

UNITED STATES OF AMERICA  
DEPARTMENT OF ENERGY  
OFFICE OF FOSSIL ENERGY

JORDAN COVE ENERGY PROJECT, L.P.

FE DOCKET NO. 11-127-LNG

ORDER GRANTING LONG-TERM MULTI-CONTRACT AUTHORIZATION  
TO EXPORT LIQUEFIED NATURAL GAS BY VESSEL  
FROM THE JORDAN COVE LNG TERMINAL  
TO FREE TRADE AGREEMENT NATIONS

DOE/FE ORDER NO. 3041

DECEMBER 7, 2011

## **I. DESCRIPTION OF REQUEST**

On September 22, 2011, Jordan Cove Energy Project, L.P. (Jordan Cove), filed an application (Application), with the Office of Fossil Energy (FE) of the Department of Energy (DOE) under section 3 of the Natural Gas Act (NGA)<sup>1</sup> for long-term, multi-contract authorization, to export up to nine million metric tons per year of liquefied natural gas (LNG) from the proposed Jordan Cove LNG terminal and liquefaction facility to be built in Coos Bay County, Oregon, for a 30-year term. The export volume is equivalent to approximately 438 billion cubic feet per year (Bcf/yr) of natural gas.<sup>2</sup> Jordan Cove seeks to export LNG by vessel to any nation with which the United States currently has, or in the future will have, a Free Trade Agreement (FTA) requiring the national treatment for trade in natural gas, and that currently has, or in the future develops, the capacity to import LNG via ocean-going carriers.<sup>3</sup> Jordan Cove seeks to export this LNG on its own behalf and also as agent for third parties. Jordan Cove requests that this authorization commence on the earlier of the date of first export or ten years from the date the authorization is issued (December 7, 2021).

## **II. BACKGROUND**

Jordan Cove is a Delaware limited partnership, which has its principal place of business in Coos Bay, Oregon. It is owned by Jordan Cove Energy Project L.L.C., a Delaware limited liability company, as general partner, Fort Chicago LNG II U.S.L.P., a Delaware limited

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<sup>1</sup> The authority to regulate the imports and exports of natural gas, including liquefied natural gas, under section 3 of the NGA (15 U.S.C. §717b) has been delegated to the Assistant Secretary for FE in Redelegation Order No. 00-002.04E issued on April 29, 2011.

<sup>2</sup> Jordan Cove requested authorization to export up to nine million metric tons of LNG, and stated this is equivalent to 1.2 Bcf/day of natural gas. Consistent with DOE regulations (10 CFR part 590), applications are to provide volumes in Bcf. DOE/FE has converted the 1.2 Bcf/day to 438 Bcf/year, the volume to be authorized.

<sup>3</sup> The United States currently has free trade agreements requiring national treatment for trade in natural gas with Australia, Bahrain, Canada, Chile, Costa Rica, Dominican Republic, El Salvador, Guatemala, Honduras, Nicaragua, Jordan, Mexico, Morocco, Oman, Peru, and Singapore. FTAs with Israel and Costa Rica do not require national treatment for trade in natural gas. FTAs with Colombia, South Korea, and Panama have been ratified by Congress but have not yet taken effect.

partnership, as limited partner, and Energy Projects Development L.L.C., a Delaware limited partnership, as limited partner.

Jordan Cove states that it will conduct its proposed export operations from an LNG terminal and liquefaction facility to be constructed on the North Spit of Coos Bay in Coos Bay County, Oregon. Jordan Cove's construction and operation of an LNG terminal at this location has already been authorized by the Federal Energy Regulatory Commission (FERC) as an import facility.<sup>4</sup> Jordan Cove asserts that it has developed modified plans to make use of the terminal as an export facility. According to Jordan Cove, the terminal facilities already authorized by the FERC include two 160,000 cubic meter LNG full-containment storage tanks, a single marine berth capable of accommodating LNG vessels up to Q-Flex size (which DOE/FE notes are up to 216,000 cubic meters of LNG; the equivalent of 4.6 Bcf of natural gas), and on-site utilities and services. The modified plans to enable the facilities to be used for exports of domestically produced LNG include large diameter LNG piping configured for exports and electrically driven liquefaction equipment. Jordan Cove states that the Jordan Cove terminal will be connected to a new interstate natural gas pipeline, the Pacific Connector Gas Pipeline (PCGP), also certificated by the FERC Order.

Jordan Cove states that the source of natural gas supply for Jordan Cove's exports will be the North American natural gas market which they further describe as follows. Jordan Cove's terminal will be connected via the PGCP to the northwest U.S. market hub at Malin, Oregon, providing interconnections with the interstate pipeline system grid, including GTN Pipeline, delivering gas from western Canada and, via its Stanfield interconnection with Northwest Pipeline, from the U.S. Rockies; Ruby Pipeline, delivering gas from western Wyoming,

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<sup>4</sup> Pacific Connector Gas Pipeline, LP; Jordan Cove Energy Project, L.P., 129 FERC ¶61,234 (December 17, 2009) (FERC Order). Rehearing requests of the FERC Order are currently pending.

northwestern Colorado and northern Utah; Tuscarora Pipeline, serving northern Nevada; and, PG&E Redwood Path, serving northern California.

Jordan Cove's contemplated commercial arrangements will be in the form of Liquefaction Tolling Agreements (LTA) under which an individual customer that holds title to natural gas will have the right to deliver that gas to Jordan Cove's terminal for liquefaction services and to receive LNG in exchange for a processing fee paid to Jordan Cove; and the LTA customer will be responsible to source the feed gas for the facility. According to Jordan Cove, the decision whether to utilize liquefaction capacity will be made by the LTA customer and driven by market economics. Jordan Cove is in the process of negotiating LTAs with prospective customers but has not concluded LTAs as of the date the Application was filed.

Jordan Cove further anticipates that the title holder of the LNG at the point of export may be the LTA customer or a party that purchases LNG from an LTA customer pursuant to a long-term contract. Jordan Cove is prepared to accept conditions on its authorization consistent with the conditions imposed in recent DOE/FE orders that have authorized applicants to export as agent for others when not holding title to the LNG at the point of export. In this regard, Jordan Cove states that it will undertake: (1) to file contracts associated with both the long-term supply of natural gas to the Jordan Cove terminal for processing into LNG for export, and the long-term export of LNG from the Jordan Cove terminal within 30 days after their execution; (2) to include in any contract for the transfer of LNG exported under its authorization a provision by which the customer makes the necessary commitments to comply with the requirements imposed by DOE/FE, including to limit deliveries of exported LNG to authorized countries and to report on the countries of destination for actual deliveries; and (3) to register with DOE/FE any title holder for whom Jordan Cove will act as agent to export LNG and to cause such title holder to

provide all information and commitments required by DOE/FE, including its agreement to comply with destination restrictions and other requirements, to include DOE/FE requirements in any subsequent purchase or sale agreement entered into by that title holder, and to file long-term agreements associated with the supply of gas to or the export of LNG from the Jordan Cove terminal.

Jordan Cove states that it intends to file a separate non-FTA application with DOE/FE requesting long-term, authorization to export LNG to those nations with which the United States does not have an FTA requiring national treatment for trade in natural gas, and to which the export of LNG by vessel is not prohibited by U.S. law or policy.

### **III. STATE OF OREGON PROTEST**

#### **Oregon's Position**

On October 11, 2011, the State of Oregon (Oregon) submitted a protest (Protest) of Jordan Cove's application. Oregon charged that the Application is both premature and deficient. Oregon observes that Jordan Cove does not presently have a facility from which to export LNG nor has it commenced the process to obtain authorization from the FERC to construct those facilities. Referring to the statutory requirements of section 3(c) of the NGA which mandates approval of the instant application without modification or delay, Oregon states that "...there is currently no exportation of natural gas for which delay must be avoided, and such exportation is years away." Oregon asks that DOE/FE defer ruling on the Application until Jordan Cove has cured these alleged deficiencies. Additionally, Oregon states that, notwithstanding language in DOE's regulations calling for the publication of a notice of application in the Federal Register of all applications under section 3, DOE has not published a notice of Jordan Cove's Application. Oregon maintains that the regulations require that the public be given 30 days in which to

intervene in section 3 proceedings and that this 30 day period can only be shortened in the event of an emergency. According to Oregon, there is no emergency that warrants foregoing publication of a notice of the application.

Furthermore, Oregon maintains that the Application does not meet the minimal substantive requirements of DOE's regulations. Specifically, Oregon contends that:

(1) the Application does not provide the source and security of supply of the natural gas proposed for export, as required by section 590.202(b)(2) of the regulations (10 CFR 590.202(b)(2)); in this regard, because Jordan Cove has requested an authorization that will begin no later than ten years in the future and will run for a term of 30 years, Oregon maintains that the Application must describe the North American reserves supporting the project for nearly 40 years into the future and must take into account both existing authorizations to export and domestic uses that will tap into the same reserves;

(2) the Application does not describe the lack of a national or regional need for the gas, as required by section 590.202(b)(6) of the regulations (10 CFR 590.202(b)(6));

(3) the Application does not appear to contain a verified oath or affirmation by the person filing the Application, or by an officer or authorized representative having knowledge of the facts alleged, as required by section 590.103(b) of the regulations (10 CFR 590.103(b)); and

(4) the Application does not appear to contain the required certification that the signatory is a duly authorized representative of Jordan Cove, as also required by section 590.103(b).

### **Jordan Cove's Response**

On October 17, 2011, Jordan Cove filed the "Response of Jordan Cove Energy Project, L.P. to State of Oregon Protest" (Response). Jordan Cove maintains in the Response that Oregon's Protest demonstrates a misunderstanding of the statutory requirements and the

regulatory processes applicable to FTA applications under section 3(c) of the NGA. Jordan Cove contends also that the Application is neither premature nor deficient and that it is entitled to the statutory presumption that exports to FTA nations are deemed to be within the public interest and must be granted without modification or delay. Jordan Cove states that it is irrelevant that the Jordan Cove Project is not yet constructed and that Jordan Cove has not yet commenced the pre-filing process at the FERC. Jordan Cove maintains that filing of the Application is the first step in a multi-step process and that a long-term export authorization from DOE is required in order to attract prospective customers willing to make large-scale, long-term investments in export arrangements.

Jordan Cove also states that DOE's processing of the Application without publication of a notice of the application in the Federal Register and without requiring a showing involving domestic need for the gas to be exported is consistent with DOE/FE's policy and practice for FTA applications. Jordan Cove observes that DOE's procedural regulations at 10 CFR Part 590 were last updated in 1989, prior to the amendment of NGA section 3(c) by the Energy Policy Act of 1992 (EPAAct 1992). Jordan Cove cites to *Freeport LNG Expansion, L.P. and FLNG Liquefaction, LLC*, DOE/FE Order No. 2913 (February 10, 2011) at footnote 6, where the agency stated that "the requirement for granting the application without delay or modification overrides regulatory requirements for public notice and other hearing-type procedures in 10 CFR Part 590." Jordan Cove notes that DOE/FE also stated at page 6 of the *Freeport* order that "[i]n light of DOE's statutory obligation to grant the Application without modification or delay, there is no need for DOE to review the other arguments posed by [the Freeport Project] in support of the Application." Jordan Cove states that the quoted passages from the Freeport order indicate that DOE/FE will not analyze the arguments raised by Oregon that go to alleged deficiencies in

the Application, *e.g.* source and security of supply, description of supporting gas reserves, and national or regional need for the gas. Jordan Cove concludes that while DOE/FE practices do not align with regulations, they are fully consistent with the applicable amended provisions of the NGA. Additionally, Jordan Cove has attached a verification to its Application apparently to correct one of the alleged deficiencies identified by Oregon.

### **Discussion and Conclusions**

The amendment of NGA section 3(c) in EAct 1992 requires that applications to export natural gas, including LNG, to most FTA countries, shall be deemed in the public interest and shall be granted without modification or delay. DOE's procedural regulations have not been updated to reflect the impact of EAct 1992 and Oregon appears to have drawn on this discrepancy between law and regulation in its protest. As discussed below, however, DOE is bound by the statutory amendments to the NGA and has consistently interpreted the notice of application requirements in DOE's regulations at 10 CFR 590.205 to apply only to requests for authorization to export LNG to non-FTA countries. DOE is in the process of preparing a rulemaking to update our procedural regulations in part to make them consistent with the requirements of EAct 1992's changes and eliminate any confusion. Pending promulgation of a final rule implementing these changes, DOE will give full effect to the statutory requirements and continue to interpret the notice of application requirements in our existing rules to apply to non-FTA applications.

DOE's authority under section 3(c), as amended by EAct 1992, is limited to two areas: (1) to ensure that applications are filed with sufficient information to confirm that the applicant is engaged in a meaningful (*i.e.*, not frivolous) effort to undertake natural gas export or import activities, and (2) to provide in any order granting a section 3(c) application that the applicant



will report its export or import activities in sufficient detail to enable DOE to monitor import and export activities.

In the present case, DOE/FE is satisfied of the applicant's seriousness of purpose and the instant order includes monitoring requirements sufficient to ensure that DOE is able to follow export activities under the proposed authorization. By virtue of the amendment of section 3(c) in 1992, our inquiry can go no further.

The substantive issues raised by Oregon regarding alleged deficiencies in the Application (source and security of supply, adequacy of supporting gas reserves, and national or regional need for the gas) and the claim that the Application is premature thus are not matters subject to regulatory review and they are not grounds for deferring or denying the Application.

Oregon also is concerned over this agency's practice of not publishing notices of section 3(c) applications in the Federal Register. In our view, the publication of a Federal Register notice of application serves two potential purposes. With respect to applications under section 3(a) of the NGA, a Federal Register notice alerts the public to the fact that an application has been filed and provides an avenue for the submission of motions to intervene, comments, and/or protests of the application.

Yet, with respect to applications under section 3(c) of the NGA, the law precludes any public interest review of the application and requires that the application be granted without modification or delay. In this circumstance, the publication of a Federal Register notice is meaningful only for the limited purpose of informing the public that an application has been filed and that DOE/FE has fulfilled its statutory charge by issuing an order granting the Application.

Neither Oregon's interests nor the interests of other potential intervenors in this or other section 3(c) applications have been prejudiced by the failure of this agency to publish Federal

Register notices of section 3(c) applications. There can be no prejudice where the agency is required to deem applications to be in the public interest and to grant them without modification or delay.

On the other hand, we do agree that publication of a Federal Register notice of a section 3(c) application may be helpful for the limited purpose of informing the public of the filing and the fact that it has been granted. All such applications and orders are already posted on the agency's website and maintained on the website for public viewing indefinitely. However, we agree that publication in the Federal Register could be a helpful way of keeping the public even better informed of the filing of section 3(c) applications and the issuances of orders authorizing section 3(c) imports and exports from and to FTA countries. To that end, we will commence publication of such notices on a monthly basis.

As noted previously, this agency is currently revising and updating its procedural regulations. As part of that exercise, we also intend to propose the adoption of this new notice publication procedure in our revised regulations.

## **FINDINGS**

(1) Section 3(c) of the NGA was amended by section 201 of the Energy Policy Act of 1992 (Pub. L. 102-486) to require that applications to authorize (a) the import and export of natural gas, including LNG, from and to a nation with which there is in effect a free trade agreement requiring national treatment for trade in natural gas, and (b) the import of LNG from other international sources, be deemed consistent with the public interest and granted without

modification or delay. The instant Application falls within section 3(c), as amended, and therefore, DOE/FE is charged with granting the Application without modification or delay.<sup>5</sup>

(2) In light of DOE's statutory obligation to grant the Application without modification or delay, there is no need for DOE/FE to review the other arguments posed by Jordan Cove in support of the Application. The instant grant of authority should not be read to indicate DOE's views on those arguments.

(3) The countries with which the United States has an FTA requiring national treatment for trade in natural gas currently are: Australia, Bahrain, Canada, Chile, Dominican Republic, El Salvador, Guatemala, Honduras, Jordan, Mexico, Morocco, Nicaragua, Oman, Peru, and Singapore.

(4) DOE/FE addressed the issue of agency rights in *Freeport LNG Expansion, L.P. and FLNG Liquefaction, LLC*, DOE/FE Order No. 2913 (Order 2913), issued February 10, 2011. In Order 2913, DOE/FE approved a proposal by Freeport LNG Expansion, L.P. and FLNG Liquefaction, LLC (collectively, FLEX) to register each LNG title holder for whom FLEX sought to export LNG as agent. FLEX also proposed that this registration include a written statement by the title holder acknowledging and agreeing to comply with all applicable requirements included in its export authorization and to include those requirements in any subsequent purchase or sale agreement entered into by that title holder. In the FLEX application (FE Docket No. 10-160-LNG), FLEX also stated that it would file under seal with DOE/FE any relevant long-term commercial agreements that it reached with the LNG title holders on whose behalf the exports were performed.

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<sup>5</sup> DOE further finds that the requirement for public notice of applications and other hearing-type procedures in 10 CFR Part 590, are applicable only to applications seeking to export natural gas, including LNG, to countries with which the United States does not have a free trade agreement requiring national treatment for trade in natural gas.

In Order 2913, DOE/FE found that the above proposal was an acceptable alternative to the non-binding policy adopted by DOE/FE in *Dow Chemical*,<sup>6</sup> which established that the title for all LNG authorized for export must be held by the authorization holder at the point of export. DOE/FE agreed to accept the FLEX alternative because it would ensure that the title holder was aware of all DOE/FE requirements applicable to the proposed export and would provide DOE with a record of all authorized exports and direct contact information and a point of contact with the title holder. Moreover, DOE/FE found that the registration process was responsive to current LNG markets and provided an expedited process by which companies seeking to export LNG can do so. Additionally, in Order 2913, DOE/FE noted that those entities that hold title or expect to hold title to LNG that is stored in domestic LNG terminals can choose to submit an application to DOE for their own authorization to export LNG, and are not required to use the agency rights held by others.

The same policy considerations that supported DOE/FE's acceptance of the alternative proposal in Order 2913 apply here as well. The authorization granted herein shall be conditioned to require that where Jordan Cove proposes to export as agent for others, Jordan Cove must register those companies in accordance with the procedures and requirements described herein.

### **ORDER**

Pursuant to section 3 of the NGA, it is ordered that:

A. Jordan Cove is authorized to export domestically produced LNG by vessel from the Jordan Cove LNG terminal in Coos Bay, Oregon, up to the equivalent of 438 Bcf per year of natural gas (nine million metric tons per year) for a 30-year term, beginning on the earlier of the

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<sup>6</sup> *The Dow Chemical Company*, DOE/FE Opinion and Order No. 2859 (FE Docket No. 10-57-LNG), October 5, 2010, at p. 7 and 8.

date of first export or 10 years from the date the authorization is issued (December 7, 2021), pursuant to one or more long-term LTAs with third parties that do not exceed the term of this authorization.

B. This LNG may be exported to Australia, Bahrain, Canada, Chile, Dominican Republic, El Salvador, Guatemala, Honduras, Jordan, Mexico, Morocco, Nicaragua, Oman, Peru, and Singapore, and to any nation that the United States subsequently enters into a FTA requiring national treatment for trade in natural gas, provided that the destination nation has the capacity to import ocean going vessels. FTA countries are currently identified by DOE/FE at: <http://www.fossil.energy.gov/programs/gasregulation/index.html>.

C. Jordan Cove shall ensure that all transactions authorized by this order are permitted and lawful under United States laws and policies, including the rules, regulations, orders, policies, and other determinations of the Office of Foreign Assets Control of the United States Department of the Treasury. Failure to comply with this requirement could result in rescission of this authorization and/or other civil or criminal remedies.

D. Jordan Cove shall file with the Office of Natural Gas Regulatory Activities all executed long-term LTA's associated with the long-term export of LNG from the Jordan Cove LNG terminal within 30 days of their execution. Jordan Cove shall file with the Office of Natural Gas Regulatory Activities all executed long-term contracts associated with the long-term supply of natural gas to the Jordan Cove LNG terminal with the intent to process this natural gas into LNG for export within 30 days of their execution.

E. Jordan Cove shall include the following provision in any contract for the sale or transfer of LNG exported pursuant to this Order:

"Customer or purchaser acknowledges and agrees that it will resell or transfer LNG purchased hereunder for delivery only to countries identified in Ordering Paragraph B of DOE/FE Order No. 3041, issued December 7, 2011 in FE Docket No. 11-127-LNG, and/or to purchasers that have agreed in writing to limit their direct or indirect resale or transfer of such LNG to such countries. Customer or purchaser further commits to cause a report to be provided to Jordan Cove that identifies the country of destination, upon delivery, into which the exported LNG was actually delivered, and to include in any resale contract for such LNG the necessary conditions to ensure that Jordan Cove is made aware of all such actual destination countries."

F. Jordan Cove is permitted to use its authorization in order to export LNG on behalf of or as agent for others, after registering the other party with DOE/FE. Registration materials shall include an acknowledgement and agreement by the registrant to supply Jordan Cove with all information necessary to permit Jordan Cove to register that person or entity with DOE/FE, including: (1) the registrant's agreement to comply with this Order and all applicable requirements of DOE's regulations at 10 CFR Part 590, including but not limited to destination restrictions; (2) the exact legal name of the registrant, state/location of incorporation/registration, primary place of doing business, and the registrant's ownership structure, including the ultimate parent entity if the registrant is a subsidiary or affiliate of another entity; (3) the name, title, mailing address, e-mail address, and telephone number of a corporate officer or employee of the registrant to whom inquiries may be directed; (4) within 30 days of execution, a copy, filed with DOE/FE under seal, of any long-term contracts, including processing agreements, that result in the export of natural gas, including LNG; and (5) within 30 days of execution by a person or entity required by this Order to register, a copy, filed with DOE/FE under seal, of any LTA's

associated with the long-term supply of natural gas to the Jordan Cove LNG terminal with the intent to process this natural gas into LNG for export pursuant to this authorization.

G. Each registration submitted pursuant to this Order shall have current information on file with DOE/FE. Any changes in company name, contact information, change in term of the long-term contract, termination of the long-term contract, or other relevant modification, shall be filed with DOE/FE within 30 days of such change(s).

H. Within two weeks after the first export of domestically produced LNG occurs from the Jordan Cove liquefaction facility, Jordan Cove shall provide written notification of the date that the first export of LNG authorized in Order Paragraph A above occurred.

I. Jordan Cove shall file with the Office of Natural Gas Regulatory Activities, on a semi-annual basis, written reports describing the progress of the planned liquefaction facility project. The reports shall be filed on or by April 1 and October 1 of each year, and shall include information on the progress of the Jordan Cove LNG Terminal liquefaction facility, the date the facility is expected to be operational, and the status of the long-term contracts associated with the long-term export of LNG and any long-term supply contracts.

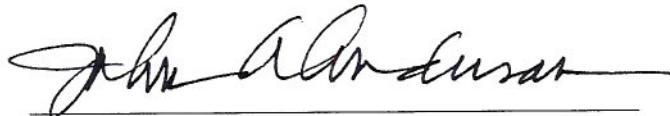
J. Monthly Reports: With respect to the LNG exports authorized by this Order, Jordan Cove shall file with the Office of Natural Gas Regulatory Activities, within 30 days following the last day of each calendar month, a report indicating whether exports of LNG have been made. The first monthly report required by this Order is due not later than the 30<sup>th</sup> day of the month following the month of first export. In subsequent months, if exports have not occurred, a report of “no activity” for that month must be filed. If exports of LNG have occurred, the report must give the following details of each LNG cargo: (1) the name(s) of the authorized exporter registered with DOE/FE; (2) the name of the U.S. export terminal; (3) the name of the LNG

tanker; (4) the date of departure from the U.S. export terminal; (5) the country of destination; (6) the name of the supplier/seller; (7) the volume in Mcf; (8) the price at point of export per million British thermal units (MMBtu); (9) the duration of the supply agreement (indicate spot sales); and (10) the name(s) of the purchaser (s).

(Approved by the Office of Management and Budget under OMB Control No. 1901-0294)

K. All monthly report filings shall be made to U.S. Department of Energy (FE-34), Office of Fossil Energy, Office of Natural Gas Regulatory Activities, P.O. Box 44375, Washington, D.C. 20026-4375, Attention: Ms. Yvonne Caudillo. Alternatively, reports may be e-mailed to Ms. Caudillo at [Yvonne.caudillo@hq.doe.gov](mailto:Yvonne.caudillo@hq.doe.gov) or [ngreports@hq.doe.gov](mailto:ngreports@hq.doe.gov), or may be faxed to Ms. Caudillo at (202) 586-6050.

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John A. Anderson  
Manager, Natural Gas Regulatory Activities  
Office of Oil and Gas Global Security and Supply  
Office of Fossil Energy