



Department of Energy
Washington, DC 20585

April 14, 2020

John Decker
Vinson & Elkins LLP
2200 Pennsylvania Avenue, NW
Suite 500 West
Washington, DC 20037

RE: Notice of DOE/FE's Approach Under Executive Order 13807 (One Federal Decision)
Jordan Cove Energy Project L.P.
FE Docket No. 12-32-LNG

Dear Mr. Decker:

I am writing to provide an update on Jordan Cove Energy Project L.P.'s (Jordan Cove) application (Application)¹ pending before the Department of Energy (DOE), Office of Fossil Energy (FE), in the above-captioned docket. This update pertains to DOE/FE's actions in complying with Executive Order (or E.O.) 13807 ("Establishing Discipline and Accountability in the Environmental Review and Permitting Process for Infrastructure Projects"), also referred to as "One Federal Decision" or OFD.²

I. Background

On March 23, 2012, Jordan Cove filed the Application with DOE/FE under section 3(a) of the Natural Gas Act (NGA), 15 U.S.C. § 717b(a). In the Application, Jordan Cove requests long-term authorization to export as liquefied natural gas (LNG) both domestically produced natural gas and natural gas produced in Canada and imported into the United States. Jordan Cove seeks to export this LNG to any country with which the United States has not entered into a free trade agreement (FTA) requiring national treatment for trade in natural gas, and with which trade is not prohibited by U.S. law or policy (non-FTA countries).³ Jordan Cove seeks to export the LNG by vessel from a proposed LNG export terminal and associated facilities to be located in unincorporated Coos County, Oregon (Jordan Cove LNG Terminal).

¹ Jordan Cove Energy Project, L.P., Application for Long-Term Authorization to Export LNG to Non-Free Trade Agreement Countries, FE Docket No. 12-32-LNG (Mar. 23, 2012).

² Exec. Order 13807, Establishing Discipline and Accountability in the Environmental Review and Permitting Process for Infrastructure Projects, 82 Fed. Reg. 40,463 (Aug. 24, 2017), available at: <https://www.govinfo.gov/content/pkg/FR-2017-08-24/pdf/2017-18134.pdf> [hereinafter E.O. 13807].

³ In FE Docket No. 11-127-LNG, Jordan Cove currently holds a long-term authorization (DOE/FE Order No. 3041) to export LNG to FTA countries, pursuant to NGA section 3(c), 15 U.S.C. § 717b(a). The FTA order is not at issue here.

On March 24, 2014, in DOE/FE Order No. 3413, DOE/FE conditionally granted Jordan Cove's Application.⁴ In the conditional order, DOE/FE stated that it had made preliminary findings on all issues relating to the public interest other than environmental issues.⁵ DOE/FE further stated that, "[w]hen the environmental review is complete, DOE/FE will reconsider this conditional authorization in light of the information gathered as part of that review."⁶ Jordan Cove subsequently filed an amendment to the pending Application in 2015 and again in 2018.⁷

On September 21, 2017, Jordan Cove filed an application with the Federal Energy Regulatory Commission (FERC) requesting authorization to site, construct, and operate the proposed Jordan Cove LNG Terminal.⁸ In a related docket, Pacific Connector Gas Pipeline, LP (Pacific Connector) filed an application requesting authorization from FERC to construct and operate a new interstate natural gas pipeline system (Pacific Connector Pipeline) in Oregon. The proposed Pacific Connector Pipeline would transport natural gas to the Jordan Cove LNG Terminal for liquefaction and export.⁹

Before reaching a final decision on a non-FTA application, DOE/FE is required to comply with the National Environmental Policy Act of 1969 (NEPA), 42 U.S.C. §§ 4321 *et seq.* FERC served as the lead agency in the NEPA review process for the proposed Jordan Cove LNG Terminal and Pacific Connector Pipeline. FERC staff evaluated the potential environmental impacts of the proposed projects in a final environmental impact statement (EIS) issued on November 15, 2019.¹⁰ DOE served as a cooperating agency in the preparation of the EIS.¹¹

On March 19, 2020, FERC issued an order granting both Jordan Cove's application for the Jordan Cove LNG Terminal and Pacific Connector's application for the Pacific Connector Pipeline.¹²

II. Executive Order 13807

On August 15, 2017, President Trump issued Executive Order (E.O.) 13807, which seeks "to ensure that the Federal environmental review and permitting process for infrastructure projects is coordinated, predictable, and transparent."¹³

E.O. 13807 established a One Federal Decision (OFD) policy, which sets a government-wide goal of completing environmental reviews and authorization decisions for "major infrastructure projects"

⁴ *Jordan Cove Energy Project L.P.*, 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).

⁵ *See id.* at 14-15, 152.

⁶ *Id.* at 15; *see also id.* at 141.

⁷ All documents in this proceeding are available online at https://fossil.energy.gov/ng_regulation/applications-2012-jordancoveenergyproject12-32-lng.

⁸ *See* Federal Energy Regulatory Comm'n, *Jordan Cove Energy Project L.P., Pacific Connector Gas Pipeline, LP*; Notice of Applications, 82 Fed. Reg. 47,502 (Oct. 12, 2017) (FERC Docket Nos. CP17-495-000, *et al.*).

⁹ *See id.*

¹⁰ *See* Federal Energy Regulatory Comm'n, "FERC Staff Issues the Final EIS for the Jordan Cove Energy Project (CP17-494-000 and CP17-495-000)" (Nov. 15, 2019), available at: <https://www.ferc.gov/industries/gas/enviro/eis/2019/11-15-19-FEIS.asp> (follow links to final EIS); *see also Jordan Cove Energy Project L.P. & Pacific Connector Gas Pipeline, LP*, Order Granting Authorizations Under Sections 3 & 7 of the Natural Gas Act, 170 FERC ¶ 61,202, ¶ 152 (Mar. 19, 2020), available at: [file:///C:/Users/581649/Downloads/20171005-3081\(32437456\).pdf](file:///C:/Users/581649/Downloads/20171005-3081(32437456).pdf) [hereinafter FERC Order].

¹¹ FERC Order at ¶ 152; *see also* 40 C.F.R. § 1501.4, 1501.5.

¹² *See* FERC Order at ¶¶ 1-3.

¹³ *See* E.O. 13807, 82 Fed. Reg. at 40,463.

within two years.¹⁴ In 2018, several Federal agencies, including DOE, entered into a “Memorandum of Understanding Implementing One Federal Decision Under Executive Order 13807” (MOU) to implement the OFD process under E.O. 13807.¹⁵

Under the OFD process, a “major infrastructure project” means an infrastructure project for which multiple authorizations by Federal agencies will be required to proceed with construction, the lead Federal agency has determined that it will prepare an environmental impact statement (EIS) under the National Environmental Policy Act (NEPA), 42 U.S.C. §§ 4321 *et seq.*, and the project sponsor has identified the reasonable availability of funds sufficient to complete the project.¹⁶ The two-year period starts from the date a notice of intent to prepare an EIS under NEPA is published, to the issuance of a record of decision (ROD) under NEPA.¹⁷

As relevant here, for major infrastructure projects where FERC is the lead agency, agencies will work together to develop a single “Permitting Timetable” for the necessary environmental review and authorization decisions, prepare a single EIS, sign a single ROD, and issue all necessary authorization decisions within 90 days of issuance of FERC’s ROD (which also serves as FERC’s final licensing decision), subject to limited exceptions.¹⁸ As one such exception, the MOU authorizes FERC to grant an exception to the single ROD requirement as follows:

FERC will grant an exception to the single ROD requirement of E.O. 13807 when the FERC licensing order serves as the ROD. In such situations, the agencies not authorized to issue a combined [final EIS]/ROD will issue a joint ROD or other appropriate decision as soon as practicable, consistent with applicable law and the Permitting Timetable.¹⁹

Additionally, an exception is available if “the lead agency determines that one ROD would not promote efficient completion of the project’s environmental review and authorization process.”²⁰

The Council on Environmental Quality (CEQ) subsequently confirmed that “FERC does not need to specifically grant itself or other agencies the authority to issue a separate ROD.”²¹ CEQ further stated that, “[w]here multiple Federal authorizations are required in addition to the FERC action, CEQ recommends that the cooperating agencies plan to prepare a joint ROD (separate from the relevant FERC action)”²²

In 2017, the Jordan Cove LNG Terminal and the Pacific Connector Pipeline projects came under the purview of the OFD process.

¹⁴ *Id.* (Sec. 2(h)).

¹⁵ Memorandum of Understanding Implementing One Federal Decision Under Executive Order 13807 (Apr. 9, 2018), available at: <https://www.whitehouse.gov/wp-content/uploads/2018/04/MOU-One-Federal-Decision-m-18-13-Part-2-1.pdf> [hereinafter MOU].

¹⁶ See E.O. 13807, 82 Fed. Reg. at 40,464 (Sec. 3(e)); see also MOU at A-1 n.1.

¹⁷ See E.O. 13807, 82 Fed. Reg. at 40,464 (Sec. 4(a) (i) (B)); see also MOU at A-2 (Sec. V).

¹⁸ MOU at A-1 (Sec. II); see also E.O. 13807, 82 Fed. Reg. at 40,466-67 (Sec. 5(b)).

¹⁹ MOU at A-12 (Section XIII(C)).

²⁰ *Id.* (Section XIII(A)(3)).

²¹ Ltr. from Mary B. Neumayr, Chairman of CEQ, to Neil Chatterjee, Chairman of FERC, at 1 (Nov. 22, 2019), available at: <https://www.whitehouse.gov/wp-content/uploads/2017/11/20190822FERCOFDLetter.pdf> [hereinafter CEQ Ltr.].

²² *Id.* at 1-2.

III. Notice of DOE/FE's Approach for the Jordan Cove Application

We write to notify you that, consistent with E.O. 13807 and the MOU, DOE has obtained approval to issue its own ROD under NEPA for its final action on the pending Jordan Cove Application, rather than participating in the joint agency ROD to be developed by the other cooperating agencies to the FERC action.

The U.S Department of Interior's (DOI) Bureau of Land Management is coordinating the development of the joint ROD for the cooperating agencies. On November 12, 2019, DOE's agency Chief Environmental Review and Permitting Officer (agency CERPO) for the OFD process, Assistant Secretary of the Office of Electricity Bruce J. Walker, consulted with DOI's agency CERPO, Associate Deputy Secretary of the Department of the Interior Jim Cason. The two agency CERPOs agreed that DOE/FE qualifies for an exception under the OFD process, whereby DOE will issue its own, separate ROD, rather than signing a joint ROD.²³

This arrangement will allow DOE to most quickly and efficiently meet its responsibilities for NEPA review and its permitting decision. Additionally, this arrangement is consistent with DOE/FE's longstanding practice of issuing a final order and ROD on a pending non-FTA application to export natural gas (including LNG) after FERC completes its action in determining whether to approve or disapprove the construction and operation of the related natural gas export facility.²⁴

Please let me know if you have any questions.

Sincerely,

Amy R. Sweeney
Director, Office of Regulation, Analysis, and Engagement

²³ See MOU at A-12 (Section XIII); see also CEQ Ltr. at 1-2.

²⁴ See, e.g., *Annova LNG Common Infrastructure, LLC*, DOE/FE Order No. 4491, FE Docket No. 19-34-LNG, Opinion and Order Granting Long-Term Authorization to Export Liquefied Natural Gas to Non-Free Trade Agreement Nations, t 3-4, 57 (Feb. 10, 2020); see also FERC Order, 170 FERC ¶ 61,202, ¶ 29 & n.38.