

**Testimony of
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Subcommittee on Energy and Air Quality
Committee on Energy and Commerce
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I. Introduction and Summary

Mr. Chairman and Members of the Subcommittee:

Thank you for the opportunity to speak today on the status of proposals for the transportation of natural gas from Alaska to markets in the Lower 48 States and legislation to expedite the construction of a natural gas pipeline from Alaska. As an initial matter, I want to assure you that the FERC Commissioners and staff stand with President Bush and Congress in our commitment to ensure that America's energy markets function reliably and well at this crucial time and for many years to come.

Natural gas is an essential part of our Nation's energy future. The Department of Energy has estimated that natural gas currently represents 24 percent of the energy consumed in the United States, and that demand may approach almost 30 trillion cubic feet (Tcf) by 2020, an annual level requiring a significant increase in production and delivery.

Against this backdrop, the importance of Alaska natural gas supplies, including those in the North Slope area, is clear. It is impossible to envision a 30 Tcf annual domestic market without Alaska natural gas. There has recently been renewed interest in

the development of the transportation infrastructure necessary to move that gas to markets in the Lower 48 States. However, there are currently no applications before the Commission regarding an Alaska natural gas transportation project.

In this testimony, I will first describe the statutory schemes under which the Commission may consider applications filed with it for authorization for Alaska pipeline projects. I will then discuss issues that may be expected to arise under these laws and provide my thoughts on how these matters could be addressed through Congressional action. While I recognize that energy markets, like all markets, are subject to change, so that the economic viability of building an Alaska gas pipeline may vary from time to time, the need for Alaska natural gas in the Lower 48 market is only going to increase as the years go by.

Well-functioning energy markets require three basic things: an adequate energy infrastructure; clear and balanced rules that permit efficient commerce between market participants; and effective regulatory oversight. These key elements have led to robust competition in energy markets, with resultant benefits to customers. Toward that end, we will make every effort to process and act upon any applications for Alaska gas transportation projects as efficiently as possible, working with the applicants, other federal and state agencies, Native Americans, shippers, end users, and other interested parties, to ensure timely, reasonable decisions.

II. Statutory Background

Applications for authorization to construct and operate an Alaska natural gas transportation project may currently be filed under either the Natural Gas Act (NGA) or the Alaska Natural Gas Transportation Act (ANGTA). I will address these statutes in turn. I will also review proposed legislation which I understand has been submitted to Congress for its consideration (the proposed Alaska Natural Gas Pipeline Act).

A. The Natural Gas Act

Under Section 7(c) of the Natural Gas Act, the Commission issues certificates of public convenience and necessity authorizing the construction and operation of natural gas pipelines. The Commission also establishes initial rates for new facilities.

Most natural gas pipeline facility construction is authorized under the case-by-case certificate review process embodied in Subpart A of Part 157 of the Commission's regulations. 18 C.F.R. Part 157 (2001). The Commission reviews numerous aspects of a proposed project, including the route, environmental impacts, engineering and design, gas supply, market, cost, financing, construction, operation, and maintenance, revenues, expenses, and income, and tariff and rate matters.

During the last 20 years, the Commission has moved increasingly to promote competition in the natural gas industry. The Commission has encouraged pipelines subject to its jurisdiction to unbundle their production, sales, and transportation functions, and to provide transportation on an open-access basis. Almost all have done so. Under the open-access policy, shippers are able to buy gas directly in production areas and

separately obtain transportation on interstate pipelines on an equal footing with other shippers. Moreover, in response to competition, the interstate pipeline transportation grid has expanded significantly, offering shippers more flexibility in their choice of supply areas, and creating new paths from supply areas to additional markets.

When the Commission receives an application under Section 7(c), it issues public notice of the application in the Federal Register, and notifies potentially-impacted landowners of the proposed project. Interested persons may file motions to intervene or protest. Generally, Commission staff requests from the applicant any additional information it needs to fully understand the application, considers issues raised by other persons, and conducts a thorough environmental review. A certificate order is then drafted, containing whatever terms and conditions are deemed necessary for the public convenience and necessity. The Commission can set an application for evidentiary hearing before an administrative law judge, if there are material issues of fact that cannot be resolved on the basis of the written record, although such hearings regarding construction applications are rare.

I am proud of the prompt manner in which the Commission in recent years has acted on natural gas pipeline applications. For major projects, we have been making every effort to act within 18 months of the time that the application is complete, which, given the complexity of these cases, is quick indeed. This requires a significant commitment of time and resources, but we know that swift regulatory action is necessary for properly functioning markets.

B. The Alaska Natural Gas Transportation Act

In response to the energy shortages of the 1970's, Congress passed ANGTA, in an effort to establish streamlined procedures for the consideration, approval, and construction of a natural gas pipeline to bring Alaskan natural gas to the Lower 48 States (the Alaska Natural Transportation System, or ANGTS).

ANGTA established a unique process for selecting an ANGTS and expediting its construction and initial operation. Under this process, the Commission was directed to recommend to the President a specific transportation proposal. The President then would submit a decision to Congress, and Congress would approve or disapprove that decision. Thereafter, the Commission was to issue an NGA certificate for any approved project. ANGTA also established other procedural mechanisms to assist in the completion of an ANGTS, including requiring all federal agencies to expeditiously grant necessary authorizations for the ANGTS, establishing the Office of the Federal Inspector to oversee the timely, efficient, and environmentally sound construction of the ANGTS and to coordinate federal efforts related to the project, and strictly limiting judicial review.

In 1977, in the President's Decision and Report to Congress on the Alaskan Natural Gas Transportation System (President's Decision), President Carter designated the route and selected the project sponsors for construction of the ANGTS, running 4,787 miles from Prudhoe Bay, south to near Fairbanks, and then southeast along the route of the Alaska-Canadian highway to near Calgary, Alberta, where it would split into two legs, one continuing to California in the West, and the other to Illinois in the Midwest.

The President's designation of the ANGTS route and choice of sponsors to construct and operate it were closely coordinated with the government of Canada and followed adoption of an Agreement Between The United States And Canada On Principles Applicable To A Northern Natural Gas Pipeline (Agreement on Principles). Pursuant to the Agreement, Canada enacted the Northern Pipeline Act, which is similar to ANGTA.

On December 16, 1977, the Commission issued a conditional certificate under ANGTA and the NGA to designate project sponsors. (The project sponsors have changed over the years and the certificate is currently held by the Alaska Northwest Natural Gas Transportation Company, a partnership between Foothills Pipelines, Inc. and Transcanada Pipelines Limited). This conditional certificate, which authorized the project sponsors to construct and operate the pipeline system to transport gas from Alaska's North Slope to the Lower 48 States, was actually the initial step in the process of issuing a more detailed final certificate. The conditional certificate was followed by extensive procedures to establish further conditions for the project, including the design specifications and initial system capacity of the Alaskan segment of the ANGTS and an interim rate of return mechanism applicable to the segments of the ANGTS located in the United States.

The ANGTS sponsors, in order to facilitate financing for what would be the largest privately financed construction project in U.S. history, proposed to build the project in two phases. Phase 1, or the "Prebuild," completed in 1982, is an approximately 1,500-

mile segment, which presently delivers large volumes of Canadian gas from Alberta to Stanfield, Oregon in the Western Leg, and to Ventura, Iowa in the Eastern Leg.

At the time work on Phase I was being completed, the energy outlook of the United States and Canada changed substantially. Natural gas discoveries in Canada and in the Lower 48 States ballooned, and world oil prices moderated. With this changed natural gas market, the ANGTS sponsors announced in April 1982 that the Alaska portion of the project (Phase II) would be substantially delayed. No final certificate for Phase II was requested or issued before proceedings came to a halt in 1983.

On January 18, 2001, a report on ANGTA prepared by Commission staff was submitted to Congress. That report reviewed the background of ANGTA and discussed issues that might arise in the event of a renewed ANGTS application or of an Alaska gas pipeline application under the NGA.

C. The proposed Alaska Natural Gas Pipeline Act

As I understand the proposed Alaska Natural Gas Pipeline Act, which has been included in the last several versions of the National Energy Bill, it is an effort to apply many of the streamlining aspects of ANGTA to a project filed solely under the NGA. To that end, the proposed legislation would, among other things: require the Commission to complete environmental review and issue a certificate to any proposal backed by an agreement with a shipper of Alaska gas, within 18 months of the filing of an application; establish a Federal Pipeline Director with sweeping authority to coordinate and control federal activities relating to a proposed project; establish the Commission as the lead

agency for purposes of environment review; and, like ANGTA, strictly limit environmental review. The bill contains provisions relating to facilities constructed within Alaska and to those located in the Lower 48 States.

III. Potential Issues

In this section, I will discuss issues that may arise with regard to applications filed under each of the three potential statutory schemes.

A. Issues with Respect to an NGA Application

The NGA itself raises few issues. The Commission has been reviewing applications under Section 7 for more than 60 years, and that process is well-known and understood by all participants. I am confident that Commission staff would work quickly to complete its review of any NGA application for an Alaska natural gas pipeline, and that, if the Commission is presented with a complete application, including all necessary environmental documentation, the Commission would be prepared to act on the application in a timely manner.

Two key matters could nonetheless arise. First is the question of the effect of ANGTA on the Commission's authority to consider an NGA proposal. Arguably, ANGTA precludes the Commission from approving any other proposal for an Alaska gas pipeline until the ANGTS is complete. The staff report concluded that, while ANGTA provided that the Commission was required to give precedence to consideration of the ANGTS, nothing in ANGTA bars the Commission from considering competing NGA proposals. I agree with that conclusion. Nonetheless, it would eliminate delays

occasioned by litigation if Congress were to clarify that, since the Commission satisfied the requirements of ANGTA by issuing an ANGTS certificate in 1977, nothing in ANGTA precludes, or requires delay in, Commission consideration of another Alaska pipeline proposal, filed under the NGA. Alternatively, Congress could establish that the Commission in fact is precluded from approving any other proposal for an Alaska natural gas pipeline until the ANGTS is either procedurally or physically complete.

Second is the question of the coordination of federal efforts. There is no doubt that coordinated federal action is necessary to avoid increased expense, redundant reviews, and delay. It would greatly assist the consideration and implementation of an Alaska gas pipeline proposal if Congress clarifies that the Commission has the authority to coordinate federal activities with respect to a proposal filed under the NGA, and that the environmental record prepared by the Commission will be the one Federal record. At a minimum, it would be helpful if Congress provided that the Commission has the authority to establish deadlines for action by other federal agencies with respect to an Alaska natural gas pipeline proposal, so that the Commission can ensure that it is able to act on any application in a timely manner, and that the role of the proposed federal coordinator is to supervise activities other than the Commission's environmental review and issuance of a certificate.

B. Issues with Respect to an ANGTA Application

As I explained earlier, the Commission granted to the ANGTS sponsors a conditional certificate in 1977. Before the ANGTS could be constructed, the Commission

would have to issue a final certificate. A renewed or revised ANGTS application could raise several issues. These issues are discussed in detail in the staff report, but I will summarize some of the key questions here.

1. Ability to Deal with a Revised ANGTS Proposal

The President's Decision, which was issued pursuant to ANGTA and approved by Congress, contains a number of conditions that on their face seem to affect directly the Commission's consideration of a renewed application to complete the ANGTS. Among other things, the President's Decision, in addition to designating the sponsors and route for the pipeline, specifies many aspects of the design, provides for a variable rate of return as an incentive to limit costs, and determines that the required environmental impact statements relative to an Alaska natural gas transportation system have been prepared and are in compliance with NEPA. Completion of the certificate process more than twenty years after issuance of the conditional certificate could raise some questions about aspects of the President's Decision that could appear to restrict the applicants' and/or the Commission's ability to revise the project in light of changes in the market, technology and environmental circumstances.

ANGTA permits the Commission or another federal agency to amend the ANGTS (15 U.S.C. 719g(d)), but restricts agency discretionary revisions only to those that would not alter "the basic nature and general route" of the ANGTS. The staff report noted that these provisions leave it unclear as to what extent the project sponsors or the Commission or other federal agencies could propose or authorize changes to the ANGTS as outlined in the President's Decision. I observe, however, that the term "basic nature and general route" is sufficiently broad to encompass a number of update-related revisions that the sponsors, the Commission or another federal agency could take upon reactivation of the project. This becomes more difficult, however, if revisions were to reasonably vary from the "basic nature and general route" of the original project. In such event, Congressional guidance would assist prompt processing of a reactivated project.

2. Environmental Considerations

The original environmental impact statement (EIS) for the ANGTS project was prepared more than 20 years ago by the Department of Interior and supplemented by the Commission's predecessor, the Federal Power Commission. In 1980, the Commission prepared a second EIS to consider the environmental impacts of a gas conditioning plant that was proposed to be built, as part of the ANGTS, at Prudhoe Bay.

ANGTA provided that a decision by Congress approving the President's Decision designating an ANGTS was deemed conclusive as to the sufficiency of the underlying EIS and that the EIS was insulated from judicial review. Given that the ANGTS environmental documentation is now more than 20 years old, a supplemental EIS may

need to be prepared before the Commission can issue a final certificate for Phase II. It would expedite Commission review of a reactivated project if Congress would clarify whether the original EIS is legally sufficient or if a supplemental EIS should be prepared and, if so, whether the supplemental EIS is also protected from judicial review.

3. Role of Other Federal Agencies

As noted above, coordinating the roles of the various Federal agencies that have responsibility over various aspects of such a proposal is critical to efficient, timely review of any Alaska natural gas pipeline proposal. During the original ANGTS proceedings, this coordination role was performed by the Office of the Federal Inspector. The Office of the Federal Inspector was abolished by Congress in 1992, and those functions and authorities were transferred to the Secretary of Energy. I defer to the Secretary with respect to any budgetary or other authority he might need to fulfill the coordinating and compliance functions if the original ANGTS proposal is renewed by the project sponsors.

C. Alaska Gas Pipeline Update

As I mentioned previously, there are currently no certificate applications for an Alaska natural gas pipeline on file with the Commission. Our staff and I are closely following the public pronouncements of potential applicants, and stand ready to immediately begin processing any application that is filed. We are also making every effort to prepare to work together with other agencies that may have regulatory responsibilities concerning a natural gas pipeline moving gas from Alaska and Canada to the lower 48 states. Last year, I signed a memorandum of understanding with the Chair

of the Regulatory Commission of Alaska with respect to coordinating our two agencies regulatory activities. My staff has worked with the Interagency Task Force, headed by the Department of State and the Department of Energy, pursuant to the President's National Energy Strategy, to prepare to coordinate Federal activities with respect to an Alaska Natural Gas Pipeline. Our environmental staff toured the pipeline route last year and met with Federal and State agencies, Native Alaskan groups, and other stakeholders. My staff has also had discussions with Canadian agencies, particularly the National Energy Board, in order to lay the groundwork for coordination between U.S. and Canadian regulators. We are also monitoring technical developments, such as the testing of new, more economical types of steel pipe that could be used in an Alaska project.

The first steps in developing an Alaska natural gas pipeline obviously lie with the project proponents. However, I assure you that as soon as any application is filed with the Commission, we will eagerly take up the challenge of processing it efficiently and effectively.

IV. Conclusion

I cannot predict which, if any, applications for Alaska natural gas projects will be filed with the Commission. That is for the investors in those projects to decide. But, in my view, at least one pipeline carrying Alaska natural gas will need to be built in the near future. It would be most helpful for interested parties to collaborate on a single project of sufficient scope to enable our focus to be on getting the gas to the market rather than on spending time in litigation. In the event that settlement of issues is not forthcoming, it would be wise, in advance of such events, to clarify the statutory structure(s) governing the issue, so we don't spend more time in Court than in the field building the needed transportation. A quarter-century wait is long enough.

I can assure you that whatever application(s) is/are ultimately filed with the Commission, we will review it/them thoroughly, promptly, and fairly, with the public interest firmly in mind, and with a clear understanding of how important Alaska natural gas is to our Nation's long-term energy security.

The Commissioners and staff of the FERC are always available to assist the Committee in any manner.