ALLEGATIONS OF IMPROPER PRACTICES, COOS COUNTY HEARING ON SOUTH DUNES POWER PLANT, SEPTEMBER 3, 2013
By Jonathan Hanson, Interested Party

BACKGROUND
The Federal Energy Regulatory Commission (FERC) must complete an EIS and issue a Record of Decision before any components of the proposed Jordan Cove LNG Project can be implemented. FERC’s planning and decision process leading to a decision to approve or deny the permit must be carried out in full compliance with the National Environmental Policy Act (NEPA). This means that FERC’s process must "insure that environmental amenities and values are given appropriate consideration in decision-making along with economic and technical considerations" and that an environmental impact statement (EIS) that records and documents this process must be prepared.1

Unfortunately, FERC’s record of compliance with NEPA is less than sterling. Almost a decade ago, US Senator Joe Lieberman, in his capacity as Chairman of the Senate Committee on Governmental Affairs, opened a hearing looking into FERC’s operations with the statement: "FERC often seems to view itself not as a regulator but as a facilitator".2 This propensity on the part of FERC was clearly demonstrated during the NEPA process it conducted leading to the now-vacated issuance of a permit for the Jordan Cove LNG import proposal. The environmental impact statement (EIS) provided was grossly deficient and clearly violated both the letter and intent of NEPA. It was, for all practical purposes, a justification of a pre-conceived decision rather than an objective analysis. The Oregon Attorney General succinctly captured the situation when he stated "FERC must withdraw the order authorizing the Jordan Cove Project. Before reissuing a decision on the Jordan Cove project...FERC must perform the required analysis of the effects of the project on the public interest and on the environment under the NEPA".3

Approximately a year ago, FERC initiated an entirely new NEPA process for the Jordan Cove LNG export proposal. The public portion of the scoping process has been completed4 and a Draft EIS is anticipated late this year.

While the preparation of a new EIS is underway, FERC has specific responsibilities under NEPA relating to actions by the applicant during the interim. The primary purpose of this statement, most of which was sent to Governor Kitzhaber eight months ago, is to show how FERC has failed to fulfill these duties, and how, as a result, the State of Oregon and Coos County have been manipulated by the applicant et al. to take advantage of the situation.

PRESENT SITUATION
NEPA regulations expressly prohibit certain actions while an EIS process is underway. Specifically, until a final record of decision is issued, FERC is not to permit any action concerning the proposal which would limit the choice of reasonable alternatives addressed

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1 National Environmental Policy Act of 1969, 42 USC 4332, Section 102 (b).
2 Opening statement, Senate Committee on Governmental Affairs, Hearing on FERC oversight of ENRON Corporation, November 12, 2002
4 State of Oregon Scoping Comments for the Jordan Cove LNG export project, #3729689, October 29, 2012
in the EIS, including the option of not completing this particular project at all, ever.\(^5\)

In cases involving a non-federal applicant, such as this Jordan Cove case, the regulations strongly emphasize FERC's responsibility to also limit the actions of the applicant while the NEPA process is underway. If the applicant takes any actions that would tend to bias or influence the reasonable alternatives (such as influencing or changing the outcome of local elections or forming PACS for recruiting, propagandizing, and financing the campaigns of city, county, state and federal candidates – as has happened here in Coos County --) FERC has the responsibility to tell the applicant to cease and desist, and may take injunctive measures under NEPA up to and including a refusal to process the application.\(^6\)

The identification and the objective, un-biased evaluation of alternative ways of meeting the described need for the proposed action is the very heart of the NEPA process. In cases involving a non-federal applicant, FERC must still consider all alternatives that are practical or feasible from a technical and economic standpoint rather than simply desirable from the standpoint of the applicant.\(^7\)

As of December 2012, the following permits and applications had been or were being processed for the Jordan Cove project by various State and county agencies within Oregon:

1. (HBCU-07-04) Coos County Land Use Approval for the Upland Facilities of the LNG Terminal.
2. (HBCU-07-03) Coos County land Use Approval for the Marine Facilities of the LNG Terminal
3. (ZON2007-00034) Mitigation Site Approval by the City of Coos Bay.
4. (ACU-08-10/CL-08-01) Coos County land use approval for stockpiling and sorting of sand.
5. (AM-09-03/RZ-09-02/HBCU-09-01) Coos County rezoning for mitigation site.
6. (HBCU-10-01) Coos County land use approval for gas pipeline.
7. (09-045) Douglas County land use approval for gas pipeline.
8. (ABI-12-01) Coos County boundary adjustment for the Coos Bay Estuary Management Plan.
9. (ACU-12-12/ABI-12-02) Coos County boundary adjustment for the Coos Bay Estuary Management Plan.
10. (ACU-12-16/ACU-12-17/ACU-12-18) Coos County permit for fill in beach and dune areas.
11. (DSL Application 37712) Dept. of State Lands removal/fill permit for construction of marine facilities of the LNG terminal.
12. (File No. SP-12-02) Coos County Administrative Site Plan Review Application for the Jordan Cove South Dunes Power Plant Project

\(^5\) CEQ, Regulations for implementing the National Environmental Policy Act, 40 CFR 1500-1508, July 1, 1986, Section 1506.1(a)(2).
\(^7\) CEQ, "A Citizen's Guide to the NEPA", December, 2007, pg.16
The construction and operation of the Jordan Cove LNG export terminal is entirely
dependent on the issuance of a permit by FERC. Under existing law, FERC is required to
document its decision-making process leading to the issuance or non-issuance of the permit
via an EIS prepared in conformance with NEPA regulations. The fact that these applications
for State permits and approvals have been or are being processed at this time, months in
advance of the publication of a Draft EIS, tends to lend credence to the following
assumptions:

- the Jordan Cove applicant, by spending the time, effort, and funding to
  pursue the State permits in advance of the EIS, fully believes FERC's EIS
  process will result in the issuance of the federal permit.

- the State of Oregon, by processing the permit applications at this time,
  essentially concurs.

- FERC, by not curtailing the activity of the applicant prior to the
  completion of the EIS process as required by the NEPA regulations,
  apparently also views the issuance of the federal permit as a foregone conclusion.

NEPA regulations are quite explicit as to the role and function of an EIS:

An EIS should "...serve practically as an important contribution to the decision making process and
will not be used to rationalize or justify decisions already made". (40 CFR 1502.5)

An EIS "is more than a disclosure document. It shall be used by Federal officials in conjunction with
other material to plan actions and make decisions." (40 CFR1502.1)

An EIS is meant to document how, specifically, environmental considerations were incorporated with
economic and technical considerations in all plans and projects (NEPA 102(A),(B))

An EIS "...must be objectively prepared and not slanted to support the choice of the agency's
preferred alternative over the other reasonable and feasible alternatives". (Federal Register Vol. 46,
No.55, 18026-18038, March 23, 1981. Question # 4c)

In the case of the Jordan Cove LNG export proposal, based on its failure to limit the actions
of the applicant prior to the completion of the EIS process as called for in existing
regulations, FERC has clearly demonstrated that it views the EIS not as a critical part of the
decision process but rather as a disclosure and justification document relating to a decision
already made. This posture is a direct violation of both the letter and intent of the NEPA.

Unfortunately, even perhaps inadvertently, the State of Oregon is giving the appearance of
facilitating this malfeasance on the part of FERC by processing the various permits and
certifications under its jurisdiction prior to the completion of the EIS process.

An EIS, in and of itself, is not a decision document. Rather, after public review and
comment, it is followed up by a formal record of decision (ROD) which documents how and
why one of the alternatives analyzed in the EIS was selected for implementation.
How can Oregonians be expected to objectively evaluate the range of alternatives that would be provided in a valid EIS if, in fact, Oregon state agencies have already issued permits and certifications for one of the alternatives beforehand?

A citizen of Coos County faces a disturbingly similar dilemma. In the August 20, 2013 Coos County Hearing on the proposed South Dunes Power Plant, information was brought to light that the County Planning Department has completely redefined the requirements for an applicant to propose and construct a facility in a County Industrial area, eliminating the need for a site plan and thereby eliminating any opportunity for citizen participation in such decisions, causing irreparable harm to our rights to due process. This is an outright effort to fast-track this project, and in my view implies that the applicant has convinced the County to conspire and to aid and abet them in this effort. This puts the County in the position of directly violating NEPA, while also violating Oregon’s public meeting law, and blatantly violating the public’s right to due process. It also puts the County on thin ice regarding violation of the ORICO laws.

SUGGESTIONS FOR FURTHER ACTION

Jonathan Hanson and Citizens Against LNG have already requested that all permits and certifications already issued by State and Counties relevant to this case be withdrawn, suspended, canceled, or held in abeyance insofar as such actions are legally feasible. This would of course include any applications under the jurisdiction of Cocos County.

Jonathan Hanson and CALNG have also requested that the State of Oregon refuse to accept and process any further applications for permits, certifications, etc. until the completion of the EIS process by FERC and the issuance of a formal record of decision which completes the NEPA process. The intervener hereby makes the same request of the County.

Federal law guarantees that Oregonians are entitled to a clear and rational explanation relating to how technical, economic, and environmental considerations were blended to arrive at a final decision. The State and County should take all measures to ensure its citizens receive that to which they are entitled.

Since a potential environmental disaster is being deliberately planned and promoted by unscrupulous business and governmental interests in Coos County and the state of Oregon, the intervener now requests: 1) That the State of Oregon and the County of Coos actively and aggressively participate in the EIS process for all components of the Jordan Cove LNG proposal and refuse to accept or process any further applications until a Record of Decision is reached by FERC upon completion of the EIS, and 2) That the Hearing Officer recommend that Coos County CEASE AND DESIST in this matter, so the County can come into compliance with public law and exercise fiduciary responsibility to protect the irreplaceable public commons and the constitutional due process rights of its citizens.
Based on all of the above, I am herewith requesting the Hearing Officer to evaluate the applicability of the Oregon Racketeering Influenced and Corrupt Organizations Act, as codified in ORS 166.715 to 166.735, to the County's actions pursuant to these proceedings, and the possible legal and financial consequences for the taxpayers of this County.

Signed,

[Signature]

Jonathan Hanson
Concerned Coos County Citizen