



DEPARTMENT OF JUSTICE
GENERAL COUNSEL DIVISION

January 16, 2015

VIA E-FILING (CP09-6, CP09-7) AND REGULAR U.S. MAIL

Honorable Kimberly D. Bose, Secretary
Federal Energy Regulatory Commission
888 First Street, NE
Washington, D.C. 20426

RE: Oregon LNG Terminal and Pipeline Sections 10/103/404 Application (NWP-2005-748); Request for Coordination of ongoing NEPA process with U.S. Army Corps of Engineers, State of Oregon's Concurrent Authorizations and ESA Consultation

Dear Ms. Bose,

As lead agency, the Federal Energy Regulatory Commission ("FERC" or "Commission") is charged with supervising and coordinating the Oregon LNG Terminal and Pipeline's National Environmental Protection Act ("NEPA") process with Oregon's concurrent authorizations and the applicable federal Endangered Species Act ("ESA") consultation processes. The lead agency is responsible for ensuring that cooperating agencies prepare the relevant environmental impact statement ("EIS") "early in the process," see 40 C.F.R. 1500.5(f), 1501.2, and "*concurrently with and integrated with* environmental impact analyses and related surveys and studies required by . . . [among other acts, the ESA], and *other environmental review* laws and executive orders." See 40 C.F.R. 1502.25(a) (emphasis added). This coordination is necessary to ensure informed decision-making and to avoid improperly delaying environmental analysis until after resources have been committed and in a manner that prejudices the selection of alternatives. See 40 C.F.R. 1502.1, 1502.2, 1502.5, 1506.1(a)(2); *Pit River Tribe v. U.S. Forest Serv.*, 469 F.3d 768 (9th Cir. 2006) (emphasizing an EIS's timing is of great importance). To date, no draft EIS has been published or preliminarily shared with the State of Oregon or the public for the proposed Oregon LNG terminal and pipeline (hereafter, the "Oregon LNG project").

On November 18, 2014, however, the U.S. Army Corps of Engineers ("Corps") issued a public notice seeking comments by January 17, 2015 on the Oregon LNG project's application for permits under the Clean Water Act Section 404 (33 U.S.C. § 1344), Rivers and Harbors Act Section 10 (33 U.S.C. § 403), and the Marine Protection, Research, and Sanctuaries Act of 1972 Section 103 (33 U.S.C. § 1413). It is unclear why the Corps is seeking public comment during this limited time period on permit applications that it cannot approve absent a final EIS and when a draft EIS has yet to be published. The purpose of NEPA's procedures are to "insure that environmental information is available to *public officials and citizens* before decisions are made and before actions are taken. The information must be of high quality. Accurate scientific

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analysis, expert agency comments, and public scrutiny are essential to implementing NEPA.” 40 C.F.R. 1500.1(b).

At present, the only environmental information available relevant to these applications for the public to comment upon is the applicant-prepared project resource reports, which may not reflect the applicant’s current proposal and that do not include any alternatives to the proposed action that will be analyzed in the draft EIS. Moreover, this environmental information does not include the technical analysis of any federal agencies whose expertise in their respective program areas is essential for evaluation of these applications. To foreclose the State’s officials’ and citizens’ ability to comment on these applications absent such scientific analysis not only undermines the sound decision-making principles that NEPA requires but it results in wasteful duplication of efforts by our state agency officials and citizens. *See* 40 C.F.R. 1506.2(b) (“Agencies shall cooperate with state and local agencies to the fullest extent possible to reduce duplication between NEPA and state and local requirements . . .”).

The State of Oregon therefore requests the Commission, as lead agency, to coordinate this NEPA process to insure the public’s opportunity to comment on high quality, accurate environmental information that includes consideration of alternatives. The State also requested by a separate comment letter sent to the Corps that it extend its comment period on the permit applications associated with the Oregon LNG project until thirty days after issuance of the draft EIS and that it await that EIS before performing any further review of those necessary permits.

NEPA compliance rests on the lead agency’s supervision of State and federal concurrent processes to avoid foreclosing federal agencies’ consideration of alternatives. We hope the Commission will take this opportunity to realign its NEPA process to avoid violating both the spirit and obligations of that federal law.

Sincerely,



Paul Garrahan
Attorney-in-Charge, Natural Resources Section

cc: Richard Chong, U.S. Army Corps of Engineers
Richard Whitman, Oregon Governor’s Office
Dick Pedersen, Oregon Department of Environmental Quality
Mary Abrams, Oregon Department of State Lands
Jim Rue, Oregon Department of Land Conservation and Development

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