantly, much of the Eastern and Western Legs of the ANGTS in the United States (i.e., Northern Border Pipeline Company and Pacific Gas Transmission Company, predecessor to PG&E – Gas Transmission Northwest) and in Canada (i.e., Foothills) has been constructed and are in operation to supply Canadian natural gas to the lower 48 states. This prebuild of the ANGTS was authorized and constructed pursuant to the ANGTA/NPA framework. In addition, Foothills has expanded its facilities in Canada five times pursuant to the NPA.

In addition, substantial work already has been completed with respect to obtaining the necessary authorizations for the completion of the remainder of the ANGTS. Using the framework developed under ANGTA, the ANNGTC already has obtained several of the needed regulatory approvals for the ANGTS, including a conditional certificate of convenience and necessity from the FERC and Clean Water Act Section 404 wetlands permits from the U.S. Army Corps of Engineers. In addition, the ANNGTC currently holds a Bureau of Land Management ("BLM") right-of-way across all federal lands along the pipeline route in Alaska. Moreover, in Canada, the project has obtained certificates of public convenience and necessity, as well as a right-of-way across the entire Yukon Territory. In addition to the EISs that already have been completed, significant environmental work has been done by the ANGTS sponsors in support of its FERC certification, the Section 404 permits, the federal right-of-way, and the pending state right-of-way application.

ANGTA is viable, and any questions about its effectiveness can be addressed administratively or through the unique waiver of law process included in Section 8(g) of ANGTA. That section provides, in pertinent part, that "at any time after a decision designating a transportation system is submitted to the Congress pursuant to this section, if the President finds that any provision of law applicable to actions to be taken under subsection (a) or (c) of section 9 require waiver in order to permit expeditious construction and initial operation of the approved transportation system, the President may submit such proposed waiver to both Houses of Congress." This waiver of law provision was used in 1981 to waive certain provisions of the President's Decision and the NGA in order to facilitate the private financing of the project.

Furthermore, Paragraph 8 of the U.S./Canada Agreement directs each Government to designate a senior official "for carrying on periodic consultations on the implementation of these principles relating to the construction and operation of the Pipeline." The designated officials may delegate the authority to other representatives who, "individually or as a group, may make recommendations with respect to particular disputes or other matters, and may take such other actions as may be mutually agree, for the purpose of facilitating the construction and operation of the Pipeline." This

coordination and consultative process, in addition to ANGTA's waiver of law provision, provides the flexibility to address issues as they may arise.

As a result of this legal and regulatory framework, and the many actions that already have been taken with respect to the ANGTS pursuant to this framework, no new federal regulations or legislation are needed to expedite construction of the pipeline. The Task Force can best serve the Administration's policy of accelerating the completion of the ANGTS, and increasing the production and transmission of energy in a safe and environmentally sound manner, by maintaining this framework intact.

VII. The Office of the Federal Inspector, and Now the Secretary of Energy, Provides an Adequate Mechanism for Coordinating Governmental Activities With Respect to the ANGTS

The creation of the OFI, whose duties and authorities have since been transferred to the Secretary of Energy, provides an existing mechanism for coordinating governmental activities with respect to the ANGTS. As discussed above, the OFI was created as a way to streamline Federal activities related to the construction of the ANGTS. By centralizing many related functions in a single office, delays and cost overruns due to agency conflict would be avoided and construction of the project would be expedited. The OFI also was designed to provide a means of facilitating coordination between the Federal government and the State of Alaska.

One of the primary functions of the OFI was coordination among Federal agencies. In order to make such coordination effective, the President's Decision provided that the OFI would have supervisory enforcement authority over permits, certificates and other authorizations from other Federal Agencies. The Report accompanying the Decision characterized such authority as "essential to avoid project delays and minimize cost overruns" and suggested that, in absence of the OFI's enforcement authority, a "coordinate regulatory approach will be elusive."²⁶ The Reorganization Plan implemented the President's decision and vested in the Federal Inspector "exclusive responsibility for enforcement of all Federal statutes relevant in any manner to pre-construction, construction, and initial operation [of the ANGTS]."²⁷

The regulatory framework developed in relation to the ANGTS also identified the OFI as the office generally responsible for providing the necessary coordination between the Federal government and the State of Alaska. Section 7(a)(5) of ANGTA required the Federal Inspector to "establish a joint surveillance and monitoring agreement, approved by the President, with the State of Alaska similar to that in effect during construction of the trans-Alaska oil pipeline to monitor the construction of the approved transportation system within the State of Alaska." The agreement has not yet been finalized. Although Section 7(a)(5) of ANGTA was later repealed by the EPAct, its provisions are reiterated, almost verbatim, in Section 5 of the President's Decision, which has independent force and effect of law because it was approved by an Act of Congress. Therefore, the

²⁶ Report accompanying the President's Decision, at 198-199.

²⁷ Reorganization Plan, § 102.

obligation to establish a joint surveillance and monitoring agreement with the State of Alaska has an independent statutory basis and was not affected by the repeal of Section 7(a)(5) of ANGTA. When EPAct transferred to the Secretary of Energy all functions and authorities of the OFI, it necessarily also transferred the still outstanding responsibility for the establishment of a joint surveillance and monitoring agreement with the State of Alaska.

The OFI concept could not be more consistent with the goals of Executive Order 13212 and the mission of the Task Force. Accordingly, to the extent that the Task Force aims to address coordination issues with respect to the ANGTS project, it should take advantage of this existing mechanism and lend its support and assistance to the efforts of the Secretary.

VIII. Conclusion

Foothills Alaska shares the President's and the CEQ's objective to expedite construction of energy projects, including the Alaska natural gas pipeline. In determining the scope and nature of its role, the Task Force should recognize the benefits that can be achieved by maintaining, and to the extent necessary, reinforcing, the existing ANGTA framework.

The existing ANGTA framework fully reflects the policies established in Executive Order 13212. Executive Order 13212 states that:

The increased production and transmission of energy in a safe and environmentally sound manner is essential to the well-being of the American people. In general, it is the policy of this Administration that executive departments and agencies (agencies) shall take appropriate actions, to the extent consistent with applicable law, to expedite projects that will increase the production, transmission, or conservation of energy.

The Executive Order further directs agencies, for energy-related projects, to "expedite their review of permits or take other actions as necessary to accelerate the completion of such projects, while maintaining safety, public health, and environmental protections." Accordingly, in its request for comments, CEQ specifically asks for "recommendations for improving agency activities, consistent with the purposes and policies of the National Environmental Policy Act, 42 U.S.C. 4321 et seq., (1) To accelerate the completion of energy-related projects; (2) to increase energy production and conservation; (3) to improve transmission of energy; and (4) to coordinate permitting in geographic areas where increased permitting activity is expected."

These policies will best be served with respect to the ANGTS by allowing the continuing development of the project in accordance with the existing ANGTA framework. The ANGTS, as it would be developed pursuant to the ANGTA framework,

would clearly contribute to increased production and transmission of energy, providing a mechanism to transport significant quantities of North Slope natural gas to the lower 48 states, and would do so in a safe and environmentally sound manner. Through its expedited permitting provisions, limits on agency discretion, and limited judicial review, ANGTA provides substantial regulatory certainty and expedition. By establishing the ANGTS project as a priority and directing agencies to expedite actions relating to the project, the existing ANGTA framework fully serves the policy of expediting energy projects as stated in the Executive Order. The creation of the OFI, whose authorities are now vested in the Secretary of Energy, provides an existing mechanism for the coordination of Federal activities related to the project, as well as for coordination between the Federal government and the State of Alaska.

The ANGTA/NPA framework was specifically adopted in the United States and Canada to expedite the construction of the Alaska Highway Project when market conditions justified the cost of delivering natural gas to the lower 48 states. Foothills Alaska believes those market conditions will soon be in place. Unlike any other project, the ANGTS has been designated and approved by the Congress and the Canadian government after careful consideration of competing projects and routes. By virtue of this status, the project proponents have available all of the expedited permitting provisions of the ANGTA framework. Foothills Alaska therefore urges the Task Force to take advantage of the existing framework as a means to ensure the increased production and transmission of energy in a safe and environmentally sound manner, in accordance with the Administration's new policy.

Respectfully submitted,

Foothills Pipe Lines Alaska, Inc.

By \s\ Theresa I. Zolet

J. Curtis Moffatt

Theresa I. Zolet

Van Ness Feldman

A Professional Corporation

1050 Thomas Jefferson Street, N.W.

Seventh Floor

Washington, D.C. 20007

(202) 298-1800

Overview of United States Governmental Actions in Support of ANGTS

The U.S. government and its agencies have consistently supported Phase I (the "Prebuild") and completion of the Alaska Natural Gas Transportation System ("ANGTS"). The following are specific examples of direct actions by the U.S. government in support of the ANGTS regime:

- In 1977, the United States and Canada signed an Agreement (the Treaty) designating the ANGTS as the project to transport Alaska gas to the lower 48 States. The Treaty mandates the respective roles of both governments, governs the construction and operation of the ANGTS and designates the company responsible for the construction and operation of the U.S. segments of the system.
- Two days after signing the Treaty, the President issued his Decision under the Alaska Natural Gas Transportation Act. The Decision specifically identified the project route and sponsors.
- On January 11, 1980, the FERC issued an order approving the Prebuild imports and related sales and tariff arrangements for the Western Leg of the ANGTS. The FERC found that the Prebuild was an integral part of the ANGTS and would create substantial benefits for the completion of the entire system. Among other things, the FERC concluded that prebuilding would:
 - Reduce the future transportation costs of Alaskan gas
 - Start the ANGTS project sooner than would otherwise be the case
 - Facilitate the financing of the ANGTS
- Later the same year, prior to Canadian approval of the Prebuild, the United States government was requested to provide an assurance to Canada that the U.S. was committed to the completion of the entire ANGTS in accordance with the 1977 Agreement. On July 1, 1980, Congress passed a Joint Resolution that reaffirmed its support for the ANGTS.

"It is the sense of Congress that the [ANGTS] system remains an essential part of securing this nation's energy future and, as such, enjoys the highest level of Congressional support for its expeditious construction and completion."

- Seventeen days later, President Carter wrote Prime Minister Trudeau expressing the United States' support for prebuilding and the completion of the remainder of the ANGTS.

"The United States also stands ready to take appropriate additional steps necessary for completion of the ANGTS."

"Our Government also appreciates the timely way in which you and Canada have taken steps to advance your side of this vital energy project. In view of this progress, I can assure you that the U.S. Government not only remains committed to the project; I am able to state with confidence that the U.S. Government is now

satisfied that the entire Alaska Natural Gas Transportation System will be completed. "

"I trust these recent actions on our part provide your government with the assurances you need from us to enable you to complete the procedures in Canada that are required before commencement of construction of the Prebuild sections of the pipeline."

- In late 1981, the U.S. Congress, at the request of the President, passed a resolution waiving, among other things, certain provisions of the U.S. Natural Gas Act. The waivers were necessary in order to remove obstacles to private financing of the ANGTS.

Subsequent to these commitments, the U.S. Government and its agencies have continually supported and preserved the ANGTS, the Prebuild and their underpinnings, including the following:

- On May 25, 1984, the Federal Energy Regulatory Commission in the United States issued a generic rule which prohibited minimum take or pay purchase obligations in pipeline tariffs. Following interventions by the Canadian Government and Foothills, the Prebuild arrangements were subsequently exempted from the generic rule. The FERC explained its action as follows:

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

- When Order 636 was issued, the Commission proposed to remove certain regulations applicable to ANGTS explaining that they were obsolete in the post-Order 636 environment. FERC stated:

"Nonetheless, the Commission remains ready to facilitate the construction of the ANGTS, which Congress has found to be in the public interest. Hence, if action is warranted in the future to facilitate financing and progress on the ANGTS and the recovery of ANGTS costs, the Commission will act expeditiously. What was stated in Order 636-A applies here as well: 'nothing in the rule [Order 636] is intended to disturb the United States governments' commitment to the ANGTS prebuild."

In addition, the FERC stated:

"The United States, like Canada is bound by the 'Agreement on Principles' concerning the ANGTS. By virtue of the 'Agreement' which has the force and effect of a treaty, the

Commission may not alter the viability of the ANGTS by changes in previously granted orders.”

- In January 1988, President Reagan issued a finding that the export of Alaskan gas would not decrease the quantity, nor increase the price of energy available to the United States. However, the finding reaffirmed the President’s support for the unique regulatory treatment of the Prebuild and the ANGTS.
- In January 1992, the U.S. Federal Inspector for the ANGTS, Michael Bayer, sent the President a report, which contained 10 recommendations including:
 - The repeal of the Alaska Natural Gas Transportation Act;
 - The termination of the 1977 Agreement on Principles with Canada;
 - The elimination of the “exclusive ANGTS route to transport Alaska North Slope gas to the Lower 48; and,
 - The elimination of the “ANGTS project sponsors’ unique legal monopoly status.”

On February 14, 1992, the Government of Canada sent a diplomatic note to the U.S. Department of State, stated that it opposed the implementation of six of the Federal Inspector’s recommendations, including the four listed above. “Any action giving effect to the above-noted recommendations would be contrary to the obligations of the United States and would not be acceptable to Canada.” The U.S. did not accept the recommendations in question. The one action taken was that Congress transferred the functions of the Federal Inspector to the Secretary of Energy.

- On June 30, 1999, the Federal Energy Regulatory Commission issued an Order in the 1999 Northern Border Pipeline Company Rate Case. The Order included a statement that the “ANGTS is no longer viable”. Canada, through its Ambassador, and Foothills requested that the FERC clarify its statement to avoid creating uncertainty with respect to the U.S. commitments to its treaty with Canada and the ANGTS. The FERC clarified its order stating

“The Commission did not intend to indicate that the ANGTS project would not be fully implemented or that the Commission would not honor its commitments to that project.”

August 13, 2001

Overview of Canadian Governmental Actions in Support of ANGTS

The Canadian government and its agencies have consistently supported Phase I (the "Prebuild") and completion of the Alaska Natural Gas Transportation System ("ANGTS"). The following are specific examples of direct actions by the Canadian government in support of the ANGTS regime:

- In 1977, Canada and the United States signed an Agreement (the Treaty) designating the ANGTS as the project to transport Alaska gas to the lower 48 States. The Treaty mandates the respective roles of both governments, governs the construction and operation of the ANGTS and designates Foothills as the company responsible for the construction and operation of the Canadian segment of the system.
- In April 1978, Parliament enacted the Northern Pipeline Act, which granted certificates of public convenience and necessity to Foothills for the Canadian segments of the ANGTS. The Act also established the Northern Pipeline Agency and gave it authority to oversee the planning and construction of the system in Canada.

There was no question that the ANGTS was the sole means for delivery of Alaskan gas. Since that time, there have been several affirmations of the ANGTS regime, including:

- In 1980, prior to agreeing to approve the Prebuild of the ANGTS, Canada indicated that it required assurances reaffirming the commitment of the United States government to the completion of the entire ANGTS in accordance with the 1977 Agreement. In May that year, the National Energy Board stated the following:

"The Northern Pipeline Act, in the opinion of the Board, requires the building of the whole pipeline in Canada; in other words, it is an integrated project. In the Board's view the Act does not prohibit the building of the pipeline in two stages; for example, the southern part first and the northern part later. It does require that there must be a commitment to the whole of the pipeline in Canada before construction could start on the prebuild facilities. This in turn means a commitment to the whole of the pipeline in both Canada and the United States."

Subsequently, in a letter to the U.S. President, the Prime Minister stated:

"[the] Canadian government cannot, under the Northern Pipeline Act, authorize the construction of any part of the line, including pre-build, until it is assured that the entire line will be completed."

"The Foothills Company...has expressed...grave concern about the delays and is reluctant to invest more money until the uncertainties are resolved."

On July 1, 1980, Congress passed a Joint Resolution that reaffirmed its support for the ANGTS. Seventeen days later, President Carter wrote Prime Minister Trudeau expressing the United States' support for prebuilding and the completion of the remainder of the ANGTS.

- Based upon these commitments, the NEB issued a decision in July 1980 finding that the financing conditions of the Northern Pipeline Act, as amended, had been satisfied, and that prebuilding the Canadian segment of Phase I of the ANGTS could go forward. Foothills invested approximately \$1 Billion to construct the Prebuild.
- On May 25, 1984, the Federal Energy Regulatory Commission in the United States issued a generic rule which prohibited minimum take or pay purchase obligations in pipeline tariffs. The Canadian Government requested consultations with the U.S. government under Article 8 of the 1977 Agreement to consider the implications of the Order on the Prebuild. The Prebuild arrangements were subsequently exempted from the generic rule.
- Foothills had made certain changes to its Prebuild business over time based upon the commitments to the overall Project.
- With respect to a 1989 expansion of the Foothills system to add a compression facility, the National Energy Board and the Northern Pipeline Agency obtained a Department of Justice opinion that found that the construction of the project was under the ambit of the Northern Pipeline Act, not the National Energy Board Act. Foothills was required to submit a filing pursuant to provisions of the Northern Pipeline Act, even though the Prebuild was in operation. This determination effectively limited Foothills to submissions for new facilities along the ANGTS route under the Northern Pipeline Act and established a clear determination that the ANGTS regime remains in place until the pipeline is completed.
- Subsequently, there have been four other expansions to the Foothills system; two of which were major expansions occurring in 1993 and 1998. All have been facilitated under the Northern Pipeline Act regime with no other environmental or certificate review other than meeting the comprehensive terms and conditions identified for the Project and obtaining approval of the Designated Officer.
- In February 1991, the National Energy Board and the Northern Pipeline Agency reaffirmed that a conclusive public interest determination had been made regarding the ANGTS as evidenced by the Foothills certificates. This was again reaffirmed by the Board in May when it rejected arguments made by Altamont Gas Transmission Company and Amoco Canada Petroleum Company which opposed the 1993 Expansion on the basis that that there needed to be public interest determination. The Board's decision made specific reference to the Prebuild expansion being an integral part to the overall project:

"The Board finds that the proposed amendment is consistent with the NPAct and that it reaffirms the integrated nature of the AHGP as established by the NPAct.... Further, the Board notes that Foothills' commitment to the whole of the pipeline was previously demonstrated prior to the start of construction of the prebuild facilities."
- In January 1992, the U.S. Federal Inspector for the ANGTS, Michael Bayer, sent the President a report, which contained 10 recommendations including:

- The repeal of the Alaska Natural Gas Transportation Act;
 - The termination of the 1977 Agreement on Principles with Canada;
 - The elimination of the "exclusive ANGTS route to transport Alaska North Slope gas to the Lower 48; and,
 - The elimination of the "ANGTS project sponsors' unique legal monopoly status."
- On February 14, 1992, the Government of Canada sent a diplomatic note to the U.S. Department of State, opposing six of the recommendations, including the four listed above. Canada stated that it opposed the recommendations because "Any action giving effect to the above-noted recommendations would be contrary to the obligations of the United States and would not be acceptable to Canada." The U.S. Congress did not accept the recommendations in question. Congress did transfer the functions of the Federal Inspector to the Secretary of Energy. (Foothills could come to no other conclusion than that Canada tacitly accepted the "unique legal monopoly status" and the "exclusive ANGTS route" characterizations as true.)
 - In January 1997, the National Energy Board approved an expansion to the Empress Decompression/Recompression facility as part of the 1998 Eastern Leg Expansion project. In a news release, the Board explained the different regulatory treatment of the De/Re facilities compared to the remainder of the expansion project.

"[T]he planned 1998 Prebuild expansion [has] been considered to fall within the scope of the ANGTS project and hence within the ambit of the Northern Pipeline Act and the certificates contained therein. ... The de/re facility is considered to fall outside of the scope of the ANGTS project and hence outside of the scope of the Northern Pipeline Act, since Alaskan gas was not planned to be stripped of liquids at Empress. Accordingly, the application for the de/re expansion was made pursuant to the National Energy Board Act and a screening was performed pursuant to the Canadian Environmental Assessment Act."

No review under CEAA was required for the 1998 Prebuild expansion facilities as the Northern Pipeline Act Terms and Conditions were sufficient to meet environmental and socio-economic requirements.

- On June 30, 1999, the Federal Energy Regulatory Commission issued an Order in the 1999 Northern Border Pipeline Company Rate Case. The Order included a statement that the "ANGTS is no longer viable". The Canadian Government, through its Ambassador, requested that the FERC clarify its statement to avoid creating uncertainty with respect to the U.S. commitments to its treaty with Canada and the ANGTS. The FERC subsequently clarified the order consistent with the requests of Foothills and Canada.

August 13, 2001