

COMM-OPINION-ORDER, 3 FERC ¶61,290, **Alaskan Northwest Natural Gas Transportation Company (formerly Alcan Pipeline Company and Northwest Alaskan Pipeline Company), Docket No. CP78-123**, (June 30, 1978)

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Alaskan Northwest Natural Gas Transportation Company (formerly Alcan Pipeline Company and Northwest Alaskan Pipeline Company), Docket No. CP78-123

Order Transferring Conditional Certificate Of Public Convenience And Necessity From Alcan Pipeline Company To Alaskan Northwest Natural Gas Transportation Company, Reviewing Relevant Portions Of Underlying Partnership Agreement And Granting Intervention

(Issued June 30, 1978)

Before Commissioners: Charles B. Curtis, Chairman; Georgiana Sheldon and George R. Hall.

Presently before the Commission are a notice of succession in interest and an application for transfer of certificate of public convenience and necessity relative to the Alaska portion of the Alaska Natural Gas Transportation System (ANGTS). As will be discussed in detail below, we authorize the transfer of the conditional certificate of public convenience and necessity, issued by Commission order of December 16, 1977, [1 FERC ¶61,248](#), in [Docket No. CP78-123](#), from the original certificate holder, Alcan Pipeline Company (Alcan), to a newly constituted partnership, Alaskan Northwest Natural Gas Transportation Company (Alaskan Northwest), which encompasses the corporate interests behind Alcan and those of additional natural gas pipelines and distributors. In addition, we find that the Alaskan Northwest partnership agreement on its face does not appear inconsistent with either the Alaska Natural Gas Transportation Act (ANGTA) [15 U.S.C. §719](#), or the President's *Decision and Report, infra*.

[61,754]

Background

Alcan was the original holder of the conditional certificate to build and operate the Alaska portion of ANGTS.¹ Effective January 1, 1978, the name of Alcan was changed to Northwest Alaskan Pipeline Company (Northwest Alaskan).²

Between March 3, and 17, 1978, Northwest Alaskan and five other companies³ executed a partnership agreement to constitute Alaskan Northwest as successor in interest of Alcan. The specific partnership purpose of Alaskan Northwest is to plan, design, secure financing for, construct and operate the Alaska portion of ANGTS.

Northwest Alaskan and Alaskan Northwest filed with the Commission on April 19, 1978, a notice of succession in interest, an application for transfer of Alcan's conditional certificate, and a request for approval of the Alaskan Northwest partnership agreement. The Commission gave public notice of this filing on April 24, 1978,⁴. It is this filing which is presently before the Commission.

Discussion

(1) *Transfer of Conditional Certificate*

The controlling legal standard for ruling upon the requested transfer of the conditional certificate is found in the President's *Decision and Report*, pp. 4-5: "The Alcan Pipeline Company, or its successor, and the Northern Border Pipeline, or its successor, shall be publicly held corporations or general or limited partnerships, open to ownership participation by all persons without discrimination, except producers of Alaskan natural gas." The transfer of the conditional certificate from Alcan to Alaskan Northwest satisfies this standard, and we find that such transfer should be granted.

Alaskan Northwest is a general partnership which is "open to ownership participation by all persons without discrimination." Section 11.2 of the partnership agreement states in part that "[t]he intent of the foregoing provisions is to permit the addition of Additional Partners on a non-discriminatory basis, as freely as possible. * * *" Also, attached to this filing is a transmittal letter from Northwest Alaskan to eighty-nine gas pipelines and distributors, dated March 7, 1978, by which these companies were apprised of the opportunity to participate in the Alaskan Northwest partnership. Accordingly, we find that there has been an open and nondiscriminatory opportunity to participate in the partnership. As will be discussed below in the context of the Partnership Agreement, however, a wider distribution of notice of opportunity to join the Partnership is appropriate before certain conditions of membership related to the time of joinder become operative. Nevertheless, such conditions do not amount to discriminatory treatment as would invalidate this transfer of the conditional certificate. Finally, the bar against Alaska gas producers participating in the partnership has been met.

The need for the transfer of certificate is *bona fide*. Due to the competitive nature of the certificate proceeding before the FPC in *El Paso Alaska, et al., supra*, each competing applicant did not represent all potential participants. This was especially true for Alcan, which during the FPC proceeding and ANGTA selection process was comprised of only one U.S. pipeline company and two Canadian pipeline companies. Having been selected to build and operate the Alaska portion of ANGTS, Alcan had to expand its ownership base in light of the size of ANGTS. This process of expanding Alcan was assumed by all throughout the ANGTA process.

(2) Partnership Agreement

In our review of the Alaskan Northwest partnership agreement, we shall only consider those matters which specifically relate to our statutory responsibilities under ANGTA and the President's *Decision and Report*. Therefore, our approval of this agreement does not run to such matters as compliance with partnership and securities statutes. We find that the Alaskan Northwest partnership agreement is not inconsistent with ANGTA, or the President's *Decision and Report*.

Section 3.4 of the agreement, entitled "Use of the Line," provides for operation of the pipeline as a "contract carrier" open to all shippers whether or not they are ANGTS owners.⁵ This provision is obviously directed to the "equal access" provision of ANGTA, Section 13(a). Based upon the statutory interpretation of Section 13(a) prepared by our Office of General Counsel and Alaska Gas Project Office and appended to our recent order issued on June 7, 1978, this provision satisfies the Section 13(a) mandate. ANGTS need not operate as a "common carrier." The proposed "contract carrier" status is permissible in light of the express provision in Section 3.4 for system availability open to all shippers not conditioned on ownership.

Section 4.1 deals with treatment of "Qualified Expenditures," which are defined in Section 2.32:

Expenditures to acquire information, knowledge, studies, tests, computer programs or governmental authorizations by any Partner or corporate Affiliate of a Partner, in the course of activities reasonably related to the selection of a transportation system for the delivery of Alaskan natural gas, if such expenditures were made by such Partner or corporate Affiliate prior to the Formation Date.

Basically, qualified expenditures are prior precertification expenses. Subsection 4.1.2 provides that Northwest Alaska's Qualified Expenditures are \$ 19 million, and Subsection 4.1.3 provides other Partners (presumably members of the Artic Gas group) the opportunity to present their respective Qualified Expenditures to the Board of Partners for approval. Finally, Subsection 4.1.4 recognizes the Commission's

authority to rule on these Qualified Expenditures and to possibly disallow them from the rate base of Alaskan Northwest if found to be

[61,755]

unreasonable, unnecessary, or imprudent. While we have no objection to Section 4.1, we wish to emphasize that this provision shall in no way be deemed to constitute any Commission ruling upon the rate treatment of these Qualified Expenditures.

The most unique provision of the partnership agreement is Section 5, entitled "Allocation of Profits and Losses." Subsection 5.2 provides for an "unequal allocation of all net profits and net losses and credits of the Partnership" in the event that some partners join after March 17, 1978. Specifically, partners joining after that date will have a discount deducted from their allocation otherwise based on percentage of ownership, that discount increasing the later the partner joins after March 17, 1978. Subsection 5.2 would justify this discount as being "in recognition of the greater degree of financial risk, Partnership responsibility and commitment of personnel and capital assumed by those Partners who execute this agreement on or before March 17, 1978." Subsection 5.2.1 sets forth the discount schedule as follows: ⁶

Admission Date	Discount
After Commitment Date	15%
1-1-80 thru Commitment Date	10%
7-1-79 thru 12-31-79	6%
1-1-79 thru 6-30-79	4%
7-1-78 thru 12-31-78	2%
3-18-78 thru 6-30-78	1%

Finally, under Subsection 5.2.2 the discounts deducted from the allocation of profits, losses, and credits would then be distributed to the original partners, those which joined before March 18, 1978.

We have reviewed this provision governing the allocation of profits and losses based upon date of membership and find that, under the specific circumstances underlying ANGTS, it is consistent with the aforementioned mandate of the President's *Decision and Report*. In light of the magnitude of the investment needed to finance the Alaska segment of ANGTS construction and the Presidential decision that ANGTS be privately financed (with neither Federal loan guarantees nor consumer non-completion guarantees ⁷), Section 5.2 of the partnership agreement provides a reasonable incentive for participation in ANGTS, which has already been found to be in the public interest. The different returns on partnership investment resulting from the operation of the discount schedule do not constitute undue discrimination. The discount is a recognition of varying degrees of risk to be assumed by the partners dependent upon date of membership, and it comports in principle with the ratemaking precepts ⁸ which the Commission employs in establishing rates of return for natural gas companies and public utilities.

The purpose of the discount provision is to motivate potential equity participants to promptly join

Alaskan Northwest by recognizing the greater degree of financial risk and responsibility in the early planning phase of the project (and concomitant reduction in risk and responsibility as time passes and progress is made). The amended discount schedule is therefore predicated upon certain current assumptions relative to project planning progress and the occurrence of other relevant events.⁹ Under these assumptions, the increase in the discount is reasonably related to events which should reduce financial risk so as to afford potential future partners the opportunity to assess the progress of the project before being subject to the next escalation of the discount schedule.

As for the specific values in the discount schedule, we do not presently have adequate information for a final decision as to whether it comports with the open ownership participation mandate of the President's *Decision and Report*. While the lower range of the discount schedule appears to relate to the amount of partner capital contribution at risk,¹⁰ we are unable to find the same relationship for the upper range of discounts. We have already found the basic concept involved to be consistent with the President's *Decision and Report*, but, before we can make a similar determination as to the specific discount rates in the schedule, Alaskan Northwest must first provide the underlying basis for such discount rates. In this regard, it should indicate how it developed the specific values, and it should also demonstrate how the schedule specifically reflects the increased risks of early membership and motivates potential partners to join. Alaskan Northwest should give consideration to the effects upon such risk reward and membership motivation of the mechanisms in Section 5.2, including the operation of the discounted allocation throughout the life of the Alaskan portion of ANGTS and the distribution of deducted discounts among only the original partners.

As suggested earlier, *supra* p. 5, the Commission finds that, although Northwest Alaska gave written notice of the opportunity of participation and the operation of Section 5.2 before the operative date of March 17, 1978, the spirit of President's mandate of open ownership participation without discrimination is best realized if membership, without operation of the discount schedule, remains open for an additional time period. Specifically, persons who join the partnership within 30 days of the date of this order shall not be subject to the discount schedule of Section 5.2. After that date, however, the then-current 2% discount rate will operate. In light of the aforementioned need for further information concerning the values in the discount schedule, however, we direct that this 2% discount rate remain in effect until such time as Alaskan Northwest has provided the Commission adequate information supporting the higher discount rates.

The Justice Department has also reviewed the partnership agreement, along with the application

[61,756]

to transfer the conditional certificate, from the perspective of possible competitive impact. In its official response, dated May 15, 1978, addressed to our Alaska Delegate, and appended to this order as Appendix A, the Justice Department has concluded that neither the partnership agreement nor the transfer of conditional certificate present competitive problems.¹¹ Of particular relevance is the Justice Department's analysis of the allocation of profits and losses under Section 5.2.

The partnership agreement and import authority appear to provide necessary incentives for participation in the construction and operation of the Alaskan Natural Gas Pipeline by giving early participants an allocation of partnership profits and losses based on their full partnership share and giving later participants a discounted share of such profits and losses. Since membership in the partnership has been made available to all gas industry entities that might be interested in joining, except for Alaskan gas producers (footnote omitted), the provisions creating these incentives do not warrant competitive concern.

We herein adopt the views of the Justice Department.

Section 11 of the Partnership Agreement provides for the admission of new partners who would join after the initial partnership formation. Subsections 11.1.1 thru 11.1.4 comprise conditions to be met before new partners are admitted.¹² Pursuant to Section 11.2, however, it is expressly stated that the "intent of the

foregoing provisions is to permit the addition of additional partners on a non-discriminatory basis, as freely as possible * * * These conditions appear reasonable on their face, consistent with the open participation mandate, but we stress that the Commission reserves the authority to review the actual implementation of these conditions, such as in the event of a complaint filed with the Commission concerning denial of admission or excessively strict terms and conditions of admission, to assure open ownership participation.

Section 13 of the partnership agreement, entitled "Expansion of the Line," provides that the Board of Partners may authorize capacity expansion (subject of course to the appropriate governmental approvals) but that related partner capital contributions be obtained only under Section 12.3¹³ and the decision to expand capacity be consistent with Section 3.4.¹⁴

Section 13 is properly included in the partnership agreement, but it must be implemented by Alaskan Northwest in a manner consistent with our recently endorsed position concerning the expansion of the initial system by the addition of low cost compression in order to assure the optimal development of the Nation's natural gas resources in Alaska.¹⁵

The Commission further finds:

(1) The partnership agreement upon which Alaskan Northwest was formed has been shown to be not inconsistent with ANGTA and the President's *Decision and Report*.

(2) It is in the public interest under the Natural Gas Act and consistent with ANGTA and the President's *Decision and Report* for the Commission to transfer the conditional certificate of public convenience and necessity issued by order of December 16, 1977, from Alcan to Alaskan Northwest.

(3) United Alaska Fuels Corporation should be granted intervention in this and every phase of [Docket Nos. CP78-123](#), CP78-124, and CP78-125.

The Commission orders:

(A) The transfer of conditional certificate from Alcan to Alaskan Northwest is hereby ordered.

(B) United Alaska Fuels Corporation is hereby permitted to intervene as requested subject to the Rules of the Commission, provided that the participation of such intervenor shall be limited to matters affecting the rights and interests specifically set forth in its petition to intervene, and that the admission of such intervenor shall not be construed as recognition by the Commission that it might be aggrieved because of any order issued by the Commission in this proceeding.

(C) The secretary shall cause prompt publication of this order in the *Federal Register*.

-- Footnotes --

¹ Alcan first filed with the FPC for a certificate for its project on July 9, 1976. The FPC consolidated the application with the then-ongoing comparative certificate proceeding in *El Paso Alaska Company, et al.* Docket No. CP75-96, *et al.* This entire certificate proceeding was altered by the enactment of ANGTA on October 22, 1976, pursuant to which the FPC on May 1, 1977, 58 FPC 810, issued its *Recommendation to the President*, in which two of the four FPC commissioners recommended selection of Alcan. Following an extensive process of technical reporting to the President by numerous Federal agencies, he chose Alcan to build and operate the Alaska portion of ANGTS. This selection of Alcan was embodied in the President's *Decision and Report to Congress on the Alaska Natural Gas Transportation System* (hereinafter, *Decision and Report*), which gained the force of law when approved by Joint Resolution of the Congress on November 2, 1977 (H.J. Res. 621, Pub. L. No. 95-108, 95th Cong. 1st Sess.), which in turn was signed into law by the President on November 8, 1977. Finally, with the ANGTA selection process completed, the Commission, pursuant to Section 5(a)(2) of ANGTA, issued an order on December 16, 1977, 1 FERC ¶61, 248, *inter alia*, vacating the prior *El Paso Alaska* proceed and issuing a conditional certificate of public

convenience and necessity to Alcan.

² Northwest Energy Company owns all of the common stock of this company, as it did the common stock of Alcan.

[61,757]

[GRAPHIC]

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Footnote #3 Common Stock

⁴ The Commission has received petitions to intervene from United Gas Pipe Line Company, United Alaska Fuels Corporation, Tennessee Gas Pipeline Company, Midwestern Gas Transmission Company, Northwest Natural Gas Company, Natural Gas Pipeline Company of America, and the State of Alaska. All but one of these petitioners have previously been granted intervention in the overall ANGTS proceeding by our order of June 7, 1978, [3 FERC ¶61.226](#), and no further permission is necessary. United Alaska Fuels Corporation petitions for the first time, and we hereby grant its petition to intervene. Among these petitions, there has been no request for a hearing on the matters raised.

⁵ "3.4 *Use of the Line*: It is the intention and policy of the Partnership that the Line shall be a contract carrier of Gas and be available to Shippers (whether or not a Partner or its Affiliate) on a fair and nondiscriminatory basis. Nothing in this Agreement shall (i) commit or entitle any Partner or any of its Affiliates to transport Gas owned by, or committed to be sold to, such Partner or Affiliate through the Line or other facilities of the Partnership regardless of the location of such Partner's or Affiliate's owned or controlled Gas reserves or the markets to which such Gas is to be delivered or (ii) limit the availability of Gas transportation service only to those who are Partners or Affiliates of Partners."

⁶ This discount schedule appears in an amendment to the partnership agreement filed on May 26, 1978. The original discount schedule, which has been superseded, contained a much more rapid increase in the discount schedule, under which, for example, the discount reached 10% by November 1, 1978. Under the current schedule, by contrast, the discount factor at that time would be 2%.

⁷ *CF., Alcan Pipeline Company, et al., Docket No. CP78-123, et al.*, order dismissing petition for declaratory order issued March 24, 1978 [2 FERC ¶61.263](#).

⁸ E.g., *F.P.C. v. Hope Natural Gas Company*, 320 U.S. 591 (1944) (comparable earnings test).

⁹ In this regard, we note, for example, that the discount does not increase from 2% to 4% until January 1, 1979. Based upon the current status of Congressional action on the President's National Energy Plan, specifically natural gas pricing, this date presently appears realistic in terms of Prudhoe Bay gas sales contracts having been negotiated. In addition the discount does not increase from 6% to 10% until January 1, 1980, by which date final certification could possibly have occurred.

¹⁰ The initial 1% discount operates through June 30, 1978, and during this initial phase of the partnership Section 4.2.2 of the agreement calls for precommitment date capital investment of \$ 24 million. Based upon the adjusted current dollar Alcan capital cost estimate in the President's *Decision and Report*, p. 110, the \$ 3.72 billion capital estimate for the Alaskan segment, assuming a 75/25 debt to equity ratio, included \$ 935 million of common equity. While the aforementioned \$ 24 million constitutes 2.5% of this total equity capital and of course recognizing the possibility of escalation in capital requirements, the discount rate is only 1%. By the same token, it is currently estimated that Alaskan Northwest will have a 1978 and 1979 budget of \$ 200 million (*see, Alcan Pipeline Company, et al., Docket No. CP78-123, et al.*, issued March 24, 1978, p. 2, note 4). While this budget, to be funded by partner equity contributions, would constitute

21% of the total equity capital, the discount rate at the end of 1979 is only 6%.

¹¹ The Justice Department also reviewed Northwest Alaska's applications for conditional import authorization, as was discussed and considered in our order granting such conditional import authorization, issued in Docket No. CP78-123, *et al.*, on June 7, 1978.

¹² Briefly, the conditions include approval by the Board of Partners, approval by security holders or others under possible agreements with the Partnership, compliance with all applicable laws, and assurance that admission does not bring the Partnership within the Public Utility Holding Company Act.

¹³ Under Section 12.3, additional capital contributions in excess of the basic capital requirements as of commitment date may be made by the partners using their previously elected ownership percentage, but the partners are not obligated to make such contributions.

¹⁴ As noted above, *supra* p. 6, Section 3.4 states that the pipeline shall be a contract carrier with equal, non-discriminatory access thereto for owners and non-owners alike.

¹⁵ *Northwest Alaskan Pipeline Company*, Docket No. CP78-123, *et al.*, issued June 7, 1978 (Appendix A, pp. 5-6).

APPENDIX A

Mr. John B. Adger, Jr.

Director

Alaska Gas Project Office

Federal Energy Regulatory Commission

Washington, D.C. 20426

Dear Mr. Adger:

At your request, the Department of Justice has evaluated for competitive impact the application to transfer to the Alaska Northwest Natural Gas Transportation Company, a general partnership, the conditional certificate of public convenience and necessity issued to the Alcan Pipeline Company pursuant to the Alaska Natural Gas Transportation Act of 1976. In so doing the Department has also reviewed the partnership agreement itself and Alaskan Northwest's application for import authority under Section 3 of the Natural Gas Act. This review has led to the conclusion that the partnership agreement and import authority do not present competitive problems. Therefore, the Department has no objection to the transfer of the conditional certificate to Alaska Northwest.

The partnership agreement and import authority appear to provide necessary incentives for participation in the construction and operation of the

[61,758]

Alaska Natural Gas Pipeline by giving early participants an allocation of partnership profits and losses based on their full partnership share and giving later participants a discounted share of such profits and losses. Since membership in the partnership has been made available to all gas industry entities that might be interested in joining, except for Alaskan gas producers,¹ the provisions creating these incentives do not warrant competitive concern. Further, the decision of the Canadian government to restrict the export and sale of Canadian gas to participants in the sponsoring company consortium appears to be a reasonable method of insuring that Canadian gas will be used to support the construction of the pipeline which will

ultimately be of benefit to the Canadian people. Moreover, since participation in the partnership and, thus, access to this gas, would be accessible to all interested parties, this form of incentive also does not appear to present competitive problems.

We appreciate your providing us with copies of these documents and hope that in the future we will continue to be fully informed of the progress of the project.

Sincerely yours,

Joe Sims, Deputy Assistant Attorney General, Antitrust Division

¹ Such Producers have been precluded from participation by Order of the President, acting on the advice of the Attorney General. See President's Decision and Report to Congress on the Alaska Natural Gas Transportation System, issued on September 22, 1977 and approved by the Congress on November 2, 1977.