

UNITED STATES OF AMERICA

DEPARTMENT OF ENERGY

OFFICE OF FOSSIL ENERGY

JORDAN COVE ENERGY PROJECT, L.P.

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FE DOCKET NO. 12-32-LNG

ORDER DISMISSING SUPPLEMENTAL COMMENTS,
DISMISSING REQUEST FOR EXTENSION OF TIME, AND
DISMISSING MOTION TO FILE PARTIAL ANSWER

FEBRUARY 1, 2018

I. INTRODUCTION

On October 17, 2017, the Evans Schaaf Family LLC, Ron Schaaf, and Deborah Evans (collectively, the Evans Schaaf Family or Family) submitted a filing to the Department of Energy’s Office of Fossil Energy (DOE/FE)¹ in the above-captioned docket entitled, “Supplemental Comments for the Record” (Supplemental Comments).² The Evans Schaaf Family is an intervenor in this proceeding.³ Previously, on March 24, 2014, DOE/FE conditionally granted the application (Application)⁴ of Jordan Cove Energy Project, L.P. (Jordan Cove) to export liquefied natural gas (LNG) in DOE/FE Order No. 3413 (Conditional Order), as described below.⁵ In its Supplemental Comments, the Evans Schaaf Family asks DOE/FE to “rescind Order 3413” and/or to “re-evaluate the ‘public interest’ determination for [Jordan Cove] based on current facts and the significant shift in LNG market dynamics” since the Conditional Order was issued.⁶

To address the Family’s Supplemental Comments, the Citizens Against LNG and Jody McCaffree jointly submitted two documents to DOE/FE:

¹ The authority to regulate the imports and exports of natural gas, including liquefied natural gas, under section 3 of the NGA (15 U.S.C. § 717b) has been delegated to the Assistant Secretary for FE in Redelegation Order No. 00-006.02F issued on November 17, 2014.

² Evans Schaaf Family LLC, *et al.*, Supplemental Comments for the Record, FE Docket No. 12-32-LNG (Oct. 17, 2017) [hereinafter Supp. Comments].

³ *See* Evans Schaaf Family LLC, Deborah Evans, and Ron Schaaf; Motion to Intervene, Comment, and Protest; FE Docket No. 12-32-LNG (March 23, 2016). Because the Family’s Motion to Intervene was unopposed, the Motion to Intervene is deemed granted. 10 C.F.R. § 590.303(g).

⁴ Application of Jordan Cove Energy Project, L.P. for Long-Term Authorization to Export LNG to Non-Free Trade Agreement Countries, FE Docket No. 12-32-LNG (Dec. 21, 2011) [hereinafter Jordan Cove App.].

⁵ *Jordan Cove Energy Project, LP*, DOE/FE Order No. 3413, FE Docket No. 12-32-LNG, Order Conditionally Granting Long-Term, Multi-Contract Authorization to Export Liquefied Natural Gas by Vessel from the Jordan Cove LNG Terminal in Coos Bay, Oregon, to Non-Free Trade Agreement Nations (Mar. 24, 2014) [hereinafter Jordan Cove Conditional Order].

⁶ Supp. Comments at 1.

- (i) A “Request for an Extension of Time to Answer Supplemental Comments and Protest of Evans Schaaf Family, L.L.C., Ron Schaaf and Deborah Evans (Request for Extension of Time), filed on October 27, 2017;⁷ and
- (ii) A “Motion to File Partial Answer to Protest of Evans Schaaf Family, L.L.C., Ron Schaaf and Deborah Evan (Motion to File Partial Answer), filed on November 1, 2017.⁸

Below, pursuant to 10 C.F.R. §§ 590.205 and 590.302, we dismiss the Supplemental Comments of the Evans Schaaf Family as out of time. Further, in light of our action on the Supplemental Comments, we dismiss as moot both the Request for Extension of Time and the Motion to File Partial Answer submitted by Citizens Against LNG and Jody McCaffree, to the extent these filings are not already deemed denied by operation of law.⁹

II. BACKGROUND

On March 24, 2014, in DOE/FE Order No. 3413, DOE/FE conditionally granted Jordan Cove’s Application requesting long-term authority to export LNG in a volume equivalent to 292 billion cubic feet (Bcf) per year of natural gas (0.8 Bcf per day) to nations with which the United States has not entered a free trade agreement (FTA) requiring national treatment for trade in natural gas (non-FTA countries). Jordan Cove proposed to export this LNG—both domestically produced natural gas and natural gas produced in Canada and imported into the United States—by vessel from its proposed liquefaction facilities and terminal to be located in Coos Bay, Oregon (Jordan Cove Terminal). Prior to issuing Order No. 3413, DOE/FE provided notice and an opportunity for public comment on Jordan Cove’s Application.¹⁰

⁷ Citizens Against LNG and Jody McCaffree, Request for an Extension of Time to Answer Supplemental Comment and Protest of Evans Schaaf Family L.L.C., Ron Schaaf and Deborah Evans, FE Docket No. 12-32-LNG (Oct. 27, 2017).

⁸ Citizens Against LNG and Jody McCaffree, Motion to File Partial Answer to Protest of Evans Schaaf Family L.L.C., Ron Schaaf and Deborah Evans, FE Docket No. 12-32-LNG (Nov. 1, 2017).

⁹ See 10 C.F.R. § 590.302(c).

¹⁰ See Jordan Cove Energy Project, L.P., Application to Export Domestic Liquefied Natural Gas to Non-Free Trade Agreement Nations, 77 Fed. Reg. 33,446 (Feb. 23, 2012).

In granting Order No. 3413, DOE/FE conditioned the export authorization on Jordan Cove's satisfactory completion of the Federal Energy Regulatory Commission's (FERC) environmental review process under the National Environmental Policy Act of 1969 (NEPA), 42 U.S.C. § 4321 *et seq.* (NEPA), and on DOE/FE's issuance of a finding of no significant impact or a record of decision pursuant to NEPA.¹¹ FERC's environmental review of the proposed Jordan Cove Terminal is currently on-going, and therefore DOE/FE has not yet issued a final order on Jordan Cove's Application.¹²

On October 5, 2015, Jordan Cove submitted a request to DOE/FE to amend the Conditional Order by increasing the volumes of LNG conditionally authorized for export (Amendment). DOE/FE invited the public to submit comments, motions to intervene, and/or protests addressing the Amendment no later than March 23, 2016.¹³ In response to this notice, the Evans Schaaf Family timely filed its Motion to Intervene, Comment, and Protest.¹⁴

Most recently, in its Supplemental Comments filed on October 17, 2017, the Family asks DOE/FE to "rescind" Jordan Cove's Conditional Order or, in the alternative, to "re-evaluate" the public interest determination in that Order, pursuant to section 3(a) of the NGA.¹⁵ The Family argues, *inter alia*, that "the mandated conditions for the [Conditional] Order have not been met

¹¹ See *Jordan Cove Energy Project, LP*, DOE/FE Order No. 3413, at 154 (Para. F); see also *id.* at 141 ("When the environmental review is complete, DOE/FE will reconsider its public interest determination in light of the information gathered as part of that review.").

¹² In relevant part, in January 2017, Jordan Cove and Pacific Connector Gas Pipeline, LP commenced a new application process at FERC, requesting approval to participate in FERC's pre-filing review process. FERC granted that request. Thereafter, on September 17, 2017, Jordan Cove and Pacific Connector Gas Pipeline filed new applications with FERC requesting authorization to develop the Jordan Cove Terminal and its associated pipeline project. Jordan Cove's application is pending in FERC Docket No. CP-17-495, and Pacific Connector Gas Pipeline's application is pending in FERC Docket No. CP-17-494. FERC has issued a notice of intent to prepare an environmental impact statement in connection with these applications. DOE is currently participating in that process as a cooperating agency. See, e.g., *Jordan Cove Energy Project, L.P., Application for Authorizations Under Section 3 of the Natural Gas Act*, FERC Docket No. CP-17-495 (Sept. 21, 2017).

¹³ *Jordan Cove Energy Project, L.P., Amendment of Application for Long-Term Authorization to Export Liquefied Natural Gas to Non-Free Trade Agreement Nations*, 81 Fed. Reg. 11,202 (Mar. 3, 2016).

¹⁴ See *supra* at 2 n.3.

¹⁵ Supp. Comments at 1.

and the facts and circumstances underlying its initial issuance have ... dramatically changed.”¹⁶

Specifically, the Family asserts that DOE/FE’s 2014 public interest determination in the Conditional Order is now obsolete, and asks DOE/FE to re-evaluate that determination in light of more recent information on “economic, international and environmental factors” affecting Jordan Cove’s proposed exports.¹⁷

III. DISCUSSION AND CONCLUSIONS

The Evans Schaaf Family styled its October 17, 2017 filing as “Supplemental Comments for the Record.”¹⁸ However, the most recent public comment period in this proceeding—for Jordan Cove’s Amendment to the Application—closed on March 23, 2016.¹⁹ Upon consideration, we do not find good cause to reopen the comment period for purposes of accepting the Family’s Supplemental Comments.

First, we find that Jordan Cove and other parties to this proceeding would be prejudiced by our acceptance of the Supplemental Comments at this time—nearly two years after the most recent comment period closed. Further, we find that the Evans Schaaf Family will not be prejudiced by our dismissal of the Supplemental Comments. As noted above, the Conditional Order “makes preliminary findings”²⁰ and does not allow Jordan Cove to export LNG. Therefore, the Conditional Order is not immediately prejudicial to the interest of the Family or to the public generally.

Second, we note that DOE/FE already has committed to conducting a public interest review on an updated record prior to issuing any final order in this proceeding.²¹ DOE/FE

¹⁶ *Id.* at 13.

¹⁷ *Id.* at 12.

¹⁸ *See supra* 2 n.2.

¹⁹ *See supra* at 4.

²⁰ Jordan Cove Conditional Order, DOE/FE Order No. 3413, at 152 (Term & Condition H); *see also id.* at 15, 140-41.

²¹ *See id.* at 141.

advised that issues regarding the export of natural gas will be reexamined at the time of DOE/FE's review of the FERC environmental analysis.²²

Accordingly, we dismiss the Evans Schaaf Family's Supplemental Comments as out of time. Because we are dismissing the Supplemental Comments, the Request for an Extension of Time and the Motion to File Partial Answer filed by Citizens Against LNG and Jody McCaffree are moot and also will be dismissed, to the extent they are not already denied by operation of law.

Finally, we note that Jordan Cove has announced its intent to file a second amendment to its pending Application in this proceeding.²³ This amendment, according to Jordan Cove, will ask DOE/FE to authorize a higher export volume from the proposed Terminal, consistent with the higher production capacity for the Terminal that Jordan Cove is now requesting from FERC.²⁴ If and when Jordan Cove submits that filing, DOE/FE will process any such amendment according to DOE/FE's normal procedures—including publishing notice of the amendment and providing an opportunity for public comment. The Evans Schaaf Family, as well as other intervenors or interested parties, will be able to submit comments in response to the requested amendment at that time.

ORDER

Pursuant to Section 3 of the Natural Gas Act, it is ordered that:

A. The Evans Schaaf Family's Supplemental Comments for the Record are dismissed as out of time.

²² *Id.* at 152 (Term and Condition H).

²³ *See* Jordan Cove Energy Project, L.P., Application for Authorizations Under Section 3 of the Natural Gas Act, FERC Docket No. CP-17-495, *supra* note 12, at 7-8.

²⁴ *See id.* at 18-19.

B. The Request for an Extension of Time and Motion to File Partial Answer submitted jointly by Citizens Against LNG and Jody McCaffree are dismissed as moot.

Issued in Washington, D.C., on February 1, 2018.



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Robert J. Smith
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