

OD-ORDER, 22 FERC ¶62,402, **Alaskan Northwest Natural Gas Transportation Company, Docket No. CP80-435 Northwest Alaskan Pipeline Company, Docket No. CP78-123, et al.**, (Mar. 09, 1983)
PART 01 OF 02.

Alaskan Northwest Natural Gas Transportation Company, Docket No. CP80-435 Northwest Alaskan Pipeline Company, Docket No. CP78-123, et al.

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**Report to the Commission on the November 1981 Amendment to the Certification Cost Estimate
Part II**

(Issued March 9, 1983)

Barry Smoler and J. Richard Berman, Presiding Officers.

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I. Introduction

On July 1, 1980, Alaskan Northwest Natural Gas Transportation Company (Alaskan Northwest), project sponsor of the Alaska segment of the Alaska Natural Gas Transportation System (ANGTS), filed in [Docket No. CP80-435](#) a partial application for a final certificate of public convenience and necessity for that segment. The application included a proposed Certification Cost and Schedule Estimate (CCE) and a proposed Center Point for the Incentive Rate of Return (IROR) for the Alaska pipeline segment,¹ along with supporting materials. An amendment to the application was filed on November 17, 1980, to reflect changes in the CCE occasioned by routing changes emanating from the Grant of Right-of-Way proposed and

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subsequently issued by the United States Department of the Interior.²

In a Notice and Order issued on August 1, 1980, the Commission instituted a special subproceeding to consider the CCE and Center Point values proposed by Alaskan Northwest and related IROR issues. The order instructed the Commission's Alaskan Delegate, in conjunction with the Director of the Division of Audit and Cost Analysis (Division Director) of the Office of the Federal Inspector (OFI), to convene a series of technical conferences to consider these matters. The Alaskan Delegate and the OFI Division Director presided over those conferences, and submitted their report to the Commission (hereinafter referred to as "the Adger/Berman Report"). On August 21, 1981, the Commission issued an order inviting comments on that report. Comments and reply comments in response to that order were filed with the Commission in September and October of 1981.

On November 23, 1981, Alaskan Northwest filed a second amendment to its application (hereinafter referred to as the "November 1981 Amendment"), providing seven volumes of additional data on the above enumerated subjects. On December 9, 1981, the Commission issued, in [Docket Nos. CP80-435](#) and CP78-123, *et al.*, a combined Notice of Amendment to Application and Order Establishing Procedures. The order reconvened the technical conferences in [Docket No. CP80-435](#), and appointed us to preside and prepare a report to the Commission. The order also provided for the filing of comments and reply comments on our report.

Procedural conferences were held on December 18, 1981 and January 12, 1982, to determine the need for additional data, the schedule for supplying that data, and the schedule for technical conferences on the substantive issues. The substantive issues were discussed at technical conferences held on February 16 and 18, 1982. The February 18 conference was devoted to cost issues associated with highway repair, socioeconomic impact, government monitoring, and the affirmative action training plan. All of the other issues were discussed at the February 16 conference.

For reasons elaborated in greater detail in our memorandum to the Commission accompanying Part I of our report, it became apparent during the technical conferences that the issues discussed at the February 18 conference would take considerably longer to resolve than the issues discussed at the February 16 conference. Accordingly, we decided to issue our report in separate parts. Part I, issued on April 16, 1982 (unreported), contained our recommendations on the issues discussed at the February 16 conference. Comments and reply comments on that report were filed with the Commission in May of 1982.

On September 21, 1982 [[20 FERC ¶61,321](#)], the Commission issued an order establishing the Certification Cost Estimate and the Center Point for the Alaska pipeline segment of the ANGTS, based on the Adger/ Berman Report, Part I of our report, and the comments and reply comments received on those two reports.³ The order deferred consideration of certain components of the CCE pending receipt of Part II of our report (submitted herein) and comments and reply comments on it.

During the course of the technical conference proceedings in the late winter and early spring, numerous interested persons in Alaska made known their interest in having the Commission hold hearings in Alaska on the socioeconomic impact of the pipeline and related issues. The State of Alaska also filed a motion formally requesting such hearings. Accordingly, hearings were held in Anchorage, Alaska, on April 20, 1982, and in Fairbanks, Alaska, on April 21, 1982.⁴ We assisted Commissioner Anthony G. Sousa in presiding at those hearings.

The hearings in both cities were well attended and very informative.⁵ Full transcripts were prepared for both hearings (as well as for the February 18 technical conference). Resolutions and other written matter presented at the hearings were made part of the record. Several interested persons who were unable to attend the hearings submitted written comments; those comments were also made part of the record, through inclusion in the transcript.

Prior to the February 18 technical conference, Alaskan Northwest and the State of Alaska supplied additional data, particularly on highway repair and maintenance costs, in response to extensive interrogatories from the Commission's Trial Staff. Following that technical conference and in response to various requests by the Trial Staff and the presiding officers, additional data were supplied by Alaskan

Northwest and the State of Alaska, particularly on projected Alaska revenues.

To further assist us in understanding the material in the record, four parties submitted memoranda evaluating the issues. On April 15, 1982, the Rural Alaska Community Action Program (RurAL CAP) and the Upper Tanana Development Corporation (UTDC) submitted a memorandum on recovery of socioeconomic

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expenditures (hereinafter referred to as the "RurAL CAP/UTDC Memorandum"). On April 19, 1982, the State of Alaska submitted a memorandum on recovery of expenditures for extraordinary highway repair and maintenance (hereinafter referred to as the "Alaska Highway Memorandum"). On April 22, 1982, the State of Alaska submitted a memorandum on socioeconomic impact and monitoring costs (hereinafter referred to as the "Alaska 1982 Socioeconomic Memorandum"). It incorporated by reference a memorandum submitted by the State of Alaska on February 13, 1981, in connection with the technical conferences that resulted in the Adger/Berman Report; that memorandum addressed proposed treatment of monitoring and socioeconomic impact expenditures (hereinafter referred to as the "Alaska 1981 Socioeconomic Memorandum").⁶ On April 28, 1982, Alaskan Northwest submitted a memorandum on inclusion of State of Alaska socioeconomic, monitoring, and highway repair costs in the CCE (hereinafter referred to as the "Alaskan Northwest Memorandum"). On May 12, 1982, the Trial Staff submitted a memorandum on inclusion of socioeconomic, monitoring, highway, and training costs in the CCE (hereinafter referred to as the "Staff Memorandum"). On May 21, 1982, the Trial Staff submitted a supplement to its memorandum (hereinafter referred to as the "Staff Supplement"). On July 22, 1982, the State of Alaska submitted a "Final Reply" to the Staff Memorandum (hereinafter referred to as the "Alaska Final Reply").

On October 26, 1982, we issued a Notice and Request for Additional Information, addressed (separately) to Alaskan Northwest and the State of Alaska; our requests focussed principally on the highway repair issues. On November 30, 1982, Alaskan Northwest and the State filed their respective responses, providing additional information (hereinafter referred to, respectively, as the "Alaskan Northwest Response" and the "Alaska Response").

Finally, we wish to emphasize that this report represents solely the personal views and recommendations of the undersigned presiding officers, based on the record before us. The Commission will make its determinations based upon the full record in this subproceeding, including the comments submitted to the Commission on this report.

II. Socioeconomic Impact Costs

A. Summary

Alaskan Northwest has requested inclusion in the CCE of \$19,784,000 (1980 dollars) for socioeconomic impact costs. The request is based solely on the State of Alaska's request to Alaskan Northwest and not on any independent derivation of the estimate. Alaskan Northwest's position is that

" . . . it would agree with the State's socioeconomic costs presented in the State's February 13, 1981 memorandum to the Commission if the Commission order establishing the CCE specified that this amount is fixed as a ceiling for actual costs and [is] not subject to upward adjustments by the state and, moreover, that the Commission determine in advance that payment of such amount is in the public interest." ⁷

Consistent with this position, Alaskan Northwest would prefer to adjust the CCE after construction to reflect socioeconomic costs actually incurred.

The State of Alaska supports Alaskan Northwest's request. The State contends that the \$19,784,000

represents a very modest sharing of the overall socioeconomic impact costs and that the funds sought are but a "small fraction" of socioeconomic impact cost identified by the State.⁸ In more general terms, the RurAL CAP/UTDC Memorandum also supports the request, as does the testimony of most of the persons who spoke at the hearings in Alaska. The Trial Staff opposes the request in its entirety.

The issue of the socioeconomic impact of the ANGTs was first raised in the mid-1970's, during the Commission proceedings to determine which of three pipeline proposals should be certificated. That the construction of such a large project would affect Alaska's social and economic structure has been accepted by all who have examined the issue; nevertheless, there has been considerable debate over the extent of the impact and the responsibility for its mitigation. Section II.B. of this report explores these issues. As discussed in Section II.C., the State will also derive considerable financial benefit from the construction of the gas pipeline; the property and corporate income taxes alone will greatly exceed the cost of mitigating the adverse socioeconomic impact that the State anticipates.

The primary question before the Commission in the current proceeding is this: to what extent would direct payments by Alaskan Northwest for socioeconomic mitigation be appropriate under regulatory law, policy and precedent, and thus appropriate for inclusion in the CCE (and, ultimately, in the rate base). We believe the ultimate responsibility for socioeconomic mitigation should rest with the State and local governments as long as the revenues from the

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project are sufficient to cover the anticipated costs of mitigation. Thus, we recommend that the \$19.8 million claimed for socioeconomic costs not be included in the CCE.

However, there are other issues--issues that may be even more relevant to the people of Alaska--that cannot be ignored:

1. How to pay for the increased costs of government and social services that will be required during construction of the pipeline, when the additional tax revenues from the project will not be available until after operation begins.
2. How to allocate and distribute available socioeconomic mitigation funds to each of the impacted areas on an equitable and timely basis.
3. How to meet the needs of the local communities for timely and relevant project information so that effective planning for socioeconomic mitigation can take place.

Mayor Carlson of the Fairbanks North Star Borough aptly summed up the first issue:

"It's true the community benefits, but it's after a lag period. In other words, we have to have the roads in, we have to have the utilities, the public facilities that are necessary to meet the demand that's there, and it's that up-front funding that is the cost that has to be borne by either increasing taxes or looking for other sources."⁹

Thus, the problem as we see it is not who will bear the socioeconomic cost, but how to ensure that the substantial tax revenues generated by the project can be made available for mitigating the socioeconomic impact on a timely basis.

As to the second issue, there is evident concern among some Alaskans that the benefits of the pipeline will not reach those who would be the most adversely affected. Two observations highlight the allocation problem. First, the majority of benefits will flow to the State of Alaska as a whole, while the impacts will be concentrated in the pipeline corridor. Second, most of the people who spoke at the hearings in Alaska are representatives of social service organizations, both in and out of government, who believe that their current resources will be inadequate to deal with the level of socioeconomic impact they anticipate, while

the benefits will flow into State and local government treasuries.

The need for cooperation between Alaskan Northwest and local officials in planning for the impact that will occur was expressed by almost everyone who appeared before us. It ranged over a broad spectrum of activities for which planning is essential, including housing, utilities, communications, police protection, education, social services, medical services, employment counseling and training.

These are complex issues whose resolution requires analysis, discussion and cooperation on the part of all concerned, including Alaskan Northwest, the State of Alaska and local communities, as well as the Federal government. One means that has been used to fund similar mitigation efforts is sponsor-provided loans or other financial assistance, reimbursed by the State or affected communities as a credit against future taxes or in some other appropriate manner. The problems of allocating and distributing the funds would be appropriate matters for consideration by the State of Alaska and the affected localities. For its part, we recommend that the Commission (if so requested) consider eliminating regulatory restraints that might inhibit funding arrangements. For instance, specialized accounting treatment might be required to facilitate loans or advance tax payments. Cooperative efforts among Alaskan Northwest and State and local entities in planning and disseminating project-related information have already commenced and should be continued and expanded as the time for construction approaches.

The following sections deal, respectively, with (1) the anticipated socioeconomic impact of the ANGTS, (2) Alaska State tax revenues and other benefits from the ANGTS, (3) considerations of law, policy and Commission precedent, and (4) conclusions and recommendations.

B. The Projected Socioeconomic Impact

The State of Alaska distinguishes between two types of socioeconomic impact costs that would be caused by the ANGTS. On the one hand, there are the effects that would be directly traceable to the pipeline workers and their dependents who would come from outside the state. The extra demands that these people would place on State and local services are referred to by the State as "Type I impacts." The State believes that Alaskan Northwest has a responsibility to assist the State in providing the additional public services that these people would require. Accordingly, Alaska has requested from Alaskan Northwest, proposing for inclusion in the CCE, approximately \$20 million (in 1980 dollars). A detailed breakdown of these figures is outlined below, but in general it can be said that these funds would go to State agencies that provide population-sensitive services and would fund these agencies' incremental ANGTS-related costs.

The second kind of impact cost which the State anticipates is much broader and somewhat less direct. Generally speaking, it

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refers to any ANGTS-related cost impact above and beyond that identified by Type I.¹⁰ The State has estimated the cost of this impact at about \$100 million. Because these impacts are less direct, the State has announced that it will bear their cost and does not propose to include those costs in the CCE.

This distinction between types of impact costs is rather artificial. From the State's viewpoint, to be sure, such a distinction is useful for allocating the costs between what it believes the ANGTS sponsors should pay and those properly borne by the State. Yet, it is not likely that the overall socioeconomic impact of the ANGTS on the people of Alaska will be so discriminating.¹¹ Alaska's case supporting the inclusion of the \$20 million in the CCE can be better appreciated by understanding what Alaska anticipates to be the total impact of the ANGTS on its citizens.

1. Scope of the Anticipated Socioeconomic Impact

The issue of socioeconomic impact was initially raised in the mid-1970's during the Commission's proceedings on the proposed El Paso pipeline project (Docket No. CP75-96, *et al.*). Socioeconomics was

examined as part of the environmental evaluation of the El Paso proposal and the alternative projects proposed by the Arctic group and Alcan (Alaskan Northwest's predecessor). Each of the contesting parties adduced projections of population increases, employment, and revenues to the State and discussed the effects on local communities, in an effort to demonstrate that its proposal was in the best interest of Alaska. The Commission Staff's Environmental Impact Statement also examined socioeconomic impacts, employing the Man-in-the-Arctic computer program at the University of Alaska to project employment, income, population and State revenue effects. Staff also cited Alaska's experience with TAPS (which was then under construction) to assess the potential effects of the ANGTS on housing, health services, transportation and utilities, financial and retail services, crime, alcohol and drug abuse, family problems and quality of life.¹² The Arctic group argued that its project would create the least negative impact and therefore should be selected. El Paso, supported by the State of Alaska, countered that its all-Alaskan route would generate the greatest net benefit and therefore was in the best interest of Alaska. Alcan contended that its project would generate benefits that would be greater than Arctic's but less than El Paso's. Staff found that all of the proposals produced net benefits and believed that socioeconomics should not be a determining factor in selection of a project.¹³

In 1975, the State of Alaska expressed its views on the subject of socioeconomic impact as follows:

"Alaska is greatly concerned also with the economic and social impact of a gas pipeline, both immediate and long term. It knows from its continuing experience with the Trans-Alaska oil pipeline that the social and economic effects during the construction period can be serious. A housing shortage and inflated housing prices, an increase in the crime rate, inflation of Alaska's already high prices for food and other necessities of life and even a rise in the divorce rate have been unwanted side effects of pipeline construction. This social and economic spill-over places a heavy burden on the essential public services that Alaska must provide or finance at a time when its financial resources are hard-pressed. Unless the costs of preventing and remedying these social ills are placed where they belong, on the pipeline . . . natural gas consumers in the lower 48 states will have an undeserved bargain at the expense of the taxpayers and residents generally of Alaska" ¹⁴

Nevertheless, Alaska continued its support of the El Paso project, the one that would cause the largest socioeconomic impact on the State. Alaska recognized that the potential benefits of El Paso would outweigh the costs. The State observed that while each of the alternative projects would generate revenues from property taxes, severance taxes, royalty payments, personal income taxes and corporate income taxes, El Paso "provides the largest revenues--and the widest margin between revenues and costs--and thereby places the greatest resources in the State's hands for meeting its obligations to its citizens."¹⁵ Furthermore, El Paso "would provide far greater State and municipal revenues in order that the governmental units can cope with the socioeconomic costs that are certain to result from any of the projects."¹⁶

Administrative Law Judge Nahum Litt, in his *Initial Decision*,¹⁷ ultimately supported the Arctic proposal, but allowed that El Paso, too, was feasible and could satisfy the standards of public convenience and necessity. The *Initial Decision* devoted a separate chapter to socioeconomics, examining the arguments of the parties and summarizing the record on the socioeconomic impact issues, including effects on employment, population, local communities, Native populations, and public revenues and expenditures. Judge Litt observed that "the State of Alaska has made a value judgement that the increased development and socio-economic impact on the State resulting from a Trans-Alaska project,

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and El Paso in particular, is in its best interest." And he believed that the views of Alaska were entitled to substantial weight. Nevertheless, he refused to base his decision among the competing proposals on the relative benefits to the State since "the Natural Gas Act does not permit this Commission to certificate a project which will benefit one area of the country to the detriment of another."¹⁸

The Federal Power Commission agreed with Judge Litt on the matter of the relative weight to be given to the socioeconomic issues, observing that each of the proposals would result in net benefits to the State.¹⁹

Subsequently President Carter, in selecting the Alcan proposal, did not elaborate on the socioeconomic record, finding that environmental values, including socioeconomic values, had been extensively considered and evaluated throughout the decision process.²⁰

Turning now to the current issue of the CCE, we believe that the information gathered in the course of the instant proceedings has further sharpened understanding of the problems, dealing as it has with the more detailed questions of mitigation and payment.

The State of Alaska's basic position remains unchanged from the beginning of the ANGTS deliberations in 1975: while strongly supporting a trans-Alaska gas pipeline, the State believes that the costs of preventing and remedying the social ills that would accompany its construction should be shared by the pipeline. This position was supported by most of the people who appeared at the technical conference and hearings in Washington, Anchorage and Fairbanks. Comments on this and related issues stressed the TAPS experience, following quite closely the position set forth in Alaska's 1981 Socioeconomic Memorandum (at 2):

"Alaska's concerns with the socioeconomic impacts of the ANGTS are neither newfound nor casual. They spring directly from Alaska's traumatic experience with the construction of the TransAlaska oil pipeline. Dramatic increases in almost every category of undesirable economic and social behavior occurred. These included but were not limited to housing shortages, rampant inflation in the local cost of goods and services, an explosion in domestic problems such as divorce and child- and spouse-abuse, an increase in crime generally as well as the importation of crimes not seen before in Alaska, and destruction, at least short-term, of some of the amenities that attracted many early Alaskans to the State. The shock of this activity was amplified by its occurrence over a small period of time--the construction years--but, several years later, the wound has not healed completely and the scar tissue of Alaskans is tender."

What the State seeks in this case is that "all the external costs, the externalities, can be identified and incorporated into the real costs of the pipeline." (Tr. 16)

Variations on this theme were presented at the hearings. Mayor John Carlson of the Fairbanks-North Star Borough, introducing a resolution of the Borough Assembly, stated his view that the Federal government has a particular responsibility for the local impact of "multi-billion dollar projects" and sought to dispel the belief that local communities get so rich from these projects that they need no assistance in providing schools, utilities, housing, roads or power for these gigantic construction efforts. (Tr. 185) An anthropologist, Dr. Patricia Book, stated that

". . . it is our collective social responsibility to concern ourselves with the effects that development projects of this kind have on our human systems, including social, economic and cultural subsystems. It is recognized good business practice and good policy to promote both productive economic development and the social welfare of the people. These goals need not be incompatible." (Tr. 337)

Another Fairbanksan answered the question whether the people of Fairbanks wanted this project with yes, but "not to make it so impossible for everyone to live." (Tr. 302)

A contrasting opinion was offered by the Fairbanks Chamber of Commerce:

". . . the Chamber does not feel that a new business or industry entering the community should be saddled with providing up-front funding for the privilege of doing business here. We should be looking at the long-range benefits that can be derived from encouraging new business growth and development in the State, rather than penalizing those businesses as a part of the startup costs."

The Chamber acknowledged that there would be socioeconomic problems, but stated that the costs of these "should be rightfully borne by the State." (Tr. 218)²¹

The presentations at the hearings generally fell into two main groupings: officials representing the State agencies seeking the Type I funds, and other citizens, most of whom represented social service organizations or local governments. Those advocating direct payment by Alaskan Northwest of socioeconomic costs cited the impact that Alaskans foresee would arise from the rapid increase in population and the concomitant increase in demand for housing, utilities, public

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services, and goods and services provided in the local economy. Accompanying this, Alaskans believe, would be localized inflation, with adverse effects on those not working on the pipeline, especially older, retired people; alcohol and drug abuse; increases in some crime; and family stress leading to more spouse and child abuse, and divorces.

As currently conceived, the ANGTS will be constructed over a period of four years. One estimate is that employment on the pipeline will peak in the third year at 10,340, and that this will lead to a total population increase in that year of about 35,300, most of whom will be located in the pipeline corridor communities.²²

Several persons testified to the special problems faced by families moving to Alaska for the first time, alluding to problems documented during TAPS construction: they are removed from their home communities and from all of the family and social support to which they are accustomed; in Alaska they face boom-town conditions, a transient and preoccupied community, high prices, crowding, and strained local services, as well as severe weather. (Tr. 100) When these conditions are combined with job-related problems--whether the spouses have jobs and, if so, the frequent and lengthy absences from home--or other personal problems, the result, according to Ms. Marianne Robinson, an Anchorage social worker, is often family crisis. She testified that during and after TAPS construction, Alaska saw increases in Child abuse and neglect cases. (Tr. 101) Dr. Frederick McGinnis, Deputy Commissioner of the Department of Health and Human Service, testified to sharp increase in social workers' caseloads in the northern areas of the State during TAPS construction. (Tr. 49)

Testimony was also presented that long-time residents of Alaska are not immune to these problems and share many of the same experiences. According to Mrs. Clara Johnson, Director of Family Services for the Tanana Chiefs conference, Native peoples face the same problems, exacerbated by the fact that 80 percent of the households in the communities represented by the Tanana Chiefs are below the poverty level (based on income) and cannot compete for housing and other services during pipeline-induced inflation. She also testified that if the TAPS pattern holds, the incidence of abuse of Native women and children is expected to be severe. (Tr. 283)

Particular concerns were expressed over the effect of the ANGTS on the Native peoples' subsistence lifestyle. Subsistence includes hunting, fishing and gathering, and other associated activities. Although subsistence is important in the economic life of many Natives, providing them with a measure of self sufficiency, it has a cultural and social function as well.

Mr. Dennis Kelso, Director of the Division of Subsistence in the Alaska Department of Fish and Game, stated that the ANGTS could affect subsistence activities in a variety of ways: construction might disrupt some wildlife habitats; the population increase could lead to increased competition for game; the variety of construction activities could reduce access to some hunting and fishing areas; and employment of Natives on the pipeline could disrupt their traditional harvest schedules.²³ (Tr. 20-21) Mr. Kelso went on to point out that the Alaska right-of-way leasing statute requires protection of those engaged in subsistence activities. But exactly what steps should be taken is uncertain because, as he also pointed out, there has never been any systematic study of whether or how TAPS affected subsistence activities. The only information available is anecdotal. (Tr. 27) Mr. Kelso called for pipeline-related research, funded by Alaskan Northwest, to identify possible effects and to develop mitigation measures. (Tr. 22-25) He was supported in this by Mr. Ralph Anderson, representing the North Slope Borough, and by Mr. Chris Anderson, Director of the Department of Community and Natural Resources for the Tanana Chiefs Conference.

Housing shortages created by the TAPS boom were cited as a prime contributor to much of the personal and family distress in Alaska. Several people testified that such shortages could occur again. In Fairbanks, Mrs. Doris Southall, Chairperson of the Retired Persons, described housing as the "number one problem in Fairbanks." (Tr. 221) In Anchorage, Ms. Laurie Terrall of the Coalition of Economic Justice impressed upon us the vulnerability of poor persons who are displaced from their housing by rent increases and evictions. (Tr. 156)²⁴

Health care was another matter of concern to many of the people testifying at the hearings. Dr. McGinnis led off with the observation that during TAPS construction, medical facilities in local communities were sorely taxed, hospitals were overcrowded, and nursing home facilities were used for pipeline workers. (Tr. 46-47) The Fairbanks Memorial Hospital, which was quite crowded during TAPS and which expanded its capacity during TAPS construction, has evolved into a regional medical center. One consequence of this, reported its Administrator, Mr. Tom Mingen, is that the ANGTS impact is likely to be even greater, with people throughout the pipeline

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corridor being referred to this facility. Mr. Mingen reported that the hospital is already at its capacity, with a current expansion underway and additional expansion, based on natural population growth, slated for 1985-1986. He further stated that while these improvements will aid in meeting some of the pipeline boom, other capital improvements will be necessary to meet the increased work loads. (Tr. 315-317) Since emergency health care facilities are especially critical to people in the Alaskan bush and in small communities, several spokesmen urged that the emergency health programs of the ANGTS be coordinated with local services, so that no one is left unassisted because of inadequate personnel and equipment.

The impact on mental health services was also addressed by several witnesses. A representative of the Anchorage Department of Health and Environmental Protection listed mental health as one of the principal health concerns, citing as causes the family stresses that increase during such times. (Tr. 124) Dr. McGinnis also listed mental health concerns as one of the additional pressures on Department of Health and Social Services programs during TAPS construction. (Tr. 45) He observed that the State's mental hospital in Anchorage was full, with increasingly more people seeking short term assistance, some of whom were very recent arrivals in the State. (Tr. 50-51)²⁵

Law enforcement problems increased during TAPS. For Fairbanks and Anchorage, the number of misdemeanors increased 92 percent between 1973 and 1976, while felonies increased 24 percent. Alaska's crime rate increased at a rate 5 percent higher than the U.S. rate. Correctional facilities received more than 25 percent more inmates, from 400 to 520, during the same period. Other notable increases were in traffic offenses, especially drunk driving and vehicle accident fatalities. (Tr. 47-49)

At the same time, Alaska's police departments experienced high attrition among officers, many of whom were lured to higher paying positions with the pipeline. (The Commission's Final Environmental Impact Statement noted that even the Fairbanks Chief of Police resigned to take a pipeline job.)²⁶ Coupled with this was the difficulty in recruiting new officers, in large part because of the housing shortage in Alaska during construction. Colonel Vaden of the Alaska State Troopers testified that at Delta, a corridor community southeast of Fairbanks, the local police department actually closed down for lack of personnel, and State Troopers had to take over all law enforcement responsibilities there. (Tr. 83)

The failings of the Fairbanks utility system during TAPS construction, particularly the telephone system, are legend. The telephone system, according to reports, ran out of phone numbers and did not have sufficient equipment to handle the volume of calls.²⁷ Speaking for the Fairbanks Municipal Utility System (MUS), which furnishes electricity, telephone, water, district heat, and sewer service, Mr. Bill Perry, General Manager, stated the problem faced by the MUS in boom times: how can capital intensive services expand for only temporary increases in demand without becoming over-built for more normal levels of demand. Mr. Perry pointed out that the utility systems would be able to meet the ANGTS-generated

demands given the proper lead time, coordination with the project sponsors, and financing. (Tr. 207)

If any one concern emerged from the hearings, it is that expressed by Mr. Perry: the need for cooperation between Alaskan Northwest and local officials in planning for the impact that will occur. This concern was repeated time and again, by almost everyone who appeared before us, and ranged over a very broad spectrum of supplies and services for which planning is essential, including housing, utilities, communications, police protection, education, social services, and medical services.

Some planning is necessary by all of the organizations that provide social services. They must know how many people they will have to serve and when and where their services will be necessary. For example, contractors will probably request the Red Cross to train personnel in first aid and emergency care programs. Yet, as Ms. Phyllis Leavenworth of the American Red Cross pointed out, the organization cannot be expected to expand its services suddenly without planning, coordination and some financial assistance. (Tr. 200-203) Ms. Sherry McWhorter of the Arctic Alliance for People, a coalition of 24 human services agencies, reported that their organization had been unprepared for TAPS and therefore understood the need for planning and financial assistance to prepare for the ANGTS. (Tr. 226) Systematic planning should integrate the needs of transportation, education, social and health services, and law enforcement; should encourage local participation; and should include technical and financial assistance to local communities. (Tr. 295)

The Fairbanks North Star Borough Assembly's Resolution No. 82-19, issued April 8, 1982 and introduced into our record at the Fairbanks hearing, provides a clear summary of what many Alaskans believe to be necessary

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for addressing the potential socioeconomic impact of the ANGTS. The resolution urges the FERC to condition Alaskan Northwest's certificate with requirements that the project sponsors involve the Alaskan public in project planning, that community organizations be involved in planning for the project, that the sponsors offer technical assistance to communities for planning, and that the sponsors finance the communities' preparations for the impact.²⁸ In light of our discussion below, we do not recommend adoption of the certificate conditions proposed in the resolution; we believe, however, that our recommendations are responsive to the Borough Assembly's concerns.

2. Type I Socioeconomic Impact Reimbursement Requested by the State

To mitigate many of the types of impacts described, the State of Alaska proposes that the ANGTS sponsors reimburse the State for those socioeconomic impact costs directly traceable to pipeline workers and their families, characterized by the State as "Type I" assistance costs. These costs, as initially estimated in Alaska's 1981 Socioeconomic Memorandum (at 4), would total \$19,784,100 in 1980 dollars. This amount was expected to cover all activities in fiscal years 1981-1988. The costs were calculated by first estimating the number of out-of-state pipeline workers and their dependents who would locate in Alaska during construction of the ANGTS. These estimates were then provided to State agencies responsible for delivering government services to the population. These agencies in turn estimated how their work loads would increase to meet the additional levels from the pipeline workers and their families.²⁹

The Department of Health and Social Services has requested the largest amount of Type I assistance, \$9.25 million, or almost 50 percent of the total. The Department administers the State's programs for mental health, alcoholism, drug abuse, public health, welfare programs (General Assistance Aid and Aid to Families with Dependent Children), social programs (children's protective services and adult supportive services) and juvenile and adult corrections. The Department's responsibilities are quite broad and are in areas that would be particularly affected by pipeline-related activities. Drawing on his experiences with TAPS construction, Dr. McGinnis, Deputy Commissioner of the Department, pointed out that the main pressure would be on the public assistance, public health, mental health and correction programs. The bulk of the Department's request, \$6.4 million, would fund expected increases in the various social service

programs aimed at pipeline workers' families, particularly programs for child abuse and neglect, foster care, and family counseling.³⁰

The State Pipeline Coordinator's Office has requested the next largest portion of the Type I socioeconomic impact assistance funds. These funds would be used to mitigate those impacts that fall outside the purview of normal State agency functions. The \$6.1 million would be used primarily to establish five Impact Information Centers. Each center would have two staff members and an advisory board of local citizens. The function of these centers would be to coordinate the flow of information between the ANGTS sponsors and local communities so as to assist the communities in anticipating and meeting the local impact of pipeline construction.³⁰ In addition, funds would also be used to establish a Citizens Socioeconomic Advisory Council to advise State, Federal, and pipeline company officials on local issues affecting the project. The Council would monitor compliance with the socioeconomic stipulations, coordinate the activities of the Impact Information Centers and assist in coordination between State agencies and the project sponsors.³²

Alaska's Department of Labor has requested \$2.6 million in Type I funds. These funds would support three programs supervised by the Department of Labor: employment stabilization, worker protection, and life and property protection. The major portion of the employment stabilization program would ensure that all unemployment benefits are paid promptly and would provide services to incoming job seekers, such as work registration, job referral, referral to support services and counseling. Other funds would be used to police contributions to the Alaska unemployment insurance programs and to provide for a labor economist who would analyze impacts for planning programs following construction of the project. The Department's worker protection program would consist of safety inspections, enforcement of safety and health regulations, and processing of workers' compensation claims. The life and property protection program would certify electricians and plumbers.³³ The Department of Public Safety has requested \$1.9 million in Type I funds to allow the Department to hire additional State troopers, to process license applications for an estimated 25,000 additional vehicles and 12,000 additional drivers entering the State, and to enforce vehicle overweight regulations on Alaska's highways.³⁴

With the exception of the State Pipeline Coordinator, each of the agencies that would receive Type I funds would also receive Type

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II funds. The State has not provided a detailed description of these funds, since no claim is made for their inclusion in the CCE. Nevertheless, we note that such funds proposed in budgets submitted by the State would total about \$96.6 million (1980 dollars). The largest proposal, \$81.8 million, would support the programs of the Department of Health and Social Services. The Department of Public Safety would receive \$7.4 million, the Department of Labor would receive \$5.5 million, and the Department of Community and Regional Affairs would receive \$1.9 million.³⁵

C. Alaska State Tax Revenues and Other Benefits from the ANGTS

1. Identifying and Quantifying the Benefits

Up to this point we have reviewed what Alaskans view to be the costs of the ANGTS to the State and its citizenry. We now take up the benefits. Like costs, benefits fall into two major categories: the tax revenues that the project and related activities would generate for the State, and the more general benefits that would arise from expansion of the local economy. Like the costs, these beneficial effects are entwined (although, as discussed below, our recommendations are premised solely on a portion of the tax revenues). A good summary of these effects was provided by the President of the Fairbanks Chamber of Commerce at the hearing in that city:

"During the building of the Trans-Alaska Oil Pipeline, there was tremendous impact in our community upon the streets, roads, retail and wholesale business, clinics, hospitals, airports, railroads,

restaurants; just about everyone in the community was impacted, all of which meant considerably more dollars and dollar turnover, improved cash flow for businesses, increased savings accounts for individuals, opportunities for businesses and individuals to use some of the "big money" made during the pipeline to invest and improve their own individual status by either purchasing material things, making wise investments, or in some cases just blowing it. All of this meant a great deal to the business climate of the community. The improved business climate caused a tremendous increase in the amount of tax dollars collected during the period. Additional profits derived by businesses were, in many cases, plowed back into the businesses. Capital improvements were made. Additional retail space and shopping centers were developed, which helped broaden the tax base. As a result, the city, borough and state tax revenues increased dramatically." (Tr. 217)

Although the State of Alaska's support for the El Paso project was not without reservation,³⁶ its arguments in favor of an all-Alaska route cited the numerous socioeconomic benefits that the El Paso alternative would bring: it would provide the most employment opportunity to the State; it would increase population on the southern coast; it would provide the greatest revenues to State and local government; and it would provide the greatest benefits from the future use of royalty gas.³⁷ And in answer to the criticisms leveled in that proceeding against the employment and population effects of an ANGTS, Alaska asserted that

"... large-scale construction projects are "unnatural" to those who think in this way because they do not provide long term jobs ... Alaska believes that the question should be approached with an appreciation of the fact that at some point a major project becomes a "natural" stimulus of the economy ... Gas pipeline construction may provide the extra stimulus that starts continuing growth of the Alaskan economy."³⁸

The benefits of such project-induced economic expansion, Alaska believed, were that growth can bring lower prices, more industry and greater job opportunities.³⁹

The direct benefits to the State government would be the increased revenues that ANGTS construction would generate. Outlined below are the various categories of revenue that would be affected:

(1) *Royalty payments.* Alaska will collect 12.5 percent of the value of the natural gas extracted from lands owned by the State. This may be collected either in kind or in money. (Alaska Stat. §38.05.180)

(2) *Severance taxes.* Alaska taxes all gas extracted within the State at the rate of either 10 percent or \$.064 per mcf, whichever is greater. (Alaska Stat. §43.55.016)

(3) *Property taxes.* *Ad valorem* taxes on ANGTS facilities will be assessed at a rate of 2 percent of the full and true value. Property taxes paid to local governments on the value of the pipeline property within the local jurisdiction are treated as an offset to the State pipeline property taxes. (Alaska Stat. §43.56.010)

(4) *Corporate income taxes.* Our research indicates that Alaska's corporate income tax statutes have been revised during the course of this proceeding, and it is our understanding that they may be further revised in the near

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future. (See generally Alaska Stat., Title 43, Chapters 20 and 21.) For purposes of this report, we have relied on Alaskan Northwest's estimates of these taxes, as discussed below.

(5) *Fuel taxes.* The State currently charges a tax of 8 cents per gallon on most motor fuel. (Alaska Stat. §43.40.010) There is a 6 cent per gallon refund if the fuel is used by vehicles and equipment not licensed to operate on public ways. (Alaska Stat. §43.40.030(a)(3))

(6) *Licensing fees.* Like most States, Alaska charges fees for vehicle and operators' licenses and for

certification of electricians and plumbers. (Alaska Stat. §42.10.160; §28.15.271; §28.10.411; §28.15.421; §18.62.030; §18.62.040)

(7) *Permit fees.* Several State agencies charge permit application fees. (Alaska Stat. §46.35.120; 11 Alaska Admin. Code §80.005)

(8) *Federal Mineral Leasing Act and related land-use and sales receipts.* The State will receive 90 percent of all money received by the Federal government from project-related sales, bonuses, royalties and rentals of public lands, including revenues from mineral materials sales. (30 U.S.C. §191, §603)⁴⁰

(9) *State leasing and sales revenues.* The State will also receive similar payments for use of its land and resources. This will include fair market value rental payments for its leased land on the right-of-way, mineral material receipts, and timber sales receipts. (Alaska Stat. §38.05.110; §38.35.140)

(10) *Other sources of revenue.* These would include reimbursement of government-provided services by medical, workman's compensation, and disability insurance carriers.

In addition to State-wide revenues, some municipalities and boroughs in Alaska will also collect taxes from the ANGTS and related activities, in the following general categories: real and personal property taxes, generally limited to a 3 percent maximum rate; pipeline property taxes, which would be assessed directly on the ANGTS facilities, subject to limitations, and credited against the ANGTS total gas pipeline property tax bill; and sales taxes, which are limited to a maximum of 6 percent.⁴¹ The ANGTS would be constructed through the jurisdictions of two boroughs, the North Slope and Fairbanks North Star. (The remainder of the route would be through the unorganized area.)

Alaskan Northwest and the State of Alaska have each presented estimates of the probable magnitude of revenues that the ANGTS would provide to the State. While these estimates are tentative and subject to some change, they do provide a reasonable picture of the scope and magnitude of the benefits that the ANGTS will bring the State of Alaska.

At our request, Alaskan Northwest filed on March 26, 1982 (as corrected on March 31, 1982) estimates of the State income and property taxes that it would pay Alaska during the operation of the project.⁴² Table I, as filed by Alaskan Northwest, is reproduced below. Alaskan Northwest projects that the pipeline (excluding the gas conditioning facility at Prudhoe Bay) would contribute \$1.530 billion in property taxes and \$543 million in State income taxes (in 1980 constant dollars) over the twenty years between 1987 and 2007.⁴³

Table I
Alaskan Northwest Natural Gas Transportation Company
Estimated State Income and Property Taxes During Operations
(Millions of 1980 \$)

Year	Alaska Segments		
	Property Taxes	State Income Taxes	
	AGCF ¹	AGP ²	AGCF ¹
AGP ²			
1987	\$72	\$224	
\$ 5			
1988	62	197	1
7			

1989	52	170	1
13			
1990	45	144	1
15			
1991	38	123	2
19			
1992	33	106	4
24			
1993	28	91	6
30			
1994	24	78	7
35			
1995	21	67	9
39			
1996	18	58	11
43			
1997	16	50	11
40			
1998	13	43	11
37			
1999	12	37	10
35			
2000	10	31	10
33			
2001	8	26	10
30			
2002	7	22	9
28			
2003	6	18	9
26			

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2004	5	15	9
24			
2005	4	12	8
23			
2006	3	10	7
20			
2007	2	8	6
17			

	\$479	\$1,530	\$142
\$543			

¹ AGCF--Alaska Gas Conditioning Facility

² AGP--Alaska Gas Pipeline

Notes:

The projections of Alaska income and property taxes are based upon the cost estimates and cost-of-service included in the October 21, 1981 statements to Congress during the Congressional Waiver Hearings.

The income taxes have been calculated on the basis of proposed regulatory and administrative practices of the Alaska Department of Revenue, effective January 1, 1982 (AS 43.20). The income taxes have been further calculated on the basis of Alaskan Northwest being organized as a corporation.

The estimated taxes are not necessarily representative of the taxes which may ultimately have to be paid to the State of Alaska by the tax paying entity or entities. Additionally, such estimated taxes are not necessarily those estimates which will appear in subsequent projected cost-of-service filings by Alaskan Northwest. These estimates are simply examples and should be used for illustrative purposes only.

Source: Alaskan Northwest filing, March 31, 1982.

Alaskan Northwest has also submitted an estimate of the additional property taxes which it would pay during the four year construction period: \$218 million to the State and \$5.7 million to the North Slope Borough (both in 1980 dollars). Other taxes would be paid to the Fairbanks North Star Borough, but no estimate of this amount is available.⁴⁴ Thus, the combined total estimated tax revenue to the State from the ANGTS is in the neighborhood of \$2.3 billion.

In response to a request of the Trial Staff, the State of Alaska filed a report with the Commission entitled "Net Economic Benefit to Alaska of Alaska Natural Gas Transportation System." The report derives estimates of the economic benefit and revenues to Alaska from construction of the ANGTS. The report was prepared by Mr. Milt Barker of the Legislative Finance Division of the Alaska Legislature, and was reviewed by the Alaska Departments of Revenue, Natural Resources, and Budget and Management.⁴⁵ Accordingly it represents the State's estimate of the revenues and net benefit of the ANGTS.

The report presents a range of estimates for the total net economic benefit to the State from the ANGTS. The estimates range from approximately \$5 billion in net benefit to \$968 million in net cost (in 1982 dollars). The report contends that localized Alaskan inflation would be a major determinant of the ultimate economic benefit from the project.⁴⁶

The Trial Staff, in its Memorandum (at 1-10), discusses at length the Alaskan economy and the history of Federal involvement in its development going back to the construction of roads to sustain the defense of the Aleutian Islands in World War II. The discussion ranges over such topics as comparison of Federal

benefits to Alaska with Federal taxes generated by Alaska; subsidies to and growth of Alaska's transportation infrastructure, including the maritime industry and the Alaska Railroad; State support for the arts; and the economic boom generated by the oil industry. The discussion culminates in an analysis of the net economic benefit to Alaska arising out of the ANGTS, including expansion of business and employment opportunities.

The State of Alaska, in its Final Reply (at 1-7), contends that the Trial Staff's entire line of inquiry is irrelevant, but responds to it point by point. The discussion ranges over such topics as adjustment of personal income data to reflect inflation and the cost of living; Federal taxes paid on a per capita basis; Federal taxes compared with Federal expenditures; Federal expenditures adjusted for inflation; bankruptcy rates in different years; unemployment rates; the quality and quantity of roads and plumbing facilities; and the effect of ANGTS-generated inflation on the State of Alaska's budget.

Although interesting as background information on Alaska, we have not relied on this information in formulating our recommendations herein. In our view, the history and condition of Alaska's economy in general, and the historic and present role of Federal involvement in it, raise issues of national economic development (and, to a certain extent, issues of national defense and security) that far transcend the Commission's

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statutory jurisdiction to regulate interstate gas pipelines. Similarly, we do not rely on the Barker study projections of net economic benefit to Alaska, because those projections analyze the potential impact of the ANGTS on the entire State economy.

Consistent with this approach, in formulating our recommendations we do not rely on either the gas severance taxes or Alaska's royalty share of the gas. Both give rise to extraneous considerations of law and policy. Thus, in this report, our analysis of ANGTS "benefits" to the State of Alaska (for purposes of comparison to the cost of socioeconomic impacts) is based solely on tax revenues generated directly by the ANGTS itself, *i.e.*, taxes paid directly by the project sponsors of the Alaska pipeline segment.

As noted above, Alaskan Northwest estimates (with caveats) that the Alaska pipeline segment, during its planned years of construction and operation, and stated in 1980 dollars, will generate approximately \$2.3 billion in State and local income and property taxes.⁴⁷ Thus, in discussing socioeconomic impact costs in the context of revenues and benefits generated by the ANGTS, the context we utilize is the \$2.3 billion in property and income taxes to be paid to State and local governments by the project sponsors of the Alaska pipeline segment.

2. Allocating the Benefits and Costs

Although the foregoing figures are necessarily estimates, they demonstrate the probable magnitude of revenues that the project will generate. It is clear that Alaska will benefit substantially from the construction of the ANGTS,⁴⁸ and that the ANGTS project sponsors will contribute considerable sums in taxes throughout the project's life.

The State of Alaska argues that socioeconomic costs associated with large energy projects such as the ANGTS should be internalized to the project; in this way the price of the natural gas would reflect the true cost to society of its extraction and transportation.⁴⁹ The preceding description of tax revenues adequately answers these arguments. The taxes that the ANGTS will pay the State of Alaska will be reflected in Alaskan Northwest's cost-of-service charges to the shippers of Prudhoe Bay gas. The shippers, in turn, will include these costs in the rates they charge their customers in the lower 48 States. In short, the price for Alaskan gas will reflect all of the State of Alaska's tax assessments against the ANGTS, thereby providing an adequate price signal to gas consumers and constituting a rather massive sharing of the costs of the ANGTS. As discussed above, the revenues that Alaskan Northwest will pay the State (including its subdivisions) in the form of property and corporate income taxes will be in the range of \$2.3 billion (in

1980 dollars) during the life of the project. This figure (which excludes the additional payments to the State in severance taxes and Alaska's royalty share of the gas) dwarfs any estimate we have heard as to the cost of mitigating socioeconomic impacts caused by the project.

Nevertheless, there is evident concern among some Alaskans that the benefits of the pipeline will not reach those who would be the most adversely affected. Thus, the problem is not the availability of revenues, but rather, the timing and allocation of revenues. The issue is how to ensure that some adequate portion of Alaskan Northwest's massive tax payments will be brought to bear on timely alleviation of the socioeconomic dislocations.

Most of the socioeconomic impact will occur during construction of the project, while most of the above-mentioned revenues will be paid only after the project is completed and operating. If the benefits (the State's increased revenues) are to be used effectively in alleviating the impact, they must be brought to bear before and as the impact occurs.

Two observations highlight the potential allocation problem. First, most of the tax revenues will flow to the State of Alaska as a whole, while the socioeconomic impact will be concentrated in the pipeline corridor and particularly in the Fairbanks area. Second, most of the people who spoke at the hearings in Alaska are representatives of social service organizations, both in and out of government, who consider the current resources to be inadequate to deal with the level of socioeconomic impact that they anticipate, while the benefits will flow into State and local government treasuries. Although these people generally express support for the pipeline and acknowledge the good that may come of it, they, nevertheless, will have to deal with additional work loads and their concern is whether the resources to help them will be available.⁵⁰

The State may wish to comment on our belief that the problem of allocating benefits is essentially a political one. To the extent that some Alaskans seek socioeconomic payments from the ANGTS because they are not confident that the State's generous in-flow of tax revenue from the project would reach them,⁵¹ then the Commission is being asked to second-guess State authorities or to decide questions that properly belong with those authorities. To do that, in our view, would infringe on the sovereign prerogatives of the State of Alaska.⁵²

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D. Considerations of Law, Policy, and Commission Precedent

As discussed above, there is a considerable factual record in this proceeding as to the expected socioeconomic impact of the ANGTS on Alaska, the amount of and basis for the State's claim that socioeconomic impact costs should be included in the CCE, and the tax revenues that the State will receive as a consequence of the ANGTS. With this record in mind, we now turn to an examination of regulatory law, policy and precedent on the issue of whether (or to what extent) socioeconomic costs are properly includable in the project's rate base.⁵³

1. Commission Precedent and Policy

As a regulatory agency that also issues licenses for the construction of non-Federal hydroelectric projects,⁵⁴ the FERC and its predecessor, the Federal Power Commission, have on several occasions faced issues in that context similar to the ones raised in this case. In *Safe Harbor Water Power Corp.*, Project No. 1025, 1 F.P.C. 230, 258 (1935), for example, the Commission was asked to determine whether a licensee's payment of tuition to a local Pennsylvania township to cover the costs of educating the children of project construction workers was properly a cost of the project. The Commission concluded that the payment was proper, since the township was authorized under the Pennsylvania School Code to seek such funds. In that case, the licensee satisfied its obligations under State law by paying a compromise figure of \$3000 (\$1500 per year), and the Commission found the payment to be prudent.

Several parties cite as precedent the license awarded in 1977 to the Virginia Electric Power Company

(VEPCO) for its Bath County Pumped Storage Project. In that case, the Commission affirmed the *Initial Decision* of Administrative Law Judge Benkin, which required VEPCO to reach agreement with Highland County, Virginia, to provide financial assistance for education, law enforcement, solid waste disposal, general government, welfare, and other social services that would be affected by the influx of construction workers into the county.⁵⁵ Alaska's distinction between Type I and Type II impact costs is based in part on the VEPCO *Initial Decision's* conclusion that the licensee's obligation extended to the impacts generated by workers and their families, but not to other migrants attracted by the project.⁵⁶

The VEPCO case, however, does not support Alaska's basic position. As Judge Benkin observed, the VEPCO project was located in the tax base of Bath County, Virginia, while one of the construction worker camps, and hence the socioeconomic impact, was situated in neighboring Highland County. This is not the case with the ANGTS, where the State of Alaska--the jurisdiction seeking reimbursement--will also be the recipient of the lion's share of the taxes. A further distinction is that the payments to Highland County were to be limited "to the marginal increase in the expense of conducting current governmental programs which were not covered by increased revenue and which are attributable to an influx of persons employed directly on the project and persons accompanying them." Consideration of increased revenues was to include new tax revenues and fees attributable to the employees of the project, any increased State and Federal aid attributable to such persons, and any increased taxes on real estate and improvements paid by VEPCO.⁵⁷ In the case before us, therefore, application of the the VEPCO precedent would preclude inclusion of any socioeconomic impact costs in the CCE, because the ANGTS-generated revenues that Alaska will receive substantially exceed the impact costs.⁵⁸

In two more recent cases, the Commission awarded licenses for hydroelectric facilities that require some form of socioeconomic impact assistance. In an order issued February 8, 1982, the Commission awarded a license to the Calaveras County Water District for the North Fork Stanislaus River Project (No. 2409). Conditions on the license required the licensee, itself a local government agency, to consult with other Calaveras County agencies on potential socioeconomic impacts and to provide the County with financial assistance for additional sheriff's deputies and for additional educational facilities for project-worker school-age children.⁵⁹ In an order issued March 22, 1982, the Commission awarded a license to the Kings River Conservation District for the Dinkey Creek Project (No. 2890). In that license, the Commission required the licensee to provide assistance to local law enforcement agencies, as needed.⁶⁰

In our opinion, neither of these cases supports socioeconomic impact assistance for the ANGTS. In each case, the licensee is a government agency that pays no taxes to local governments on the value of project facilities, and therefore the socioeconomic costs which the Commission addressed were not balanced by a compensating increase in tax revenues.⁶¹ Thus, the result in both cases is consistent with the rationale stated in VEPCO.⁶²

In summary, the cases in which the Commission has previously had occasion to consider issues of financial responsibility for

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socioeconomic impact are somewhat sparse and scattered, and none have involved either impacts or costs remotely approaching those involved in construction of the ANGTS. For this reason, the Commission need not feel bound by precedent, and has the flexibility to devise new or creative approaches tailored to the unique problems and legal framework of the ANGTS. Nevertheless, to the extent that the Commission has faced and resolved comparable issues in the past, as indicated by the precedents discussed above, we believe that our recommendation on the CCE treatment of socioeconomic costs is fully consistent with those precedents.

Under the Natural Gas Act, 15 U.S.C. §717, *et seq.*, the Commission has broad authority, analogous to that under the Federal Power Act, over the construction and operation of interstate gas pipelines. Its certification authority under Section 7, including its authority to condition certificates under Section 7(e), provides an adequate legal basis for the Commission, if it so chooses, to authorize recovery of a project sponsor's

socioeconomic payments where such payments meet the broad statutory standard of consistency with the "public convenience and necessity."

The Natural Gas Act does not, however, provide a basis for allowing the Commission to favor the economic conditions of a particular state or region at the expense of others. Thus, in response to the State of Alaska's argument that the El Paso project should be the preferred project on the basis of benefits to Alaska, Judge Litt held that "[T]he result of giving disproportionate weight to these considerations . . . rather than basing the decision on an analysis of costs and benefits which rebound to all consumers, is no different than that already rejected by the Commission and the courts." ⁶³ As discussed by Judge Litt, ⁶⁴

". . . the Commission has held that the economic ills of a particular area are not a valid consideration in determining pipeline rates and that costs may not be shifted from one region to another to affect local economic conditions. *Michigan Wisconsin Pipeline Co.*, 34 F.P.C. 1188, 1190 (1965). Further, in determining ceiling rates for interstate sales of gas by producers, it was judicially determined that the Commission properly declined to accede to pricing arguments based solely on the particular economic interests of the States of Texas and New Mexico. *Skelly Oil Company v. FPC.*, 375 F.2d 6, 18 (10th Cir., 1967), reversed on other grounds, 390 U.S. 747 (1968). See also *FPC v. Hope Natural Gas Company*, 320 U.S. 591, 607-614, holding that nothing in the Natural Gas Act intimates that high prices should be maintained so that "the producing states obtain indirect benefits."

For this reason, the alleged condition of Alaska's economic health--be it either rich or poor--cannot serve as a basis for determining whether particular costs can be prudently incurred.

The State of Alaska asserts that the Commission has already ruled in favor of socioeconomic payments, citing [Order No. 31](#), wherein the Commission stated that "prudent [socioeconomic] expenditures . . . should be included in the [CCE] at the outset, and should not be included in the Change in Scope mechanism." ⁶⁵ While this statement recognizes the Commission's authority, its context (the Commission clarifying the mechanism of the Incentive Rate of Return) indicates that the Commission was not deciding that socioeconomic expenditures are necessarily prudent and recoverable through gas rates. On the contrary, as we read [Order No. 31](#) the Commission held only that, *if* there are prudent socioeconomic expenditures, they should appear in the CCE when it is initially approved, not subsequently as a Scope Change. [Order No. 31](#) is not dispositive of the issue of whether such expenditures could, in fact, be includable in the CCE--that is precisely the issue presently before the Commission for decision.

We also note that the issue of socioeconomic impact was briefly discussed in a subsequent Commission order in a related subproceeding in [Docket No. CP78-123](#), *et al.* Upper Tanana Development Corporation had filed comments proposing adoption of socioeconomic impact conditions to the ANGTS project sponsors' certificates. In its order of February 26, 1980 (at 6-7) [[10 FERC ¶61,183](#)], the Commission expressed a preference for certain alternative approaches to the problem, and deferred consideration of it pending discussions among the parties and other government agencies:

"The Commission observes that there is now some Federal legislation designed to deal with socioeconomic impact resulting from Federally authorized development. Additional legislation specifically directed towards energy related impacts is under consideration. The general approach to this problem which seems common to both existing and proposed legislation is provision for planning grants upon appropriate application, and for loans to assist infrastructure development against future property and other tax revenues. This also is

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essentially the same approach which has been established to deal with socioeconomic impact in Canada's Yukon Territory as part of the U.S.--Canada *Agreement on Principles*.

"In this context, the Commission believes that UTDC's proposal, i.e., specific terms and conditions to address socioeconomic impact problems, is inappropriate. The Commission is aware, through its representation on interagency working groups to coordinate pipeline-related activities, that

socioeconomic impact assistance, particularly for the Alaska segment, is a subject under discussion among appropriate Federal, State and company representatives. The Commission expects those discussions to produce results which are appropriate and consistent with Federal energy impact assistance policy. If those discussions indicate a need for specific socioeconomic terms and conditions which are within the Commission's authority to impose, the Commission would be prepared to consider any such proposal at that time." (Footnotes omitted)

It is clear from the February 26, 1980 order that the Commission has not yet made any decision as to whether socioeconomic impact payments should be included in the CCE.

The *Report* accompanying the President's *Decision* (at 241) sheds some light on the Commission's above quoted reference to the treatment of socioeconomic impact costs in Canada's Yukon Territory as established in the Agreement on Principles between the U.S. and Canada:⁶⁶

"A related issue was the \$200 million socioeconomic impact payment recommended by the NEB in its July 4th decision. There are precedents in the United States for socioeconomic impact assistance. Normally, however, compensation for such impacts has been through federal government loans and subsidies. In negotiations with Canadian representatives, it was strongly urged that this payment be structured as a loan from the pipeline company to be repaid through reduction of future property-tax liability. In fact, such an arrangement has been worked out between the Canadian project sponsors and the Canadian government. As a result, cost of service to U.S. consumers will not be affected by this arrangement."

Thus, the *Report*,⁶⁷ and the provisions of the Agreement on Principles it interprets, could be construed as an expression of Federal policy discouraging non-reimbursable payments for socioeconomic costs while recognizing the possibility that an ANGTS project sponsor might make a loan to a State or local government as a prepayment of taxes.⁶⁸

In summary, we believe that the Commission has the legal authority to authorize socioeconomic expenditures, and that the Commission has not yet made any determination on that issue in the ANGTS proceedings. What this exercise of authority requires is a balancing of responsibilities and obligations. Under the National Environmental Policy Act (NEPA), the Commission has the obligation to consider the environmental impact (including socioeconomic impact) of its major actions.⁶⁹ On the other hand, the Supreme Court has held that the Commission has no "broad license to promote the general public welfare."⁷⁰ The Commission must also consider its broader responsibilities as a regulatory agency operating under the Natural Gas Act, including consideration of the "public convenience and necessity" when issuing certificate authority, and ensuring that rates charged by interstate pipelines are "just and reasonable."

It is long established policy and practice that regulated gas companies may recover from their customers all prudently incurred costs reasonably related to construction and operation of their jurisdictional facilities. In the present context, the CCE for the Alaska pipeline segment of the ANGTS must include an estimate of all such costs. The costs of land, material and labor are clearly necessary to put the facility in service, and their recovery from the gas consumer raises no policy debate. By contrast, the costs of mitigating socioeconomic impact are not essential to the construction and operation of the pipeline. In most instances where such costs have been considered, the project sponsor was a private entity which would not pay taxes within the jurisdiction where the socioeconomic impact would fall, or was a public agency which would pay no taxes at all, and the socioeconomic impact assistance authorized by the Commission was limited to those costs that were in excess of the revenues which the local jurisdiction claiming impact would collect as a result of the project-related activities.

2. Requirements of Alaska State Law

There is another potential basis for including socioeconomic impact assistance in the CCE. If such payments are mandated by the requirements of an Alaska statute (and assuming that such statute, on its face and as applied, is not inconsistent with the U.S. Constitution), then reasonable payments by Alaskan

Northwest would be prudently incurred costs of the project and, as such,

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would be properly includable in both the CCE and the rate base.

Accordingly, at the technical conferences we requested Alaskan Northwest to submit a legal memorandum indicating Alaskan Northwest's position as to the extent of its legal obligation under Alaska State law to make socioeconomic impact payments to the State. We couched this request in the context that Alaskan Northwest, as the applicant, has the burden of proof to justify the CCE it is requesting the Commission to approve.⁷¹ At the same time, we invited all other parties to express their views on the subject and to submit legal memoranda in support thereof.

Alaskan Northwest, in response to our request, included in its Memorandum to us a discussion of Alaska statutes (as well as Commission and other precedents) potentially applicable to its CCE request, and expressed the following statement of position:

"Throughout this proceeding it has been alleged that Alaskan Northwest, as the applicant, has the burden of demonstrating the reasonableness of the amounts in question and the basis for inclusion of such amounts in the CCE. Again Alaskan Northwest's position in this respect remains unchanged. The State has the initial burden of demonstrating a valid, non-discriminatory and otherwise constitutional basis for seeking reimbursement for such amounts and the reasonableness of the amounts in question. If the State satisfies this burden, then Alaskan Northwest submits the Commission has no discretion in its decision: It *must* include such amounts in the CCE.

"While Alaskan Northwest, at the presiding officers' request, identifies herein potential bases for the State to seek reimbursement from Alaskan Northwest for these three types of expenditures, the issue of whether a specific request by the State for reimbursement for any such costs is under a specific statute or regulation is somewhat theoretical, and perhaps premature, at this stage of the project. Alaskan Northwest also lists regulatory precedents relevant to the Commission's consideration of inclusion of State of Alaska socioeconomic and highway repair costs in the CCE." (Alaskan Northwest Memorandum at 4)

* * *

"Again, it is the position of Alaskan Northwest that the State has the burden of justifying both the basis for reimbursement and the reasonableness of the amounts in question. Accordingly, the State must, in the first instance, interpret its own statutes and regulations." (Alaskan Northwest Memorandum at 9)

It is clear from this statement of position, as well as from the balance of the Memorandum, that Alaskan Northwest is *not* asserting that the socioeconomic impact payments requested in its CCE are mandated by requirements of Alaska statutes.

In response to our invitation for legal memoranda, the State has cited statutory provisions that authorize it to collect socioeconomic impact payments from Alaskan Northwest. The State's discussion, however, is couched in terms of statutes pursuant to which the State "*can* require impact mitigation . . .," "*can* impose . . . a charge," "*may* enforce this provision . . .," and "*empower* the State to require payment. . . ." (emphasis added)⁷² The subjunctive flavor of the discussion conveys the impression that, while Alaska believes it has ample statutory authority to compel socioeconomic impact payments as a matter of State law, nevertheless it has not in fact done so; nowhere does the State assert that Alaskan Northwest is required by State law to make particular payments for particular purposes in particular amounts and pursuant to particular statutes. Moreover, the legal discussion is preceded and followed by discussions sounding in policy, fairness, practicality and compromise, as opposed to requirements of State law:

". . . The proper questions are (1) what are Northwest's obligations to mitigate adverse socioeconomic

impact; and (2) is the proposal of the applicant to fund a small part of the mitigation effort of the State of Alaska a reasonable response to that obligation . . . Alaska views the inclusion of money in the CCE for socio-economic impact assessment as a delegation of Northwest's responsibilities from it to the State, with the State acting as a subcontractor in, for example, its efforts to establish mitigation centers. Alaska will be a subcontractor undertaking a reasonable segment of the project, as any other private subcontractor.

In this sense a subcontract with the State no more requires an explicit statutory basis than does a contract with any other contractor on the project." (Alaska 1982 Socioeconomic Memorandum at 3)

* * *

"In reality, this inquiry into State law is unnecessary and distracting. . . . There is no basis for seeking statutory authority for an agreement by a developer for services to mitigate socio-economic impact when the party providing the services is the State. The developer can enter into an agreement with any other party to provide services or material related to the construction of the project based on his own perception of the best

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way to obtain services needed for the project. There is no material difference between Northwest directly funding impact mitigation centers and funding them through the State of Alaska, as will be done here. As noted above, a "subcontract" with the State no more requires an explicit statutory basis than does a contract with any other contractor on the project. As always, the appropriate question is the standard test of whether the expenditure is used and useful in providing service. In this case, there ought to be no doubt as to the value of the programs sought to be funded." (Alaska 1982 Socioeconomic Memorandum at 6-7)

We note Alaska's policy arguments, and the Commission might ultimately find them persuasive. The point we are making here, however, is that Alaska's position appears to be founded on policy considerations rather than on legal requirements. (By way of contrast, for instance, Alaska tax statutes unequivocally require Alaskan Northwest to pay the taxes.)

One party, however, does assert such a legal requirement. RurAL CAP/UTDC, in its Memorandum, citing Alaska's Right-of-Way Leasing Act (Alaska Stat. §38.35.010, *et seq.*), Article VII, Section 10 of the Alaska Constitution, and the Alaska Land Act (Alaska Stat. §38.05.005--§38.05.370), asserts that

". . . the State of Alaska is constitutionally and statutorily required to consider socio-economic impacts and include measures to protect against such impacts whenever issuing a State right-of-way lease for pipeline purposes . . . [T]he Federal Energy Regulatory Commission should include in the CCE costs associated with mitigating the socio-economic impacts of the project. Such costs will be incurred as a result of State constitutional and statutory requirements and must be deemed prudent expenditures by definition." (RurAL CAP/UTDC Memorandum at 11)

RurAL CAP/UTDC notes first that Section 38.35.020 requires Alaskan Northwest to obtain a right-of-way lease from the Commissioner of Alaska's Department of Natural Resources, authorizing construction of the pipeline on State land. RurAL CAP/UTDC contends that the Commissioner, pursuant to Section 38.05.100(a), must determine whether "the proposed use of the right-of-way will unreasonably conflict with existing uses of the land involving a superior public use," and that the Commissioner must also consider issues of "environmental impact" (including erosion of land, damage to fish and wildlife, restoration and revegetation, and reliance of right-of-way vicinity inhabitants on fish, wildlife and biotic resources "for subsistence purposes").

RurAL CAP/UTDC further contends that Article VIII, Section 10 of the Alaska Constitution requires "safeguards of the public interests as may be prescribed by law," and that Alaska Stat. §38.05.301 (with respect to disposal of land in the unorganized borough) requires that the Commissioner consider the effect

of a lease on population density and potential for conflicts with traditional land uses. In this regard, citing *Moore v. State*, 553 P.2d 8 (Alaska 1976), RurAL CAP/UTDC contends that failure to consider these matters would render the lease "void," and that "failure . . . to include mitigation measures for socio-economic impacts in a State right-of-way lease would result in a defective lease clearly not in the best interests of the State of Alaska." Finally, RurAL CAP/UTDC contends that Section 38.05.035 requires a finding by the Director of the Alaska Division of Lands that "the interests of the State will be best served," and authorizes him to impose lease conditions to that end.

RurAL CAP/UTDC then contends that Section 38.35.120 authorizes the Commissioner of the Department of Natural Resources to impose conditions on right-of-way leases; requires *inter alia* a condition that the lessee be liable to the State for damages or injuries to the State caused by the construction, operation or maintenance of the pipeline; and mandates conditions obligating the lessee to avoid conflicts with existing superior public interest uses of the land, to protect state and private property, to prevent significant adverse environmental impact, to restore and revegetate the land, and to protect the interests of right-of-way vicinity inhabitants who rely on fish, wildlife and biotic resources for subsistence purposes. RurAL CAP/UTDC construes "all" of these requirements to "clearly . . . address socio-economic impacts," and contends that the Commissioner's authority pursuant to that section to "insert in any right-of-way lease other reasonable provisions and conditions that he determines the public interests require" would in any event encompass socioeconomic impact mitigation conditions.

In its 1982 Socioeconomic Memorandum (at 4-6), the State of Alaska cites Section 38.05.035(a)(14) as authorizing the State to "require impact mitigation as a condition of granting a right-of-way lease for use of State lands," and construes the environmental conditions (erosion, damage to fish and wildlife) requirement in Section 38.35.120(d) as authorizing the State to "impose, as a condition designed to prevent adverse

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environmental impact, a charge for the costs of mitigating socio-economic harm caused by a project taking place to a significant degree on State land." The State also cites the above-mentioned requirement in Section 38.35.120(a)(13) regarding liability and indemnification of the State for injury and damages caused by the pipeline, and contends that it "would encompass socio-economic harm suffered by Alaska's citizens." The State concludes that "[t]hese statutes explicitly empower the State to require payment for socio-economic damage stemming from construction on the rights-of-way." Finally, while acknowledging the absence of judicial decisions on whether the above-described statutory authority is limited to impacts occurring on (or near) State land, as opposed to impacts elsewhere in the State that are generated by a project that utilizes State land, the State's Memorandum refers to "informal discussions" with the Alaska Attorney General's office as supporting the broader interpretation.

Alaskan Northwest, in its Memorandum (at 9-10), also cites Section 38.35.120(a)(13), Section 38.35.120(c), and Section 38.35.010(a), but concludes:

". . . Neither the statute itself nor decisions of Alaskan courts indicate whether this conditioning authority includes socioeconomic impacts or, if it does, whether it is limited to impact on the state right-of-way or can extend to off the right-of-way impacts.³²

³² However, a State Attorney General's opinion suggests that the conditioning authority under the Right-of-Way Leasing Act is limited to activities within the state right-of-way. In considering whether Alaskan Northwest's predecessor, Alcan, could be required to maintain the Haul Road by imposition of a condition to that effect in any pipeline right-of-way lease issued to Alcan, the Attorney General's opinion stated that "[w]e have some doubt whether such a provision, requiring an activity outside the right-of-way to be leased, could be considered reasonable and valid. The Haul Road will not be part of the Alcan pipeline as defined in AS 38.35.250 (12)." Alaska Att'y Gen. Op. to Fran Ulmer, Director, Division of Policy and Planning, Office of the Governor (Jan. 17, 1978)."

We are reluctant to offer a definitive interpretation of these points of Alaska State law,⁷³ and are equally reluctant to gratuitously delve into their potential relationship to applicable Federal Law.⁷⁴ We believe that the Commission can and should decide the basic issues before it without reaching these legal questions. The ultimate issue to be decided is whether to approve socioeconomic impact costs for inclusion in the CCE. The applicant in this proceeding--the moving party requesting approval of a CCE for its project--is Alaskan Northwest. But Alaskan Northwest has *not* asserted that it is required by provisions of State law to make socioeconomic impact payments to the State. Accordingly, in approving Alaskan Northwest's CCE for IROR purposes, the Commission does not need to consider potential requirements of Alaska State law, because Alaskan Northwest has not alleged such requirements as the basis for its requested CCE component for such costs.⁷⁵ Thus, in our view, the Commission is free to resolve the issue on other grounds.⁷⁶

E. Conclusion and Recommendations

Our review of the record leads us to conclude that the most significant potential problem in mitigating the socioeconomic impact of the ANGTS is one of timing: local governments and other institutions need information sufficiently in advance of construction to allow them to plan for the impending increases in demand for their services and, in addition, they need funds to allow them to finance their expansion. The fact that the project will eventually generate revenues for State and local government far in excess of the amount needed to finance socioeconomic impact mitigation militates against inclusion of such a cost component in the CCE; thus, we do not recommend that the \$20 million proposed by Alaskan Northwest be included.

We recommend that Alaskan Northwest and the State of Alaska, together with appropriate local governments, meet on their own to consider how they will cooperate with each other and whether there is a need for loan arrangements. Such loans or assistance, if provided, should be fully reimbursed by the State or corridor communities, either as a credit against future taxes or in some other appropriate manner. The Commission would not have to review the specific costs or types of socioeconomic programs.

Loans and advance payments of taxes would not require adjustment of the CCE because they would not be capitalized as a project cost, would not be included in a construction work in progress account, and would not be included in the rate base.⁷⁷ Thus, such arrangements would have no impact on Alaskan Northwest's rate of return. We recommend that parties to loan arrangements and advance tax payment arrangements be free to negotiate appropriate terms and

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conditions (including interest rates and payment schedules) with limited regulatory involvement by either the Commission or the Federal Inspector. Loans and/or advance tax payments might require the parties and the Commission to devise particular accounting treatment to accomplish the desired objectives, but we are confident that satisfactory arrangements could be devised if the State and/or affected corridor communities wish to pursue an approach along these lines as a means of solving the timing problem of socioeconomic impact mitigation.⁷⁸ The fundamental objective would be to devise arrangements that would enable Alaskan Northwest to advance funds to the State and/or to its political subdivisions, subject to reimbursement, in such a manner that the transactions after completion would leave Alaskan Northwest in the same financial posture as if it had not advanced the funds in the first place.

III. Government Monitoring Costs

A. Background

The Adger/Berman Report recommended approval of the then-proposed CCE cost component of \$53.6 million for monitoring by Federal agencies (the Department of the Interior and the Office of the Federal Inspector),⁷⁹ subject to adjustment of part of that estimate.⁸⁰ Because the State of Alaska had substituted

its present estimate after the close of the technical conferences, the Adger/Berman Report recommended deferral of the proposed CCE cost component for State monitoring. Subsequently, in its November 1981 Amendment, Alaskan Northwest requested an additional \$9.8 million for Federal Inspector monitoring and \$2.5 million for Interior Department monitoring, based on the schedule adjustment discussed in that Amendment and in Part I of our Report, such that the total request for Federal monitoring is now \$65.9 million.

In its November 1981 Amendment, Alaskan Northwest requests that \$51,256,000 be included in the CCE for the costs of monitoring and surveillance of construction by the State of Alaska. The request is "based solely on the submission of the State; Alaskan Northwest did not participate in the derivation of [the estimate] and did not have access to the information necessary to independently evaluate [it]." ⁸¹ In support of its request, Alaskan Northwest adopts by reference the Alaska 1981 Socioeconomic Memorandum, which details the monitoring and surveillance costs. ⁸² The State provided additional information on March 10, 1981, and at the technical conference held on February 18, 1982.

As noted above, Part I of our report (at 57-58), issued April 16, 1982, recommended deferral of government monitoring issues pending completion of Part II (submitted herein). In its comments to the Commission on Part I of our report, Alaskan Northwest urged the Commission to approve a cost component for Federal monitoring as part of its basic CCE order. ⁸³ The Commission, in its order issued September 21, 1982 (at 65), deferred the issue, citing the nexus between State and Federal monitoring.

Trial Staff advocates the deferral of all government monitoring costs. Trial Staff contends that the \$12.3 million total increase in Federal costs attributable to the November 1981 schedule adjustment is, by Alaskan Northwest's own admission, an "all-out guess" unverified by the government agencies involved; that the absence of a joint monitoring agreement with the State sheds some doubt on the validity of the originally requested \$53.6 million; and that accordingly there is insufficient record basis at this time to recommend approval of any CCE figure for Federal monitoring. Trial Staff makes the same recommendation with respect to State of Alaska monitoring costs. Citing the "uncertain status" of the project and the pending negotiations on a joint monitoring agreement, Trial Staff takes the position that "it is impossible at this time to include any figure in the CCE for Third Party Monitoring." ⁸⁴ Considering a wide range of additional factors, as discussed below, we find considerable merit in the Trial Staff's position.

Finally, both Alaskan Northwest and the Trial Staff recommend that actual costs be substituted in the CCE after they have been incurred, with respect to both Federal and State monitoring costs. ⁸⁵ The Commission, in its order of September 21 (at 58) approving the bulk of the CCE, rejected substitution of actual costs for estimates in the context of the cost component for government fees and permits. In its Order on Rehearing, however, the Commission indicated its intention to reconsider that issue in the context of its consideration of monitoring costs. ⁸⁶ If our recommendation on monitoring costs (discussed below) is adopted, the matter of substitution of actual costs for estimates may be rendered moot, as the potential gap between estimated and actual costs will have been substantially or totally closed. That would alleviate Alaskan Northwest's concern with potential rate of return erosion attributable to cost increases arguably beyond its control.

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B. Uncertainties Affecting the Current Estimates

Although the record now before us is, to be sure, more detailed than the record available when the Adger/Berman Report and Part I of our report were written, it does not provide an adequate basis for determining a reasonably reliable estimate of government monitoring costs. The uncertainty arises from a combination of (1) the most recent schedule delays; (2) the lack of a joint Federal/State monitoring agreement; and (3) the lack of a State right-of-way lease. Accordingly, we recommend deferral of the CCE cost component for government monitoring until such time as the Commission can evaluate such a cost estimate in the context of the joint Federal/State monitoring agreement and the State right-of-way lease.

1. Schedule Delays

Since the government monitoring cost estimates were initially submitted, a total of four years of slippage has been announced in the proposed completion date for the Alaska segment. As noted above, the Federal portion of the estimate (by Alaskan Northwest's candid admission) has been updated by an "all-out guess," and for only one of the four years. The State portion has not been updated.

We recognize that the Design Change mechanism in Condition No. 9 of [Order Nos. 31](#) and [31-B](#) could be used to adjust the CCE for schedule changes. Nevertheless, Alaskan Northwest's use of a totally unsupported one-year schedule adjustment to Federal monitoring costs (in its November 1981 Amendment) calls into question whether the basis upon which that original estimate was formulated is still valid. While the construction cost components of the CCE (as adjusted for inflation) are likely to remain relatively stable over time, this is not necessarily true with respect to the more abstract government monitoring requirements, which could change dramatically.

There are two primary, schedule-related concerns that cause us to question whether the 1980 estimates are already obsolete, or at least whether a much better basis for the monitoring component of the CCE will be available in the future. First, subsequent to the formulation of the original estimate of Federal monitoring costs in Alaskan Northwest's July 1980 Application, the Federal Inspector has promulgated reimbursement regulations, 10 C.F.R. Part 1530, which are just beginning to be implemented. This rulemaking process is likely to have altered the assumptions upon which the 1980 estimate was based. Moreover, experience with these regulations will provide a much better basis upon which to set the CCE.⁸⁷

Secondly, other intervening events could change Federal and State monitoring requirements. For example, the construction supervision provisions of the management plan to be submitted by Alaskan Northwest to the Federal Inspector might cause Federal and/or State agencies to reconsider the nature and level of government monitoring that would be necessary and appropriate. Similarly, the Federal Inspector's experience in monitoring the prebuild portions of the ANGTS could result in changes to the government monitoring program upon which the 1980 estimate was based. Finally, various land that is currently Federal might be transferred to the State; a change in ownership could result in changes in the costs of monitoring by altering the ratio of State personnel to Federal personnel.

2. Lack of a Joint Monitoring Agreement

At the February 18, 1982 technical conference, Mr. Behlke, the State's (then) Pipeline Coordinator, explained that his office and the Federal Inspector will coordinate their efforts in such a manner that at least some State monitoring functions will be performed by the Federal Inspector for the State on the State's right-of-way land, while at least some Federal monitoring functions will be performed by the State for the Federal Inspector on portions of the pipeline outside of the State's land. (Tr. 224-225) This joint arrangement would presumably be more efficient and less costly. Extensive negotiations have been conducted, but the State and the Federal Inspector have not yet reached agreement on how to allocate responsibilities and resources to best achieve their respective objectives.⁸⁸

The absence of a completed joint surveillance and monitoring agreement between the State and Federal governments presents problems similar to those described above. Changes in government policies from those underlying earlier estimates could result in changes in the estimates themselves. For instance, a change in the field/headquarters mix of surveillance and monitoring personnel could change the amount of travel and/or overtime required by the State and/or the Federal Inspector. Avoidance of duplicative or overlapping monitoring functions might reduce either Federal or State monitoring costs, or both. Absent the agreement (and its implementing arrangements), the Commission cannot be certain of which functions each government will perform, and in what manner.

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3. Lack of a State Right-of-Way Lease

Pursuant to applicable provisions of Alaska law, the State and Alaskan Northwest are negotiating a right-of-way lease for the segments of the pipeline right-of-way that cross State owned land. Those negotiations have not yet been completed.

Normally, the absence of a necessary government authorization would not preclude establishing a particular cost component of the CCE. The State of Alaska monitoring cost proposal, however, contains some cost elements that are premised on socioeconomic stipulations that the State proposes to include in the right-of-way lease. For reasons discussed at length above in the previous chapter of this report, we believe that inclusion of socioeconomic type monitoring costs would be questionable at best. In fact, a Commission order resolving the basic socioeconomic issues might facilitate negotiation of the right-of-way lease, with the monitoring cost estimate falling into place thereafter.

As mentioned at the outset, Alaskan Northwest requests that \$51,256,000 be included in the CCE for the costs of monitoring and surveillance of construction by the State of Alaska. That request is based solely on data provided by the State. Before we summarize the State's position as presented to us in the technical conferences, we note the possibility that the State itself might wish to reconsider its estimate after the joint State/Federal monitoring agreement and the right-of-way lease have been negotiated.

According to the State, Alaska's monitoring program will be carried out by its Office of the Pipeline Coordinator, a division within the Department of Natural Resources, the agency responsible for issuing, *inter alia*, the State right-of-way lease. The Office of the Pipeline Coordinator will coordinate the State's participation in the review of pipeline design criteria and engineering studies, and issue the necessary permits for rights-of-way, material-site acquisition and water extraction. Since these permits will have conditions attached to them, the Coordinator will also monitor compliance with the permit conditions. Under the State's proposal, the State Pipeline Coordinator's Office (SPCO) would require approximately \$20.2 million to staff an office of 39 people, to enable it to coordinate the design and construction review phases of its monitoring programs.⁸⁹

Three other State agencies account for the bulk of the State's request. The Department of Environmental Conservation, which regulates water, land and air pollution, would be allocated \$10.6 million to support a staff of 22 people. According to the State, this staff will process and issue, on an expedited basis, permits required by the pipeline, and will review construction plans, including the plans for waste and drinking water systems, erosion and siltation control, oil spill contingencies, handling pesticides and hazardous substances, air emissions, and facility siting. This staff will also conduct environmental review of water, air, and land pollution, and will monitor compliance with permit stipulations on these issues. The Department of Fish and Game would receive \$11.1 million for a staff of 25 people. This staff would be responsible for reviewing pipeline design to protect fish and wildlife and their habitats, for issuing permits of the Department, and for field-verifying compliance with the permits. The Department of Transportation and Public Facilities would receive \$6.8 million to monitor design and construction activities, focusing on impacts on highways and other transportation facilities within its jurisdiction.

Turning to the smaller elements of the State's proposal, the Department of Labor would receive \$830,000, for a labor economist to develop labor force planning information, and for a staff of occupational safety compliance officers. The latter would provide consultation and advice to employers on safety and health matters, and would also provide safety and health training to employees. The Department of Public Safety would receive \$1.1 million. The Department's responsibilities include police and fire protection, vehicle weight enforcement, registration of vehicles, and licensing of drivers. The funds also would be used to establish a Pipeline Coordinator for the Department, to hire a Deputy Fire Marshall, and to hire an Administrative Assistant (with contractual support) to review construction plans for fire safety. The Department of Health and Social Services would receive \$560,000 for a staff to monitor compliance with socioeconomic terms and conditions, to serve as liaison between pipeline workers and the Department, and to provide health services to pipeline employees and their families.

To summarize, the State's reimbursement proposal includes funds for a variety of functions. Some, such as those for the Pipeline Coordinator, are earmarked primarily for lease-related compliance functions.

Others, such as those for the Department of Public Safety, appear to be primarily aimed at funding ANGTS-related marginal increases in normal law-enforcement functions. Still others, such as the labor economist, appear to provide for the establishment of services not now performed by the State.

No party has advanced any consideration of law or policy militating against inclusion in

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the CCE of a cost estimate component for reimbursing the State, pursuant to applicable State law, for its reasonable costs of monitoring construction of the project on the State owned right-of-way, and we do not readily perceive any such arguments. However, issues have arisen over the scope of the State's monitoring program. For instance, during the course of the February 18, 1982 technical conference, Trial Staff addressed a number of questions to the State in an effort to distinguish between activities that could be classified as monitoring of pipeline construction and activities that appear to be more socioeconomic in nature. The following colloquy between Mr. Foley of the Trial Staff and the State's (then) Pipeline Coordinator, Mr. Behlke, in which Mr. Foley sought to clarify the State's rationale for placing certain costs in the "surveillance" category, is illustrative of the Trial Staff's concerns:

"MR. FOLEY: You didn't say if you had a specific criteria that divided surveillance [and] Type 1?

"MR. BEHLKE: There isn't a real hard dividing line, but the criteria that we used principally was, is the the person involved going to be involved in surveilling and monitoring the right-of-way lease, Fish and Game laws or pollution laws?

Type 1 related to pipeline workers, their wives and kids.

"MR. FOLEY: I guess we can look at the definitions of some of these people in surveillance. It looks like some of the people in surveillance are monitoring socioeconomics.

"MR. BEHLKE: Yes, this is because of the socioeconomic stipulations on the right-of-way lease."
(Tr. 196)

This exchange prompts several related questions. First, in light of the absence of a State right-of-way lease for the ANGTS, and thus, the absence of agreed socioeconomic stipulations, should the Commission provide in the CCE for the costs directly imposed by, or attributable to the monitoring of, such stipulations? Second, does reimbursement for monitoring under the State right-of-way leasing statute contemplate reimbursement for monitoring pursuant to the requirements of other State statutes? For example, is monitoring for compliance with fish and game laws and/or occupational safety and health regulations a reimbursable activity under the right-of-way leasing statute? Third, is the processing of permit applications a reimbursable item consistent with the language of the right-of-way leasing statute? Finally, is monitoring of activities that take place off the right-of-way reimbursable? This last question is particularly pertinent to the claimed monitoring of socioeconomic stipulations because many of the proposed socioeconomic stipulations relate to activities that would not occur in the right-of-way.

As mentioned in the preceding chapter of this report, under Alaska Stat. §38.35.120 the State Commissioner of Natural Resources has the power to insert conditions in leases.⁹⁰ The State has a legitimate interest in monitoring compliance with whatever valid conditions are properly included in the lease.

The memoranda submitted by Alaskan Northwest and the State of Alaska both identify the Right-of-Way Leasing Act as specific authority for reimbursement. As expressed by Alaskan Northwest:

"A. *Governmental Monitoring*

Alaskan Northwest is seeking from the State a right-of-way lease for construction over State lands.

The State Right-of-Way Leasing Act provides in pertinent part that [t]he lessee shall reimburse the state for all reasonable costs incurred in monitoring the construction of the pipeline on the right-of-way." ⁹¹

Alaska quotes the same provision:

"First, as to the costs of *monitoring* construction on the State right-of-way, there is an explicit statutory provision obligating Northwest to pay those costs: The lessee shall reimburse the State for all reasonable costs incurred in monitoring the construction of the pipeline on the right-of-way. Alaska Stat. 38.35.140(b). The State may accordingly compel payment under this statute. Indeed, a state role in monitoring and surveillance is contemplated by Section 7(a)(5)(A) of the Alaska Natural Gas Transportation Act of 1976." ⁹²

The reimbursement authorized by Alaska Stat. §38.35.140(b) is defined in terms of "all reasonable costs incurred in monitoring construction of the pipeline on the right-of-way." Alaska law on this point is less than clear. The term "construction" is not defined by the statute. "Pipeline" is essentially defined as the pipe and all related physical facilities "used or necessary . . . to effectuate transportation" through it. (Alaska Stat. §38.35.230(7) and (12)) "Right-of-way" is defined as "the land covered by the lease." (Alaska Stat. §38.35.230(16))

The State contends that its statutory authority to compel reimbursement is quite broad. ⁹³ However, the Alaska Attorney General, in addressing a closely related issue, rendered an opinion expressing a rather strict interpretation of the authority of the

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Commissioner of Natural Resources to condition right-of-way leases:

"It has been suggested that the commissioner of the Department of Natural Resources may insert a provision in the Alcan right-of-way lease *requiring* Alcan to assume all or part of the State's obligations to maintain the Haul Road We have some doubt whether such a provision, requiring an activity outside the right-of-way to be leased, would be considered reasonable and valid." ⁹⁴

We also are concerned that the State, to at least some extent, may be pursuing socioeconomic reimbursement in the CCE cost component for monitoring and surveillance, by seeking to condition the lease with certain socioeconomic stipulations and then seeking reimbursement for the monitoring of such stipulations. For instance, the State seeks to expand the scope of the lease by defining "pipeline corridor" (at draft stipulation 4.0.23) as "the totality of the five corridor regions--the North Slope Region, the Fairbanks--North Star Region, the Tanana Yukon/North Region, the Delta-Clearwater Region and the Upper Tanana Region." The State has also proposed (at draft stipulation 4.4.2.6), a requirement that "[a]ll reasonable costs incurred by State agencies in monitoring or surveillance activities shall be reimbursed by Lessee." Defining monitoring agencies, the State (at draft stipulation 4.4.2(d)) has proposed that

". . . all State agencies with responsibilities to enforce standards pursuant to agreements in section 4.2 program plans, and State agencies with responsibilities established by law to enforce standards in the living and working environments of project employees shall be considered monitoring and surveillance agencies for the project."

Finally, it has been suggested that, pursuant to the contemplated joint surveillance and monitoring agreement, the State will be performing monitoring functions off State land. ⁹⁵ While it is likely that the State will be performing some monitoring off the State owned right-of-way, it does not necessarily follow that, under State law, the State can compel Alaskan Northwest to reimburse it for the expenses incurred on land not under lease from the State. In addition to the question of the State's legal authority to seek such reimbursement, it is also possible that the source of reimbursement may be Federal law. ⁹⁶ Thus, even if the State does, in fact, perform monitoring functions off the State owned right-of-way, this would not necessarily be dispositive of the scope of reimbursement for such monitoring.

C. Conclusion and Recommendations

Federal law (the Mineral Leasing Act, 30 U.S.C. §185 (1)) clearly mandates Federal monitoring, including reimbursement for it. Similarly, Alaska law clearly mandates at least some level of State monitoring and at least some level of reimbursement for it. Although silent on reimbursement, the President's *Decision* clearly contemplates both Federal and State monitoring. No party opposes inclusion in the CCE of a cost component for both Federal and State monitoring. We conclude that such a cost component - in some amount - is properly includable in the CCE.

The cost estimate for State monitoring, however, raises many questions of interpretation of State law as well as potential questions of the relationship of State law to Federal law. Alaska law is less than clear in several relevant and important areas. We are reluctant to offer recommended interpretations of State law, and we sense that the Commission might share that reluctance, when there are alternative approaches to resolving these questions. Similarly, the relationship of State law to Federal law is a delicate and complex matter. In our view, these types of issues are best addressed only on the basis of a complete factual record.

The estimate of State monitoring costs was prepared by the State, not by Alaskan Northwest. Significant portions of that cost estimate appear to be premised on, or at least strongly related to, draft stipulations in the draft right-of-way lease for State owned land to be crossed by the ANGTS. Until such time as the lease has been negotiated and signed, the Commission can have no assurance that the factual premises underlying the State's estimate of its monitoring costs are valid. The final version of the lease, in fact, might eliminate some or all of the potential legal issues that concern us. Viewed in this light, resolution of the CCE cost component for State monitoring prior to resolution of the lease would be to put the cart before the horse.

Similarly, until such time as the State and the Federal Inspector have negotiated their joint agreement on surveillance and monitoring, the Commission can have no assurance of the accuracy of the factual premises underlying the cost estimates for either State or Federal monitoring. Moreover, the joint agreement may well resolve the potential issues of Federal preemption; that thicket is best avoided by affording the State and the Federal Inspector ample opportunity to negotiate a mutually satisfactory arrangement. Thus, in our view, deferral of the government monitoring cost component in its

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entirety--both State and Federal--until after the joint agreement, as well as the lease, have been negotiated would provide a much better record basis for the Commission's decisions. The factual context at that juncture will be substantially clearer, and the issues presented for decision will be substantially narrower and sharper.

Finally, if the Commission adopts our recommendation to defer determination of the monitoring cost component of the CCE, and if the Commission also adopts our recommendation to deny inclusion of a CCE component for socioeconomic costs, then we further recommend that the Commission, in its order in response to this report, clearly state that it will not approve for the CCE any monitoring costs attributable to State monitoring of socioeconomic activities.

IV. Highway Repair and Maintenance Costs

The issue here is whether (and to what extent) the costs of upgrading, revising, maintaining or repairing Alaska's highways and bridges should be included in the CCE, and if so, how that component of the cost estimate should be calculated.

In its November 1981 Amendment, Alaskan Northwest included an estimate of \$120 million (in 1980 dollars) for the cost of upgrading and maintaining those highways in Alaska that will be used in transporting construction materials and equipment for the project. Alaskan Northwest stresses that its

proposed amount is included on the understanding that it would be paid only to the extent that it could be credited against payment of fees or taxes, and that the final cost estimate for IROR purposes should be based upon the costs actually incurred for permit and license fees and fuel taxes. At the February 18 technical conference, Alaskan Northwest explained that the CCE currently contains \$25 million to cover such taxes, based on current statutes and regulations. (Tr. 44-45)⁹⁷ The \$120 million, therefore, represents an additional amount which Alaskan Northwest might be forced to pay as a consequence of any Alaskan legislation or regulations enacted or adopted in the future that would require such payments for highway usage. Alaskan Northwest stresses that any such legal requirement would have to apply to all highway users in a nondiscriminatory manner. (Tr. 52-53)

The State of Alaska contends that it already has legal authority to require Alaskan Northwest to pay \$303 million (in as-spent dollars) prior to the issuance of any permits for construction of the ANGTS.⁹⁸ The State's claim, as estimated by the Alaska Department of Transportation and Public Facilities, includes \$199.8 million for roadway repair and construction, \$7.3 million for repair in areas affected by hauling of gravel, and \$96.2 for maintenance costs during construction. Recalling its experience with damaged roads during construction of TAPS, the State stresses that it seeks only the cost of repairs for ANGTS-related damage.

Trial Staff contends that the record is inadequate to support the State's claim or, for that matter, to arrive at any precise estimate of highway damage costs. Trial Staff recommends, therefore, that Alaskan Northwest establish an interest bearing escrow fund in the amount of \$120 million. This fund would be used to pay increases in legislated, nondiscriminatory road use fees or properly adjudicated claims for road damage. Amounts actually paid to Alaska would be put into the rate base and directly substituted into the CCE for IROR purposes.⁹⁹

For consistency with the figures used elsewhere in this report, we shall express the State's request in 1980 dollars, or \$184.5 million (rather than the \$303 million in nominal dollars). By contrast, Alaskan Northwest proposes \$120 million in addition to the \$25 million already included in the CCE for fuel taxes and for permit and license fees; thus, the total proposed by Alaskan Northwest is \$145 million.¹⁰⁰ The difference between Alaskan Northwest's proposal and the State's is \$39.5 million.

A. Nature and Magnitude of the Highway Repair Costs

1. Background

The State's position on ANGTS highway damage is heavily colored by its experience with TAPS. The State believes, and the record tends to show, that the State's highway system was severely affected by the construction of the oil line. The State points out that Alyeska essentially paid for some of the damages that it caused, by constructing at a cost of \$300 million the 400 mile haul road to the North Slope, which it later turned over to the State. In addition, the State points out, Alyeska maintained the road while construction of TAPS was under way. Later, in settling a lawsuit with the State, in 1977 Alyeska agreed to pay the State \$476,000 for repairs to the Yukon River bridge, and also agreed to undertake repair of the haul road and to stockpile surface grading materials for the Highway Department to use in general highway maintenance.¹⁰¹

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Nevertheless, Alaska appealed to the Federal government for additional funds (\$70 million initially and \$300 million over a five year period) to perform the other work it believed necessary to repair the TAPS-related damage to its highways. Accordingly, Section 151 of the Federal-Aid Highway Act of 1976 (90 Stat. 448) authorized the Secretary of Transportation to determine the cost of, and responsibility for, the damage to Alaska highways resulting from the construction of the oil pipeline.

The Secretary's report surveyed the condition of Alaska's roads and found that the total cost of repairing the State's highways would be \$65.5 million; of this amount \$40 million was attributed to the pipeline impact. The Secretary's report concluded, however, that the Federal government had no responsibility in

the matter. The report noted that the State of Alaska had allowed the damage to occur by permitting overweight trucks to traverse the highways, and that this appeared to be consistent with comments the State had made earlier on the environmental impact statements assessing the impact of TAPS to the effect that the benefits to be derived far outweighed the temporary detriments.¹⁰² The report also noted that the revenues Alaska would derive from oil development were extensive, and that the State would have the financial capability to undertake necessary repairs.¹⁰³ Ultimately, the State received no special funds from the Congress for extraordinary highway repair.

Now confronting the ANGTS construction, the State of Alaska has concluded: "The lesson of the TAPS experience is that the State has two options: either it must guarantee that it will be compensated for extraordinary maintenance and repair in advance of construction, or it must protect its highways by strictly enforcing its load limits on Northwest's truck traffic, regardless of how severely such enforcement may hamstring the project."¹⁰⁴

We would make one important observation about the State's claim that Alyeska paid for highway damages caused during construction of TAPS. It was necessary to construct the haul road in order to construct the oil pipeline. The same can be said for maintaining the haul road during construction; it was necessary for the construction of TAPS, just as maintaining any machinery is necessary for the operation of the machine. Thus we do not view Alyeska's haul road maintenance as a reparation for damage to someone else's property. The fact that the haul road was ultimately given to the State (with, we note, certain provisions allowing TAPS personnel priority of use), and the fact that Alyeska chose to settle a lawsuit, are not relevant.

2. Projected ANGTS Highway Costs and Rationale for Inclusion in the CCE

There are approximately 5,400 miles of highways in Alaska; 2,250 of them are paved. Of this mileage, the State has identified approximately 814 miles, running from the Canadian Border through Delta Junction, Fairbanks, and Livengood to Prudhoe Bay, that will carry the increased loads of ANGTS traffic. Half of the 814 miles consists of the haul road, also known as the Dalton Highway, between Livengood and the North Slope. This stretch, built by Alyeska but now owned and maintained by the State, is made of gravel. It is used by a handful of recreational vehicles and by approximately 300 trucks daily. (Tr. 142) During construction of the ANGTS, Alaska estimates that truck traffic could increase in some areas by a factor of ten. (Tr. 145) Alaska believes that the constant use of this gravel road by heavy trucks could lead to significant deterioration.

The State of Alaska also considers the stretch of highway between Fairbanks and the Canadian Border to be problematic. While this road is paved, it too would suffer from the large numbers of trucks using the road constantly. Unlike the haul road, this stretch of highway is heavily used by the public and, indeed, is the principal motor route into the State. Therefore, in addition to the concern for physical damage to the road surface, there is considerable concern for the safety of the driving public. (Tr. 181)

The State calculated the costs of highway repair and reconstruction by estimating the amount of traffic which the ANGTS would generate, and expressing it in terms of volume and equivalent axle loadings (EAL's). Expected EAL's are used by the Alaska Department of Transportation and Public Facilities to design highways for a 20 year life. The more EAL's expected over that life, the stronger a road will need to be. The State then projected the number of EAL's that could be expected for the 20 years, using the historical traffic growth rate of between 7 percent and 8 percent annually. Roads were assumed to have an average age of 10 years. The ANGTS EAL's were compared with the normal EAL's, and the percentages developed were then used to allocate repair and reconstruction estimates. This method resulted in estimates of ANGTS impact ranging from 19 percent of the expected life of the highway between Delta and Fairbanks to 96 percent of the highway's expected life between Livengood and Atigun.

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Using the average reconstruction costs per mile for the various segments of highway, the State calculated that the ANGTS' share of the repair and reconstruction costs would be \$84,700,000 in 1980 dollars. Added

to this are the costs of repairing and reconstructing bridges, estimated at \$28,888,000. Also added are the costs of reconstructing those sections of road, totaling 42 miles, across which trucks would haul gravel, resulting (in the State's view) in virtual destruction of these stretches (Tr. 164); these costs are estimated at \$4,100,000. Thus, total repair and reconstruction would be approximately \$117,688,000 in 1980 dollars.¹⁰⁵

The State used a similar ratio methodology to estimate annual maintenance costs. Annual normal truck volumes were compared to expected ANGTS truck volumes, from which the percent increase over normal was calculated. This increase was then applied to repair cost data to estimate repair costs attributable to the ANGTS--\$66,800,000 over four years of project construction.¹⁰⁶

Alaskan Northwest approaches the highway impact issue from a very different perspective. Rather than characterizing the impact costs in terms of repairing damage caused by ANGTS-related transportation activities, Alaskan Northwest believes that certain segments of the Alaska highway system will require extensive upgrading and maintenance just to make them usable: "The condition of the road system to be utilized by the project, particularly the Dalton Highway, must be upgraded to a reasonable level such that routine maintenance can maintain it as a safe and reliable conduit for the transportation of project personnel and material." Upgrading costs would total about \$70 million with another \$10 million earmarked for revisions to highway structures, *e.g.*, reinforcements to or replacement of crucial bridges "to allow loads that exceed current allowable load limits." Alaskan Northwest also estimates \$40 million for the cost of maintaining the road system during construction of the project.¹⁰⁷

On October 26, 1982, we issued a Notice and Request for Additional Information, asking Alaskan Northwest to elaborate further on its position. Specifically, we asked Alaskan Northwest to explain the difference between "upgrading," "revisions," and "maintaining"; to describe the work to be performed in each category for each road; and, with respect to upgrading and revisions, to explain why additional work is required beyond the work done when TAPS was constructed.

With regard to upgrading, Alaskan Northwest advises:

Upgrading. The road system in Alaska has been maintained to handle light loads or low volumes of traffic. Therefore, the road system needs to be upgraded from its current general and deteriorated condition to reasonably handle heavier loads and larger volumes of traffic during the construction phase of the project in order to reduce future maintenance costs. The upgrading will involve adding surface coats of material and pavement where necessary.

* * *

"The \$70 million cost estimate for upgrading the road system includes 473 miles of Dalton highway and the Alcan highway 100 miles south of TOK at approximately \$125,000 per mile. The work would involve repairing the highway with an asphalt cover or gravel, or a combination thereof. If the upgrading is not done prior to heavy construction use, the result will be an unsafe main artery of travel, ultimately requiring higher maintenance costs, with a high probability of disruption to project traffic at a critical time in the construction phase of the project."

* * *

"The 473 miles of Dalton highway was used in the construction of the TAPS oil line and part of the Alcan highway 100 miles south of TOK was used for some overland transport. However, it has been approximately 5 years since the TAPS construction with the road system being maintained for normal usage, not heavy construction usage."¹⁰⁸

In response to our questions about revisions to highway structures, Alaskan Northwest indicates:

Revisions. In order to accommodate the heavier loads and increased volumes of traffic during the construction phase of the project, structural support additions will be required at various bridges and culverts throughout the road system.

* * *

"The \$10 million cost estimate for revisions to highway structures includes an allowance for supporting the bridges and culverts on both the Dalton and Alcan highways.

* * *

"In general, the highway system was used during the TAPS construction. The revisions are needed to accommodate the structural faults discovered during and after the TAPS construction. If such revisions are not made, the consequences would be to dismantle

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equipment, resulting in delays and higher costs." ¹⁰⁹

With respect to the rationale for maintenance costs totalling \$40 million, Alaskan Northwest advises:

"Maintaining. Once the road system has been upgraded for heavier loads and increased volumes of traffic, the system must be maintained at acceptable levels in order to continue to handle the heavier loads and increased volumes of traffic during the construction phase of the project. Maintenance will involve spot repairs where necessary.

* * *

"The \$40 million cost estimate for maintaining the road system includes 473 miles of Dalton Highway and 100 miles of highway south of TOK. The maintenance work to be performed would be for site specific repairs for such things as pot holes and erosions. Additionally, snow removal and grading will be a continuing requirement to keep the road system in acceptable usable condition." ¹¹⁰

3. *Overweight and Overlength Vehicles*

During the technical conferences, Alaska stressed *inter alia* its concern with damage attributable to overweight vehicles. Mr. Behlke, for instance, spoke of "big, overweight, virtually non-permittable when loaded, equipment" repeatedly crossing the haul road to the point of destroying it, and stated that Alaska's Commissioner of Transportation and Public Facilities has authority to "curtail" such use of the road. (Tr. 164) He also spoke of the Commissioner's authority to refuse to issue permits for overweight and overlength loads:

"This would mean that the 80-foot loads would not go up, the pipe would not be hauled up in the 80-foot configuration, indeed it's possible to haul it up in 40-foot lengths and that would be legal loads, acceptable and well within place. Eighty-foot is well over.

"There would be no traffic on the highway system of overloads of loaded trucks. We would probably allow pieces of equipment such as compressor station pieces and so on that cannot be broken down, there is no other way they can get there, they have to be permitted, there's no question about that.

"But if these loads can be broken down, they will have to be broken down and I don't know what that means in cost to Northwest. But the State of Alaska does not intend at this point, this has not been negotiated, but does not intend at this point to pick up the tab on all of that. We got hit once and we know what it's like." (Tr. 166-167)

* * *

". . . If indeed, the highway indemnification agreement is not what the state feels it must have, then there will be implications about this 40-foot pipeline and no overloads and that's the bottom line." (Tr. 173)

These points were reinforced in Alaska's Highway Memorandum (at 7):

". . . Accordingly, in order to fulfill its duty to maintain Alaska's highways in a safe manner, the Department is authorized to take whatever measures are necessary when an unusual project or event renders its ordinary maintenance operations unsatisfactory and threatens the availability of State roads for the general motoring public. These measures would include requiring responsible parties to pay for the extraordinary work required *or strictly enforcing its load limits to prevent the otherwise inevitable damage.*" (Emphasis added)

In light of Alaska's expressed concern with overweight vehicles, our October 26, 1982 Notice and Request for Additional Information included a request to the State to provide additional information on Alaska statutes and regulations pertinent to operation of overweight vehicles, and Alaska standards and policies with respect to overweight vehicle permits, fees, penalties and enforcement. The State's Response provided a detailed description of Alaska's regulatory framework governing the operation of overweight and oversized vehicles, documenting the rather elaborate guidelines in the law and stressing that "[t]here are no discretionary decisions in the process."¹¹¹ The Response (at 1) is prefaced, however, by a statement of position that stresses concern over "extraordinary numbers" of "vehicles with normal loads" (rather than overlength or overweight vehicles) as the "major cause" of ANGTS highway damage:

". . . While Alaska is pleased to answer these or any other inquiries concerning overweight vehicles, it finds it appropriate to restate its position, expressed in a previous *filing*,* that it is primarily the enormous increase in highway use by *normal* vehicles operated by Northwest, as well as its abnormal *use* of the roadways, that will cause extraordinary damage to Alaska's highways. Even though Northwest certainly will need permits for some overweight

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traffic, the State believes that vehicles with normal loads, but in extraordinary numbers, will be the major cause of the highway damage which will occur during the construction period.** (Emphasis in the original)

* Memorandum of the State of Alaska Regarding Recovery of Expenditures for Extraordinary Highway Repairs and Maintenance, April 16, 1982.

** Significant damage will also occur from crosshighway hauling. See April 16 Memo at 5.

The State's method of estimating future damage (using EAL's as described above), in fact, reflects this emphasis on excessive numbers of normal vehicles (as opposed to overweight vehicles).¹¹² Based on all of the above, we shall proceed on the assumption that, while overweight and overlength loads might comprise an element of negotiating strategy, it is neither the prime cause of the highway damage contemplated nor the central issue in resolving the CCE cost component for highways.

4. Analysis of the Rationale

Alaskan Northwest identifies only the haul road and 100 miles of the Alcan Highway south of Tok, a total of about 573 miles, as those portions in need of upgrading and additional maintenance. The State, on the other hand, identifies 814 miles of highway, roughly the entire length of the highway system between Prudhoe Bay and the Canadian border, that would be affected by the construction of the ANGTS. It is not clear from the record whether the highway upgrading, structural revision, and maintenance described by Alaskan Northwest would substantially alleviate the highway damage described by the State. To the extent that the highways described by the State are considerably more extensive in mileage than the highways described by Alaskan Northwest, the highway work envisaged by Alaskan Northwest would not be co-

extensive with the damage envisaged by the State.

Thus, even though the respective Alaskan Northwest and State of Alaska highway cost estimates are comparatively close to each other in dollar figures, they differ substantially in their rationale -- in terms of the work to be performed, the reasons for performing it, the highways upon which it is to be performed, and perhaps, the time frame in which it is to be performed.¹¹³ These fundamental factual discrepancies substantially affect our ultimate recommendation on highway costs, as discussed below.

The Trial Staff is "unable to determine from the record the proportionate share of any damage for Alaskan highways resulting from the Applicants' use . . .," and goes so far as to describe the State's figures as "highly suspect."¹¹⁴ The State rejects Trial Staff's characterization, contending that both the State and Staff, using different formulas, have provided reasonable projections.¹¹⁵

We recognize the complexities inherent in determining in advance the cost of potential highway damage that could be caused by the ANGTS, and thus we share some of Trial Staff's concern about the State's calculations. We do not, however, dismiss those calculations as "suspect"; if the State's rationale for its claim is valid, the State has adopted a reasonable methodology for calculating highway costs pursuant to that rationale.¹¹⁶ Rather, our principal concern arises from the State's very formulation of the issue as one of reparation for damages.

Everyone agrees that ANGTS construction will cause "damage" to Alaska highways in the sense of greater wear and tear on them. As discussed above, during the technical conferences we had the impression that the State's concern was heavily premised on damage caused by overweight vehicles - the State stressed enforcement of its overweight vehicle laws as a potential alternative to CCE reimbursement for highway damage. More recently, the State has clarified its position such that it now places primary stress on damage attributable to substantially increased numbers of "normal" vehicles (*i.e.*, vehicles that drive in profuse numbers, but not overweight). No one has contended that such use of the roads by Alaskan Northwest is in any way illegal or immoral. In fact, this profusion of "normal" vehicles will serve a socially constructive purpose that the State itself supports -- construction of a gas pipeline to develop the State's resources.

In this context, there is no basis for levying discriminatorily higher road use charges on Alaskan Northwest, nor for any requirement of advance payment for "damage." If the "damage" is primarily the same wear and tear caused by all vehicles that make "normal" use of the highway system, and if Alaskan Northwest has the same right to operate such vehicles as every other motorist in the State, then Alaskan Northwest (and through it, the gas consumers) should not be required to pay anything other than the same fuel taxes and license fees that everyone else pays.

As discussed below in the concluding section of this chapter, the fuel taxes and

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license fees to be paid by Alaskan Northwest apparently will not cover the full cost of repairing wear and tear caused by Alaskan Northwest vehicles, because the State's fuel taxes and license fees are not designed to cover the full cost of maintaining the State's highway system. That, however, is not a justification for singling out Alaskan Northwest; Alaskan Northwest's activities will accelerate the problem, but will not be the basic cause of the financial shortfall. If the problem is one of timing -- that ANGTS-related transportation activities will wear out the highways before ANGTS-generated tax revenues will be available to repair them - then the State may wish to consider advance tax payment or loan arrangements for highway repair along the lines discussed previously with respect to socioeconomic impact.

It is possible that while most ANGTS-related "damage" to the highways will be in the nature of accelerated wear and tear caused by profuse numbers of "normal" vehicles, nevertheless some level of "damage" will be caused by use of overweight vehicles, by construction equipment repeatedly crossing highways perpendicular to their direction of travel, and by use of certain highway sections as workpads for pipeline construction. If so, however, the record is silent as to the precise level of damage and cost of its repair

attributable to those particular activities. The State has made no effort to break out and justify highway repair costs on that basis (except, perhaps, for the \$7.3 million for repair in areas affected by hauling of gravel). Indeed, the State's methodology of calculating EAL's attributable to Alaskan Northwest is completely independent of such specialized causes of highway damage.

While it is true that the Commission has on several occasions (including several recent orders, as discussed below) authorized highway maintenance, repair or replacement costs, it has always been in the context of a comparatively modest level of work to be performed on roads immediately adjacent to, or within, the project site. Here, in contrast, we are dealing with the main traffic artery connecting the center of a territorially vast State to the border of its only neighboring land mass, plus the sole overland traffic artery that penetrates north to a coastal area undergoing substantial oil production activities quite independent of the gas pipeline project.

Alaskan Northwest's rationale, however, poses entirely different considerations that we find more persuasive. Alaskan Northwest has stated that some of Alaska's highways will require upgrading to handle the increased volume of heavier traffic imposed by the ANGTS. Similarly, bridges will need reinforcement and additional measures must be taken to maintain the roadways for the increased use during construction. If these steps are not taken, then unsafe conditions would result, leading to project delays and consequent higher costs. Thus, Alaskan Northwest has proposed to upgrade portions of the highways, to reinforce bridges, and to initiate a maintenance program in order to guarantee the safe and expeditious construction of the ANGTS. Based on this rationale, we believe the record supports the inclusion of some costs for highway work. As explained more fully below, we believe that Alaskan Northwest and the State should negotiate a comprehensive agreement describing what work will be performed, where, and by whom; determination of the CCE cost component for highways should be deferred until after such an agreement has been filed with the Commission.

B. Considerations of Law, Policy and Commission Precedent

1. Legal Framework

In response to our request for legal citation, Alaskan Northwest and the State of Alaska have referred us to a variety of sources of legal authority potentially or arguably supportive of the State's claim. Alaskan Northwest's legal citations focus primarily on the matter of overweight and oversized vehicles.¹¹⁷ As discussed above, however, regulation of overweight and oversized vehicles now appears to be substantially peripheral to the issues before us.

The State, citing Alaska Stat. §19.05.010 and §19.05.030, observes that the State Department of Transportation and Public Facilities has "general responsibility for the maintenance of Alaska's highways" and must, pursuant to 23 U.S.C. §116(a), "maintain, or cause to be maintained" all roads that are part of the Federal-Aid Highway System; that the Department is required by Alaska Stat. §19.40.100 to maintain the haul road; and that the State has a responsibility to maintain roads adequately for all reasonable use. The State contends, citing Alaska Stat. §28.05.011, that its maintenance responsibilities stem from its "broad police power to ensure safe conditions and continuous availability of the highways for its citizens," and, citing Alaska Stat. §19.05.040(11), that the Department may exercise any power necessary to carry out its responsibilities. Finally, the State cites the right-of-way leasing statute, Alaska Stat. §38.35.120(a)(13), which provides that the lessee "will be liable to the state for damages or injury incurred by the state caused by the

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construction, operation or maintenance of the pipeline and it will indemnify the state for the liabilities or damages."¹¹⁸

The heart of the State's position, however, as we understand it, rests not on State statutory requirements explicitly compelling payment of particular sums, but rather, is premised on the fact that transportation of

construction equipment and material--including the cost of repairing roads utilized for such transportation--is an integral cost of the project. As explained by the State in its Highway Memorandum (at 8-9):

"The pipe and other materials which Northwest plans to transport by truck over Alaska's highways constitute a 'prudent investment;' indeed, if a substantially less expensive means of transporting these goods were available, Northwest would have to use it or be precluded by the Commission from passing the extra costs on to consumers. Furthermore, the movement of materials is not only 'used and useful' in providing service, it is indispensable.

"An inherent cost of this 'prudent investment' is any unavoidable injury to the roadbeds, bridges, and other parts of the transportation system. The stress and breakage which will be caused by Northwest trucks are unavoidable. They are as much a part of the project as any other cost. Just as the ANGTS could not be built quickly without purchasing materials, it could not be built without damaging Alaska's transportation infrastructure. No one would argue that the costs of purchasing those materials are not 'actual and legitimate' costs of the project; similarly, the costs of transporting those materials are intrinsic and integral to the project. Those transportation costs are not limited to gasoline and truck drivers' salaries. They include all the incidental costs directly incurred, including damage to the highways. Those costs must be calculated as any other cost of doing business."

In our view, Alaska's basic legal premise is fundamentally sound provided that it is recast as follows: the cost of transporting construction supplies and equipment, including the cost of upgrading roads, of reinforcing bridges and of maintaining roads during project construction, to the extent necessary to safely and efficiently construct the pipeline, is a legitimate cost of the project. The actual cost, once determined, should be includable in the rate base, and the estimated cost should be includable in the CCE. We have reached this conclusion independently of any requirements of Alaska State law. Thus, we do not reach the question of whether State law requires such payments, but merely note at this juncture the statutory provisions cited to us in response to our request for legal memoranda.

2. Commission Precedent and Policy

Commission precedent on reimbursing local governments for damage to local roads is sparse, but is consistent with our recommendations. The early cases involved hydroelectric projects that inundated roads. In *Alabama Power Company*, Project No. 349, 2 FPC 432, 451 (1941), for instance, the Commission allowed compensation to several counties in Alabama for the cost of roads that were flooded as a result of a project. The licensee had instituted condemnation proceedings to flood the roads, and was required by Alabama statute and Alabama court orders to make the payments.

In *Northern States Power Company*, Project No. 108, 1 FPC 329, 338-341 (1936), where a licensee had voluntarily constructed a new 12 mile long road to replace one that had been flooded, the Commission refused to allow the cost of the new road as a cost of the project. The Commission found that the new road was of substantially higher quality and substantially more expensive than the road it replaced; that constructing the road was not a requirement of any government authority nor was it necessary for the project; and that construction of the road appeared to be for the benefit of developing land adjacent to the project. On rehearing, the licensee was able to show that the road had been constructed pursuant to a legal obligation to replace a road inundated by the project. Nevertheless, because the replacement road was of superior quality to the inundated road (and was apparently designed that way for purposes of developing the adjacent land), and based on a confusing record involving conflicting testimony and missing financial records, the Commission ultimately allowed only \$7,500 of the \$34,000 claimed. (1 FPC 597, 602-610 (1939))

In the 1982 cases involving the Calaveras County Water District (CCWD) and the Kings River Conservation District (KRCD), discussed previously in the context of the socioeconomic issues, the Commission also addressed payments for damages to local roads. "CCWD, itself a local governmental agency . . . has agreed . . . to finance the costs of maintaining the three miles of county roads that will be affected by project-related heavy truck traffic. . . ." Accordingly the Commission conditioned the license with a requirement to "reimburse Calaveras County for the costs of maintaining and repairing all portions

of county roads that are impacted during construction by project-related truck

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traffic." ¹¹⁹ In almost identical fashion, the Commission conditioned the license awarded the Kings River Conservation District (also a governmental agency) with the requirement to "cooperate with the appropriate government agencies in repairing road damage attributable to project construction" ¹²⁰

Alaskan Northwest contends that upgrading certain sections of Alaska's highways, reinforcing certain bridges and repairing roadways during construction will be necessary for the safe and expeditious completion of the ANGTS. No party disputes those contentions. As a matter of policy, regulated gas companies may recover from their customers all prudently incurred costs that are reasonably related to the construction and operation of their facilities, including prudent expenditures for land, materials and labor. ¹²¹ What we believe this basic policy requires is a showing that the costs associated with revising, upgrading and maintaining highways are necessary to the successful completion of the project.

There is one other issue of policy to consider. Although no party has raised it, we believe it should be addressed.

As discussed in chapter II (in conjunction with socioeconomic impact costs), the State of Alaska will derive tax revenues from the ANGTS approximating \$2.3 billion. That figure substantially exceeds (by a factor of ten) the combined estimate for highway and socioeconomic reimbursement. Thus, an argument could be made that the State can well afford to pay the cost of highway upgrading, repair and maintenance out of its own resources, and that such expenditure by the State would in any event be a proper and prudent investment in the development of the State's royalty share ¹²² and severance tax interest in the gas itself. In this regard, the *Report* accompanying the President's *Decision* (at 101-102) concludes in part that "2. Producers and the State of Alaska, as direct and major beneficiaries of this project, should participate in the financing . . ." Similar views were expressed in Congress in conjunction with enactment of the President's Waiver of Law, Pub. L. No. 97-93. ¹²³

We do not, however, recommend exclusion of highway costs from the CCE on such a basis. As discussed above, we have concluded that highway costs should be treated as integral, prudently incurred costs of the project to the extent that highway upgrading, maintenance and repair are necessary to ensure safe and efficient construction of the pipeline. We also believe that it would be inappropriate for the Commission to attempt to allocate financing responsibilities by excluding from the CCE (and, implicitly, from the rate base) costs of functions whose performance is essential to the project. The appropriate regulatory role of the Commission with respect to financing of the ANGTS is to carefully review whatever financing plan is negotiated and filed with the Commission.

C. Conclusion and Recommendations

We recommend, first of all, that the CCE include funds for upgrading and "revising" highways and bridges to the extent necessary to facilitate the safe and reliable transportation of project personnel, equipment, and construction material. It seems to us that reinforcing bridges and upgrading roadways to carry the volume and weight of project traffic is a reasonable expense of any project. Even in the absence of any State imposed legal obligation, we believe that such costs may be prudently incurred, and may even be absolutely necessary; obviously roads and bridges must be strong enough to carry project vehicles. ¹²⁴

The question of maintenance during construction is potentially more difficult. Alaskan Northwest has estimated that \$40 million may be necessary to maintain the State's highways to counteract damage caused by ANGTS construction, but is reluctant to pay any amount that it believes is discriminatory. No other highway users are currently required to pay for such maintenance. ¹²⁵ The State collects fees for permits and licenses, plus an 8 cent per gallon fuel tax. The revenues from these sources are intended to offset the State's cost of maintaining the highway system but usually fall far short of what is required. (Tr. 175-176) The allowance already approved in the CCE of \$25 million for these fees and taxes presumably is not

enough to maintain the highways in good repair while the ANGTS is under construction. The State has observed that "basically, . . . we have an archaic system that does not address the present needs and it . . . does not address the magnitude of deterioration we projected and know will happen with a project of this magnitude." (Tr. 176)

On its face, State policy appears to be that permit fees and fuel taxes are not intended to completely offset highway maintenance costs; in fact, it is a matter of public record that only about 25 percent of these costs are covered by these revenues. (Tr. 176) If this is State policy, then, absent other considerations, Alaskan Northwest should not have to pay a higher percentage of the maintenance costs it generates than any other highway user pays or more than what State fees and tax laws require it to pay.

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Both Alaskan Northwest and the State recognize that ANGTS construction traffic will require some considerable degree of additional maintenance. It stands to reason that a level of additional maintenance commensurate with the level of additional traffic, and commensurate with use of certain sections of the highways as a virtual workpad,¹²⁶ could help to avoid serious road deterioration detrimental to the project. As the Federal Highway Administration study observed, there was a concerted effort during TAPS to provide a higher level of maintenance. This was necessary since there was no doubt that "the combination of commercial hauling and local pipeline contractor hauling has had a severe deteriorating impact on portions of the Richardson and Elliot Highways."¹²⁷ And once pavement starts to break down, the difficulty and cost of repairing the damage is magnified; without timely maintenance, a roadbed could be lost in a short time.¹²⁸ The overriding consideration, however, is that Alaskan Northwest itself needs to have access to properly maintained highways in order to avoid delays and excess costs (to say nothing of dangers to personnel and property) in completing the project. As Alaskan Northwest has stated:

"Once the road system has been upgraded for heavier loads and increased volumes of traffic, the system must be maintained at acceptable levels

* * *

. . . The maintenance work . . . would be for such things as pot holes and erosions. Additionally, snow removal and grading will be a continuing requirement to keep the road system in acceptable usable condition."¹²⁹

We are not prepared to recommend a particular cost figure for the necessary highway upgrading, structural revisions and maintenance. For our own reasons, as discussed above, we agree with Trial Staff that the record before us does not generate any cost estimate component that we could recommend with confidence to the Commission. Alaskan Northwest has relied heavily on the State to establish a record in support of the highway cost estimate, but there is a substantial divergence in their respective approaches to the problem. Alaskan Northwest has presented a rationale for including highway costs in the CCE which we find compelling--a need to improve and maintain the roads in order to be able to safely and efficiently construct the pipeline. In its efforts to defer to the State, however, Alaskan Northwest has provided only the barest outline of a factual record. Essentially it consists of a general assertion of need for road work, but with no breakdown of precisely what work needs to be performed on each road segment and structure involved, and at what cost per task and per structure and road segment. All we have is a compelling statement of the need, a total number of miles on two highways, and a set of three bottom line figures.

Given the current status of the project, however, we do not regard this lack of detail to be in any way unreasonable. Alaskan Northwest can project with considerable accuracy how many segments of steel pipe it will need because the same number of segments will be needed regardless of what year they are welded in place. The condition of Alaska's roads, however, might change drastically (for either better or worse) between now and the time when the project goes forward. Thus, even had Alaskan Northwest identified for us in exquisite detail every pothole and structural weakness between the Canadian border and Prudhoe Bay, the Commission would be in no better position to determine a cost estimate premised on Alaskan Northwest's rationale because it would have no assurance that those will be the highway conditions

Alaskan Northwest will actually confront when it needs to begin driving on them.

In this regard, we note that the North Slope of Alaska is the site of extensive on-going oil exploration and production activities that generate substantial truck traffic on the Dalton Highway (and, presumably, on other roads as well). It is entirely possible that the State may have occasion to upgrade roads and revise structures to meet those traffic needs prior to commencement of ANGTS construction. We also note that the recently enacted Surface Transportation Assistance Act of 1983 could provide substantial funds for such highway restoration work.¹³⁰

In contrast, the State has presented a very detailed and elaborate factual record in support of its rationale--that construction activities will damage the highways and that Alaskan Northwest should repair the damage. Moreover, the State's methodology is not necessarily affected by the present delay in the project, because the State's highway cost estimate is premised on incremental damage caused by the ANGTS without regard to the particular condition of the roads at the time that construction commences. For reasons discussed above, however, we have grave reservations about the State's rationale and, faced with a rationale that we find considerably more persuasive, we are not inclined to recommend use of the State's methodology to compute a highway cost estimate.

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We recommend that Alaskan Northwest and the State negotiate an agreement to perform the necessary highway work, and that they submit that agreement to the Commission, with related supporting documents, as the basis for setting the CCE cost component for highways. The agreement should address several points. First, it should specify in detail the nature of the work that is to be performed with respect to upgrading, structural revisions and maintenance, including identification of the road segments and structures involved and what work will be performed on each.

Secondly, the agreement should indicate who will perform each portion of the work, Alaskan Northwest or the State.¹³¹ We posed this question, with respect to each category of highway work, in our October 26, 1982 request for additional information from Alaskan Northwest. Putting aside the Janus-like ambiguity in the answers as to who exactly will be doing the work, the Response is clear in indicating that Alaskan Northwest contemplates negotiating an arrangement with the State: ". . . Alaskan Northwest will probably have some kind of arrangement with the State to do the . . . work." Such arrangements presumably would be recorded in an agreement even absent a Commission CCE condition.

Third, the agreement should separately identify the cost of each element of the work to be performed. Thus, deferral of the highway cost component of the CCE until after such an agreement has been negotiated should provide the certainty that Alaskan Northwest seeks in determining and limiting its highway costs, and should therefore eliminate any basis for substituting actual costs for estimates in the CCE.

Fourth, along these lines, the agreement should encompass *all* highway costs that Alaskan Northwest (and through it, the gas consumers) will be expected to bear, including, but not limited to, fees and penalties for overlength and overweight vehicles, and definition and limitation of Alaskan Northwest's liability (if any) for damage to highways.¹³² If the Commission is asked to approve inclusion in the CCE of a substantial cost component for highway upgrading, maintenance and repair, based on an agreement between Alaskan Northwest and the State, the agreement should be all encompassing and should set a fixed limit on Alaskan Northwest's financial responsibilities for all highway costs, with no open-ended obligations or exposures.

Finally, in negotiating an agreement, we believe that Alaskan Northwest and the State should follow this principle: only those costs associated with work that is necessary for the safe and expeditious construction of the ANGTS shall be considered legitimate costs of the project.¹³³ We recommend that the Commission adopt this principle as the standard by which it will consider highway costs in the CCE and include it in an order in response to this report, so as to facilitate negotiation of the agreement we contemplate. If our recommendation is adopted, then Alaskan Northwest should also submit to the Commission whatever detailed data is necessary to verify that the proposed highway costs (as set forth in the agreement) meet the

Commission's standard.

V. Affirmative Action Training Costs

Alaskan Northwest has requested inclusion in the CCE of \$25 million (in 1980 dollars) for its affirmative action program. That program is mandated by Section 17 of ANGTA, and by conditions attached to Alaskan Northwest's conditional certificate.¹³⁴ The \$25 million includes \$14 million for a program for the employment, training and counseling of Alaskan Natives. Such a program is required by the Department of Interior right-of-way agreement with Alaskan Northwest.

Trial Staff does not question the \$25 million as a reasonable estimate of the cost of Alaskan Northwest's affirmative action plan as presently formulated and approved, but raises questions as to the adequacy of the plan itself.¹³⁵ These questions reflect issues raised by several of the participants at the technical conferences and the hearings in Alaska.¹³⁶

For reasons discussed below, we recommend inclusion in the CCE of a cost component of \$25 million for affirmative action training costs. Inasmuch as actual costs might diverge from estimated costs, either due to future changes in the training plan or for other reasons, we also recommend inclusion of affirmative action training costs in the base estimate upon which "Normal Contingency" (12 percent of the base estimate) is calculated, resulting in an addition to the CCE cost component for "Normal Contingency" in the amount of \$3 million.

A. Background

In its original CCE application, filed in July of 1980, Alaskan Northwest estimated the cost of implementing the affirmative action program at \$22 million, with no funds designated for pre-employment training (construction, operation and maintenance). In its November 1981 Amendment, Alaskan Northwest decreased its estimate for administering the program to \$15.5 million

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and added \$9.5 million for pre-employment training, bringing the total estimate to \$25 million. Alaskan Northwest maintains that although the pre-employment training component (\$9.5 million) is based primarily on training Alaskan Natives, who comprise two-thirds of the total minority population in Alaska, it is extending the eligibility for training to all females and minorities as an additional affirmative action.

Alaskan Northwest's adjusted CCE assumes that pre-employment training will be necessary to develop craft, technician, office and clerical workers. It states that the cost of training is based upon existing programs of unions, state, and private institutions.

B. ANGTS Affirmative Action Plan Requirement

Before addressing the substantive issues raised by Alaskan Northwest's filing, it is helpful to understand the nature of Alaskan Northwest's affirmative action responsibilities.

Section 17 of ANGTA,¹³⁷ [15 U.S.C. §719](#)o, requires that "all Federal officers and agencies shall take such affirmative action as is necessary to assure that no person shall, on the grounds of race, creed, color, national origin, or sex, be excluded from receiving, or participating in any activity" connected with the construction or operation of the ANGTS. Moreover, Federal officers and agencies are authorized to enforce Section 17 of ANGTA through the promulgation of rules. Condition I.11. of the President's *Decision* (at 31) requires that the project sponsors "develop and submit to the Federal Inspector for approval a plan for taking affirmative action to ensure that no person shall on the grounds of race, creed, color, national origin or sex be excluded from receiving or participating in contracts for management, engineering design or construction activity."

On May 12, 1980 (45 Fed. Reg. 31,095), the Department of the Interior (DOI) issued its "Requirement For Equal Opportunity During Construction and Operation of the Alaska Natural Gas Transportation System," 43 C.F.R. Part 34. These regulations require that project sponsors develop affirmative action plans for employment and procurement activities, and submit them to the Federal Inspector for approval (43 C.F.R. §34.8).

The Commission worked closely with DOI in formulating DOI's regulations. On October 18, 1979 [[9 FERC ¶61,053](#)], the Commission issued an order (in [Docket No. CP78-123](#), et al.) proposing to adopt the DOI (proposed) regulations as a condition to the conditional certificates¹³⁸ previously issued to the various ANGTS project sponsors (including Alaskan Northwest), and inviting comments on that proposal. Thereafter, the Commission and DOI held joint hearings on the proposed regulations, in Washington (D.C.), Chicago, San Francisco, Seattle, Anchorage, Fairbanks and Barrow. Following consideration of the views elicited at the hearings and in the comments received, and after further consultation with DOI to coordinate revision of the proposed regulations in light of those views, on May 8, 1980 the Commission issued its order adopting the DOI regulations as conditions to Alaskan Northwest's conditional certificate.

C. Training Requirements

On December 1, 1980, Alaskan Northwest entered into a right-of-way agreement with DOI authorizing ANGTS construction activities on Federal land in Alaska. It includes the following provision concerning the training of Alaskan Natives:

"Training of Alaska Natives --

"In connection with, and to accomplish the objectives of the 43 C.F.R. Part 34 regulations, and the affirmative action plans for the project the COMPANY shall take the following actions:

"A. Enter into an agreement with the SECRETARY and the FEDERAL INSPECTOR regarding recruitment, testing, training, placement, employment, and job counseling of Alaskan Natives.

"B. During construction and operation of the PIPELINE SYSTEM, implement, through available public or private sources or its own efforts, a pre-employment training program for Alaskan Natives designed to qualify them for initial employment in connection with the PIPELINE SYSTEM and for advancement to higher paying positions thereafter;

"C. Do everything practicable to secure the employment in connection with the PIPELINE SYSTEM, of those Alaskan Natives who successfully complete the pre-employment training program described in subparagraph B above;"

There is no explicit requirement that other minorities or females be trained. With respect to this issue, the Federal Inspector's Deputy General Counsel, Rhodell Fields, in a memorandum to J. Richard Berman, one of the undersigned presiding officers, stated:¹³⁹

"Minority training is addressed to some extent in the Equal Opportunity Regulations for ANGTS, 43 CFR Part 34. In setting goals for employment, 43 CFR 34.8(c)(2)(ii)(A)(3) required that sponsors set goals in proportion to an identified

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minority group's general availability in the population taking into consideration:

"1. the number of group members currently available in that job group;

"2. the reason members of the group are not available in that job group in proportion to their existence in the general population, and

"3. the degree to which the provision of training could be expected to increase the availability of the group's members in the particular job group within the time available.

"The regulations only required that training be considered in determining availability in the goal-setting process. For instance, without consideration of training, a sponsor may identify a pool of fifty minorities for a particular job category.

"However, with minimal training, i.e., 4-6 weeks, the pool of available minorities could be expanded to 75 people. The regulations require that factor to be considered in the goal-setting process.

"It is only in this context that overall minority training is mentioned in the regulations. The EEO regulations do not specifically require the training of anyone, including Alaskan Natives."

The cost changes that Alaskan Northwest identified ¹⁴⁰ as responsible for the revised estimate are shown below:

1. Project Management Contractor--\$8,240,000 decrease

This reflects decreases in planned project affirmative action staffing developed after the execution of the right of way agreement and the approval of Alaskan Northwest's affirmative action plan. Alaskan Northwest determined that planning could best be done by the supervisors of the working element of the affirmative action staff and by the manager, rather than by a separate staff. In addition, it concluded that less staff was needed to audit contractors to verify their affirmative action plan performance. These changes resulted in a net decrease of 78.5 man years.

2. Execution Contractors--\$1,023,000 increase

Additional man years were included for Execution Contractors to implement the employment, training, and counseling programs. They will be responsible for personnel management, including employment relationships with organized labor, job related counseling, on the job training, maintaining data documentation, and providing reports as required by the Federal Inspector and DOI.

3. Community Coordination Board--\$630,000 increase

A Community Coordination Board is to be organized by the Project Management Contractor to assist in developing the detailed annual plans for employment training and counseling. Alaskan Northwest envisions that the Board will be comprised of representatives of minority and female interest groups that it will designate.

4. Pre-Employment Training--\$9,467,000 increase

This represents the estimated total cost of pre-employment training. Pre-employment training for the construction phase is estimated to cost \$8,864,000, including the costs of training craft labor, technicians, and office and clerical workers. Alaskan Northwest does not plan to provide pre-employment training for individuals in the professional or manager job groups. Alaskan Northwest also plans to provide eight man years of pre-employment training in preparation for the operation and maintenance phase, at an estimated cost of \$603,000.

None of the above training costs were included in Alaskan Northwest's original CCE application as filed in July of 1980 or as amended in November of 1980.

Some of the parties expressed doubts as to whether Alaskan Northwest's training estimate is adequate. The estimate is based on training approximately 1,550 Alaskan Natives, representing about one half of the number required to meet Alaskan Native employment goals during the three peak years of construction. Alaskan Northwest concluded that the 50 percent figure was appropriate for cost estimation purposes

because approximately one half of the Alaskan Natives employed on TAPS required some type of training.

While Alaskan Northwest's training plan is ostensibly designed to accommodate Alaskan Natives, other minorities and females, it is based on training only Alaskan Natives. Alaskan Northwest has maintained, however, that it should be able to meet its goals for females and minorities (other than Alaskan Natives) without providing significant amounts of training. In response to a question asked by Mr. Russell of the Trial Staff, Mr. Kuhn of Alaskan Northwest responded:

"The people who looked at this and the numbers believe that the numbers will be available to meet our employment goals. That relates back to one other fundamental

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underpinning of this whole process as far as we are concerned.

"That is, that the driving element is the Affirmative Action Plan, the Project Affirmative Action Plan that provides the employment goals. . . .

. . . I can only tell you that our people are looking at the numbers, using the best information we have had available on the availabilities of people in the various categories." ¹⁴¹

Trial Staff also expressed concern that the training program "may be heavy toward the overhead and management and not the actual training," ¹⁴² but did not extensively pursue this aspect of the training issue.

Most of the other comments were concerned with perceived inadequacies in the affirmative action and training plans. For example, Mr. Louis Overstreet, President of the Alaska Black Caucus, contends that the underlying intent of Section 17 of ANGTA is not being implemented. It is his perception "that a thinly disguised ploy is being perpetuated whereby other nonnative minorities and females are being pitted against natives." ¹⁴³

Similar concerns were expressed by Ms. Katie Hurley of the Alaska Commission on the Status of Women. She maintains that Alaskan Northwest's affirmative action plan does not provide enough opportunities for females in non-traditional blue collar jobs. Further, she avers that the company's "goals are set so low as to ensure success in reaching them with no affirmative action such as training and active recruitment taking place at all." ¹⁴⁴

D. Conclusion and Recommendations

We recommend that the Commission approve Alaskan Northwest's proposed affirmative action cost component for inclusion in the CCE notwithstanding the concerns expressed that the cost estimate for training may be insufficient. As discussed above, while the training program extends to other minorities and women, the number of proposed trainees contemplated by the plan is based on Alaskan Natives. Despite the criticisms directed at the affirmative action and training cost component, we believe that Alaskan Northwest's figures should be accepted for CCE purposes. The company is best situated to determine what its training needs will be; its current assessment is that it can reach its goals for other minority and female employment without providing significant training. Also, none of the parties in the technical conferences, nor any of the participants at the hearings, have offered any specific adjustment or alternative to Alaskan Northwest's estimates.

As explained below, Alaskan Northwest's affirmative action plans and goals are subject to revision, and its employment, training and counseling plan has yet to be approved by either the Federal Inspector or DOI. Thus, the amount recommended for approval in the CCE does not necessarily reflect the final costs of the program.

The substantive elements of the affirmative action and training plans elicited substantial criticism. As

noted above, however, the Commission has no jurisdiction over or responsibility for the approval of those plans. The equal opportunity regulations, 43 C.F.R. Part 34 (adopted as a condition to the certificate issued by the Commission); Condition I.11. of the President's *Decision*; and the December 1, 1980 right-of-way agreement designate the Federal Inspector and DOI as the Federal agencies responsible for approval of the respective plans. Alaskan Northwest's affirmative action plan was approved by the Federal Inspector on August 13, 1981 after extensive review, taking into account all of the relevant information available.

Pursuant to 43 C.F.R. §34.8(c)(2)(ii)(A)(1), Alaskan Northwest was directed to use "[c]urrent national statistics, such as those available from the U.S. Bureau of the Census, . . . to determine the available minority and female workforce populations . . ." Although 1980 Census data had been collected, the results were not available during the review process.¹⁴⁵ Consequently, Alaskan Northwest was constrained to use 1970 Census data to develop its affirmative action plan. It is conceivable that this might have led to lower goals than if 1980 Census data had been utilized. In any event, Alaskan Northwest is required by the regulations to file annual updates of its affirmative action plan (see 43 C.F.R. §34.8(c)). At such time as the relevant 1980 Census Data becomes available, Alaskan Northwest will be required to adjust its goals in its next annual update, based upon the new data.

Similarly, with respect to training, the right-of-way agreement requires Alaskan Northwest to enter into an agreement with the Secretary of the Interior and the Federal Inspector regarding the recruitment, testing, training, placement, employment, and job counseling of Alaskan Natives. Although Alaskan Northwest has provided a draft of its training plan to the Federal Inspector for discussion purposes, it has not formally presented the plan for Federal Inspector or DOI approval.

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Consequently, persons who wish to express additional substantive problems with either the affirmative action or training programs should make their concerns known to the Federal Inspector. With respect to the concerns expressed in the record of this subproceeding, the Federal Inspector will take those views into account in reviewing both the updates to the affirmative action plan and the training program applicable to Alaskan Natives, other minorities, and women.

In any event, we recommend that the Commission amend the CCE at this time by adding \$28 million to it, consisting of the \$25 million for affirmative action costs plus \$3 million for Normal Contingency.

VI. Conclusion

Following receipt of comments and reply comments on this report, we recommend that the Commission proceed with the issuance of an order revising the Certification Cost Estimate based on the recommendations in this report and the comments received on it. We further recommend that the technical conference subproceeding be held open to consider whatever items may be deferred.

-- Footnotes --

¹ See [Order No. 31](#), Order Setting Values for the Incentive Rate of Return, Establishing Inflation Adjustment and Change in Scope Procedures, and Determining Applicable Tariff Provisions, issued June 8, 1979 in [Docket No. RM78-12](#), [7 FERC ¶61,237](#); [Order No. 31-B](#) on Rehearing, issued September 6, 1979 in [Docket No. RM78-12](#), [8 FERC ¶61,250](#).

² In this report, the application is referred to as the "July 1980 Application," and the first amendment of it is referred to as the "November 1980 Amendment."

³ On February 18, 1983 [[22 FERC ¶61,175](#)], the Commission issued an order on rehearing of the September 21 order.

⁴ Before the determination to hold hearings in Alaska, we issued a Notice inviting interested persons in Alaska to send written comments to us. The comments received in response to that Notice were made part

of the record, by inclusion in the transcript of the April 20 hearing in Anchorage.

⁵ The hearings in Anchorage were held in morning and afternoon sessions. The hearing in Fairbanks was held in morning, afternoon and evening sessions. All persons who wished to speak were afforded an opportunity to do so.

⁶ The Adger/Berman Report deferred consideration of all socioeconomic and State government monitoring issues.

⁷ Alaskan Northwest Memorandum at 2, quoting from the November 1981 Amendment.

⁸ Alaska 1981 Socioeconomic Memorandum at 11.

⁹ Tr. 188. Unless otherwise specified, transcript references in this chapter of our report (socioeconomic impact) are to the hearings in Anchorage (tr. 1-177) and Fairbanks (tr. 178-358), held on April 20 and 21, 1982, respectively.

¹⁰ It has been the experience of Alaskans that whenever a major economic boom occurs in the State, large numbers of jobseekers migrate to Alaska, swelling the population far beyond the numbers necessary to service the boom (be it in mining, construction of a pipeline, the Alcan highway or whatever). The result has been large population increases accompanied by substantial unemployment and major demands on local services and facilities. This, along with the natural multiplier effects of the increase in people employed on the pipeline, constitutes what Alaska has called "Type II impacts" -- the impact caused by the total population increase brought about by the ANGTS.

¹¹ Much of the testimony we heard supporting the State's position, both in the Washington technical conference and the Alaska hearings, cited the extensive overall impact of constructing the Trans-Alaskan (oil) Pipeline System (TAPS) to justify the \$20 million now sought by Alaska.

¹² Federal Power Commission Staff, *Alaska Natural Gas Transportation Systems Final Environmental Impact Statement, Vol. I, General Economic Analysis: Comparison of Systems*, April 1976.

¹³ Federal Power Commission, *Initial Decision on Proposed Alaska Natural Gas Transportation Systems*, February 1, 1977 [58 FPC 1127 at 1329 - 1331].

¹⁴ Statement of Position of the State of Alaska, April 7, 1975, *El Paso Alaska Co., et al.*, Docket No. CP75-96, *et al.*, at 2.

¹⁵ Brief of the State of Alaska on Socioeconomic Matters, November 23, 1976, *El Paso Alaska Co., et al.*, Docket No. CP75-96, *et al.*, at 9. Alaska has since abolished its personal income tax.

¹⁶ *Id.*, at 12.

¹⁷ Federal Power Commission, *Initial Decision on Proposed Alaska Natural Gas Transmission Systems*, February 1, 1977.

¹⁸ *Initial Decision* at 1339.

¹⁹ Federal Power Commission, *Recommendation to the President: Alaska Natural Gas Transportation Systems*, May 1, 1977 [58 FPC 810], at VI-27.

²⁰ Executive Office of the President, Energy Policy and Planning, *Decision and Report to Congress on the Alaska Natural Gas Transportation System*, September 1977, at 131-135.

²¹ During the TAPS construction period, the State did appropriate emergency funding to assist local communities in dealing with the emerging socioeconomic impact of construction. In 1973-1974, \$20

million in impact funds were appropriated. (Tr.9) According to Mim Dixon in *What Happened to Fairbanks* (Westview Press, 1978) (at 46), Fairbanks used its share of the funds to expand existing services to meet the increased demand and to establish the impact information center, a new recreation program, and an alcohol abuse program.

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²² Oliver S. Goldsmith and Margaret Mogford, *The Relationship Between the Alaska Natural Gas Pipeline and State and Local Government Expenditures* (Institute for Social and Economic Research, Anchorage, Alaska, 1982) at p. xxii and Table II.

²³ This is not to suggest that Natives do not want to work on the pipeline, only that the work schedules required of wage labor, important as those wages may be to them, often conflict with the equally important need to hunt in the required season. A good discussion of this conflict appears in Judge Litt's *Initial Decision* at 1335.

²⁴ Major J. C. Bowen of the Salvation Army reported that their facilities are already experiencing increased work loads from people entering the State to look for non-existent pipeline work. (Tr. 212)

²⁵ This contrasts somewhat with the findings of Dr. Dixon in her study of the impact of TAPS on Fairbanks. While acknowledging that counseling services experienced greater case loads, Dixon found that mental health indicators in general remained neutral during TAPS construction. This suggested that the rapid changes in the local community that brought on stress may have been balanced by the satisfaction from better jobs and higher income. Dixon, *What Happened to Fairbanks*, *supra*, at 219.

²⁶ Federal Power Commission Staff, *Final Environmental Impact Statement* (1976), Vol. I, at C87.

²⁷ At the Anchorage hearing, the Rural Alaska Community Action Plan showed a video tape of a 1975 segment of the television news program *60 Minutes* in which Mike Wallace unsuccessfully tried to make a telephone call.

²⁸ Tr. 190. A copy of the resolution is appended to the transcript.

²⁹ February 18, 1982 technical conference, tr. 186-192. In addition, several of the agency representatives appearing at the Anchorage hearings stressed their experiences with TAPS construction as the basis for their estimates. *See, e.g.*, testimony of Deputy Commissioner Londell (Department of Labor) and Deputy Commissioner McGinnis (Department of Health and Social Services).

³⁰ Alaska 1981 Socioeconomic Memorandum, Appendix, at 14; Tr. 43-59.

³¹ Alaska 1981 Socioeconomic Memorandum, Appendix, at 2.

³² *Id.* at 3.

³³ *Id.* at 7-8.

³⁴ *Id.* at 9-10.

³⁵ *Id.* at 2, Table A. The Department of Community and Regional Affairs is responsible for providing assistance to local governments and for representing the interests of these governments throughout the State government; it also has particular responsibility for assisting the communities in Alaska's unorganized areas. Deputy Commissioner Aks discussed the problems faced by those living in Alaska's unorganized region, the areas not incorporated into either boroughs or municipalities. Services in these areas are provided by the State. According to Mr. Aks, these areas are particularly vulnerable to localized pipeline impacts because they have no local government to manage public services. (Tr. 67-80)

³⁶ Alaska tempered its support with the following: "The comments and conclusions of this section should not be read, therefore, as implying an uncritical appreciation of economic growth and further development. Alaska is willing to accept the adverse impact that a gas pipeline would cause because it believes that the opportunities and beneficial impact of such a line significantly outweigh any adverse consequences." Brief of the State of Alaska on Socioeconomic Matters, November 23, 1976, *El Paso Alaska Co., et al.*, CP75-96, *et al.*, at 13.

³⁷ *Id.*

³⁸ *Id.* at 8.

³⁹ *Id.* at 13.

⁴⁰ Approximately 41.67 percent of these funds is to be used for schools and highways. (Alaska Stat. §43.05.210)

⁴¹ Commerce Clearing House, *State Tax Guide*, Volume II (1982).

⁴² A copy of that filing is appended to the transcript of the Anchorage hearing.

⁴³ Regarding the caveats in Alaskan Northwest's footnotes, we would observe that these figures, nevertheless, provide a good order-of-magnitude estimate of the potential tax revenues from the ANGTS. We therefore cite these figures only in the context of a comparison with the estimates of socioeconomic impact costs. We note that the magnitude of the tax revenue estimate in relation to the socioeconomic impact estimate is so great that the comparison would not be affected if Alaskan Northwest's tax revenue estimate were discounted to 1980 dollars.

⁴⁴ See February 18, 1982 technical conference, tr. 200-201.

⁴⁵ Letter to Commission Trial Staff from Robert Loeffler, Attorney for the State of Alaska, March 31, 1982; Milt Barker, Legislative Finance Division, *Net Economic Benefit to Alaska of Alaska Natural Gas Transportation System*, March 1982, at 4.

⁴⁶ Of the four alternative outcomes presented, three would confer a net benefit on the State. To generate the alternative outcomes, the author made "arbitrary estimate[s]" of inflation rates which he assumed would last eleven years. ". . . the high inflation assumptions serve as a pessimistic case to test the sensitivity of the model to *unanticipated* levels of inflation." (*Id.*, Table X, n.2 and p. 14) (Emphasis supplied) All estimates in the study were based on discounting back to 1982 dollars.

⁴⁷ Given the magnitude of this figure, it is not necessary to estimate lesser amounts that might be generated by other relevant legislation - *e.g.*, license and permit fees, and lease payments.

⁴⁸ In reporting favorably on the joint resolution (ultimately adopted) to approve the President's ANGTS waiver of law (S. J. Res. 115, Pub. L. No. 97-93), the House Energy and Commerce Committee concluded that the "economic benefits that would result from pipeline construction, access to natural gas, and encouragement of additional exploration for natural gas in Alaska would vastly outweigh . . . the

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socioeconomic and environmental costs the pipeline may exact." (H.R. No. 97-350, Part 2, 97th Cong., 1st Sess., at 10.)

⁴⁹ Alaska 1981 Socioeconomic Memorandum at 8-9; statement of Lt. Governor Miller, tr. 15-16.

⁵⁰ One need only compare the testimony of these organizations with that of the Fairbanks Chamber of

Commerce to appreciate the different experiences each anticipates.

⁵¹ Ms. Leslie Korvola of Fairbanks, for example, stated that ". . . when money is involved and it goes through our State Legislature, then there is a certain siphoning off in the sense that we are only one of many communities and not necessarily do we have the political clout to get the money to reimburse us for our losses." (Tr. 307) And as troublesome as this was to Fairbanks, she believed that the smaller rural communities would have their interests "looked out for even less." (Tr. 308) RurAL CAP/UTDC expressed similar concerns: "The unorganized borough is an area that feels the impacts of socioeconomic pressures and it is an area to which distribution of socioeconomic funds, if done by a state government, very often does not reach and we feel quite strongly that the socioeconomic costs not only are required to be paid by any applicant for a pipeline right-of-way lease, but they should be paid." (Tr. 141)

⁵² We have already noted elsewhere that during construction of TAPS the State Legislature chose to allocate special funds for impact assistance. More recently, the State passed legislation to distribute from the State's permanent fund the proceeds from oil and gas development to all eligible Alaskan citizens in the form of an annual cash dividend. In 1982, the State paid \$1,000 to each eligible citizen, totaling approximately \$400 million. (Alaska Stat., Title 43, Chapter 23, 1982 Amendments) We also note in passing that, at the hearing in Fairbanks, Mr. Davis of the Greater Fairbanks Chamber of Commerce pointed out that governmental revenues generated by the construction of TAPS resulted in a reduction in local personal property taxes and elimination of sales taxes, elimination of the State income tax, and "revenue sharing that has come back to local communities from the State for capital improvements." (Tr. 219)

⁵³ The primary issue before us at this time is the CCE, which is only an estimate of costs that may be incurred; approval of costs for inclusion in the rate base will occur at a later date in separate proceedings after those costs have been incurred. Nevertheless, as a practical matter, the Commission's resolution of the applicable issues of law and policy in the context of the CCE will significantly affect later resolution of comparable issues in the rate base proceedings. The standard for approval of costs for inclusion in the rate base is whether such costs have been prudently incurred. Thus, approval of particular costs for inclusion in the CCE would strongly influence the determination of the prudence of actually incurring such costs, at least to the extent of determining the prudence of incurring particular types and categories of costs.

⁵⁴ Pursuant to the Federal Power Act, Part I, [16 U.S.C. §792](#), *et seq.*

⁵⁵ *Virginia Electric Power Co.(VECPO), Initial Decision* Project No. 785, 57 FPC 32, 69-71 (1976), affirmed in Opinion No. 785, 57 FPC 24 (1977).

⁵⁶ Testimony of Charles Behlke, February 18, 1982 technical conference, tr. 188; Alaska Final; Reply at 7, n.17.

⁵⁷ 57 FPC at 69-71.

⁵⁸ Alaska has also cited other cases as precedent for its request. (Alaska 1981 Socioeconomic Memorandum at 8.)

In *Pacific Alaska LNG Company, et al., Initial Decision*, issued August 13, 1979, [Docket No. CP75-140](#), *et al.*, [8 FERC ¶63,032](#), the "cultural values" referred to by the State were those already required to be protected by applicable Federal statutes -- the National Historic Preservation Act of 1966, as amended, and the Archaeological and Historic Preservation Act of 1974. The applicant was also required to start an experimental bus program for its workers, which program could be discontinued if unsuccessful. In this regard, it is our understanding that Alaskan Northwest will provide transportation for its workers, and that these costs are already included in the CCE. (*See Pacific LNG*, Appendix, Condition 51, at 11-12 and Condition 57, at 13.)

The State also cites *Appalachian Power Company*, Project No. 2317, Opinion and Order of the Commission Granting a License for the Construction of the Blue Ridge Power Project, issued June 14,

1974 [51 FPC 1906]. Alaska notes that the Commission imposed a financial assistance condition for moving expenses, personal property losses, and increased mortgage interest rates. But *Appalachian* dealt with a hydroelectric project requiring the flooding of a vast area, and the compensation dealt with tangible losses.

Alaska also relies on a number of FERC regulations alleged to allow socioeconomic costs under the rubric of environmental costs. Close examination of the cited provisions of [18 C.F.R. Part 2](#) reveals that they deal with either general statements in National Environmental Policy Act procedures or with the natural environment, which is being addressed through the various environmental terms and conditions applied to this project through the President's *Decision* and the Department of the Interior right-of-way grant.

⁵⁹ *Calaveras County Water District*, Project No. 2409, Order Issuing License, February 8, 1982, [18 FERC ¶61,124](#).

⁶⁰ *Kings River Conservation District*, Project No. 2890, Order Issuing License, March 22, 1982, [18 FERC ¶61,264](#). As discussed in Chapter IV of this report, *infra*, both licenses also required assistance in repairing roads affected by the projects.

⁶¹ We also note Administrative Law Judge Birchman's *Initial Decision* in *Power Authority of the State of New York* (PASNY), [Project No. 2729-00](#), issued July 6, 1982, 20 FERC ¶63-001, at 65,069-65,071, involving a hydroelectric pumped storage project at Prattsville, New York. Judge Birchman approved agreements between PASNY, an agency of the State of New York, and local affected jurisdictions which provide for repairing of roads and bridges, the installation of a water supply system and

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"certain other public services within Prattsville . . . and necessary increases in the costs of local governmental services directly attributable to the in-migration of temporary workers that are not subject to reimbursement from any other source," including agreements providing for payments to impacted school districts reflecting costs attributable to transient workers' children in excess of Federal and State aid payments.

⁶² In response to our invitation for legal precedents, Alaskan Northwest in its Memorandum (at 7-8) cited a decision of the Nuclear Regulatory Commission (NRC) involving the Tennessee Valley Authority (TVA). *Partial Initial Decision, Application of Tennessee Valley Authority*, (Hartsville Nuclear Plant), Docket Nos. STN 50-518, *et al.*, April 1976, Nuclear Regulatory Commission Issuances. In that case, the NRC's Atomic Safety and Licensing Board approved an application by TVA to construct nuclear reactors near Hartsville, Tennessee. TVA had entered into agreements with local governments for reimbursing those governments for socioeconomic costs attributable to the project. The arrangements approved by the Board were similar to those adopted in *VEPCO* in that TVA agreed to reimburse the State and local governments for socioeconomic costs directly attributable to the project which exceeded additional revenues resulting from the project.

⁶³ *Initial Decision* at 1340.

⁶⁴ *Id.*

⁶⁵ Alaska 1981 Socioeconomic Memorandum at 5, citing [Order No. 31](#), *supra*, at 125.

⁶⁶ The Agreement Between the United States of America and Canada on Principles Applicable to a Northern Natural Gas Pipeline (Agreement on Principles) appears as Section 7 of President's *Decision and Report to the Congress on the Natural Gas Transportation System*. Under the decisional process set forth in ANGTA, the joint resolution of Congress approving the *Decision* (H.J. Res. 621, Pub. L. (No. 95-158) invests in both the *Decision* and the Agreement on Principles the force and effect of law. Paragraph 5(b)(ix)

of the Agreement assures that the Yukon Property Tax will constitute the sole exposure for U.S. gas consumers in terms of indirect socioeconomic costs or other special funds, but goes on to provide a possible exception, allowing for socioeconomic payments beyond those subsumed in the fixed Yukon Property Tax if "public authorities in the State of Alaska require creation of a special fund or funds, financed by contributions not fully reimbursable, in connection with construction of the Pipeline in Alaska."

⁶⁷ The U.S. Court of Appeals has construed the *Report* as having the legal status of "at least an authoritative legislative history." *Midwestern Gas Transmission Co. v. F.E.R.C.*, 589 F. 2d 603, 611, n.23 (D.C. Cir. 1978).

⁶⁸ In its 1981 Socioeconomic Memorandum (at 12-13), the State of Alaska presented an argument (presumably anticipating arguments to the contrary) that the socioeconomic impact payments it seeks "would not trigger the U.S.-Canadian Agreement on Principles." We do not reach this question because, for two reasons, we do not base our recommendations on the Agreement. First of all, interpretation of Paragraph 5(b)(ix) would be more appropriately pursued in the context of regulatory consultations or diplomatic negotiations with Canadian governmental authorities, and not in the context of the Alaska pipeline segment CCE proceeding. Conversely, and more fundamentally, we believe that the socioeconomic impact issues raised in this proceeding ought to be resolved on their merits, based on the record developed for that purpose, and without regard to the effect (if any) that any particular resolution of Alaskan Northwest's CCE might have with respect to other segments of the pipeline system or other ANGTS proceedings that might arise in the future.

⁶⁹ In its 1981 Socioeconomic Memorandum (at 6-7), the State cites several court decisions to the effect that "NEPA is not limited to concern with the physical environment," and contends that the Commission has a "duty" to "mitigate . . . injury to the social environment" as part of a broader duty to mitigate environmental harm generally. The basic thrust of the National Environmental Policy Act of 1969 (NEPA), [42 U.S.C. §4321](#), *et seq.*, is to require Federal agencies to fully consider the potential environmental impact and consequences of authorizing major projects before making decisions allowing such projects to proceed. The State is correct in its contention that NEPA requires Federal agencies to include socioeconomic impact in their consideration of potential environmental impact. Indeed, as discussed above, the Commission, the President and the Congress did, in fact, consider socioeconomic impact in reaching their respective recommendations and decisions on the ANGTS during the competitive selection process pursuant to ANGTA. The cases cited by Alaska (at 7, n.7) (and numerous other cases as well) require consideration of potential socioeconomic impact in determining whether to proceed with a project, but do not require mitigation of such impact, and our own research has not disclosed any such legal requirement in the court decisions construing NEPA. In any event, as the State is aware, pursuant to Section 10(c)(3) of ANGTA, [15 U.S.C. 719](#) h(c)(3), the NEPA process with respect to the ANGTS was conclusively terminated by Congressional ratification of the President's *Decision*. See *Earth Resources Co. v. F.E.R.C.*, 617 F.2d 775 (D.C. Cir. 1980). In summary, while the Commission certainly has ample authority to require socioeconomic mitigation measures as a matter of policy (and has, in fact, imposed environmental mitigation measures on the ANGTS as a matter of policy -- *see, e.g.*, the above-discussed order of February 26, 1980), such measures are not compelled as legal requirements of NEPA.

⁷⁰ *National Association for the Advancement of Colored People v. Federal Power Commission*, 425 U.S. 662, 669 (1975).

⁷¹ February 18, 1982 technical conference, tr. 111-117. The request encompassed, as well, Alaskan Northwest's obligation (if any) under Alaska law to make payments to the State for monitoring and for highway repair.

⁷² Alaska 1982 Socioeconomic Memorandum at 5-6.

⁷³ The applicable State law on these issues lends itself to a variety of plausible interpretations.

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⁷⁴ *E.g.*, ANGTA, the President's *Decision* as adopted by the Congress, the Natural Gas Act, and the Supremacy, Interstate Commerce, and Due Process clauses of the U.S. Constitution. The relationship of State and Federal regulation raises intricate (and often emotional) issues. *See, e.g., F.E.R.C. v. Public Service Commission of North Dakota*, 513 F. Supp. 653 (D.N.D. 1981).

⁷⁵ In this context, determinations now with respect to the CCE would not necessarily be dispositive of future determinations with respect to the rate base. In the future, a court might construe an Alaska statute as validly mandating such payments; the State of Alaska might amend its legislation; or Alaskan Northwest and other interested parties and decisional entities might conclude after further consideration that such payments are validly mandated for some other reason. In such event, those payments might well be properly includable in the rate base regardless of how they are dealt with in this proceeding.

⁷⁶ In its 1981 Socioeconomic Memorandum (at 14, n.15), Alaska raised the possibility that the Alaska legislature might enact new legislation. The Commission need not consider at this juncture the potential ramifications of that hypothetical possibility -- *e.g.*, the potential scope and mandate of such legislation, and its relationship to the Alaska and U.S. Constitutions. The CCE constitutes the best cost estimate that can be made, based on the record before the Commission at the time the CCE is considered and approved. *See* the Commission's order of September 21, 1982, in the above cited dockets, at 54 and 58 [20 FERC ¶61.321](#)).

⁷⁷ A somewhat analogous situation arose in connection with treatment of certain public relations expenses and charitable contributions. The Commission determined that those expenditures were not qualified for inclusion in Alaskan Northwest's rate base but, because they were allowable as operating costs, Alaskan Northwest was authorized to transfer those amounts to a deferred account, and to amortize these deferred amounts, as a charge to its cost-of-service, over a period not to exceed five years. *See* Order Approving in Part and Disallowing in Part Expenditures Claimed for Inclusion in Rate Base, issued in [Docket No. CP78-123-000](#) on June 1, 1982, [19 FERC ¶61.218](#). (Loans to ameliorate socioeconomic impact would, of course, differ from public relations expenses and charitable contributions in that the loans would be fully reimbursed.)

⁷⁸ For instance, use of advance tax payments might raise technical issues of tax consolidation.

⁷⁹ All dollar amounts discussed in this chapter are stated in 1980 dollars.

⁸⁰ Adger/Berman Report at V-4 to V-8. The potential adjustment involved a then-pending protest by Alaskan Northwest with respect to certain reimbursable funding requirements imposed by the Department of the Interior.

⁸¹ Alaskan Northwest Memorandum at 2. The quoted sentence also applied to the requested CCE component for socioeconomic costs.

⁸² *See* November 1981 Application, Vol. XXXIV at 12-1; Alaska 1981 Socioeconomic Memorandum, Appendix.

⁸³ Alaskan Northwest's Memorandum of April 28, 1982 on socioeconomic, highway and monitoring costs addresses only State of Alaska costs.

⁸⁴ Trial Staff Memorandum at 20-21.

⁸⁵ Alaskan Northwest Memorandum at 21; February 18, 1982 technical conference, tr. 229. Alaskan Northwest's request also encompasses socioeconomic and highway costs. If our recommendation with respect to socioeconomic costs is adopted, the question of substitution would be rendered moot. If our recommendations on monitoring and highway costs are adopted, substitution of highway costs could be treated in the same manner as the requested substitution of monitoring costs.

⁸⁶ Order on Rehearing, issued February 18, 1983, in [Docket Nos. CP80-435](#) and CP78-123, *et al.* [[22](#)

[FERC ¶61,175](#)], n.4.

⁸⁷ While this may lead to the inclusion of some actual costs, *i.e.*, monitoring costs incurred prior to setting the CCE, this is preferable to setting a CCE partially based on total guesswork. Compare the Commission's deferral of a CCE cost component for project management until after Alaskan Northwest has developed a more detailed management plan. *See* the Commission's September 21 order at 47-50.

⁸⁸ We assume that the specific arrangements will be set forth in a joint agreement pursuant to Section 7(a)(5)(A) of ANGTA, or in documents implementing such an agreement.

⁸⁹ Alaska 1980 Socioeconomic Memorandum, Appendix at 1-3. The SPCO will be responsible for enforcement of regulations of all appropriate State agencies. "Under a proposed Executive Order [now issued], each State agency affected by construction of the gas pipeline will designate a liaison officer and attach staff to the [SPCO]. The liaison officer will report to his or her commissioner or department head, but following issue of the right-of-way lease, enforcement of conditions on the lease will be carried out by the agency through the authority of the State Pipeline Coordinator." The \$20.2 million does not include the costs of the attached staffs of the pertinent agencies; these are described separately herein.

⁹⁰ The Commissioner can insert terms and conditions in the right-of-way lease agreement, *inter alia*, to protect State or private property interests, to prevent significant adverse environmental impact, to restore and revegetate, to protect the interests of local people who rely on the lease area for subsistence purposes (§38.35.120(d)), and "other reasonable provisions and conditions that [the Commissioner] determines the public interest requires." (§38.35.120(c))

⁹¹ Alaskan Northwest Memorandum at 9 (footnotes omitted).

⁹² Alaska 1982 Socioeconomic Memorandum at 4 (footnotes omitted) (emphasis in the original). Although not dispositive of the matter of reimbursement, Section 7(a)(5)(A) of ANGTA, cited by the State, does contemplate State monitoring activities:

"(5) . . . the Federal Inspector shall -- (A) establish a joint surveillance and monitoring agreement, approved by the President, with the State of Alaska

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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;"

Alaska Stat. §38.35.140(a) provides for an annual lease payment to the State that is separate from any monitoring reimbursements. This payment has been determined to be eight percent of the appraised fair market value of the land. *See* 11 Alaska Admin. Code §80.015(a).

⁹³ Alaska contends that "[T]he State also has authority to compel payment of the costs of the monitoring construction on non-state lands, although the monitoring costs in question pertain only to state lands. *See* Alaska Stat. 46.03.010 and Alaska Stat. 44.46.020(4)." (Alaska 1982 Socioeconomic Comments at n.***) Although the language of these provisions is quite broad, it is not clear whether they would provide independent authority to compel payment of off-lease monitoring or other costs not specifically authorized elsewhere.

⁹⁴ Alaska Attorney General, Opinion to Fran Ulmer, Director, Division of Policy and Planning, Office of the Governor, January 17, 1978, at 7, n.* (emphasis in the original).

⁹⁵ State of Alaska, Draft Socioeconomic Stipulations, Alaska Natural Gas Transportation System, March 13, 1981.

⁹⁶ If, under the contemplated joint surveillance and monitoring agreement, the State performs some of the Federal Inspector's reimbursable monitoring functions, a separate legal basis for reimbursement for those State monitoring activities on Federal land exists through the Mineral Leasing Act, 30 U.S.C. §185 (I). Under this approach, some of the State's monitoring actions on Federal lands will, in essence, be analogous to those of a contractor or Federal agency hired by the Federal Inspector to help perform the Federal Inspector's reimbursable monitoring functions. *See* 10 C.F.R. §1530.3.

⁹⁷ Transcript references in this chapter of our report (highway repair and maintenance) refer to the technical conference of February 18, 1982, at which highway costs were discussed.

⁹⁸ In a letter from Robert W. Ward, Commissioner, State of Alaska Department of Transportation and Public Facilities, to Edwin Kuhn, Director, Government and Environmental Affairs, Northwest Alaskan Pipeline Co., dated July 21, 1980, the State estimated the costs for highway impacts as \$184,488,000 (1980 dollars). The State then applied a 10 percent inflationary constant (with 1980 as the base year), and added additional maintenance cost for 1982 through 1985 (the then contemplated construction period). These additional costs were estimated to be \$118,934,000. The total cost estimated by the State is approximately \$303,422,000 in as-spent dollars.

⁹⁹ Staff Memorandum at 19. In a footnote on that page, Trial Staff asserts that "[o]nly the amount requested by Alaskan Northwest in its proposed CCE is proper for inclusion in this fund, notwithstanding any amount proposed by the State."

¹⁰⁰ *See* Tr. 45-53. As discussed below, Alaskan Northwest described the \$120 million as encompassing \$70 million for upgrading of roads, \$40 million for maintenance, and \$10 million for revision of structures. And, as noted previously, Alaskan Northwest's proposal is premised on requirements of hypothetical future-enacted non-discriminatory legislation as far as the \$120 million is concerned; the \$25 million is mandated by currently effective legislation.

¹⁰¹ Alaska Highway Memorandum at 3. The text of the Agreement is attached to the Memorandum. The State suggests that this payment by Alyeska is precedent for the instant proceeding, observing that in the ongoing hearings in the oil pipeline rate case no protesting party has challenged Alyeska's costs for the

haul road. This is not, however, dispositive of the issue. The TAPS rate base proceedings are still pending at the hearing stage, and the Commission has not yet had occasion to address that issue. Our recommendation in this report is in no way premised on what may or may not transpire in TAPS proceedings before the Commission, and should not be construed as implying any view on issues pending in those proceedings.

¹⁰² Federal Highway Administration, Report to Congress, Alaska Roads Study, Initial Report, September 1976, at 63, attached as an appendix to the Report to Congress, Alaska Roads Study, August 1978. The 1978 Report (at 2) contained the following "Final Conclusions":

"Final Conclusions

* * *

"The Congress, in passing the trans-Alaska Pipeline Authorization Act (PL 93-153), did not indicate a willingness or intent that the Federal Government assume any financial responsibility for the work or any related costs attributable to the work.

"The State of Alaska recognized in its comments on the environmental impact statement prior to construction of the pipeline, that highway damage would occur and increase costs of highway maintenance and construction but that ' . . . the benefits to be derived from the development in terms of long range revenues available to construct, reconstruct and maintain highways would far outweigh such temporary excesses.'

"Revenues received by the State of Alaska from development of the North Slope oil resources have increased the State's General Fund balance from \$460.8 million in 1975 to an estimated \$755.7 million in 1977.

"The State has made significant accomplishments in reducing the magnitude of the costs to repair the highways damaged by pipeline construction traffic with existing funds. The occurrence of the damage and the costs of repair were anticipated and acceptable to the State prior to pipeline construction considering the benefits to be received from completion of the pipeline. Expectations as expressed in the State's comments on the environmental impact statement with regards to costs versus benefits are being realized. The repair and restoration of Alaska highways damaged by pipeline construction traffic is not a Federal responsibility."

¹⁰³ A recurrent theme in the State's memoranda is that the ANGTS is a project of national

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importance, as determined by the President and the Congress in ANGTA and the President's *Decision* as well as international agreements with Canada, and that accordingly the citizens of Alaska should not be asked to bear a disproportionate share of alleviating the cost of its impacts. The Secretary of Transportation, in his 1976 Initial Report, discussed an analogous situation involving the Trans-Alaska Pipeline Authorization Act, Pub. L. No. 93-153:

"The Federal Government's role is one of national perspective. The position of the Congress that early completion of the pipeline was in the national interest and that Federal offices and agencies were authorized to waive procedural requirements may have affected the State's position in taking actions relative to the pipeline, but nothing in the legislation either directly or indirectly authorizes the State to suspend any State regulations or controls intended to protect State highways from damage." (Initial Report at 61-62)

* * *

"While the delivery of oil from the North Slope is indeed in the national interest it is also very much in the State interest not only from an improved energy posture but also a long range monetary benefit." (Initial Report at 66)

* * *

"Examination of the Trans-Alaska Pipeline Act of 1973 indicates that intent of Congress is that the Federal Government should not be held liable for damages associated with construction of the pipeline. Permits issued by the Department of the Interior included provisions to carry out this intent. However, these provisions may not be interpreted to imply responsibility on the part of the permittee for repair and reconstruction of deteriorating highways resulting from State authorized traffic loadings." (Initial Report at 72-73)

¹⁰⁴ Alaska Highway Memorandum at 4.

¹⁰⁵ Alaska Highway Memorandum, Appendix A.

¹⁰⁶ *Id.*

¹⁰⁷ November 1981 Amendment, Vol. XXXIV at 13-2. In effect, Alaskan Northwest's total estimate for maintaining the road system would be \$65 million, consisting of the \$25 million covered by existing permit and license fees and fuel taxes plus the \$40 million identified here.

¹⁰⁸ Alaskan Northwest Response at 1, 2 and 4.

¹⁰⁹ *Id.* at 1 and 4.

¹¹⁰ *Id.* at 1 and 3.

¹¹¹ Alaska Response at 4.

¹¹² At the February 18, 1982 technical conference, Mr. Heinrich Springer of the Alaska Department of Transportation and Public Facilities stressed damage caused by "normal" vehicles in excess numbers.

¹¹³ The main thrust of Alaskan Northwest's rationale is upgrading of highways before construction commences; the main thrust of the State's rationale is restoration of highways after project construction has been completed.

¹¹⁴ Staff Memorandum at 19.

¹¹⁵ Alaska Final Reply at 13. The State also contends that its calculations are only a projection which should be adjusted later to "the actual additional costs which can reasonably be attributed to ANGTS."

¹¹⁶ Trial Staff, in its Memorandum (at 13), points out that a number of the highways at issue are older than 20 years; thus, assuming a 20 year design life for purposes of calculating EAL's, increased road use attributable to the ANGTS, and remaining design life, these highways presumably will have no design life left in them even before the project has commenced construction. It is our understanding of the State's EAL methodology, however, that it is not intended to portray the actual condition of the highways either at the outset or at the conclusion of the project but rather, is intended to portray the percentage of increased use attributable to ANGTS activities. On this basis, and used for this purpose, the State's methodology appears to be reasonable.

The actual condition of the highways before and after ANGTS construction is very difficult to ascertain. Thus, we share Trial Staff's difficulty in attempting to quantify the damage attributable to ANGTS and the cost of its repair. Although many of the highways are more than 20 years old, the 20 year design life standard is an elusive concept. As explained by Mr. Behlke at the February 18, 1982

technical conference (tr. 157-158A), Alaska has a small population spread over a vast geographical territory. Most road construction consists not of building new roads, but rather, of continually upgrading the quality of a comparatively small number of extant roads that were originally built to rather primitive standards.

¹¹⁷ See Alaskan Northwest Memorandum at 11.

¹¹⁸ Alaska Highway Memorandum at 6-7. The State also cites the Agreement on Principles between the U.S. and Canada as additional authority for imposition of highway costs, contending that inclusion of the Agreement in the President's *Decision* (as Chapter VII thereof) constitutes acknowledgement by the President that highway damage costs will arise and should be borne by the project. The Agreement, however, confers no authority on the State of Alaska. Rather, the Agreement defines how the respective governments may treat certain costs pursuant to accepted regulatory practices. Thus, Paragraph 11 of the Agreement states that "the direct charges imposed by public authorities requiring approval by the appropriate regulatory authority for inclusion in the cost of service will be subject to all of the tests required by the appropriate legislation and will include only (i) those charges that are considered just and reasonable on the basis of accepted regulatory practice, and (ii) those charges of a nature that would normally be paid by a natural gas pipeline in Canada." Annex IV of the Agreement lists examples of such charges, including: "1. Crossing damages (roads, railroad crossings, etc.; this is usually covered in the crossing permit). 2. Road damages caused by exceeding design load limits. 3. Required bridge reinforcements caused by exceeding design load limits. . . . In the case of these items, and all other road related charges by public authorities, total

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charges in the Yukon Territory shall not exceed Canadian \$30 million." (President's *Decision* at 62-63 and 80)

¹¹⁹ *Calaveras County Water District*, Project No. 2409, Order Issuing License, February 8, 1982, [18 FERC ¶61,124](#) at 61,235 and 61,241.

¹²⁰ *Kings River Conservation District*, Project No. 2890, Order Issuing License, March 22, 1982, [18 FERC ¶61,264](#) at 61,553-61,554.

¹²¹ In addition, validly assessed taxes paid during construction are normally included as a cost of a project. To this end, as noted above, the CCE components approved by the Commission in its order of September 21, 1982 already include \$25 million to cover the estimated costs of fuel taxes and license and permit fees.

¹²² The Milt Barker study (at 23) estimated the present value of Alaska's royalty share of the gas (in 1982 discounted dollars) as ranging from \$1.5 billion to \$2.2 billion.

¹²³ See, e.g., the Report of the House Committee on Energy and Natural Resources, H.R. No. 97-350, Part 2, 97th Cong., 1st Sess., at 10.

¹²⁴ Although the record is by no means clear, one impression it generates is that the road degradation attributable to construction of TAPS might never have been fully repaired, and that Alaskan Northwest is being asked to repair someone else's damage in order to facilitate construction of its own project. For instance, the Secretary of Transportation's 1976 Initial Report (at 21) noted that:

"C. *Physical Conditions*

The Alaska highway network is still relatively undeveloped. The State has only a skeleton of primary highways with a minimum number of connecting secondary routes. Traffic volumes are quite low compared to the "Lower 48" States.

"Alaska received its basic highway system from the Federal Government with the advent of statehood. Many miles of the existing system are, with some minor improvements, essentially those built by the Alaska Road Commission and the Bureau of Public Roads. The earlier Federal policy and subsequently State Policy during the early years of statehood was to build as many miles of paved minimum standard highways as financial resources would permit. Considering the small population, limited financial resources, and light highway traffic, this policy was realistic and the roads so constructed have performed adequately prior to the increase in traffic caused by pipeline construction.

"The Alaska highway system was, therefore, not designed and built to withstand the heavy pipeline related loads which have been imposed on it in recent years. Many miles of older highway, such as the Alaska Highway near the Canadian border, are now near the limit of their expected service lives. While they apparently were performing adequately under the light traffic volumes and loads that preceded the pipeline construction period, they are now not capable of supporting the increased volumes and weights which have been imposed and are showing varying degrees of distress."

The Secretary's 1978 Report (at 4), however, noted that "[t]hrough the State's construction and maintenance efforts, the cost of the needed repairs to the damaged highways have been affectively [sic] reduced." Moreover, the State may well have completed repair of TAPS-related damage subsequent to 1978.

Be that as it may, gas consumers are not being asked to share the cost of constructing the oil line; gas consumers, in fact, benefit from the existence of the Dalton Highway, which the TAPS owners had to construct from scratch at their own very considerable expense. In any event, to the extent that Alaskan Northwest needs upgraded roads in order to safely and efficiently construct its own pipeline, inquiry into the historical reasons for the presently inadequate condition of those roads is irrelevant. Alaskan Northwest must grapple with the terrain as it finds it at the outset of the project. In that sense, upgrading of roads (particularly the Dalton Highway) by Alaskan Northwest as an internalized cost of the project is analogous to construction of the Dalton Highway by Alyeska. Surveying the same terrain, Alyeska saw the need for a highway and build it; Alaskan Northwest sees a highway in need of upgrading and will have to upgrade it.

¹²⁵ See tr. 134. Alyeska maintained the haul road during the construction of TAPS, but the haul road was not a public highway at the time, becoming one only after ownership had been transferred to the State. As discussed above, however, Alyeska did agree to provide certain other maintenance services and supplies in settlement of the State's claims. See, e.g., Alaska Final Reply at 8-9.

¹²⁶ Alaskan Northwest advises that it "expects to use Alaskan highways as workpads in areas where physical limitations present no other alternatives, such as [Atigun Pass] and other short segments where the pipeline is immediately adjacent to the haul road." (Alaskan Northwest Response at 5; see also tr. 160.) In this limited respect, we find persuasive the State's argument that Alaskan Northwest will be making discriminatory use of the highways.

¹²⁷ Federal Highway Administration Study at 3 and 18.

¹²⁸ *Id.* at 20.

¹²⁹ Alaskan Northwest Response at 1 and 3.

¹³⁰ In this regard, we note that Section 150 of the Act (23 U.S.C. §157) requires that at least 85 percent of the estimated tax payments attributable to the highway users in a State be apportioned to that State.

¹³¹ For instance, at the technical conferences Alaskan Northwest expressed the opinion that it would be more economical for the State to maintain sections of the haul road than for Alaskan Northwest to do it. (Tr. 179-180)

¹³² For instance, holders of permits for overweight vehicles are liable for any damages to private or public property, and may be required to post a bond as a condition to the issuance of the permit pursuant to the authority granted the Commissioner of Public Safety. *See* 13 Alaska Admin. Code §20.200(f); Alaska Stat. §28.05.011.

¹³³ Along these lines, we note in passing that the Secretary of Transportation's 1976 Initial Report (at iii-iv and 36-37) estimated that it would cost an additional \$446 million (presumably in 1976 dollars)

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to upgrade the TAPS-impacted highways it studied (which did not include the Dalton Highway) to the structural and geometric (width) standards adopted for Federal-aid highways by the American Association of State Highway and Transportation Officials. It would, of course, be intolerable for gas consumers in the lower-48 States to be asked to bear the cost of upgrading Alaska's highway system beyond the minimum work necessary to enable Alaskan Northwest to safely and efficiently construct the pipeline; Alaskan Northwest could not prudently incur such costs, and they would not be includable in the rate base. Thus, identification of the precise nature and extent of highway upgrading necessary for the pipeline project would be an essential element in any agreement between the State and Alaskan Northwest.

Nevertheless, the fact that some roads may be improved over the course of construction does not imply that the States would be deriving undue benefits from the project. Degraded roads are hazardous to everyone, including project vehicles as well as Alaskan drivers generally. Improvements necessary for the project logically extend to other highway users.

¹³⁴ *See* Order Adopting Conditions Implementing Section 17 of the Alaskan Natural Gas Transportation Act, issued May 8, 1980 in [Docket No. CP78-123](#), *et al.* (including Erratum Notice issued May 21, 1980), [11 FERC ¶61,149](#). The conditions are also printed at 45 *Fed. Reg.* 31,095.

¹³⁵ Staff Memorandum at 21-24.

¹³⁶ *See* February 18, 1982 technical conference, tr. 247-298, as well as the transcripts of the hearings in Anchorage and Fairbanks.

¹³⁷ The Alaska Natural Gas Transportation Act (ANGTA), [15 U.S.C. §719](#), *et seq.*, authorized the construction and operation of the ANGTS.

¹³⁸ The conditional certificates were issued by an order of December 16, 1977 [[1 FERC ¶61,248](#)], following Congressional approval of the President's *Decision*.

¹³⁹ The memorandum was read into the record at the February 18, 1982 technical conference, tr. 247-251.

¹⁴⁰ November 1981 Amendment, Vol. XXXVI at 3-13 to 3-14.

¹⁴¹ February 18, 1982 technical conference, tr. 270-271.

¹⁴² *Id.*, tr. 288-289.

¹⁴³ Anchorage hearing, tr. 133.

¹⁴⁴ Anchorage hearing, tr. 113.

¹⁴⁵ The 1980 census results relevant to the employment issue still have not been released.

