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<b>Jordan Cove Energy Project, L.P.</b>	)	<b>Jordan Cove Energy Project, L.P.;</b>
<b>Application for Certificate</b>	)	<b>Application to Amend Long-Term,</b>
	)	<b>Conditional Authorization to Export</b>
	)	<b>Liquefied Natural Gas to Non-Free</b>
	)	<b>Trade Agreement Nations and to</b>
	)	<b>Amend Application for Long-Term</b>
	)	<b>Authorization to Export Liquefied</b>
	)	<b>Natural Gas to Non-Free Trade</b>
	)	<b>Agreement Nations</b>

***Evans Schaaf Family LLC, Ronald Schaaf and Deborah Evans***

**PROTEST AND COMMENT**

On April 19, 2018, the Office of Fossil Energy at the Department of Energy (DOE/FE) posted in the *Federal Register*, a notice of receipt for a proposed amendment to the application filed on March 23, 2012, by Jordan Cove Energy Project, L.P. (Jordan Cove), requesting long-term, multi-contract authorization to export liquefied natural gas (LNG), both natural gas produced domestically in the United States and natural gas produced in Canada and imported into the United States. Intervenors Evans Schaaf Family LLC, Ronald Schaaf and Deborah Evans, submit this protest and comments in response to that application.

Additionally, Intervenors Stacey and Craig McLaughlin, Oregon Women’s Land Trust (Francis Eatherington, President), Landowners United (Clarence Adams, President), and proposed intervenors Bob Barker, John Clarke, Bill Gow, Pam Brown Ordway, and Clarence Adams are also landowners who will be directly impacted and harmed by the proposed Pacific Connector Gas Pipeline L.P. (PCGP) and Jordan Cove Energy Project L.P. (JCEP). For convenience, we collectively refer here to the proposed intervenors and existing intervenors as “Intervenors.” Thirty-nine more affected landowners have signed on in support of this protest.<sup>1</sup>

Intervenors protest JCEP’s Amended Application filed with DOE/FE on February 6, 2018, along with Conditional Order No. 3413 issued on March 24, 2014 conditionally granting long-term, multi-contract authorization to export liquefied natural gas (LNG) by vessel from Jordan Cove LNG terminal in Coos Bay, Oregon to non-free trade agreement (Non-FTA) nations. Intervenors protest on the grounds that there is strong factual evidence, including new and recent factual evidence submitted herein, that shows that the project is inconsistent with the public interest and therefore, DOE/FE authorization on JCEP’s amended and original applications should be denied. Specifically, increasing allowed export quantities absent any limits on the percentage of gas that would come from Canada

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<sup>1</sup> See Ex. T.

undermines any assumption that such exports would provide a public benefit in the United States. While the primary claimed benefits from LNG exports stem from assumptions of increased gas production in the Rockies, such benefits are non-existent in the likely scenario that a vast majority, if not all, of the exported volume would be from Canada.

On October 3, 2017, Intervenors, along with additional affected landowners filed a letter/protest<sup>2</sup> with the Federal Energy Regulatory Commission (FERC). In it, Intervenors asked FERC to deny the new September 21, 2017 JCEP and PCGP applications for authorization to construct and operate natural gas facilities and an associated pipeline pursuant to §§ 3(a) and 7 of the Natural Gas Act. As the criteria discussed in that protest is relevant to the decision before DOE/FE, we incorporate by this reference that protest, and ask you to consider the points and authorities discussed therein.

Intervenors will show in this further protest that JCEP's current Amended Application to DOE and Conditional Order No. 3413, if approved, will cause significant harm to U.S. interests. JCEP, who has contract for 95.8% of PCGP and will serve as aggregator, can and will likely convert their 20-year preliminary contracts with global traders like JERA, Itochu and Petronas to precedent binding 20-year contracts for full pipeline capacity utilizing Canadian-sourced natural gas in a coveted west coast location that is transportation-advantaged over the U.S. Gulf Coast. With destination clauses removed, these large buyers/traders can offer to sell at any time over the next 20 years, the contracted cargos onto the spot market, resulting in direct competition with transportation-challenged Gulf Coast projects to the desired Asian market which constitutes 70% of global LNG demand. This scenario is very likely to materialize, given that both JERA and Petronas have extensive trapped natural gas resources in the upper Montney. Nothing in the 2017 applications to FERC or current Conditional Order No. 3413 would prohibit this action. This would perpetrate a harm against all other U.S. LNG proposed and approved projects and is clearly inconsistent with the public interest of the United States.

**1. JCEP's Amended Application and Conditional Order No. 3413 do not meet critical criteria requiring sourcing U.S. natural gas in DOE/FE's current orders and commissioned studies, therefore are inconsistent with the public interest and should be denied.**

The recent DOE/FE Order granting non-FTA authority to Lake Charles LNG (Order No. 4010 issued July 29, 2017) explains the presumptions and factors DOE/FE considers when making a public interest determination:

15 U.S.C. § 717b(a). This provision creates a rebuttable presumption that a proposed export of natural gas is in the public interest. DOE/FE must grant such an application **unless opponents of the application overcome that**

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<sup>2</sup> See Ex. A.

**presumption by making an affirmative showing of inconsistency with the public interest.**<sup>3</sup> (emphasis added)

While section 3(a) establishes a broad public interest standard and a presumption favoring export authorizations, the statute does not define “public interest” or identify criteria that must be considered. In prior decisions, however, DOE/FE has identified a range of factors that it evaluates when reviewing an application for export authorization. **These factors include economic impacts, international impacts, security of natural gas supply, and environmental impacts, among others. To conduct this review, DOE/FE looks to record evidence developed in the application proceeding.**<sup>4</sup> (emphasis added)

**A. DOE/FE Commissioned Studies provide guidance for Public Interest Determination and JCEP’s Project Does Not Satisfy that Guidance.**

DOE/FE has commissioned multiple studies to help determine if exporting LNG from the United States is in the public interest. The most recent studies commissioned by DOE/FE—U.S. Energy Information Administration’s (EIA) *Effect of Increased Levels of Liquefied Natural Gas Exports on U.S. Energy Markets*<sup>5</sup> (2014 EIA Study), and, in particular, *The Macroeconomic Impacts of Increasing U.S. LNG Exports*<sup>6</sup> (2015 LNG Study) found that increasing U.S. LNG Exports from 12 to 20 billion cubic feet per day (Bcf/d) would result in a “marginally positive” GDP. The latter study used modeling based on U.S.-sourced natural gas, not Canadian, and concluded that “the overall gain to the U.S. economy is between 0.03 and 0.07 percent of GDP over the period of 2026–2040, or between \$7 and \$21 billion USD annually in today’s prices.... The main channel for positive impacts when U.S. LNG exports increase to a higher level, is through **higher production and greater investment in the natural gas sector in the United States.**”<sup>7</sup> (emphasis added)

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<sup>3</sup> Lake Charles LNG DOE/FE Order No. 4010, fn. 57; *see, e.g., Sabine Pass Liquefaction, LLC*, DOE/FE Order No. 2961, FE Docket No. 10-111-LNG, Opinion and Order Conditionally Granting Long-Term Authorization to Export Liquefied Natural Gas From Sabine Pass LNG Terminal to Non-Free Trade Agreement Nations at 28 (May 20, 2011) [hereinafter *Sabine Pass*]; *see also Phillips Alaska Natural Gas Corp. & Marathon Oil Co.*, DOE/FE Order No. 1473, FE Docket No. 96-99-LNG, Order Extending Authorization to Export Liquefied Natural Gas from Alaska at 13 (April 2, 1999) [hereinafter *Phillips Alaska Natural Gas*], citing *Panhandle Producers & Royalty Owners Ass’n v. ERA*, 822 F.2d 1105, 1111 (D.C. Cir.1987).

<sup>4</sup> *Id.* at fn. 48; *see, e.g., Sabine Pass*, DOE/FE Order No. 2961 at 28-42 (reviewing record evidence in issuing conditional authorization).

<sup>5</sup> *See Ex. Q.*

<sup>6</sup> *See Ex. R.*

<sup>7</sup> *Id.* at 82-83.

The location of JCEP's proposed LNG terminal is on the Pacific Northwest coast and per JCEP's filings with DOE/FE and FERC, it would "provide new market access for natural gas producers in the U.S. Rocky Mountains and western Canada."<sup>8</sup> Additionally, JCEP states in the Amended Application to DOE that "[S]tudies of LNG exports commissioned by DOE/FE concluded that LNG exports would produce 'net economic benefits' for the U.S.," citing 2014 EIA and 2015 LNG studies. Clearly JCEP is trying to ride on the coattails of all other proposed and approved LNG terminals in the U.S., ignoring the fact that they are the only LNG terminal proposing, or in a position let alone likely, to export significant portions of non-U.S.-sourced gas. Given the marginally positive results of the 2015 LNG Study that is based on 100% U.S.-sourced gas, substituting even a portion of Canadian-sourced gas into the same model calls into question JCEP's claim of "net U.S. benefits." Specifically, even if DOE were to accept the premise that the export of U.S.-produced natural gas as LNG would have a mildly positive economic benefit despite the substantial price hikes it would inflict on U.S. consumers, that conclusion is entirely premised on the assumptions that the exported gas would be produced by U.S. workers and companies. To the extent the Jordan Cove project becomes an export hub for Canadian gas, U.S. commercial and residential gas consumers, especially those in Oregon and the West coast, will be put in the position of having to compete for gas against one of the highest priced gas markets in the world: the Asia-Pacific Rim LNG market. At the same time, however, none of the benefits to workers or the regional economy that have been presumed to offset increased consumer prices would be materialized.

**B. DOE's recent orders approving exports of LNG to non-FTA countries are conditioned on sourcing U.S. natural gas; no such condition has been imposed on JCEP.**

JCEP states: "Since issuing Order 3413, DOE/FE has continued to grant additional export authorizations, in each case finding that LNG exports are not inconsistent with the public interest."<sup>9</sup>

This is correct, but in DOE/FE's recent orders to Lake Charles (Order No. 4010), Eagle Maxville (Order No. 4078, issued September 15, 2017) and Cameron LNG (Order No. 3846, issued July 15, 2016) granting authorization to export LNG to non-FTA countries, each order specifically states that the natural gas must be U.S.-sourced as in this condition (J.) from Lake Charles LNG, Order No. 4010:

J. Lake Charles LNG Export, or others for whom Lake Charles LNG Export acts as agent, shall include the following provision in any agreement or other contract for the sale or transfer of LNG exported pursuant to this Order and any other applicable DOE/FE authorization:

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<sup>8</sup> JCEP's Amended Application at 9.

<sup>9</sup> *Id* at 7.

Customer or purchaser acknowledges and agrees that it will resell or transfer **U.S.-sourced natural gas** in the form of LNG purchased hereunder for delivery to the countries identified in Ordering Paragraph B of DOE/FE Order No. 4010, issued June 29, 2017, in FE Docket No. 16-109-LNG, and/or to purchasers that have agreed in writing to limit their direct or indirect resale or transfer of such LNG to such countries. Customer or purchaser further commits to cause a report to be provided to Lake Charles LNG Export Company, LLC that identifies the country of destination (or countries) into which the exported LNG or natural gas was actually delivered and/or received for end use, and to include in any resale contract for such LNG the necessary conditions to insure that Lake Charles LNG Export Company, LLC is made aware of all such actual destination countries.<sup>10</sup> [emphasis added]

JCEP's proposed project has continuously been premised on providing access to both Canadian-sourced and U.S.-sourced gas stating: "The need [is] to source natural gas from the major production basins in the U.S. Rocky Mountains and western Canada, for the purpose of exporting to Asian markets ...."<sup>11</sup> According to the most recent *EIA Oil and Natural Gas Resources and Technology Report*, the United States has ample gas to supply LNG exports from four of its major basins.

Over the past 10 years, tight oil and shale gas production in the United States has increased dramatically, accounting for 54% of crude oil production and 55% of dry natural gas production in 2017, compared with 17% for each in 2008 (Figure 5). This growth has been supported by development in the Appalachian Basin, the Williston Basin, the Western Gulf Basin and, more recently, the Permian Basin.<sup>12</sup>

JCEP additionally states: "AEO 2017 and the DOE/FE studies show that natural gas markets in the U.S. would support LNG exports and that, over time, EIA's analyses have grown more favorable to LNG exports. Given the relatively small increase JCEP is requesting herein, DOE/FE's conclusions in Order No. 4010, which was issued in June 2017, would apply equally here. Increasing the quantity of LNG JCEP may export will produce net economic benefits for the U.S. and will not adversely affect the U.S. gas supply." JCEP misleadingly uses the DOE/FE studies, the AEO 2017 Report and Order No. 4010 as supporting JCEP's argument that it's project has a net economic benefit and therefore is in the public interest.

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<sup>10</sup> Lake Charles LNG DOE/FE Order No. 4010 at 59. Same U.S.-sourced natural gas condition is also found in Eagle Maxville LNG DOE/FE Order No. 4078 at 47 and Cameron LNG DOE/FE Order No. 3846 at 134.

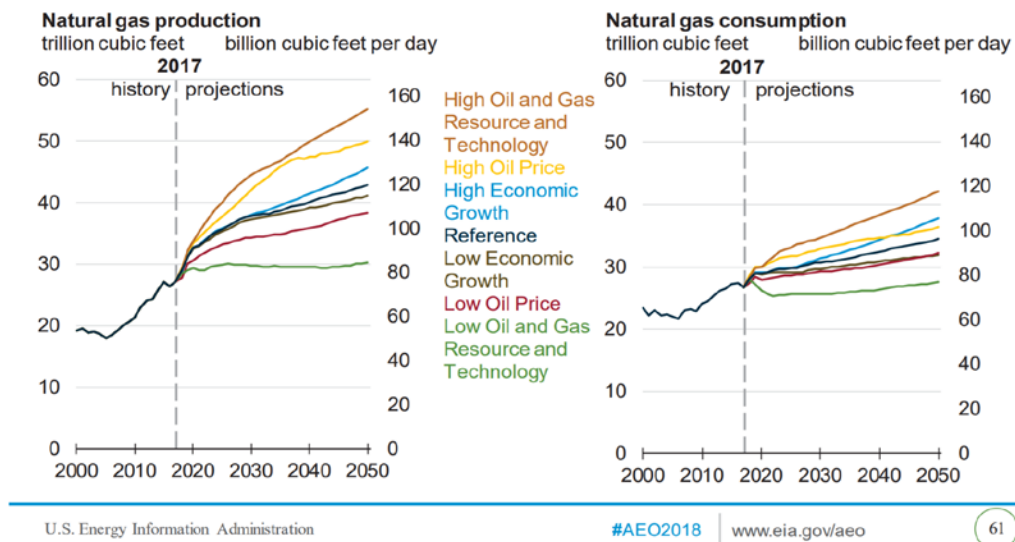
<sup>11</sup> JCEP § 3 Application with FERC, Resource Report 10 at 4.

<sup>12</sup> See **Ex. B**.

But, each of the sources JCEP cites are singularly focused on benefits provided when **U.S. gas production** is utilized and do not substantiate JCEP’s presumption that exporting Canadian-sourced gas would garner the same results. Despite JCEP’s misrepresenting omission, it is clear to us that DOE/FE fully understands the distinction and has thus required in the most recent orders that all contracts be bound to “U.S.-sourced natural gas.”

Concerning natural gas supplies in the United States, the 2018 AEO outlook to 2050 states, “U.S. natural gas consumption and production increase in all cases—with production growth outpacing natural gas consumption in all cases,” As illustrated in the chart below, the forecast is that American supplies of gas are more than adequate to support U.S. LNG export.

U.S. natural gas consumption and production increase in all cases—



—with production growth outpacing natural gas consumption in all cases

JCEP’s assertion that domestic gas supplies will not be adversely affected because there are abundant supplies, is incorrect. By exporting Canadian gas, JCEP will displace U.S.-sourced natural gas opportunities in the overall LNG global market, and thus, will negatively impact net U.S. economic benefit.

**C. Conditional Order 3413's approval hinged on both upstream and LNG terminal economic benefits based on the speculative prediction of 50% US-sourced gas and 50% Canadian-sourced gas over the lifetime of the project but that Presumption is Unsupported by the Relevant Facts.**

JCEP states that, "In Order No. 3413, DOE/FE considered such factors and concluded that the proposed exports would yield regional economic benefits, that 'the United States will experience net economic benefits' from LNG exports, and that exports will improve energy security for allies and other trading partners. All these conclusions will remain true if the amendment to Order No. 3413 is granted."<sup>13</sup> Intervenors disagree. The world LNG markets, circumstances and evidence given to DOE/FE have changed substantially since Conditional Order No. 3413 was issued on March 24, 2014.<sup>14</sup>

Importantly, the Conditional Order No. 3413 approval hinged on 2012 economic data provided in the *Jordan Cove LNG Export Project Market Analysis Study* (Navigant Study)<sup>15</sup> and four ECONorthwest Reports (ECO Reports)<sup>16</sup> and was premised on a speculative prediction of upstream and LNG terminal economic benefits based on 50% US-sourced gas and 50% Canadian-sourced gas over the life of the project.

Navigant Study's prediction in 2012 was that initial gas sourcing for Jordan Cove would be 70% Canadian and 30% U.S. Rockies, but that would shift over time to a 50%-50% balance over the life of the project.<sup>17</sup> Using this unsubstantiated prediction, ECONorthwest compiled data in a series of reports that showed significant upstream benefits accrued from natural gas production jobs, by-products including natural gas liquids (NGL) and positive influence on U.S. trade deficit specifically on the percentage attributed to U.S. natural gas production. Current studies including the April 2018 ICF *Calculating the Economic Benefits of U.S. LNG Exports*<sup>18</sup> report concur that the largest benefits of LNG exports to the economy come from natural gas production versus the LNG terminals themselves. The ratio from each

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<sup>13</sup> JCEP Amended Application to DOE/FE at 7.

<sup>14</sup> See **Ex. A**.

<sup>15</sup> *Jordan Cove LNG Export Project Market Analysis Study* – Navigant Consulting, Inc Report for JCLNG for DOE Order No. 3413 – can be found in JCEP's original application for NON-FTA approval at pp. 33 -103 (App. A).

<sup>16</sup> JCLNG original Application for DOE/FE Non-FTA approval found at: App. C – *ECONorthwest Construction Study*; App. D – *ECONorthwest Operations Study*; App. E – *ECONorthwest Upstream Contributions Study*; and App. F – *ECONorthwest Balance of Trade Study*.

<sup>17</sup> JCLNG original Application for DOE/FE Non-FTA approval found at App. A: *Jordan Cove LNG Export Project Market Analysis Study*.

<sup>18</sup> See **Ex C**.

of the cases shown below range from 1 : 2.3/2.9 for terminal to natural gas production economic impacts.

Exhibit 1. Economic Impacts from U.S. LNG Export Terminals

	Reference Case	High Oil & Gas Case	High Oil Price Case
Highest Annual LNG Exports Billion cubic feet per day (Bcf/d)	14.7	22.9	32.2
Highest Annual Value Added from LNG Terminals (Billion 2017\$)	23.0	32.4	45.7
Cumulative Value Added from LNG Terminals (2013-2050, Billion 2017\$)	716	976	1,267
Highest Annual Direct, Indirect, Induced Jobs from LNG Terminals (jobs)	142,534	142,534	160,807
Average Annual Direct, Indirect, Induced Jobs from LNG Terminals (jobs)	52,441	76,134	102,809
Cumulative Direct, Indirect, Induced Jobs from LNG Terminals (job-years)	1,992,770	2,893,087	3,906, 756

Exhibit 2. Economic Impacts from U.S. Natural Gas Supplied for LNG Fuel and Feedstock

	Reference Case	High Oil & Gas Case	High Oil Price Case
Highest Annual Value Added from Natural Gas for LNG Terminals (billion 2017\$)	36.8	34.9	95.5
Cumulative Value Added from Natural Gas for LNG Terminals (2016-2050, billion 2017\$)	948	909	1,988
Highest Annual Direct, Indirect, Induced Jobs from Natural Gas for LNG Terminals	182,844	259,908	476,543
Average Annual Direct, Indirect, Induced Jobs from Natural Gas for LNG Terminals	152,962	193,940	330,088
Cumulative Direct, Indirect, Induced Jobs from Natural Gas for LNG (job-years)	5,353,659	6,787,913	11,553,067

Note: Value added and jobs include direct, indirect, and induced impacts. LNG export plant construction began in 2013, so that is the first year for estimating economic impacts from the plants. U.S. LNG exports began in 2016, so that is the first year for estimating the impacts related to natural gas supply.

Natural gas basins that have ‘wet gas’ with high NGL profiles, like both the Montney shale play in western Canada and the Permian shale play in west Texas, are particularly valued for their NGL resources. In the JCEP proposal all marketable NGLs coming from Canada are removed and processed prior to shipping gas into the United States. Since the greatest benefit to U.S. interests is the natural gas production, it makes sense to concentrate on extracting U.S. resources in shale plays like the Permian.<sup>19</sup> The economic benefits to Canada and the loss of those benefits to U.S. natural gas producers would be significant and contribute to a determination that shipping Canadian-sourced gas through a U.S. LNG export port will harm rather than support the public interest.

**D. JCEP intends to utilize large volumes of Canadian-sourced gas as demonstrated by JCEP’s Application and approval in case no. A58981 from National Energy Board (NEB) of Canada and Order No. 3412 from DOE to import 565.75 Bcf/yr (1.55 Bcf/d) of natural gas from Canada into the United States for Jordan Cove; an amount that exceeds PCGP’s 1.2 Bcf/d capacity and JCEP’s Amended Application request of 395 Bcf/yr by 140%.**

On September 9, 2013 JCEP applied to NEB asking for permission to export 1.55 Bcf/d of Canadian natural gas for Jordan Cove, explaining JCEP’s plan to initially export 6 million tons of LNG and increasing to 9 million tons within four years. NEB granted that request in A58981 on February 20, 2014 which includes the following statement:

<sup>19</sup> See Ex. D-1.



Finally, Jordan Cove LNG concluded that any opportunity for Canada to economically utilize existing gas pipelines and gas processing infrastructure and to diversify its traditional export markets clearly serves the Canadian public interest.”<sup>20</sup>

On October 21, 2013 Jordan Cove submitted an application to DOE/FE asking for permission to import 1.55 Bcf/d, the equivalent of 565.75 Bcf/yr, of natural gas from Canada. DOE/FE granted the request of “up to 565.75 Bcf per year of natural gas for a 25-year term”<sup>21</sup> in Order No. 3412 on March 18, 2014 “without modification or delay” under § 3(c) of the National Gas Act. The order states:

(1) Section 3(c) of the NGA was amended by section 201 of the Energy Policy Act of 1992 (Pub. L. 102-486) to require that applications authorizing (a) the import and export of natural gas, including LNG, from and to a nation with which there is in effect a FTA requiring national treatment for trade in natural gas, and (b) the import of LNG from other international sources, be deemed consistent with the public interest and granted without modification or delay. The authorization sought by JCLNG to import natural gas from Canada, a nation with which a FTA is in effect, falls within section 3(c), as amended. Therefore, DOE/FE is charged with granting the requested authorization without modification or delay.<sup>22</sup>

DOE/FE Order No. 3412 also states, “In light of DOE’s statutory obligation to grant this Application without modification or delay, there is no need for DOE/FE to review any other arguments asserted by JCLNG in support of the Application. The instant grant of authority should not be read to indicate DOE’s views on those arguments.”<sup>23</sup>

The importance of understanding the permissions that have been granted to JCEP in these two orders is that: 1) JCEP asked for and received permission, not for 1.2 Bcf/d, but for 1.55 Bcf/d of natural gas showing they have always been interested in expanding JCEP export 9 million tons of LNG per annum and wanted the option to do that with Canadian-sourced gas; and 2) DOE/FE, while required by NGA § 3c rules guiding border imports and exports of natural gas with Canada (as part of NAFTA), is under no such obligation to authorize export

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<sup>20</sup> National Energy Board of Canada – A58981 - JCEP approval to import gas - <https://apps.neb-one.gc.ca/REGDOCS/Item/Filing/A58981>.

<sup>21</sup> DOE/FE Order No. 3412 at 11.

<sup>22</sup> DOE/FE Order No. 3412 at 8  
[https://fossil.energy.gov/ng\\_regulation/sites/default/files/programs/gasregulation/authorizations/2014/orders/ord3412.pdf](https://fossil.energy.gov/ng_regulation/sites/default/files/programs/gasregulation/authorizations/2014/orders/ord3412.pdf).

<sup>23</sup> *Id* at 8.

of Canadian-sourced gas to non-FTA countries, and in fact cannot, if it is deemed “inconsistent with the public interest.”

**E. Global LNG markets and conditions have significantly changed since 2014, creating highly competitive, limited world market opportunities warranting a close look by DOE/FE to determine which US LNG export terminals serve the public interest and which ones do not.**

Between 2012 and 2018, significant shifts have taken place in global LNG markets with new changes and demands for lower priced contracts and more flexibility coming almost daily.<sup>24 25 26</sup> Many of these market changes were outlined to DOE in Intervenors’ earlier comments submitted to FE docket 12-32-LNG on March 23, 2016 in response to JCEP’s Oct 5, 2015 request to increase the volume of LNG exported from 292 to 350 Bcf/yr.

Since then, Intervenors have outlined further concerns over markets and the JCEP/PCGP projects in additional comments to FERC, i.e., asking FERC to deny the rehearing request made by JCEP and PCGP following their March 11, 2016 denial<sup>27</sup> and most recently in asking FERC to deny JCEP’s and PCGP’s §§ 3 and 7 applications submitted Sept. 21, 2017<sup>28</sup>. The latter request is based on grounds that JCEP/PCGP have not lifted the bar as far as securing firm offtake agreements or minimizing adverse effects to landowners/communities. PCGP had no qualified bidders in the open season, and subsequently have booked 95.8% of capacity to JCEP. Furthermore, approved projects in the Gulf Coast—1) who utilize U.S.-sourced gas, 2) are struggling to get off-take contracts and 3) are generating significantly more economic value to the U.S. GDP—are competing for the same market. Intervenors believe that DOE/FE- and FERC-approved projects are being squeezed by large aggregator buyers using Jordan Cove and, what could be entirely Canadian-sourced gas, to leverage down price and flexibility in contracts elsewhere.<sup>29</sup> In this respect, a project that provides fewer American jobs (JCEP), would be competing for market share with a fully approved Gulf Coast project waiting on off-take buyers, thereby cutting directly into what would inevitably result in more American jobs if U.S. domestically-source gas were used.

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<sup>24</sup> See Ex. A (Ex. 8).

<sup>25</sup> See Ex. A (Ex. 9).

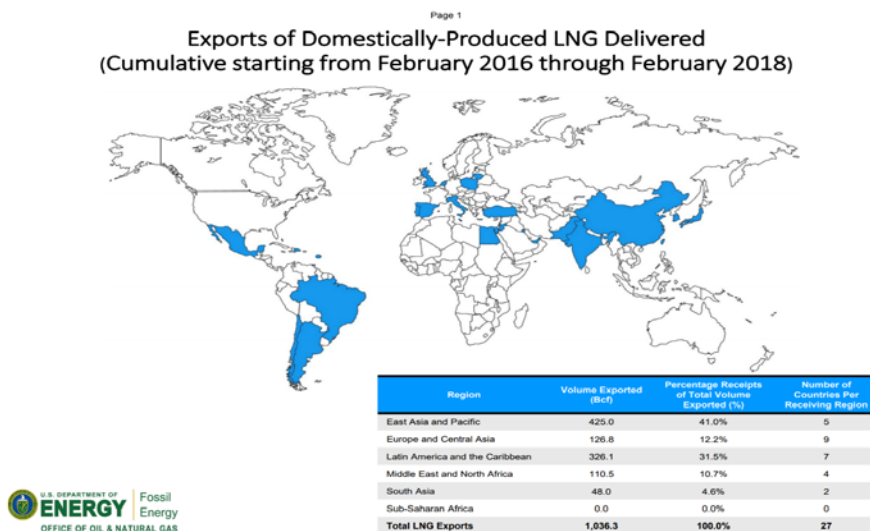
<sup>26</sup> See Ex. A (Ex. 10).

<sup>27</sup> See Ex. D.

<sup>28</sup> See Ex. A.

<sup>29</sup> *Id.*

Other conditions that have changed since 2014 include potentially significant curtailment of U.S. LNG exports to European markets due to increased shifts to renewable energy and aggressive Russian negotiations to double natural gas delivery to Europe via pipeline.<sup>30</sup> This is causing Gulf Coast projects to increasingly turn toward Asian markets which make up 70% of LNG demand<sup>31</sup> as shown in the latest DOE/FE domestically-sourced LNG destinations.<sup>32</sup>



If JCEP, as the only U.S. West Coast LNG export port, is permitted, any significant percentage of the gas supply that is Canadian would give Canadian interests a distinct transportation advantage to the coveted Asian markets with eight-day shipping times versus roughly 16 days, assuming ship size and capacity is equal. In the event that the West Coast Port caters, in part or in full, to spot market cargos sold on a daily basis, the travel advantage will work directly against U.S. domestically-sourced natural gas Gulf coast projects. Additionally, the glut of LNG available has created a “buyer’s market” and strong push for more flexible terms, shorter term/lower priced contracts, increase in spot market buying and trading, and ‘no destination’ clauses—all influencing U.S. LNG’s competitiveness in the global market.

While studies have generally indicated that the U.S. will have supply of gas available for export, what is less certain is what the demand will be and whether the U.S. will be consistently competitive on the global LNG stage. In the 2015 *MacroEconomic Impacts of*

<sup>30</sup> See Ex. A (Ex. 12).

<sup>31</sup> See Ex. E.

<sup>32</sup> DOE/FE April 2018 Monthly LNG Report  
[https://www.energy.gov/sites/prod/files/2018/04/f50/LNG%20Monthly%202018\\_0.pdf](https://www.energy.gov/sites/prod/files/2018/04/f50/LNG%20Monthly%202018_0.pdf).

*Increasing U.S. LNG Exports* study, an assumption was made that world demand would be there for 20 Bcf/d of U.S. LNG with pricing that would enable the U.S to participate. The continued struggle for already approved U.S. LNG export facilities to secure off-take contracts and make a positive financial investment decision (FID) further points to a restricted and highly coveted world market.<sup>33</sup>

Top 10 Second Wave US LNG Projects			
Ranking	Project	Regulatory Status	Expected FID
1	Corpus Christi Train 3	Fully Approved	Unknown
2	Magnolia LNG	Fully Approved	Unknown
3	Sabine Pass Train 6	Fully Approved	Unknown
4	Golden Pass	Fully Approved	2018
5	Rio Grande	Filed with Ferc	2018
6	Driftwood	Filed with Ferc	2018
7	Cameron Train 4-5	Fully Approved	Unknown
8	Jordan Cove	Refiled with Ferc	Unknown
9	Delfin FLNG	Fully Approved	2018
10	Lake Charles	Fully Approved	Unknown

*Source: World Gas Intelligence*

This fact makes it particularly important for DOE/FE to ensure that the coveted slots to those limited markets be met by only the most beneficial and least harmful projects and sourcing U.S. natural gas.

On September 21, 2017, JCEP and PCGP filed new applications for § 3 authorization and § 7 Certificate for Public Convenience and Necessity under the Natural Gas Act. After reading the Abbreviated Application for PCGP, Intervenors and eight other affected landowners filed a protest with FERC raising concerns over continued lack of binding contracts, adverse effects to landowners and communities, as well as competition the project would create for existing pipelines and terminals in the Gulf Coast, particularly those that use only U.S. domestically-sourced natural gas.<sup>34</sup>

**F. Surplus reserves of natural gas in both the U.S. and Canada and their access or lack thereof to world markets have created discounted prices at Canada’s AECO hub.**

One of the factors DOE/FE looks for in determining the public interest is the extent to which a project is likely to spur competition and thereby keep prices lower for U.S. consumers. This does not apply if you are trying to reach broader limited LNG world markets. Through aggressive action, the U.S. has developed LNG export terminals based on large reserves of natural gas primarily in the Appalachian, Williston, Western Gulf and, more

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<sup>33</sup> See Ex. A (Ex. 3).

<sup>34</sup> See Ex. A.

recently, Permian Basins.<sup>35</sup> Canada, on the other hand, has struggled to get even one LNG project going in B.C. despite having several approved. This abundant supply of Canadian gas, their lack of access to world markets and the shrinking demand of U.S. markets has caused prices at the Alberta Energy Co. (AECO) hub in Alberta to go into negative numbers last fall and near zero in the last couple of days.<sup>36</sup> While this is benefiting U.S. consumers, it has created a trapped asset situation for Canadian investors, making them eager to reach the coveted world markets anyway they can—including by exercising the right of eminent domain to take private and public land of residents and communities of Oregon to ship gas through Jordan Cove.

Chief Executive Officer of Pembina Pipeline, Michael Dilger, captured some of the interest in Asian markets and the struggles Canada is facing in this February 2018 article *Pembina Pipelines new purpose: Get Canada's oil and gas to the rest of the world*.

CEO shifts to getting hydrocarbons to the U.S. and Asia, especially in light of Canada's infrastructure problems, which he thinks will only get worse...

We think we have a purpose beyond what we have done, which is to play our part alongside other sector companies to get our hydrocarbons to the rest of the world," Dilger said.

\* \* \*

The price of gas in Alberta on a bad day is like \$1. It costs you \$5 to \$6 to get it there. So there is a massive arbitrage today. I don't know what it's going to be in 2023, but there is a lot of interest right now."<sup>37</sup>

**G. Large holders of Montney Shale in Canada are eyeing Jordan Cove and have long been hoping for a "Christmas Present" in the form of access to world markets.**

The interest in Jordan Cove as an avenue to coveted global LNG markets began in earnest with the securing of Order No. A58981 (NEB) and Order No. 3412 (DOE/FE) permission to import 1.55 Bcf/d of natural gas from Canada into the United States in 2014. At that time a revealing article appeared in the *Financial Post* titled "With Montney assets buy, Veresen eyes building first West Coast LNG facility in Oregon." The article reported that,

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<sup>35</sup> See Ex. B.

<sup>36</sup> [http://www.naturalgasintel.com/data/data\\_products/daily?location\\_id=CDNNOVA&region\\_id=canada](http://www.naturalgasintel.com/data/data_products/daily?location_id=CDNNOVA&region_id=canada).

<sup>37</sup> See Ex. F-1.

President and CEO of Veresen Inc. made a bold prediction – that his company would be the first to build an LNG project on the West Coast, but that it would be built in the U.S.... Asked whether access to the liquids-rich Montney, whose compounds are in high demand in Asia, was part of a wider strategy to link gas assets with Veresen’s proposed LNG project, Mr. Althoff said the two were intended to stand alone – but would work well together.<sup>38</sup>

One of the top natural gas analysts in North America, Bill Gwozd added, “I’ve always suggested that Canada should annex Oregon because we view those Oregon projects tapping into the western Canadian sedimentary basin.”

More recently in a third Quarter 2017 Investor call—shortly after Pembina Pipeline, Inc. completed their buyout of Veresen, Inc.—the CEO of Pembina, Michael Dilger, described his wish list this way:

Well, I think it's what every person in the energy business in Alberta want for Christmas is access to global markets. You know when we see the gas price in Tokyo and reflect on what that could mean, we could you know net that back to western Canada through Jordan Cove and associates pipelines or the propane price what that means to Western Canadian producers if we can get world pricing or world pricing for polypropylene. If Pembina and others that we wish well actually sincerely can connect Western Canada to the rest of the world that’s really the Christmas present we all want. And we think is fantastic for our industry, but also for all Canadians. The amount of money that we are leaving on the table as a country, it’s absolutely sad, we're a single customer industry and that's just got to change. So, that's the biggest thing that’s missing from my perspective.<sup>39</sup>

Many big oil and gas interests including Malaysia’s state-owned Petroliam Nasional Berhad (Petronas), have invested billions into Montney assets and many in Canada were hopeful Petronas’s Pacific Northwest LNG project, approved for Prince Rupert B.C., would achieve positive Financial Investment Decision (FID).

But it appears they may have instead for the past year been eyeing Jordan Cove as their outlet.

In March 2017 TransCanada subsidiary, NOVA Gas Transmission Ltd. (NGTL), filed an application with NEB asking for a variance on certificate GC-125 concerning the North Montney Mainline Project that they had received in 2015 and conditioned on Petronas’s FID for the Pacific Northwest LNG project. NGTL asked for that condition to be waived, stating

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<sup>38</sup> See Ex. U.

<sup>39</sup> See Ex. F.

that Progress Energy (100% owned by Petronas) along with 11 other companies had signed firm transportation receipt contracts on the North Montney Mainline Project for 1.485 Bcf/d that did not hinge on Pacific Northwest LNG approval.

On July 25, 2017, Petronas announced they would not build Pacific Northwest LNG and seven days prior on July 18, 2017, PCGP put out an open season notice stating that they already had 95.8% of the pipeline capacity booked, but would entertain anchor shipper bids between July 18 and August 17, 2017.<sup>40</sup> On PCGP's § 7 application with FERC submitted in September 2017 they revealed that JCEP had signed precedent agreements with PCGP for 95.8% of PCGP and had received no other qualifying bids.

On October 11, 2017 Reuters reported that "Progress Energy, a wholly-owned unit of Malaysia's Petronas, will look at other liquefied natural gas opportunities as a way to monetize its Canadian gas assets after Petronas scrapped a \$29 billion LNG project this year, a company executive said on Wednesday."<sup>41</sup>

Meanwhile, in the ongoing North Montney Mainline Variance proceedings, many current downstream users of TransCanada's NGTL filed to intervene and extensive hearings took place in Canada in January and February 2018. One of the groups that intervened was a consortium of U.S. gas industries including Pacific Gas and Electric, Avista, Portland General Electric and others—collectively identified as the Western Export Group (WEG). WEG argued that NGTL had not given any indication of where this new 1.485 Bcf/d of gas would be delivered and that if it was slated to go south on pipelines WEG utilizes (WEG makes up 62% of the capacity at the Kingsgate border crossing), NEB needed to ensure that cost causation would be used and that the burden of any new infrastructure would not fall on current users. NEB has not yet made a ruling on this matter.

What is known is that there is great interest in Canada in reaching coveted world markets and that those large and small players invested in the Western Canada Sedimentary Basin are both undercutting the price of the U.S. Rockies<sup>42</sup> and would absolutely be handed a "Christmas Present" if Jordan Cove receives authorization to ship to non-FTA countries. We know that JCEP has signed precedent agreements for 95.8% of Pacific Connector presumably to show FERC this round that they have firm shippers and that JCEP will be the aggregator/gate keeper of who ultimately ships gas through Pacific Connector. We know that there is 1.485 Bcf/d of gas belonging to Progress Energy and 11 other companies that is destined to go somewhere, although nobody is saying where. We know that the preliminary agreements that JCEP has with JERA and ITOCHU are just that, preliminary, and that no firm

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<sup>40</sup> See **Ex. G.**

<sup>41</sup> See **Ex. H.**

<sup>42</sup> See **Ex. I.**

transportation contracts have been signed according to the semi-annual reports submitted by JCEP to DOE/FE in April 2018. Is there something they are trying to hide by seeking DOE/FE and FERC authorization prior to signing and revealing contracts? We include this in our protest to say that the current Order No. 3413 conditionally authorizing shipments from JCEP to non-FTA countries, if ultimately approved, would hand Pembina and Canada their wish, but would be absolutely inconsistent with the public interest.

**H. Nothing in the current Conditional Order No. 3413 or in JCEP's amended application with DOE or in JCEP's new application with FERC prevents JCEP from sourcing up to 100% Canadian gas locked in with 20-year contracts.**

JCEP's Amended Application to DOE/FE along with Applications submitted to FERC for §§ 3 and 7 make no indication of how much gas will be sourced from the U.S. Rockies and how much from western Canada. The company states in FERC application materials:

The Pipeline will receive all of its gas supply from interconnections with the GTN Pipeline and Ruby Pipeline. These meter stations will be co-located within the Klamath Compressor Station. **Each meter station will be capable of receiving up to 100 percent of the Pipeline design capacity of 1,200,000 Dth/d.**<sup>43</sup> ...Both GTN and Ruby can support the feed gas requirement of the Project based on current flows to date on their respective systems. In addition, given the current timing of when contracts roll off on GTN and Ruby, there is ample supply from those two systems when gas is needed starting in mid-2023.<sup>44</sup> (emphasis added).

WEG was right to be worried, where the gas will be sourced will directly impact U.S. shippers already on the Gas Transmission Northwest Pipeline (GTN) running from the Canadian border at Kingsgate to the interconnect with PCGP, near Malin, OR. Conditional Order No. 3413 mistakenly makes no restrictions on gas-sourcing, opening up the very real possibility that JCEP's and PCGP's Canadian corporate parent and new owner, Pembina Pipeline, will control the strings on who gets in with long term contracts and has every reason to ensure the advantage goes to Canadian gas. This is a coup for both Pembina's Canadian affiliates and LNG traders such as JERA or Petronas to get long-term contracts with discounted Canadian gas from a West Coast location (avoiding the longer, and potentially bottle-necked Panama Canal) that they then can use or trade on the spot market, directly competing with and negatively impacting approved and pending US-sourced gas LNG projects.

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<sup>43</sup> PCGP Resource Report 1 at 22 - <http://pacificconnectorgp.com/wp-content/uploads/2017/09/2.1.2-PCGP-RR1-Text-Figures-App-A.1-F.1.pdf>.

<sup>44</sup> *Id* at 7.



**I. JCEP premises their entire proposal on the “need to provide markets for western Canada and U.S. Rockies for the purpose of serving Asian Markets.” Not only is this inconsistent with the public interest, there are far better alternative brownfield port locations in Costa Azul, Puerto Libertad and Gulf Coast to serve Asian markets with U.S.-sourced gas and with less harm than JCEP in Oregon.**

Despite industry’s wish to be regulated less, this is one case where DOE/FE and FERC must play referee and do due diligence in protecting American interests. Not all LNG projects are equal and not all LNG projects serve the public interest.

With more than 40 Bcf/d of U.S. LNG projects either approved or pending, DOE/FE and FERC will need to use their discretionary authority granted by the NGA § 3.B. that, since January 1, 2015 removes the mandatory ‘Hackberry’ Policy encoded in the Energy Policy Act.<sup>45</sup> Projects must be assessed on both their benefits and negative impacts as a stand-alone project and in comparison to other alternative projects

For JCEP, the “purpose” of the proposal itself is flawed and does not meet the public interest precisely because it includes sourcing gas from Canada versus 100% from the United States. This is a non-starter. Under Resource Report 10 of JCEP’s § 3 Application with FERC covering Alternatives, JCEP states:

Selection of the No Action Alternative could also result in the use or expansion of other existing or proposed LNG facilities and associated interstate natural gas pipeline systems, or the construction of new infrastructure to meet the purpose and need of this proposed Project (*i.e.*, to make other sources of natural gas available for LNG export to Asian markets). Section 10.2 below examines LNG system alternatives. Although the specific impacts of any future construction on the Coos Bay site or construction or expansion of other LNG facilities to meet the purpose and need for the Project are not reasonably foreseeable, any expansion of existing systems or construction of new facilities would result in additional environmental impacts associated with the expansion or construction of those alternative facilities that would likely be similar to those associated with the Project. Therefore, Jordan Cove does not consider adoption of the No Action alternative to be reasonable.<sup>46</sup>

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<sup>45</sup> Prior to 2002 the Commission regulated the rates and terms governing both natural gas pipeline transportation service provided under NGA § 7 and LNG terminal services provided under either NGA § 7 or § 3 to ensure that they are just and reasonable. Generally, this meant that cost-of-service rates and open access terms of service were required. In 2002, in Hackberry LNG Terminal, L.L.C. (Hackberry), after finding that the traditional approach may have had the unintended effect of deterring new investment in LNG terminals, the Commission announced a “less intrusive” regulatory regime for LNG terminal service; this so-called “Hackberry” policy was codified by the Energy Policy Act of 2005 (EPAAct 2005).

<sup>46</sup> JCEP Resource Report 10.

We disagree. The least impactful solution “to make other sources of natural gas available for LNG export to Asian markets” is to source U.S. gas from the most efficient basins and through existing brownfield facilities. Gulf Coast brownfield import or export facilities, Energia Costa Azul or Sonoran LNG as existing brownfield import projects could serve the purpose of sourcing U.S. natural gas to Asian markets including gas from the U.S. Rockies if it is competitively priced versus other U.S. shale plays. We believe that the myriad of proposed projects should be scrutinized closely by DOE/FE and FERC to ensure that the U.S. public interest is met by approving only the least harmful projects. Going forward, DOE/FE will have to regulate who is in and who is not and JCEP falls well short of this mark.

The latest AEO 2018 Report states, and the rig counts can affirm, that the most successful shale plays in the U.S. are in the Appalachian, Williston, Western Gulf and Permian Basins.<sup>47</sup> Siting terminals in relative proximity to these shale plays makes far more sense. Three obvious choices are the Gulf Coast or Puerto Libertad (Sonora LNG)<sup>48</sup> and Costa Azul (Energia Costa Azul) in Mexico, both of which already have brownfield import terminals, existing pipelines that can be expanded if needed and deep-water ports on the West Coast. Any of these locations could tap into the Permian shale play which has the added benefit of being a dual resource field focused on oil extraction with natural gas as a by-product. Rather than flare the natural gas, it makes much more sense to try to bring it to markets. The Permian, like the Montney shale play in western Canada, is also rich with NGLs, creating even more value-added resource and making it far more important for the U.S. than development of the Montney.<sup>49</sup> In short, JCEP has far too many downsides—dredging, predicted large earthquake and tsunami risks, eminent domain challenges, environmental degradation, and Canadian-sourced gas—making the no action alternative a serious consideration.

**J. JCEP states that there is strong local community support, but statewide polling shows the majority of Oregonians across all 5 congressional districts are opposed.**

JCEP’s states that “The Project enjoys strong support from the local community.” Statewide polling<sup>50</sup> conducted in January 2018 by PolicyInteractive<sup>51</sup>, a member of American

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<sup>47</sup> See **Ex. B**.

<sup>48</sup> [https://www.lngworldnews.com/mexico-pacific-secures-funds-for-sonora-lng-project/?lipi=urn%3Ali%3Apage%3Ad\\_flagship3\\_profile\\_view\\_base\\_recent\\_activity\\_details\\_all%3BdTLN0LB1TliXi220QG1NeA%3D%3D#.We717Jjymww.linkedin](https://www.lngworldnews.com/mexico-pacific-secures-funds-for-sonora-lng-project/?lipi=urn%3Ali%3Apage%3Ad_flagship3_profile_view_base_recent_activity_details_all%3BdTLN0LB1TliXi220QG1NeA%3D%3D#.We717Jjymww.linkedin).

<sup>49</sup> See **Ex. D-1**.

<sup>50</sup> See **Exs. K and K-1**.

<sup>51</sup> The Exec director of PolicyInteractive is a member of the American Association of Public Opinion Researchers (AAPOR) and PolicyInteractive is a member of AAPOR’s Transparency Initiative. <http://www.policyinteractive.org>.

Association of Public Opinion Researchers (APPOR), shows the majority of Oregonians do not support this project because the benefits do not outweigh the negative impacts. The topline question on JCEP resulted in 57% lean toward or strongly oppose, 20% undecided or neutral, 22% lean toward or strongly support. Key issues that resonated with the majority were: 1) adamantly opposed to the use of Eminent Domain; 2) feel corporations have far too much overreach; 3) believe strongly in private property rights; 4) recognize negative impacts of GHG emissions; and 5) believe we need to transition to renewable energy. Certainly, we intervenor landowners who have been harmed and whose properties have been held in limbo for more than 13 years through two former denials of this project, deserve relief.

In JCEP's Amended Application to DOE/FE asking to increase the volume of gas they intend to export as LNG from 292 Bcf/yr to 395 Bcf/yr to match their current FERC applications, JCEP does not mention the study on *Life Cycle Greenhouse Gas Perspective on Exporting Liquefied Natural Gas from the United States*<sup>52</sup> that DOE commissioned in 2014, but for many in Oregon and across the country greenhouse gas emissions are a growing concern. In January 2018, Oil Change International released a case study, *Jordan Cove LNG and Pacific Connector Pipeline Greenhouse Gas Emissions Briefing*<sup>53</sup> to capture the full lifecycle greenhouse gas emissions from this particular project and show that the claim that natural gas combustion is half as harmful as the GHG emissions of coal is not accurate.

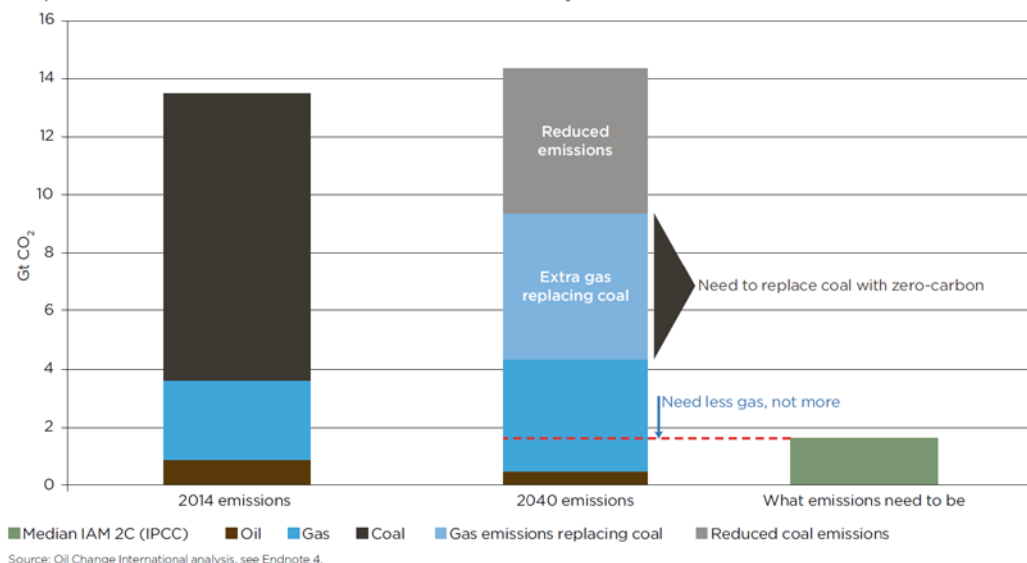
The information presented in OCI's study along with the concerns raised and the full lifecycle greenhouse gas emissions estimate of 36.8 million metric tons per year are sobering and must not be ignored when siting LNG terminals in the future. Estimates were calculated on the following: 1) All PCGP and JCEP related data came straight from their application; 2) The gas extraction and processing data were taken from a published study on wells in Utah, Colorado and Wyoming; 3) EPA's conservative data on leakage and emissions were used in all other transportation, regasification and combustion estimates along the supply chain and 4) the 20-year global warming potential (GWP) of 86 times CO<sub>2</sub> was used for methane leakage throughout. One of the most startling realizations from the study is that, to achieve anything close to staying under the 2 degree Celsius increase of the Paris Climate Agreement signed by all countries but the United States, would require less gas extraction, not more.

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<sup>52</sup> See Ex. S.

<sup>53</sup> See Ex. L.

Figure 1: We Need Less Gas, Not More: Global Emissions from Power Generation (2014 and projected 2040 in IEA New Policies Scenario) Compared to Median IPCC 2040 Power Emissions Consistent With a Likely 2°C Scenario



In addition, Hair on Fire Oregon, a group that has previously commented on the DOE/FE’s 2014 EIA study and the 2015 LNG Study, recently compiled a briefing entitled *Economic Cost of Greenhouse Gas Emissions* on some of these external costs of GHG emissions in the U.S. along with the predicted climate change impacts to Oregon.<sup>54</sup> Most notably in that briefing is the unprecedented cost of \$306.2 billion dollars in extreme weather events that occurred in the United States in 2017. When the conclusions of the 2015 LNG Study of increasing exports from 12 to 20 Bcf/d are a “marginally positive” GDP at \$7 to \$21 billion dollars annually, it is concerning that more effort is not being made to understand who is benefiting and who is paying the cost for the externalities associated with fossil fuel use.

We raise these as additional concerns for DOE/FE to wrestle with as there is a growing amount of evidence that suggests the externalities of GHG-induced climate change will need to be internalized through a mechanism like the social cost of carbon if public interest is to be accurately assessed on future LNG export projects.

## 2. Request for Relief

Last fall interveners submitted comments to DOE/FE, justifying our request that JCEP’s Conditional Order 3413 be rescinded. These comments were not admitted as they were deemed out of time. We are summarizing and resubmitting parts of those comments we believe to be relevant as part of our current protest. We do so, understanding that DOE/FE has full authority to deny JCEP’s order either now or later if it is deemed inconsistent with the public interest. In Lake Charles Order 4010, DOE/FE summarized reasons why it might rescind an order and affirmed the authority to do so:

<sup>54</sup> See Ex. M.

We cannot precisely identify all the circumstances under which DOE/FE would exercise its authority to revoke, in whole or in part, a previously issued LNG export authorization. We observe in Sabine Pass that:

In the event of any unforeseen developments of such significant consequence as to put the public interest at risk, DOE/FE is fully authorized to take action as necessary to protect the public interest. Specifically, DOE/FE is authorized by section 3(a) of the Natural Gas Act ... to make a supplemental order as necessary or appropriate to protect the public interest. Additionally, DOE is authorized by section 16 of the Natural Gas Act 'to perform any and all acts and to prescribe, issue, make, amend, and rescind such orders, rules, and regulations as it may find necessary or appropriate' to carry out its responsibilities. Sabine Pass, DOE/FE Order No. 2961, at 33 n.45 (*quoting* 15 U.S.C. § 717o).<sup>55</sup>

With that in mind, we respectfully seek the following relief:

**A. Rescind Order No. 3413 based on the facts that JCEP has not, and cannot, meet the conditions of the order.**

JCEP filed an application with DOE/FE on March 23, 2012 asking for permission to export 292 Bcf/yr (approximately 6 million tons) of LNG to non-FTA nations. On March 24, 2014, JCEP received Order No. 3413 **conditionally** granting long-term, multi-contract authorization to export liquefied natural gas by vessel from Jordan Cove LNG terminal in Coos Bay, Oregon to non-free trade agreement (Non-FTA) nations (emphasis added).

Under the Terms and Conditions of JCEP's Order 3413, DOE/FE states:

To ensure that the authorization issued by this Order is not inconsistent with the public interest, DOE/FE has attached the following terms and conditions to the authorization. The reasons for each term or condition are explained below. Jordan Cove must abide by each term and condition or face rescission of its authorization or other appropriate sanction."<sup>56</sup>

Part of one condition of the Order cannot be met.

Condition XII. F. of Order 3413 states:

The authorization granted by this Order is conditioned on Jordan Cove's satisfactory **completion of the environmental review process under NEPA in FERC Docket Nos. CP13-483-000 and CP13-492-000, and on issuance**

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<sup>55</sup> DOE/FE Lake Charles Order No. 4010, fn. 154.

<sup>56</sup> DOE/FE Order No. 3413 at 146.

**by DOE/FE of findings of no significant impact or a record of decision pursuant to NEPA** (emphasis added). Additionally, the authorization is conditioned on Jordan Cove's ongoing compliance with any and all preventative and mitigative measures at the Jordan Cove Terminal imposed by federal or state agencies.

On March 11, 2016, the Federal Energy Regulatory Commission (FERC) issued an order denying applications for PCGP's Certificate of Public Convenience (Docket CP-483-000) and JCEP's § 3 authorization for the LNG terminal at Coos Bay (Docket CP13-492-000). On December 12, 2016 FERC denied JCEP/PCGP's requests to rehear the case. In so doing, the required "*completion of the environmental review process under NEPA in FERC Docket Nos. CP13-483-000 and CP13-492-000, and on issuance by DOE/FE of findings of no significant impact or a record of decision pursuant to NEPA*" were rendered unattainable.

Another condition of the Order has not been met and is no longer feasible, per JCEP's admission.

Order No. 3413, § XII, B. states:

Jordan Cove must commence export operations using the planned liquefaction facilities no later than seven years from the date of issuance of this Order.

Seven years from the issuance of the Order is March 24, 2021. JCEP indicates in its September 21, 2017 "Application of Jordan Cove Energy Project L.P. for Authorization under § 3 of the Natural Gas Act" (p. 2) that the proposed facilities will not be in service before the first half of 2024.

**B. Rescind Order 3413 because LNG market dynamics have rendered JCEP's stated need of supplying gas in part from Canada inconsistent with the public interest.**

The reason for the seven-year condition is explained in the Order as follows:

Jordan Cove requested this conditional authorization to commence on the earlier of the date of first export or seven years from the date of the issuance of this Order. Consistent with the final and conditional non-FTA authorizations granted to date,<sup>57</sup> DOE/FE will impose the condition that Jordan Cove must commence commercial LNG export operations no later than seven years from the date of issuance of this Order. The purpose of this condition is to ensure that other entities that may seek similar authorizations are not frustrated in

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<sup>57</sup> From Order No. 3413, fn. 165 - See, e.g., *Sabine Pass*, DOE/FE Order No. 2961-A at 33; *Freeport LNG*, DOE/FE Order No. 3282 at 122; *Lake Charles Exports*, DOE/FE Order No. 3324 at 128; *Freeport II*, DOE/FE Order No. 3357 at 158.

their efforts to obtain those authorizations by authorization holders that are not engaged in actual export operations.<sup>58</sup>

At the time JCEP's conditional Order was issued, DOE/FE was relying heavily on the 2012 EIA *Effect of Increased Natural Gas Exports on Domestic Energy Markets Study*<sup>59</sup> and the 2012 NERA *Macroeconomics Impacts of LNG Exports from the United States Report*<sup>60</sup>--each of which looked specifically at impacts of LNG exports of between 6 Bcf/d up to 12 Bf/d. As of April 23, 2018, FERC and DOE/FE have approved LNG export projects totaling 18.74 Bcf/d with three, totaling 3.82 Bcf/d, currently in operation.<sup>61</sup> An additional 27.27 Bcf/d of LNG export projects are either pending or in pre-filing.<sup>62</sup> Even with the more recent 2015 Export LNG study *The Macroeconomic Impacts of Increasing U.S. LNG Exports*<sup>63</sup> commissioned by DOE/FE, on which we commented extensively, the macroeconomics of increasing from 12 bcf/d to 20 bcf/d of exports was studied and determined with modeling to have a very marginal positive impact on GDP (.03%-.07% - not including all externalities).

Competition is clearly fierce, raising the question of how many of these pending projects will get approval and how or under what criteria will DOE /FE deny projects as inconsistent with the public interest? All projects, with the exception of Jordan Cove, are sourcing American natural gas and competing equally for Asian markets. In a confined LNG world market, authorizing Canadian-sourced gas access before U.S. gas producers, we believe reaches the bar of being inconsistent with the public interest and that Jordan Cove's non-FTA approval should be rescinded and freed up for other domestically-sourced natural gas LNG export projects.

**C. Rescind Order 3413 “on the basis that the applicant proposes to use the LNG terminal exclusively or partially for gas that the applicant or an affiliate of the applicant will supply to the facility.”**

Post January 1, 2015, The Natural Gas Act § 3(B) gives discretionary authority to deny or condition an order on any of the following provisions:

(3)

(A) Except as provided in subparagraph (B), the Commission may approve an application described in paragraph (2), in whole or part, with such modifications and upon such terms and conditions as the Commission find [1] necessary or appropriate.

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<sup>58</sup> DOE/FE Order No. 3413 at 147.

<sup>59</sup> See **Ex. Q**.

<sup>60</sup> See **Ex. R**.

<sup>61</sup> See **Exs. N-1 and N-2**.

<sup>62</sup> See **Ex. N-3**.

<sup>63</sup> See **Ex. R**.

- (B) Before January 1, 2015, the Commission shall not—
- (i) deny an application solely on the basis that the applicant proposes to use the LNG terminal exclusively or partially for gas that the applicant or an affiliate of the applicant will supply to the facility; or
  - (ii) condition an order on—
    - (I) a requirement that the LNG terminal offer service to customers other than the applicant, or any affiliate of the applicant, securing the order;
    - (II) any regulation of the rates, charges, terms, or conditions of service of the LNG terminal; or
    - (III) a requirement to file with the Commission schedules or contracts related to the rates, charges, terms, or conditions of service of the LNG terminal.
- (C) Subparagraph (B) shall cease to have effect on January 1, 2030.<sup>64</sup>

JCEP's and PCGP's §§ 3 and 7 applications with FERC clearly states that they have contracted for 95.8% of the PCGP capacity. We urge DOE/FE to rescind Order No. 3413 "on the basis that the applicant proposes to use the LNG terminal exclusively or partially for gas that the applicant or an affiliate of the applicant will supply to the facility."

**D. Alternatively, rescind Order No. 3413 by denying the extension request because the JCEP project has dragged on in one form or another for over 12 years and continues to be fraught with delays to the point that it has become a "legacy project."**

The following statement can be found on the DOE/FE website:

On August 15, 2014, the Department of Energy's (DOE) Office of Fossil Energy announced its Procedures for Liquefied Natural Gas Export Decisions (Procedures). Pursuant to these Procedures, DOE will act on applications to export liquefied natural gas (LNG) from the lower-48 states to non-FTA countries only after the review required by the National Environmental Policy Act (NEPA) has been completed, suspending its practice of issuing conditional decisions prior to final authorization decisions.

These Procedures will not affect the continued validity of the conditional orders DOE has already issued. For those applications, DOE will proceed as explained in the conditional orders: when the NEPA review process for those projects is complete, DOE will reconsider the conditional authorization in light

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<sup>64</sup> National Gas Act § 3 - 15 U.S. Code § 717b - Exportation or importation of natural gas; LNG terminals - <https://www.law.cornell.edu/uscode/text/15/717b>.



of the information gathered in the environmental review and take appropriate final action.<sup>65</sup>

According to the Department of Energy Procedures for Liquefied Natural Gas Export Decisions Notice posted August 15, 2014 in the *Federal Register*:

The Department [of Energy] offered four reasons for the proposed procedural change. First, the Department explained that conditional authorizations no longer appear necessary for FERC or the majority of applicants to commit resources to the NEPA review process. Second, the Department explained that by suspending its practice of issuing conditional decisions and ceasing to follow the order of precedence published on December 5, 2012, DOE would better be able to ensure prompt action on applications that are otherwise ready to proceed. Third, the Department explained that the proposed procedures would improve the quality of information on which DOE bases its decisions. Finally, the Department noted that suspending its practice of issuing conditional decisions would better allocate departmental resources by reducing the likelihood that the Department would be forced to act on applications with little prospect of proceeding.<sup>66</sup>

JCEP's original application for non-FTA export approval, submitted on March 23, 2012, and current Order 3413 proceedings have spanned a period of six years during which time the LNG market has experienced significant change exemplifying the need for, and DOE's insight in, implementing procedures that would "ensure prompt action on applications that are otherwise ready to proceed....and that would improve the quality of information on which DOE bases its decisions."<sup>67</sup>

At the time this procedural change was made there were eight grandfathered projects in process, seven of those with "Conditional" Orders. Of these, five went on to receive final orders and one vacated their order, leaving Jordan Cove as the only Conditional Order remaining.

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<sup>65</sup> <https://www.energy.gov/fe/procedures-liquefied-natural-gas-export-decisions>.

<sup>66</sup> *Federal Register* – Aug. 15, 2014.

[https://energy.gov/sites/prod/files/2014/08/f18/FR%20Procedures%20LNG%20Exports%2008\\_15\\_14.pdf](https://energy.gov/sites/prod/files/2014/08/f18/FR%20Procedures%20LNG%20Exports%2008_15_14.pdf).

<sup>67</sup> *Id.* At 48133.

Project	FE Docket	Order	Date conditional order	Current Status
Freeport LNG Expansion, L.P. and FLNG Liquefaction, LLC	10-161-LNG	3282	5/17/2013	11-20-2014 - Final Record of Decision
Lake Charles Exports, LLC	11-59-LNG	3324	8/7/2013	7-29-2016 - Final Record of Decision
Carib Energy (USA) LLC	11-141-LNG	3487		9-10-2014 - Final Record of Decision
Dominion Cove Point LNG, LP	11-128-LNG	3331	9/11/2013	5-7-2015 - Final Record of Decision 3331-A
Jordan Cove Energy Project LP	12-31-LNG	3413	3/24/2014	*waiting - conditions not met*
Cameron LNG, LLC	11-162-LNG	3391	2/11/2014	9-10-2014 - Final Record of Decision - 3391-A
Freeport LNG Expansion, L.P. and FLNG Liquefaction, LLC	10-161-LNG	3357	11/15/2013	11/11/2014 - Final Record of Decision - 3357-B
Oregon LNG	12-77-LNG	3465	7/31/2014	Vacated - 5-31-2016

For reasons stated above, JCEP, who failed to execute a successful application with FERC in 2016, should not be allowed to hold on to their order indefinitely when others are ready to proceed. JCEP has forfeited the opportunity to maintain a conditional permit by its failure to meet the deadline imposes. DOE/FE should deny the application to extend the deadline, effectively rescinding the order. Should JCEP reapply, the new policy to withhold an authorization until after the FERC NEPA process should apply.

In addition, JCEP's inconsistency with the public interest should permanently end their bid for non-FTA authorization.

As a "legacy" application on a project that began in 2004 and is now on its 3<sup>rd</sup> iteration, intervenors respectfully ask DOE/FE and FERC to incorporate language as part of any denial or procedural rules going forward that prohibits any potential future § 7 applications from utilizing a pipeline route that has been previously denied. Landowners have been unduly burdened by the duration and persistence of companies involved in this project, that has been twice denied, and request that any potential future NGA § 7 proposals not be allowed to utilize the proposed Pacific Connector pipeline route. As part of the record we are submitting testimony from 54 landowners along the 232-mile proposed Pacific Connector Pipeline that were collected after FERC's March 9, 2016 denial<sup>68</sup> and a letter from the Jackson County, Oregon County commissioners who asked that the project remain denied. The commissioners did not find JCEP/PCGP to be in the public interest and felt strongly that local ordinance (Ordinance of Jackson County codified as § 216.23) and Oregon ballot measure 39 passed in 2006 made it clear that the county as well as the entire state was opposed to using eminent domain for private economic benefit.<sup>69</sup>

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<sup>68</sup> See Ex. O.

<sup>69</sup> See Ex. P.

**E. Rescind Order No. 3413 because despite multiple attempts to obtain binding contracts, JCEP still has no binding contracts in place as evidenced by lack of reporting the required data.**

For 5½ years, JCEP has offered 11 semi-annual reports to DOE/FE, each stating the progress, or lack thereof, on pending applications with FERC and market prospects.<sup>70</sup> Throughout these reports, JCEP has repeatedly stated that they are in negotiations with buyers, with several preliminary Heads of Agreements coming and going. But JCEP has yet to land a binding contract for either pipeline capacity or LNG offtake agreements as evidenced by their lack of providing the Office of Oil and Gas Global Security and Supply notice of executed long-term contracts within 30 days of execution per Order 3413 XII. G (i) and (ii).

XII. G. (i) Jordan Cove shall file, or cause others to file, with the Office of Oil and Gas Global Security and Supply a non-redacted copy of all executed long-term contracts associated with the long-term export of LNG on its own behalf or as agent for other entities from the Jordan Cove Terminal. The non-redacted copies may be filed under seal and must be filed within 30 days of their execution. Additionally, if Jordan Cove has filed the contracts described in the preceding sentence under seal or subject to a claim of confidentiality or privilege, within 30 days of their execution, Jordan Cove shall also file, or cause others to file, for public posting either: i) a redacted version of the contracts described in the preceding sentence, or ii) major provisions of the contracts. In these filings, Jordan Cove shall state why the redacted or non-disclosed information should be exempted from public disclosure.<sup>71</sup>

(ii) Jordan Cove shall file, or cause others to file, with the Office of Oil and Gas Global Security and Supply a non-redacted copy of all executed long-term contracts associated with the long-term supply of natural gas to the Jordan Cove Terminal. The non-redacted copies may be filed under seal and must be filed within 30 days of their execution. Additionally, if Jordan Cove has filed the contracts described in the preceding sentence under seal or subject to a claim of confidentiality or privilege, within 30 days of their execution, Jordan Cove shall also file, or cause others to file, for public posting either: i) a

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<sup>70</sup> SEMI-ANNUAL REPORTS FOR JORDAN COVE ENERGY PROJECT, L.P. - FE DKT. NO. 11-127-LNG - ORDER 3041; FE DKT. NO. 12-32-LNG - ORDER 3413 - on the progress of JCEP's planned LNG terminal and liquefaction facility. <https://energy.gov/fe/downloads/semi-annual-reports-jordan-cove-energy-project-lp-fe-dkt-no-11-127-lng-order-3041-fe>.

<sup>71</sup> DOE/FE Conditional Order No. 3413 at 154. [https://fossil.energy.gov/ng\\_regulation/sites/default/files/programs/gasregulation/authorizations/2014/orders/ord3413.pdf](https://fossil.energy.gov/ng_regulation/sites/default/files/programs/gasregulation/authorizations/2014/orders/ord3413.pdf).

redacted version of the contracts described in the preceding sentence, or ii) major provisions of the contracts. In these filings, Jordan Cove shall state why the redacted or non-disclosed information should be exempted from public disclosure.<sup>72</sup>

To date, as understood no binding contracts have been posted publicly as required in Order No. 3413. Additionally, in JCEP's Semi Annual Reports on the status of long-term contracts associated with the long-term import of natural gas and any long-term supply contracts for the LNG terminal and liquefaction facility as required for FE DKT. NO. 13-141-LNG - ORDER 3412, the last three reports dated April 3, 2017, October 2, 2017 and April 2, 2018 state: "JCLNG remains in negotiations with potential counterparties regarding long-term imports and supply of natural gas."<sup>73</sup> The October 2017 and April 2018 letters do not mention anything about Precedent Agreements being signed by JCEP for 95.8% of PCGP, a statement made in their Abbreviated Application to FERC.

Again, we can only assume these are non-binding Precedent Agreements, otherwise JCEP/PCGP would have publicly posted the redacted copy or key terms with an explanation of why redacted or non-disclosed information should be exempted from public disclosure within 30 days of signing. Intervenors respectfully request that DOE/FE look closely at JCEP/PCGP's semi-annual letters and any submittals of non-redacted contracts and public posting of contracts to assess if JCEP/PCGP is in compliance with XII, G, (i) and (ii) of Order 3413. We believe that the public has the right to know if binding contracts exist and where the natural gas will be supplied from and for what duration of time.

The market dynamics including oversupply of LNG for the foreseeable future, higher costs of greenfield projects, large buyers like Japan's JERA, Co. Inc. (JERA) becoming aggregators/traders, and the growing push for non-destination clauses have created a climate where few are willing to sign long term contracts. Additionally, in this highly competitive market, buyers are pushing to renegotiate contracts that do exist. We suspect that the two Precedent Agreements JCEP signed for 95.8% of the pipeline capacity as stated in PCGP's application to FERC are non-binding and/or are all Canadian-sourced natural gas. This would be contrary to the public interest and DOE/FE should weigh whether there is any benefit in allowing long term Canadian-sourced gas to compete with fully approved, lower cost Gulf Coast LNG terminals struggling to get binding off-take agreements. The outcome would lose far more American jobs than Jordan Cove would gain.

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<sup>72</sup> *Id.* at 154.

<sup>73</sup> SEMI-ANNUAL REPORTS FOR JORDAN COVE LNG L.P. - FE DKT. NO. 13-141-LNG - ORDER 3412 - on the status of long-term contracts associated with the long-term import of natural gas and any long-term supply contracts for the LNG terminal and liquefaction facility planned by JCEP. <https://energy.gov/fe/downloads/semi-annual-reports-jordan-cove-lng-lp-fe-dkt-no-13-141-lng-order-3412>.

## CONCLUSION

**DOE/FE has ability to reject this Amended Application, rescind Conditional Order No. 3413 and bring relief to Intervenor who have been held in limbo for more than 13 years now and it should do so.**

JCEP's Amended Application asking DOE/FE to increase from 0.8 Bcf/d to 1.08 Bcf/d, the equivalent of 7.8 million metric tons per annum of LNG to non-FTA countries and to re-set the time for another 7 years should be denied on grounds that they failed to meet the conditions of their Conditional Order, that exporting Canadian-sourced gas is inconsistent with the public interest and that a limit to how many attempts a company gets to make and how long it may tie up Landowners' lives needs to be taken into consideration.

While both of the Canadian companies pursuing this project have delayed submitting incomplete applications to federal and state agencies and failing to meet requirements of both DOE/FE and FERC processes, landowners have endured countless hours, spent hundreds of thousands of dollars, had their ability to sell and plan for future land use activities on their properties undermined, had their land trespassed on, their lives put on hold and their livelihoods disrupted. They have had to watch JCEP first try to secure an import facility which was denied, then refile in 2011-2012 with NEB, DOE and FERC to get an export LNG terminal, which was also denied and now come back over 13 years later asking DOE/FE to align Non-FTA authorization with their latest reiteration of this project, prolonging the harm and uncertainty for intervenors.

Some landowners have died over this long interim, others are elderly and unable to secure their retirement by selling their properties with the threat of a high-pressure pipeline interminably on the horizon. The majority (over 60% have not signed) would face eminent domain, threats to their water supplies and safety, and significant degradation of their properties and livelihoods—all to allow Canadian-gas assets to pass through their properties for the benefit of a private corporation. As circumstances unfold, we now see a very real possibility that a very high percentage or perhaps 100% of that gas may be Canadian. We believe fervently that this is both inconsistent with the public interest and a violation of our Fifth Amendment rights and respectfully ask DOE/FE to deny this amended application, rescind Conditional Order 3413 and grant us relief.

For the reasons already stated in this protest and earlier comments, we believe the facts and the record do not support the contention that this project is in the public interest and request that DOE/FE conduct a thorough review of all considerations that go into DOE's public interest determination now and concurrently with FERC.

As in our request to FERC, we respectfully ask that DOE/FE use the most recent data, closely inspect all contracts and do a thorough review of the record when assessing its public interest determination to ensure that this project will not unfairly discriminate against entirely domestically-sourced natural gas projects and American jobs elsewhere, cause

significant harm, or compromise U.S. benefits by allowing profits and natural gas sales to go to Canadian interests versus U.S. interests.

In conclusion, we believe that DOE/FE has the authority and the discretion to deny JCEP's current amended application and rescind Order No. 3413 as inconsistent with the public interest and respectfully ask that you do so.

DATED: May 9, 2018.

Respectfully submitted,

LANDYE BENNETT BLUMSTEIN LLP

By: s/ Thane W. Tienson

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**CERTIFICATE OF SERVICE**

I hereby certify that on May 9, 2018, I served the foregoing document upon the following representatives of all parties in these proceedings in accordance with 10 C.F.R. § 590.107(a):

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