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THE WHITE HOUSE
WASHINGTON

revised

January 12, 1988

MEMORANDUM FOR EUGENE J. MCALLISTER
SPECIAL ASSISTANT TO THE PRESIDENT AND
EXECUTIVE SECRETARY OF THE
ECONOMIC POLICY COUNCIL

FROM: JAY B. STEPHENS
DEPUTY COUNSEL TO THE PRESIDENT

SUBJECT: Presidential Finding Relating to Alaskan North
Slope Natural Gas Exports

Counsel's office has reviewed the above-referenced materials and has no objection to them from a legal perspective.

We also note that the first sentence of the concluding paragraph of the Analysis prepared by the DOE Office of Policy, Planning and Analysis is incomplete as drafted. It appears to be missing several words or a phrase (See attached draft).

Attachment

cc: Rhett B. Dawson

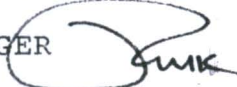
THE WHITE HOUSE

WASHINGTON

January 11, 1988

MEMORANDUM FOR JAY B. STEPHENS

FROM:

ROBERT M. KRUGER 

SUBJECT:

Presidential Finding Relating to Alaskan
North Slope Natural Gas Exports

Rhett Dawson has asked us to provide comments and recommendations on the attached materials to Gene McAllister by the close of business today. The materials consist of:

- (1) A draft Presidential finding under section 12 of the Alaskan Natural Gas Transportation Act;
- (2) An "Analysis" supporting the finding prepared by the Department of Energy's Office of Policy.
- (3) A memorandum for the President from the Economic Policy Council recommending issuance of the finding;
- (4) A memorandum for the President from Nancy Risque transmitting the EPC memorandum and endorsing the EPC's recommendation.

The draft finding is the same as the finding that was presented to the EPC on January 7. It reflects the changes to the October 8 draft finding which were suggested by interested departments and agencies. It also contains excerpts from Jim White's December 8, 1987 memorandum explaining the economic justification for the issuance of a finding.

That justification is set out at greater length in the DOE "Analysis" which was also prepared at our request. The analysis (1) provides data on Alaskan and North American natural gas reserves and resources, (2) explains how development of those reserves will have an overall positive effect on price and supply in interrelated energy markets, (3) describes expected gains for the U.S. economy and macroeconomic benefits from allowing the export of the Alaskan natural gas and (4) explains how exports could improve U.S. energy security.

Taken together, the finding and the analysis comprise a fairly complete statement of the justification for issuing the finding.

The memoranda to the President from the EPC and Nancy Risque do not attempt to restate the economic justification for the finding, reporting instead on the concern that the finding may be seen as a threat to the gas transportation system being built by Canadian and U.S. firms. Both memoranda note that the proposal to issue a finding grew out of a 1983 Joint Policy Statement by President Reagan and Prime Minister Nakasone. The EPC Memorandum also notes that the Yukon Pacific Corporation is interested in the development of the North Slope gas.

I believe these materials generally meet our concerns -- the finding and the analysis seem to have been crafted in accordance with our comments respecting the lack of sufficient analytical support. On the attached memorandum for your review and signature, I note a problem with the concluding paragraph of the analysis. I also point out that neither the EPC memorandum nor the memorandum from Nancy Risque explain for the President why he should sign the finding. They fail to mention, for example, that such a finding would be consistent with the President's preference for a free market approach to resource development.

Attachment

WHITE HOUSE CORRESPONDENCE TRACKING WORKSHEET

O - OUTGOING

H - INTERNAL

I - INCOMING

Date Correspondence Received (YY/MM/DD) 1 1



Name of Correspondent: Rhett Dawson

MI Mail Report

User Codes: (A) _____ (B) _____ (C) _____

Subject: Exporting Natural Gas from the North Slope

ROUTE TO:

ACTION

DISPOSITION

Office/Agency (Staff Name)	Action Code	Tracking Date YY/MM/DD	Type of Response	Code	Completion Date YY/MM/DD
<u>euholu</u>	ORIGINATOR	<u>88,01,11</u>			<u>1 1</u>
	Referral Note:	<u>GBS signature</u>			
<u>euat28</u>	<u>D</u>	<u>88,01,11</u>		<u>S</u>	<u>88,01,11</u>
	Referral Note:				<u>5PM</u>
		<u>1 1</u>			<u>1 1</u>
	Referral Note:				
		<u>1 1</u>			<u>1 1</u>
	Referral Note:				
		<u>1 1</u>			<u>1 1</u>
	Referral Note:				

ACTION CODES:

- A - Appropriate Action
- C - Comment/Recommendation
- D - Draft Response
- F - Furnish Fact Sheet to be used as Enclosure

- I - Info Copy Only/No Action Necessary
- R - Direct Reply w/Copy
- S - For Signature
- X - Interim Reply

DISPOSITION CODES:

- A - Answered
- B - Non-Special Referral
- C - Completed
- S - Suspended

FOR OUTGOING CORRESPONDENCE:

- Type of Response = Initials of Signer
- Code = "A"
- Completion Date = Date of Outgoing

Comments: Reply to Gene McAllister with a copy to Rhett Dawson

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WHITE HOUSE STAFFING MEMORANDUM

DATE: 1/11/88 ACTION/CONCURRENCE/COMMENT DUE BY: C.O.B. TODAY

SUBJECT: EXPORTING NATURAL GAS FROM THE NORTH SLOPE

	ACTION FYI			ACTION FYI	
VICE PRESIDENT	<input type="checkbox"/>	<input checked="" type="checkbox"/>	GRISCOM	<input checked="" type="checkbox"/>	<input type="checkbox"/>
BAKER	<input type="checkbox"/>	<input checked="" type="checkbox"/>	HOBBS	<input type="checkbox"/>	<input type="checkbox"/>
DUBERSTEIN	<input type="checkbox"/>	<input checked="" type="checkbox"/>	HOOLEY	<input type="checkbox"/>	<input type="checkbox"/>
MILLER - OMB	<input type="checkbox"/>	<input type="checkbox"/>	KING	<input type="checkbox"/>	<input type="checkbox"/>
BALL	<input checked="" type="checkbox"/>	<input type="checkbox"/>	POWELL	<input checked="" type="checkbox"/>	<input type="checkbox"/>
BAUER	<input checked="" type="checkbox"/>	<input type="checkbox"/>	RANGE	<input type="checkbox"/>	<input type="checkbox"/>
CRIBB	<input checked="" type="checkbox"/>	<input type="checkbox"/>	RISQUE	<input type="checkbox"/>	<input checked="" type="checkbox"/>
CRIPPEN	<input checked="" type="checkbox"/>	<input type="checkbox"/>	RYAN	<input type="checkbox"/>	<input type="checkbox"/>
CULVAHOUSE	<input checked="" type="checkbox"/>	<input type="checkbox"/>	SPRINKEL	<input type="checkbox"/>	<input type="checkbox"/>
DAWSON	<input type="checkbox"/>	<input checked="" type="checkbox"/>	TUTTLE	<input type="checkbox"/>	<input type="checkbox"/>
DONATELLI	<input checked="" type="checkbox"/>	<input checked="" type="checkbox"/>	MCALLISTER	<input type="checkbox"/>	<input checked="" type="checkbox"/>
FITZWATER	<input checked="" type="checkbox"/>	<input type="checkbox"/>	_____	<input type="checkbox"/>	<input type="checkbox"/>

REMARKS:

Please provide your comments/recommendation directly to Gene McAllister (rm 216-x6404) with an info copy to my office by close of business today, January 11.

RESPONSE:

THE WHITE HOUSE

WASHINGTON

January 11, 1988

MEMORANDUM FOR THE PRESIDENT

FROM: NANCY J. RISQUE *Nancy J. Risque*

SUBJECT: Exporting Natural Gas from the North Slope

ISSUE

The Economic Policy Council is unanimously recommending that you issue a finding permitting the export of natural gas from Alaska's North Slope. The Alaska Natural Gas Transportation Act requires such a finding before permitting exports to countries other than Canada and Mexico.

BACKGROUND

Although the export of natural gas to the Far East does not appear economical at this time, the Council believes issuing a finding is worthwhile:

1. You and Prime Minister Nakasone issued a statement in 1983 calling for a study on the feasibility of such exports, and a business group is trying to develop a pipeline that would carry the natural gas to be exported.
2. The finding will permit exports in the future, when economic circumstances may be very different.

DISCUSSION

The Council delayed making this recommendation until after you and Prime Minister Mulroney signed the Free Trade Agreement. Some in Canada may view this finding as a threat to the Alaskan Natural Gas Transportation System being built by Canadian and U.S. firms. We have tried to mitigate the Canadian concerns through consultations and by including in the proposed finding a strong affirmation of our commitment to the ANGST.

The economic justification for this finding is strong; permitting exports will increase worldwide energy supply and reduce energy prices.

RECOMMENDATION

That you approve the Council's recommendation and sign the attached finding.

DECISION

_____ Approve _____ Approve As Amended _____ Reject _____ No Action

THE WHITE HOUSE

WASHINGTON

January 7, 1988

MEMORANDUM FOR THE PRESIDENT

FROM: THE ECONOMIC POLICY COUNCIL

SUBJECT: Alaskan North Slope Natural Gas Exports

Section 12 of the Alaskan Natural Gas Transportation Act (ANGTA) requires that the President issue a "finding" before permitting exports of Alaskan North Slope natural gas to countries other than Canada and Mexico. The "finding" must determine that exports will not diminish the total quantity of energy available to the U.S., nor increase its price.

The Economic Policy Council unanimously recommends that you issue a general finding that would permit natural gas exports.

This recommendation is prompted by a request from the Yukon Pacific Corporation, which plans to explore with Japan, Korea, and Taiwan the possibility of exporting natural gas to those countries. The gas would be transported through the Trans-Alaska Gas System (TAGS), which has yet to be constructed.

A preliminary study has indicated that such exports will be uneconomical unless all three nations -- Japan, Korea, and Taiwan -- contract to purchase North Slope natural gas. It is not clear that these nations will desire U.S. exports under current circumstances.

Despite the uncertainty about potential customers, the Council recommends that you issue the finding for two reasons:

1. The TAGS project grows out of a November 1983 Joint Policy Statement by you and Prime Minister Nakasone calling for a pre-feasibility study on the potential joint development of North Slope gas.
2. Permitting natural gas exports is good policy, although such exports may not be economic now. A finding will permit exports in the future, when the economic circumstances may be different.

In making this recommendation, the Council gave significant consideration to the possible adverse reception to the finding in Canada. Some in Canada might see the TAGS project as a threat to the Alaskan Natural Gas Transportation System (ANGTS), which will transport natural gas from the North Slope to the U.S. and Canada.

We have tried to mitigate this concern by drafting a Presidential finding that is generic, not specific to the TAGS project, and reiterates the Administration's support for the special U.S. regulatory treatment of the ANGTS.

The Council does not believe this finding will jeopardize enactment of the Free Trade Agreement in Canada.

RECOMMENDATION

The Economic Policy Council unanimously recommends issuing a Presidential finding permitting export of natural gas from Alaska's North Slope to countries other than Canada and Mexico.

_____ Approve

_____ Disapprove

James A. Baker, III
Chairman Pro Tempore

DRAFT

PRESIDENTIAL FINDING CONCERNING ALASKA NATURAL GAS

My Administration has been dedicated to encouraging free trade and to removing regulatory impediments that inhibit the development of our Nation's natural resources. Proven natural gas reserves in the Prudhoe Bay area of Alaska's North Slope represent approximately 15% of total U.S. gas reserves. In addition, undiscovered, recoverable supplies of natural gas from Alaska's North Slope may exceed 100 trillion cubic feet. There can be no doubt the development of Alaskan oil has played an important role in ensuring adequate energy supplies at reasonable prices for American consumers. I believe efficient development of Alaska natural gas will provide similar benefits. Leaving this resource undeveloped benefits no one.

Efficient development of Alaska natural gas on the basis of market financing could encompass the export of some of this gas to other countries. Because world energy markets are interrelated, our nation will benefit from an enlarged international gas supply. Production of Alaska reserves will increase the amount of secure energy sources available at market prices and, thus, displace less secure or more expensive energy sources, including oil from the Persian Gulf.

Before Alaska natural gas can be exported to nations other than Canada or Mexico, Section 12 of the Alaska Natural Gas Transportation Act requires me to find exportation "will not diminish the total quantity or quality nor increase the total price of energy available to the United States." In order to make this finding, it has been necessary to assess the relationship of Alaska natural gas to the United States energy market.

There exist adequate, secure, reasonably-priced supplies of natural gas to meet the demand of American consumers for the foreseeable future. This demand can be met by lower-48 production and already-approved Canadian imports. If necessary, this demand also can be met at lower delivered energy cost by coal, oil, imported LNG, natural gas from Mexico, and other energy sources.

Given these facts, exports of Alaska natural gas would represent a judgment by the market that the energy demands of American consumers can be met adequately from other sources at comparable or lower prices. Exports of Alaska natural gas would not diminish the total quantity or quality of energy available to U.S. consumers because world energy resources would be increased and other more efficient supplies would thus be available. Finally, exports would not increase the price of energy available to consumers since increased availability of secure energy sources tends to stabilize or lower energy prices.

Accordingly, I find that exports of Alaska natural gas in quantities in excess of 1,000 Mcf per day will not diminish the total quantity or quality nor increase the total price of energy available to the United States.

DRAFT

This finding removes the Section 12 regulatory impediment to Alaskan natural gas exports in a manner that allows any private party to develop this resource and sets up competition for this purpose. It is my belief that removal of this impediment to private sector development of Alaska's vast natural gas resources, using private sector resources with no government subsidy, will benefit our entire nation.

This finding represents a determination that the effects of exports of Alaska natural gas on American consumers would comply with the market criteria of Section 12 in the context of current and projected future energy markets and that such exports would be consistent with our comprehensive energy policy. It does not assess the merits or feasibility of a particular project, but rather lets the marketplace undertake a realistic consideration of various options concerning Alaska natural gas. The operation of market forces is the best guarantee that Alaska natural gas will be developed efficiently and that there is an incentive to find additional reserves.

I do not believe this finding should hinder completion of the Alaska Natural Gas Transportation System. My Administration supports the timely, economic development of Alaskan natural resources. To this end my Administration has removed all regulatory barriers to the private sector's expeditious completion of this project. In particular, I want to reaffirm our support for the special regulatory treatment of the "prebuild" portion of ANGTS, including the minimum revenue stream guarantees.

ANALYSIS SUPPORTING SECTION 12 FINDING

Prepared by
Office of Policy, Planning
and Analysis

Department of Energy

Issue:

Section 12 of the Alaska Natural Gas Transportation Act requires that prior to exporting more than 1000 Mcf per day of North Slope natural gas to countries other than Canada and Mexico, the President must make a finding that such exports "will not diminish the total quantity or quality nor increase the total price of energy available to the United States."

Will the export of North Slope gas to countries other than Canada and Mexico "diminish the total quantity or quality [or] increase the total price of energy available to the United States."

Summary:

The export of Alaska natural gas would represent a judgment by the market that the energy demands of American consumers can be met adequately from other sources at comparable or lower prices and that Alaska natural gas can be consumed more efficiently in foreign markets.

By developing the gas and placing it on the market via exports, additional supplies of energy are available; therefore, exports of Alaska natural gas would not diminish the total quantity or quality of energy available to U.S. consumers because world energy resources would be increased and other more efficient supplies would thus be available.

Finally, exports would not increase the price of energy available to consumers since increased availability of secure energy sources tends to stabilize or lower energy prices. Removal of this impediment to private sector development of Alaska's vast natural gas resources would benefit the entire nation by fostering adequate energy supplies at reasonable prices.

Organization:

The analysis is organized as follows:

1. Data on Alaskan and North American natural gas reserves and resources;
2. The international nature of the energy market and the fungibility of gas supplies;
3. The economics of international trade show that the US gains net economic benefits when it does not restrict exports;
4. The other economic benefits from allowing export of the gas;
5. The inefficiencies arising from restricting the export of Alaska natural gas; and
6. The energy security implications of allowing the export of Alaska natural gas.

I. Alaskan and North American Natural Gas Reserves and Resources

Proven natural gas reserves in the Prudhoe Bay area of Alaska's North Slope represent approximately 15% of total U.S. gas reserves. In addition, undiscovered, recoverable supplies of natural gas from Alaska's North Slope may exceed 100 trillion cubic feet. The development of Alaskan oil has played an important role in ensuring adequate energy supplies at reasonable prices for American consumers. Efficient development of Alaska natural gas will provide similar benefits. On the other hand, leaving this resource undeveloped benefits no one.

There exist large reserves of natural gas elsewhere on the North American continent, as well. Canada had 100 tcf of proved reserves at the end of 1986 (compared to a 1986 production rate of 2.96 tcf), while Mexico had 77 tcf of proved reserves at the end of 1986 (compared to a 1986 production rate of .93 tcf). The Lower 48 had 159 tcf of proved reserves at the end of 1986 (compared to a 1986 production rate of 16.04 for the entire US).

II. An International Energy Market

Energy markets are interrelated, both across regions and across fuels. For example, an unusual cold spell in one region of the US would cause an increase in the demand for natural gas in that region and thus put upward pressure on its price; that would induce additional flows of gas from other regions to take advantage of the profit opportunity; gas markets in regions not experiencing the cold spell, but which get gas from the same supply regions which supply the area that is experiencing the cold spell, would also feel upward price pressure due to the diverted supplies. Over time the supply flows would continue to respond to the price signals in a manner such that equilibrium is maintained.

In this way, energy developments in one region affect market equilibriums in other regions. This applies both across regions and fuels.

In general, then, the main effect of restricting the flow of one particular form or all forms of energy from one region to another would be to redirect the pattern and magnitudes of energy flows among all regions. Typically, the demands by energy consumers would be met by energy from other regions, and the level of energy consumption would be affected negligibly. Similarly, the targeted energy supplies would be redirected to other regions, unless it were uneconomical to produce and ship those supplies to other regions.

The shipment of gas from Alaska to Japan would mean that Japan would consume less gas from other regions, and possibly less oil in total. The gas and oil displaced by the shipment would be available to other energy users, including the United States, across the globe. That part of the displaced energy that goes to regions other than the United States, would in turn displace other energy shipments to those regions, which would also be available to the United States. This equilibration of energy markets ensures that the ability of the US to economically obtain energy supplies would not be adversely affected by the export of Alaska natural gas.

Gas supplies are fungible; it is of no concern to the consumer whether the gas he consumes comes from Alaska, Canada, or the US - he simply cares about the price, security and availability of the gas. Furthermore, fuels are increasingly becoming substitutable to large end users of energy. Industrial consumers switch between gas and oil, sometimes within hours, as their relative price fluctuates, for example. Electric utilities also have great capacity to fuel-switch. This substitutability of the various fuels further bolsters the ability of a free market to deliver energy, in all its various forms, in an efficient pattern to energy consumers.

III. Gains from Trade

Allowing a market to allocate energy supplies leads to the most efficient pattern of energy deliveries from supply regions to demand regions. The fact that consumers in region 1 are getting no natural gas from suppliers in region 2 does not mean that those consumers are paying a price for energy which is made higher due to the absence of a flow of gas from region 2 to region 1; it simply means that the gas demands of those consumers are met at the same or lower delivered costs by gas from other regions, or, to some extent, by other fuels.

To compete in a market setting for any region's energy market, natural gas from Alaska would have to compete both with natural gas delivered from other areas and with other fuels serving that region's energy market. Removing any regulatory barriers to the flow of gas would allow it to flow to its most valued use, in the region that values it most.

Whether the Pacific Rim regions represent the most valued use for Alaska gas is subject to debate. The market will make that determination. But if that is where the gas is most valued, the US economy gains from having the gas delivered there. In that case, US energy consumers would be served by the same or lower priced less expensive delivered gas from other regions, or, to some extent,

by other fuels. This market equilibration process leads to a pattern of energy flows in which the US economy is better off than it would be in a situation in which Alaskan gas is constrained from being sold to its natural market and where users willing to offer the highest commodity price.

ANGTA was enacted during a period of price controls on both natural gas and oil. These controls distorted the efficient allocation of resources, and under this distortion, it may be that restricting the export of the price-controlled commodity would have been an improvement. The theorem on the gains from trade does not apply in the presence of an economic distortion such as price controls: in such cases, it is possible that the removal of one distortion - an export restriction - may not be an improvement if another distortion - price controls - is allowed to remain. But oil price controls have been eliminated, and most natural gas price controls have been raised to the point where they are substantially nonbinding - i.e., they are above market prices.

IV. Macroeconomic Benefits from Allowing Export

Assuming transportation costs are less to develop and export the gas to Japan, there are greater economic benefits from allowing the export of Alaska natural gas. If market conditions were such that export did occur, that would generate greater federal corporate income tax receipts, greater state and local tax receipts, and greater royalty payments. Employment would increase, stimulating the economy of Alaska. The US balance-of-payments deficit would be reduced, along with the bilateral trade deficits with the countries where the gas is intended to be sold

V. Inefficiencies from Restricting Export

To the extent that a restriction on export reduces the development of Alaska gas, there would be a net economic loss from the restriction. Even if it were still economical to produce the reserves, but the new delivery point were less economic due to higher shipping costs or the lower valuation of the supplies at this new delivery point, there would be a net economic loss from the restriction. Further, profits accruing to the developers of the resources would be reduced. This would reduce incentives to invest in exploration and development of the resource base, a loss to everyone. Efficiency generally would be reduced as producers would not adjust to actual market conditions; instead they would adjust to an artificially distorted environment.

VI. Energy Security Implications

Production of Alaska reserves will increase the amount of secure energy supplies available at market prices and, thus, displace less secure or more expensive energy sources, including oil from the Persian Gulf. Because of the integrated nature of the world energy market, US vulnerability to the effects of energy supply disruptions is associated more with worldwide dependence on insecure sources of supply than with the level of US energy imports. Allowing the export could stimulate development of US energy sources and thereby reduce worldwide dependence on insecure sources.

In fact, enforcing an export ban which led to lower US production could increase our net energy imports. This would be true, for example, if the gas would not be developed if there were an export ban in place, but would be developed if export were allowed.

It is also worth noting that almost all Canadian gas reserves are closer to Lower-48 markets than Alaska North Slope gas. Due to the resulting lower transport costs, those supplies would likely be more economic, and in a sense, more secure than Alaska supplies.

Conclusion

This analysis has examined the issues relating the allowance of the export of Alaska natural gas and the economic well-being of energy consumers and the US as a whole. It concludes that allowing the export will benefit the US, and that such export would meet ANGTA Section 12 requirements.

This conclusion was reached by an examination of the international nature of the energy market and the fungibility of gas supplies; of the economic gains to energy consumers and the nation from free trade; of other economic benefits from allowing the gas export; of the inefficiencies from restricting the export of Alaska natural gas; of data on Alaskan and North American natural gas reserves and resources; and of the energy security implications of allowing the export of Alaska natural gas.

While policymakers should be vigilant in ensuring that price controls remain non-binding and that the cost to the economy of price controls does not exceed the value to energy consumers and, or better still that they be eliminated. In the current environment and foreseeable future, natural gas price controls will remain nonbinding and there will be gains to be made from free trade.

THE WHITE HOUSE

WASHINGTON

December 17, 1987

MEMORANDUM FOR JAY B. STEPHENS

FROM: ROBERT M. KRUGER SUBJECT: Presidential Finding Regarding
Alaskan North Slope Gas Exports

I have reviewed the memorandum provided by the Department of Energy in response to the questions we raised regarding DOE's proposal to have the President issue a finding under Section 12 of the Alaskan Natural Gas Transportation Act (ANGTA). As you know, Section 12 requires that before appreciable quantities of natural gas may be exported to any nation other than Canada or Mexico, the President must find that "such exports will not diminish the total quantity or quality nor increase the total price of energy available to the United States." We asked DOE (1) why the President should not delegate to the Secretary of Energy the authority to issue this finding, (2) whether such a finding can be generic or project specific and (3) assuming the finding can be generic, whether it can be issued without reference to quantity of exports or the time period over which the exports will be made.

DOE notes that ANGTA is basically silent on the delegation issue, but argues that, for policy reasons, the President should make the finding himself. DOE asserts that Presidential leadership is appropriate in a matter involving such sensitive issues as energy security, foreign policy and national security. Further, it argues that a delegation would complicate and delay the finding, by subjecting it to the requirements of the DOE Act, the Administrative Procedure Act and the National Environmental Policy Act. In addition, DOE argues that a delegation would open the decision-making process to politicization and subject the Secretary's determination to pressure for Presidential review. Finally, DOE believes that the finding presents the President with an opportunity to reaffirm the free market principles in which the President so strongly believes.

In stating the rationale for a generic finding, DOE argues that such an approach would foster competitive development of the Alaskan reserves, thereby allowing the marketplace, rather than the government, to select the best strategy and solution. DOE notes that federal agencies would, under other statutory and regulatory requirements, be available to review specific proposals. DOE also offers the assurance that a generic finding would not be irrevocable -- that the President (and presumably subsequent Presidents) could rescind the finding at any time

should he (or she) determines that economic conditions had changed so that exports of Alaska natural gas would have detrimental effects on American consumers. Conversely, DOE points out, a project-specific finding could give rise to an argument by the project sponsor that it has an exclusive government license. Finally, DOE suggests that the criteria set out in the statute are more meaningful under a macro-economic analysis rather than applied to the merits of a particular export project. In this sense, DOE seems to argue that the requirement that the quantity of energy "available to the United States" not be diminished would be satisfied by the injection of any additional quantity of energy into the world energy market.

These same arguments lead DOE to conclude that the Section 12 finding need not be specific as to volume or time. Additionally, DOE suggests that volume or time limitations might prevent some proposals from ever being made, thereby discouraging beneficial competition.

Conclusion

I can accept DOE's arguments against delegation of the finding to the Secretary. I am also somewhat reassured by DOE's assertions that a finding would not be irrevocable and that specific proposals would be reviewed by other federal agencies. I have come to realize, however, that my basic problem with this finding is inherent in the statute. Within that framework, whether exports of Alaskan gas would be beneficial or detrimental to the United States is answerable in one of two ways. As DOE sees it, any injection of Alaskan natural gas into the world energy market benefits U.S. consumers by increasing the total supply of energy and decreasing thereby its relative cost. Alternatively, one could argue that any exports of U.S. energy reserves necessarily diminishes the total quantity of energy available to U.S. consumers by sharing it with consumers outside the U.S. The problem with the statute, then, is that the only decision it allows is that of choosing between these competing interpretations -- once that choice is made a finding is either compelled or precluded. That is, either all exports are beneficial or all exports are detrimental. Viewed in terms of the short-run world market, a "finding" is the only course. Seen in terms of the long-run national interest, no "finding" would ever be possible.

DOE adopts the global approach as being more consistent with the statute as a whole and with the President's free market policies. Given the alternative, I believe the President would agree.

I do not know what purpose would be served by pressing DOE on this further (DOE requests a meeting this week if we have any continuing concerns). As I mentioned earlier, we might want to send Justice an informational copy of DOE's memorandum for its use in DPC consideration of this issue. Apart from that, I am not sure what else we can do. Let me know what you think, so that I can get back to DOE as soon as possible.



Department of Energy

Washington, DC 20585

December 8, 1987

Robert Kruger
Associate Counsel to the
President
Old Executive Office Bldg.
Room 106
Washington, D.C. 20500

Dear Bob:

The attached memorandum addresses the three questions you asked on the Presidential export finding for Alaska North Slope natural gas. Secretary Herrington expects Scott Campbell and I to resolve any further questions your office might have on an expedited basis. Accordingly, we would like to meet with you at your earliest convenience. Can we meet one day this week, or in any case no later than the following week?

Sincerely,

A handwritten signature in cursive script that reads "Jim White".

James K. White
Assistant General Counsel for
Natural Gas and Mineral Leasing

PRESIDENTIAL EXPORT FINDING FOR
ALASKA NATURAL GAS UNDER SECTION 12 OF ANGTA

Introduction

This memorandum addresses three questions concerning a Presidential export finding for Alaska natural gas under section 12 of the Alaska Natural Gas Transportation Act (ANGTA). They are:

- 1) Should the President make the finding?
- 2) What is the rationale for a generic finding?
- 3) Can the finding be open-ended as to volume, time?

Section 12 (attachment A) is brief and straightforward. The legislative history of section 12 is sparse and uninformative. There was no conference report, the House and Senate reports (attachment B) are unhelpful on your questions, and there is no relevant floor debate. There is no indication Congress intended to bind the President to a particular procedure beyond that set forth in the broad language of section 12 to "make and publish" a finding.

With respect to ANGTA as a whole, however, the statute and legislative history make clear Congress viewed the huge Alaska natural gas reserves (over 25 trillion cubic feet) as an important energy resource whose efficient development is vital to the national interest. Congress enacted ANGTA to expedite development of Alaska natural gas and to prevent development from becoming bogged down in business-as-usual, bureaucratic proceedings, such as the massive Alaska gas pipeline case inching along at the Federal Power Commission when ANGTA was passed.

Should the President make the finding?

Section 12 of ANGTA provides for "the President to make and publish an express finding." It neither explicitly authorizes or prevents the delegation of this responsibility. Accordingly, as a matter of law, the President may choose to retain the authority or delegate it. For policy reasons, the President should make the finding.

While the absence of explicit delegation authority does not preclude delegation, the overall structure of ANGTA indicates Congress gave careful consideration to the specific responsibilities of the President and Federal agencies and reserved for the President major energy policy decisions concerning Alaska natural gas. For example, sections 5, 6, and 7 of ANGTA

establish a detailed system under which Federal agencies analyze specific transportation systems and environmental issues, but the President makes the overall decision on these matters. On its face, section 12 creates a similar division of labor between the President and Federal agencies since it makes the President responsible for the policy decision of whether exports of Alaska natural gas will harm American consumers, while explicitly preserving the responsibilities of Federal agencies to review individual export projects under section 3 of the Natural Gas Act (NGA) and section 103 of the Energy Policy Conservation Act (EPCA).

There is ample precedent for reserving major energy policy decisions to the President. For example, in Executive Order No. 12235, the President did not delegate his authority to declare a natural gas supply emergency under section 301 of the Natural Gas Policy Act. 45 F.R. 58803 (September 5, 1980) Likewise, the President did not delegate his authority to decontrol crude oil under the Emergency Petroleum Allocation Act. Rather, as one of his first acts in office, President Reagan issued Executive Order No. 12287 to decontrol crude oil. 46 F.R. 9909 (January 30, 1981) A section 12 finding can represent a similar major energy initiative requiring Presidential leadership, since there will be important consequences for American energy consumers and also sensitive issues of economics, energy security, foreign policy, and national security.

A delegation to the Secretary of Energy of the responsibility for the section 12 finding would complicate any decision on exports of Alaska natural gas. The Secretary, unlike the President, would be subject to the rigorous, time-consuming procedural requirements of the DOE Act (section 501), the Administrative Procedures Act, and the National Environmental Policy Act. Delegation also would increase the analytical support necessary for a section 12 finding. Moreover, a finding by the Secretary would be vulnerable to politicization by private interests, Congress, and foreign governments during the lengthy notice-and-hearing process, a problem a Presidential finding would avoid. Furthermore, a finding by the Secretary would not remove the President from the section 12 process, since most likely there would be intense pressure for a Presidential review of any finding by the Secretary.

A section 12 finding by the President would reaffirm the President's policy to promote the efficient development of Alaska natural gas through the operation of competitive market forces unfettered by government interference. The President already has taken actions in furtherance of this policy. In 1981, the President submitted the waiver package for the Alaska Natural Gas Transportation System (ANGTS) in order to remove government impediments to construction of ANGTS by private parties. In November 1983, the President and Japanese Prime Minister Nakasone issued a Joint Policy Statement (attachment C) initiating a joint U.S.-Japan study on the feasibility of Alaska gas exports to

Japan. Delegation of responsibility for the section 12 finding would be perceived by the Japanese and others as a diminution of the President's interest in the efficient development of Alaska natural gas. Exercise of that responsibility by the President would be perceived as an appropriate, visible expression of the President's own initiative.

What is the rationale for a generic finding?

A section 12 finding would be consistent with the President's policy of letting the marketplace decide how best to develop our energy resources. Currently the absence of a section 12 finding prevents realistic consideration by the market of any Alaska natural gas project other than the dormant ANGTS. Since competition is the best guarantee this resource will be developed efficiently, a section 12 finding should be issued if the export of Alaska natural gas is consistent with the criteria set forth in section 12. A generic section 12 finding would remove the regulatory impediment to Alaska natural gas exports in a manner that allowed any private commercial party to develop the resource, set up a competition for this purpose, and thus ended the current situation where there is no incentive to develop already discovered reserves or to find additional reserves. On the other hand, case-by-case findings would focus on project details and become a Government selection process among various proposals, the antithesis of competition.

On its face, section 12 speaks of a single Presidential finding prior to export of Alaska natural gas. A single generic finding is consistent with section 12's explicit retention of Federal agency NGA and EPCA case-by-case review of specific proposals to export Alaska natural gas. A generic section 12 finding would focus on the broad criteria of section 12 and make clear the nation's energy policy concerning exports of Alaska natural gas in light of those criteria. On the other hand, case-by-case section 12 Presidential findings would be largely duplicative of the case-by-case agency determinations.

A section 12 finding requires consideration of price, supply, and quality of energy sources. Given the interrelated and fungible nature of the world energy market, the finding is better made on a macro-basis in a generic finding than on a micro-basis in case-by-case findings. A generic finding can focus on the effects of exports of Alaska natural gas on American consumers, rather than on the merits of a particular export project. Case-by-case findings would focus on the feasibility of a particular project and could become entangled in issues unique to a particular project (for example, a case-by-case finding on TAGS could be sidetracked on the controversy surrounding exports of Alaska oil to Japan).

A case-by-case finding on a particular project inevitably would be perceived as Presidential support for that project. The perception that the President is endorsing a specific project

would effectively preclude the development of more competitive alternative projects. Such a perception runs counter to the President's policy to eliminate, as a general proposition, governmental interference with marketplace decisions. In addition, a case-by-case finding would be more susceptible to an interpretation that the United States is "backing away" from its "commitment" to ANGTS, and thus incur opposition from the Canadian Government that would not result from a generic finding.

A generic finding would not be irrevocable. Section 12 does not preclude the President from rescinding the finding at any time he determined conditions had changed so that exports of Alaska natural gas would have detrimental effects on American consumers. In fact, it can be argued a generic finding is more finite than a case-by-case finding since the sponsors of a particular project can be expected to characterize a finding as an exclusive Government license, even if they delay their project for years (just as the ANGTS sponsors have done). On the other hand, a generic finding would not give rise to a "reliance" argument, since it would be clearly tied to the criteria of section 12 and not to the feasibility of a particular project.

Can the finding be open-ended as to volume, time?

On its face, section 12 does not require the finding to be project specific, with determinations based on a specific volume and time period. In fact, specificity would be inconsistent with the broad market criteria set forth in section 12. These criteria recognize energy policy must be based on a broad assessment of current and projected future energy markets. While a narrow finding based on the volume and time period of a specific project might possess the illusion of precision, such a finding necessarily would miss the objective of assessing the effects of export of Alaska natural gas on American consumers in the context of a comprehensive energy policy.

A project-specific finding would require determinations based on the specific details of the current TAGS proposal. In effect, the President would have to review the feasibility of a specific private sector project -- an action not explicitly required by section 12 and one that is inconsistent with the President's market philosophy.

A project-specific finding for TAGS would have a chilling effect on competing projects to develop Alaska natural gas. In fact, the TAGS sponsors and others might perceive a project-specific finding as a "commitment" to TAGS of a certain volume of Alaska natural gas for a certain time period. A project-specific finding for TAGS would become a governmentally imposed impediment to competition since any other export project would be barred until it obtained a similar case-by-case finding. Furthermore, even the TAGS project might be forced to seek another finding if it was revised in response to market forces. In effect, the Federal government, and not the commercial market

place, would become the arbiter of which projects should go forward and in what form.

A project-specific finding could choke off competition in other ways. For example, a finding limited as to export volumes and duration would make the multi-billion dollar financing necessary for any Alaska natural gas project impossible to obtain. Investors would demand that any such project have the flexibility to respond to changing market conditions without first obtaining Government approval.

An argument in support of a project-specific finding might be extracted from the House and Senate Committee Reports on ANGTA. While these reports discuss section 12 only briefly, and contain no description of how the finding must be made, each report contains a general reference to "exchange arrangement" or "agreement". However, there is no indication what is meant by such arrangements or how they relate to a section 12 finding. It is unlikely any large-scale export project will contain a volume-for-volume exchange provision as part of the export contract. In fact, the most plausible interpretation of "arrangement" is that it refers to the interrelated nature of the world energy market and thus should be considered as part of a generic finding. In any event, this language does not appear in the statute.

The use of the phrase "energy available to the United States" does not necessitate a finding based on a specific export volume during a particular time period. This phrase is part of the description of the section 12 criteria. The plain meaning of the phrase is that the section 12 finding should focus broadly on the world energy market and not be restricted only to natural gas or domestic energy sources. Since this phrase recognizes the interrelated and fungible nature of the world energy market, it is more compatible with a generic finding than one that purports to determine the precise effects of Alaska natural gas exports. A finding based on precise volumes and time periods assumes regulators can predict the exact effects of their action. This belief in "regulatory fine-tuning" is the antithesis of the President's market-oriented philosophy and should not be unnecessarily read into section 12.

Conclusion

Section 12 requires no specific procedure or form. Rather, Congress granted the President broad discretion to make the section 12 finding in the manner the President believes best serves the interests of American consumers. There are compelling policy reasons for the President to make the finding and for the finding to be generic and unlimited as to volume and duration. Most importantly for American consumers, a generic Presidential finding is the best way to guarantee the efficient development of Alaska natural gas through competitive market forces, and thus end the current situation where this vital gas supply stays in the ground and benefits no one.

EXPORT LIMITATIONS

SEC. 12. Any exports of Alaska natural gas shall be subject to the requirements of the Natural Gas Act and section 103 of the Energy Policy and Conservation Act, except that in addition to the requirements of such Acts, before any Alaska natural gas in excess of 1,000 Mcf per day may be exported to any nation other than Canada or Mexico, the President must make and publish an express finding that such exports will not diminish the total quantity or quality nor increase the total price of energy available to the United States.

[15 U.S.C. 719j]

THE ALASKA NATURAL GAS
TRANSPORTATION ACT OF 1976

JOINT REPORT

OF THE

SENATE COMMITTEES ON COMMERCE
AND INTERIOR AND INSULAR AFFAIRS

together with

MINORITY AND ADDITIONAL VIEWS

ON

S. 3521

TO EXPEDITE A DECISION ON THE DELIVERY OF ALASKA
NATURAL GAS TO UNITED STATES MARKETS AND FOR
OTHER PURPOSES



JUNE 30 (legislative day, JUNE 28), 1976.—Ordered to be printed

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or modify any certificate, right-of-way, permit, lease, or other authorization issued by such officer or agency pursuant to this Act.

SECTION 10—JUDICIAL REVIEW

Section 10 of S. 3521 minimizes judicial review of the issuance of certificates, rights-of-way, permits, leases, and other authorizations necessary for the construction and initial commercial operation of the Alaska natural gas transportation system approved by enactment of a joint resolution of the Congress. A detailed discussion of the judicial review provisions appears as part of the Detailed Description section of this report.

SECTION 11—REMEDIES

Section 11(a) states that in addition to remedies available under other applicable provisions of law, whenever on the basis of any information available to it the Commission, the Secretary, or other appropriate federal officers finds that any person is in violation of any provision of this Act or other applicable law or any rule, regulation, or order thereunder or a condition of the certificate, right-of-way, permit, lease, or other authorization required for the construction of initial commercial operation of the Alaska natural gas transportation system approved by enactment of a joint resolution of the Congress, the Commission, Secretary, or other appropriate federal officer as the case may be, in their discretion may either issue an order requiring such person to comply with such provision or requirement, or request the Attorney General to commence a civil action for appropriate relief including a permanent or temporary injunction or a civil penalty not to exceed \$25,000 per day of any violation for which the appropriate federal officer is authorized to issue a compliance order. The United States District Court in which the defendant is located or resides or is doing business is given jurisdiction to restrain a violation, require compliance or impose a penalty.

Subsection (b) of section 11 requires that any compliance order issued shall state with reasonable specificity the nature of the violation and a time for compliance not to exceed 30 days, which the Commission, the Secretary or other appropriate federal officer, as the case may be, determines is reasonable taking into account the seriousness of the violation and any good faith efforts to comply with applicable requirements.

SECTION 12—EXPORT LIMITATIONS

Any exports of Alaska natural gas shall be subject to all of the limitations and approval requirements of the Natural Gas Act and in addition, notwithstanding any other provision of law, before any natural gas from Alaska in excess of 1,000 Mcf per day may be exported to any nation other than Canada or Mexico, the President must make and publish an express finding that such exports will not diminish the total quantity or quality nor increase the total price of energy available to the United States and that such exports are in the national interest. This provision is designed to assure that if the export of Alaska natural gas is in the national interest, it may be done only under an ex-

change arrangement whereby U.S. consumers would not be faced with increases in energy prices nor a reduction in the total quantity or quality of energy.

SECTION 13—EQUAL ACCESS TO FACILITIES

Section 13 requires that there shall be included in the terms of any certificate issued pursuant to this Act a provision that no person seeking to transport natural gas in the Alaska natural gas transportation system approved by enactment of a joint resolution of the Congress may be prevented from doing so or discriminated against in the terms and conditions of service on the basis of his degree of ownership or lack thereof of the Alaska natural gas transportation system. This provision requires that tariffs shall be equal to shippers who are owners or non owners of the system for the shipment of similar quantities of natural gas for similar distances. This is to assure that pipelines or distributors who are able to purchase additional quantities of Alaska natural gas are able to transport such natural gas to their own system upon non-discriminatory terms.

In addition, section 28(r)(2)(B) of the Mineral Leasing Act of 1920 (Public Law 93-153) imposes certain requirements to transport natural gas produced from federal lands through natural gas pipelines crossing federal lands. These requirements are imposed even though such natural gas pipelines are operated by a person subject to regulation under the Natural Gas Act or by a public utility subject to regulation by a state or municipal regulatory agency having jurisdiction to regulate the rates and charges for the sale of natural gas to consumers within the state or municipality. These requirements specify that " * * * in the case of oil or gas produced from federal lands or from the resources on the federal lands in the vicinity of the pipeline, the Secretary may, after a full hearing with due notice thereof to the interested parties and a proper finding of facts, determine the proportionate amounts to be accepted, conveyed, transported or purchased". This provision allows any person producing natural gas from federal lands in the vicinity of the Alaska natural gas transportation system certified hereunder to petition the Secretary of the Interior who may, after a full hearing, require the certificate holder, in the event adequate capacity is not available, to apportion shipments of other shippers in order to accommodate the production from federal lands. For a more complete discussion of this provision, see Senate Report No. 93-207, pages 32-35.

SECTION 14—ANTITRUST LAWS

This section makes clear that the grant of a certificate, right-of-way, permit, lease, or other authorization pursuant to this Act shall not impair or amend any of the antitrust laws.

SECTION 15—EXPIRATION OF AUTHORITY

This section provides that the provisions of section 4(a), 5, 6, and 8 of this Act shall expire upon the date that the provisions for the Alaska natural gas transportation system becomes final in accordance

NATURAL GAS TRANSPORTATION ACT
P.L. 94-586

**ALASKA NATURAL GAS TRANSPORTATION
ACT OF 1976**

P.L. 94-586, see page 90 Stat. 2903

Senate Report (Commerce and Interior and Insular Affairs Committees) No. 94-1020, June 30, 1976 [To accompany S. 3521]

House Report (Interstate and Foreign Commerce Committee) No. 94-1658, Sept. 22, 1976 [To accompany S. 3521]

Cong. Record Vol. 122 (1976)

DATES OF CONSIDERATION AND PASSAGE

Senate July 1, October 1, 1976

House September 30, 1976

The House Report is set out.

HOUSE REPORT NO. 94-1658

[page 1]

The Committee on Interstate and Foreign Commerce, to whom was referred the bill (S. 3521) to expedite a decision on the delivery of Alaska natural gas to United States markets, and for other purposes, having considered the same, report favorably thereon with amendments and recommend that the bill as amended do pass.

* * * * *

[page 17]

PURPOSE AND BRIEF SUMMARY

The purpose of this legislation is to provide a process for arriving at a sound decision with respect to the selection of a transportation system for the delivery of Alaska natural gas to United States markets and, should any such system be approved, to expedite its construction and initial operation.

The Committee substitute to the bill S. 3521 would alter procedures under existing law for the selection of a transportation system for the delivery of Alaska natural gas in order to expedite both the designation and the construction of such a system. A 4-step process is contemplated.

In the first stage, the Federal Power Commission is directed to suspend current proceedings pursuant to which contesting applicants seek the issuance of a certificate of public convenience and necessity from the Commission authorizing the construction of a transportation system for such gas. The Commission is directed to review the contesting systems proposed by applicants, together with other alternatives, and to report to the President by May 1, 1977. The Commission's report is to analyze various economic and environmental considerations as well as other factors which the Committee believes to be relevant to the selection of an appropriate system. The Commission may

LEGISLATIVE HISTORY

P.L. 94-586

it is adequately supported by the record of any proceedings as may have occurred before the agency.

Subsection (c) vests exclusive jurisdiction over claims brought under subsection (b) in the U.S. Court of Appeals for the District of Columbia. The court is directed to give precedence to these claims over all other pending matters on the docket, and to adjudicate such claims within 90 days from the date the action is brought, unless the court determines a longer period is necessary to satisfy constitutional requirements. The court shall not have jurisdiction to grant injunctive relief except in connection with a final judgment entered in the case. Sole

[page 32]

review of any interlocutory or final judgment on order of the court shall lie with the Supreme Court, and the appellant must file a petition for certiorari within 15 days after the decision of Court of Appeals. The approval of a system pursuant to section 8 shall be conclusive as to the legal and factual sufficiency of any environmental impact statement related to the system and the court shall have no jurisdiction to consider questions respecting the sufficiency of such statements.

Sec. 11. Supplemental Enforcement Authority

Section 11 gives any Federal officer or agency the authority to issue a compliance order or bring a civil action against any person he determines to be in violation of any provision of law administered by such officer or agency. Any such compliance order would state the nature of the violation with specificity, and set a time of compliance, not to exceed 30 days, in keeping with the seriousness of the violation and any good faith efforts to comply with the requirements. Continued non-compliance in violation of a compliance order would permit the Attorney General, at the request of the officer or agency, to commence civil action for appropriate relief, including a permanent or temporary injunction or a civil penalty not to exceed \$25,000 per day for each day of continued violation. These actions may be brought in the District Court of the U.S. for the district in which the defendant resides or is doing business.

Sec. 12. Export Limitations

Section 12 provides that any exportation of Alaskan natural gas, as defined by Section 4(1), be subject to the requirements of the Natural Gas Act and section 103 of the Energy Policy and Conservation Act. In addition, such exports may not exceed 1,000 MCF per day unless it is done under an exchange agreement whereby the exports would not diminish the total quality or quantity, nor increase the total price of energy available within the United States.

Sec. 13. Equal Access to Facilities

Section 13 provides that no person seeking to transport gas in the approved system would be prevented from doing so or discriminated against in the terms and conditions of service, on the basis of ownership or lack thereof. This section would work to assure that any tariffs applied to the transportation of gas through the system would be equal for owners and non-owners alike.

Sec. 14. Antitrust Laws

Section 14 states that nothing in the Act is intended to operate as an amendment to any provisions of the anti-trust laws.

JOINT POLICY STATEMENT ON JAPAN-U.S. ENERGY COOPERATION

Prime Minister Nakasone and President Reagan share the view that further progress be made in energy trade and cooperation in oil, natural gas and coal between Japan and the United States as outlined in the following Joint Policy Statement recommended by the Japan-United States Energy Working Group:

Taking account of the energy prospects for the entire Pacific basin, the two countries agree that the sound expansion of U.S.-Japan energy trade will contribute to the further development of the close economic and energy security relationship which exists between the two countries.

They will continue to discuss and find ways of developing this trade for the mutual benefit of both countries, noting the importance of long-term cooperation, the central role of the private sector, and the need for a balance between economic cost and energy security.

Both countries consider Alaska to be a particularly promising area for joint development of energy resources. Both governments will encourage private sector discussions regarding the possibilities for such development.

With regard to trade in oil, gas and coal, we have agreed on the following next steps:

A. The U.S. and Japan recognize that if legislative barriers can be removed, the U.S. has the potential to ship substantial quantities of crude oil to Japan, thereby increasing economic incentives for U.S. oil production and helping to diversify Japan's energy sources. The U.S. will continue to keep under review the removal of restrictions on exports of domestic crude oil.

B. The U.S. and Japan will encourage private industry in both countries to undertake now the pre-feasibility or feasibility studies necessary to determine the extent to which Alaskan natural gas can be jointly developed by U.S. and Japanese interests.

C. The U.S. and Japan will encourage private industry in both countries to discuss the possibility of concluding long-term coal contracts and jointly developing mines and transportation systems to make American coal more competitive in the Japanese market.

D. In this regard, the two countries welcome the examination under way of the technical and economic aspects of several steam coal projects by private companies concerned on both sides. As economic recovery proceeds, Japan will encourage its industries to consider purchase of more competitively priced U.S. steam coal to meet future demand not already covered by existing contracts. In addition, Japan will invite the private sector concerned to explore the possibility of further increasing substitution of coal for oil in electrical generation.

E. With regard to metallurgical coal, both sides noted that the depressed state of world steel manufacturing had reduced demand for traded coal. However, in view of the fact that the U.S. has been a major supplier to the Japanese market, both sides will endeavor to maintain the level of Japanese imports of U.S. coal. Japan expects that imports of competitively priced U.S. metallurgical coal will not continue to decline, and will encourage its steel industry to increase U.S. coal imports when conditions in the industry permit.

F. As a first step toward developing U.S.-Japan coal trade from a mid- to long-term prospective, a mission composed of representatives of major Japanese coal users and other appropriate interests will visit the U.S. to meet with major coal mining and transportation interests. The purpose of this mission will be to explore the possibility of expanding coal trade between the U.S. and Japan, and the possibility of conducting a major study of the opportunities for reducing the delivered price in Japan of U.S. coal.

November 11, 1983

COPY

THE WHITE HOUSE

WASHINGTON

December 23, 1987

MEMORANDUM FOR JAY B. STEPHENS

FROM:

ROBERT M. KRUGER 

SUBJECT:

Presidential Finding Regarding Alaskan North Slope Gas Exports

As we discussed, I have prepared a brief memorandum for your signature transmitting a copy of the DOE paper supporting a Presidential finding under Section 12 of the Alaskan Natural Gas Transportation Act to the Office of Legal Counsel at the Department of Justice. The memorandum advises that DOE's proposal is scheduled to come before a joint DPC/EPC meeting during the first week in January and suggests that OLC may wish to contact Jim White at DOE if it needs additional information in order to advise the Attorney General on this matter.

I will also advise Jim White that DOE should prepare a brief memorandum providing analytical support for the President's decision to accompany the proposed finding it submits to the DPC/EPC.

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MEMORANDUM FOR CHARLES J. COOPER
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OFFICE OF LEGAL COUNSEL
DEPARTMENT OF JUSTICE

FROM: JAY B. STEPHENS
DEPUTY COUNSEL TO THE PRESIDENT

SUBJECT: Presidential Finding Regarding Alaskan North
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Attachment

PRESIDENTIAL EXPORT FINDING FOR
ALASKA NATURAL GAS UNDER SECTION 12 OF ANGTA

Introduction

This memorandum addresses three questions concerning a Presidential export finding for Alaska natural gas under section 12 of the Alaska Natural Gas Transportation Act (ANGTA). They are:

- 1) Should the President make the finding?
- 2) What is the rationale for a generic finding?
- 3) Can the finding be open-ended as to volume, time?

Section 12 (attachment A) is brief and straightforward. The legislative history of section 12 is sparse and uninformative. There was no conference report, the House and Senate reports (attachment B) are unhelpful on your questions, and there is no relevant floor debate. There is no indication Congress intended to bind the President to a particular procedure beyond that set forth in the broad language of section 12 to "make and publish" a finding.

With respect to ANGTA as a whole, however, the statute and legislative history make clear Congress viewed the huge Alaska natural gas reserves (over 25 trillion cubic feet) as an important energy resource whose efficient development is vital to the national interest. Congress enacted ANGTA to expedite development of Alaska natural gas and to prevent development from becoming bogged down in business-as-usual, bureaucratic proceedings, such as the massive Alaska gas pipeline case inching along at the Federal Power Commission when ANGTA was passed.

Should the President make the finding?

Section 12 of ANGTA provides for "the President to make and publish an express finding." It neither explicitly authorizes or prevents the delegation of this responsibility. Accordingly, as a matter of law, the President may choose to retain the authority or delegate it. For policy reasons, the President should make the finding.

While the absence of explicit delegation authority does not preclude delegation, the overall structure of ANGTA indicates Congress gave careful consideration to the specific responsibilities of the President and Federal agencies and reserved for the President major energy policy decisions concerning Alaska natural gas. For example, sections 5, 6, and 7 of ANGTA

establish a detailed system under which Federal agencies analyze specific transportation systems and environmental issues, but the President makes the overall decision on these matters. On its face, section 12 creates a similar division of labor between the President and Federal agencies since it makes the President responsible for the policy decision of whether exports of Alaska natural gas will harm American consumers, while explicitly preserving the responsibilities of Federal agencies to review individual export projects under section 3 of the Natural Gas Act (NGA) and section 103 of the Energy Policy Conservation Act (EPCA).

There is ample precedent for reserving major energy policy decisions to the President. For example, in Executive Order No. 12235, the President did not delegate his authority to declare a natural gas supply emergency under section 301 of the Natural Gas Policy Act. 45 F.R. 58803 (September 5, 1980) Likewise, the President did not delegate his authority to decontrol crude oil under the Emergency Petroleum Allocation Act. Rather, as one of his first acts in office, President Reagan issued Executive Order No. 12287 to decontrol crude oil. 46 F.R. 9909 (January 30, 1981) A section 12 finding can represent a similar major energy initiative requiring Presidential leadership, since there will be important consequences for American energy consumers and also sensitive issues of economics, energy security, foreign policy, and national security.

A delegation to the Secretary of Energy of the responsibility for the section 12 finding would complicate any decision on exports of Alaska natural gas. The Secretary, unlike the President, would be subject to the rigorous, time-consuming procedural requirements of the DOE Act (section 501), the Administrative Procedures Act, and the National Environmental Policy Act. Delegation also would increase the analytical support necessary for a section 12 finding. Moreover, a finding by the Secretary would be vulnerable to politicization by private interests, Congress, and foreign governments during the lengthy notice-and-hearing process, a problem a Presidential finding would avoid. Furthermore, a finding by the Secretary would not remove the President from the section 12 process, since most likely there would be intense pressure for a Presidential review of any finding by the Secretary.

A section 12 finding by the President would reaffirm the President's policy to promote the efficient development of Alaska natural gas through the operation of competitive market forces unfettered by government interference. The President already has taken actions in furtherance of this policy. In 1981, the President submitted the waiver package for the Alaska Natural Gas Transportation System (ANGTS) in order to remove government impediments to construction of ANGTS by private parties. In November 1983, the President and Japanese Prime Minister Nakasone issued a Joint Policy Statement (attachment C) initiating a joint U.S.-Japan study on the feasibility of Alaska gas exports to

Japan. Delegation of responsibility for the section 12 finding would be perceived by the Japanese and others as a diminution of the President's interest in the efficient development of Alaska natural gas. Exercise of that responsibility by the President would be perceived as an appropriate, visible expression of the President's own initiative.

What is the rationale for a generic finding?

A section 12 finding would be consistent with the President's policy of letting the marketplace decide how best to develop our energy resources. Currently the absence of a section 12 finding prevents realistic consideration by the market of any Alaska natural gas project other than the dormant ANGTS. Since competition is the best guarantee this resource will be developed efficiently, a section 12 finding should be issued if the export of Alaska natural gas is consistent with the criteria set forth in section 12. A generic section 12 finding would remove the regulatory impediment to Alaska natural gas exports in a manner that allowed any private commercial party to develop the resource, set up a competition for this purpose, and thus ended the current situation where there is no incentive to develop already discovered reserves or to find additional reserves. On the other hand, case-by-case findings would focus on project details and become a Government selection process among various proposals, the antithesis of competition.

On its face, section 12 speaks of a single Presidential finding prior to export of Alaska natural gas. A single generic finding is consistent with section 12's explicit retention of Federal agency NGA and EPCA case-by-case review of specific proposals to export Alaska natural gas. A generic section 12 finding would focus on the broad criteria of section 12 and make clear the nation's energy policy concerning exports of Alaska natural gas in light of those criteria. On the other hand, case-by-case section 12 Presidential findings would be largely duplicative of the case-by-case agency determinations.

A section 12 finding requires consideration of price, supply, and quality of energy sources. Given the interrelated and fungible nature of the world energy market, the finding is better made on a macro-basis in a generic finding than on a micro-basis in case-by-case findings. A generic finding can focus on the effects of exports of Alaska natural gas on American consumers, rather than on the merits of a particular export project. Case-by-case findings would focus on the feasibility of a particular project and could become entangled in issues unique to a particular project (for example, a case-by-case finding on TAGS could be sidetracked on the controversy surrounding exports of Alaska oil to Japan).

A case-by-case finding on a particular project inevitably would be perceived as Presidential support for that project. The perception that the President is endorsing a specific project

would effectively preclude the development of more competitive alternative projects. Such a perception runs counter to the President's policy to eliminate, as a general proposition, governmental interference with marketplace decisions. In addition, a case-by-case finding would be more susceptible to an interpretation that the United States is "backing away" from its "commitment" to ANGTS, and thus incur opposition from the Canadian Government that would not result from a generic finding.

A generic finding would not be irrevocable. Section 12 does not preclude the President from rescinding the finding at any time he determined conditions had changed so that exports of Alaska natural gas would have detrimental effects on American consumers. In fact, it can be argued a generic finding is more finite than a case-by-case finding since the sponsors of a particular project can be expected to characterize a finding as an exclusive Government license, even if they delay their project for years (just as the ANGTS sponsors have done). On the other hand, a generic finding would not give rise to a "reliance" argument, since it would be clearly tied to the criteria of section 12 and not to the feasibility of a particular project.

Can the finding be open-ended as to volume, time?

On its face, section 12 does not require the finding to be project specific, with determinations based on a specific volume and time period. In fact, specificity would be inconsistent with the broad market criteria set forth in section 12. These criteria recognize energy policy must be based on a broad assessment of current and projected future energy markets. While a narrow finding based on the volume and time period of a specific project might possess the illusion of precision, such a finding necessarily would miss the objective of assessing the effects of export of Alaska natural gas on American consumers in the context of a comprehensive energy policy.

A project-specific finding would require determinations based on the specific details of the current TAGS proposal. In effect, the President would have to review the feasibility of a specific private sector project -- an action not explicitly required by section 12 and one that is inconsistent with the President's market philosophy.

A project-specific finding for TAGS would have a chilling effect on competing projects to develop Alaska natural gas. In fact, the TAGS sponsors and others might perceive a project-specific finding as a "commitment" to TAGS of a certain volume of Alaska natural gas for a certain time period. A project-specific finding for TAGS would become a governmentally imposed impediment to competition since any other export project would be barred until it obtained a similar case-by-case finding. Furthermore, even the TAGS project might be forced to seek another finding if it was revised in response to market forces. In effect, the Federal government, and not the commercial market

place, would become the arbiter of which projects should go forward and in what form.

A project-specific finding could choke off competition in other ways. For example, a finding limited as to export volumes and duration would make the multi-billion dollar financing necessary for any Alaska natural gas project impossible to obtain. Investors would demand that any such project have the flexibility to respond to changing market conditions without first obtaining Government approval.

An argument in support of a project-specific finding might be extracted from the House and Senate Committee Reports on ANGTA. While these reports discuss section 12 only briefly, and contain no description of how the finding must be made, each report contains a general reference to "exchange arrangement" or "agreement". However, there is no indication what is meant by such arrangements or how they relate to a section 12 finding. It is unlikely any large-scale export project will contain a volume-for-volume exchange provision as part of the export contract. In fact, the most plausible interpretation of "arrangement" is that it refers to the interrelated nature of the world energy market and thus should be considered as part of a generic finding. In any event, this language does not appear in the statute.

The use of the phrase "energy available to the United States" does not necessitate a finding based on a specific export volume during a particular time period. This phrase is part of the description of the section 12 criteria. The plain meaning of the phrase is that the section 12 finding should focus broadly on the world energy market and not be restricted only to natural gas or domestic energy sources. Since this phrase recognizes the interrelated and fungible nature of the world energy market, it is more compatible with a generic finding than one that purports to determine the precise effects of Alaska natural gas exports. A finding based on precise volumes and time periods assumes regulators can predict the exact effects of their action. This belief in "regulatory fine-tuning" is the antithesis of the President's market-oriented philosophy and should not be unnecessarily read into section 12.

Conclusion

Section 12 requires no specific procedure or form. Rather, Congress granted the President broad discretion to make the section 12 finding in the manner the President believes best serves the interests of American consumers. There are compelling policy reasons for the President to make the finding and for the finding to be generic and unlimited as to volume and duration. Most importantly for American consumers, a generic Presidential finding is the best way to guarantee the efficient development of Alaska natural gas through competitive market forces, and thus end the current situation where this vital gas supply stays in the ground and benefits no one.

EXPORT LIMITATIONS

SEC. 12. Any exports of Alaska natural gas shall be subject to the requirements of the Natural Gas Act and section 103 of the Energy Policy and Conservation Act, except that in addition to the requirements of such Acts, before any Alaska natural gas in excess of 1,000 Mcf per day may be exported to any nation other than Canada or Mexico, the President must make and publish an express finding that such exports will not diminish the total quantity or quality nor increase the total price of energy available to the United States.

[15 U.S.C. 719j]

THE ALASKA NATURAL GAS
TRANSPORTATION ACT OF 1976

JOINT REPORT

OF THE

SENATE COMMITTEES ON COMMERCE
AND INTERIOR AND INSULAR AFFAIRS

together with

MINORITY AND ADDITIONAL VIEWS

ON

S. 3521

TO EXPEDITE A DECISION ON THE DELIVERY OF ALASKA
NATURAL GAS TO UNITED STATES MARKETS AND FOR
OTHER PURPOSES



JUNE 30 (legislative day, JUNE 28), 1976.—Ordered to be printed

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57-0100

WASHINGTON : 1976

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or modify any certificate, right-of-way, permit, lease, or other authorization issued by such officer or agency pursuant to this Act.

SECTION 10—JUDICIAL REVIEW

Section 10 of S. 3521 minimizes judicial review of the issuance of certificates, rights-of-way, permits, leases, and other authorizations necessary for the construction and initial commercial operation of the Alaska natural gas transportation system approved by enactment of a joint resolution of the Congress. A detailed discussion of the judicial review provisions appears as part of the Detailed Description section of this report.

SECTION 11—REMEDIES

Section 11(a) states that in addition to remedies available under other applicable provisions of law, whenever on the basis of any information available to it the Commission, the Secretary, or other appropriate federal officers finds that any person is in violation of any provision of this Act or other applicable law or any rule, regulation, or order thereunder or a condition of the certificate, right-of-way, permit, lease, or other authorization required for the construction of initial commercial operation of the Alaska natural gas transportation system approved by enactment of a joint resolution of the Congress, the Commission, Secretary, or other appropriate federal officer as the case may be, in their discretion may either issue an order requiring such person to comply with such provision or requirement, or request the Attorney General to commence a civil action for appropriate relief including a permanent or temporary injunction or a civil penalty not to exceed \$25,000 per day of any violation for which the appropriate federal officer is authorized to issue a compliance order. The United States District Court in which the defendant is located or resides or is doing business is given jurisdiction to restrain a violation, require compliance or impose a penalty.

Subsection (b) of section 11 requires that any compliance order issued shall state with reasonable specificity the nature of the violation and a time for compliance not to exceed 30 days, which the Commission, the Secretary or other appropriate federal officer, as the case may be, determines is reasonable taking into account the seriousness of the violation and any good faith efforts to comply with applicable requirements.

SECTION 12—EXPORT LIMITATIONS

Any exports of Alaska natural gas shall be subject to all of the limitations and approval requirements of the Natural Gas Act and in addition, notwithstanding any other provision of law, before any natural gas from Alaska in excess of 1,000 Mcf per day may be exported to any nation other than Canada or Mexico, the President must make and publish an express finding that such exports will not diminish the total quantity or quality nor increase the total price of energy available to the United States and that such exports are in the national interest. This provision is designed to assure that if the export of Alaska natural gas is in the national interest, it may be done only under an ex-

change arrangement whereby U.S. consumers would not be faced with increases in energy prices nor a reduction in the total quantity or quality of energy.

SECTION 13—EQUAL ACCESS TO FACILITIES

Section 13 requires that there shall be included in the terms of any certificate issued pursuant to this Act a provision that no person seeking to transport natural gas in the Alaska natural gas transportation system approved by enactment of a joint resolution of the Congress may be prevented from doing so or discriminated against in the terms and conditions of service on the basis of his degree of ownership or lack thereof of the Alaska natural gas transportation system. This provision requires that tariffs shall be equal to shippers who are owners or non owners of the system for the shipment of similar quantities of natural gas for similar distances. This is to assure that pipelines or distributors who are able to purchase additional quantities of Alaska natural gas are able to transport such natural gas to their own system upon non-discriminatory terms.

In addition, section 28(r)(2)(B) of the Mineral Leasing Act of 1920 (Public Law 93-153) imposes certain requirements to transport natural gas produced from federal lands through natural gas pipelines crossing federal lands. These requirements are imposed even though such natural gas pipelines are operated by a person subject to regulation under the Natural Gas Act or by a public utility subject to regulation by a state or municipal regulatory agency having jurisdiction to regulate the rates and charges for the sale of natural gas to consumers within the state or municipality. These requirements specify that " * * * in the case of oil or gas produced from federal lands or from the resources on the federal lands in the vicinity of the pipeline, the Secretary may, after a full hearing with due notice thereof to the interested parties and a proper finding of facts, determine the proportionate amounts to be accepted, conveyed, transported or purchased". This provision allows any person producing natural gas from federal lands in the vicinity of the Alaska natural gas transportation system certified hereunder to petition the Secretary of the Interior who may, after a full hearing, require the certificate holder, in the event adequate capacity is not available, to apportion shipment of other shippers in order to accommodate the production from federal lands. For a more complete discussion of this provision, see Senate Report No. 93-207, pages 32-35.

SECTION 14—ANTITRUST LAWS

This section makes clear that the grant of a certificate, right-of-way, permit, lease, or other authorization pursuant to this Act shall not impair or amend any of the antitrust laws.

SECTION 15—EXPIRATION OF AUTHORITY

This section provides that the provisions of section 4(a), 5, 6, and 8 of this Act shall expire upon the date that the provisions for the Alaska natural gas transportation system becomes final in accordance

NATURAL GAS TRANSPORTATION ACT
P.L. 94-586

ALASKA NATURAL GAS TRANSPORTATION
ACT OF 1976

P.L. 94-586, see page 90 Stat. 2903

Senate Report (Commerce and Interior and Insular Affairs Committees) No. 94-1020, June 30, 1976 [To accompany S. 3521]

House Report (Interstate and Foreign Commerce Committee) No. 94-1658, Sept. 22, 1976 [To accompany S. 3521]

Cong. Record Vol. 122 (1976)

DATES OF CONSIDERATION AND PASSAGE

Senate July 1, October 1, 1976

House September 30, 1976

The House Report is set out.

HOUSE REPORT NO. 94-1658

[page 1]

The Committee on Interstate and Foreign Commerce, to whom was referred the bill (S. 3521) to expedite a decision on the delivery of Alaska natural gas to United States markets, and for other purposes, having considered the same, report favorably thereon with amendments and recommend that the bill as amended do pass.

* * * * *

[page 17]

PURPOSE AND BRIEF SUMMARY

The purpose of this legislation is to provide a process for arriving at a sound decision with respect to the selection of a transportation system for the delivery of Alaska natural gas to United States markets and, should any such system be approved, to expedite its construction and initial operation.

The Committee substitute to the bill S. 3521 would alter procedures under existing law for the selection of a transportation system for the delivery of Alaska natural gas in order to expedite both the designation and the construction of such a system. A 4-step process is contemplated.

In the first stage, the Federal Power Commission is directed to suspend current proceedings pursuant to which contesting applicants seek the issuance of a certificate of public convenience and necessity from the Commission authorizing the construction of a transportation system for such gas. The Commission is directed to review the contesting systems proposed by applicants, together with other alternatives, and to report to the President by May 1, 1977. The Commission's report is to analyze various economic and environmental considerations as well as other factors which the Committee believes to be relevant to the selection of an appropriate system. The Commission may

LEGISLATIVE HISTORY

P.L. 94-586

it is adequately supported by the record of any proceedings as may have occurred before the agency.

Subsection (c) vests exclusive jurisdiction over claims brought under subsection (b) in the U.S. Court of Appeals for the District of Columbia. The court is directed to give precedence to these claims over all other pending matters on the docket, and to adjudicate such claims within 90 days from the date the action is brought, unless the court determines a longer period is necessary to satisfy constitutional requirements. The court shall not have jurisdiction to grant injunctive relief except in connection with a final judgment entered in the case. Sole

[page 32]

review of any interlocutory or final judgment on order of the court shall lie with the Supreme Court, and the appellant must file a petition for certiorari within 15 days after the decision of Court of Appeals. The approval of a system pursuant to section 8 shall be conclusive as to the legal and factual sufficiency of any environmental impact statement related to the system and the court shall have no jurisdiction to consider questions respecting the sufficiency of such statements.

Sec. 11. Supplemental Enforcement Authority

Section 11 gives any Federal officer or agency the authority to issue a compliance order or bring a civil action against any person he determines to be in violation of any provision of law administered by such officer or agency. Any such compliance order would state the nature of the violation with specificity, and set a time of compliance, not to exceed 30 days, in keeping with the seriousness of the violation and any good faith efforts to comply with the requirements. Continued non-compliance in violation of a compliance order would permit the Attorney General, at the request of the officer or agency, to commence civil action for appropriate relief, including a permanent or temporary injunction or a civil penalty not to exceed \$25,000 per day for each day of continued violation. These actions may be brought in the District Court of the U.S. for the district in which the defendant resides or is doing business.

Sec. 12. Export Limitations

Section 12 provides that any exportation of Alaskan natural gas, as defined by Section 4(1), be subject to the requirements of the Natural Gas Act and section 103 of the Energy Policy and Conservation Act. In addition, such exports may not exceed 1,000 MCF per day unless it is done under an exchange agreement whereby the exports would not diminish the total quality or quantity, nor increase the total price of energy available within the United States.

Sec. 13. Equal Access to Facilities

Section 13 provides that no person seeking to transport gas in the approved system would be prevented from doing so or discriminated against in the terms and conditions of service, on the basis of ownership or lack thereof. This section would work to assure that any tariffs applied to the transportation of gas through the system would be equal for owners and non-owners alike.

Sec. 14. Antitrust Laws

Section 14 states that nothing in the Act is intended to operate as an amendment to any provisions of the anti-trust laws.

JOINT POLICY STATEMENT ON JAPAN-U.S. ENERGY COOPERATION

Prime Minister Nakasone and President Reagan share the view that further progress be made in energy trade and cooperation in oil, natural gas and coal between Japan and the United States as outlined in the following Joint Policy Statement recommended by the Japan-United States Energy Working Group:

Taking account of the energy prospects for the entire Pacific basin, the two countries agree that the sound expansion of U.S.-Japan energy trade will contribute to the further development of the close economic and energy security relationship which exists between the two countries.

They will continue to discuss and find ways of developing this trade for the mutual benefit of both countries, noting the importance of long-term cooperation, the central role of the private sector, and the need for a balance between economic cost and energy security.

Both countries consider Alaska to be a particularly promising area for joint development of energy resources. Both governments will encourage private sector discussions regarding the possibilities for such development.

With regard to trade in oil, gas and coal, we have agreed on the following next steps:

A. The U.S. and Japan recognize that if legislative barriers can be removed, the U.S. has the potential to ship substantial quantities of crude oil to Japan, thereby increasing economic incentives for U.S. oil production and helping to diversify Japan's energy sources. The U.S. will continue to keep under review the removal of restrictions on exports of domestic crude oil.

B. The U.S. and Japan will encourage private industry in both countries to undertake now the pre-feasibility or feasibility studies necessary to determine the extent to which Alaskan natural gas can be jointly developed by U.S. and Japanese interests.

C. The U.S. and Japan will encourage private industry in both countries to discuss the possibility of concluding long-term coal contracts and jointly developing mines and transportation systems to make American coal more competitive in the Japanese market.

D. In this regard, the two countries welcome the examinations under way of the technical and economic aspects of several steam coal projects by private companies concerned on both sides. As economic recovery proceeds, Japan will encourage its industries to consider purchase of more competitively priced U.S. steam coal to meet future demand not already covered by existing contracts. In addition, Japan will invite the private sector concerned to explore the possibility of further increasing substitution of coal for oil in electrical generation.

E. With regard to metallurgical coal, both sides noted that the depressed state of world steel manufacturing had reduced demand for traded coal. However, in view of the fact that the U.S. has been a major supplier to the Japanese market, both sides will endeavor to maintain the level of Japanese imports of U.S. coal. Japan expects that imports of competitively priced U.S. metallurgical coal will not continue to decline, and will encourage its steel industry to increase U.S. coal imports when conditions in the industry permit.

F. As a first step toward developing U.S.-Japan coal trade from a mid- to long-term prospective, a mission composed of representatives of major Japanese coal users and other appropriate interests will visit the U.S. to meet with major coal mining and transportation interests. The purpose of this mission will be to explore the possibility of expanding coal trade between the U.S. and Japan, and the possibility of conducting a major study of the opportunities for reducing the delivered price in Japan of U.S. coal.

November 11, 1983



Department of Energy
Washington, DC 20585

January 6, 1988

Robert Kruger
Associate Counsel to
the President
Old Executive Office Bldg.
Room 106
Washington, D.C. 20500

Dear Bob:

As I mentioned to you on the phone yesterday, Gene McAllister asked us to send you a revision of our October 1987 "Presidential Finding Concerning Alaska Natural Gas." Two versions are attached. The first (Tab A) revises the October finding to include changes suggested by Federal agencies. The second (Tab B) also includes appropriate language from my December 8, 1987, memo to you, as you requested (page 2, first two paragraphs).

I want to thank you again for your cooperation on this matter, particularly during the holiday season when I know you had so many other important projects.

Sincerely,

A handwritten signature in blue ink, appearing to read "J. White".

James K. White
Assistant General Counsel
for Natural Gas & Mineral
Leasing

A

PRESIDENTIAL FINDING CONCERNING ALASKA NATURAL GAS

My Administration has been dedicated to encouraging free trade and to removing regulatory impediments that inhibit the development of our Nation's natural resources. Proven natural gas reserves in the Prudhoe Bay area of Alaska's North Slope represent approximately 15% of total U.S. gas reserves. In addition, undiscovered, recoverable supplies of natural gas from Alaska's North Slope may exceed 100 trillion cubic feet. There can be no doubt the development of Alaskan oil has played an important role in ensuring adequate energy supplies at reasonable prices for American consumers. I believe efficient development of Alaska natural gas will provide similar benefits. Leaving this resource undeveloped benefits no one.

Efficient development of Alaska natural gas on the basis of market financing could encompass the export of some of this gas to other countries. Because world energy markets are interrelated, our nation will benefit from an enlarged international gas supply. Production of Alaska reserves will increase the amount of secure energy sources available at market prices and, thus, displace less secure or more expensive energy sources, including oil from the Persian Gulf.

Before Alaska natural gas can be exported to nations other than Canada or Mexico, Section 12 of the Alaska Natural Gas Transportation Act requires me to find exportation "will not diminish the total quantity or quality nor increase the total price of energy available to the United States." In order to make this finding, it has been necessary to assess the relationship of Alaska natural gas to the United States energy market.

There exist adequate, secure, reasonably-priced supplies of natural gas to meet the demand of American consumers for the foreseeable future. This demand can be met by lower-48 production and already-approved Canadian imports. If necessary, this demand also can be met at lower delivered energy cost by coal, oil, imported LNG, natural gas from Mexico, and other energy sources.

Given these facts, exports of Alaska natural gas would represent a judgment by the market that the energy demands of American consumers can be met adequately from other sources at comparable or lower prices. Exports of Alaska natural gas would not diminish the total quantity or quality of energy available to U.S. consumers because world energy resources would be increased and other more efficient supplies would thus be available. Finally, exports would not increase the price of energy available to consumers since increased availability of secure energy sources tends to stabilize or lower energy prices.

Accordingly, I find that exports of Alaska natural gas in quantities in excess of 1,000 Mcf per day will not diminish the total quantity or quality nor increase the total price of energy available to the United States.

It is my belief that removal of this impediment to private sector development of Alaska's vast natural gas resources, using private sector resources with no government subsidy, will benefit our entire nation.

I do not believe this finding should hinder completion of the Alaska Natural Gas Transportation System. My Administration supports the timely, economic development of Alaskan natural resources. To this end my Administration has removed all regulatory barriers to the private sector's expeditious completion of this project. In particular, I want to reaffirm our support for the special regulatory treatment of the "prebuild" portion of ANGTS, including the minimum revenue stream guarantees.

B

PRESIDENTIAL FINDING CONCERNING ALASKA NATURAL GAS

My Administration has been dedicated to encouraging free trade and to removing regulatory impediments that inhibit the development of our Nation's natural resources. Proven natural gas reserves in the Prudhoe Bay area of Alaska's North Slope represent approximately 15% of total U.S. gas reserves. In addition, undiscovered, recoverable supplies of natural gas from Alaska's North Slope may exceed 100 trillion cubic feet. There can be no doubt the development of Alaskan oil has played an important role in ensuring adequate energy supplies at reasonable prices for American consumers. I believe efficient development of Alaska natural gas will provide similar benefits. Leaving this resource undeveloped benefits no one.

Efficient development of Alaska natural gas on the basis of market financing could encompass the export of some of this gas to other countries. Because world energy markets are interrelated, our nation will benefit from an enlarged international gas supply. Production of Alaska reserves will increase the amount of secure energy sources available at market prices and, thus, displace less secure or more expensive energy sources, including oil from the Persian Gulf.

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Given these facts, exports of Alaska natural gas would represent a judgment by the market that the energy demands of American consumers can be met adequately from other sources at comparable or lower prices. Exports of Alaska natural gas would not diminish the total quantity or quality of energy available to U.S. consumers because world energy resources would be increased and other more efficient supplies would thus be available. Finally, exports would not increase the price of energy available to consumers since increased availability of secure energy sources tends to stabilize or lower energy prices.

Accordingly, I find that exports of Alaska natural gas in quantities in excess of 1,000 Mcf per day will not diminish the total quantity or quality nor increase the total price of energy available to the United States.

This finding removes the Section 12 regulatory impediment to Alaskan natural gas exports in a manner that allows any private party to develop this resource and sets up competition for this purpose. It is my belief that removal of this impediment to private sector development of Alaska's vast natural gas resources, using private sector resources with no government subsidy, will benefit our entire nation.

This finding represents a determination that the effects of exports of Alaska natural gas on American consumers would comply with the market criteria of Section 12 in the context of current and projected future energy markets and that such exports would be consistent with our comprehensive energy policy. It does not assess the merits or feasibility of a particular project, but rather lets the marketplace undertake a realistic consideration of various options concerning Alaska natural gas. The operation of market forces is the best guarantee that Alaska natural gas will be developed efficiently and that there is an incentive to find additional reserves.

I do not believe this finding should hinder completion of the Alaska Natural Gas Transportation System. My Administration supports the timely, economic development of Alaskan natural resources. To this end my Administration has removed all regulatory barriers to the private sector's expeditious completion of this project. In particular, I want to reaffirm our support for the special regulatory treatment of the "prebuild" portion of ANGTS, including the minimum revenue stream guarantees.

TR

1/4

OLC

Alden Abbott

- reviewed DOE § 12 memorandum
- suggested AG may want to reraise delegatn. ques (political implicatns)
- suggested he talk to USTR, Fed Inspector AGNTS re FTA concerns

THE WHITE HOUSE
WASHINGTON

DEC 23 1987

MEMORANDUM FOR CHARLES J. COOPER
ASSISTANT ATTORNEY GENERAL
OFFICE OF LEGAL COUNSEL
DEPARTMENT OF JUSTICE

FROM: JAY B. STEPHENS **ORIGINAL SIGNED BY J.B.S.**
DEPUTY COUNSEL TO THE PRESIDENT

SUBJECT: Presidential Finding Regarding Alaskan North
Slope Gas Exports

I am transmitting for your review a memorandum provided by the Department of Energy in response to questions raised by this office concerning DOE's proposal to have the President issue a finding under Section 12 of the Alaskan Natural Gas Transportation Act. We understand that this proposal is expected to come before a joint DPC/EPC meeting during the first week in January and assume this memorandum would be helpful to you in advising the Attorney General on this matter. You may wish to contact James K. White, Assistant General Counsel for Natural Gas and Mineral Leasing at DOE, should you desire further information on this matter.

Attachment

PRESIDENTIAL EXPORT FINDING FOR
ALASKA NATURAL GAS UNDER SECTION 12 OF ANGTA

Introduction

This memorandum addresses three questions concerning a Presidential export finding for Alaska natural gas under section 12 of the Alaska Natural Gas Transportation Act (ANGTA). They are:

- 1) Should the President make the finding?
- 2) What is the rationale for a generic finding?
- 3) Can the finding be open-ended as to volume, time?

Section 12 (attachment A) is brief and straightforward. The legislative history of section 12 is sparse and uninformative. There was no conference report, the House and Senate reports (attachment B) are unhelpful on your questions, and there is no relevant floor debate. There is no indication Congress intended to bind the President to a particular procedure beyond that set forth in the broad language of section 12 to "make and publish" a finding.

With respect to ANGTA as a whole, however, the statute and legislative history make clear Congress viewed the huge Alaska natural gas reserves (over 25 trillion cubic feet) as an important energy resource whose efficient development is vital to the national interest. Congress enacted ANGTA to expedite development of Alaska natural gas and to prevent development from becoming bogged down in business-as-usual, bureaucratic proceedings, such as the massive Alaska gas pipeline case inching along at the Federal Power Commission when ANGTA was passed.

Should the President make the finding?

Section 12 of ANGTA provides for "the President to make and publish an express finding." It neither explicitly authorizes or prevents the delegation of this responsibility. Accordingly, as a matter of law, the President may choose to retain the authority or delegate it. For policy reasons, the President should make the finding.

While the absence of explicit delegation authority does not preclude delegation, the overall structure of ANGTA indicates Congress gave careful consideration to the specific responsibilities of the President and Federal agencies and reserved for the President major energy policy decisions concerning Alaska natural gas. For example, sections 5, 6, and 7 of ANGTA

establish a detailed system under which Federal agencies analyze specific transportation systems and environmental issues, but the President makes the overall decision on these matters. On its face, section 12 creates a similar division of labor between the President and Federal agencies since it makes the President responsible for the policy decision of whether exports of Alaska natural gas will harm American consumers, while explicitly preserving the responsibilities of Federal agencies to review individual export projects under section 3 of the Natural Gas Act (NGA) and section 103 of the Energy Policy Conservation Act (EPCA).

There is ample precedent for reserving major energy policy decisions to the President. For example, in Executive Order No. 12235, the President did not delegate his authority to declare a natural gas supply emergency under section 301 of the Natural Gas Policy Act. 45 F.R. 58803 (September 5, 1980) Likewise, the President did not delegate his authority to decontrol crude oil under the Emergency Petroleum Allocation Act. Rather, as one of his first acts in office, President Reagan issued Executive Order No. 12287 to decontrol crude oil. 46 F.R. 9909 (January 30, 1981) A section 12 finding can represent a similar major energy initiative requiring Presidential leadership, since there will be important consequences for American energy consumers and also sensitive issues of economics, energy security, foreign policy, and national security.

A delegation to the Secretary of Energy of the responsibility for the section 12 finding would complicate any decision on exports of Alaska natural gas. The Secretary, unlike the President, would be subject to the rigorous, time-consuming procedural requirements of the DOE Act (section 501), the Administrative Procedures Act, and the National Environmental Policy Act. Delegation also would increase the analytical support necessary for a section 12 finding. Moreover, a finding by the Secretary would be vulnerable to politicization by private interests, Congress, and foreign governments during the lengthy notice-and-hearing process, a problem a Presidential finding would avoid. Furthermore, a finding by the Secretary would not remove the President from the section 12 process, since most likely there would be intense pressure for a Presidential review of any finding by the Secretary.

A section 12 finding by the President would reaffirm the President's policy to promote the efficient development of Alaska natural gas through the operation of competitive market forces unfettered by government interference. The President already has taken actions in furtherance of this policy. In 1981, the President submitted the waiver package for the Alaska Natural Gas Transportation System (ANGTS) in order to remove government impediments to construction of ANGTS by private parties. In November 1983, the President and Japanese Prime Minister Nakasone issued a Joint Policy Statement (attachment C) initiating a joint U.S.-Japan study on the feasibility of Alaska gas exports to

Japan. Delegation of responsibility for the section 12 finding would be perceived by the Japanese and others as a diminution of the President's interest in the efficient development of Alaska natural gas. Exercise of that responsibility by the President would be perceived as an appropriate, visible expression of the President's own initiative.

What is the rationale for a generic finding?

A section 12 finding would be consistent with the President's policy of letting the marketplace decide how best to develop our energy resources. Currently the absence of a section 12 finding prevents realistic consideration by the market of any Alaska natural gas project other than the dormant ANGTS. Since competition is the best guarantee this resource will be developed efficiently, a section 12 finding should be issued if the export of Alaska natural gas is consistent with the criteria set forth in section 12. A generic section 12 finding would remove the regulatory impediment to Alaska natural gas exports in a manner that allowed any private commercial party to develop the resource, set up a competition for this purpose, and thus ended the current situation where there is no incentive to develop already discovered reserves or to find additional reserves. On the other hand, case-by-case findings would focus on project details and become a Government selection process among various proposals, the antithesis of competition.

On its face, section 12 speaks of a single Presidential finding prior to export of Alaska natural gas. A single generic finding is consistent with section 12's explicit retention of Federal agency NGA and EPCA case-by-case review of specific proposals to export Alaska natural gas. A generic section 12 finding would focus on the broad criteria of section 12 and make clear the nation's energy policy concerning exports of Alaska natural gas in light of those criteria. On the other hand, case-by-case section 12 Presidential findings would be largely duplicative of the case-by-case agency determinations.

A section 12 finding requires consideration of price, supply, and quality of energy sources. Given the interrelated and fungible nature of the world energy market, the finding is better made on a macro-basis in a generic finding than on a micro-basis in case-by-case findings. A generic finding can focus on the effects of exports of Alaska natural gas on American consumers, rather than on the merits of a particular export project. Case-by-case findings would focus on the feasibility of a particular project and could become entangled in issues unique to a particular project (for example, a case-by-case finding on TAGS could be sidetracked on the controversy surrounding exports of Alaska oil to Japan).

A case-by-case finding on a particular project inevitably would be perceived as Presidential support for that project. The perception that the President is endorsing a specific project

would effectively preclude the development of more competitive alternative projects. Such a perception runs counter to the President's policy to eliminate, as a general proposition, governmental interference with marketplace decisions. In addition, a case-by-case finding would be more susceptible to an interpretation that the United States is "backing away" from its "commitment" to ANGTS, and thus incur opposition from the Canadian Government that would not result from a generic finding.

A generic finding would not be irrevocable. Section 12 does not preclude the President from rescinding the finding at any time he determined conditions had changed so that exports of Alaska natural gas would have detrimental effects on American consumers. In fact, it can be argued a generic finding is more finite than a case-by-case finding since the sponsors of a particular project can be expected to characterize a finding as an exclusive Government license, even if they delay their project for years (just as the ANGTS sponsors have done). On the other hand, a generic finding would not give rise to a "reliance" argument, since it would be clearly tied to the criteria of section 12 and not to the feasibility of a particular project.

Can the finding be open-ended as to volume, time?

On its face, section 12 does not require the finding to be project specific, with determinations based on a specific volume and time period. In fact, specificity would be inconsistent with the broad market criteria set forth in section 12. These criteria recognize energy policy must be based on a broad assessment of current and projected future energy markets. While a narrow finding based on the volume and time period of a specific project might possess the illusion of precision, such a finding necessarily would miss the objective of assessing the effects of export of Alaska natural gas on American consumers in the context of a comprehensive energy policy.

A project-specific finding would require determinations based on the specific details of the current TAGS proposal. In effect, the President would have to review the feasibility of a specific private sector project -- an action not explicitly required by section 12 and one that is inconsistent with the President's market philosophy.

A project-specific finding for TAGS would have a chilling effect on competing projects to develop Alaska natural gas. In fact, the TAGS sponsors and others might perceive a project-specific finding as a "commitment" to TAGS of a certain volume of Alaska natural gas for a certain time period. A project-specific finding for TAGS would become a governmentally imposed impediment to competition since any other export project would be barred until it obtained a similar case-by-case finding. Furthermore, even the TAGS project might be forced to seek another finding if it was revised in response to market forces. In effect, the Federal government, and not the commercial market

place, would become the arbiter of which projects should go forward and in what form.

A project-specific finding could choke off competition in other ways. For example, a finding limited as to export volumes and duration would make the multi-billion dollar financing necessary for any Alaska natural gas project impossible to obtain. Investors would demand that any such project have the flexibility to respond to changing market conditions without first obtaining Government approval.

An argument in support of a project-specific finding might be extracted from the House and Senate Committee Reports on ANGTA. While these reports discuss section 12 only briefly, and contain no description of how the finding must be made, each report contains a general reference to "exchange arrangement" or "agreement". However, there is no indication what is meant by such arrangements or how they relate to a section 12 finding. It is unlikely any large-scale export project will contain a volume-for-volume exchange provision as part of the export contract. In fact, the most plausible interpretation of "arrangement" is that it refers to the interrelated nature of the world energy market and thus should be considered as part of a generic finding. In any event, this language does not appear in the statute.

The use of the phrase "energy available to the United States" does not necessitate a finding based on a specific export volume during a particular time period. This phrase is part of the description of the section 12 criteria. The plain meaning of the phrase is that the section 12 finding should focus broadly on the world energy market and not be restricted only to natural gas or domestic energy sources. Since this phrase recognizes the interrelated and fungible nature of the world energy market, it is more compatible with a generic finding than one that purports to determine the precise effects of Alaska natural gas exports. A finding based on precise volumes and time periods assumes regulators can predict the exact effects of their action. This belief in "regulatory fine-tuning" is the antithesis of the President's market-oriented philosophy and should not be unnecessarily read into section 12.

Conclusion

Section 12 requires no specific procedure or form. Rather, Congress granted the President broad discretion to make the section 12 finding in the manner the President believes best serves the interests of American consumers. There are compelling policy reasons for the President to make the finding and for the finding to be generic and unlimited as to volume and duration. Most importantly for American consumers, a generic Presidential finding is the best way to guarantee the efficient development of Alaska natural gas through competitive market forces, and thus end the current situation where this vital gas supply stays in the ground and benefits no one.

EXPORT LIMITATIONS

SEC. 12. Any exports of Alaska natural gas shall be subject to the requirements of the Natural Gas Act and section 103 of the Energy Policy and Conservation Act, except that in addition to the requirements of such Acts, before any Alaska natural gas in excess of 1,000 Mcf per day may be exported to any nation other than Canada or Mexico, the President must make and publish an express finding that such exports will not diminish the total quantity or quality nor increase the total price of energy available to the United States.

[15 U.S.C. 719j]

THE ALASKA NATURAL GAS
TRANSPORTATION ACT OF 1976

JOINT REPORT

OF THE

SENATE COMMITTEES ON COMMERCE
AND INTERIOR AND INSULAR AFFAIRS

together with

MINORITY AND ADDITIONAL VIEWS

ON

S. 3521

TO EXPEDITE A DECISION ON THE DELIVERY OF ALASKA
NATURAL GAS TO UNITED STATES MARKETS AND FOR
OTHER PURPOSES



JUNE 30 (legislative day, JUNE 28), 1976.—Ordered to be printed

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WASHINGTON : 1976

57-0100

4222

or modify any certificate, right-of-way, permit, lease, or other authorization issued by such officer or agency pursuant to this Act.

SECTION 10—JUDICIAL REVIEW

Section 10 of S. 3521 minimizes judicial review of the issuance of certificates, rights-of-way, permits, leases, and other authorizations necessary for the construction and initial commercial operation of the Alaska natural gas transportation system approved by enactment of a joint resolution of the Congress. A detailed discussion of the judicial review provisions appears as part of the Detailed Description section of this report.

SECTION 11—REMEDIES

Section 11(a) states that in addition to remedies available under other applicable provisions of law, whenever on the basis of any information available to it the Commission, the Secretary, or other appropriate federal officers finds that any person is in violation of any provision of this Act or other applicable law or any rule, regulation, or order thereunder or a condition of the certificate, right-of-way, permit, lease, or other authorization required for the construction of initial commercial operation of the Alaska natural gas transportation system approved by enactment of a joint resolution of the Congress, the Commission, Secretary, or other appropriate federal officer as the case may be, in their discretion may either issue an order requiring such person to comply with such provision or requirement, or request the Attorney General to commence a civil action for appropriate relief including a permanent or temporary injunction or a civil penalty not to exceed \$25,000 per day of any violation for which the appropriate federal officer is authorized to issue a compliance order. The United States District Court in which the defendant is located or resides or is doing business is given jurisdiction to restrain a violation, require compliance or impose a penalty.

Subsection (b) of section 11 requires that any compliance order issued shall state with reasonable specificity the nature of the violation and a time for compliance not to exceed 30 days, which the Commission, the Secretary or other appropriate federal officer, as the case may be, determines is reasonable taking into account the seriousness of the violation and any good faith efforts to comply with applicable requirements.

SECTION 12—EXPORT LIMITATIONS

Any exports of Alaska natural gas shall be subject to all of the limitations and approval requirements of the Natural Gas Act and in addition, notwithstanding any other provision of law, before any natural gas from Alaska in excess of 1,000 Mcf per day may be exported to any nation other than Canada or Mexico, the President must make and publish an express finding that such exports will not diminish the total quantity or quality nor increase the total price of energy available to the United States and that such exports are in the national interest. This provision is designed to assure that if the export of Alaska natural gas is in the national interest, it may be done only under an ex-

change arrangement whereby U.S. consumers would not be faced with increases in energy prices nor a reduction in the total quantity or quality of energy.

SECTION 13—EQUAL ACCESS TO FACILITIES

Section 13 requires that there shall be included in the terms of any certificate issued pursuant to this Act a provision that no person seeking to transport natural gas in the Alaska natural gas transportation system approved by enactment of a joint resolution of the Congress may be prevented from doing so or discriminated against in the terms and conditions of service on the basis of his degree of ownership or lack thereof of the Alaska natural gas transportation system. This provision requires that tariffs shall be equal to shippers who are owners or non owners of the system for the shipment of similar quantities of natural gas for similar distances. This is to assure that pipelines or distributors who are able to purchase additional quantities of Alaska natural gas are able to transport such natural gas to their own system upon non-discriminatory terms.

In addition, section 28(r)(2)(B) of the Mineral Leasing Act of 1920 (Public Law 93-153) imposes certain requirements to transport natural gas produced from federal lands through natural gas pipelines crossing federal lands. These requirements are imposed even though such natural gas pipelines are operated by a person subject to regulation under the Natural Gas Act or by a public utility subject to regulation by a state or municipal regulatory agency having jurisdiction to regulate the rates and charges for the sale of natural gas to consumers within the state or municipality. These requirements specify that " * * * in the case of oil or gas produced from federal lands or from the resources on the federal lands in the vicinity of the pipeline, the Secretary may, after a full hearing with due notice thereof to the interested parties and a proper finding of facts, determine the proportionate amounts to be accepted, conveyed, transported or purchased". This provision allows any person producing natural gas from federal lands in the vicinity of the Alaska natural gas transportation system certified hereunder to petition the Secretary of the Interior who may, after a full hearing, require the certificate holder, in the event adequate capacity is not available, to apportion shipments of other shippers in order to accommodate the production from federal lands. For a more complete discussion of this provision, see Senate Report No. 93-207, pages 32-35.

SECTION 14—ANTITRUST LAWS

This section makes clear that the grant of a certificate, right-of-way, permit, lease, or other authorization pursuant to this Act shall not impair or amend any of the antitrust laws.

SECTION 15—EXPIRATION OF AUTHORITY

This section provides that the provisions of section 4(a), 5, 6, and 8 of this Act shall expire upon the date that the provisions for the Alaska natural gas transportation system becomes final in accordance

NATURAL GAS TRANSPORTATION ACT
P.L. 94-586

**ALASKA NATURAL GAS TRANSPORTATION
ACT OF 1976**

P.L. 94-586, see page 90 Stat. 2903

Senate Report (Commerce and Interior and Insular Affairs Committees) No. 94-1020, June 30, 1976 [To accompany S. 3521]

House Report (Interstate and Foreign Commerce Committee) No. 94-1658, Sept. 22, 1976 [To accompany S. 3521]

Cong. Record Vol. 122 (1976)

DATES OF CONSIDERATION AND PASSAGE

Senate July 1, October 1, 1976

House September 30, 1976

The House Report is set out.

HOUSE REPORT NO. 94-1658

[page 1]

The Committee on Interstate and Foreign Commerce, to whom was referred the bill (S. 3521) to expedite a decision on the delivery of Alaska natural gas to United States markets, and for other purposes, having considered the same, report favorably thereon with amendments and recommend that the bill as amended do pass.

* * * * *

[page 17]

PURPOSE AND BRIEF SUMMARY

The purpose of this legislation is to provide a process for arriving at a sound decision with respect to the selection of a transportation system for the delivery of Alaska natural gas to United States markets and, should any such system be approved, to expedite its construction and initial operation.

The Committee substitute to the bill S. 3521 would alter procedures under existing law for the selection of a transportation system for the delivery of Alaska natural gas in order to expedite both the designation and the construction of such a system. A 4-step process is contemplated.

In the first stage, the Federal Power Commission is directed to suspend current proceedings pursuant to which contesting applicants seek the issuance of a certificate of public convenience and necessity from the Commission authorizing the construction of a transportation system for such gas. The Commission is directed to review the contesting systems proposed by applicants, together with other alternatives, and to report to the President by May 1, 1977. The Commission's report is to analyze various economic and environmental considerations as well as other factors which the Committee believes to be relevant to the selection of an appropriate system. The Commission may

LEGISLATIVE HISTORY

P.L. 94-586

it is adequately supported by the record of any proceedings as may have occurred before the agency.

Subsection (c) vests exclusive jurisdiction over claims brought under subsection (b) in the U.S. Court of Appeals for the District of Columbia. The court is directed to give precedence to these claims over all other pending matters on the docket, and to adjudicate such claims within 90 days from the date the action is brought, unless the court determines a longer period is necessary to satisfy constitutional requirements. The court shall not have jurisdiction to grant injunctive relief except in connection with a final judgment entered in the case. Sole

[page 32]

review of any interlocutory or final judgment on order of the court shall lie with the Supreme Court, and the appellant must file a petition for certiorari within 15 days after the decision of Court of Appeals. The approval of a system pursuant to section 8 shall be conclusive as to the legal and factual sufficiency of any environmental impact statement related to the system and the court shall have no jurisdiction to consider questions respecting the sufficiency of such statements.

Sec. 11. Supplemental Enforcement Authority

Section 11 gives any Federal officer or agency the authority to issue a compliance order or bring a civil action against any person he determines to be in violation of any provision of law administered by such officer or agency. Any such compliance order would state the nature of the violation with specificity, and set a time of compliance, not to exceed 30 days, in keeping with the seriousness of the violation and any good faith efforts to comply with the requirements. Continued non-compliance in violation of a compliance order would permit the Attorney General, at the request of the officer or agency, to commence civil action for appropriate relief, including a permanent or temporary injunction or a civil penalty not to exceed \$25,000 per day for each day of continued violation. These actions may be brought in the District Court of the U.S. for the district in which the defendant resides or is doing business.

Sec. 12. Export Limitations

Section 12 provides that any exportation of Alaskan natural gas, as defined by Section 4(1), be subject to the requirements of the Natural Gas Act and section 103 of the Energy Policy and Conservation Act. In addition, such exports may not exceed 1,000 MCF per day unless it is done under an exchange agreement whereby the exports would not diminish the total quality or quantity, nor increase the total price of energy available within the United States.

Sec. 13. Equal Access to Facilities

Section 13 provides that no person seeking to transport gas in the approved system would be prevented from doing so or discriminated against in the terms and conditions of service, on the basis of ownership or lack thereof. This section would work to assure that any tariffs applied to the transportation of gas through the system would be equal for owners and non-owners alike.

Sec. 14. Antitrust Laws

Section 14 states that nothing in the Act is intended to operate as an amendment to any provisions of the anti-trust laws.

JOINT POLICY STATEMENT ON JAPAN-U.S. ENERGY COOPERATION

Prime Minister Nakasone and President Reagan share the view that further progress be made in energy trade and cooperation in oil, natural gas and coal between Japan and the United States as outlined in the following Joint Policy Statement recommended by the Japan-United States Energy Working Group:

Taking account of the energy prospects for the entire Pacific basin, the two countries agree that the sound expansion of U.S.-Japan energy trade will contribute to the further development of the close economic and energy security relationship which exists between the two countries.

They will continue to discuss and find ways of developing this trade for the mutual benefit of both countries, noting the importance of long-term cooperation, the central role of the private sector, and the need for a balance between economic cost and energy security.

Both countries consider Alaska to be a particularly promising area for joint development of energy resources. Both governments will encourage private sector discussions regarding the possibilities for such development.

With regard to trade in oil, gas and coal, we have agreed on the following next steps:

A. The U.S. and Japan recognize that if legislative barriers can be removed, the U.S. has the potential to ship substantial quantities of crude oil to Japan, thereby increasing economic incentives for U.S. oil production and helping to diversify Japan's energy sources. The U.S. will continue to keep under review the removal of restrictions on exports of domestic crude oil.

B. The U.S. and Japan will encourage private industry in both countries to undertake now the pre-feasibility or feasibility studies necessary to determine the extent to which Alaskan natural gas can be jointly developed by U.S. and Japanese interests.

C. The U.S. and Japan will encourage private industry in both countries to discuss the possibility of concluding long-term coal contracts and jointly developing mines and transportation systems to make American coal more competitive in the Japanese market.

D. In this regard, the two countries welcome the examination under way of the technical and economic aspects of several steam coal projects by private companies concerned on both sides. As economic recovery proceeds, Japan will encourage its industries to consider purchase of more competitively priced U.S. steam coal to meet future demand not already covered by existing contracts. In addition, Japan will invite the private sector concerned to explore the possibility of further increasing substitution of coal for oil in electrical generation.

E. With regard to metallurgical coal, both sides noted that the depressed state of world steel manufacturing had reduced demand for traded coal. However, in view of the fact that the U.S. has been a major supplier to the Japanese market, both sides will endeavor to maintain the level of Japanese imports of U.S. coal. Japan expects that imports of competitively priced U.S. metallurgical coal will not continue to decline, and will encourage its steel industry to increase U.S. coal imports when conditions in the industry permit.

F. As a first step toward developing U.S.-Japan coal trade from a mid- to long-term prospective, a mission composed of representatives of major Japanese coal users and other appropriate interests will visit the U.S. to meet with major coal mining and transportation interests. The purpose of this mission will be to explore the possibility of expanding coal trade between the U.S. and Japan, and the possibility of conducting a major study of the opportunities for reducing the delivered price in Japan of U.S. coal.

November 11, 1983

12/19 T/C McGuinness

one concluded back in 70s that Pres. is not
included in APA

11/25

T/C J. White 586-6667

prepare written response / prior to any mtg.

① why Pres should not delegate to the Sec. of the auto. to issue this finding

② can finding be ~~be~~ generic or must it be project specific

③ if generic, can the finding be issued w/o ref. to quantity of exports or the time period over which the exports will be made?

~~how, etc.~~ if there no quantity that would affect the P of energy to the US or the quantity of gas available —

particularly in view of the fact that world supply will diminish over time

how are we interpreting the word "available"

— to mean ~~available~~ in the market?

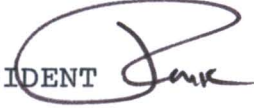
— or "unconsumed"?

THE WHITE HOUSE

WASHINGTON

October 26, 1987

MEMORANDUM FOR THE FILE

FROM: ROBERT M. KRUGER
ASSOCIATE COUNSEL TO THE PRESIDENT 

SUBJECT: Presidential Finding Regarding
Alaskan North Slope Gas Exports

As reported by Jay Stephens at a recent staff meeting, the Economic Policy Council has deferred action on a Presidential finding authorizing Alaskan North Slope gas exports. The EPC determined that several conditions had to be met prior to the issuance of such a finding. These conditions include preparation by the Energy Department of a written justification for a Presidential finding, a decision as to whether the authority to issue such a finding can and should be delegated to the Secretary of Energy, and further consultations with Canadian officials to ensure that such a finding does not adversely affect the ANGTS project.

No further action on this matter is required at this time.

dg

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WHITE HOUSE CORRESPONDENCE TRACKING WORKSHEET

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Name of Correspondent: Theodore J. Garrison

MI Mail Report

User Codes: (A) _____ (B) _____ (C) _____

Subject: North Slope Gas Exports

ROUTE TO:

ACTION

DISPOSITION

Office/Agency (Staff Name)	Action Code	Tracking Date YY/MM/DD	Type of Response	Code	Completion Date YY/MM/DD
<u>cuhol</u>	ORIGINATOR	<u>8710107</u>	<u>PY</u>		<u>1 1</u>
<u>cut 28</u>	A/D	<u>8710108</u>	<u>PY</u>		<u>58710118</u>
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ACTION CODES:

- A - Appropriate Action
- C - Comment/Recommendation
- D - Draft Response
- F - Furnish Fact Sheet to be used as Enclosure

- I - Info Copy Only/No Action Necessary
- R - Direct Reply w/Copy
- S - For Signature
- X - Interim Reply

DISPOSITION CODES:

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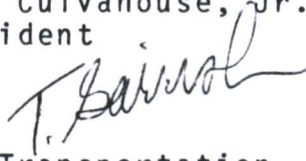
Alaska Natural Gas Transportation System

FA-1
1000 Independence Avenue, SW
Washington, DC 20585

533091 CK

October 5, 1987

MEMORANDUM FOR Honorable Arthur B. Culvahouse, Jr.
Counsel to the President

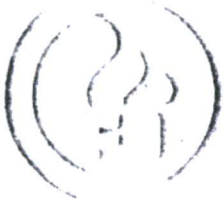
FROM: Theodore J. Garrish 
Federal Inspector
Alaska Natural Gas Transportation
System

SUBJECT: North Slope Gas Exports

Attached is a copy of a memorandum to Secretary Baker regarding the proposed Presidential Finding on Alaskan North Slope gas exports to the Asian market, an issue currently under EPC review. Because this issue bears significantly on activities related to the Alaska Natural Gas Transportation System, I wanted to bring my concerns to your attention as efforts begin towards preparation of a final version of the Presidential Finding.

I would be pleased to work with your office to provide any assistance you may request on this matter.

Attachment



Office of the Federal Inspector

Alaska Natural Gas Transportation System

FA-1

1000 Independence Avenue, SW
Washington, DC 20585

October 5, 1987

MEMORANDUM FOR Honorable James A. Baker III
FROM: Theodore J. Garrish *T. Garrish*
Federal Inspector for the Alaska
Natural Gas Transportation System
RE: EPC Consideration of North Slope Gas Exports

Based on recent discussions and materials related to the issue of exporting Alaska North Slope gas to the Asian market, it appears that most elements within the Administration support allowing such exports and that this course of action will probably be recommended at an upcoming Economic Policy Council meeting. I am writing, however, to stress the importance of exercising a measure of caution in this undertaking. Approving the export of North Slope gas, without a clear reaffirmation of the American commitment to the Alaska Natural Gas Transportation System (ANGTS), could generate concerns that the United States is retreating from its previous commitment to the ANGTS project and thereby adversely affect the project's potential completion.

I have had the opportunity to review a draft Presidential Finding with respect to exports of North Slope gas to the Asian market. It essentially approves such exports, concluding that they would not have a detrimental effect on energy supplies or prices within the United States. With respect to the impact on the ANGTS, the proposed Finding suggests that there is no intent to "hinder completion of the Alaska Natural Gas Transportation System." For the following reasons, I believe the language of the Finding needs to be more supportive of the ANGTS.

First, the United States has made explicit commitments to the completion of the ANGTS, and assurances of this commitment have been expressed by both Presidential communications to the Canadian Government and by a Congressional Joint Resolution. Taking an action perceived as inconsistent with the development of the ANGTS, such as approving the shipment of North Slope gas through a different transportation system, without making a strong reaffirmation of the American commitment to the ANGTS, could signal a retreat from these prior commitments. Private entities which have invested in the ANGTS project on the strength of this nation's commitment to it will

now have to contend with an apparent change in American policy regarding North Slope gas reserves. Instead of a commitment to the ANGTS as the means of bringing North Slope gas to the lower 48 states, America's commitment will appear to be to the development of North Slope gas in general without emphasizing a particular project to achieve this objective. While this result may reflect the collective judgment of the Administration, the potential impact on the ANGTS project and the historic assurances made by the United States regarding its future indicate the need to do more than render a passing acknowledgement of the project's existence. Anything less could have a destabilizing effect on the investment and construction decisions of the ANGTS sponsors.

Second, a failure to strongly reaffirm American resolve to complete the ANGTS could signal to the Canadian Government a dilution of the commitment upon which substantial Canadian investment in the ANGTS is based. The Canadian Government approved construction of the Southern portion of the ANGTS in Canada only after the United States made clear that it was fully committed to the project's completion. To express an interest in developing North Slope gas for a purpose unrelated to the ANGTS would suggest that previous American commitments to Canada regarding the ANGTS were unreliable. This could seriously complicate future discussions between the United States and Canada regarding final construction and completion of the ANGTS project.

I can appreciate the Administration's desire to remove any obstacles that could stand in the way of an entity's attempt to develop North Slope gas reserves. My concern is simply that in the process of doing so, the Administration may send negative signals to both the ANGTS sponsors and the Canadian Government, signals that could indicate a retreat from prior commitments rather than a simple, objective desire for the economic development of Alaskan gas reserves. Under these circumstances, I urge the Economic Policy Council to incorporate in the Presidential Finding a strong reaffirmation of the long-standing American commitment to the ANGTS project.

If you desire additional information or have any questions regarding this issue, please do not hesitate to contact me.

cc: Honorable Eugene McAllister
Honorable Arthur B. Culvahouse, Jr.

UNITED STATES DEPARTMENT OF ENERGY
WASHINGTON, D.C. 20585

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Energy Security
Our Future
Depends On It



Honorable Arthur B. Culvahouse, Jr.
Counsel to the President
The White House
1600 Pennsylvania Avenue, NW
Washington, D.C. 20500

10/9

THE WHITE HOUSE
WASHINGTON

Bob,

The ANS natural gas export issue is back.

Attached are some papers on this issue, including a draft Presidential finding.

We are clearing this through the EPC on paper and should have something to go to West Wing clearance on Tuesday.

DOE (Bill Martin) volunteered the availability of their lawyers to go over the finding with you.

Hope this heads up is helpful.

Gene McAllister

6406

October 8, 1987

MEMORANDUM FOR THE PRESIDENT

FROM: THE ECONOMIC POLICY COUNCIL

SUBJECT: Alaskan North Slope Natural Gas Exports

Section 12 of the Alaskan Natural Gas Transportation Act (ANGTA) requires that the President issue a "finding" before permitting exports of Alaskan North Slope natural gas to countries other than Canada and Mexico. The "finding" must determine that exports will not diminish the total quantity of energy available to the U.S., nor increase its price.

The Economic Policy Council is recommending (not recommending) that you issue a general finding that would permit natural gas exports.

This recommendation is prompted by a request from the Yukon Pacific Corporation, which plans to explore with Japan, Korea, and Taiwan the possibility of exporting natural gas to those countries. The gas would be transported through the Trans-Alaska Gas System (TAGS), which has yet to be constructed.

A preliminary study has indicated that such exports will be uneconomical unless all three nations -- Japan, Korea, and Taiwan -- contract to purchase North Slope natural gas. It is not clear that these nations will desire U.S. exports under current circumstances.

Despite the uncertainty about potential customers, the Council recommends that you issue the finding for two reasons:

- o Permitting natural gas exports is good policy, although such exports may not be economic now. A finding will permit exports in the future, when the economic circumstances may be different.
- o The TAGS project grows out of a November 1983 Joint Policy Statement by you and Prime Minister Nakasone calling for a pre-feasibility study on the potential joint development of North Slope gas.

how can Pres find that exports will not increase US energy prices under changed circs?
why not postpone finding until after feasibility?

In making this recommendation, the Council was conscious of two potential problems:

- o (U.S. and Canadian companies have already built a portion of a ~~Canada is building~~ a pipeline of its own to transport natural gas from Alaska's North Slope -- the Alaska Natural Gas Transportation System (ANGTS). ~~Initially,~~ The Canadians ~~were~~ are concerned that a finding might be construed as choosing TAGS over ANGTS. The State Department has consulted with

(we have given careful consideration to their points. While,

the Canadians and they are ~~no longer~~^{still} opposed to a Presidential finding, if it is not TAGS-specific and it includes some reference to the importance of the ANGTS project, some Canadian concerns will have been met.

- o That a finding might jeopardize our efforts to open up the Arctic National Wildlife Reserve (ANWR) for exploration and development. The Departments of Energy and Interior do not believe a finding will affect Congressional consideration of ANWR.

RECOMMENDATION

The Economic Policy Council recommends (does not recommend) issuing a Presidential finding permitting export of natural gas from Alaska's North Slope to countries other than Canada and Mexico.

_____ Approve

_____ Disapprove

PRESIDENTIAL FINDING CONCERNING ALASKA NATURAL GAS

My Administration has been dedicated to encouraging free trade and to removing regulatory impediments that inhibit the development of our Nation's natural resources. Alaska natural gas is an important part of these natural resources. Proven natural gas reserves in the Prudhoe Bay area of Alaska's North Slope represent approximately 15% of total U.S. gas reserves. In addition, undiscovered, recoverable supplies of natural gas from Alaska's North Slope may exceed 100 trillion cubic feet. There can be no doubt the development of Alaskan oil has played an important role in ensuring adequate energy supplies at reasonable prices for American consumers. I believe efficient development of Alaska natural gas will provide similar benefits. ~~On the other hand,~~ leaving this resource undeveloped benefits no one.

Efficient development of Alaska natural gas could encompass the export of some of this gas to other countries. Because world energy markets are interrelated our nation will benefit ~~whether Alaska natural gas is consumed domestically or exported.~~ Production of Alaska reserves will increase the amount of secure energy sources available at market prices and, thus, displace less secure or more expensive energy sources, including oil from the Persian Gulf.

from an enlarged international gas supply.

Before Alaska natural gas can be exported to nations other than Canada or Mexico, Section 12 of the Alaska Natural Gas Transportation Act requires me to find exportation "will not diminish the total quantity or quality nor increase the total price of energy available to the United States." In order to make this finding, it has been necessary to assess the relationship of Alaska natural gas to the United States energy market.

There exist adequate, secure, reasonably-priced supplies of natural gas to meet the demand of American consumers for the foreseeable future. This demand ~~will be met~~ ^{can} by lower-48 production and already-approved Canadian imports. If necessary, this demand also can be met at lower delivered energy cost by coal, oil, imported LNG, natural gas from Mexico, and other energy sources.

Given these facts, exports of Alaska natural gas would represent a judgment by the market that the energy demands of American consumers can be met adequately from other sources at comparable or lower prices and that Alaska natural gas can be consumed more efficiently in foreign markets. Exports of Alaska natural gas would not diminish the total quantity or quality of energy available to U.S. consumers because world energy resources would be increased and other more efficient supplies would thus be available. Finally, exports would not increase the price of energy available to consumers since increased availability of secure energy sources tends to stabilize or lower energy prices.

Accordingly, I find that exports of Alaska natural gas in quantities in excess of 1,000 Mcf per day will not diminish the total quantity or quality nor increase the total price of energy available to the United States.

~~will~~ This finding ^{will} ~~is~~ not ~~intended to~~ hinder completion of the Alaska Natural Gas Transportation System. My Administration has removed all regulatory barriers to the private sector's expeditious completion of this project. In particular, I want to reaffirm our support for the special regulatory treatment of the "prebuild" portion of ANGTS, including the minimum revenue stream guarantees.

~~Finally~~ It is my belief that removal of this impediment to private sector development of Alaska's vast natural gas resources will benefit our entire nation.

supports the timely, economic development of Alaskan natural resources. To this end, my Administration

MEMORANDUM FOR NANCY RISQUE

FROM: GRANT S. GREEN, JR.

SUBJECT: Alaska North Slope Natural Gas Exports

The NSC staff supports the EPC recommending a Presidential finding which would permit export of Alaska North Slope natural gas.

Our comments, which reflect the NSC-DOE-State consensus, on the EPC paper and draft finding are attached (Tab A).

If the EPC issues a favorable recommendation, it is important to give Canada 24 hours' notice before the recommendation becomes public.

We recommend that the issue be raised at next Tuesday's scheduled EPC.

Attachment

Tab A EPC Paper with NSC, DOE and State Comments

cc: Gene McAllister

CABINET AFFAIRS STAFFING MEMORANDUM

Date: Oct. 8, 1987 **Number:** 490,700 **Due By:** COB 10/9/87

Subject: Alaskan North Slope Natural Gas Exports

ALL CABINET MEMBERS	Action	FYI		Action	FYI
Vice President	<input type="checkbox"/>	<input type="checkbox"/>	CEA	<input checked="" type="checkbox"/>	<input type="checkbox"/>
State	<input type="checkbox"/>	<input type="checkbox"/>	CEQ	<input type="checkbox"/>	<input type="checkbox"/>
Treasury	<input checked="" type="checkbox"/>	<input type="checkbox"/>	OSTP	<input type="checkbox"/>	<input type="checkbox"/>
Defense	<input checked="" type="checkbox"/>	<input type="checkbox"/>	_____	<input type="checkbox"/>	<input type="checkbox"/>
Justice	<input checked="" type="checkbox"/>	<input type="checkbox"/>	_____	<input type="checkbox"/>	<input type="checkbox"/>
Interior	<input checked="" type="checkbox"/>	<input type="checkbox"/>	_____	<input type="checkbox"/>	<input type="checkbox"/>
Agriculture	<input checked="" type="checkbox"/>	<input type="checkbox"/>	_____	<input type="checkbox"/>	<input type="checkbox"/>
Commerce	<input checked="" type="checkbox"/>	<input type="checkbox"/>	<u>Carlucci</u>	<input checked="" type="checkbox"/>	<input type="checkbox"/>
Labor	<input checked="" type="checkbox"/>	<input type="checkbox"/>	Cribb	<input type="checkbox"/>	<input type="checkbox"/>
HHS	<input type="checkbox"/>	<input type="checkbox"/>	Bauer	<input type="checkbox"/>	<input type="checkbox"/>
HUD	<input type="checkbox"/>	<input type="checkbox"/>	Dawson (For WH Staffing)	<input type="checkbox"/>	<input type="checkbox"/>
Transportation	<input checked="" type="checkbox"/>	<input type="checkbox"/>	_____	<input type="checkbox"/>	<input type="checkbox"/>
Energy	<input checked="" type="checkbox"/>	<input type="checkbox"/>	_____	<input type="checkbox"/>	<input type="checkbox"/>
Education	<input type="checkbox"/>	<input type="checkbox"/>	_____	<input type="checkbox"/>	<input type="checkbox"/>
Chief of Staff	<input type="checkbox"/>	<input type="checkbox"/>	_____	<input type="checkbox"/>	<input type="checkbox"/>
OMB	<input checked="" type="checkbox"/>	<input type="checkbox"/>	_____	<input type="checkbox"/>	<input type="checkbox"/>
UN	<input type="checkbox"/>	<input type="checkbox"/>	_____	<input type="checkbox"/>	<input type="checkbox"/>
USTR	<input checked="" type="checkbox"/>	<input type="checkbox"/>	_____	<input type="checkbox"/>	<input type="checkbox"/>
CIA	<input type="checkbox"/>	<input type="checkbox"/>	Executive Secretary for:		
EPA	<input type="checkbox"/>	<input type="checkbox"/>	DPC	<input type="checkbox"/>	<input type="checkbox"/>
GSA	<input type="checkbox"/>	<input type="checkbox"/>	EPC	<input checked="" type="checkbox"/>	<input type="checkbox"/>
NASA	<input type="checkbox"/>	<input type="checkbox"/>	_____	<input type="checkbox"/>	<input type="checkbox"/>
OPM	<input type="checkbox"/>	<input type="checkbox"/>	_____	<input type="checkbox"/>	<input type="checkbox"/>
SBA	<input type="checkbox"/>	<input type="checkbox"/>	_____	<input type="checkbox"/>	<input type="checkbox"/>
VA	<input type="checkbox"/>	<input type="checkbox"/>	_____	<input type="checkbox"/>	<input type="checkbox"/>

REMARKS: A draft memorandum to the President and a proposed Presidential finding are attached for your review and comment.

RETURN TO:

Nancy J. Risque
Cabinet Secretary
456-2823
(Ground Floor, West Wing)

Associate Director
Office of Cabinet Affairs
456-2800
(Room 235, OE0B)

THE WHITE HOUSE

WASHINGTON

October 8, 1987

MEMORANDUM FOR THE ECONOMIC POLICY COUNCIL

FROM: EUGENE J. McALLISTER *EM*

SUBJECT: Alaskan North Slope Exports

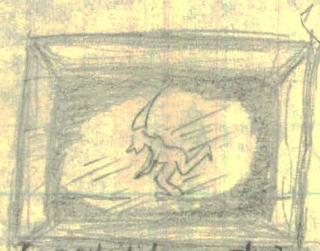
At its July 21, 1987 meeting, the Economic Policy Council agreed to reconsider the issue of whether to recommend a Presidential finding permitting the export of Alaska North Slope natural gas after consultations with the Canadians were completed.

The State Department has completed its consultations and believes that, with certain caveats, a Presidential finding will not be in conflict with the Canadian goals for the Alaska Natural Gas Transportation System (ANGTS).

A draft memorandum to the President and a proposed Presidential finding are attached for your review and comment. Please inform me of your agency's position on the finding, as well as any editorial comments you might want to suggest on the papers, by close of business, Friday, October 9.

Thank you very much.

10/12



- 1 why is finding necessary to pre-feasibility study?
(there are no exports to be undertaken now,
in fact, the project is seen as uneconomic now)
- 2 how can Pres. reasonably find that exports will not affect quantities or prices
- when those exports will take place "in the future,
when the economic circumstances may be diff."
- 3 why not have the Sec of DoE issue the finding?

- 4 why take on all these problems (i.e. Canada), if there's no need?
- 5 has US-TR signed off? what is effect on US-Canada free Trade accord?
- 6 why no EPC mtg? why such a quick turn-around?
(what are DoE's comments?)

- DoE proposes that
Pres issue finding
under ANGSTA that
exports will not
diminish even, or equal,
or increase price of
energy

- ① delegate auth. to Sec of DoE
- ② ability to "find" prospectively & generically
- ③ sev. prob. of

THE WHITE HOUSE

WASHINGTON

July 22, 1987

MEMORANDUM FOR ARTHUR B. CULVAHOUSE, JR.

FROM: ROBERT M. KRUGER 

SUBJECT: Presidential Finding Under Section 12 of
the Alaska Natural Gas Transportation Act

Gene's McAllister reported to me today on the discussion at yesterday's EPC meeting of DOE's proposal to have the President issue a finding under Section 12 of the Alaska Natural Gas Transportation Act. Gene advised that the EPC decided to consult with Canadian trade representatives and defer further consideration of DOE's proposal until after the U.S. - Canada Free Trade Agreement has passed the Congress (expected to occur in October).

I advised Gene of my discussion of this matter with Jim White at DOE and suggested that he consider asking DOE to provide a written opinion addressing the legal issues we have identified concerning a "generic" Section 12 finding and to provide in writing DOE's reasons for not wanting the President to delegate his authority to issue such a finding to the Secretary of Energy.

THE WHITE HOUSE

WASHINGTON

July 21, 1987

MEMORANDUM FOR ARTHUR B. CULVAHOUSE, JR.

FROM: ROBERT M. KRUGER 

SUBJECT: National Finding to Permit
Export of North Slope Gas

As I reported at this morning's staff meeting, Gene McAllister, Executive Secretary of the Economic Policy Council, has asked our advice regarding a proposal to have the President issue a finding under Section 12 of the Alaska Natural Gas Transportation Act (ANGTA) permitting the export of natural gas from Alaska. Apparently, DOE is seeking such a finding at this time in order to clear the way for a private sector project called the Trans-Alaska Gas System (TAGS) being pursued by the Yukon Pacific Corporation.

Gene's specific question is whether such a finding can be generic in nature, and thereby applicable to any and all exports of natural gas from Alaska, or whether it must be limited to the TAGS Project.

A draft memorandum for the EPC provided by Gene argues that a sufficient statutory basis exists for the issuance of a Section 12 finding, i.e., that such exports will not diminish the total quantity or quality nor increase the total price of energy available to the United States. The memorandum notes that issuance of a Section 12 finding would be consistent with a free-market approach to energy development, may boost the Alaskan and U.S. economy, will encourage and stimulate further exploration and development of North Slope natural gas resources, and will deter Japan from seeking gas supplies from the Soviets. On the other hand, the memorandum notes that such a finding could upset ongoing free trade negotiations between the U.S. and Canada, may lead to depletion of a potential strategic gas reserve, and would increase environmental concerns. According to the memorandum, failure to issue the finding would effectively kill the TAGS Project.

The statute is silent as to the precise form or nature of a Section 12 finding. It provides:

Any exports of Alaska natural gas shall be subject to the requirements of the Natural Gas Act and Section 103 of the Energy Policy and Conservation Act, except that

in addition to the requirements of such Acts, before any exports of Alaska natural gas in excess of 1,000 Mcf per day may be exported to any nation other than Canada or Mexico, the President must make and publish an express finding that such exports will not diminish the total quantity or quality nor increase the total price of energy available to the United States.

15 U.S.C. § 719(j). No Presidential findings under Section 12 have ever been issued. On its face, Section 12 does not indicate whether the President's finding may be generic or project-specific. The phrase "any exports" could be read as covering a particular quantity of exports or any and all exports. (The statutory reference to levels of Alaska natural gas in excess of 1,000 Mcf only establishes a floor below which no finding is required.)

The two additional statutes referenced in Section 12 to which "[a]ny exports of Alaska natural gas" are also subject do not shed any direct light on whether a Section 12 finding must be specific to a particular proposal or may be general in nature. Section 3 of the Natural Gas Act requires persons seeking to export any U.S. natural gas to first obtain an order authorizing the proposed exportation. 15 U.S.C. § 717(b). Section 103 of the Energy Policy and Conservation Act requires the President to promulgate a rule prohibiting the export of natural gas except as the President may exempt. Section 103 provides that exemptions "may be based on the purpose for export, class of seller or purchaser, country of description, or any other reasonable classification or basis as the President determines to be appropriate and consistent with the national interest." According to James White, Assistant General Counsel for Natural Gas and Mineral Leasing at the Department of Energy, the President delegated responsibility to the Secretary of Commerce to issue the rule referred to in Section 103. Mr. White also advises that Commerce has never issued such a rule.

Section 3 and Section 103 suggest a proposal-specific approach to the determinations to be made under each of the Natural Gas and Energy Policy and Conservation Act, respectively. It is arguable, therefore, that in order to conform a Section 12 finding to determinations under these statutes, the finding should be specific to a particular proposal. On the other hand, there is no indication that Congress intended that the three determinations be compatible.

It is also arguable that the President cannot reasonably find that exports will not increase the price of energy available to

the United States without any reference as to the quantity of exports or the time period over which exports will be made. The EPC memorandum asserts that any injection of additional natural gas into the world market will work to increase the total quantity of gas available and to lower energy prices generally.

The legislative history behind ANGTA does not illuminate the nature of the Section 12 funding. As noted, I have discussed this matter with James White and also with Mike Ferrell, General Counsel at DOE. Both are firmly of the view that a generic finding is authorized by Section 12.

I have already advised Gene McAllister that, based upon a preliminary review of this matter, it is our view that he should request a written opinion from DOE on the President's authority to issue a generic Section 12 finding. Gene advises that the precise issue of what form a Section 12 finding should take will not be decided during the EPC meeting this week. I also advised Gene that I found no mention of problems with the TAGS Project in the EPC memorandum. Gene's memorandum states that the TAGS project does not appear to be economically feasible. Gene promised to correct this omission in the EPC memorandum.

Finally, pursuant to your suggestion at this morning's staff meeting, I advised Gene that it may be appropriate to delegate the President's authority to issue this finding to the Secretary of Energy. In our conversations, Mr. White indicated that DOE has several reasons for wanting the President to issue this finding. I suggested to Mr. White that those reasons should also be put in writing and aired and discussed by the EPC.