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October 6, 2020

Ms. Kimberly D. Bose, Secretary
Federal Energy Regulatory Commission
888 First Street, N.E.
Washington, D.C. 20426

RE: The 2020 Oregon Wildfires Represent Significant New Information Requiring the Preparation of a Supplemental Environmental Impact Statement for the Jordan Cove Energy Project, Docket No. CP17-494-000, CP17-494-001; *Evans, et al v.. FERC* (D.C. Cir. 20-1161)

Dear Ms. Bose:

We write to bring to your attention significant new information requiring supplementation of existing environmental analysis for the Jordan Cove Energy Project since the FEIS was released in November 2019, and FERC's issuance of the Certificate of Public Convenience and Necessity in March 2020. Western Oregon is experiencing an unprecedented wildfire season. Oregon Governor Brown has declared a state of emergency, calling the wildfires a "once-in-a-generation event." These fires constitute significant new information that warrants preparation of a supplemental EIS.

One of the ongoing fires, the South Obenchain Fire, burned across the approved route for the Pacific Connector Gas Pipeline (PCGP). Over 7 miles of the pipeline right-of-way are within the current fire perimeter, as well as many more miles of access roads and TEWAs that were approved for use. The affected area is approximately between mile post 133 and 141, near the town of Shady Cove. Because the wildfire is not yet contained, and because wildfire season is not yet over, the entirety of effects to the pipeline right-of-way is unknown.

Between the South Obenchain Fire and the nearby Almeda fire, over 3,000 structures were lost and thousands of people had to flee their homes. The final death toll has not yet been tallied. The fires are not yet contained.

When FERC issued the Certificate of Public Convenience and Necessity in March 2020, the soils in this area of the South Obenchain Fire were healthy and relatively erosion-free. There is no mention in the FEIS of any soil problems in that area. However, depending on the severity of the South Obenchain fire, the soils could now be burnt, fragile, and highly erodible. Revegetation after pipeline construction will be more difficult, if not impossible.

Other items that should be considered in a Supplemental EIS include, but is not limited to:

- The fire season in Oregon may coincide with the approved construction window. Waiver of fire season restrictions limiting project construction should not be granted, given the high risk of wildfire. The public should know the environmental risks associated with mechanical operations during high wildfire risk;
- Where the pipeline right-of-way intersects with the Obenchain and other fires, the structural soundness of the ground and surrounding landscape may have changed. Specifically, the right-of-way is already very steep and rugged, and may now be more susceptible to erosion, landslides, and other instability. This information needs to be disclosed and analyzed;
- How future wildfire may affect storage of pipe segments, with corrosion-resistant coating, especially embers or ash falling on the coating;
- Effects of fire on mainline block valves that do not have automatic shut off valves;
- In the event of a fire during construction, how evacuation of a large numbers of workers would compete with thousands of residents and members of the public evacuating at the same time. There must be a rational and organized evacuation plan for the entire pipeline route that includes both construction workers and the public/residents;
- How wildfire has affected rare plants and animals, which may require additional protection given the effects of the fire. For instance, from MP 113 through 155, including the area burned by the South Obenchain fire, contains habitat for the Gentner's fritillary. (FEIS 4-369). An individual plant has been identified at MP 142, close enough to the fire perimeter to be impacted by smoke and ash;
- The Obenchain fire affected terrestrial wildlife habitat, including critical habitat listed under the Endangered Species Act (ESA). Other 2020 fires may also affect the environmental baseline. These fires likely changed the environmental baseline for ESA consultation, requiring reinitiation;
- The federal land management agencies have proposed forest plan amendments to authorize construction of the pipeline right-of-way the need for which may have changed based on the fires, and there may be a need for new and different plan amendments.

Moreover, because the 2020 wildfire season is not yet over, it is possible – even likely – that additional fires between now and the end of the year may also affect the Pacific Connector Pipeline right-of-way and the resources located there.

The 2020 wildfire season represents significant new information that is relevant to the environmental impacts of the Jordan Cove Energy Project. 40 C.F.R. § 1502.9(c)(1)(ii). As you are aware, “the purpose of NEPA is to foster better decision making and informed public participation for actions and affect the environment.” *Or. Natural Res. Council Action v. U.S. Forest Service*, 293 F.Supp.2d 1200, 1204 (D. Or. 2003)(“*ONRC*”) (citing 42 U.S.C. § 4321; 40

C.F.R. § 1501.1(c)). “It ensures that the agency, in reaching its decision, will have available, and will carefully consider, detailed information concerning significant environmental impacts; it also guarantees that the relevant information will be made available to the larger audience that may also play a role in both the decisionmaking process and the implementation of that decision.” *Friends of the Clearwater v. Dombeck*, 222 F.3d 552, 557 (9th Cir. 2000) (quoting *Robertson v. Methow Valley Citizens Council*, 490 U.S. 332, 349, 109 S.Ct. 1835 (1989)). “Stated differently, NEPA’s purpose is to ensure that ‘the agency will not act on incomplete information, only to regret its decision after it is too late to correct.’” *Id.*

“In view of this purpose, an agency that has prepared an EIS cannot simply rest on the original document. The agency must be alert to new information that may alter the results of its original environmental analysis, and continue to take a ‘hard look at the environmental effects of its planned action, even after a proposal has received initial approval.’” *Friends of the Clearwater*, 222 F.3d at 557 (quoting *Marsh* 490 U.S. at 374); *Blue Mountains Biodiversity Project v. U.S. Forest Service*, 229 F.Supp.2d 1140, 1148 (D. Or. 2002). Indeed, when a “major federal action” remains to occur and the initial NEPA document does not adequately discuss “significant new circumstances or information relevant to environmental concerns and bearing on the proposed action or its impacts,” then the action agency is required to supplement the existing environmental analysis. 40 C.F.R. § 1502.9(c)(1)(ii); *Marsh v. Or. Natural Res. Council*, 490 U.S. 360, 374 (1989); *Marsh v. Or. Natural Res. Council*, 490 U.S. 360, 371, 374 (1989); *Or. Natural Res. Council Action v. United States Forest Serv.*, 2004 U.S. Dist. Lexis 59034, 24 (D. Or., Aug. 9, 2006).

Given the importance of the South Obenchain fire and its impacts, as well as additional fires from the 2020 wildfire season, we wish to bring this significant new information to your attention. We believe this information is directly relevant to the environmental consequences of the Jordan Cove Energy Project, and may change the effects determinations reached by the FERC. To that end, we request that the action and consulting agencies conduct supplemental environmental analysis regarding the effects of the South Obenchain Fire specifically, and the 2020 fire season in general. *Seattle Audubon Soc. v. Espy*, 998 F.2d 699, 704 (9th Cir. 1993) (an agency must re-examine its decision when the EIS “rests on stale scientific evidence... and false assumptions”). Reinitiation of consultation under the ESA is also appropriate. 50 C.F.R. § 402.16; *Salmon Spawning & Recovery All. v. Gutierrez*, 545 F.3d 1220, 1229 (9th Cir. 2008) (“The duty to reinitiate consultation lies with both the action agency and the consulting agency”); *Envtl. Prot. Info. Ctr. v. Simpson Timber Co.*, 255 F.3d 1073 (9th Cir. 2001) (“The duty to reinitiate consultation lies with both the action agency and the consultation agency”).

Thank you for your attention to this matter.

Sincerely,



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