

Environmental Law Center (WELC).² NMFS also filed a request to stay the December 17 Order.

3. This order grants rehearing, in part, and vacates the December 17 Order.

I. Background

4. As approved, the Jordan Cove terminal would be located on approximately 159 acres of land on the North Spit of Coos Bay, north of the Cities of North Bend and Coos Bay, Oregon. The Jordan Cove terminal would consist of an access channel from the existing Coos Bay navigation channel to the terminal slip; a slip and berth at the terminal, including a dock for tugs and a dock for unloading LNG carriers, with three unloading arms and one vapor return arm; a 2,600-foot-long, 36-inch-diameter cryogenic transfer pipeline capable of a maximum unloading rate of 12,000 cubic meters (m³) per hour, between the berth and the storage tanks; two full-containment LNG storage tanks, each with a capacity of 160,000 m³ (1,006,000 barrels) or approximately 3.3 Bcf; an LNG transfer system from the storage tanks to the vaporizers, consisting of six LNG booster pumps (including one spare), each sized for 2,200 gallons per minute; a vaporization system consisting of six submerged combustion vaporizers capable of regasifying a total of 1.2 Bcf/d of LNG; a natural gas liquids extraction facility; a 37-megawatt natural gas-fired, simple cycle combustion turbine power plant to provide electric power for the LNG terminal; a boil-off gas and waste heat recovery system; an emergency vent system, LNG spill containment system, firewater system, utility system, hazard detection system, and control system; associated buildings and support facilities; and metering facilities capable of handling up to 1.2 Bcf/d of natural gas for delivery into the Pacific Connector pipeline.

² WELC filed on behalf of a number of groups and individuals (referred to collectively as WELC): Citizens Against LNG, Friends of Living Oregon Waters, Klamath Siskiyou Wildlands Center, Umpqua Watersheds, Oregon Wild, Ratepayers for Affordable Clean Energy, Oregon Citizens Against the Pipeline, Southern Oregon Pipeline Information Project, Oregon Shores Conservation Coalition, Institute for Fisheries Resources, Pacific Coast Federation of Fisherman's Association, Oregon Women's Land Trust, Jody McCaffree, Bob Barker, Harry S. Stamper, Holly C. Stamper, Pacific Environment, and Francis Eatherington. Under Rule 713 of the Commission's rules of practice and procedure, a request for rehearing may be filed only by a party to the proceeding. 18 C.F.R. § 385.413 (2011). Neither Pacific Environment nor Francis Eatherington ever filed a motion to intervene. Therefore, they are not parties to this proceeding and have no standing to seek rehearing. However, their concerns will be addressed in answering WELC's request for rehearing.

5. The 234-mile-long Pacific Connector pipeline would originate at an interconnection with Jordan Cove's LNG facilities and interconnect at the proposed Clarks Branch Delivery meter station with Northwest Pipeline's Grants Pass Lateral and at the Shady Cove meter station with Avista Corporation, a local distribution company regulated by the Oregon Public Utilities Commission. At the Oregon/California border, the pipeline would terminate at interconnections with Gas Transmission Northwest Corporation, Tuscarora Gas Transmission Company, and Pacific Gas and Electric Company at the proposed Buck Butte, Russell Canyon, and Tule Lake meter stations, respectively.

6. The Commission's December 17 Order granted the requested authorizations subject to 128 conditions. In the order, the Commission found that with the adoption of the proposed mitigation measures recommended in the final EIS prepared for the project, construction of the project would result in limited adverse environmental impacts. The Commission also concluded that the project was required by the public convenience and necessity to meet the projected energy needs of the Pacific Northwest, northern California, and northern Nevada.

II. Rehearing Requests

7. Pacific Connector requests rehearing only of the December 17 Order's denial of its request to accrue Allowance for Funds Used During Construction (AFUDC) on certain expenditures it made prior to the filing of its application for a certificate of public convenience and necessity. Pacific Connector argues that the Commission erred in rejecting its request to begin accruing AFUDC prior to September 4, 2007, the date Pacific Connector filed its certificate application. Pacific Connector asks the Commission to replace AR-5 with the Generally Accepted Accounting Principles, specifically the Statement of Financial Accounting Standards No. 34 (FAS 34).

8. The requests for rehearing filed by NMFS, Oregon, and WELC essentially fall into three categories. The first category involves allegations that the Commission improperly concluded, under its Certificate Policy Statement³ and otherwise, that the Jordan Cove LNG terminal and the Pacific Connector pipeline (referred to collectively as the Jordan Cove Project) was needed to serve the needs of the Pacific Northwest, northern California, and northern Nevada, contending that the natural gas needs for the region could adequately be met through domestic sources of natural gas.

³ *Certification of New Interstate Natural Gas Pipeline Facilities (Certificate Policy Statement)*, 88 FERC ¶ 61,227 (1999), *orders clarifying statement of policy*, 90 FERC ¶ 61,128 and 92 FERC ¶ 61,094 (2000).

9. The second category involves allegations that the Commission erred in issuing a decision authorizing the Jordan Cove Project prior to action by various agencies on other necessary permits required under federal law or prior to the completion of various consultations or studies. Specifically, Oregon and WELC argue that the Commission should not have issued its final order until other agencies had reached decisions on necessary permits and approvals, insisting that doing so violates: (1) the NGA and the Administrative Procedure Act (APA),⁴ by not considering the entire administrative record before issuing a decision; (2) section 401 of the Clean Water Act (CWA),⁵ because a water quality certification under section 401 had not been issued; (3) the Coastal Zone Management Act (CZMA),⁶ because Oregon has not issued a consistency determination; (4) the Clean Air Act (CAA),⁷ because the applicants have not secured the required permits; (5) section 404 of the CWA⁸ and section 10 of the Rivers and Harbors Act,⁹ because a dredge and fill permit from the U.S. Army Corp has not yet been acquired; and (6) the National Historic Preservation Act (NHPA),¹⁰ because consultations are not yet completed. They assert that approval of the Jordan Cove Project before the issuance of these and perhaps other authorizations invalidates the Commission's environmental conclusions because the public has been unable to evaluate and comment on the effects of the proposed mitigation measures. Similarly, Oregon, WELC, and NMFS assert that the Commission erred by issuing the December 17 Order before initiating formal consultation with NMFS as required by section 7(a)(2) of the Endangered Species Act (ESA)¹¹ and section 305(b) of the Magnuson-Stevens Fishery Conservation Act (Magnuson-Stevens Act).¹²

⁴ 5 U.S.C. § 551 *et seq.* (2006).

⁵ 33 U.S.C. § 1251 *et seq.* (2006).

⁶ 16 U.S.C. § 1451 *et seq.* (2006).

⁷ 42 U.S.C. §§ 7401-7671q (2006).

⁸ 33 U.S.C. § 1344 (2006).

⁹ 33 U.S.C. § 403 (2006).

¹⁰ 6 U.S.C. § 470 *et seq.* (2006).

¹¹ 16 U.S.C. § 1536(a)(2) (2006).

¹² 42 U.S.C. §§ 4321-4347 (2006).

10. The third category comprises allegations that the Commission's environmental review or final EIS was inadequate to support the Commission's action in these proceedings. In particular, Oregon and WELC assert that the final EIS: (1) does not give a "hard look" in its analysis of many environmental and cumulative impacts of the project, as required by the National Environmental Policy Act;¹³ (2) fails to document compliance with Migratory Bird Treaty Act, the Marine Mammal Protection Act, the NHPA, the National Forest Management Act, the Northwest Forest Plan, the Federal Land Policy Management Act, and the Oregon and California Lands Act; and (3) must be supplemented to evaluate the impacts of the post-authorization design plans and future studies.

III. Procedural Issues

A. Other Pleadings

11. On March 2, 2010, Jordan Cove and Pacific Connector filed a motion seeking leave to answer and an answer to the requests for rehearing filed by NMFS, Oregon, and WELC. Jordan Cove and Pacific Connector assert that their answer clarifies misstatements and misunderstandings raised in the rehearing requests regarding the legal sufficiency of the Commission's environmental review. In response, WELC filed a motion on March 9, 2010, asking the Commission to strike Jordan Cove's and Pacific Connector's answer to the requests for rehearing, or, in the alternative, to allow WELC to respond to the answer.

12. Rule 213(a)(2) of the Commission's Rules of Practice and Procedure provides that, unless otherwise ordered by the decisional authority, an answer may not be made to a request for rehearing or to an answer.¹⁴ The Commission may find good cause to waive this rule, if the answers provide additional information to assist in our decision-making. We do not find good cause to waive the rule with respect to the subject pleading since the Commission finds no need for additional information to address the arguments raised in the rehearing requests regarding the legal sufficiency of the Commission's environmental review of the Jordan Cove Project. Therefore, we reject Jordan Cove's and Pacific Connector's answer to the requests for rehearing and dismiss as moot WELC's request for permission to respond to the answer.

¹³ See Oregon's *Request for Rehearing* at 27 and WELC's *Request for Rehearing* at 124 (citing *Robinson v. Methow Valley Citizens Council*, 490 U.S. 332, 348-353 (1989)).

¹⁴ 18 C.F.R. § 385.213(a)(2) (2011).

B. Request for Stay

13. In its request for rehearing, filed on January 26, 2010, NMFS requests that the Commission stay its December 17 Order until the Commission and the applicants have completed formal consultation with NMFS under section 7(a)(2) of the ESA¹⁵ and section 305(b) of the Magnuson-Stevens Act.¹⁶ NMFS argues that the Commission's decision to authorize the Jordan Cove Project prior to completing these consultations deprives NMFS of its right to seek rehearing with respect to issues that may arise in these consultations.

14. As discussed below, we are granting rehearing and vacating our December 17 Order's authorization of the Jordan Cove Project. Therefore, NMFS' request for stay of the order until completion of formal consultation is dismissed as moot.

C. Request to Reopen the Proceeding

15. On December 9, 2011, Oregon filed a motion to reopen the record. Specifically, Oregon seeks to present the following facts: (1) on July 27, 2011, the Commission authorized the construction of the Ruby Pipeline to transport natural gas from Rocky Mountain production areas to west coast markets; (2) on September 22, 2011, Jordan Cove applied to DOE for authorization to export natural gas and intends to ask the Commission to amend its existing authorization to add export facilities; and (3) the current price of domestic natural gas is significantly lower than the price relied upon by project proponents and the Commission to justify a benefit in the public interest from importation of LNG. Oregon states that in light of changed circumstances, any public benefit that existed at the time the Jordan Cove Project was proposed no longer exists.

16. On December 13, 2011, Jordan Cove and Pacific Connector filed a response to Oregon's motion stating that the facts cited by Oregon do not rise to the level of extraordinary circumstances to warrant a reopening of the record.

17. As discussed below, we are granting rehearing and vacating our December 17 Order's authorization of the Jordan Cove Project. Therefore, Oregon's request to reopen the record is dismissed as moot. However, as discussed below, we do find statements which were made by Jordan Cove in filings related to obtaining authorization to export LNG germane to our reconsideration of the authorizations granted in the December 17 Order.

¹⁵ 16 U.S.C. § 1536(a)(2) (2006).

¹⁶ 16 U.S.C. § 1855(b)(2) (2006).

IV. Commission Determination

18. In deciding whether to authorize the construction of new natural gas facilities, the Commission balances the public benefits of a proposed project against the potential adverse consequences. The December 17 Order identified benefits associated with the Jordan Cove LNG terminal – giving the Pacific Northwest, northern California, and northern Nevada markets long-term access to an additional supply source, resulting in greater supply reliability for those markets and ensuring supply adequacy¹⁷ – and found that those benefits outweighed any limited adverse effects the project might have.¹⁸ The order also noted that Commission policy is to allow the market to drive decisions as to which gas infrastructure projects will go forward.¹⁹

19. The Commission’s general policies as described in the December 17 Order remain unchanged. Long-term Commission policy dictates that, once the Commission has determined that a project would not result in substantial adverse impacts, the market is allowed to determine which gas infrastructure projects will actually be constructed.²⁰

20. However, in this proceeding we are faced with the fact that Jordan Cove has expressed an intent, and begun the process of seeking the necessary approvals, to use the facilities authorized solely for the purpose of importing natural gas to instead export natural gas to foreign markets. On September 22, 2011, Jordan Cove filed an application with the Department of Energy’s Office of Fossil Energy for long-term, multi-contract authorization to export the equivalent of up to 1.2 Bcf/d of LNG from the Jordan Cove LNG terminal, which, we note, equals the full capacity of its facilities previously

¹⁷ *December 17 Order*, 129 FERC ¶ 61,234 at P 25.

¹⁸ *Id.* at P 28.

¹⁹ *Id.* at P 26 (*citing Certificate Policy Statement*, 88 FERC ¶ 61,227 at p. 61,276 (1999)).

²⁰ *Certificate Policy Statement*, 88 FERC ¶ 61,227 at 61,746 (1999) (“[a] number of commenters . . . urged the Commission to allow the market to decide which projects should be built, and this requirement [that a project be able to stand on its own financially without subsidies] is a way of accomplishing that result”). *See, also, AES Sparrows Point, LNG*, “we affirm our previously stated preference permitting determinations on the number, type, timing, and location of energy facilities to be guided by market forces, and not by Commission fiat.” 61 FERC ¶ 61,245 at P 52. We note that the Certificate Policy Statement does not apply specifically to terminal and storage facilities authorized under section 3 of the NGA, although the rationale of balancing benefits against burdens is the same.

authorized for import usage. In its application to the Office of Fossil Energy, Jordan Cove states that it has developed modified plans to make use of the Jordan Cove LNG terminal as an export facility for domestically produced natural gas and that it is in the process of negotiating Liquefaction Tolling Agreements²¹ with prospective customers for the export of LNG. Jordan Cove specifically states in that application that “[t]he terminal facilities already authorized by the FERC Order that will be used for exports include two 160 cubic meter LNG full-containment storage tanks, a single marine berth capable of accommodating LNG vessels up to Q-flex size, and on-site utilities and services.”²² On December 8, 2011, the Office of Fossil Energy issued an order granting Jordan Cove long-term, multi-contract authorization for the export of LNG.²³

21. In addition, on February 29, 2012, Jordan Cove filed an application with the Commission to initiate a pre-filing review of a proposed Liquefaction Project to be located at the site of Jordan Cove’s previously-certificated Jordan Cove LNG import terminal.²⁴ Jordan Cove states that “[g]iven current market conditions” it is seeking authorization to construct and operate export facilities.²⁵ Jordan Cove also states that it “does not intend to construct the facilities specific to importation of LNG at this time, but would add the equipment necessary for import of LNG should the natural gas market conditions change in the future.”²⁶

²¹ Liquefaction Tolling Agreements are commercial arrangements under which an individual customer that holds title to natural gas will have the right to deliver that gas to Jordan Cove’s LNG terminal for liquefaction services and to receive LNG in exchange for a processing fee paid to Jordan Cove.

²² Application of Jordan Cove Energy Project, L.P. to Department of Energy Office of Fossil Energy for Long-Term Authorization to Export Liquefied Natural Gas to Free Trade Agreement Nations, FE Docket No. 11-127-LNG, at p. 3.

²³ *Jordan Cove Energy Project, L.P.*, Department of Energy’s Office of Fossil Energy Order No. 3041, available at http://www.fossil.energy.gov/programs/gasregulation/authorizations/2011_applications/Jordan_Cove_Energy_Project,_L.P..html.

²⁴ Application of Jordan Cove Energy Project, L.P. for pre-filing review in Docket No. PF12-7-000, filed on February 29, 2012.

²⁵ *Id.* at p. 2.

²⁶ *Id.*

22. The Commission recognizes that it is possible for LNG terminal facilities to be used for both the importation and exportation of natural gas, and that such operations might even occur simultaneously. However, the Commission's ability to rely on the usually valid assumption that a project sponsor will not go forward with construction of a project (in this case, an import terminal) for which there is no market is compromised here. Jordan Cove has explicitly stated that it is not desirable under current market conditions to construct facilities necessary for the importation of natural gas. It instead proposes to seek authorization to enable the use of the Jordan Cove terminal facilities for only the exportation of natural gas. Given that Jordan Cove no longer intends to implement the December 17 Order's authorization to the construct and operate an import terminal, we will vacate that authorization.

23. We note that Jordan Cove's decision that the construction and operation of an import facility is not viable under current market conditions is consistent with changes observed in the North American natural gas supply situation. The changes in the market go far beyond mere fluctuations in economic projections of prices and supply. In 2007, domestic natural gas production in the lower 48 states was reported at 18.88 Tcf.²⁷ In comparison, domestic natural gas production in 2011 was expected to reach 20.71 Tcf.²⁸

24. The growth in domestic production has had a significant impact on LNG imports. Actual imports of LNG have dropped by almost 23 percent in the last two years, from 452 Bcf in 2009 to 349 Bcf through December 2011.²⁹ As a result, only 3 of the 12 existing United States LNG terminals are operating at more than 5 percent of their capacity.³⁰ Two of the 12 terminals, including one of the three with a utilization rate of over 5 percent (Golden Pass LNG, which operated at 6.14 percent of capacity), completed construction and received an initial cargo, thus, initiating service, but have

²⁷ See *EIA Outlook 2009*, at Table 114, available at <http://www.eia.gov/oiaf/archive/aeo09/supplement/supref.html>.

²⁸ See *EIA Outlook 2011*, at Table 62, available at <http://www.eia.gov/oiaf/aeo/tablebrowser/#release=AEO2011&subject=0-AEO2011&table=72-AEO2011®ion=0-0&cases=ref2011-d020911a>.

²⁹ See U.S. Department of Energy, Office of Fossil Energy, 2010 4th Quarter and December 2011 Monthly Reports on Natural Gas Imports and Exports.

³⁰ *Id.* The highest utilization rate was 32.27 percent, for the Distrigas of Massachusetts terminal in Everett, MA.

received no additional cargos to date.³¹ Three of the other existing terminals have sought and/or received authorization to install additional facilities to enable them to preserve plant operations in the absence of imported LNG supply.³² Four companies which were granted authorization to construct and operate LNG facilities in the past six years have allowed their authorizations to lapse, without ever starting construction,³³ and two others requested that the Commission vacate their authorizations prior to commencing construction, due to changes in market circumstances.³⁴

25. Based on the foregoing, we vacate our December 17 Order's authorization for the Jordan Cove LNG import terminal. In addition, since the Pacific Connector pipeline was proposed as an integral part of the larger Jordan Cove Project, the stated purpose of the pipeline being to transport gas sourced from the Jordan Cove terminal, we will also

³¹ See Golden Pass LNG Terminal, LLC in Docket No. CP04-386-000 and Gulf LNG Energy, LLC in Docket No. CP06-12-000. We also note that Excelerate Energy, has announced that the Gulf Gateway Deepwater Port, another of the 12 existing terminals (completed in 2005 under authorization issued by the Department of Transportation's Maritime Administration), will be decommissioned in 2012, "due to the dramatic shift in the supply demand balance in the United States." See <http://www.excelerateenergy.com/past-projects>.

³² See *Dominion Cove Point LNG, LP*, 135 FERC ¶ 61,261 (June 24, 2011). See also the Phase II Development Project proposed in Docket No. CP12-29-000 by Freeport LNG Development, L.P. for its Freeport LNG import terminal; and the Elba BOG Compressor Project proposed in Docket No. CP12-31-000 by Southern LNG Company L.L.C. for its Elba Island LNG Project.

³³ See *Port Arthur LNG, L.P. and Port Arthur Pipeline, L.P.*, 136 FERC ¶ 61,196 (2011); *Creole Trail LNG, L.P.*, 136 FERC ¶ 61,122 (2011); *Ingleside Energy Center, LLC and San Patricio Pipeline, LLC*, 136 FERC ¶ 61,114 (2011); *Vista del Sol LNG Terminal LP and Vista del Sol Pipeline LP*, 132 FERC ¶ 61,157 (2010).

³⁴ See *Weaver's Cove Energy, LLC and Mill River Pipeline, LLC*, 136 FERC ¶ 61,015 (2011); *Bayou Casotte Energy LLC*, 132 FERC ¶ 61,158 (2010). See also *State of Oregon v. Federal Energy Regulatory Commission*, 636 F. 3d 1203 (9th Cir. 2011) (vacating the Commission's section 3 authorization and section 7 certificate of public convenience and necessity issued to Bradwood Landing, LLC and NorthernStar Energy, LLC as a result of NorthernStar Energy, LLC bankruptcy proceeding) and *Southern LNG Company, L.L.C.*, 137 FERC ¶ 61,034 (2011) (Commission granting request by company to vacate authorization to construct previously-authorized expansion of existing LNG terminals).

vacate our authorization to construct those facilities, as well as the related blanket construction and transportation certificates.³⁵

26. Given this action, we dismiss as moot the requests for rehearing filed by Pacific Connector and NMFS. To the extent that Oregon and WELC requested the Commission to vacate the December 17 Order, their requests are granted. However, the remaining issues raised by Oregon and WELC on rehearing are dismissed as moot.

27. Our actions here are without prejudice to Jordan Cove submitting a new application to construct and/or operate facilities to import natural gas should there develop a market need for import service in the future. We also note that Jordan Cove's pre-filing application for export authorization pursuant to section 3 of the NGA is pending in Docket No. PF12-7-000 and will be considered on its own merits in that separate proceeding.³⁶

The Commission orders:

(A) The authorization under section 3 of the NGA, in Docket No. CP07-444-000, issued to Jordan Cove to site, construct, and operate an LNG terminal in Coos Bay County, Oregon is vacated.

(B) The certificate of public convenience and necessity under section 7(c) of the NGA, in Docket No. CP07-441-000, issued to Pacific Connector to construct and operate the Pacific Connector Pipeline is vacated.

³⁵ We acknowledge that the proposal for the Pacific Connector pipeline was supported by precedent agreements for the full amount of the proposed capacity and that the December 17 Order conditioned commencement of construction of the pipeline on execution of service agreements at levels and equivalent to those represented in the precedent agreements. However, as stated, we view the Jordan Cove Project as an integrated project, comprising both the terminal and the pipeline. Accordingly, since we are vacating authorization for the LNG import terminal as proposed, we are also vacating our authorization for the Pacific Connector pipeline.

³⁶ Depending on the details of the proposed project, it is possible that portions of the environmental information and analysis developed in conjunction with the import terminal may remain viable for resubmission and use for the contemplated export terminal and associated pipeline facilities.

(C) The blanket construction certificate, in Docket No. CP07-442-000, issued to Pacific Connector under subpart F of Part 157 of the Commission's regulations is vacated.

(D) The blanket transportation certificate, in Docket No. CP07-443-000, issued to Pacific Connector under subpart G of Part 284 of the Commission's regulations is vacated.

(E) The requests for rehearing filed by Pacific Connector and the National Marine Fisheries Service are dismissed as moot.

(F) The requests for rehearing filed by the State of Oregon and the Western Environmental Law Center are granted in part and dismissed as moot in part, to the extent discussed in this order.

(G) The answer filed on March 2, 2010, by Jordan Cove and Pacific Connector is rejected.

(H) The motion to strike filed on March 9, 2010, by Western Environmental Law Center is dismissed as moot.

(I) The request for stay filed on January 6, 2010, by the National Marine Fisheries Service is dismissed as moot.

(J) The request to reopen the record filed on December 9, 2011, by the State of Oregon is dismissed as moot.

By the Commission. Chairman Wellinghoff concurring with a separate statement attached.

Commissioner Moeller dissenting with a separate statement attached.

(S E A L)

Kimberly D. Bose,
Secretary.

UNITED STATES OF AMERICA
FEDERAL ENERGY REGULATORY COMMISSION

Pacific Connector Gas Pipeline, LP

Docket Nos. CP07-441-001
CP07-442-001
CP07-443-001

Jordan Cove Energy Project, L.P.

Docket No. CP07-444-001

(Issued April 16, 2012)

WELLINGHOFF, Chairman, concurring:

Today's order vacates the Commission's previous order granting authorization for siting, constructing, and operating the Jordan Cove Project. In addition to the reasons discussed in the order, I believe the decision to vacate authorization is further supported by concerns raised in the FEIS regarding the safety of locating the Jordan Cove Project less than one mile from the Southwest Oregon Regional Airport. As noted in my earlier dissent, such close proximity of an LNG terminal to an airport could result in the accidental or intentional crash of an aircraft into the LNG terminal. The absence of sufficient information on this issue reinforces my belief that the record does not support a finding that authorization of the Jordan Cove Project is in the public interest.

For this reason, I concur in today's order.

Jon Wellinghoff
Chairman

UNITED STATES OF AMERICA
FEDERAL ENERGY REGULATORY COMMISSION

Pacific Connector Gas Pipeline, LP	Docket Nos.	CP07-441-001 CP07-442-001 CP07-443-001
Jordan Cove Energy Project, L.P.	Docket No.	CP07-444-001

(Issued April 16, 2012)

MOELLER, Commissioner, *dissenting*:

Revoking an authorization to build during the third year of a five-year authorization could fundamentally change how the public views whether this Commission will stand by its decisions. This new policy could hardly have been anticipated by employees and investors in Jordan Cove, as this Commission has long followed a policy of allowing individual investors to decide what investments in energy made the most sense for them --- that is, this Commission did not “pick winners and losers”. Had investors in Jordan Cove known that their continuing investment in that facility over the last three years would eventually be subject to a finding by the Commission about unfavorable market conditions, they certainly would have valued the Commission’s approval differently.

Natural gas prices have a long history of changing. Jordan Cove recognizes this fact by asserting that it “would add the equipment necessary for import of LNG should the natural gas market conditions change in the future.”¹ Yet somehow this is evidence to the current Commission that “Jordan Cove no longer intends to implement the December 17 Order’s authorization to construct and operate an import terminal.”²

Millions of people across the country are looking for employment. Millions of people across the country are looking for ways to invest their money in business activity that leads to more employment. But before people can invest their money into business plans, and before people can be hired to implement business plans, the public needs confidence that the government will not arbitrarily revoke its authorizations to conduct those business plans.

¹ P21 of this Order.

² P22 of this Order.

On the same day that we revoke this authorization, this Commission is granting another five-year authorization to construct a facility capable of exporting LNG at Sabine Pass. While that five-year authorization is undeniably valuable, investors need certainty that the Commission will not revoke the Sabine authorization if it later finds that the “facility is not viable under current market conditions.”³ Investors need greater profits when the return of their investment becomes more doubtful, if they invest at all. And because greater profits require higher prices, government regulators should work to minimize risk through consistent decisions that are not second-guessed at a later time.

Because this order revokes a five-year authorization to build at year three, based upon little more than statements about current market conditions by Jordan Cove and the market views of three Commissioners, I respectfully dissent.

Philip D. Moeller
Commissioner

³ See P23 of this order.