

157 FERC ¶ 61,194
UNITED STATES OF AMERICA
FEDERAL ENERGY REGULATORY COMMISSION

Before Commissioners: Norman C. Bay, Chairman;
Cheryl A. LaFleur, and Colette D. Honorable.

Jordan Cove Energy Project, L.P. Docket No. CP13-483-001

Pacific Connector Gas Pipeline, LP Docket No. CP13-492-001

ORDER DENYING REHEARING

(Issued December 9, 2016)

1. On March 11, 2016, the Commission issued an order denying: (1) Pacific Connector Gas Pipeline, LP's (Pacific Connector) application to construct and operate a 234-mile-long interstate natural gas pipeline (Pacific Connector Pipeline) and (2) Jordan Cove Energy Project, L.P.'s (Jordan Cove) application to site, construct, and operate a liquefied natural gas (LNG) export terminal and associated facilities (Jordan Cove LNG Terminal or LNG Terminal).¹ Jordan Cove, Pacific Connector, the State of Wyoming, and Wyoming Pipeline Authority filed timely requests for rehearing. For the reasons discussed below, we deny the requests for rehearing.

I. Background

2. On May 21, 2013, in Docket No. CP13-483-000, Jordan Cove filed an application under NGA section 3 and Parts 153 and 380 of the Commission's regulations to site, construct, and operate an LNG export terminal on the North Spit of Coos Bay in Oregon.

3. On June 6, 2013, in Docket No. CP13-492-000, Pacific Connector filed an application under NGA section 7(c) and Parts 157 and 284 of the Commission's regulations for a certificate of public convenience and necessity to construct and operate the Pacific Connector Pipeline, an approximately 232-mile-long, 36-inch-diameter interstate natural gas pipeline originating at the Oregon/California border near Malin, in Klamath County, Oregon, and terminating at the Jordan Cove LNG Terminal. The

¹ *Jordan Cove Energy Project, L.P. and Pacific Connector Gas Pipeline, LP*, 154 FERC ¶ 61,190 (2016) (March 11 Order).

Pacific Connector Pipeline was designed to provide up to 1,060,000 dekatherms per day (Dth/day) of natural gas transportation service from interconnects with the interstate pipelines of Ruby Pipeline LLC and Gas Transmission Northwest LLC near Malin, Oregon, to the Jordan Cove LNG Terminal for processing, liquefaction, and export. In addition to delivering natural gas to the LNG Terminal, the Pacific Connector Pipeline would have the capability to provide deliveries to markets along its route and along Northwest Pipeline GP's Grants Pass Lateral.

4. On March 11, 2016, the Commission issued an order denying Pacific Connector's application for a certificate of public convenience and necessity to construct and operate the Pacific Connector Pipeline (March 11 Order).² Specifically, the order found, under the Certificate Policy Statement,³ that Pacific Connector failed to demonstrate a need for the project sufficient to outweigh the potential harm to the economic interests of landowners whose property rights might be taken by exercise of the right of eminent domain. The Pacific Connector Pipeline would have impacted 157.3 miles of privately-owned lands. Many landowners submitted comments opposing the project and claiming that the pipeline would have negative economic impacts on their properties. The March 11 Order noted that the Certificate Policy Statement states that while holdout landowners cannot veto a project, the Commission must balance all relevant factors and considerations – "the strength of the benefit showing will need to be proportional to the applicant's proposed exercise of eminent domain procedures."⁴

5. The order found that Pacific Connector presented little or no evidence of need for the Pacific Connector Pipeline. Pacific Connector had neither entered into any precedent agreements for its project, nor had it conducted an open season, which might have resulted in "expressions of interest" the company could have claimed as indicia of demand. Further, the order stated that Pacific Connector essentially asked the Commission to rely on the U.S. Department of Energy's (DOE) finding under NGA section 3 that authorization of the commodity export is consistent with the public interest as sufficient to support a finding by the Commission that the Pacific Connector Pipeline is required by the public convenience and necessity, as there is no other proposed way for gas to be delivered to the Jordan Cove LNG Terminal for export. The March 11 Order explained that Commission has not previously found a proposed pipeline to be required

² *Id.*

³ *Certification of New Interstate Natural Gas Pipeline Facilities*, 88 FERC ¶ 61,227 (1999), *order on clarification*, 90 FERC ¶ 61,128 (2000), *order on clarification*, 92 FERC ¶ 61,094 (2000) (Certificate Policy Statement).

⁴ March 11 Order, 154 FERC ¶ 61,190 at P 38 (citing *Certification of New Interstate Natural Gas Pipeline Facilities*, 88 FERC ¶ 61,227 at 61,749).

by the public convenience and necessity under NGA section 7 on the basis of a DOE import or export authorization. Nor has the Commission relied solely on the fact that a company is not likely to proceed with construction of facilities in the absence of a market for a project's services – particularly in the face of significant opposition from directly-impacted landowners. The order found that the generalized allegations of need proffered by Pacific Connector did not outweigh the potential for adverse impact on landowners and communities.⁵

6. The March 11 Order also denied Jordan Cove's NGA section 3 application to site, construct, and operate its proposed LNG Terminal. The order held that the Jordan Cove LNG Terminal is an integral part of a single project to export domestic gas supplies and the terminal project is not feasible without a pipeline to transport gas to the terminal.⁶

A. Requests for Rehearing

7. On April 8, 2016, Jordan Cove and Pacific Connector (collectively, Applicants), jointly, filed a timely request for rehearing. The Applicants request that the Commission stay the March 11 Order and reopen the evidentiary record to receive evidence of demand for the project. The Applicants state that since the March 11 Order, Jordan Cove has entered into two agreements with foreign companies for the export of LNG: JERA Co., Inc. and ITOCHU Corporation have each agreed to purchase 1.5 million tons per year of LNG capacity for an initial term of 20 years. Additionally, and more pertinent to the March 11 Order's holding that Pacific Connector did not demonstrate sufficient need for the project, Pacific Connector entered into precedent agreements with: Macquarie Energy LLC for 215,000 Dth/day of firm transportation service from Malin, Oregon, to the Jordan Cove LNG Terminal; Avista Corporation for 10,000 Dth/day of firm transportation service from Malin, Oregon, to the Clarks Branch Meter Station; and Jordan Cove for 592,354 Dth/day of firm transportation service from Malin, Oregon, to the Jordan Cove LNG Terminal. The Applicants state that capacity of the Pacific Connector Pipeline is now 77 percent subscribed under precedent agreements for long-term firm service. They contend that the agreements executed since the March 11 Order are sufficient evidence of market need to support approval of the projects.

8. If the Commission fails to reopen the record and consider the newly executed precedent agreements, the Applicants argue that the Commission should not have rejected the applications simply because the Applicants had not executed precedent agreements. The Applicants state that: (1) the Commission's expectation that companies must have finalized commercial agreements before the Commission issues its dispositive order is

⁵ *Id.* at PP 39-41.

⁶ *Id.* at PP 43-46.

unrealistic; (2) the Commission gave undue weight to the risks of eminent domain when compared to the project's benefits; and (3) the Commission should have conditioned the order to only allow the use of eminent domain once the applicant demonstrated market support for the project.

9. On April 11, 2016, the State of Wyoming and Wyoming Pipeline Authority (collectively, Wyoming), jointly, filed a timely request for rehearing of the March 11 Order. Wyoming argues that the March 11 Order failed to consider the public benefits of the pipeline, including benefits to the State of Wyoming's economy. Wyoming also asserts that the Commission should have considered the volatility of the international energy markets and granted additional time for the Applicants to demonstrate market support for the projects.

II. Procedural Issues

A. Answers to the Requests for Rehearing

10. Motions for leave to answer the requests for rehearing were filed by: (1) Evans Schaaf Family LLC, Deborah Evans, Ronald Schaaf, Bob Barker, John Clarke, Oregon Women's Land Trust, Stacey McLaughlin, and Craig McLaughlin (jointly) (referred to collectively as "Landowners"); (2) Dennis Henderson, as an individual and as trustee of the Henderson Revocable Inter-vivos Trust (Henderson);⁷ (3) Sierra Club; and (4) Jody McCaffree (all referred to collectively as "Parties").⁸ In response, the Applicants filed a motion for leave to answer the answers.

11. Rule 213(a)(2) of our regulations prohibits answers to rehearings and answers to answers unless otherwise ordered by a decisional authority.⁹ The Commission finds good cause to waive Rule 213(a)(2) and admit these answers because doing so will not cause undue delay and the pleadings may assist the Commission in its decision-making process. The answers are addressed below.

B. Motion for Stay

12. In its rehearing request, the Applicants ask that we stay the March 11 Order pending the Commission's decisions on rehearing and regarding the Applicants' request

⁷ Henderson incorporates by reference and joins the Landowners' Answer. Henderson's Answer at 2.

⁸ The entities filing answers were all parties to the proceeding.

⁹ 18 C.F.R. § 385.213(a)(2) (2016).

to reopen the record. This order addresses and denies the Applicants' requests for rehearing and to reopen the record. Accordingly, we dismiss the request for stay as moot.

III. Discussion

A. The Commission Will Not Reopen the Record to Allow the Applicants to Submit New Evidence

13. On rehearing, the Applicants request that the Commission reopen the evidentiary record to receive evidence of demand for the project, specifically, the precedent agreements that Pacific Connector entered into with Macquarie Energy LLC, Avista Corporation, and Jordan Cove. The Applicants contend that these precedent agreements, showing long-term firm service subscription for 77 percent of the pipeline, demonstrate sufficient evidence of market need to support approval of the projects.

14. In their answers, the Parties argue that the Commission should deny the Applicants' request to reopen the record.¹⁰ The Parties state that the Applicants do not contend that they demonstrated evidence of market demand prior to the March 11 Order.¹¹ The Parties assert that it was reasonable of the Commission, and consistent with Commission policy, to expect project proponents to demonstrate market demand and landowner agreements at the completion of the Commission's environmental review, when the Commission is otherwise ready to act on the applications.¹² The Parties contend that the Applicants had years to submit evidence of genuine market demand and failed to do so, even after receiving four Commission data requests.¹³ In any event, the Parties state that the Applicants' effort to "quickly cobble together evidence of market demand is obvious."¹⁴ They argue that Pacific Connector's precedent agreement with Jordan Cove (its affiliate) is a "thinly disguised effort" to keep the "project afloat."¹⁵

¹⁰ Henderson Answer at 1; Landowners' Answer at 2; Sierra Club Answer at 5; and Jody McCaffree's Answer at 2-3, 21.

¹¹ Sierra Club's Answer at 4.

¹² *Id.*

¹³ Landowners' Answer at 4.

¹⁴ *Id.* at 5.

¹⁵ *Id.*

They also maintain that if Jordan Cove had timely identified LNG customers Pacific Connector could have conducted an open season prior to the issuance of the March 11 Order.¹⁶

15. In their answer, the Applicants state that Pacific Connector's precedent agreements with Avista, Macquarie, and Jordan Cove represent 77 percent of the pipeline's overall capacity and that the Commission does not require pipelines to be fully subscribed before receiving a certificate.¹⁷ Further, the Applicants state that Pacific Connector's precedent agreements are not a "contrived ploy," and that the Commission has approved many pipeline projects that were predicated on precedent agreements between the pipeline and the LNG terminal company.¹⁸

16. The Commission has the discretion to reopen the record and consider new evidence on rehearing. However, a party seeking to reopen the record carries a heavy burden:

In order to persuade the Commission to exercise its discretion to reopen the record, the requesting party must demonstrate the existence of extraordinary circumstances. The Commission has held that the requesting party must demonstrate a change in circumstances that is more than just material — it must be a change in core circumstances that goes to the very heart of the case. This policy against reopening the record except in extraordinary circumstances is based on the need for finality in the administrative process.¹⁹

17. We will not reopen the administrative record. The Applicants have failed to demonstrate the existence of "extraordinary circumstances" that overcome the need for

¹⁶ Sierra Club's Answer at 8.

¹⁷ Applicants' Answer at 6.

¹⁸ *Id.* at 7.

¹⁹ See *Millennium Pipeline Co., L.L.C.*, 142 FERC ¶ 61,077, at PP 8-9 (2013) (*Millennium Pipeline*) (internal citations and quotations omitted). See also *Gulf States Utilities Co. v. Southern Co. Services, Inc.*, 43 FERC ¶ 61,003, at 61,024 (1988) (citing *Bowman Transp., Inc. v. Ark.-Best Freight System, Inc.*, 419 U.S. 281, 296 (1974)). See also *Am. Fin. Services Ass'n v. FTC*, 767 F.2d 957, 964 n.5 (D.C. Cir. 1985), *cert. denied*, 475 U.S. 1011).

finality.²⁰ Prior to issuing the March 11 Order, Commission staff sent four data requests to Pacific Connector asking it to show that the public benefits of its proposed Pacific Connector Pipeline outweighed the project's adverse impacts, consistent with the Commission's Certificate Policy Statement.²¹ In response to each data request, Pacific Connector stated that its negotiations were "active and ongoing" and provided no certainty as to when it would receive agreements for the pipeline's capacity.²² We afforded Pacific Connector ample time – over 3.5 years – to demonstrate evidence of market demand or to contract for and submit the precedent agreements with its firm shippers prior to issuing the March 11 Order.

18. "[L]itigation must come to an end at some point. Hence, the general rule is that the record once closed will not be reopened."²³ The Commission has "an obligation to preserve the integrity of our processes, and so due diligence must be used to obtain and present evidence in a timely manner."²⁴ We acknowledged in the March 11 Order, Pacific Connector was not required to file precedent agreements to demonstrate need.²⁵ The Certificate Policy Statement allows an applicant to rely on a variety of relevant factors to demonstrate need, rather than requiring evidence that a specific percentage of the proposed capacity is subscribed under long-term precedent or service agreements.²⁶

²⁰ *Millennium Pipeline*, 142 FERC ¶ 61,077 at PP 8-9.

²¹ March 11 Order, 154 FERC ¶ 61,190 at PP 15-18 (discussing Commission staff's May 7, 2014, December 5, 2014, May 20, 2015, and October 14, 2015 data requests).

²² Pacific Connector's November 4, 2015 Data Response at 4. *See* Pacific Connector's May 15, 2014 Data Response at 3; Pacific Connector's December 10, 2014 Data Response at 2; and Pacific Connector's June 1, 2015 Data Response at 4.

²³ *Transwestern Pipeline Co.*, Opinion No. 238, 32 FERC ¶ 61,009 (1985), *reh'g denied*, Opinion No. 238-A, 36 FERC ¶ 61,175, at 61,453 (1986).

²⁴ *Central Maine Power Co.*, 55 FERC ¶ 61,060, at 61,170 (1991). *See Millennium Pipeline Company, LLC*, 141 FERC ¶ 61,198, at P 13 (2012) (the Commission will not reopen the record to allow parties to present arguments already made); and *Transcontinental Gas Pipe Line Corp.*, 25 FERC ¶ 61,418, at 61,938 (1983) (Commission denied a request to reopen the record following an evidentiary hearing to allow a company to present evidence of need for its project, finding the company had ample opportunity to develop the record during the hearing).

²⁵ March 11 Order, 154 FERC ¶ 61,190 at P 36.

²⁶ Certificate Policy Statement, 88 FERC ¶ 61,227 at 61,747.

These other factors might include, but are not limited to, precedent agreements, demand projections, potential cost savings to consumers, or a comparison of projected demand with the amount of capacity currently serving the market.²⁷ The Commission will consider all such evidence submitted by the applicant reflecting on the need for the project. However, Pacific Connector failed to show any evidence of market demand for its project that would satisfy the factors listed in the Certificate Policy Statement.

19. Further, reopening the record at this late date would impose additional burdens on the parties. To ensure adequate process, the Commission would have to provide a formal opportunity for others to comment on the new evidence or otherwise participate in the proceeding. Before filing its rehearing request, Pacific Connector had every opportunity to demonstrate market need. Nevertheless, it failed to do so over a three-and-a-half year long period, despite the issuance of four data requests by Commission staff seeking such information. As a result, we do not find that Pacific Connector's request to reopen the record to file precedent agreements at this late date rises to the level of extraordinary circumstances that would overcome our need for finality in the administrative process. Pacific Connector's request to reopen the record is denied.

20. However, as the March 11 Order noted, the denial of Pacific Connector's certificate application is "without prejudice to Jordan Cove and/or Pacific Connector submitting a new application . . . should the companies show a market need for these services in the future."²⁸

²⁷ *Id.*

²⁸ March 11 Order, 154 FERC ¶ 61,190 at P 48. Depending on the circumstances of any future application, we may use portions of the existing record, i.e. the September 2015 Final Environmental Impact Statement, to process that filing. The Commission notes that it shares the concerns of the Parties regarding the timing of the Applicants' submission of precedent agreements. We are concerned that the Applicants failed to submit any evidence of market demand despite receipt of 4 data requests during a 3 and ½ year period, but then submitted such evidence within the 30 day rehearing window. To the extent the Applicants resubmit their application for certification of the Pacific Connector Pipeline and Jordan Cove LNG Terminal, the Commission expects that the Applicants will submit evidence of market need as part of their initial application, or in a timely manner in response to staff data requests, so that the Commission can appropriately consider such evidence as part of the certificate application.

B. The March 11 Order Properly Denied Pacific Connector’s Certificate Application Under the Certificate Policy Statement

21. On rehearing, the Applicants argue that it is unrealistic for companies to finalize commercial agreements before the Commission issues a dispositive order.²⁹ The Applicants assert that the March 11 Order failed to consider the current circumstances in the global LNG market.³⁰ Because an LNG Project may take 10 years from initial conception to actual gas delivery, the Applicants state that customers are reluctant to sign LNG tolling or offtake agreements far out in advance of the project’s completion.³¹ Thus, the Applicants state that it would have been nonsensical to conduct an open season for the pipeline’s transmission capacity without foreign contracts for the LNG Terminal’s capacity. The Applicants state that if the Commission adopts a new policy of requiring finalized commercial agreements at the time it commences its environmental review, then the Commission will introduce regulatory risk to the industry and disadvantage competition in global markets.³²

22. Wyoming also argues that the Commission should have recognized the difficult nature of international negotiations for energy projects.³³ It states that the Commission has previously afforded project proponents ample time to procure market support.³⁴ Wyoming asserts that the Commission imposed an “undisclosed time limit” for the Applicants’ submittal of precedent agreements.³⁵ It claims that the Commission should have provided the Applicants with a warning before it acted on its application.³⁶

23. We disagree. As stated above, the Certificate Policy Statement requires applicants to show that the public benefits of its proposed project outweigh any adverse impacts. The Applicants misstated the March 11 Order’s holding when they stated that

²⁹ Applicants’ Request for Rehearing at 9-10.

³⁰ *Id.* at 9.

³¹ *Id.* at 9-10.

³² Applicants’ Request for Rehearing at 20.

³³ Wyoming’s Request for Rehearing at 11.

³⁴ *Id.* at 11-12.

³⁵ Wyoming’s Request for Rehearing at 14.

³⁶ *Id.* at 14-15.

the Commission required the Applicants to submit executed precedent agreements at the time the Commission is ready to authorize the pipeline facilities.³⁷ The Commission expects a project sponsor's initial application to contain evidence sufficient to meet its burden to demonstrate that the benefits of its proposal will outweigh any expected adverse effects. However, it is also incumbent upon the applicant to respond as necessary to continue to meet that burden, should evidence of additional negative impacts be adduced as the record develops. The March 11 Order clearly stated that submittal of precedent agreements was but one indicia of demand that an applicant could file to demonstrate the public benefits of its project.³⁸ Here, the Applicants failed to make any significant showing of demand.

24. The Commission afforded the Applicants ample time to supplement the record to satisfy the criteria of the Certificate Policy Statement. Commission staff sent Pacific Connector four data requests, over 3.5 years, asking for evidence of market demand for the Pacific Connector Pipeline. We do not find that the global nature of the LNG markets, or any circumstances unique to this proceeding, precluded the Applicants from relying on the guidance of our well-stated Commission policy to file evidence in a timely manner sufficient to meet their burden to demonstrate the extent to which their proposed project would benefit the public.³⁹

25. Wyoming cites to *Unocal Windy Hill Gas Storage, LLC (Windy Hill)*,⁴⁰ to support its proposition that the Commission will grant companies additional time to present market support. Wyoming's reliance on this case is misplaced. *Windy Hill* differs from the case at hand in a number of respects. The Commission granted Windy Hill an extension of time to construct its previously authorized facilities, not an extension of time to present evidence of market support. Additionally, unlike Pacific Connector, at the time of its application Windy Hill had obtained all surface and mineral rights necessary for construction and operation of its proposed natural gas storage field, eliminating the

³⁷ Applicants' Request for Rehearing at 20.

³⁸ March 11 Order, 154 FERC ¶ 61,190 at P 36.

³⁹ Contrary to Wyoming's suggestion, we note that the Commission is precluded from disclosing the nature and time of any proposed action and could not issue a "warning" of pending Commission action. 18 C.F.R. § 3c.2(b) (2016). We further note that the Applicants did not request the Commission to delay action on their applications to afford them more time to supplement the record with additional indicia of need; rather, they contended they had met their burden on the record as it stood. *See Pacific Connector's November 4, 2015 Data Response at 2.*

⁴⁰ 115 FERC ¶ 61,218 (2006), *order vacated*, 152 FERC ¶ 61,018 (2016).

potential exercise of eminent domain with respect to that portion of its project. Windy Hill had also already obtained a significant portion of the right of way necessary for the pipeline facilities associated with its project and there were no landowner or community objections to the project. Finally, Windy Hill stated in its application that it had held an open season for its proposed storage project and had received non-binding requests for a substantial amount of the service capability it was proposing to construct. Wyoming also cites to LNG Development Company LLC in Docket Nos. CP09-6-000 and CP09-7-000 (Oregon LNG Project), stating that the Commission afforded the company eight years to submit precedent agreements for service. We note that the Commission never issued an order on the merits of the Oregon LNG Project. Those applicants significantly revised their proposal and re-initiated the pre-filing process over three and a half years after the initial applications had been filed. The Commission's processing of the proposals was further impacted by other issues beyond the Commission's direct control, including a property rights dispute between the company and the U.S. Army Corps of Engineers. The company ultimately held an open season and accepted a bid for the pipeline's capacity in response to requests similar to those made of Pacific Connector, prior to dispositive action by the Commission. *See Oregon Pipeline Company, LLC's October 5, 2015 Open Season Update in Docket No. CP09-7-000.* In any event, the company withdrew its applications for the Oregon LNG Projects on April 28, 2016.

26. The Commission's denial of the Pacific Connector Pipeline was consistent with its ruling in *Turtle Bayou Gas Storage Company, LLC (Turtle Bayou)*.⁴¹ As the March 11 Order explained,⁴² the Commission denied Turtle Bayou's application to construct and operate a natural gas storage facility, finding that it failed to meet the criteria of the Certificate Policy Statement. Like Pacific Connector, Turtle Bayou presented only general assertions of a need for natural gas storage at the regional and national level. There was no evidence that any of the proposed capacity had been subscribed under precedent agreements. Further, Turtle Bayou owned virtually none of the property rights which would be necessary to develop its project. Thus, the Commission found that "[t]he generalized showing [of project need] made by Turtle Bayou does not outweigh the impact on the landowner that holds the majority of property rights needed to develop the proposed project" and the Commission denied Turtle Bayou's request for certificate authority.⁴³

⁴¹ 135 FERC ¶ 61,233 (2011).

⁴² March 11 Order, 154 FERC ¶ 61,190 at P 37.

⁴³ *Turtle Bayou Gas Storage Company, LLC*, 135 FERC ¶ 61,233 at P 34.

27. The March 11 Order followed the same rationale. As stated above, Pacific Connector failed to submit any evidence of need for natural gas transmission by their specific project. Further, at the time of the March 11 Order's issuance, Pacific Connector had obtained easements for only 5 percent and 3 percent, respectively, of its necessary permanent and construction right of way,⁴⁴ in the face of protests from landowners contending that the pipeline would have negative economic impacts to their interests, such as land devaluation, loss of tax revenue, and economic harm to business operations (e.g., oyster and timber harvesting and farming).⁴⁵ The Certificate Policy Statement states that "a project built on speculation (whether or not it will be used by affiliated shippers) will usually require more justification than a project built for a specific new market when balanced against the impact on the affected interests."⁴⁶ Pacific Connector failed to justify its project. Accordingly, the March 11 Order found that the generalized allegations of need proffered by Pacific Connector did not outweigh the potential for adverse impact on landowners and communities.⁴⁷

28. The Applicants also argue that the Commission misapplied the Certificate Policy Statement's balancing test when it equated the public benefits of the project with commercial need and ignored the benefits of the project that Commission staff recognized in its final environmental impact statement and the benefits cited in the DOE's order approving Jordan Cove's export of LNG.⁴⁸ Wyoming agrees and states that the Commission's balancing should have accounted for the public benefits of the project on the State of Wyoming, namely increased natural gas production, employment, and tax and royalty income in Wyoming.⁴⁹ The Applicants assert that the March 11 Order erred by focusing entirely on the possibility that Pacific Connector would have to exercise eminent domain authority to acquire some portion of the right-of-way.⁵⁰ The Applicants

⁴⁴ March 11 Order, 154 FERC ¶ 61,190 at P 18.

⁴⁵ *Id.* P 38.

⁴⁶ Certificate Policy Statement, 88 FERC ¶ 61,227 at 61,749.

⁴⁷ March 11 Order, 154 FERC ¶ 61,190 at PP 41-42.

⁴⁸ Applicants' Request for Rehearing at 20.

⁴⁹ Wyoming's Request for Rehearing at 6, 10.

⁵⁰ Applicants' Request for Rehearing at 21.

and Wyoming state that the Commission should have conditioned Pacific Connector's exercise of eminent domain on the submission of precedent agreements.⁵¹

29. We disagree. The purpose of the Certificate Policy Statement is to establish criteria for determining whether there is a need for a proposed project and whether the proposed project will serve the public interest. This is essentially an economic test. Only when the benefits outweigh the adverse effects on economic interests will the Commission proceed to consider other interests, including environmental impacts. As stated above, the Commission found that Pacific Connector's generalized allegations of need – including the generalized statement of public benefits which would be realized by Wyoming – do not outweigh the risk of eminent domain on landowners and communities. Because Pacific Connector failed to satisfy the Certificate Policy Statement, the Commission did not consider the environmental benefits and impacts of the project in its order.

30. Further, DOE has exclusive jurisdiction over the export of natural gas as a commodity under NGA section 3. As we stated in the March 11 Order, the Commission has not relied on DOE's NGA section 3 finding that the importation or exportation of the natural gas commodity by an associated LNG facility is in the public interest to determine whether the siting of a proposed pipeline is required by the public convenience and necessity under NGA section 7.⁵² The issue of whether the export of LNG will cause economic harm or benefit is beyond the Commission's purview and the March 11 Order was not required to consider these factors. DOE has delegated to the Commission authority to approve or disapprove the construction and operation of particular facilities, the site at which such facilities will be located, and with respect to natural gas that involves the construction of new domestic facilities, the place of entry for imports or exit for exports. However, DOE has not delegated to the Commission any authority to approve or disapprove the import or export of the commodity itself.⁵³

31. Finally, the Commission does ensure avoidance of unnecessary environmental impacts by including a certificate condition providing that authorization for the commencement of construction would not be granted until Pacific Connector has

⁵¹ *Id.* at 26, 29. Wyoming's Request for Rehearing at 15.

⁵² March 11 Order, 154 FERC ¶ 61,190 at P 40.

⁵³ *National Steel Corp.*, 45 FERC ¶ 61,100, at 61,333 (1988) (“The [[Office of Fossil Energy], pursuant to its exclusive jurisdiction, has approved the importation with respect to every aspect of it except the point of importation. ...The Commission's authority in this matter is limited to consideration of the place of importation, which necessarily includes the technical and environmental aspects of any related facilities.”).

successfully executed contracts for a certain level of service.⁵⁴ However, the Commission cannot condition Pacific Connector's use of eminent domain on its submission of precedent agreements; the right to eminent domain is inherent in a certificate issued under NGA section 7.⁵⁵ Therefore, we affirm our finding in the March 11 Order that we will not condition the certificate because Pacific Connector would be able to proceed with eminent domain proceedings in what we find to be the absence of a demonstrated need for the pipeline.⁵⁶

C. The March 11 Order Properly Denied Jordan Cove's NGA Section 3 Application

32. Wyoming states that the Commission erred in denying Jordan Cove's requested NGA section 3 authorization based on the Commission's denial of Pacific Connector's certificate application.

33. We disagree. The March 11 Order stated that without a source of natural gas, proposed here to be delivered by the Pacific Connector Pipeline, it will be impossible for Jordan Cove's liquefaction facility to function.⁵⁷ We affirm the March 11 Order's finding that without a pipeline connecting it to a source of gas to be liquefied and exported, the proposed Jordan Cove LNG Terminal can provide no benefit to the public to counterbalance any of the impacts which would be associated with its construction.

The Commission orders:

(A) Jordan Cove Energy Project, L.P.'s and Pacific Connector Gas Pipeline, LP's request to reopen the record is denied.

(B) Jordan Cove Energy Project, L.P.'s, Pacific Connector Gas Pipeline, LP's, the State of Wyoming's, and Wyoming Pipeline Authority's requests for rehearing are denied.

⁵⁴ The Applicants and Wyoming indeed cite to a number of cases where the Commission has required that the pipeline execute firm service agreements prior to commencing construction. Applicants' Request for Rehearing at nn.75 and 76 and Wyoming's Request for Rehearing at n.44.

⁵⁵ 15 U.S.C. § 717f(h) (2012).

⁵⁶ March 11 Order, 154 FERC ¶ 61,190 at P 40.

⁵⁷ *Id.* P 43.

(C) Jordan Cove Energy Project, L.P.'s and Pacific Connector Gas Pipeline, LP's request for stay of the March 11 Order is dismissed as moot.

By the Commission.

(S E A L)

Kimberly D. Bose,
Secretary.