

COMM-OPINION-ORDER, 1 FERC ¶61,248, **Alcan Pipeline Company, Docket No. CP78-123, Northern Border Pipeline Company, Docket No. CP78-124, Pacific Gas Transmission Company, Docket No. CP78-125**, (Dec. 16, 1977)

Alcan Pipeline Company, Docket No. CP78-123, Northern Border Pipeline Company, Docket No. CP78-124, Pacific Gas Transmission Company, Docket No. CP78-125

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**Alcan Pipeline Company, Docket No. CP78-123
Northern Border Pipeline Company, Docket No. CP78-124
Pacific Gas Transmission Company, Docket No. CP78-125**

Order Vacating Prior Proceedings And Issuing Conditional Certificates Of Public Convenience And Necessity

(Issued December 16, 1977)

Before Commissioners: Charles B. Curtis, Chairman, Don S. Smith, Georgiana Sheldon, Matthew Holden, Jr. and George R. Hall.

On October 1, 1977, pursuant to the provisions of the Department of Energy Organization Act (DOE Act), Public Law 95-91, 91 Stat 565 (August 4, 1977) and Executive Order No. 12009, 42 Fed. Reg. 46267 (September 15, 1977), the Federal Power Commission ceased to exist and its functions and regulatory responsibilities were transferred to the Secretary of Energy and the Federal Energy Regulatory Commission (FERC) which, as an independent commission

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within the Department of Energy, was activated on October 1, 1977. ¹

The "savings provisions" of Section 705(b) of the DOE Act provide that proceedings pending before the FPC on the date the DOE Act takes effect shall not be affected and that orders shall be issued in such proceedings as if the DOE Act had not been enacted. All such proceedings shall be continued and further actions shall be taken by the appropriate component of DOE now responsible for the function under the DOE Act and regulations promulgated thereunder. The functions which are the subject of this proceeding were specifically transferred to the FERC by Section 402(a) (1) or 402(a) (2) of the DOE Act.

The joint regulation adopted on October 1, 1977 by the Secretary and the FERC entitled "Transfer of Proceedings to the Secretary of Energy and the FERC," 10 CFR 1000.1, provided that this proceeding would be continued before the FERC. The FERC takes action in this proceeding in accordance with the above mentioned authorities.

Pursuant to Section 5(a) (2) of the Alaska Natural Gas Transportation Act of 1976 (ANGTA), 15 U.S.C. §719 c(a) (2), the Commission hereby vacates the previously suspended proceedings in which one of several transportation systems for Alaskan gas was to be selected ² and issues a *conditional* certificate of public convenience and necessity for the Alcan Pipeline Project. ³

By enacting ANGTA, the Congress stated its dual purpose of 1) providing "the means for making a sound decision as to the selection of a transportation system for delivery of Alaska natural gas * * *" and 2) " * * * if such a system is approved under this chapter, to expedite its construction and initial operation by * * * permitting the limitation of administrative procedures: * * *" Section 3 of ANGTA, 15 U.S.C. §719 a. This Congressional intent to expedite the administrative process was likewise manifested in Section 9(a) of

ANGTA, [15 U.S.C. §719](#) g(a). Therein, all Federal officers and agencies having certificate, right-of-way, permit or other authority relating to construction and initial operation of this transportation system are directed "to the fullest extent permitted by the provisions of law administered by such officer or agency * * * [to] issue or grant such certificates, permits, rights-of-way, leases, and other authorizations at the *earliest practicable date*." (Emphasis added). Likewise, pursuant to Section 9(b) of ANGTA, [15 U.S.C. §719](#) g(b), the Congress directed that all agency actions taken to consider requests for such certificates and other authorizations "be expedited and any such application or request shall take precedence over any similar applications or requests of the Federal officer or agency."

The Commission finds that, in order to comply with the mandate of Section 5(a) (2) of ANGTA, *supra*, and to serve the requirement to both expedite and give precedence required in Sections 9(a) and (b) of ANGTA, *supra*, it is proper to issue these conditional certificates without providing an opportunity for notice, intervention or comment. We shall more fully explain this decision below.

BACKGROUND

Certificate proceedings before the Commission concerning the transportation of gas from the Prudhoe Bay field to markets in the lower 48 states commenced on March 21, 1974, with the related certificate applications of the Arctic Gas group. This proceeding became competitive, within the meaning of the *Ashbacker* Doctrine,⁴ with the filing by El Paso Alaska Company on September 24, 1974, of its application for certification of an alternate transportation system (combination pipeline and cryogenic tanker). During the hearings which followed, the proponents of the Alcan Project on July 9, 1976, filed for certification of yet a third alternate transportation system.

During the adjudication of these competing certificate applications, which entailed over 250 days of hearing, the Congress enacted ANGTA, *supra*, which became law on October 22, 1976. Thereafter, on February 1, 1977, Presiding Administrative Law Judge Nahum Litt issued his initial decision in this proceeding. He selected the Arctic Gas proposal, although he found that either the El Paso or Alcan could be certificated. Pursuant to [Order No. 558](#),⁵ the Commission suspended this proceeding as of the issuance of that initial decision. Suspension was required by Section 5(a) (1) of ANGTA, [15 U.S.C. §719](#) c(a) (1).

Following briefs, the filing of supplemental information, interrogatories and oral argument, the Commission on May 1, 1977, 58 FPC 810, issued its *Recommendations to the President* relative to the three competing Alaska gas transportation systems, as required by Section 5(b) (1) of ANGTA, [15 U.S.C. §719](#) c(b) (1). Thereafter, by July 1, 1977, various Federal and State officers and agencies reported to the President their comments on the Commission's *Recommendation*, *supra*, as provided for in Section 6 of ANGTA, [15 U.S.C. §719](#) d.

On September 22, 1977, the President, pursuant to Section 7 of ANGTA, [15 U.S.C. §719](#) e, transmitted to the Congress his *Decision and Report to Congress on the Alaska Natural Gas Transportation System*, in which he *inter alia*, selected the Alcan Pipeline Project to be the Alaska gas transportation system.⁶ Thereafter, on October 12, 1977, the Commission, pursuant to Section 8(f) of ANGTA, [15 U.S.C. §719](#) f(f), submitted to the Congress its *Comments on the President's Decision and Report* in which the Commission concurred in the selection of the Alcan Pipeline Project, as well as the terms and conditions set forth by the President.

The President's *Decision* was approved by Joint Resolution of the Congress on November 2, 1977,⁷ in accordance with Section 8(a) of ANGTA, 15U.S.C.

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§719f(a). The President then signed the Joint Resolution into law on November 8, 1977. Accordingly, the selection process provided in ANGTA has been completed, and the second phase of ANGTA is now beginning, that being for the several Federal officers and agencies to expeditiously consider applications for the necessary and appropriate certificates, rights-of-way, permits, leases and other authorizations related to

the construction and initial operation of the Alcan Pipeline Project.

Effective October 1, 1977, the Secretary of Energy has delegated to the Commission the functions of the FPC concerning the Alaska gas transportation system which had not already been transferred to the Commission by Section 402(a) of the DOE Act.

For the Commission, this second phase encompasses, among other things and as already mentioned, *supra*, vacating the previously suspended proceedings and also issuing a certificate of public convenience and necessity for the Alcan Pipeline Project, pursuant to Section 5(a) (2) of ANGTA. In this regard Alcan Pipeline Company (Alcan), Northern Border Pipeline Company (Northern Border) and Pacific Gas Transmission Company (PGT), the Alcan Pipeline Project companies, *supra*, note 3, filed with the Commission on November 16, 1977, a motion to both vacate the prior proceedings and also to issue to them conditional certificates of public convenience and necessity.⁸

DISCUSSION

Presently before the Commission is the November 16, 1977, motion to vacate proceedings and issue conditional certificates mentioned above. However, because the ANGTA selection procedures have been successfully completed, *supra*, the Commission is required by Section 5(a) (2) of ANGTA, as noted above, to perform such actions even absent any petition or motion. Therefore, we hereby vacate the prior proceedings, *supra*, note 2, and issue conditional certificates to Alcan, Northern Border and PGT.

The vacation of the prior proceedings and the issuance of conditional certificates are ministerial actions which the Commission must perform without any exercise of administrative judgment or discretion. Accordingly, the Commission has decided first that the November 16, 1977, motion need not be officially noticed in the Federal Register as would otherwise be the case under Section 1.19 of our Rules of Practice and Procedure, second that it is premature for the Commission to act upon any petitions to intervene as would otherwise be the case under Section 1.8 of our Rules of Practice and Procedure, and third that comments on that motion are inappropriate. These procedural steps are not presently relevant because, on the one hand the Commission is issuing an order which has been mandated by Congress, and on the other hand the Alcan Pipeline Project is at too incipient a stage to warrant Commission acceptance of applications for permanent certificates of public convenience and necessity under Section 157 of the Commission's Regulations under the Natural Gas Act. The size and complexity of this entire Alaska gas pipeline undertaking requires numerous preliminary actions on the part of the Alcan participants, as well as Federal and State agencies, before the project participants could even prepare applications for permanent certificates which this Commission would entertain and consider.

By issuing these conditional certificates, we are doing nothing more than is required by Section 5(a) (2) of ANGTA, *supra*. We view this action as a step which initiates the detailed process of final certification. While it is required by statute as one of many components in the process of expediting construction and initial operation of the Alcan Pipeline Project, neither ANGTA nor the President's *Decision* eliminates the Commission review of properly constituted applications required under Section 7(c) of the Natural Gas Act, [15 U.S.C. §717 f\(c\)](#).⁹ In this respect, we note that, while Section 7(a) (4) (D) of ANGTA, 15 U.S.C. *Decision* to identify provisions of law which require waiver in order to allow expedition, the President did not identify Section 7 of the Natural Gas Act for such waiver.

Following issuance of these conditional certificates but before final certification and construction of the Alcan Pipeline project, numerous questions must be raised and answered by the Commission. At the same time the Commission will have to expedite the certificate process pursuant to the mandate of Sections 9(a) and (b) of ANGTA. The Commission expresses its intention to initiate its participation in this pre-permanent certification phase by appointing an Alaskan Delegate¹⁰ to act on behalf of the Commission in order to expeditiously and yet comprehensively gather the necessary information which the Commission will require before it can intelligently analyze and rule upon the future applications for permanent certification. This Delegate shall also be the Department of Energy's representative in liaison with the other Federal agencies to develop a coordinated Federal government interaction with development of the project,

including the appointment of the Federal Inspector.¹¹ In performing these functions, this Delegate shall have the authority to meet with all relevant entities and groups. In this regard, all communications with the Commission concerning the Alcan Project should be directed through our Delegate, who will maintain a public file of all communications where appropriate. In the course of gathering information and receiving applications on various aspects of this project, the Commission may conclude that adjudicatory hearings are required for specific issues. In those instances, the Delegate will limit

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his contact with any party litigating the specific issues being heard.¹²

The Commission recognizes that the President's *Decision* contains a number of terms and conditions which are to be incorporated in all Federal government authorizations, including the conditional certificate granted herein. Six general areas of terms and conditions were presented, including construction costs and schedule, safety and design, environment, finance, antitrust and certification of facilities. These terms and conditions were developed in the course of an interagency analysis process which led up to the President's *Decision*. Some of these terms and conditions will be within the exclusive domain of a particular agency, others will relate simultaneously to the jurisdiction of several agencies and still others may involve the Federal government in areas where formal jurisdiction may not have been exercised prior to the President's *Decision*.¹³

To clarify any jurisdictional overlap and to render more efficient the Federal involvement in the Alcan Pipeline Project, the President stated his intention to create an Office of the Federal Inspector and to initiate a * * * "limited executive reorganization plan to transfer to the Federal Inspector field-level supervisory authority over enforcement of terms and conditions from those Federal agencies having statutory responsibilities over various aspects of an Alaska natural gas transportation system." *Decision, supra*, pp. 1164-1165. The Commission in its Comments, p. 65, endorsed this concept and the goal of making Federal involvement in the project more efficient.

While we do not at this time make an extensive review of all of the President's terms and conditions,¹⁴ a brief overview indicates that, at a minimum, the Commission shall have either exclusive or coextensive jurisdiction over the President's terms and conditions concerning construction costs and schedule, finance, environment and certification of facilities. We note also that some of the terms and conditions which will be attached to the Commission's conditional certificate in accordance with the President's *Decision* require submissions to the Federal Inspector prior to the time when the Federal Inspector has been appointed and his/her office fully authorized.

The Commission is concerned that full jurisdiction to enforce all of the President's terms and conditions be available immediately, in order to expedite planning for the project and granting of the necessary approvals. The Commission intends to use its conditional certificate to achieve that purpose. It is expected that the Commission and its Delegate will seek the advice and assistance of other agencies in performing any functions intended by the President for the Federal Inspector, and that the Commission will transfer the appropriate functions to the Federal Inspector in the course of developing and implementing the limited executive reorganization plan contemplated by the President's *Decision*.

The Commission in its *Comments* on the President's *Decision* listed a number of matters which would require substantial inquiry. These include gas reserves and deliverability, gas gathering, processing and conditioning (allocation of costs and liquefiable hydrocarbons), extraneous source water injection, wellhead price (depending upon Congressional action on the National Energy Plan), gas purchase contracts, financial plan (including consideration of a variable rate of return provision and possible debt guarantees by the State of Alaska and the Prudhoe Bay field producers), shippers' tariffs (including matters set forth in the "Agreement on Principles Applicable to a Northern Natural Gas Pipeline"), pipe selection (choice of diameter and pressure), and size and volume of the Eastern and Western Legs. The Commission's Delegate will supervise and inquire into all of these matters and will advise the Commission regarding the need for the initiation of formal proceedings for permanent certification.

The Alcan group's proposed draft of a conditional certificate order would delineate certain conditions which would have to be met before final certification. These include approval of service agreements executed between the applicants and the shippers, approval of any changes in system design, filing of final capital cost estimates, approval of tariffs, and approval of gas purchase contracts. In each case the draft order speaks in terms of filing with the Commission "as soon as practicable" and also having the applicants make quarterly progress reports to the Commission as to their progress in meeting these conditions. While we adopt the quarterly progress reporting procedure, we find that greater order should be given to the applicant's filings with the Commission to satisfy the various conditions. Instead of such filings being made "as soon as practicable," we shall rely upon our Delegate to report to us when the level of the applicants' underlying preparation has reached a stage at which the consideration of applications for permanent certificates would be productive. It may transpire that a Commission ruling on particular components of the overall applications is necessary before other matters can be finalized to the point of filing with the Commission. We anticipate, however, that the aforementioned reporting from our Delegate will apprise us of any such eventuality.

Finally, the proposed draft order also provides for the designation of portions of the record in *El Paso Alaska Company, et al.*, to be incorporated into any future proceedings related to the Alcan Pipeline Project. Such incorporation would require no further proof or service, except that it would be subject to objections as to relevance and materiality. Although we endorse this suggestion, it is presently premature. When the applicants have filed for permanent certificates and in other instances when

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on-the-record hearings are appropriate, incorporation of portions of the record from the prior proceedings will be appropriate and should be utilized. Also, the applicants may avail themselves of this time-saving procedure in the preparation of their certificate applications.

The Commission further finds:

(1) Pursuant to Section 5(a) (2) of ANGTA, the Commission must now vacate the prior suspended proceedings and issue conditional certificates of public convenience and necessity to persons designated in the President's September 22, 1977, *Decision* to construct and operate the Alaska gas transportation system.

(2) It is in the public interest and consistent with ANGTA for the Commission to appoint an official Delegate who will function as the Commission's agent during this phase of the proceeding, as more fully explained in the body of this order.

The Commission orders:

(A) The prior suspended proceedings in *El Paso Alaska Company, et al.*, Docket No. CP75-96, *et al.*, and *Order Providing for Suspension of Proceedings*, [Docket No. RM77-6](#), are hereby vacated.

(B) Conditional certificates of public convenience and necessity are hereby issued according to Section 5(a) (2) of ANGTA to those persons designated in the President's *Decision*, and under the terms and conditions established therein and to be found necessary pursuant to Sections 7(c) and (e) of the Natural Gas Act, to construct and operate the Alaska gas transportation system, including Alcan, Northern Border and PGT.

(C) An official Alaskan Delegate is hereby appointed and authorized to perform the functions specified in the body of this order. The Delegate shall be named in a subsequent administrative order, *infra* and shall be the Director of the Alaska Gas Project Office within the Commission.

Administrative Order No. 1

Designation Of Director Of Alaska Gas Project Office

(Issued December 16, 1977)

Pursuant to the mandate of the Alaska Natural Gas Transportation Act of 1976, [15 U.S.C. §719](#), and the President's "Decision and Report to Congress on the Alaska Natural Gas Transportation System" as enacted into law, H.J. Res. 621, Pub. L. No. 95-108, 95th Cong., 1st Sess. (November 2, 1977), and under a delegation of authority from the Secretary of Energy, the Federal Energy Regulatory Commission (FERC), by order dated December 16, 1977 in *Alcan Pipeline Company, et al.*, [Docket No. CP78-123](#), et al., supra, has established an Alaska Gas Project Office, to be headed by a Director. Pursuant to the authority invested in the Chairman of the Commission by Section 401(c) (2) of the Department of Energy Organization Act, Pub. L. No. 95-91, 95th Cong., 1st Sess. (August 4, 1977), for the selection and appointment of personnel, John B. Adger, Jr. is hereby designated as the Director of the Alaska Gas Project Office.

In its order of December 16, 1977, the Commission set out the duties and responsibilities of the Director of the Alaska Gas Project Office:

"to act on behalf of the Commission in order to expeditiously and yet comprehensively gather the necessary information of which the Commission must be cognizant before it can intelligently analyze and rule upon the future applications for permanent certification. The Director shall also be the Department of Energy's representative in liaison with the other Federal agencies to develop a coordinated project, including the appointment of the Federal Inspector. In performing these functions, the Director shall have the authority to meet with all relevant entities and groups. In this regard, all communications with the Commission concerning the Alcan Project should be directed through the Director, who will maintain a public file of all communications where appropriate. "

Other duties and responsibilities of the Director will be the subject of subsequent administrative orders as may be necessary.

-- Footnotes --

¹ The "Commission" when used in the context of an action taken prior to October 1, 1977, refers to the FPC: when used otherwise, the reference is to the FERC.

² *El Paso Alaska Company, et al.*, Docket No. CP75-96, et al.; and *Order Providing for Suspension of Proceedings*, [Docket No. RM77-6](#).

³ Alcan Pipeline Project refers to the three U.S. components of the overall U.S.-Canadian pipeline project to transport gas from both the Prudhoe Bay field in Alaska and the Mackenzie Delta field in Canada. These three components are to be constructed by Alcan Pipeline Company (pipeline through Alaska), Northern Border Pipeline Company (pipeline from Saskatchewan-Montana border to Dwight, Illinois), and Pacific Gas Transmission (pipeline from British Columbia-Idaho border into California, referred to as the Western leg"). In their November 16, 1977, motion, the Alcan group states that the portion of the "Western Leg" within California is subject to the jurisdiction of the California Public Utilities Commission, and Pacific Gas and Electric Company (PG&E), which is designated by the President (*Decision*, mimeo p. 5) to construct that portion of the "Western Leg," does not join in the motion for a conditional certificate. The Commission is not prepared at this preliminary juncture to agree with the Alcan group that the portion of the "Western Leg" within California is covered by the "Hinshaw Exemption," Section 1(c) of the Natural Gas Act, [15 U.S.C. §717](#) (c). Therefore, while the instant order is styled to include only Alcan, Northern Border and PGT, subsequent events may necessitate PG&E filing with the Commission an application for a certificate of public convenience and necessity.

⁴ *Ashbacker Radio Company v. F.C.C.*, 326 U.S. 327 (1945).

⁵ [Order No. 558](#), Docket No. CP75-96, *et al.*, and RM77-6, issued December 14, 1976, 56 FPC 3568.

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⁶ The Arctic Gas Project had been eliminated for all intents and purposes when the National Energy Board of Canada selected the Alcan Project over the Arctic Gas Project to transport Mackenzie Delta gas from the Northwest Territories to the provinces. *See, Reasons for Decision: Northern Pipelines*, June 1977.

⁷ H.J. Res. 621, Pub. L. No. 95-108, 95th Cong. 1st Sess.

⁸ They attached to this motion a proposed draft order vacating the proceedings and issuing the conditional certificates. The Commission shall consider statements made in this draft order as recommendations made by these three petitioners.

⁹ Pursuant to ANGTA, the threshold selection decision made by the President, together with the terms and conditions and other determinations made in the President's *Decision*, acts to circumscribe the Commission's future exercise of its Section 7 authority as applied to the Alcan Pipeline Project.

¹⁰ Pursuant to Section 5(b) (2) of ANGTA, [15 U.S.C. §719 c\(b\) \(2\)](#), the Commission in [Order No. 558-A, Docket No. RM77-6](#), issued December 16, 1976, 56 FPC 3677, provided for the appointment of a delegate to receive "data, views and arguments." While that Commission delegate may have performed some functions similar to those to be performed by the current delegate, the different statutory bases for the two positions will result in some functional and legal differences. The delegate will be the Director of the Alaska Gas Project Office, which the Commission is establishing to facilitate the certification process.

¹¹ Delegation Order No. 0204-1, effective October 1, 1977, delegated to the FERC authority for all of the functions with regard to this project which were assigned to the Federal Power Commission prior to passage of the DOE Act, plus other actions. That Delegation Order also authorized further delegations.

¹² *See*, Section 1.4(d) of the Commission's Rules of Practice and Procedure.

¹³ The construction costs and schedule terms and conditions are particular examples of where jurisdiction may not have been previously exercised by a particular agency or group of agencies.

¹⁴ Of course, The Commission under the mandate of Section 7 of the Natural Gas Act has the authority to impose additional terms and conditions.