

## The Alaska Natural Gas Pipeline Act of 2004

In October, 2004, Congress passed the Alaska Natural Gas Pipeline (“ANGPA”) and certain related tax law provisions. The passage of ANGPA was a major milestone in advancing an Alaska gas pipeline project. ANGPA had its origin in broader national energy legislation that was introduced in the summer of 2001 and that slowly advanced through one house or another of Congress during 2002 and 2003. National energy legislation did not pass until 2005 (“Energy Policy Act of 2005”) but the Alaska provisions were earlier removed from the broader legislation and enacted in the fall of October 2004. The Governor, the Congressional delegation, and the state’s Washington representatives were active in promoting provisions aiding an Alaska gas pipeline throughout the years of the legislative process. Representatives of the North Slope producers, Anadarko, TransCanada and the lower 48 pipeline industry all contributed to what finally emerged as consensus legislation.

At the end of the Clinton administration on January 18, 2001, the FERC issued a “Staff Report of the Federal Energy Regulatory Commission” concerning potential legal issues arising under the existing statutory framework. For example, the FERC staff pointed out that much of the framework of the Alaska Natural Gas Transportation Act of 1976 (ANGTA), and the Decision of President Carter on the person and route for an Alaska Natural Gas Transportation System (and related permits and certificates) remained unchanged. This raised an issue whether the Commission could, despite the passage of time, accept, review and act upon applications for a new pipeline project. The Commission’s report was part of the impetus to remove obstacles to the forward progress of a gas pipeline.

ANGPA resolved or clarified many of the issues that were attendant to the permitting of an interstate Alaska natural gas pipeline. ANGPA i) resolved the uncertainty over whether a new party could file an application for an Alaska gas pipeline, ii) created a clear and expedited process for action upon a certificate application, iii) addressed pipeline access issues that had competitive implications, created a central coordinator for the issuance by other federal agencies of other necessary permits for a pipeline, iv) confirmed the jurisdiction of the Regulatory Commission of Alaska over an in-state lateral, v) gave the State specific rights with respect to the shipment of royalty gas for in-state needs, vi) confirmed the authority within limits of the federal government to update the terms and conditions of the ANGTS and preserve certain rights it had under the 1976 statute, and vii) authorized an \$ 18 billion loan guaranty for the successful project.

ANGPA directed the FERC to issue a certificate for an Alaska gas pipeline project twenty months after the filing of a completion application. In the meantime, the environmental impact statements would be prepared with the FERC acting as the lead agency. ANGPA also prohibited an over the top route. The act also limited judicial review to one federal court, expedited any case seeking review, and defined the grounds upon which review could occur. ANGPA makes clear that new pipeline projects could seek certification under its provisions, thereby removing that uncertainty.

ANGPA also addressed a host of issues arising from concerns that the three North Slope producers would monopolize the development of the North Slope through their potential ownership of the single means of transporting North Slope gas to market. First, it required the Commission to adopt within 120 days regulations governing the conduct

of open seasons for Alaska natural gas transportation projects, including procedures for the allocation of capacity. Among other provisions, the regulations were directed to “promote competition in the exploration, development, and production of Alaska natural gas.” The FERC had developed a body of law on open season requirements on a case by case basis but the requirement for specific regulations for a single project was unique.

The most dramatic break from existing case law was Section 105 of ANGPA, a new set of requirements for mandatory expansion. It was accepted law that FERC lacked authority to order a pipeline to expand its facilities to accommodate new or existing users. ANGPA gave FERC that authority within carefully prescribed limits and procedures. Because of these new powers, a shipper who needs capacity on the pipeline that the pipeline is unable to provide could apply to the FERC for an expansion order. After a process that addressed eight issues, the Commission could grant a certificate order. The person seeking the expansion is then required to execute a firm transportation agreement with the pipeline within a reasonable time after the expansion order set by the FERC. The Commission was given the power to establish rates for the expansion service designed to recover the costs associated with it on the basis of either rolled in or incremental pricing.

ANGPA further established a Federal Coordinator for Alaska natural gas transportation projects. The Coordinator’s task is to coordinate the expeditious discharge of all activities by federal agencies related to the project except with respect to certain activities conducted by the Commission. The Federal Coordinator was required to enter into a joint surveillance and monitoring agreement with the State similar to that in effect

during the construction of TAPS. Any residual authorities of the position of Federal Inspector under ANGTA were transferred to the new Federal Coordinator.

ANGPA created several provisions quite specific to interests of the State of Alaska. First, it gave the Commission the power to provide “reasonable access” to the pipeline for shipping Alaska royalty gas for the purpose of meeting local consumption needs. Second, it required the Commission to consult with the State regarding rates or rate settlements for gas transported on the pipeline and delivered inside Alaska. Third, the legislation confirmed that the RCA, not the FERC, would have jurisdiction over any facility receiving gas from the Alaska gas pipeline project for delivery to consumers within the state. Fourth, the act required the project, as a condition to receiving its certificate, to study in-Alaska needs for natural gas.

ANGPA also preserved the decisions, permits and authorizations granted under ANGTA but authorized federal agencies to update those provided that the addition, amendment or rescission would not compel any change in the “basic nature and general route” of the ANGTS or would not “otherwise prevent or impair in any significant respect” its expeditious construction. ANGPA also authorized the Secretary of Energy to require the sponsor of the ANGTS to update its environmental data, reports, permits and statements.

A final set of provisions also authorized federal loan guarantees for the project up to the sum of \$18 billion, indexed for inflation. The loan guarantees were to be administered by the Secretary of Energy. The loan guarantees were authorized also for the Canadian portion of the qualified project. The guaranteed loans were not to exceed

80% of the total capital costs of the project, including interest during construction, capped at \$18 billion.

The passage of ANGPA was a major event in the development of an Alaska gas pipeline. The federal process for the project was clearly defined by that legislation. The certificate granted under the 1976 statute could not stand in the way of a modern project. The State's concerns about royalty gas shipments, RCA jurisdiction over in-state facilities, and the needs to ascertain in-state needs were addressed. Competitive concerns raised by parties independent of the three North Slope producers including the State were met by the special requirements for open season regulations and the new power given to the FERC to order expansion of the line in defined circumstances. Finally, the uncertainties over the financing of the line were materially eased by the authorization of \$18 billion dollars of federal loan guarantees.<sup>1</sup>

---

<sup>1</sup> Congress passed certain tax provisions at the same time that aided the project. These included a provision for accelerated depreciation of the pipeline and the extension of the enhanced oil recovery credit to a qualifying gas treatment plant.