

No. 19870

**UNITED STATES OF AMERICA
and
CANADA**

Agreement on principles applicable to a northern natural gas pipeline (with annexes). Signed at Ottawa on 20 September 1977

Exchange of notes constituting an agreement amending the above-mentioned Agreement. Washington, 6 June 1978

Authentic texts: English and French.

Registered by the United States of America on 10 June 1981.

**ÉTATS-UNIS D'AMÉRIQUE
et
CANADA**

Accord sur les principes applicables à un pipe-line pour le transport du gaz naturel du nord (avec annexes). Signé à Ottawa le 20 septembre 1977

Échange de notes constituant un accord modifiant l'Accord susmentionné. Washington, 6 juin 1978

Textes authentiques : anglais et français.

Enregistrés par les États-Unis d'Amérique le 10 juin 1981.

AGREEMENT¹ BETWEEN THE UNITED STATES OF AMERICA AND CANADA ON PRINCIPLES APPLICABLE TO A NORTH- ERN NATURAL GAS PIPELINE

The Government of the United States of America and the Government of Canada,

Desiring to advance the national economic and energy interests and to maximize related industrial benefits of each country, through the construction and operation of a pipeline system to provide for the transportation of natural gas from Alaska and from Northern Canada,

Hereby agree to the following principles for the construction and operation of such a system:

1. PIPELINE ROUTE

The construction and operation of a pipeline for the transmission of Alaskan natural gas will be along the route set forth in Annex I, such pipeline being hereinafter referred to as "the Pipeline". All necessary action will be taken to authorize the construction and operation of the Pipeline in accordance with the principles set out in this Agreement.

2. EXPEDITIOUS CONSTRUCTION; TIMETABLE

(a) Both Governments will take measures to ensure the prompt issuance of all necessary permits, licenses, certificates, rights-of-way, leases and other authorizations required for the expeditious construction and commencement of operation of the Pipeline, with a view to commencing construction according to the following timetable:

—Alaska—January 1, 1980

—Yukon—main line pipe laying January 1, 1981

—Other construction in Canada to provide for timely completion of the Pipeline to enable initial operation by January 1, 1983.

(b) All charges for such permits, licenses, certificates, rights-of-way, leases and other authorizations will be just and reasonable and apply to the Pipeline in the same non-discriminatory manner as to any other similar pipeline.

(c) Both Governments will take measures necessary to facilitate the expeditious and efficient construction of the Pipeline, consistent with the respective regulatory requirements of each country.

3. CAPACITY OF PIPELINE AND AVAILABILITY OF GAS

(a) The initial capacity of the Pipeline will be sufficient to meet, when required, the contractual requirements of United States shippers and of Canadian shippers. It is contemplated that this capacity will be 2.4 billion cubic feet per day (bcfd) for Alaska gas and 1.2 bcfd for Northern Canadian gas. At such time

¹ Came into force on 20 September 1977 by signature, except for the provisions which required legislative approval (which entered into force on 24 July 1978), in accordance with section 15.

as a lateral pipeline transmitting Northern Canadian gas, hereinafter referred to as “the Dempster Line”, is to be connected to the Pipeline or at any time additional pipeline capacity is needed to meet the contractual requirements of United States or Canadian shippers, the required authorizations will be provided, subject to regulatory requirements, to expand the capacity of the Pipeline in an efficient manner to meet those contractual requirements.

(b) The shippers on the Pipeline will, upon demonstration that an amount of Canadian gas equal on a British Thermal Unit (BTU) replacement value basis will be made available for contemporaneous export to the United States, make available from Alaska gas transmitted through the Pipeline, gas to meet the needs of remote users in the Yukon and in the provinces through which the Pipeline passes. Such replacement gas will be treated as hydrocarbons in transit for purposes of the Agreement between the Government of Canada and the Government of the United States of America concerning Transit Pipelines,¹ hereinafter referred to as “the Transit Pipeline Treaty”. The shippers on the Pipeline will not incur any cost for provision of such Alaska gas except those capital costs arising from the following provisions:

- (i) The owner of the Pipeline in the Yukon will make arrangements to provide gas to the communities of Beaver Creek, Burwash Landing, Destruction Bay, Haines Junction, Whitehorse, Teslin, Upper Liard and Watson Lake at a total cost to the owner of the Pipeline not to exceed Canadian \$2.5 million;
- (ii) The owner of the Pipeline in the Yukon will make arrangements to provide gas to such other remote communities in the Yukon as may request such gas within a period of two years following commencement of operation of the Pipeline at a cost to the owner not to exceed the product of Canadian \$2,500 and the number of customers in the communities, to a maximum total cost of Canadian \$2.5 million.

4. FINANCING

(a) It is understood that the construction of the Pipeline will be privately financed. Both Governments recognize that the companies owning the Pipeline in each country will have to demonstrate to the satisfaction of the United States or the Canadian Government, as applicable, that protections against risks of non-completion and interruption are on a basis acceptable to that Government before proof of financing is established and construction allowed to begin.

(b) The two Governments recognize the importance of constructing the Pipeline in a timely way and under effective cost controls. Therefore, the return on the equity investment in the Pipeline will be based on a variable rate of return for each company owning a segment of the Pipeline, designed to provide incentives to avoid cost overruns and to minimize costs consistent with sound pipeline management. The base for the incentive program used for establishing the appropriate rate of return will be the capital costs used in measuring cost overruns as set forth in Annex III.

(c) It is understood that debt instruments issued in connection with the financing of the Pipeline in Canada will not contain any provision, apart from normal trust indenture restrictions generally applicable in the pipeline industry,

¹ United Nations, *Treaty Series*, vol. 1086, p. 343.

which would prohibit, limit or inhibit the financing of the construction of the Dempster Line; nor will the variable rate of return provisions referred to in subparagraph (b) be continued to the detriment of financing the Dempster Line.

5. TAXATION AND PROVINCIAL UNDERTAKINGS

(a) Both Governments reiterate their commitments as set forth in the Transit Pipeline Treaty with respect to non-discriminatory taxation, and take note of the statements issued by the Governments of the Provinces of British Columbia, Alberta and Saskatchewan, attached hereto as Annex V, in which those Governments undertake to ensure adherence to the provisions of the Transit Pipeline Treaty with respect to non-interference with throughput and to non-discriminatory treatment with respect to taxes, fees or other monetary charges on either the Pipeline or throughput.

(b) With respect to the Yukon Property Tax imposed on or for the use of the Pipeline the following principles apply:

- (i) The maximum level of the property tax, and other direct taxes having an incidence exclusively, or virtually exclusively, on the Pipeline, including taxes on gas used as compressor fuel, imposed by the Government of the Yukon Territory or any public authority therein on or for the use of the Pipeline, herein referred to as "the Yukon Property Tax", will not exceed \$30 million Canadian per year adjusted annually from 1983 by the Canadian Gross National Product price deflator as determined by Statistics Canada, hereinafter referred to as the GNP price deflator.
- (ii) For the period beginning January 1, 1980, and ending on December 31 of the year in which leave to open the Pipeline is granted by the appropriate regulatory authority, the Yukon Property Tax will not exceed the following:
 - 1980—\$5 million Canadian
 - 1981—\$10 million Canadian
 - 1982—\$20 million Canadian
 - Any subsequent year to which this provision applies—\$25 million Canadian.
- (iii) The Yukon Property Tax formula described in subparagraph (b) (i) will apply from January 1 after the year in which leave to open the Pipeline is granted by the appropriate regulatory authority until the date that is the earlier of the following, hereinafter called the tax termination date:
 - (A) December 31, 2008, or
 - (B) December 31 of the year in which leave to open the Dempster Line is granted by the appropriate regulatory authority.
- (iv) Subject to subparagraph (b) (iii), if for the year ending on December 31, 1987, the percentage increase of the aggregate per capita revenue derived from all property tax levied by any public authority in the Yukon Territory (excluding the Yukon Property Tax) and grants to municipalities and Local Improvement Districts from the Government of the Yukon Territory, as compared to the aggregate per capita revenue derived from such sources for 1983, is greater than the percentage increase for 1987 of the Yukon Property Tax as compared to the Yukon Property Tax for 1983, the maximum level of the Yukon Property Tax for 1987 may be increased to

equal the amount it would have reached had it increased over the period at the same rate as the aggregate per capita revenue.

- (v) If for any year in the period commencing January 1, 1988, and ending on the tax termination date, the annual percentage increase of the aggregate per capita revenue derived from all property tax levied by any public authority in the Yukon Territory (excluding the Yukon Property Tax) and grants to municipalities and Local Improvement Districts from the Government of the Yukon Territory as compared to the aggregate per capita revenue derived from such sources for the immediately preceding year exceeds the percentage increase for that year of the Yukon Property Tax as compared to the Yukon Property Tax for the immediately preceding year, the maximum level of the Yukon Property Tax for that year may be adjusted by the percentage increase of the aggregate per capita revenue in place of the percentage increase that otherwise might apply.
- (vi) The provisions of subparagraph (b) (i) will apply to the value of the Pipeline for the capacities contemplated in this Agreement. The Yukon Property Tax will increase for the additional facilities beyond the aforesaid contemplated capacity in direct proportion to the increase in the gross asset value of the Pipeline.
- (vii) In the event that between the date of this Agreement and January 1, 1983, the rate of the Alaska property tax on pipelines, taking into account the mill rate and the method of valuation, increases by a percentage greater than the cumulative percentage increase in the Canadian GNP deflator over the same period, there may be an adjustment on January 1, 1983, to the amount of \$30 million Canadian described in subparagraph (b) (i) of the Yukon Property Tax to reflect this difference. In defining the Alaska property tax for purposes of this Agreement, the definition of the Yukon Property Tax will apply *mutatis mutandis*.
- (viii) In the event that, for any year during the period described in subparagraph (iii), the annual rate of the Alaska property tax on or for the use of the Pipeline in Alaska increases by a percentage over that imposed for the immediate preceding year that is greater than the increase in percentage of the Yukon Property Tax for the year, as adjusted, from that applied to the immediately preceding year, the Yukon Property Tax may be increased to reflect the percentage increase of the Alaska property tax.
- (ix) It is understood that indirect socio-economic costs in the Yukon Territory will not be reflected in the cost of service to the United States shippers other than through the Yukon Property Tax. It is further understood that no public authority will require creation of a special fund or funds in connection with construction of the Pipeline in the Yukon, financed in a manner which is reflected in the cost of service to U.S. shippers, other than through the Yukon Property Tax. However, should public authorities in the State of Alaska require creation of a special fund or funds, financed by contributions not fully reimbursable, in connection with construction of the Pipeline in Alaska, the Governments of Canada or the Yukon Territory will have the right to take similar action.

(c) The Government of Canada will use its best endeavors to ensure that the level of any property tax imposed by the Government of the Northwest Territories

on or for the use of that part of the Dempster Line that is within the Northwest Territories is reasonably comparable to the level of the property tax imposed by the Government of the Yukon Territory on or for the use of that part of the Dempster Line that is in the Yukon.

6. TARIFFS AND COST ALLOCATION

It is agreed that the following principles will apply for purposes of cost allocation used in determining the cost of service applicable to each shipper on the Pipeline in Canada:

(a) The Pipeline in Canada and the Dempster Line will be divided into zones as set forth in Annex II. Except for fuel and except for Zone 11 (the Dawson-Whitehorse portion of the Dempster Line), the cost of service to each shipper in each zone will be determined on the basis of volumes as set forth in transportation contracts. The volumes used to assign these costs will reflect the original BTU content of Alaskan gas for U.S. shippers and Northern Canadian gas for Canadian shippers, and will make allowance for the change in heat content as the result of commingling. Each shipper will provide volumes for line losses and line pack in proportion to the contracted volumes transported in the zone. Each shipper will provide fuel requirements in relation to the volume of his gas being carried out to the content of the gas as it affects fuel consumption.

(b) It is understood that, to avoid increased construction and operating costs for the transportation of Alaskan gas, the Pipeline will follow a southern route through the Yukon along the Alaska Highway rather than a northern route through Dawson City and along the Klondike Highway. In order to provide alternative benefits for the transportation of Canadian gas to replace those benefits that would have been provided by the northern route through Dawson City, U.S. shippers will participate in the cost of service in Zone 11. It is agreed that if cost overruns on construction of the Pipeline in Canada do not exceed filed costs set forth in Part D of Annex III by more than 35 percent, U.S. shippers will pay the full cost of service in Zone 11. U.S. shipper participation will decline if overruns on the Pipeline in Canada exceed 35 percent; however, at the minimum the U.S. shippers' share will be the greater of either two-thirds of the cost of service or the proportion of contracted Alaskan gas in relation to all contracted gas carried in the Pipeline. The proportion of the cost of service borne by U.S. shippers in Zone 11 will be reduced should overruns on the cost of construction in that Zone exceed 35 percent after allowance for the benefits to U.S. shippers derived from Pipeline construction cost savings in other Zones. Notwithstanding the foregoing, at the minimum, the U.S. shippers' share will be the greater of either two-thirds of the cost of service or the proportion of contracted Alaskan gas in relation to all contracted gas carried in the Pipeline. Details of this allocation of cost of service are set out in Annex III.

(c) Notwithstanding the principles in subparagraphs (a) and (b), in the event that the total volume of gas offered for shipment exceeds the efficient capacity of the Pipeline, the method of cost allocation for the cost of service for shipments of Alaskan gas (minimum entitlement 2.4 bcf/d) or Northern Canadian gas (minimum entitlement 1.2 bcf/d) in excess of the efficient capacity of the Pipeline will be subject to review and subsequent agreement by both Governments; provided however that shippers of either country may transport additional volumes without such review and agreement, but subject to appropriate regulatory

approval, if such transportation does not lead to a higher cost of service or share of Pipeline fuel requirements attributable to shippers of the other country.

(d) It is agreed that Zone 11 costs of service allocated to U.S. shippers will not include costs additional to those attributable to a pipe size of 42 inches. It is understood that in Zones 10 and 11 the Dempster Line will be of the same gauge and diameter and similar in other respects, subject to differences in terrain. Zone 11 costs will include only facilities installed at the date of issuance of the leave to open order, or that are added within three years thereafter.

7. SUPPLY OF GOODS AND SERVICES

(a) Having regard to the objectives of this Agreement, each Government will endeavor to ensure that the supply of goods and services to the Pipeline project will be on generally competitive terms. Elements to be taken into account in weighing competitiveness will include price, reliability, servicing capacity and delivery schedules.

(b) It is understood that through the coordination procedures in paragraph 8 below, either Government may institute consultations with the other in particular cases where it may appear that the objectives of subparagraph (a) are not being met. Remedies to be considered would include the renegotiation of contracts or the reopening of bids.

8. COORDINATION AND CONSULTATION

Each Government will designate a senior official for the purpose of carrying on periodic consultations on the implementation of these principles relating to the construction and operation of the Pipeline. The designated senior officials may, in turn, designate additional representatives to carry out such consultations, which representatives, individually or as a group, may make recommendations with respect to particular disputes or other matters, and may take such other action as may be mutually agreed, for the purpose of facilitating the construction and operation of the Pipeline.

9. REGULATORY AUTHORITIES: CONSULTATION

The respective regulatory authorities of the two Governments will consult from time to time on relevant matters arising under this Agreement, particularly on the matters referred to in paragraphs 4, 5 and 6, relating to tariffs for the transportation of gas through the Pipeline.

10. TECHNICAL STUDY GROUP ON PIPE

(a) The Governments will establish a technical study group for the purpose of testing and evaluating 54-inch 1,120 pounds per square inch (psi), 48-inch 1,260 psi, and 48-inch 1,680 psi pipe or any other combination of pressure and diameter which would achieve safety, reliability and economic efficiency for operation of the Pipeline. It is understood that the decision relating to pipeline specifications remains the responsibility of the appropriate regulatory authorities.

(b) It is agreed that the efficient pipe for the volumes contemplated (including reasonable provision for expansion), subject to appropriate regulatory authorization, will be installed from the point of interconnection of the Pipeline with the Dempster Line near Whitehorse to the point near Caroline, Alberta, where the Pipeline bifurcates into a western and an eastern leg.

11. DIRECT CHARGES BY PUBLIC AUTHORITIES

(a) Consultation will take place at the request of either Government to consider direct charges by public authorities imposed on the Pipeline where there is an element of doubt as to whether such charges should be included in the cost of service.

(b) It is understood that the direct charges imposed by public authorities requiring approval by the appropriate regulatory authority for inclusion in the cost of service will be subject to all of the tests required by the appropriate legislation and will include only

- (i) Those charges that are considered by the regulatory authority to be just and reasonable on the basis of accepted regulatory practice, and
- (ii) Those charges of a nature that would normally be paid by a natural gas pipeline in Canada. Examples of such charges are listed in Annex IV.

12. OTHER COSTS

It is understood that there will be no charges on the Pipeline having an effect on the cost of service other than those:

- (i) Imposed by a public authority as contemplated in this Agreement or in accordance with the Transit Pipeline Treaty, or
- (ii) Caused by Acts of God, other unforeseen circumstances, or
- (iii) Normally paid by natural gas pipelines in Canada in accordance with accepted regulatory practice.

13. COMPLIANCE WITH TERMS AND CONDITIONS

The principles applicable directly to the construction, operation and expansion of the Pipeline will be implemented through the imposition by the two Governments of appropriate terms and conditions in the granting of required authorizations. In the event of subsequent non-fulfillment of such a term or condition by an owner of the Pipeline, or by any other private person, the two Governments will not have responsibility therefor, but will take such appropriate action as is required to cause the owner to remedy or mitigate the consequences of such non-fulfillment.

14. LEGISLATION

The two Governments recognize that legislation will be required to implement the provisions of this Agreement. In this regard, they will expeditiously seek all required legislative authority so as to facilitate the timely and efficient construction of the Pipeline and to remove any delays or impediments thereto.

15. ENTRY INTO FORCE

This Agreement will become effective upon signature and shall remain in force for a period of 35 years and thereafter until terminated upon 12 months' notice given in writing by one Government to the other, provided that those provisions of the Agreement requiring legislative action will become effective upon exchange of notification that such legislative action has been completed.

ANNEX I

THE PIPELINE ROUTE

In Alaska:

The Pipeline constructed in Alaska by Alcan will commence at the discharge side of the Prudhoe Bay Field gas plant facilities. It will parallel the Alyeska oil pipeline southward on the North Slope of Alaska, cross the Brooks Range through the Atigun Pass, and continue on to Delta Junction.

At Delta Junction, the Pipeline will diverge from the Alyeska oil pipeline and follow the Alaska Highway and Haines oil products pipeline passing near the towns of Tanacross, Tok, and Northway Junction in Alaska. The Alcan facilities will connect with the proposed new facilities of Foothills Pipe Lines (South Yukon) Ltd. at the Alaska-Yukon border.

In Canada:

In Canada the Pipeline will commence at the Boundary of the State of Alaska and the Yukon Territory in the vicinity of the towns of Border City, Alaska and Boundary, Yukon. The following describes the general routing of the Pipeline in Canada:

From the Alaska-Yukon border, the Foothills Pipe Lines (South Yukon) Ltd. portion of the Pipeline will proceed in a southerly direction generally along the Alaska Highway to a point near Whitehorse, Yukon, and thence to a point on the Yukon-British Columbia border near Watson Lake, Yukon where it will join with the Foothills Pipe Lines (North B.C.) Ltd. portion of the Pipeline.

The Foothills Pipe Lines (North B.C.) Ltd. portion of the Pipeline will extend from Watson Lake in a southeasterly direction across the northeastern part of the Province of British Columbia to a point on the boundary between the Provinces of British Columbia and Alberta near Boundary Lake where it will interconnect with the Foothills Pipe Lines (Alta.) Ltd. portion of the Pipeline.

The Foothills Pipe Lines (Alta.) Ltd. portion of the Pipeline will extend from a point on the British Columbia—Alberta boundary near Boundary Lake in a southeasterly direction to Gold Creek and thence parallel to the existing right-of-way of The Alberta Gas Trunk Line Company Limited to James River near Caroline.

From James River a “western leg” will proceed in a southerly direction, generally following the existing right-of-way of The Alberta Gas Trunk Line Company Limited to a point on the Alberta-British Columbia boundary near Coleman in the Crow’s Nest Pass area. At or near Coleman the Foothills Pipe Lines (Alta.) Ltd. portion of the Pipeline will interconnect with the Foothills Pipe Lines (South B.C.) Ltd. portion of the Pipeline.

The Foothills Pipe Lines (South B.C.) Ltd. portion of the Pipeline will extend from a point on the Alberta-British Columbia boundary near Coleman in a southwesterly direction across British Columbia generally parallel to the existing pipeline facilities of Alberta Natural Gas Company Ltd. to a point on the International Boundary Line between Canada and the United States of America at or near Kingsgate in the Province of British Columbia where it will interconnect with the facilities of Pacific Gas Transmission Company.

Also, from James River, an “eastern leg” will proceed in a southeasterly direction to a point on the Alberta-Saskatchewan boundary near Empress, Alberta where it will interconnect with the Foothills Pipe Lines (Sask.) Ltd. portion of the Pipeline. The Foothills Pipe Lines (Sask.) Ltd. portion of the Pipeline will extend in a southeasterly direction across Saskatchewan to a point on the International Boundary Line between Canada and the United States of America at or near Monchy, Saskatchewan where it will interconnect with the facilities of Northern Border Pipeline Company.

ANNEX II

ZONES FOR THE PIPELINE AND THE DEMPSTER LINE IN CANADA

ZONE 1. *Foothills Pipe Lines (South Yukon) Ltd.*

Alaska Boundary to point of interconnection with the Dempster Line at or near Whitehorse.

ZONE 2. *Foothills Pipe Lines (South Yukon) Ltd.*

Whitehorse to Watson Lake.

ZONE 3. *Foothills Pipe Lines (North B.C.) Ltd.*

Watson Lake to point of interconnection with Westcoast's main pipeline near Fort Nelson.

ZONE 4. *Foothills Pipe Lines (North B.C.) Ltd.*

Point of interconnection with Westcoast's main pipeline near Fort Nelson to the Alberta-B.C. border.

ZONE 5. *Foothills Pipe Lines (Alta.) Ltd.*

Alberta-B.C. border to point of bifurcation near Caroline, Alberta.

ZONE 6. *Foothills Pipe Lines (Alta.) Ltd.*

Caroline, Alta. to Alberta-Saskatchewan border near Empress.

ZONE 7. *Foothills Pipe Lines (Alta.) Ltd.*

Caroline to Alberta-B.C. border near Coleman.

ZONE 8. *Foothills Pipe Lines (South B.C.) Ltd.*

Alberta-B.C. border near Coleman to B.C.-United States border near Kingsgate.

ZONE 9. *Foothills Pipe Lines (Sask.) Ltd.*

Alberta-Saskatchewan border near Empress to Saskatchewan-United States border near Monchy.

ZONE 10. *Foothills Pipe Lines (North Yukon) Ltd.*

Mackenzie Delta Gas fields in the Mackenzie Delta, N.W.T., to a point near the junction of the Klondike and Dempster Highways just west of Dawson, Yukon Territory.

ZONE 11. *Foothills Pipe Lines (South Yukon) Ltd.*

A point near the junction of the Klondike and Dempster Highways near Dawson to the connecting point with the Pipeline at or near Whitehorse.

ANNEX III

COST ALLOCATION IN ZONE 11

The cost of service in Zone 11 shall be allocated to United States shippers on the following basis:

- (i) There will be calculated, in accordance with (iii) below, a percentage for Zones 1-9 in total by dividing the actual capital costs by filed capital costs and multiplying by 100. If actual capital costs are equal to or less than 135% of filed capital costs, then United States shippers will pay 100% of the cost of service in Zone 11. If actual capital costs in Zones 1-9 are between 135% and 145% of filed capital costs, then the percentage paid by United States shippers will be adjusted between 100% and 66 2/3% on a straight-line basis, except that in no case will the portion of cost of service paid by United States shippers be less than the proportion of the contracted volumes of Alaskan gas at the Alaska-Yukon border to the same volume of Alaskan gas plus the contracted volume of Northern Canadian gas. If the actual capital costs

are equal to or exceed 145% of filed capital costs, the portion of the cost of service paid by United States shippers will be not less than 66 2/3% or the proportion as calculated above, whichever is the greater.

- (ii) There will be calculated a percentage for the cost overrun on the Dawson to Whitehorse lateral (Zone 11). After determining the dollar value of the overrun, there will be deducted from it:
- (a) The dollar amount by which actual capital costs in Zones 1, 7, 8 and 9 (carrying Alaskan gas only) are less than 135% of filed capital costs referred to in (iii) below;
- (b) In each of Zones 2, 3, 4, 5 and 6 the dollar amount by which actual capital costs are less than 135% of filed capital costs referred to in (iii) below, multiplied by the proportion that the U.S. contracted volume bears to the total contracted volume in that Zone.

If the actual capital costs in Zone 11, after making this adjustment, are equal to or less than 135% of filed capital costs, then no adjustment is required to the percentage of the cost of service paid by United States shippers as calculated in (i) above. If, however, after making this adjustment, the actual capital cost in Zone 11 is greater than 135% of the filed capital cost, then the proportion of the cost of service paid by United States shippers will be a fraction (not exceeding 1) of the percentage of the cost of service calculated in (i) above, where the numerator of the fraction is 135% of the filed capital cost and the denominator of the fraction is actual capital cost less the adjustments from (a) and (b) above. Notwithstanding the adjustments outlined above, in no case will the percentage of the actual cost of service borne by United States shippers be less than the greater of 66 2/3% or the proportion of the contracted volumes of Alaskan gas at the Alaska-Yukon border to the same volume of Alaskan gas plus the contracted volume of Northern Canadian gas.

- (iii) The "filed capital cost" to be applied to determine cost overruns for the purpose of cost allocation in (i) and (ii) above will be:

*"Filed Capital Cost"
Estimates for the
Pipeline in Canada
(millions of Canadian
dollars)*

*The Pipeline in Canada (Zones 1-9)**

48"—1,260 lb. pressure pipeline	3,873
or 48"—1,680 lb. pressure pipeline	4,418
or 54"—1,120 lb. pressure pipeline	4,234

*"Filed Capital Cost"
Estimates for the
Pipeline in Canada
(millions of Canadian
dollars)*

*Zone 11 of the Dempster Line***

30"—Section of Dempster line from Whitehorse to Dawson	549
or 36"—Section of Dempster line from Whitehorse to Dawson	585
or 42"—Section of Dempster line from Whitehorse to Dawson	705

* These filed capital costs include and are based upon (a) a 1,260 psi, 48-inch line from the Alaska-Yukon border to the point of possible interconnection near Whitehorse; (b) a 1,260 psi, 48-inch; or 1,680 psi, 48-inch; or 1,120 psi, 54-inch line from the point of possible interconnection near Whitehorse to Caroline Junction; (c) a 42-inch line from Caroline Junction to the Canada-United States border near Monchy, Saskatchewan; and (d) a 36-inch line from Caroline Junction to the Canada-United States border near Kingsgate, British Columbia. These costs are escalated for a date of commencement of operations of January 1, 1983.

** The costs are escalated for a date of commencement of operations of January 1, 1985.

Details for Zones 1-9 are shown in the following table:

Filed Capital Costs for the Pipeline in Canada

Zone	48"	48"	54"
	1,260 psi \$ million (Canadian)	1,680 psi \$ million (Canadian)	1,120 psi \$ million (Canadian)
1	707	707	707
2	721	864	805
3	730	850	803
4	380	488	456
5	677	859	813
6	236	236	236
7	126	126	126
8	83	83	83
9*	205	205	205
TOTAL Zones 1-9	3,873	4,418	4,234

* The last compression station in Zone 9 includes facilities to provide compression up to 1,440 psi.

It is recognized that the above are estimates of capital costs. They do not include working capital, property taxes or the provision for road maintenance in the Yukon Territory (not to exceed \$30 million Canadian).

If at the time construction is authorized, both Governments have agreed to a starting date for the operation of the Pipeline different from January 1, 1983, then the capital cost estimates shall be adjusted for the difference in time using the GNP price deflator from January 1, 1983. Similarly at the time construction is authorized for the Dempster Line, if the starting date for the operation agreed to by the Canadian Government is different from January 1, 1985, then the capital cost estimate shall be adjusted for the difference in timing using the GNP price deflator from January 1, 1985. The diameter of the pipeline in Zone 11, for purposes of cost allocation, may be 30", 36" or 42", so long as the same diameter pipe is used from the Delta to Dawson (Zone 10).

The actual capital cost, for purposes of this Annex, shall be the booked cost as of the date "leave to open" is granted plus amounts still outstanding to be accrued on a basis to be approved by the National Energy Board. Actual capital costs shall exclude working capital, property taxes, and direct charges for road maintenance of up to \$30 million Canadian in the Yukon as specifically provided herein.

For purposes of this Annex, actual capital costs will exclude the effect of increases in cost or delays caused by actions attributable to the U.S. shippers, related U.S. pipeline companies, Alaskan producers, the Prudhoe Bay deliverability or gas conditioning plant construction and the United States or State Governments. If the appropriate regulatory bodies of the two countries are unable to agree upon the amount of such costs to be excluded, the determination shall be made in accordance with the procedures set forth in Article IX of the Transit Pipeline Treaty.

The filed capital costs of facilities in Zones 7 and 8 will be included in calculations pursuant to this Annex only to the extent that such facilities are constructed to meet the requirements of U.S. shippers.

ANNEX IV

DIRECT CHARGES BY PUBLIC AUTHORITIES

- *1. Crossing damages (roads, railroad crossings, etc.; this item is usually covered in the crossing permit).
- *2. Road damages caused by exceeding design load limits.
- *3. Required bridge reinforcements caused by exceeding design load limits.
 4. Airfield and airstrip repairs.
 5. Drainage maintenance.
 6. Erosion control.
 7. Borrow pit reclamation.
 8. Powerline damage.
 9. Legal liability for fire damage.
10. Utility system repair (water, sewer, etc.).
11. Camp waste disposal.
12. Camp site reclamation.
13. Other items specified in environmental stipulations.
14. Costs of surveillance and related studies as required by regulatory bodies or applicable laws.

ANNEX V

Statement by the Government of the Province of Alberta

The Government of the Province of Alberta agrees in principle to the provisions contained in the Canada-United States Pipeline Treaty of January 28, 1977, and furthermore, Alberta is prepared to cooperate with the Federal Government to ensure that the provisions of the Canada-United States Treaty, with respect to non-interference of throughput and non-discriminatory treatment with respect to taxes, fees, or other monetary charges on either the Pipeline or throughput, are adhered to. Specific details of this undertaking will be the subject of a Federal-Provincial Agreement to be negotiated when the Canada-United States protocol or understanding has been finalized.

Statement by the Government of the Province of Saskatchewan

The Government of Saskatchewan is willing to cooperate with the Government of Canada to facilitate construction of the Alcan Pipeline through southwestern Saskatchewan and, to that end, the Government of Saskatchewan expresses its concurrence with the principles elaborated in the Transit Pipeline Agreement signed between Canada and the United States on January 28, 1977. In so doing, it intends not to take any discriminatory action towards such pipelines in respect of throughput, reporting requirements, and environmental protection, pipeline safety, taxes, fees or monetary charges that it would not take against any similar pipeline passing through its jurisdiction. Further details relating to Canada-Saskatchewan relations regarding the Alcan Pipeline will be the subject of Federal-Provincial agreements to be negotiated after a Canada-United States understanding has been finalized.

* In the case of these items and all other road-related charges by public authorities, total charges in the Yukon Territory shall not exceed \$30 million Canadian.

Statement by the Government of the Province of British Columbia

The Government of the Province of British Columbia agrees in principle to the provisions contained in the Canada-United States Pipeline Treaty of January 28, 1977, and furthermore British Columbia is prepared to co-operate with the Federal Government to ensure that the provisions of the Canada-United States Treaty, with respect to non-interference of throughput and non-discriminatory treatment with respect to taxes, fees or other monetary charges on either the Pipeline or throughput, are adhered to. Specific details of this undertaking will be the subject of a Federal-Provincial Agreement to be negotiated at as early a date as possible. Such agreement should guarantee that British Columbia's position expressed in its telex of August 31 is protected.

EXCHANGE OF NOTES CONSTITUTING AN AGREEMENT¹ BETWEEN THE UNITED STATES OF AMERICA AND CANADA AMENDING THE AGREEMENT OF 20 SEPTEMBER 1977 ON PRINCIPLES APPLICABLE TO A NORTHERN NATURAL GAS PIPELINE²

ÉCHANGE DE NOTES CONSTITUANT UN ACCORD¹ ENTRE LES ÉTATS-UNIS D'AMÉRIQUE ET LE CANADA MODIFIANT L'ACCORD DU 20 SEPTEMBRE 1977 SUR LES PRINCIPES APPLICABLES À UN PIPE-LINE POUR LE TRANSPORT DU GAZ NATUREL DU NORD²

I

*The Canadian Ambassador
to the Secretary of State*

CANADIAN EMBASSY
AMBASSADE DU CANADA

Washington, D.C., June 6, 1978

No. 255

Sir,

I have the honour to refer to the Agreement between Canada and the United States of America on Principles Applicable to a Northern Gas Pipeline, signed at Ottawa on September 20, 1977.² The National Energy Board, as the appropriate Canadian regulatory authority under Paragraph 10 of the Agreement, has recommended approval by the Government of Canada of 56-inch pipe for the section of the Northern Natural Gas Pipeline between Whitehorse, Yukon and Caroline Junction, Alberta. In light of this decision, I have the honour to propose that Annex III of the Agreement be amended by adding the following:

Addendum

“The filed capital costs specified in Annex III shall be deemed to include all normal

¹ Came into force on 6 June 1978, the date of the note in reply, in accordance with the provisions of the said notes.

² See p. 312 of this volume.

*L'Ambassadeur canadien
au Secrétaire d'Etat*

CANADIAN EMBASSY
AMBASSADE DU CANADA

Washington, D.C., June 6³, 1978

N° 255

Monsieur le Secrétaire d'Etat,

J'ai l'honneur de faire référence à l'Accord entre les Etats-Unis d'Amérique et le Canada sur les principes applicables à un Pipe-line pour le transport du gaz naturel du Nord, signé à Ottawa le 20 septembre 1977². En sa qualité d'autorité réglementaire appropriée pour le Canada, l'Office national de l'énergie a, en vertu du paragraphe 10 de l'Accord, recommandé au Gouvernement du Canada d'approuver le choix d'une conduite de 56 pouces de diamètre pour le tronçon du gazoduc devant relier Whitehorse (Yukon) et Caroline Junction (Alberta). En conséquence de cette décision, j'ai l'honneur de proposer que l'annexe III de l'Accord soit amendée par l'ajout de ce qui suit :

Addendum

« Les coûts d'investissement déposés précisés à l'annexe III sont réputés com-

¹ Entré en vigueur le 6 juin 1978, date de la note de réponse, conformément aux dispositions desdites notes.

² Voir p. 319 du présent volume.

³ 6 juin 1978.

pipeline costs incurred in constructing the gas pipeline facilities in Canada, except those specifically excluded in the provisions of the Annex, and include such items as an allowance for funds used during construction. The filed capital costs in Annex III shall also be deemed to include an allowance on and recovery of regulatory monitoring costs.

The following additions shall be made to the tabulations contained in Part (iii) of Annex III:

(A) To the table captioned: “ ‘Filed Capital Costs’ Estimates for the Pipeline in Canada (millions of Canadian dollars): The Pipeline in Canada (Zones 1-9)”, insert as line four the following phrase:

“or 56” — 1,080 lb. pressure pipeline — 4,325”.

(B) Footnote 1, subpart (b) to the said table shall be modified to read in its entirety:

“(b) a 1,260 psi, 48-inch; or 1,680 psi, 48-inch; or 1,120 psi, 54-inch; or 1,080 psi, 56-inch line from the point of possible interconnection near Whitehorse to Caroline Junction;”

(C) To the table captioned: “Filed Capital Costs for the Pipeline in Canada”, add an additional column as follows:

56"
1,080 psi
\$ million
(Canadian)

707
817
874
427
850
236
126
83
205
<hr/>
4,325”

prendre tous les frais pipe-liniers normaux engagés dans la construction d’installations de pipe-lines de gaz au Canada, sauf ceux expressément exclus dans les dispositions de l’annexe, et comprennent des articles tels qu’une allocation au titre des fonds utilisés pendant la construction. Les coûts d’investissement déposés de l’annexe III sont aussi réputés comprendre une allocation au titre des frais d’inspection réglementaire et de leur récupération.

Les ajouts suivants sont apportés aux tableaux que renferme la Partie iii) de l’annexe III :

A) Au tableau intitulé : « Estimations des « coûts d’investissement déposés » pour le Pipe-line au Canada (en millions de dollars canadiens) : Le Pipe-line au Canada (zones 1 à 9) », s’ajoute en quatrième ligne le passage suivant :

« ou 56 pouces — pression manométrique de 1 080 livres — 4 325 ».

B) La partie b) de la note infrapaginale 1 à laquelle renvoie ledit tableau se lit maintenant en entier comme suit :

b) une canalisation de 48 pouces (pression manométrique de 1 260 livres au pouce carré); ou de 48 pouces (pression manométrique de 1 680 livres au pouce carré); ou de 54 pouces (pression manométrique de 1 120 livres au pouce carré); ou de 56 pouces (pression manométrique de 1 080 livres au pouce carré) à partir du point éventuel de raccordement à proximité de Whitehorse jusqu’à Caroline Junction; »

C) Au tableau intitulé : « Coûts d’investissement déposés pour le Pipe-line au Canada », s’ajoute la colonne suivante :

56 pouces
1 080 livres
au pouce carré
(en millions
de dollars
canadiens)

707
817
874
427
850
236
126
83
205
<hr/>
4 325 »

It is further proposed that in Paragraph 6(b) of the Agreement, the reference in the third sentence to "Part D of Annex III" be amended to read "(Part (iii) of Annex III)".

If these proposals are acceptable to the Government of the United States, I have the honour to propose that this Note, which is authentic in English and French, and your reply to that effect shall constitute an agreement between our two Governments to add a technical addendum to Annex III and correct Paragraph 6(b) of the Agreement on Principles Applicable to a Northern Natural Gas Pipeline, which shall enter into force on the date of your reply and shall be considered an integral part of the said Agreement.

Accept, Sir, the renewed assurances of my highest consideration.

[Signed]

PETER M. TOWE
Ambassador

The Honourable Cyrus R. Vance
Secretary of State
Washington, D.C.

Il est proposé en outre de remplacer, dans la troisième phrase du sous-paragraphe b du paragraphe 6 de l'Accord, « Partie D de l'annexe III » par « Partie (iii) de l'annexe III ».

Si ces propositions agréent au Gouvernement des Etats-Unis, j'ai l'honneur de proposer que la présente Note, dont les versions anglaise et française font également foi, et votre réponse à cet effet constituent entre nos deux Gouvernements un accord ayant pour effet d'ajouter un addendum technique à l'annexe III et de corriger le paragraphe 6 de l'Accord sur les principes applicables à un Pipe-line pour le transport du gaz naturel du Nord, lequel entrera en vigueur à la date de votre réponse et sera considéré comme une partie intégrante dudit Accord.

Je vous prie de croire, Monsieur le Secrétaire d'Etat, à l'assurance de ma très haute considération.

L'Ambassadeur,

[Signé]

PETER M. TOWE

M. Cyrus R. Vance
Secrétaire d'Etat
Secrétariat d'Etat
Washington, D.C.

II

[TRADUCTION¹ — TRANSLATION²]

*The Secretary of State
to the Canadian Ambassador*

*Le Secrétaire d'Etat à l'Ambassadeur
canadien*

DEPARTMENT OF STATE
WASHINGTON

DÉPARTEMENT D'ÉTAT
WASHINGTON

June 6, 1978

Le 6 juin 1978

Excellency:

I have the honor to acknowledge your note No. 255 of today's date, proposing to add a technical Addendum to Annex III of the Agreement between the United States of America and Canada on Principles Applicable to a Northern Natural Gas Pipeline and to effect a rectification of Paragraph 6(b) of that Agreement.

The Government of the United States accepts the proposals contained in your note under acknowledgement, and agrees that your note, together with this reply, shall constitute an Agreement between the United States and Canada to add a technical Addendum to Annex III of the Agreement on Principles and to rectify Paragraph 6(b) of that Agreement.

Accept, Excellency, the renewed assurances of my highest consideration.

For the Secretary of State:

[Signed — Signé]¹

His Excellency Peter M. Towe
Ambassador of Canada

Monsieur l'Ambassadeur,

J'ai l'honneur d'accuser réception de votre Note n° 255 datée de ce jour par laquelle vous proposez d'ajouter un addendum technique à l'annexe III de l'Accord sur les principes applicables à un Pipe-line pour le transport du gaz naturel du Nord et de corriger l'alinéa b) du paragraphe 6 de l'Accord.

Le Gouvernement des Etats-Unis agréé les propositions de votre Note et convient que votre Note et la présente réponse constituent entre nos deux Gouvernements un Accord ayant pour effet d'ajouter un addendum technique à l'annexe III de l'Accord et de corriger l'alinéa b) du paragraphe 6 dudit Accord.

Veillez accepter, Monsieur l'Ambassadeur, l'assurance renouvelée de ma très haute considération.

Pour le Secrétaire d'Etat :

[JULIUS L. KATZ]

Son Excellence Monsieur Peter Towe
Ambassadeur du Canada

¹ Signed by Julius L. Katz — Signé par Julius L. Katz.

¹ Traduction fournie par le Gouvernement canadien.

² Translation supplied by the Government of Canada.