No. 20-1161 (consolidated with Nos. 20-1171, 20-1170, 20-1172, 20-1180, 20-1198)
(ORAL ARGUMENT REQUESTED)

IN THE UNITED STATES COURT OF APPEALS
FOR THE DISTRICT OF COLUMBIA CIRCUIT

DEBORAH EVANS, *et al.*,
Petitioners,

v.

FEDERAL ENERGY REGULATORY COMMISSION,
Respondent.

On Petition for Review of Orders of the Federal Energy Regulatory Commission

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DEBORAH EVANS, *ET AL.*, MOTION FOR SUMMARY VACATUR OR, IN THE ALTERNATIVE, FOR A STAY OF THE CERTIFICATE

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CERTIFICATE AS TO PARTIES, RULINGS, AND RELATED CASES

Pursuant to Circuit Rules 27(a)(4) and 28(a)(1)(A), Petitioners certify as follows:

1. Parties and *Amici*

This case is a petition for review of an agency action, not an appeal from the ruling of a district court. The parties in this case are as follows:

Petitioners in **this action**, No. 20-1161: Landowners Deborah Evans, Ronald C. Schaaf, Evans Schaaf Family LLC, Bill Gow, Sharon Gow, Wilfred E. Brown, Elizabeth A. Hyde, Barbara L. Brown, Pamela Brown Ordway, Chet N. Brown, Neal C. Brown Family LLC, Stacey McLaughlin, Craig McLaughlin, Richard Brown, Twyla Brown, Clarence Adams, Stephany Adams, Will McKinley, Wendy McKinley, Frank Adams, Lorraine Spurlock, Toni Woolsey, Alisa Acosta, Gerrit Boshuizen, Cornelis Boshuizen, John Clarke, Carol Munch, Ron Munch, Mitzi Sulffridge, James Dahlman, and Joan Dahlman.

Please see attached Corporate Disclosure Statement for Rule 26.1 disclosures.

Petitioners in consolidated action No. 20-1170: Jordan Cove Energy Project L.P., and Pacific Connector Gas Pipeline, L.P.

Petitioners in consolidated action No. 20-1171: Sierra Club, Rogue Riverkeeper, Rogue Climate, Cascadia Wildlands, Center for Biological Diversity, Citizens for Renewables/Citizens Against LNG, Friends of Living Oregon Waters, Oregon Physicians for Social Responsibility, Oregon Wild, Oregon Women's Land Trust, and Waterkeeper Alliance.

Petitioners in consolidated action No. 20-1172: Confederated Tribes of the Coos, Lower Umpqua and Siuslaw Indians, and Cow Creek Band of Umpqua Tribe of Indians.

Petitioner in consolidated action No. 20-1180: Natural Resources Defense Council, Inc.

Petitioners in consolidated action No. 20-1198: State of Oregon, Oregon Department of Environmental Quality, Oregon Department of Land Conservation and Development, Oregon Department of Fish and Wildlife, and Oregon Department of Energy.

Respondent: Federal Energy Regulatory Commission.

Movant-Intervenors for Respondent Federal Energy Regulatory Commission: Jordan Cove Energy Project L.P. and Pacific Connector Gas Pipeline, LP.

Amici: At present, no parties have moved for leave to participate as *amici curiae*.

2. Rulings Under Review

Petitioners seeks review of the following Federal Energy Regulatory Commission orders: (1) Order Granting Authorizations Under Sections 3 and 7 of the Natural Gas Act, Jordan Cove Energy Project, L.P., Pacific Connector Gas Pipeline, L.P., 170 FERC ¶ 61,202 (March 19, 2020); (2) Order Granting Rehearing for Further Consideration, Jordan Cove Energy Project, L.P., Pacific Connector Gas Pipeline, L.P., (May 18, 2020) (tolling order); and (3) Order on Rehearing, Jordan Cove Energy Project, L.P., Pacific Connector Gas Pipeline, L.P., 171 FERC ¶ 61,136.

3. Related Cases

The petitions on review have not previously been before this Court or any other court. Counsel for Landowner Petitioners is unaware of any related cases within the meaning of Circuit Rule 28(a)(1)(C).

Dated: July 6, 2020.

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PETITIONERS' CORPORATE DISCLOSURE STATEMENT

Neal C. Brown LLC Family is organized under the laws of Oregon for the purpose of maintaining the property affected by the Pacific Connector Pipeline located in Douglas County, Oregon parcel numbers R10266, R11298, and R11338, and other properties in Oregon. Neal C. Brown LLC Family has no parent company, and there are no publicly held companies that have a 10 percent or greater ownership interest in Neal C. Brown LLC Family.

The *Evans Schaaf Family LLC* is organized under the laws of Oregon for the purpose of maintaining the property affected by the Pacific Connector Pipeline located in Klamath County, Oregon, parcel number R71040, tract KH-569.000, as well as other properties in Oregon. Evans Schaaf Family LLC has no parent company, and there are no publicly held companies that have a 10 percent or greater ownership interest in Evans Schaaf Family LLC.

Dated: July 6, 2020

Respectfully submitted,

/s/ David Bookbinder

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TABLE OF CONTENTS

CERTIFICATE AS TO PARTIES, RULINGS, AND RELATED CASES....... i

CORPORATE DISCLOSURE STATEMENTS iv

TABLE OF CONTENTS v

TABLE OF AUTHORITIES vii

GLOSSARY.......... xiii

INTRODUCTION 1

ARGUMENT 4

I. Summary Vacatur is Warranted because *Oberlin* Expressly Rejected Every Reason FERC Gives for Why it May Credit Export Agreements Towards a Section 7 Finding of Public Convenience and Necessity 4

A. Natural gas exports are not "transportation in interstate commerce," and do not provide any public benefit under the Natural Gas Act or the Takings Clause.......... 4

B. Even if FERC *could* credit "domestic benefits" towards a Section 7 certificate for an export pipeline, they could not do so here because the Pipeline will carry only Canadian gas.......... 10

C. Even if FERC *could* credit exports towards a Section 7 determination, there is no market demand for the Pipeline's gas.......... 13

II. In the Alternative, this Court Should Stay the Certificate.......... 15

A. Absent a stay, Landowners will be irreparably injured.......... 16

1. Condemnation is an irreparable injury to these Landowners 17

2. "Quick take" condemnation can happen long before this Court's decision.......... 18

3. A permanent easement is just that, and can be used for other purposes if the Certificate is vacated 20

4. Impacts to Landowners' property will be devastating and permanent 23

B. The balance of harms weighs towards granting a stay 25

C. A stay is in the public interest 26

1. A stay will protect the Landowners' constitutional rights and the public interest 26

2. The global pandemic warrants a stay in the public interest 27

CONCLUSION 30

CERTIFICATE OF COMPLIANCE

CERTIFICATE OF SERVICE

TABLE OF AUTHORITIES

Cases **Pages**

7–Eleven, Inc. v. Khan,
977 F. Supp. 2d 214 (E.D.N.Y. 2013) 17

Akiachak Native Cmty. v. Jewell,
995 F. Supp. 2d 7 (D.D.C. 2014) 27

Allegheny Def. Project v. Fed. Energy Regulatory Comm'n,
No. 17-1098, 2020 WL 3525547 (D.C. Cir. June 30, 2020) 19

Alliance for the Wild Rockies v. Cottrell,
632 F.3d 1127 (9th Cir. 2011) 23

Barbosa v. Solomon,
243 B.R. 562 (D. Mass. 2000) 27

Beistline v. City of San Diego,
256 F.2d 421 (9th Cir. 1958) 20

Border Pipe Line Co. v. Fed. Power Comm'n,
171 F.2d 149 (D.C. Cir. 1948) 5–6, 12

B&J Oil & Gas v. FERC,
353 F.3d 71 (D.C. Cir. 2004) 17

Carpenter Tech. Corp. v. City of Bridgeport,
180 F.3d 93 (2d Cir. 1999) 17

City of Oberlin, Ohio v. FERC,
937 F.3d 599 (D.C. Cir. 2019) 3–9, 12

Cottonwood Christian Ctr. v. Cypress Redev. Agency,
218 F. Supp. 2d 1203 (C.D. Cal. 2002) 27

Cuomo v. U.S. Nuclear Regulatory Comm'n,
772 F.2d 972 (D.C. Cir. 1985) 15

Distrigas Corp. v. Fed. Power Comm'n,
495 F.2d 1057 (D.C. Cir. 1974) 5–6, 12

E. Tennessee Nat. Gas Co. v. Sage,
361 F.3d 808 (4th Cir. 2004) 27 n.12

Entek GRB, LLC v. Stull Ranches, LLC,
885 F. Supp. 2d 1082 (D. Colo. 2012) 27

Girl Scouts of Manitou Council, Inc. v. Girl Scouts of U.S. of Am., Inc.,
549 F.3d 1079 (7th Cir. 2008) 17

HTK Mgmt., L.L.C. v. Seattle Popular Monorail Auth.,
155 Wash. 2d 612 (2005) 20

Kimball Laundry Co. v. United States,
338 U.S. 1 (1949) 18

Knick v. Township of Scott, Pennsylvania,
--- U.S. ---, 139 S.Ct. 2162 (2019) 18 n.8

League of Defenders/Blue Mountains Biodiversity Project v. Connaughton,
752 F.3d 755 (9th Cir. 2014) 23

Minisink Residents for Envtl. Pres. & Safety v. FERC,
762 F.3d 97 (D.C. Cir. 2014) 14–15

Mountain Valley Pipeline, LLC v. 6.56 Acres of Land, Owned by Sandra Townes Powell,
915 F.3d 197 (4th Cir. 2019) 18–19

Myersville Citizens for a Rural Cmty., Inc. v. FERC,
783 F.3d 1301 (D.C. Cir. 2015) 14

Philipp v. Fed. Republic of Germany,
No. 15-CV-00266, 2020 WL 474447 (D.D.C. Jan. 29, 2020) 16

Population Inst. v. McPherson,
797 F.2d 1062 (D.C. Cir. 1986) 16

Reichelderfer v. Quinn,
287 U.S. 315 (1932) 20

Reichling v. Covington Lumber Co.,
57 Wash. 225 (1910) 20

Roederer v. Treister,
2 F. Supp. 3d 1153 (D. Or. 2014) 27

Shvartser v. Lekser,
308 F. Supp. 3d 260 (D.D.C. 2018) 17

Taxpayers Watchdog, Inc. v. Stanley,
819 F.2d 294 (D.C. Cir. 1987) 4

Transcon. Gas Pipe Line Co., LLC v. Permanent Easements for 2.14 Acres & Temp. Easements for 3.59 Acres in Conestoga Twp., Lancaster Cty., Pennsylvania,
907 F.3d 725 (3d Cir. 2018) 19

Transwestern Pipeline Co. v. 17.19 Acres of Prop. Located in Maricopa Cty.,
550 F.3d 770 (9th Cir. 2008) 19

United Church of the Med. Ctr. v. Med. Ctr. Comm'n,
689 F.2d 693 (7th Cir. 1982) 18

Walker v. Washington,
627 F.2d 541 (D.C. Cir. 1980) 4

<u>Rules</u>

Cir. R. 18(a). 1

Cir. R. 18(a)(1) 15

Cir. R. 27(g). 1

Fed. R. App. P. 18(a) 1

<u>Statutes</u>

5 U.S.C. § 705 .... 1 n.1

15 U.S.C. § 717 *et. seq.* 1

15 U.S.C. § 717b. 7

15 U.S.C. § 717f(c)(2)... 4

15 U.S.C. § 717f(h). 2

Constitutional Provisions

U.S. Const. amend. V 3–5, 8, 13, 18 n.8, 25, 26

Orders

Atlantic Coast Pipeline LLC v. 1.52 Acres, More or Less, in Nottoway County, VA et al.,
No. 3:17-CV-814, D.E. 41 (E.D. Va. Mar. 9, 2018)...................................... 19, 22

Gas Transmission Northwest, LLC v. 15.83 Acres of Permanent Easement, et al.,
No. 2:15-CV-00359, D.E. 71 (D. Or. Aug. 27, 2015)................................... 19, 22

Jordan Cove Energy Project L.P., *Pacific Connector Gas Pipeline*,
170 FERC ¶ 61202 (March 19, 2020) 1–2, 6–7, 22 n.9, 23, 25

Jordan Cove Energy Project L.P., *Pacific Connector Gas Pipeline*,
171 FERC ¶ 61136 (May 22, 2020)... 1 n.1, 7–9, 12–15

Millennium Pipeline Co., L.L.C.,
140 FERC ¶ 61045 (July 17, 2012) 15 n.7

Mountain Valley Pipeline, LLC v. An Easement to Construct,
No. 2:17-CV-04214, D.E. 231 (S.D. W. Va. Feb. 21, 2018) 19

Northern Plains Resource Council v. U.S. Army Corps of Engineers,
No. CV 19-44, D.E. 151 (D. Mont. May 11, 2020)....................................... 2 n.3

Office of the Governor of the State of Oregon,
Executive Order No. 20-12 (Mar. 23, 2020) 27–28

PennEast Pipeline v. Permanent Easement in Hopewell Township,
No. 3:18-CV-001909, Order, D.E. 34 at 4–5 (D.N.J. Jan. 25, 2019) 20

Transcontinental Gas Pipe Line Co., LLC v. Permanent Easement and Temporary Easements in Conestoga Township,
No. 5:17-CV-722, D.E. 35 (E.D. Pa. Aug. 23, 2017) 19, 22

Agency filings

Landowner Comments on FERC's Draft Environmental Impact Statement for the Jordan Cove Energy Project, Docket Nos. CP17-494, CP17-495, FERC Accession No. 20190705-5199 (July 5, 2019) 6

McCullough Research, *Natural Gas Supplies for the Proposed Jordan Cove LNG Terminal* (July 3, 2019), Docket Nos. CP17-494, CP17-495, FERC Accession No. 20190705-5199 10

McCullough Research, *Supplement to July 3, 2019 report entitled "Natural Gas Supplies for the Proposed Jordan Cove LNG Terminal"* (Apr. 20, 2020), Docket Nos. CP17-494, CP17-495 FERC Accession No. 20200420-5239 10

Pipeline's Answer to Petitioner's Motion to Stay,
Docket Nos. CP17-494, CP17-495, FERC Accession No. 20200505-5223 (May 5, 2020) 17

Sierra Club and Niskanen Center, *et al.* Request for Rehearing and Stay of Order, Docket Nos. CP17-494, CP17-495 FERC Accession No. 20200420-5239 (Apr. 20, 2020) ....1 n.1, 2 & n.2, 7

Synapse Energy Economics, *Foreign or Domestic? The source of natural gas that will be processed at the proposed Jordan Cove LNG facility* (July 2, 2019), Docket Nos. CP17-494, CP17-495, FERC Accession No. 20190705-5199 10

Articles and treatises

11A Fed. Prac. & Proc. Civ. § 2948.2 (3d ed.) 25

CDC, *Older Adults*,
available at https://www.cdc.gov/coronavirus/2019-ncov/need-extra-precautions/older-adults.html (last accessed June 8, 2020) 29 n.15

CDC, *People Who Are At Higher Risk for Severe Illness*, *available at* https://www.cdc.gov/coronavirus/2019-ncov/need-extra-precautions/people-at-higher-risk.html (last accessed June 8, 2020); CDC, *Older Adults*, *available at*

https://www.cdc.gov/coronavirus/2019-ncov/need-extra-precautions/older-adults.html (last accessed June 8, 2020) 28–29 n.14

Cristin Kent, *Condemned If They Do, Condemned If They Don't: Eminent Domain, Public Use Abandonment, and the Need for Condemnee Protections*,
30 Seattle U. L. Rev. 503, 504 (2007) 20–21

Kallanish Energy, *Pembina backs Jordan Cove LNG, eyes BC LNG projects* (Mar. 2, 2020),
https://www.kallanishenergy.com/2020/03/02/pembina-backs-jordan-cove-lng-eyes-bc-lng- projects/ 26 n.10

N.Y. Times, *Oregon Coronavirus Map and Case Count*,
https://www.nytimes.com/interactive/2020/us/oregon-coronavirus-cases.html#map (last visited July 2, 2020) 28 n.13

OPB, *Coronavirus Patient Surge In Oregon Prompts Joint Hospital Efforts, Delayed Medical Treatments* (Mar. 16, 2020),
https://www.opb.org/news/article/coronavirus-patient-surge-in-oregon-prompts-joint-hospital-efforts 29 n.16

Pembina Pipeline Takes Action to Protect Stakeholders and Significantly Reduces 2020 Capital Spending in Response to the Recent Decline in Global Energy Prices (Mar. 18, 2020),
http://www.pembina.com/media-centre/news-releases/news-details/?nid=135467 .... 26 n.11

State Attorneys General Letter (May 7, 2020), *available at*
https://portal.ct.gov/-/media/AG/Press_Releases/2019/FERC---2020-5-6-Moratorium-Letter-DRAFT-clean.pdf
(last visited June 11, 2020).. 29–30 n.18

The News Review, *CDC says Douglas County one of the four worst counties to be in during COVID-19 crisis* (Mar. 25, 2020),
http://www.nrtoday.com/news/health/coronavirus/cdc-says-douglas-county-one-of-the-four-worst-counties-to-be-in-during-covid/article_e764438a-7d45-511f-8df4-553db4e044ba.html 29 n.17

GLOSSARY

Certificate Order	*Jordan Cove Energy Project L.P.*, *Pacific Connector Gas Pipeline*, 170 FERC ¶ 61202 (March 19, 2020)
CO	*Jordan Cove Energy Project L.P.*, *Pacific Connector Gas Pipeline*, 170 FERC ¶ 61202 (March 19, 2020
Commission	Federal Energy Regulatory Commission
DOE	Department of Energy
FEIS	Final Environmental Impact Statement
FERC	Federal Energy Regulatory Commission
JCEP Agreement	Precedent agreements for shipping of natural gas between Jordan Cove Energy Project, L.P. ("LNG Terminal") and Pacific Connector Gas Pipeline, L.P. ("Pipeline")
Landowners	Petitioners in Case No. 20-1161
LNG Terminal	Jordan Cove Energy Project, L.P.
NEB	Canada's National Energy Board
NGA	Natural Gas Act
Pipeline	Pacific Connector Gas Pipeline, L.P.
Project	Jordan Cove Energy Project, L.P. ("LNG Terminal") and Pacific Connector Gas Pipeline, L.P. ("Pipeline")
Rehearing Order	*Jordan Cove Energy Project L.P.*, *Pacific Connector Gas Pipeline*, 171 FERC ¶ 61136 (May 22, 2020)
Rehearing Request	Sierra Club and Niskanen Center, *et al.* Request for Rehearing and Stay of Order (Apr. 20, 2020) (Ex. 2)

RO	*Jordan Cove Energy Project L.P.*, *Pacific Connector Gas Pipeline*, 171 FERC ¶ 61136 (May 22, 2020
RR	Sierra Club and Niskanen Center, *et al.* Request for Rehearing and Stay of Order (Apr. 20, 2020) (Ex. 2)

Petitioners are Oregon landowners under imminent threat of having their land taken, during a global pandemic, for a natural gas pipeline that is unlikely to ever be built. Pursuant to Circuit Rule 27(g), Petitioners ("Landowners") respectfully move for summary vacatur of the Commission's order granting a certificate of public convenience and necessity for the Pacific Connector Pipeline under Section 7 of the Natural Gas Act. *Jordan Cove Energy Project L.P.*, *Pacific Connector Gas Pipeline* ("JCEP"), 170 FERC ¶ 61202 (2020) (Ex. 1) ("Certificate Order" or "CO").[1] In the alternative, pursuant to FRAP and Circuit Rule 18(a), Landowners seek a stay pending review of the Certificate Order.

INTRODUCTION

On March 19, 2020, the Federal Energy Regulatory Commission ("FERC" or the "Commission") authorized Jordan Cove Energy Project, L.P. (the "LNG Terminal") and Pacific Connector Gas Pipeline, L.C. (the "Pipeline") (together, "the Project") to construct a liquified natural gas export terminal and storage facility, and a 229-mile natural gas pipeline to supply it, under Sections 3 and 7 of the Natural Gas Act ("NGA"), respectively, 15 U.S.C. 717 *et seq.* The Project accepted the Certificate

[1] On April 20, 2020, Landowners requested rehearing of the Certificate Order. Sierra Club and Niskanen Center, *et al.* Request for Rehearing and Stay of Order (Apr. 20, 2020) (Ex. 2) ("Rehearing Request" or "RR"). Landowners also filed a motion for stay pending resolution, pursuant to 5 U.S.C. § 705. *Id.* pp.106–16. On May 22, 2020, FERC denied the Rehearing Request, and dismissed the request for a stay as moot. *JCEP*, 171 FERC ¶ 61136, ¶¶ 12, 148–49 (2020) (Ex. 3) ("Rehearing Order" or "RO").

Order on April 10, 2020, giving the Pipeline immediate authority to take Landowners' property via eminent domain. 15 U.S.C. 717f(h).

The Pipeline will traverse four Oregon counties, affecting over 250 private landowners. Despite years of pressure, an estimated 90 private property owners – or nearly 30% – of these, including Landowners, still refuse to sell an easement and right-of-way to their properties. CO pp.39–40. The single most important fact about the Pipeline is that none of it will be used for domestic consumption – 100% of the Pipeline's gas is intended for export. CO p.6.

Failed efforts to approve the Pipeline have been underway for more than 15 years, RR pp.72, 84, and the Project is highly unlikely to ever be built, despite obtaining the Certificate Order. Two of the necessary federal permits (under Section 401 of the Clean Water Act, and Section 307 of the Coastal Zone Management Act), have been denied,[2] and the federal agency responsible for the third (a Clean Water Section 404 permit for crossing the hundreds of waterbodies and wetlands on the Pipeline's route) is enjoined from issuing any such permit for *any* new oil or gas pipeline in the U.S.[3]

[2] RR pp.24–27, 31. The Project has asked FERC to deem the section 401 permit requirement waived, and has appealed the CZMA determination to the U.S. Secretary of Commerce. Both proceedings are pending.

[3] *Northern Plains Resource Council v. U.S. Army Corps of Engineers*, No. CV 19-44, D.E. 151 (D. Mont. May 11, 2020).

Summary vacatur is appropriate because both the Certificate Order and the Rehearing Order flout this Court's decision in *City of Oberlin, Ohio v. FERC*, 937 F.3d 599 (2019). *Oberlin* remanded the Section 7 certificate to FERC to explain "why – under the Act, the Takings Clause, and the precedent of this Court and the Supreme Court – it is lawful to credit precedent agreements with foreign shippers serving foreign customers toward a finding that an interstate pipeline is required by the public convenience and necessity under Section 7 of the Act." *Id.* at 607–08.

Not only has FERC failed to act on that remand, but the Certificate Order and Rehearing Order *rely – virtually word-for-word – on the exact same arguments* as to why FERC may credit natural gas exports towards the finding of public convenience and necessity that *Oberlin* rejected. There is no point in replaying *Oberlin* and delaying the inevitable result; this Court has expressly rejected every one of FERC's proffered justifications. There is also no point in remanding the Certificate Order; the Court did that nine months ago in *Oberlin* and FERC has yet to act on that remand. Even more importantly, unlike *Oberlin*, where the pipeline was already built and operating, here the Landowners face the imminent threat of their property being taken and destroyed for a project that has no public benefit under either the Natural Gas Act or the Takings Clause.

Two other facts make this situation even more extraordinary. First, after six years of effort, the LNG Terminal still does not have a single contract for its LNG. Second, the Commission bestowed eminent domain authority for a pipeline that will –

if the Terminal were ever to find any customers – exclusively transport *Canadian* natural gas.

Alternatively, Landowners seek a stay, as they face the imminent, irreparable harm of permanently losing their land for a project that fails to meet the Fifth Amendment's "public use" requirement, and is unlikely to be ever be built.

ARGUMENT

I. Summary Vacatur is Warranted because *Oberlin* Expressly Rejected Every Reason FERC Gives for Why it May Credit Export Agreements Towards a Section 7 Finding of Public Convenience and Necessity.

Summary disposition is appropriate because the "merits of this appeal are so clear as to make summary affirmance proper," *Walker v. Washington*, 627 F.2d 541, 545 (D.C. Cir. 1980) (per curiam), and "no benefit will be gained from further briefing and argument of the issues presented." *Taxpayers Watchdog, Inc. v. Stanley*, 819 F.2d 294, 297-98 (D.C. Cir. 1987) (per curiam).

A. Natural gas exports are not "transportation in interstate commerce," and do not provide any public benefit under the Natural Gas Act or the Takings Clause.[4]

In *Oberlin*, this Court reiterated why allowing eminent domain for an export pipeline violates the Natural Gas Act and the Takings Clause: "Section 7 states that the Commission may issue a certificate of public convenience and necessity for 'the transportation in *interstate commerce*,' § 717f(c)(2) (emphasis added), and we have

[4] By limiting this motion to certain issues, Landowners do not waive any other issues on appeal.

explicitly refused to interpret 'interstate commerce' within the context of the Act 'so as to include foreign commerce.'" 937 F.3d at 606–07 (citing *Border Pipe Line Co. v. Fed. Power Comm'n*, 171 F.2d 149, 152 (D.C. Cir. 1948), and *Distrigas Corp. v. Fed. Power Comm'n*, 495 F.2d 1057, 1063 (D.C. Cir. 1974)). Because exports cannot be part of a public convenience and necessity determination, a Section 7 certificate for a pipeline that will only *export* gas violates the Natural Gas Act, and allowing the holder of such a certificate to exercise eminent domain violates the Takings Clause. *See id.* at 607.

FERC had four separate opportunities in *Oberlin* to explain how it could credit exports towards a showing of market demand and therefore the public convenience and necessity: in its certificate order, rehearing order, briefing to this Court, and finally at oral argument. It failed each time: "When pressed on this issue at oral argument, the Commission again did not explain why it is lawful to credit precedent agreements for export in issuing a Section 7 certificate for the construction and operation of an interstate pipeline." *Id.* FERC merely repeated its earlier statements that it had looked at the benefits "to the domestic markets," to which the Court responded, "[a]s we have explained, this statement has no explanatory value with respect to the question of why it is lawful for the Commission, as it did here, to predicate a Section 7 finding of need for an interstate pipeline on a pipeline's precedent agreements for export." *Id.*

And so *Oberlin* remanded to FERC to explain "why – under the Act, the Takings Clause, and the precedent of this Court and the Supreme Court – it is lawful to credit precedent agreements with foreign shippers serving foreign customers

toward a finding that an interstate pipeline is required by the public convenience and necessity under Section 7 of the Act." *Id.* at 607–08.

That was more than nine months ago, and FERC has still not responded to the remand. But because the Pacific Connector Pipeline presents *the exact same issue* – how FERC can credit exported gas as part of its public convenience and necessity analysis under Section 7, the Commission has deliberately ignored two more opportunities (in the Certificate and Rehearing Orders) to explain itself. And while FERC may yet be able to justify *Oberlin's* certificate based on the fact that most of the gas would be used for domestic consumption (only 17.4% of the *Oberlin* pipeline capacity was for exported gas[5]), FERC does not have any such wiggle room here, since 100% of the Pipeline's gas will be exported. *Oberlin* governs this case, and by simply repeating the exact same arguments that *Oberlin* rejected, FERC has tacitly conceded that it has no justification for awarding the Pipeline a Section 7 certificate.

Landowners first raised this issue in their comments to FERC; *Oberlin* had not yet been decided, but they cited and discussed both *Border Pipe Line* and *Distrigas*, the two Circuit precedents that *Oberlin* explicitly relied on. *See* Landowner Comments on FERC's Draft EIS at 51 (July 5, 2019) (Ex. 4). Nevertheless, the Certificate Order, *issued after Oberlin,* completely ignored that decision and Landowners' comments, simply repeating the same arguments that *Oberlin* rejected, *e.g.*, export contracts "are

[5] The *Oberlin* precedent agreements accounted for 59% of the pipeline's capacity, but without the export precedent agreements, only 41.6% of the capacity would be used.

appropriately viewed as indicative of a domestic public benefits," CO ¶ 84, and that the Department of Energy's ("DOE") NGA Section 3 determination found that exporting LNG from the Terminal was "in the public interest," *id.* ¶ 86.[6]

Landowners' Rehearing Request then cited *Oberlin* no fewer than fourteen times, starting on the second page with, "FERC failed to explain why it is lawful to credit export capacity towards an assessment of market demand for what they categorize as a pipeline carrying gas in 'interstate commerce,' when interstate commerce does not include foreign commerce under section 7 of the NGA." RR p.2 (citing *Oberlin*, 937 F.3d 599). It does not get much clearer than that.

Nevertheless, FERC again failed to justify its actions in the Rehearing Order. FERC's initial explanation was that *Oberlin* was inapplicable, because the precedent agreements there were with "foreign shippers serving foreign customers", while the Pipeline's precedent agreements here are with the LNG Terminal. RO ¶ 37. Recognizing that as a truly disingenuous statement – both the LNG Terminal and the Pipeline are wholly owned subsidiaries of Pembina, a Canadian natural gas company, CO ¶ 4, and will export 100% of the gas to foreign customers – FERC's very next sentence is, "[w]e also find that it is appropriate for the Commission to give credit to the precedent agreements in this case for transportation of gas that the shipper

[6] The Certificate Order did cite *Oberlin* in one footnote, but only as support for its statement that FERC's "reliance on wetland mitigation required by the Corps is reasonable." CO ¶ 210 n.427.

intends to liquefy for export." RO ¶ 38. Why? Because "[t]he courts have stated that the Commission must consider "all factors bearing on the public interest, [and] *Petitioners cite no precedent, and we are aware of none, to suggest that the Commission should exclude Pacific Connector's precedent agreements from that broad assessment.*" *Id.* (footnote citations omitted) (emphasis added). And so FERC blithely dismisses *Oberlin*, which apparently did not even "suggest" – at least not to FERC – why exports should be excluded from its public benefits analysis.

Having decided to simply ignore *Oberlin*, FERC then merely repeats the arguments that *Oberlin* rejected. The first was based on NGA § 3(c), which provides that imports from and exports to, countries with whom the U.S. has a free trade agreement "shall be deemed to be consistent with the public interest" and § 3(a), which requires approval of exports to any country unless it is "not consistent with the public interest." RO ¶ 39. And "[w]hile these provisions of the NGA are not directly implicated by Pacific Connector's application under NGA section 7(c), they do inform [FERC's] determination that the proposed pipeline is in the public convenience and necessity because it will support the public interest of exporting natural gas to FTA countries." *Id.* But *Oberlin* rejected that exact argument: "[i]t is insufficient, however, to simply assume that such a finding under Section 3, which does not authorize the exercise of eminent domain, is somehow equivalent to a finding that a given export constitutes a public use within the meaning of the Takings Clause." 937 F.3d at 607 n.2.

Next up was FERC's argument that exports provide "domestic public benefits," in the form of

> contributing to the development of the gas market, in particular the supply of reasonably-priced gas; adding new transportation options for producers, shippers, and consumers; boosting the domestic economy and the balance of international trade; and supporting domestic jobs in gas production, transportation, and distribution, and domestic jobs in industrial sectors that rely on gas or support the production, transportation, and distribution of gas.

RO ¶ 40. *Oberlin* rejected this argument as well: FERC's laundry list recites the same "benefits to domestic markets" that *Oberlin* found had "no explanatory value with respect to the question of why it is lawful for the Commission, as it did here, to predicate a Section 7 finding of need for an interstate pipeline on a pipeline's precedent agreements for export." 937 F.3d at 607. Undeterred, FERC presses on; notwithstanding *Oberlin* repeatedly stating that exports do not provide public benefits under Section 7, "[t]hese are valid domestic public benefits of the Pacific Connector Pipeline, *which do not require us to distinguish between gas supplies that will be consumed domestically and those that will be consumed abroad*." RO ¶ 41 (emphasis added).

Remarkably, after all this, in a jaw-dropping act of agency hubris, the Commission smugly congratulates itself with, "[h]ere, we affirm the Authorization Order's finding that the Pacific Connector Pipeline is in the public convenience and necessity, a determination which, as discussed above, provides an explanation that the court's [sic] sought in *City of Oberlin*." *Id.* ¶ 56.

B. Even if FERC *could* credit "domestic benefits" towards a Section 7 certificate for an export pipeline, they could not do so here because the Pipeline will carry only Canadian gas.

Not only are the cited "domestic benefits" irrelevant to the issue of crediting exports towards the Section 7 public convenience and necessity determination, but they simply do not exist, because *100% of the gas that the Pipeline will carry, and that the LNG Terminal would export, will come from Canada.* Extracting, processing and transporting Canadian gas for export does not provide any "domestic benefits."

Although FERC does not say a single word about them, Landowners submitted three separate expert reports pointing out that while the Commission keeps saying that the exported gas would come from both Canada and the U.S., the economics say otherwise. Any assessment of market need must conclude that the Project will export Canadian gas because it has been, is now, and for the foreseeable future will be, considerably cheaper than U.S. gas. *See* Synapse Economics, *Foreign or Domestic? The source of the natural gas that will be processed at the proposed Jordan Cove LNG facility*, at 2, 4 (Figs. 2 & 4) (July 2, 2019) (Ex. 5); McCullough Research, *Natural Gas Supplies for the Proposed Jordan Cove LNG Terminal*, at 5–6 & Table 1 (July 3, 2019) (Ex. 6); McCullough Research, *Supplement to July 3, 2019 report*, at 2 (Apr. 20, 2020) (Ex. 7). Pembina, the Canadian parent of the Pipeline and the LNG Terminal, will profit more from exporting Canadian gas because is in the business of processing and transporting Canadian gas. McCullough Research *Supplement* at 3 (Apr. 20, 2020).

Even more remarkably, the Project has already secured a permit to export Canadian natural gas, and a counterpart DOE permit to import the same quantity of gas, *both for the express purpose of meeting all of the Project's needs*. As stated in the Project's export application to Canada's National Energy Board ("NEB"), "[t]he quantity of gas requested for export under the Licence is necessary to support a liquefied natural gas ("LNG") facility . . . to be located at the Port of Coos Bay, Oregon . . . which has been proposed by [the LNG Terminal]." *JCEP's Application to NEB* at 2 (Sept. 9, 2013) (Ex. 8). The LNG Terminal emphasized this point in a subsequent filing with the NEB:

> Jordan Cove LNG is in the same position as LNG Canada and other applicants who have requested an LNG export licence from the NEB and *who seek the ability to supply 100 per cent of their project requirements from Canada*. The requested tolerance *would allow Jordan Cove LNG to maximize its use of Canadian gas* despite variations in plant requirements from year to year.

Jordan Cove Response to NEB Information Request No. 1., at 2 (emphasis added) (Ex. 9). The LNG Terminal was equally frank with DOE, from whom it sought authorization "to import the natural gas from Canada by pipeline, at points near Kingsgate and Huntingdon, British Columbia, to a proposed liquefied natural gas (LNG) export facility to be located at the Port of Coos Bay, Oregon." DOE/FE Order No. 3412, at 2 (Mar. 18, 2014) (Ex. 10). DOE also referenced the NEB export permit, noting, "[t]ogether, the two applications request the necessary export and import

authorizations for the maximum volume that would be needed at the Project's maximum expanded capacity." *Id.* at 6.

FERC's *only* response in the Rehearing Order concerning any of this was to cite the Certificate Order's statement that the "Pacific Connector will provide additional capacity to transport gas out of the Rocky Mountain production area." FERC is correct – the Malin Hub in eastern Oregon, where the Pipeline will meet the GMT pipeline carrying gas down from Canada, is also is a terminus of the Ruby pipeline, whose other terminus is in Wyoming. RO ¶ 41. FERC – an agency that prides itself on understanding markets – apparently believes that this capacity will magically morph into the actual buying and transporting of U.S. natural gas, gas that is significantly more expensive than Canadian natural gas and, not to put too fine a point on it, Canadian natural gas that Pembina is already in the business of processing and transporting. Moreover, *nowhere* has the Project *ever* stated that it would transport *any* amount of U.S. gas. The Pipeline's "domestic benefits" – which *Oberlin* said may not be credited in a Section 7 determination – *simply do not exist.*

Landowners are thus likely to prevail on the merits of their claims because, after six separate opportunities, FERC has utterly failed to find any explanation for how, under this Court's decisions in *Border Pipe Line*, *Distrigas,* and now *Oberlin*, exports may be credited in Section 7's needs analysis. FERC has not – and cannot – explain how a project where 100% of the gas will be exported nevertheless (1) transports gas in interstate commerce, (2) will serve the public convenience and

necessity, or (3) provides a public benefit under the Takings Clause. Nor has FERC explained how exporting *Canadian natural gas* would satisfy those criteria, or even provide any of the domestic benefits the Commission touts. Doubtless FERC's response will be to mumble its way through the same non-responses it has already given, presumably in the hopes that it will escape with a remand which it can shelve along with the *Oberlin* one, further putting off the day of reckoning.

C. Even if FERC ***could*** credit exports towards a Section 7 determination, there is no market demand for the Pipeline's gas.

If FERC chooses to argue that *Oberlin* was incorrectly decided, and that it may credit exports towards a Section 7 determination of market need, the Commission's conclusion that there is demand for the Project's gas is even more bizarre than its consideration of how it will be supplied. FERC relies solely on the precedent agreements between the Pipeline and the LNG Terminal (the "JCEP Agreement") to justify its conclusion that there is a market need for the gas. RO ¶ 25.

The flaw is that the LNG Terminal is a dead end; after years of effort, it has not signed a single export contract for its LNG. In granting the Project permission to export LNG, DOE required biannual reports, including on, "the status of the long-term contracts associated with the long-term export of LNG and any long-term supply contracts." DOE/FE Order No. 3413, at 156 (Mar. 24, 2014) (Ex. 11). Most recently, on April 1, 2020, as it has done twice a year since 2014, the Project failed to report *any* such export contracts, even though throughout that entire period it has,

"continued its negotiations with prospective customers for liquefaction services." Letter re JCEP DOE/FE Semi-Annual Report (Apr. 1, 2020) (Ex. 12).

After six years of fruitless attempts, the Project also faces the world-wide glut of LNG and the collapse of Asian LNG prices that began in early 2020, and now exacerbated by the effects of the current economic downturn. The Project has found no customers after six years, and has no prospects of any for the foreseeable future.

FERC's response was to literally turn a blind eye to this:

> We affirm the Commission's finding in the Authorization Order that precedent agreements are significant evidence of demand for a project. As the court stated in *Minisink Residents for Environmental Preservation & Safety v. FERC*, and again in *Myersville Citizens for a Rural Community, Inc. v. FERC*, nothing in the Certificate Policy Statement or in any precedent construing it suggests that the policy statement requires, rather than permits, the Commission to assess a project's benefits by looking beyond the market need reflected by the applicant's precedent agreements with shippers.

RO ¶ 30 (footnotes omitted). *Myersville Citizens for a Rural Cmty., Inc. v. FERC*, 783 F.3d 1301 (D.C. Cir. 2015) bears no resemblance to this case. In *Myersville,* the precedent agreements were with Baltimore Gas & Electric ("a local natural gas distribution company"), and Washington Gas Company ("a public utility . . . engaged primarily in the retail sale and delivery of natural gas"). The buyers were in the business of transporting, storing, selling, or using natural gas; in other words, come what may, those buyers would be able to use the gas. *Minisink Residents for Envtl. Pres. & Safety v. FERC*, which dealt with this issue in a footnote, 762 F.3d 97, 111 n.10

(D.C. Cir. 2014), does not give the parties to the precedent agreements.[7] Landowners are unaware of any previous certificate decision, or any decision of this court, with a market need determination based on precedent agreements with entities that – literally – have no possible need or use for the gas.

In short, the JCEP Agreement indicative of self-dealing; the LNG Terminal is a complete dead end with no customers and absolutely no use for the gas without them. The JCEP Agreement provides no better evidence of market demand for the Pipeline's gas than an identical agreement with Coos Bay Bait & Tackle.

II. In the Alternative, this Court Should Stay the Certificate.

In the alternative (and as Commissioner Glick requested in his Rehearing Order dissent, RO p.11 (Comm'r Glick, dissenting)) an immediate stay and maintenance of the *status quo* is warranted.

The factors considered when reviewing a motion to stay are:

> (1) the likelihood that the party seeking the stay will prevail on the merits of the appeal; (2) the likelihood that the moving party will be irreparably harmed absent a stay; (3) the prospect that others will be harmed if the court grants the stay; and (4) the public interest in granting the stay.

Cuomo v. U.S. Nuclear Regulatory Comm'n, 772 F.2d 972, 974 (D.C. Cir. 1985) (citation omitted); *see also* Cir. Rule 18(a)(1).

[7] FERC's certificate decision in *Minisink* simply says that there are three such customers. *Millennium Pipeline Company, L.L.C.*, 140 FERC ¶ 61,045 at ¶ 6 (July 17, 2012).

As Landowners are likely to succeed on the merits or, at a minimum, have raised serious legal questions as to whether Section 7 can be used to approve a pipeline that will exclusively be used for export, only the remaining three factors need be considered. *See Population Inst. v. McPherson*, 797 F.2d 1062, 1078 (D.C. Cir. 1986) (petitioner "need not establish an absolute certainty of success: It will ordinarily be enough that the plaintiff has raised serious legal questions going to the merits." (citation and internal quotation marks omitted); *see also Philipp v. Fed. Republic of Germany*, No. 15-CV-00266, 2020 WL 474447, at *3 (D.D.C. Jan. 29, 2020).

A. Absent a stay, Landowners will be irreparably injured.

Three types of separate, irreparable injuries will befall Landowners during the pendency of this case if a stay is not issued. The first is obvious: their land will be condemned and permanent easements imposed on it, which can happen *in a matter of weeks* via the "quick take" condemnation process pipelines routinely employ. The second is insidious: even if this Court were to vacate the Certificate, any easements the Pipeline obtains in the interim *will remain valid*, and Landowners have no right to repurchase their property. Nor would the Pipeline have any interest in selling, because it has been obtaining easements allowing it to build *any* pipeline whatsoever, not limited to the Pacific Connector Pipeline as authorized by the Certificate or, indeed, not limited to natural gas pipelines at all. Finally, even though two necessary federal permits have been denied, if the Pipeline manages to get all the necessary permits, the

it would permanently destroy the land, e.g., clear-cut trees, dig the pipeline trench, blast obstacles, and more. *See, e.g.*, FEIS 2-45, 2-57, 2-59–62.

1. Condemnation is an irreparable injury to these Landowners.

If the Certificate is not stayed, the Pipeline intends to begin filing condemnation actions; in opposing Landowners' request to FERC for a stay, the Pipeline said that it needed to "begin construction as soon as possible." Pipeline's Ans. to Mot. to Stay, Dkt. Nos. CP17-494, CP17-495, FERC Accession No. 20200505-5223, at 226 (May 5, 2020) (Ex. 13). Condemnation alone is a irreparable injury: "As a result of the Commission's orders, [petitioner] . . . must either sell its land to [the pipeline] or allow [the pipeline] to take its property through eminent domain . . . . *That [the pipeline] ultimately will compensate [petitioner] for its property does nothing to erase [petitioner's] legally cognizable injury*." *B&J Oil & Gas v. FERC*, 353 F.3d 71, 75 (D.C. Cir. 2004) (emphasis added)). "As a general rule, interference with the enjoyment or possession of land is considered 'irreparable' since land is viewed as a unique commodity." *Girl Scouts of Manitou Council, Inc. v. Girl Scouts of U.S. of Am., Inc.*, 549 F.3d 1079, 1090 (7th Cir. 2008); *see also Shvartser v. Lekser*, 308 F. Supp. 3d 260, 267 (D.D.C. 2018) ("[I]t is well-settled that unauthorized interference with a real property interest constitutes irreparable harm as a matter of law." (quoting *7–Eleven, Inc. v. Khan*, 977 F.Supp.2d 214, 234 (E.D.N.Y. 2013)); *Carpenter Tech. Corp. v. City of Bridgeport*, 180 F.3d 93, 97 (2d Cir. 1999) (finding threat of irreparable injury from potentially wrongful exercise of eminent domain).

In other words, the harm to Landowners from having their properties condemned is irreparable, even in the event they receive their constitutionally required compensation. *See Kimball Laundry Co. v. United States*, 338 U.S. 1, 5 (1949) ("The value of property springs from subjective needs and attitudes; its value to the owner may therefore differ widely from its value to the taker."); *United Church of the Med. Ctr. v. Med. Ctr. Comm'n*, 689 F.2d 693, 701 (7th Cir. 1982) ("It is settled beyond the need for citation . . . that a given piece of property is considered to be unique, and its loss is always an irreparable injury.")

2. "Quick take" condemnation can happen long before this Court's decision.

It is also important to understand how swiftly the Pipeline can obtain permanent easements, which could easily happen long before this Court rules. In a process colloquially known as "quick take," district courts have historically granted the pipelines' requested possessory interest almost immediately via preliminary injunctions, but then deal with the just compensation determination in the ordinary course, a process that can take years.[8] *See, e.g.*, *Mountain Valley Pipeline, LLC v. 6.56 Acres of Land, Owned by Sandra Townes Powell*, 915 F.3d 197, 223 (4th Cir. 2019)

[8] Especially following *Knick v. Township of Scott, Pennsylvania*, Landowners believe that this practice is illegal, because "a property owner has a claim for a violation of the Takings Clause as soon as a government takes his property for public use without paying for it." --- U.S. ---, 139 S.Ct. 2162, 2170 (2019).

(upholding district court's grant of immediate possession through preliminary injunction); *Transcon. Gas Pipe Line Co., LLC v. Permanent Easements for 2.14 Acres & Temp. Easements for 3.59 Acres in Conestoga Twp., Lancaster Cty., Pennsylvania*, 907 F.3d 725, 741 (3d Cir. 2018) (same); *Transwestern Pipeline Co. v. 17.19 Acres of Prop. Located in Maricopa Cty.*, 550 F.3d 770, 777 (9th Cir. 2008) (obtaining immediate possession by preliminary injunction is appropriate where a pipeline company first obtains an order of condemnation).

As this Court noted only days ago, the Atlantic Sunrise Pipeline obtained partial summary judgment and a possessory injunction within six months of filing its condemnation case. *Allegheny Def. Project v. FERC*, No. 17-1098, 2020 WL 3525547, at *3, 5 (D.C. Cir. June 30, 2020) (condemnation filed "less than two weeks" after February 3, 2017, and summary judgment and injunction "in August" 2017).

Attached are other examples of how quickly condemnation can take place:

- *Mountain Valley Pipeline, LLC v. An Easement to Construct*, No. 2:17-CV-04214, D.E. 231 at 30 (S.D. W. Va. Feb. 21, 2018) (Ex. 14) (granting preliminary injunction for immediate possession 17 weeks after the complaint was filed).
- *Atlantic Coast Pipeline LLC v. 1.52 Acres, More or Less, in Nottoway County, VA et al.*, No. 3:17-CV-814, D.E. 41 (E.D. Va. Mar. 9, 2018) (Ex. 15) (granting immediate possession 13 weeks after complaint was filed).
- *Transcontinental Gas Pipe Line Co., LLC v. Permanent Easement and Temporary Easements in Conestoga Township*, No. 5:17-CV-722, D.E. 35 at 1–2 (E.D. Pa. Aug. 23, 2017) (Ex. 16) (granting possession and right-of-way 27 weeks after complaint was filed).
- *Gas Transmission Northwest, LLC v. 15.83 Acres of Permanent Easement, et al.*, No. 2:15-CV-00359, D.E. 71 (D. Or. Aug. 27, 2015) (Ex. 17) (granting immediate possession 25 weeks after complaint was filed).

In other words, condemnation can be completed even before this case is fully briefed, let alone argued or decided.

3. A permanent easement is just that, and can be used for other purposes if the Certificate is vacated.

Pipeline easements are permanent. *See, e.g.*, *PennEast Pipeline v. Permanent Easement in Hopewell Township*, No. 3:18-CV-001909, Order, D.E. 34 at 4–5 (D.N.J. Jan. 25, 2019) (granting a permanent right-of-way). And, unfortunately, a condemnor acquires good and permanent title if it had the authority to condemn the property at the time it did so; subsequent invalidation of that authority, or lapse of the public use, does not affect the validity of its interest. *See Reichelderfer v. Quinn,* 287 U.S. 315, 318 (1932) (finding it acceptable for D.C. to abandon the public use of land acquired for a public park to build a firehouse because D.C. had receive title to the land in fee simple absolute when it condemned the land); *Beistline v. City of San Diego*, 256 F.2d 421, 423 (9th Cir. 1958) (quotation omitted) ("Need for taking the particular land, like the issue of compensation for the taking, is judged solely by the conditions existing at the time of the taking."); *see also HTK Mgmt., L.L.C. v. Seattle Popular Monorail Auth.*, 155 Wash. 2d 612, 634 (2005) ("[w]here a fee simple is taken, the weight of authority is that there is no reversion, but, when the particular use ceases, the property may, by authority of the state, be disposed of for either public or private uses." (quoting *Reichling v. Covington Lumber Co.*, 57 Wash. 225, 227 (1910)); *see also* Cristin Kent, *Condemned If They*

Do, Condemned If They Don't: Eminent Domain, Public Use Abandonment, and the Need for Condemnee Protections, 30 Seattle U. L. Rev. 503, 504 (2007).

Not only will the Pipeline retain any easement it obtains in the interim, but even if the Certificate is vacated, the Pipeline may be able to use the easements for another purpose entirely (including transferring those rights to another entity). The Pipeline has already acquired (by contract) just such easements, *e.g.*, Right-of-Way and Easement on Edgar Maeyens' land at 3–4 (Ex. 18) (granting Pacific Connector LP an easement to construct, operate, and abandon at the Pipeline's "sole discretion," *any* pipeline, along with the right to assign those rights to another company) (emphasis added); Right-of-Way and Easement on David Park's land at 3-4 (Ex. 19) (same); *see also* Right-of-Way and Easement on Weyerhaeuser land at 3–4, 12 (Ex. 20) (granting the Pipeline an easement to construct, maintain, operate, and abandon a pipeline "for the transportation of natural gas *or other petroleum products*" (emphasis added); and making the agreement fully assignable).

Pipeline companies routinely ask for condemnations well beyond the scope of the FERC certificate. *See, e.g.*, *Defendants' Brief in Support of Second Motion for Partial Summary Judgment, Atlantic Coast Pipeline, LLC v. 4.93 Acres, More or Less, et al.*, 3:18-CV-00079, D.E. 48 at 4–6 (W.D. Va. June 4, 2020) (Ex. 21) (noting that the pipeline seeks condemnation authority well beyond what was granted in its Certificate, including rights to "alter" the pipeline; install "equipment and facilities"; five years of temporary easement access from the date of possession, on top of the three years granted from

the date of the Certificate; a permanent right of ingress and egress not merely through easements, but also "to and from" those easements; rights to "any existing roads" on the property); *Gas Transmission Northwest*, at 10 (noting that pipeline conceded that "its Complaint did not conform to the Certificate").

Presumably the Pipeline will attempt to obtain comparable easements in condemnation proceedings, and as exemplified by the condemnation proceedings noted above, district courts routinely grant pipeline companies whatever they ask for in an easement.[9] *See, e.g.*, *Atlantic Coast Pipeline LLC*, (granting, exactly as the company requested in its complaint a permanent and exclusive easement); *Transcontinental Gas Pipe Line Co.*, at 1–2 (granting permanent right-of-way and easement as described in the complaint, including prohibiting landowners from planting any trees without prior consent and granting the company permission to "cut and remove all trees including trees considered as a growing crop").

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[9] Such overreach here would not necessarily eliminated by a court-awarded easement, as it is daunting enough to determine the scope of an appropriate easement based on the Certificate Order that authorizes the Pipeline to: "construct and operate the proposed project, as described and conditioned herein, and as more fully described in Pacific Connector's application and subsequent filings by the applicant, including any commitments made therein." CO ¶ 126.

4. Impacts to Landowners' property will be devastating and permanent.

If the Pipeline were to obtain the other necessary federal permits before the Court decides this case, then the Certificate allows it to *permanently* destroy Landowners' properties, since building the Pipeline requires tree-clearing, crop clearing, livestock fence and drainage ditch relocation or removal, and grading, trenching, soil excavation, occasional blasting, and more. *See, e.g.*, CO ¶ 202 (permanently impacting soils), ¶ 211 (permanently impacting trees/vegetation; noting 782 acres of cutting late-successional and old-growth forest), ¶ 233 (permanent impact on land use); FEIS 2-45, 2-57, 2-59–62. Any of those, of course, would impose an even greater irreparable injury than "just" the taking. *League of Defenders/Blue Mountains Biodiversity Project v. Connaughton*, 752 F.3d 755, 764 (9th Cir. 2014) (the logging of thousands of mature trees "cannot be remedied easily if at all" because "[n]either the planting of new seedlings nor the paying of money damages can normally remedy such damage"); *Alliance for the Wild Rockies v. Cottrell*, 632 F.3d 1127, 1135 (9th Cir. 2011) (finding that injury to one's "ability to view, experience, and utilize [recreational areas] in their undisturbed state" was irreparable and weighed in favor of a stay (internal quotation marks omitted)).

On average, a 95-foot-wide temporary easement and a 50-foot-wide permanent easement would cut through unique ranch and farmland owned by families for generations, through horse and livestock pastures, through grapevines and orchards,

through old-growth forests and merchantable timber, and through irrigation systems. *See, e.g.*, F. Adams Decl. ¶¶ 8, 10 (Ex. 22); McLaughlin Decl. ¶¶ 4–5 (Ex. 23); C. Adams Decl. ¶¶ 4, 6 (Ex. 24); Evans Decl. ¶ 7 (Ex. 25); Clarke Decl. ¶ 8 (Ex. 26); Brown Decl. ¶¶ 3–6 (Ex. 27). The Pipeline will jeopardize Landowners' water supplies—both well water and water used to irrigate land. F. Adams Decl. ¶ 9; C. Adams Decl. ¶¶ 7–8; McLaughlin Decl. ¶ 5; Clarke Decl. ¶ 12; Brown Decl. ¶¶ 7, 10. For most landowners, their only source of potable water is their well water, but even FERC concedes bad things can happen to people's water supply, *e.g.*, "blasting agent by-products could possibly temporarily degrade groundwater quality and potentially have temporary effects on wells in the immediate proximity of the blasting." FEIS 4-35.

The Pipeline is uncomfortably close to several of Landowners' homes and barns, F. Adams Decl. ¶ 7; C. Adams Decl. ¶ 8, and will destroy their ability to guarantee an organic, herbicide-free growing of crops, and remote peaceful living with the forested viewsheds and barriers that accompanied their originally purchased properties will be jeopardized. McLaughlin Decl. ¶ 5; C. Adams Decl. ¶ 6, 10; Evans Decl. ¶¶ 7–8; F. Adams Decl. ¶ 8. It is impossible to imagine greater irreparable injury than this.

In short, the likely permanent taking of Landowners' property before this Court were to rule in the normal course is undeniably "irreparable injury," as is the

potential for the destruction of that property if the Pipeline obtains the required federal permits.

B. The balance of harms weighs towards granting a stay.

Landowners face the imminent prospect of permanently losing their property for a pipeline that has no public benefit, and which will probably never be built. Weighed against that, FERC will doubtless argue that a stay will make it more difficult for the Project to meet its March 19, 2025 deadline for being put into service. CO p.126. But FERC can cure that simply by extending that deadline, as it routinely does. *See, e.g.*, FERC's Order Granting Extension of Time, *Northwest Pipeline, LLC*, Dkt. No. CP15-8-003, ¶ 3 (April 27, 2020) (Ex. 29) (noting that this Order was the *third* time that FERC approved an extension for the pipeline to complete construction); FERC's Letter Order, *Spire STL Pipeline LLC*, Dkt. No. CP17-40 (June 18, 2020) (Ex. 29) (granting pipeline's request for one-year extension); FERC's Letter Order, *Equitrans, L.P.*, Dkt. No. TP-4555 (June 18, 2020) (Ex. 30) (granting pipeline's request for extension). The Project has already waited years for authorization to move forward, and very well may not receive the multiple permits required to commence construction; in other words, any harm from a stay would be minimal compared to the Landowners' permanent loss of their property and violation of their Takings Clause rights. *See* 11A Fed. Prac. & Proc. Civ. § 2948.2 (3d ed.). ("[W]hen [a] plaintiff is claiming the loss of a constitutional right, courts commonly rule that even a

temporary loss outweighs any harm to defendant and that a preliminary injunction should issue.”).

Pembina has long since internalized the high risk of the Project’s denial. In fact, in March Pembina’s President and CEO has said that the cost of waiting for approval of the Project is “nominal.”[10] Moreover, Pembina has acknowledged a first quarter downturn in global energy markets, and in March – even before the bottom completely fell out of the LNG market as a result of the global pandemic – announced its intention to defer several expansion projects and cut capital spending for the year by approximately $1.1 billion.[11]

C. A stay is in the public interest.

1. <u>A stay will protect the Landowners’ constitutional rights and the public interest.</u>

There is a fundamental public interest in granting a stay in an export pipeline proceeding where eminent domain will be used for no public purpose, but rather to take land for a Pipeline whose sole purpose is to facilitate transporting Canadian gas to Asia, a gross violation of the Takings Clause.

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[10] Kallanish Energy, *Pembina backs Jordan Cove LNG, eyes BC LNG projects* (Mar. 2, 2020), https://www.kallanishenergy.com/2020/03/02/pembina-backs-jordan-cove-lng-eyes-bc-lng- projects/; *see also Wis. Gas Co. v. FERC*, 758 F.2d 669, 674 (D.C. Cir. 1985) (“Monetary loss may constitute irreparable harm only where the loss threatens the very existence of the movant’s business.”).

[11] *Pembina Pipeline Takes Action to Protect Stakeholders and Significantly Reduces 2020 Capital Spending in Response to the Recent Decline in Global Energy Prices* (Mar. 18, 2020), http://www.pembina.com/media-centre/news-releases/news-details/?nid=135467.

In general "[t]he public interest . . . favors moving very cautiously in condemning private property for uses that are only questionably public," *Cottonwood Christian Ctr. v. Cypress Redev. Agency*, 218 F. Supp. 2d 1203, 1231 (C.D. Cal. 2002), and weighs against the premature taking of land, *see Akiachak Native Cmty. v. Jewell*, 995 F. Supp. 2d 7, 18 (D.D.C. 2014) (noting that "[t]here is a public interest in having certainty over title to land . . . maintained," and that "confusion over land title is not in the public interest" (citing *Entek GRB, LLC v. Stull Ranches, LLC*, 885 F. Supp. 2d 1082, 1096 (D. Colo. 2012); *Barbosa v. Solomon*, 243 B.R. 562, 567 (D. Mass. 2000))).[12]

2. The global pandemic warrants a stay in the public interest.

The public interest further and especially favors a stay during this time of global pandemic, to maintain public safety and security. *See Roederer v. Treister*, 2 F. Supp. 3d 1153 (D. Or. 2014) (finding the public interest implicated where there was risk of "serious adverse effects on public health").

On March 23, 2020, the State of Oregon declared that "[i]t is essential to the health, safety, and welfare of the State of Oregon during the ongoing state of emergency that, to the maximum extent possible, individuals stay at home or at their place of residence." Office of the Governor of the State of Oregon, Executive Order

[12] Courts have conversely found that the public interest weighs in favor of natural gas pipeline construction where the gas will be delivered to consumers *in the United States*, *i.e.,* for public use, which is not the case here. *See, e,g.*, *E. Tennessee Nat. Gas Co. v. Sage*, 361 F.3d 808, 830 (4th Cir. 2004) ("The project serves the public interest because, among other things, it will bring natural gas to portions of southwest Virginia for the first time." (internal citation omitted)).

No. 20-12 (Mar. 23, 2020). Unfortunately, cases of COVID-19 have recently exploded in Oregon, with approximately 200 new cases a day, up from fewer than 50 a day in late May.[13]

The likelihood of Landowners coming into contact with the Pipeline's agents, attorneys, or employees increases greatly if condemnation proceedings are permitted to proceed, and allowing the Pipeline to access their land during the pandemic puts Landowners and their families' health at risk. F. Adams Decl. ¶ 16; C. Adams Decl. ¶ 16; McLaughlin Decl. ¶ 12; Clarke Decl. ¶ 18; Brown Decl. ¶ 15. Many are worried they will not be able to adequately advocate for themselves during condemnation proceedings, or engage safely with land surveyors. *See* F. Adams Decl. ¶¶ 16, 18; Evans Decl. ¶ 14; Brown Decl. ¶ 15. Many Landowners do not have access to Internet in their homes, while others have severely limited bandwidth, which makes Pipeline-related document downloads and participation in online meetings difficult. F. Adams Decl. ¶ 17; Clarke Decl. ¶ 7; McLaughlin Decl. ¶ 13.

The majority of Landowners are 65 or older, a group the Center for Disease Control and Prevention ("CDC") has designated as "at high-risk for severe illness,"

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[13] N.Y. Times, *Oregon Coronavirus Map and Case Count*, https://www.nytimes.com/interactive/2020/us/oregon-coronavirus-cases.html#map (last visited July 2, 2020).

and recommends to "[s]tay home if possible."[14] Eight out of ten COVID-related deaths in the United States are adults aged 65 years or older.[15] In addition to the fact that the Oregon has the smallest number of hospital beds per capita in the United States,[16] Douglas County, where many Landowners live, "is one of the four counties in the United States at the highest risk of having more COVID-19 patients than its hospital can handle."[17] This grim reality warrants a stay in the public interest.

In addition, the ongoing Pipeline proceedings are highly prejudicial to Landowners and all affected parties. The COVID-19 pandemic prompted 11 state Attorneys General to write to FERC on May 7, 2020, expressing concern over such prejudice in preserving landowners' due process rights in FERC proceedings, and noting that "[t]he COVID-19 pandemic has imposed even greater burdens on

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[14] CDC, *People Who Are At Higher Risk for Severe Illness*, *available at* https://www.cdc.gov/coronavirus/2019-ncov/need-extra-precautions/people-at-higher-risk.html (last accessed June 8, 2020); CDC, *Older Adults*, *available at* https://www.cdc.gov/coronavirus/2019-ncov/need-extra-precautions/older-adults.html (last accessed June 8, 2020).

[15] CDC, *Older Adults*, *available at* https://www.cdc.gov/coronavirus/2019-ncov/need-extra-precautions/older-adults.html (last accessed June 8, 2020).

[16] OPB, *Coronavirus Patient Surge In Oregon Prompts Joint Hospital Efforts, Delayed Medical Treatments* (Mar. 16, 2020), https://www.opb.org/news/article/coronavirus-patient-surge-in-oregon-prompts-joint-hospital-efforts.

[17] The News Review, *CDC says Douglas County one of the four worst counties to be in during COVID-19 crisis* (Mar. 25, 2020), http://www.nrtoday.com/news/health/coronavirus/cdc-says-douglas-county-one-of-the-four- worst-counties-to-be-in-during-covid/article_e764438a-7d45-511f-8df4-553db4e044ba.html.

communities attempting to organize their interests and participate in Commission proceedings."[18]

CONCLUSION

For the foregoing reasons, Landowners request that this Court vacate or, in the alternative, stay the Certificate Order.

Dated: July 6, 2020

Respectfully submitted,

/s/ David Bookbinder

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[18] *See* State Attorneys General Letter (May 7, 2020), at 2; *available at* https://portal.ct.gov/-/media/AG/Press_Releases/2019/FERC---2020-5-6-Moratorium-Letter-DRAFT-clean.pdf (last visited June 11, 2020).

CERTIFICATE OF COMPLIANCE

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Dated: July 6, 2020

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CERTIFICATE OF SERVICE

I hereby certify that on July 6, 2020, I caused to be served the foregoing Deborah Evans, *et al.* Motion for Stay upon all ECF-registered counsel via the Court's CM/ECF system.

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