UNITED STATES OF AMERICA
FEDERAL ENERGY REGULATORY COMMISSION

IN THE MATTER OF	)	
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Jordan Cove Energy Project, L.P.	)	**Docket No. CP17-495-000**
	)	
Pacific Connector Gas Pipeline, L.P.	)	**Docket No. CP17-494-000**
	)	

SIERRA CLUB *et al.* COMMENT ON AND PROTEST OF APPLICATIONS

Pursuant to 18 C.F.R. 385.211, Sierra Club, Cascadia Wildlands, Center for Sustainable Economy, Citizens Against LNG, Citizens for Renewables, Hair on Fire Oregon, Oregon Shores Conservation Coalition, Oregon Wild, Oregon Women's Land Trust, Pipeline Awareness Southern Oregon, Rogue Climate, Rogue Riverkeeper, and the Western Environmental Law Center protest the applications for the Pacific Connector Gas Pipeline, CP17-494, and the Jordan Cove Energy Project, CP17-495.

Under the Natural Gas Act, 15 U.S.C. §§ 717b(e) and 717f(e), FERC must determine whether these projects are required by or consistent with the public interest, weighing "the public benefits against the adverse effects of the project[s]," including "environmental effects." *Sierra Club v. FERC*, 867 F.3d 1357, 1373 (D.C. Cir. 2017) ("*Sabal Trail*"). The applicants have once again failed to meet this standard, and these applications should be denied. Because this is the applicants' third attempt at this joint proposal, denial should be with prejudice.

These applications re-propose projects FERC properly denied nineteen months ago. FERC denied the prior applications because the applicants had not provided any meaningful evidence of public benefit. 154 FERC ¶ 61,190, PP39-40 (Mar. 11, 2016). Specifically, applicants had provided "little or no evidence" that any third party was interested in purchasing gas delivered by the pipeline or liquefied natural gas made available by the terminal. *Id.* Nor had the applicants submitted evidence indicating that the pipeline could be constructed without harm to the public: in particular, "Pacific Connector ha[d] not submitted evidence that it ha[d] obtained any easement or right-of-way agreements for the necessary use of private lands." *Id*. P33 n.31, *see also id.* PP18, 25 (indicating that Pacific Connector had at most obtained 3-5% of the necessary easements), 157 FERC ¶ 61,194, P27 (Dec. 9, 2016) (denying rehearing).

The present applications suffer the same flaws. The applicants have no commitments for the liquefied natural gas sales that are the ultimate purpose of the related projects. Instead, applicants submit only two press releases stating that applicants hope to negotiate agreements for sales amounting to less than half of the terminal's proposed capacity. Jordan Cove Energy Project (JCEP) Application at 15 n.16 & n.19. Those press releases were hastily issued after FERC denied the prior proposal, and there is no evidence indicating that now, 19 months later, these negotiations have meaningfully progressed—despite the fact that the applicants and their potential customers clearly understand the need to demonstrate market support for these projects. Even if these two negotiations were to lead to actual

agreements, the applicants provide no evidence of other agreements, nor is there any indication that the applicants would be willing to proceed with the project, or be financially capable of doing so, if required to sell the remaining 60% of the output on the spot market. These applications are therefore "built on speculation" that buyers will some day materialize, despite their failure to do so in the five and a half years that have passed since the export project was first proposed. 157 FERC ¶ 61,194, P27; *see* Jordan Cove Energy Project, Request to Initiate Pre-Filing (Feb. 29, 2012), Accession No. 20120229-5307. By having failed to provide meaningful or sufficient evidence of market support, the applicants have failed to show any likely public benefit.

On the other hand, the projects will clearly have severe adverse impacts, which will require denial of the applications regardless of whether the applicants eventually find market support. As before, the pipeline will require extensive use of eminent domain. Although the pipeline was first proposed over eleven years ago,[1] the applicants have failed to negotiate easements with the majority of non-timber landowners (at least 139) and an unspecified number of timber landowners. Constructing and operating the project will eliminate or put at risk jobs in the timber, fishing, and tourism industries. The pipeline will permanently and negatively impact an 81 mile right-of-way on public land. Constructing and operating the facilities will have extensive additional environmental effects.

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[1] Pacific Connector Gas Pipeline, Request to Initiate Pre-Filing (Apr. 19, 2006), Accession No. 20060419-0121.

For these reasons and others explained below, the proposed projects will provide few, if any, benefits to the public, while causing severe and wide-ranging harms. The undersigned ask that FERC promptly deny both applications.

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I. **Natural Gas Act**

In determining whether to approve these applications, FERC must evaluate whether the projects are in the public interest, under two similar provisions (sections 3 and 7) of the Natural Gas Act, 15 U.S.C. §§ 717b(e), 717f(c). The purpose of the Act is to "to protect consumers against exploitation at the lands of natural gas companies," *Fed. Power Comm'n v. Hope Nat. Gas Co.*, 320 U.S. 591, 610 (1944), ensuring "orderly development of plentiful supplies of ... natural gas at reasonable prices," while also respecting "conservation, environmental, and antitrust" concerns. *NAACP v. Fed. Power Comm'n*, 425 U.S. 662, 669-70 & n.6 (1976).

Section 7, applicable to the Pacific Connector Gas Pipeline, permits FERC to authorize construction and operation of the pipeline only if FERC affirmatively finds that these activities are or will be "required by the present or future public convenience and necessity." 15 U.S.C. 717f(e). This statutory inquiry is necessarily wide-ranging, requiring FERC to weigh "the public benefits against the adverse effects of the project," construing both sides of this inquiry broadly. *Sabal Trail*, 867 F.3d at 1373.

> The "public benefits" the Commission examines "could include, among other things, meeting unserved demand, eliminating bottlenecks, access to new supplies, lower costs to consumers, providing new interconnects that improve the interstate grid, providing competitive alternatives, increasing electric reliability, or advancing clean air objectives." On the other side of the scale, the potential "adverse effects" the Commission will consider are "the effects on existing customers of the applicant, the interests of existing pipelines and their captive customers,

> and the interests of landowners and the surrounding community, including environmental impacts."

Minisink Residents for Envtl. Pres. & Safety v. FERC, 762 F.3d 97, 102 (D.C. Cir. 2014) (quoting Certificate Policy Statement, 90 FERC ¶ 61,128, at 61,396; internal citation omitted).

Although FERC practice is to generally consider all non-environmental issues first, 88 FERC at 61745, 61749, we emphasize that environmental impacts must be incorporated into the balancing or sliding scale assessment of the public interest. FERC must "integrate the NEPA process with other planning at the earliest possible time to insure that planning and decisions reflect environmental values." 40 C.F.R. § 1501.2. FERC's certificate policy statement contemplates that a new pipeline serving a previously unserved market with an entirely negotiated right-of-way "may be readily approved if there are no environmental considerations." 88 FERC at 61749. In practice, adverse environmental impacts are inherent in the construction of every new gas pipeline: there will *always* be environmental considerations. Thus, environmental impacts must be treated similarly to the exercise of eminent domain, *id.*: greater environmental impacts require a greater showing of public benefit before a project can be approved. *See also Sabal Trail*, 867 F.3d at 1373 (environmental impacts can, themselves, provide a basis for FERC to reject a pipeline proposal).

Subsection 3(e) of the Natural Gas Act, applicable to the Jordan Cove Energy Project, applies to the "siting, construction, expansion or operation of an LNG

terminal." 15 U.S.C. 717b(e)(1).[2] Although this subsection does not specify a standard, courts and FERC interpret it to require a public interest analysis. *Sierra Club v. FERC*, 827 F.3d 36, 41 (D.C. Cir. 2016) ("*Freeport*"), 18 C.F.R. § 153.7(c)(1). FERC regulations suggest that export or import infrastructure provides public benefits when it will "improve access to supplies of natural gas, serve new market demand, enhance the reliability, security, and/or flexibility of the applicant's pipeline system, improve the dependability of international energy trade, or enhance competition within the United States for natural gas transportation or supply." 18 C.F.R. § 153.7(c)(1)(i).

II. Applicants Have Failed to Show Public Benefit

FERC regulations place the burden on a project proponent to demonstrate, *in the application*, that the proposal is in the public interest. A pipeline application submitted under Natural Gas Act Section 7 must specify "The facts relied upon by applicant to show that the proposed service, sale, operation, construction, extension, or acquisition is or will be required by the present or future public convenience and necessity." 18 C.F.R. § 157.6(b)(2). Even when an "abbreviated" application is used, the applicant still must provide "all information and supporting data necessary to explain fully the proposed project, its economic justification, [and] its effect upon … the public proposed to be served …." 18 C.F.R. § 157.7(a). Similarly, applications for

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[2] Jordan Cove's application mistakenly invokes subsection 3(a), 15 U.S.C. 717b(a). JCEP Application at 1. That section pertains to authorization of exports or imports *per se*, an issue over which the Department of Energy retains jurisdiction, rather than the siting, construction, and operation of export infrastructure.

export infrastructure submitted to FERC under Natural Gas Act Section 3 must provide a "statement demonstrating" consistency with "the public interest." 18 C.F.R. § 153.7(c)(1).

Here, the applicants purport to satisfy these requirements primarily by purporting to show market support for the projects. However, neither application succeeds in showing market support. Market support is essential to the demonstration of public benefits: if a pipeline sits unutilized because no one is willing to pay for it to actually deliver gas, for example, then the pipeline will not "lower costs to consumers," meet "unserved demand," or provide meaningful "access to new supplies," *etc.* 90 FERC ¶ 61,128, at 61,396. The applicants' failure to show market support here is therefore fatal to their assertion of public benefits. Moreover, although market support is essential, it is not sufficient to demonstrate public benefits. Here, the applications do not show that the Pacific Connector Gas Pipeline would, even if operational, provide the types of benefits contemplated by FERC's certificate policy statement or the Natural Gas Act.

A. The Applicants Have Not Demonstrated Market Support for the LNG Terminal

Jordan Cove seeks authorization to construct and operate a liquefaction facility and terminal with a capacity of 7.8 million metric tons per annum (mmtpa) of LNG. Although Jordan Cove began the process of seeking FERC authorization for an LNG export facility more than five years ago, on February 29, 2012, Jordan Cove has yet to secure a single agreement for purchase of this LNG. Although Jordan

Cove argues that global markets will support exports from the United States as a whole, the only 'evidence' Jordan Cove provides of support for *its* project, rather than exports in general, consists of two of the applicants' own press releases issued in response to FERC's denial of the initial liquefaction facility proposal. JCEP Application at 15 n.16 & n.19. These press releases assert that Jordan Cove was then in the process of negotiating agreements for sale of less than 40% of the proposed liquefaction project's capacity. *Id.* Neither these press releases nor Jordan Cove's other assertions demonstrate market support for the terminal.

1. Jordan Cove's Press Releases Describing Negotiations with JERA and ITOCHU Are Not Evidence of Market Support

Instead of providing actual agreements for the sale of LNG, Jordan Cove's application cites two of Jordan Cove's own press releases, which state that Jordan Cove was engaged in negotiations with two potential buyers, JERA and ITOCHU. In light of the circumstances surrounding the issuance of these press releases, and the proposed projects as a whole, these press releases are not evidence of market support. The applicants have not supported the inference that these negotiations are likely to result in actual purchase agreements.

Veresen hastily issued the two press releases after FERC denied the prior proposal. On March 11, 2016, when FERC denied the applicants' initial export proposal, the applicants had provided *no* evidence of agreements for the sale of

LNG.[3] FERC rules provide that such evidence should have been provided when the applications were first filed, 18 C.F.R. § 153.7(c)(1), but here the applicants were unable or unwilling to make this showing for four years following initiation of FERC proceedings for the liquefaction facility. When FERC denied the applications, the applicants responded within thirty days by issuing press releases that purported to show negotiations for tolling agreements, despite four years of silence on this issue. FERC has previously recognized that when applicants produce evidence of market support "virtually overnight" once confronted with imminent dismissal, this evidence is unreliable. *Millennium Pipeline Co., L.P. Columbia Gas Transmission Corp.*, 100 FERC ¶ 61277, 62140–41 (Sept. 19, 2002) (discussing *Independence Pipeline Company*, 89 FERC ¶ 61,283 (1999), *order issuing certificate, granting and denying reh'g, and denying clarification*, 91 FERC ¶ 61,102, *order issuing certificates*, 92 FERC ¶ 61 ,022, *reh'g denied*, 92 FERC ¶ 61,268 (2000)). Here, the applicants attempt to explain the sudden development of evidence by arguing that JERA and ITOCHU had prohibited the applicants from even identifying them as potential anchor customers because "key commercial terms" had not been finalized.[4]

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[3] We further note that the Department of Energy's order conditionally authorizing exports from the Jordan Cove facility "requires that Jordan Cove file, or cause to be filed, all long-term contracts associated with the long-term supply of natural gas to the Jordan Cove Terminal, whether signed by Jordan Cove or the Registrant, within 30 days of their execution." DOE/FE Order No. 3413 at 150. As of October 24, 2017, the DOE docket provides no indication that any such contracts have ever been filed. *See* https://fossil.energy.gov/ng_regulation/applications-2012-jordancoveenergyproject12-32.

[4] Jordan Cove, Request for Rehearing in Dockets CP13-483, CP13-492 (April 11, 2016), at 18.

The inability to agree on those terms itself demonstrates a lack of serious market support.

It has been 18 months since these press releases were issued, and Jordan Cove provides no evidence indicating that negotiations have progressed. Jordan Cove has reached any sort of binding agreement with JERA. Publicly available information casts doubt on the prospect that it never will. JERA expects to reduce its overall LNG procurement.[5] JERA also plans to change the character of this procurement, drastically reducing its long-term contracts and instead relying on short-term or spot markets.[6] JERA's existing contracts already provide most of the long-term contracted volume JERA expects through 2030.[7] JERA's business plan indicates that insofar as JERA enters additional long-term contracts, JERA will seek to take an equity position in these projects, as JERA has done with the Freeport, Texas, facility.[8] Here, the applications' discussion of the projects' financial backers does not mention JERA, *see* JCEP Application at 5, and JERA's own

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[5] JERA Business Plan at 9 (Feb. 10, 2016) (slide 4-3, indicating that JERA does not expect volumes to increase by 2030), available at http://www.jera.co.jp/english/information/pdf/20160210_01.pdf and attached as Exhibit 1.

[6] *Id.*, "Japan's JERA plans 42 percent cut in long-term LNG contracts by 2030," Reuters (Aug. 10, 2016), available at https://www.reuters.com/article/us-lng-jera/japans-jera-plans-42-percent-cut-in-long-term-lng-contracts-by-2030-idUSKCN10L117 and attached as Exhibit 2. *See also* Alan Kovski, "Liquefied Natural Gas Export Plans Face Years of Oversupply" (July 18, 2017), available at https://www.bna.com/liquefied-natural-gas-n73014461925/ and attached as Exhibit 3.

[7] JERA Business Plan at 9.

[8] *Id.* (summarizing intent to increase equity positions/double investment projects), *see also* http://www.jera.co.jp/english/business/projects/freeport.html, attached as Exhibit 4.

materials do not identify Jordan Cove as a "planned" project.[9] Indeed, as of October 25, 2017, the undersigned were unable to find even a single mention of Jordan Cove or Veresen on JERA's website.[10]

Jordan Cove's negotiations with ITOCHU appear to be even less likely to bear fruit. Jordan Cove states that it had reached "preliminary" agreement with respect to "*certain* key commercial terms," indicating that Jordan Cove and ITOCHU have been unable to agree on other "key" terms. JCEP Application at 15. Nor has Jordan Cove disputed this preliminary, incomplete agreement with ITOCHU was a direct response to FERC's denial of the prior liquefaction facility application. Although Jordan Cove contended that the preliminary agreement with JERA had been negotiated, and signing ceremony scheduled, prior to FERC's March 11, 2016 Order, Jordan Cove has made no such assertions with regard to ITOCHU.[11]

FERC has made it clear that unless the applicants here can demonstrate market support, the proposed projects will not go forward. Potential customers have nonetheless declined to finalize liquefaction tolling agreements or other evidence of support for the project. The fact that potential customers would apparently rather

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[9] JERA Business Plan at 15, *see also* JCEP Application at 5 (describing ownership structure).

[10] Specifically, the searches https://www.google.com/search?q=site%3Ajera.co.jp+"jordan+cove" and https://www.google.com/search?q=site%3Ajera.co.jp+"veresen" "did not match any documents." Exhibit 5.

[11] JCEP Rehearing Request at 18.

see the project denied than commit to supporting it demonstrates that any support for the project is insubstantial.

2. Global Conditions Do Not Demonstrate Support for *These* Projects

Jordan Cove has no actual customer agreements. Jordan Cove's discussion of the general LNG market, Energy Information Administration forecasts, and other indirect material also fails to demonstrate support for this project.

EIA predicts that global markets will support LNG exports from the United States as a whole, but this prediction does not indicate support for Jordan Cove. Specifically, EIA does not predict that markets will support exports beyond the capacity provided by facilities FERC has already approved, the majority of which are already under construction. Jordan Cove's assertion that "U.S. LNG exports are expected to maintain their competitive advantage going forward" beyond 2020 is contradicted by the very page of the EIA report Jordan Cove cites.[12] The EIA instead states that "After 2020, U.S. exports of LNG grow at a more modest rate as U.S.-sourced LNG *becomes less competitive in global energy markets*."[13] EIA does not appear to predict U.S. exports significantly beyond the capacity of the 16.43 bcf/d of liquefaction infrastructure approved by FERC, 9.65 bcf/d of which is already under construction.[14] Thus, the cited EIA report in no way indicates that global

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[12] JCEP Application at 13 (citing Energy Information Administration, Annual Energy Outlook with Projections to 2050 at 66 (Jan. 5, 2017)).

[13] Energy Information Administration, Annual Energy Outlook with Projections to 2050 at 66 (Jan. 5, 2017) (emphasis added).

[14] https://ferc.gov/industries/gas/indus-act/lng/lng-approved.pdf, attached as Exhibit 6. This table appears to not account for the full capacity of Sabine Pass,

markets would support the Jordan Cove project. Similarly, the purported "long-term fundamentals for LNG demand" asserted without citation by Jordan Cove, such as decreased use of other fossil fuels "in certain markets," provide no evidence indicating that the market will support the Jordan Cove proposal in addition to or instead of other facilities already under construction or approved. JCEP Application at 13-14.

Jordan Cove's failure to attract customers to date undermines Jordan Cove's assertion that Jordan Cove's west coast location provides meaningful unique benefits. Although potential Asian buyers presumably view decreased shipping distances, access to different producing regions, and diversification of supply as attractive benefits, the fact that no customer has entered a tolling or similar agreement demonstrates that these benefits are not attractive enough to engender market support for the Jordan Cove project.

3. Jordan Cove's Intention to Retain Some Liquefaction Capacity For Itself Does Not Demonstrate Market Support

Even in the unlikely event that Jordan Cove succeeds in negotiating tolling agreements with JERA and ITOCHU, those agreements will amount to a combined 3 mmtpa of LNG, or less than 40% of the proposed project's 7.8 mmtpa capacity. Jordan Cove states in its application that it intends to retain "a portion" of the total liquefaction capacity for itself. JCEP Application at 15. This statement of intent provides no meaningful evidence of market support for the project as a whole. This

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Louisiana, facility, and as such, these totals appear to understate national export capacity.

statement also contradicts repeated assertions by Jordan Cove representatives, to FERC and the press, that Jordan Cove will not go through with the project unless *all* of the output is contracted. *See* 154 FERC 61,190 P13 (explaining that, in the prior proceeding, applicants had stated that facilities would not be constructed "if the Jordan Cove LNG Terminal is not contracted."), Alan Kovski, Liquefied Natural Gas Export Plans Face Years of Oversupply (July 18, 2017) ("Jordan Cove is talking with other potential buyers and intends to have 100 percent of its capacity under contract within a time frame that should make the project acceptable to FERC, company spokesman Michael Hinrichs said."), Geoffrey Morgan, *Veresen's US$6-billion Jordan Cove LNG project won't be sanctioned until late 2016*, Financial Post (Dec. 7, 2015) (Jordan Cove "is looking to contract *all* of the project's production before reaching a sanctioning decision.") (emphasis added).[15]

B. The Precedent Agreements Between Pacific Connector Gas Pipeline and Jordan Cove Energy Project Do Not Demonstrate Market Support for the Pipeline

For related reasons, the applicants have failed to show market support for the Pacific Connector Gas Pipeline. The only evidence the applicants provide are precedent agreements between the two affiliated applicants. Although FERC does not automatically entirely disregard inter-affiliate agreements, here, the agreements provide only weak evidence of market demand, which is rebutted by the

[15] http://business.financialpost.com/news/energy/veresens-us6-billion-jordan-cove-lng-project-wont-be-sanctioned-until-late-2016, attached as Exhibit 7.

applicants' own prior statements and the other circumstances surrounding the proposals.

As applicants observe, FERC has declined to adopt a "policy [of] disregard[ing] contracts between affiliates in establishing need for projects." *Texas E. Transmission Corp.*, 84 FERC ¶ 61044, 61191 (July 17, 1998), *see* PCGP Application at 16 n.19. Nonetheless, while FERC may accept such agreements as evidence, FERC has clearly indicated that they are *weak* evidence. The certificate policy statement explains that "a precedent agreement with an affiliate" provides a weaker demonstration of need than a project with multiple precedent agreements with unaffiliated customers. 88 FERC at 61748, *see also id.* at 61749 (stating that "precedent agreements with multiple parties for most of the new capacity" presents "strong evidence of market demand and potential public benefits.").

Pacific Connector argues that FERC has previously found market support for a pipeline on the basis of a precedent agreement with an affiliated LNG export project. PCGP Application at 15 n.18. As FERC has previously recognized, this case is different.

One principal difference is that other such pipelines FERC has approved have not required little, if any, new rights-of-way or opposition from local landowners. *See Golden Pass Products LLC*, 157 FERC ¶ 61222 PP13, 31 (Dec. 21, 2016) (project principally modified existing pipeline, with new construction limited to compressor stations and three miles of new pipeline parallel to existing pipe, and no local landowners or communities filed adverse comments), *Magnolia LNG, LLC,*

155 FERC ¶ 61033 PP10, 31-32 (Apr. 15, 2016) (project primarily involved reversing existing line, with only 1.3 miles of new pipeline), *Sabine Pass Liquefaction Expansion*, 151 FERC ¶ 61012, PP36, 37 n.45 (Apr. 6, 2015) ("Approximately 78 percent of the project's looping, lateral, and extension lines will be co-located or installed adjacent to existing road and pipeline rights-of-way" and "Only one landowner filed comments regarding the potential impact of the project on his property."), *Corpus Christi Liquefaction, LLC*, 149 FERC ¶ 61283 P29 (Dec. 30, 2014) ("proposed pipeline and related facilities would be located within existing [applicant]-owned land and right-of-ways"). Because these cases involved minimal adverse impacts to landowners and surrounding communities, only a minimal showing of market support and public benefit was required. As FERC has recognized, the facts here "differ greatly from" those in other LNG-related pipeline cases; and as such, a much stronger showing of public benefit is required. 154 FERC 61,190 P40 n.45.

Another key distinction is that in the cases cited by the applicants, the affiliate exporter had generally already finalized liquefaction tolling agreements.[16] Thus, it was clear that the affiliate would in fact be able to provide support for the pipeline and have need of the delivered gas. Here, as noted above, Jordan Cove has provided no tolling agreements or other reliable evidence of market support for the liquefaction facility.

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[16] *See* Exhibit 8.

Thus, although FERC has approved several pipelines where market support was shown by a precedent agreement with an affiliated LNG terminal, FERC has not established a general rule or policy on this issue. The cases cited by the applicants turned on specific facts, and FERC has found, on the facts in other cases, that a precedent agreement with an affiliate did *not* demonstrate market support. In *Independence Pipeline Company*, the initial application provided no evidence of market support. *Indep. Pipeline Co.*, 89 FERC at ¶ 61840. When, six months later, FERC informed the applicant that the project would be dismissed unless evidence of market support was provided, the applicant responded by creating "an affiliated shipper … virtually overnight to subscribe to the project." *Id.* FERC concluded that, in these circumstances, the precedent agreement with this affiliate was "not reliable evidence of market need to support a finding that Independence's proposal is required by the public convenience and necessity." *Id.* FERC went on to hold that any future evidence of market need for that project would need to consist of agreements with non-affiliates. *Id.* at ¶ 61841.

Here, multiple circumstances indicate that the precedent agreements between Pacific Connector and Jordan Cove are not reliable evidence of market support for the pipeline. As in *Independence Pipeline*, the agreements were entered between affiliates as an apparent hasty last resort, once FERC made clear that the pipeline would be rejected for lack of market support. Putting the affiliate relationship aside, the fact that Jordan Cove has not demonstrated support for the liquefaction project undermines the probative value of a precedent agreement with

Jordan Cove: applicants have provided nothing to indicate that Jordan Cove will, in practice, be able to provide market support for the pipeline.

The applicants' case for market support is further undermined by the fact that previously identified customers appear to have abandoned the pipeline. After FERC's 2016 denial of the prior proposals, the applicants claimed to have entered precedent agreements with three customers: Jordan Cove (56% of capacity), Macquarie (20%), and Avista, (1%).[17] The current applications, however, make no reference to two non-affiliated customers. Insofar as these customers have withdrawn support of the pipeline, this indicates a lack of credible market support.

In summary, the Certificate Policy Statement provides precedent agreements of the type offered here—agreements with a single affiliate—as an example of, at best, weak evidence of market support. The particular circumstances of these projects demonstrate that this is "a project built on speculation." 88 FERC at 61749. The applicants state that Jordan Cove demonstrates market need for the pipeline, but offer nothing more than speculation to indicate that Jordan Cove will, in fact, be able to provide this support.

C. Market Support Is Not Sufficient To Demonstrate Public Benefits

Separate from the question of market support, the applicants have not shown that the Pacific Connector pipeline will provide any of the benefits contemplated by the Certificate Policy Statement. Market support is a predicate to these benefits: a

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[17] Jordan Cove rehearing request at 5-7.

pipeline that isn't actually put into use will not "lower costs to consumers," meet "unserved demand," provide meaningful "access to new supplies," *etc.* 90 FERC ¶ 61,128, at 61,396. But market support does not, itself, demonstrate that a pipeline will provide these benefits.

Here, although the pipeline and terminal will disrupt Oregon landscapes and communities, there is no evidence indicating that the pipeline will provide these benefits in Oregon. There are no plans to actually deliver gas to communities along the pipeline route. The projects will not reduce consumer costs—indeed, the projects will raise consumer costs, by increasing North American natural gas prices, as revealed in the Energy Information Administration and macroeconomic reports commissioned by the Department of Energy.

Nor have applicants shown that the projects will provide these benefits to any community within the United States. Notwithstanding the applicants' assertions that the projects may draw on supplies from "the U.S. Rocky Mountains," JCEP Application at 14, the applicants have refused to provide any commitment or forecast as to how much, if any, of the projects' supply will be drawn from production in the United States. *See* PCGP Resource Report 5, responses to BLM comments 1, 4. The applicants have sought and received authorization to import the gas from Canada sufficient to meet the entire supply needs for the pipelines.[18] Thus, there is no evidence indicating that the project will, in fact, draw on U.S. gas

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[18] *See* https://fossil.energy.gov/ng_regulation/sites/default/files/programs/gasregulation/authorizations/2014/orders/ord3412.pdf

production. But if the projects end up solely serving to allow a Canadian company to sell Canadian natural gas to buyers in Asian countries, the projects will not provide any U.S. community with any public benefits of the type described in the Certificate Policy Statement.

Applicants discuss other purported benefits, such as increased tax revenue and job creation. These types of benefits, standing alone, cannot provide a basis a grant of eminent domain authority under Section 7 of the Natural Gas Act. The Natural Gas Act reflects a Congressional determination that providing the public with reliable and affordable access to natural gas is of such compelling importance that where this specific goal cannot be accomplished without the exercise of eminent domain, that exercise is warranted. Congress has *not*, however, created a generalized federal grant of eminent domain authority for any large construction project that would create jobs and increase the tax base. Moreover, the applicants overstate potential job benefits and understate job losses, as we explain below.

III. **The Projects Will Have Extensive and Severe Adverse Impacts**

The proposed pipeline and terminal will have numerous, wide ranging, and severe adverse impacts on the environment, landowners, and the jobs and economies of local communities. These impacts are so significant that they would outweigh even a strong showing of public benefit, compelling denial of the projects; these harmful impacts easily overwhelm the minimal showing of public benefit here.

A project's impacts can be contrary to the public interest on balance, such that FERC must not approve it, even when the project is fully subscribed and demonstrates that it will provide pertinent public benefits. For example, the Certificate Policy Statement interprets the statute's eminent domain authority as ensuring that "a few holdout landowners cannot veto a project." 88 FERC ¶ 61227, 61749. Where a project will have major public benefits, this can outweigh "modest" use of federal eminent domain authority required by the lack of "some" voluntary right-of-way agreements. *Id.* However, nothing in the Certificate Policy Statement indicates that a project that requires more than "modest" use of eminent domain to acquire more than "a few holdout" landowners could ever be in the public interest.

Here, the situation the opposite of the examples provided by the Certificate Policy Statement: Pacific Connector has only acquired a small fraction of the required private right-of-way. Pacific Connector states that it has acquired easements across 38% of the non-timber private parcels; Pacific Connector does not state that is has acquired *any* easements for the proposed 62 miles across land held by private timber companies. PCGP Application at 13. Because Pacific Connector has acquired only this small share of the necessary easements despite more than a decade of work on this pipeline, there is no basis for Pacific Connector's "expect[ation]" that it will obtain most easements through fair negotiation. PCGP Application at 13. At this point, the only reasonable conclusion is that the landowners who have not yet negotiated easements are simply uninterested in selling.

Perhaps showing its hand, PCGP states that it expects negotiations to occur after construction on the liquefaction facility has commenced: that is, *after* FERC issued the certificates. PCGP Application at 13. Negotiation after issuance of the certificate will, of course, occur against the backdrop of a live grant of eminent domain authority, and will therefore be far from fair. Thus, while Pacific Connector might expect to find greater success "negotiating" at that future time, the possibility that landowners will grant easements only when facing the imminent threat of eminent domain does not demonstrate an absence of harm to those landowners. FERC therefore must assess the extent of harm to the public interest based on easements Pacific Connector has actually acquired *now*. Thus, the extensive impacts to private landowners compel denial of the pipeline certificate regardless of whether Pacific Connector can show market support.

The projects will also have extensive environmental issues, which provide an additional and independently sufficient basis for denying the application. Sierra Club and other organizations discussed many of these environmental impacts in comments submitted during the scoping period, *see, e.g.,* Accession No. 20170710-5157, and we anticipate providing addition evidence of these harms if and when the current proposals proceed to the point of additional NEPA review. As courts have repeatedly affirmed, FERC must consider environmental impacts in its public interest analyses, and the Natural Gas Act provides FERC with the authority to deny the applications on the basis of environmental impacts. *Sabal Trail*, 867 F.3d at 1373.

Finally, the projects will have numerous adverse economic and job impacts not adequately considered or accounted for in the applications and accompanying resource reports. As multiple timber companies have explained, routing a pipeline through timber land impacts an area far beyond the area cleared for pipeline construction or the permanent right-of-way.[19] These comments refute the applicants' wholly unsupported assertion that "Any impacts to local economies from decreased timber productivity due to clearing of the Pipeline right-of-way are expected to be minimal." PCGP Resource Report 5 at 50. The applicants have also failed to take a serious look at impacts to tourism and recreation. The applicants purport to have examined tourism issues by speaking with "local officials" in six communities in which LNG terminals exist. JCEP Resource Report 5 Appendix C.5 at 31. However, these communities are all areas in which LNG and similar infrastructure have existed for a long time, and these community's experiences do not meaningfully illustrate the consequence of *adding* an LNG facility to Coos Bay. Moreover, the applicants do not appear to have addressed the tourism and recreational impact of the pipeline, including the tourism impact of placing the pipeline across 81 miles of public land.

The economic analysis the applicants did provide ignores these issues, because it only addresses the beneficial impacts of money spent in constructing and

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[19] *See* Motion to Intervene of Seneca Jones Timber Company, Accession No. 20171025-5029; *see also* Messerle & Sons, Comments to Coos County Planning Department (June 10, 2010), attached as Exhibit 9; Yankee Creek Forestry, Comments to Coos County Planning Department (June 7, 2010), attached as Exhibit 10.

operating the pipeline. The resource reports and attached materials do not demonstrate that the analysis provided any consideration for costs and sacrificed opportunities, such as reduced employment in the timber industry. Sierra Club extensively discussed the limits of the modeling tool used here in comments previously submitted to DOE; we incorporate those comments by reference here.[20]

In summary, the proposed projects will have numerous adverse effects on the environment, landowners, and the nearby communities. These impacts would outweigh even a strong showing of public benefit; they completely overwhelm the minimal showing of benefit here.

IV. **Conclusion**

For the reasons stated above, Sierra Club and the other undersigned organizations respectfully request that the Commission deny the the applications in CP17-494 and CP17-495.

Sincerely,

Nathan Matthews
Staff Attorney
Sierra Club
2101 Webster Street, Suite 1300
Oakland, CA 94612
(415) 977-5695
Nathan.Matthews@sierraclub.org

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[20] https://fossil.energy.gov/ng_regulation/sites/default/files/programs/gasregulation/authorizations/2012/applications/sierra_club08_06_12.pdf at 62-64, attached as Exhibit 11.

Gabriel Scott
In-House Counsel
Cascadia Wildlands
POB 10455 Eugene OR 97440
gabescott@icloud.com
(541) 434-1463

Nicholas Caleb
Staff Attorney
Center for Sustainable Economy
nick.caleb@sustainable-economy.org
(541) 891-6761

Jody McCaffree
Executive Director
Citizens Against LNG
PO Box 1113
North Bend, OR 97459
citizensagainstlng@gmail.com

Kathleen Eymann
President
Citizens for Renewables, Inc.
keymann@climateclean.net

Deb Evans
Hair on Fire Oregon
Debron3@gmail.com

Phillip Johnson
Executive Director
Oregon Shores Conservation Coalition
P.O. Box 33, Seal Rock, OR 97376
(503) 754-9303
phillip@oregonshores.org

Doug Heiken
Oregon Wild
PO Box 11648
Eugene OR 97440
dh@oregonwild.org
541.344.0675
Julienne DeMarsh
Secretary
Oregon Women's Land Trust
P.O. Box 1692
Roseburg, Oregon 97471

Stacey McLaughlin
Pipeline Awareness Southern Oregon
799 Glory Lane
Myrtle Creek, OR 97457

Hannah Sohl
Director
Rogue Climate
541-840-1065
PO Box 1980
Phoenix, OR 97535

Robyn Janssen
Director
Rogue Riverkeeper
PO Box 102
Ashland, OR 97520

Susan Jane M. Brown
Staff Attorney
Western Environmental Law Center
Ph: 503-914-1323
Cell: 503-680-5513
brown@westernlaw.org