

FERC faces pushback on whether it can act now on Jordan Cove

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Pembina urges prompt decision after February delay. Property rights group, LWV join in fray

New York — After US federal regulators hit pause on the Jordan Cove LNG export terminal project and the affiliated Pacific Connector Gas Pipeline, debate has ensued over whether the Federal Energy Regulatory Commission can act right away in light of a recent Oregon objection.

If approved, financed and built, the project could provide the first West Coast LNG export terminal in the Lower-48, adding an outlet for western Rockies and Canadian production.

The Coos Bay, Oregon, project was left in limbo February 20 when FERC voted 2-1 against granting certificate authorization, effectively putting off a decision (CP17-494). More time was needed, Republican commissioners said, to allow Commissioner Bernard McNamee to review Oregon's objection to a certification that the project is consistent with the Oregon Coastal Management Program pursuant to the Coastal Zone Management Act.

Oregon regulators have contended that neither FERC nor the US Army Corps of Engineers can approve the project unless the US Secretary of Commerce first overrides the CZMA objection on appeal.

Jordan Cove reasoning

But Jordan Cove has since written to FERC to argue there is no legal or policy reason the Oregon objection should affect FERC's pending application under Natural Gas Act sections 3 and 7.

FERC's only responsibility is to withhold construction authorization until the state finds the project is consistent with the coastal zone management plan, or until the commerce secretary overrides the state objection, said the developer in a letter to FERC.

It added that none of the Oregon Department of Land Conservation and Development determinations affect issues FERC must consider in evaluating the applications.

"The commission should issue an order authorizing the LNG terminal and granting a certificate to the pipeline without further delay," wrote attorney David Owens on behalf of Jordan Cove and Pacific Connector.

'Simply wrong'

That interpretation drew a clap back from parties objecting to the project.

The Niskanen Center, which is representing landowners affected by Pacific Connector pipeline, wrote February 27 to challenge what it dubbed "significant misstatements of law and policy" by Jordan Cove.

Niskanen Chief Counsel David Bookbinder described as "simply wrong" the notion that coastal zone determinations are outside of what FERC is required to consider in reaching a decision. FERC previously has explained, Bookbinder said, that when it balances public benefits against potential adverse consequences, the latter includes unnecessary disruptions to the environment.

Further, he argued that nearly six years after the Department of Energy first approved exports from the terminal to countries that lack free trade agreements with the US, the project still lacks a contract for any of that gas, and the price of LNG in Asia has collapsed.

"There is no market for [Jordan Cove's] LNG, and thus no basis — even under the commission's unfortunately narrow view of what constitutes 'public convenience and necessity' under Section 7 or the Fifth Amendment's takings clause justifying Pacific Connector taking and destroying people's property for a project that has no hope of ever actually being built and operated," Bookbinder wrote.

Jordan Cove LNG and Pacific Connector Pipeline Project Route

Photo available at: <https://www.spglobal.com/platts/es/market-insights/latest-news/natural-gas/030220-ferc-faces-pushback-on-whether-it-can-act-now-on-jordan-cove>

Market hurdles

Amid the regulatory challenges, Pembina Pipeline executives said February 28 they were sticking with Jordan Cove, which the company inherited when Pembina acquired Veresen in 2017, but Pembina is considering developing or taking a stake in one or more liquefaction projects in British Columbia.

The continued regulatory friction comes as market conditions have made it difficult for projects in development to find buyers, even as a total of 16 Bcf/d of LNG export capacity already has been financed in North America through 2025, including projects currently in operation. Adding to the challenge, the S&P Global Platts JKM spot Asian LNG price index hit an all-time low in February amid global oversupply, and demand destruction has mounted due to the coronavirus.

Niskanen was not alone in challenging the notion that FERC should act now despite the Oregon action.

The League of Women Voters of Coos County, Umpqua Valley, Rogue Valley, and Klamath County argued the project would fail to meet a national interest requirement needed for an override. The argument "runs off course in that the nation whose interest it serves is almost exclusively Canada," the group argued. And whatever national interest might be asserted could not outweigh the adverse coastal effects, it asserted.

FERC commissioners had floated the possibility of another vote several days or a week after their February 20 meeting, as of presstime, a vote had not occurred or been scheduled.

Christi Tezak of ClearView Energy Partners said FERC in the past has issued certificates conditioned on receiving permits prior to starting construction, and those have been upheld on judicial review. "We have long expected that Jordan Cove could get a certificate but fail to secure all state reviews and not get done," she said.