

174 FERC ¶ 61,057
UNITED STATES OF AMERICA
FEDERAL ENERGY REGULATORY COMMISSION

Before Commissioners: James P. Danly, Chairman;
Neil Chatterjee, Richard Glick,
Allison Clements, and Mark C. Christie.

Pacific Connector Gas Pipeline, LP
Jordan Cove Energy Project L.P.

Docket Nos. CP17-494-003
CP17-495-003

ORDER DENYING PETITION FOR DECLARATORY ORDER

(Issued January 19, 2021)

1. On April 21, 2020, Jordan Cove Energy Project L.P. and Pacific Connector Gas Pipeline, LP (collectively, Jordan Cove) filed a petition for a declaratory order, asking the Commission to find that, under section 401(a)(1) of the Clean Water Act (CWA),¹ the Oregon Department of Environmental Quality (Oregon DEQ) waived its authority to issue a water quality certification for the Jordan Cove LNG Terminal and Pacific Connector Pipeline. For the reasons discussed below, we deny Jordan Cove's petition.

I. Background

2. On September 21, 2017, Jordan Cove filed an application for authorization under section 3 of the Natural Gas Act (NGA)² to site, construct, and operate the Jordan Cove LNG Terminal in unincorporated Coos County, Oregon, and an application under section 7 of the NGA³ to construct and operate the Pacific Connector Pipeline in Klamath, Jackson, Douglas, and Coos Counties, Oregon (collectively, Jordan Cove Energy Project).

3. On October 23, 2017, Jordan Cove submitted via email to the U.S. Army Corps of Engineers (Corps) a joint permit application for authorization under section 10 of the Rivers and Harbors Act of 1899 and section 404 of the CWA (section 404/10 permit

¹ 33 U.S.C. § 1341(a)(1).

² 15 U.S.C. § 717b.

³ *Id.* § 717f.

application) for the Jordan Cove Energy Project.⁴ Jordan Cove sent a courtesy copy of its October 23, 2017 email to Oregon DEQ.⁵

4. Subsequently, on February 6, 2018, Jordan Cove submitted a “401 Water Quality Package” to Oregon DEQ, explaining that the “package is a supplement to the Section 404/10 permit application provided to the [Corps] on October 23, 2017.”⁶ In response to an inquiry from Oregon DEQ whether the section 401 submission was different than the section 404 submission to the Corps, Jordan Cove clarified that “[t]he 401 water quality package contains the same 404-10 application submitted to [the Corps] on 10/23/2017 along with subsequent responses to [Corps] data requests on 12/1/2017 and 12/6/2017.”⁷

5. On March 20, 2018, Oregon DEQ filed a letter with the Commission, stating that, based on Oregon DEQ’s review, it appeared that the activities described in Jordan Cove’s section 404/10 permit application were “merely a subset of the larger array of activities that may affect water quality that would be governed by any subsequent FERC [authorization], if approved by the Commission.”⁸ Accordingly, Oregon DEQ explained that if it were to issue a water quality certification for the work described in the section 404/10 permit application, “the certification may not be a certification, in entirety, for the purposes of [Jordan Cove]’s application(s) for any license or certificate issued by the FERC, or any license or permit issued by other federal agencies.”⁹ Oregon DEQ opined that, in order to comply with section 401 of the CWA, Jordan Cove must revise its water quality certification application in accordance with Oregon’s regulations implementing the CWA.¹⁰

6. On March 29, 2018, Jordan Cove filed a response to Oregon DEQ’s letter, stating that its “October 23 Application and the February 6 Submission address the Project in its entirety.”¹¹ Jordan Cove contended that Oregon DEQ had “the necessary information to

⁴ Jordan Cove Petition, Attachment D at JC-000081 to JC-000082.

⁵ *Id.*

⁶ *Id.* at JC-000105.

⁷ *Id.* at JC-000144.

⁸ Oregon DEQ’s Letter, Dockets Nos. CP17-494-000 and CP17-495-000 at 2.

⁹ *Id.*

¹⁰ *Id.* (citing Oregon Administrative Rule 340-048-0020).

¹¹ Jordan Cove’s Letter, Docket Nos. CP17-494-000 and CP17-495-000 at 1.

issue a Section 401 water quality certification for the Project in its entirety upon the determination that all other requirements are met.”¹²

7. On May 22, 2018, the Corps issued public notice of Jordan Cove’s section 404/10 permit application.¹³ Pursuant to the Corps’ regulations, Oregon DEQ had 60 days from the date of the public notice to complete its review of the section 401 water quality certification application, unless the Corps determined that a longer period of time, not to exceed one year, was reasonable.¹⁴ On July 3, 2018, the Corps determined that Oregon DEQ would have until May 7, 2019, to complete its review.¹⁵

8. On September 7, 2018, in an additional information request sent to Jordan Cove, Oregon DEQ stated that it was currently reviewing Jordan Cove’s water quality certification application for a section 404 permit from the Corps.¹⁶ Oregon DEQ noted that the Jordan Cove Energy Project would “require authorizations from multiple federal agencies, including but not limited to a Section 404 permit from the [Corps] and authorizations from [the Commission] pursuant to the [NGA].”¹⁷ Oregon DEQ explained that it was “conducting a comprehensive section 401 evaluation of the Project’s . . . effects on water quality[,]” and that it “expect[ed] to develop a single certification decision based on this comprehensive evaluation of the Project that will be applicable to both the Corps and FERC decisions on the Project.”¹⁸

9. On September 25, 2018, Jordan Cove submitted a letter to Oregon DEQ withdrawing and resubmitting its water quality certification application.¹⁹ Jordan Cove explained that it previously submitted a section 404/10 permit application to the Corps, which “also constitute[d] a request to [Oregon] DEQ for certification pursuant to Section

¹² *Id.* at 2.

¹³ Jordan Cove Petition, Attachment D at JC-000172.

¹⁴ 33 C.F.R. § 325.2(b)(1)(ii) (2020).

¹⁵ Jordan Cove Petition, Attachment D at JC-000241. The Corps subsequently determined that Oregon DEQ would have until September 24, 2019 to complete its review. *Id.* at JC-000356.

¹⁶ *Id.* at JC-000246.

¹⁷ *Id.*

¹⁸ *Id.*

¹⁹ *Id.* at JC-000267.

401 of the federal [CWA].”²⁰ Jordan Cove stated that, because it would be submitting additional information to the Corps that Oregon DEQ “will need to consider in its 401 certification review,” Jordan Cove was withdrawing and resubmitting its application “to allow [Oregon] DEQ additional time to consider Jordan Cove’s certification request[.]”²¹

10. On September 28, 2018, Oregon DEQ accepted Jordan Cove’s request “to withdraw and simultaneously resubmit its request for [CWA] section 401 water quality certification related to its request to the [Corps] for authorization under CWA section 404.”²²

11. On November 2, 2018, Oregon DEQ requested, by email, that Jordan Cove provide it with hard copies of the NGA sections 3 and 7 applications filed with the Commission, explaining that “[t]he FERC application is the most comprehensive evaluation of the proposed project”²³

12. In a letter to Oregon DEQ dated December 7, 2018, Jordan Cove noted that a question had been raised during a recent meeting between Jordan Cove and Oregon DEQ regarding “whether Jordan Cove’s prior submittals constituted separate requests for certification or a single request.”²⁴ In its December 7, 2018 letter, Jordan Cove stated that its prior submittals constituted a single request, with the subsequent information supplementing its original October 2017 request.²⁵

13. On January 22, 2019, Jordan Cove sent a letter to Oregon DEQ, expressing “significant concern” with a December 20, 2018 additional information request issued by Oregon DEQ.²⁶ Jordan Cove claimed that the request exceeded Oregon DEQ’s authority under CWA section 401.²⁷ Jordan Cove asserted that:

²⁰ *Id.*

²¹ *Id.*

²² *Id.* at JC-000270.

²³ *Id.* at JC-000353.

²⁴ *Id.* at JC-000364.

²⁵ *Id.* at JC-00365 to JC-000365.

²⁶ *Id.* at JC-000460.

²⁷ *Id.* at JC-000460 to JC-000461.

[u]nder Section 401 of the [CWA], a federal agency cannot issue a permit authorizing an activity that could result in a discharge absent receiving a Section 401 certification from the state wherein the discharge will occur. In exercising its Section 401 authority, a state is limited to evaluating only the impacts of potential discharges that result from the relevant authorization. For example, in the context of Jordan Cove’s application for a permit from the [Corps] for the Jordan Cove project and associated Pacific Connector pipeline, [Oregon DEQ]’s Section 401 certification authority—the scope of its analysis—is confined to discharges from activities that require the [Corps] permit.²⁸

14. On March 11, 2019, in an additional information request sent to Jordan Cove, Oregon DEQ again noted that it was “conducting a comprehensive section 401 evaluation of the project’s . . . effects on water quality[,]” and that it “expect[ed] to develop a single certification decision based on this comprehensive evaluation of the project that will apply to the Corps and FERC decisions on the project.”²⁹

15. In an April 1, 2019 submittal to Oregon DEQ, Jordan Cove noted that its water quality certification application “provide[d] a description of the proposed activities subject to federal permitting that may result in discharges into water of the [United States][,]” and that Oregon DEQ’s review is “limited to ensuring that discharges resulting from the federally permitted activities comply with applicable state water quality standards.”³⁰

16. On May 6, 2019, Oregon DEQ denied without prejudice Jordan Cove’s request for a water quality certification for the Corps section 404/10 permit.³¹ In its denial, Oregon DEQ explained that its denial was specifically with respect to the Corps permit and that it never received an application for water quality certification for the Commission authorizations.³² Oregon DEQ stated that, if Jordan Cove resubmits a water quality certification application to Oregon DEQ, Jordan Cove should “expressly state whether

²⁸ *Id.*

²⁹ *Id.* at JC-000540 to JC-000541.

³⁰ *Id.* at JC-000553 to JC-000554.

³¹ Oregon DEQ’s Denial of 401 Water Quality Certification. Docket Nos. CP17-494-000 and CP17-495-000 on May 7, 2019.

³² *Id.* at 3.

the application is for certification for pending FERC authorizations under the [NGA] as well as the pending Corps Section 404/10 permits.”³³

17. On March 19, 2020, the Commission granted Jordan Cove authorizations under sections 3 and 7 of the NGA to construct and operate the Jordan Cove Energy Project.³⁴ The Commission’s authorizations were conditioned, in part, on Jordan Cove obtaining all applicable authorizations required under federal law (or evidence of waiver thereof).³⁵

18. On April 21, 2020, Jordan Cove filed its petition, asking the Commission to find that Oregon DEQ waived its authority to issue a CWA section 401 water quality certification for the Jordan Cove Energy Project.

II. Public Notice, Protests, and Comments

19. On May 5, 2020, the Commission issued public notice of Jordan Cove’s petition, setting June 4, 2020 as the deadline for filing comments.³⁶ Oregon DEQ; Klamath Tribes; Surfrider Foundation’s Coos Bay Chapter; Cow Creek Band of Umpqua Tribe of Indians; jointly, Jody McCaffree, Citizens for Renewables, Citizens Against LNG, Stacey McLaughlin, and Pamela Brown Ordway (collectively, Jody McCaffree); jointly, Western Environmental Law Center, the Confederated Tribes of the Coos, Lower Umpqua and Siuslaw Indians, Cascadia Wildlands, Center for Biological Diversity, Citizens For Renewables, Inc., Friends of Living Oregon Waters, Hair on Fire Oregon, League of Women Voters of Coos County, League of Women Voters of Klamath County, League of Women Voters of Rogue Valley, League of Women Voters of Umpqua Valley, Oregon Coast Alliance, Natural Resources Defense Council, Oregon Physicians for Social Responsibility, Oregon Shores Conservation Coalition, Oregon Wild, Pacific Coast Federation of Fishermen’s Associations and Institute for Fisheries Resources, Rogue Climate, Rogue Riverkeeper, Sierra Club, Surfrider Foundation, Trout Unlimited, and Waterkeeper Alliance (collectively, WELC); and Todd Snyder each filed

³³ *Id.*

³⁴ *Jordan Cove Energy Project L.P.*, 170 FERC ¶ 61,202, *order on reh’g*, 171 FERC ¶ 61,136 (2020).

³⁵ *Jordan Cove Energy Project L.P.*, 170 FERC ¶ 61,202 at Environmental Condition 11.

³⁶ 85 Fed. Reg. 27,736 (May 11, 2020). The notice explained that, because Jordan Cove’s petition related to its NGA sections 3 and 7 proceedings (Docket Nos. CP17-494-000 and CP17-495-000), the filing of the petition did not trigger a new opportunity to intervene. Any person that intervened in the underlying authorization proceedings was already a party to the petition proceeding.

timely comments and/or protests opposing Jordan Cove's petition. This order only directly addresses the arguments raised in Oregon DEQ's protest because the other comments and protests either reiterate Oregon DEQ's arguments or argue issues that are moot given our finding below that Jordan Cove did not request water quality certification for the Commission authorizations.

20. On June 16, 2020, Jordan Cove filed a motion for leave to answer and answer to the protests and comments. On June 30, 2020, Oregon DEQ filed an answer to Jordan Cove's answer. Although the Commission's Rules of Practice and Procedure do not permit answers to protests or answers to answers,³⁷ the Commission finds good cause to waive this provision and accept the answers because they provide information that has assisted us in our decision making.

III. Discussion

21. Section 401(a)(1) of the CWA provides in part that:

[a]ny applicant for a Federal license or permit to conduct any activity including, but not limited to, the construction or operation of facilities, which may result in any discharge into the navigable waters, shall provide the licensing or permitting agency a certification from the State in which the discharge originates or will originate . . . that any such discharge will comply with the applicable provisions of [the CWA]. . . . If the State . . . fails or refuses to act on a request for certification, within a reasonable period of time (which shall not exceed one year) after receipt of such request, the certification requirements of this subsection shall be waived with respect to such Federal application.³⁸

22. In its petition, Jordan Cove argues that it submitted a water quality certification request to Oregon DEQ on October 23, 2017.³⁹ Jordan Cove claims that because Oregon DEQ failed to grant or deny Jordan Cove's request within one year of receiving the request (i.e., by October 23, 2018), Oregon DEQ waived its authority to issue

³⁷ 18 C.F.R. § 385.213(a)(2) (2020).

³⁸ 33 U.S.C. § 1341(a)(1). Section 401(d) of the CWA provides that a certification and the conditions contained therein shall become a condition of any federal license or authorization that is issued. *Id.* § 1341(d). *See City of Tacoma, Washington v. FERC*, 460 F.3d 53 (D.C. Cir. 2006).

³⁹ Jordan Cove's Petition at 6-7 and 25-28.

certification for the Jordan Cove Energy Project.⁴⁰ In its protest, Oregon DEQ counters that it did not waive its authority to issue certification for the Commission's NGA sections 3 and 7 authorizations because Jordan Cove never submitted a request for certification specific to the Commission authorizations, but only submitted a request for certification with respect to the Corps section 404/10 permit.⁴¹ Alternatively, Oregon DEQ argues that if the Commission finds Jordan Cove did request certification for the Commission authorizations, Oregon DEQ did not waive its authority to issue such certification.⁴²

A. Jordan Cove Was Required to Request Water Quality Certification Specifically for the Commission Authorizations

23. As an initial matter, we address whether Jordan Cove was required to request water quality certification for each federal authorization required for construction of the Jordan Cove Energy Project that triggered section 401 of the CWA.⁴³ Jordan Cove argues that requesting certification for each relevant federal authorization is not necessary or required by the CWA.⁴⁴ Jordan Cove claims that which federal agencies may ultimately rely on a state's certification is of no relevance to the state certifying agency; rather, the agency's only concern should be with reviewing all potential discharges described in the certification application.⁴⁵ In sum, Jordan Cove contends that applicants request certification for specific discharges only, not specific federal authorizations.⁴⁶

⁴⁰ *Id.* at 28-29 and 35-45.

⁴¹ Oregon DEQ's Petition at 12-54

⁴² *Id.* at 55-65.

⁴³ Section 401(a)(3) provides that a certification obtained for construction of a facility shall satisfy the requirements of section 401 with respect to certification of any other federal authorizations needed for *operation* of the facility, unless the state certifying agency deems there is no longer reasonable assurance of compliance with the CWA because of changes since the construction license or permit certification was issued. 33 U.S.C. § 1341(a)(3). Our inquiry here is whether an applicant must request certification for each authorization required for *construction* of a project that may discharge into navigable waters of the United States.

⁴⁴ Jordan Cove's Answer at 4-8.

⁴⁵ *Id.*

⁴⁶ *Id.*

24. Oregon DEQ argues that applicants request certification for specific federal authorizations and the relevant discharges associated with those specific authorizations.⁴⁷ As support, Oregon DEQ notes that the waiver provision in section 401 refers back to specific federal applications: “[i]f the State . . . fails or refuses to act on a request for certification, within a reasonable period of time . . . the certification requirements of this subsection shall be waived *with respect to such Federal application*.”⁴⁸ Oregon DEQ states that, although an applicant is required to request certification for each relevant federal authorization, a state certifying agency may choose to issue a single certification that covers multiple certification requests and associated federal authorizations.⁴⁹

25. We agree with Oregon DEQ, and find that the language of section 401 of the CWA required Jordan Cove to request certification for each federal authorization required for construction of the Jordan Cove Energy Project that could result in discharges to navigable waters; that is, Jordan Cove was required to request certification *both* for its Corps section 404/10 permit and for the NGA sections 3 and 7 authorizations. Section 401 provides that if a state fails or refuses to act within one year of receiving a certification request, the certification requirements of section 401 are waived “with respect to *such* Federal application.”⁵⁰ We interpret this to mean that requests for certification are specific to individual federal authorization applications.

26. This does not necessarily mean that an applicant could not use a single application to request water quality certification for multiple federal authorizations, so long as doing so is permitted by the state certifying agency and the certification application is clear as to what authorizations the applicant is requesting certification for.⁵¹ But, because a state certifying agency’s one-year review period begins as soon as the agency receives the

⁴⁷ Oregon DEQ’s Protest at 12-16.

⁴⁸ *Id.* at 12, 15-16, and 25-29 (citing 33 U.S.C. § 1341(a)(1)).

⁴⁹ Oregon DEQ’s Answer at 5-6.

⁵⁰ 33 U.S.C. § 1341(a)(1).

⁵¹ Oregon DEQ similarly implies a single application can be used to request certification for multiple authorizations, so long as the application clearly specifies what the request is for. Oregon DEQ’s, Denial of 401 Water Quality Certification, Docket Nos. CP17-494-000 and CP17-495-000 at 3 (“In the event that [Jordan Cove] resubmits an application to [Oregon] DEQ for certification, [Oregon] DEQ requests that [Jordan Cove] expressly state whether the application is for certification for pending FERC authorizations under the [NGA] as well as the pending Corps Section 404/10 permits.”).

request, it is crucial that the agency know what the request is for and what its review must encompass as soon as the application is filed.⁵²

B. Jordan Cove Did Not Request Water Quality Certification Specifically for the Commission Authorizations

27. Upon finding that Jordan Cove was required to request water quality certification specifically for the Commission authorizations, we next address whether Jordan Cove in fact did so. Jordan Cove argues that its October 23, 2017 email to the Corps constituted a request to Oregon DEQ for water quality certification for all federal authorizations associated with the Jordan Cove Energy Project.⁵³ Jordan Cove notes that Oregon DEQ's regulations allow applicants to apply for water quality certification associated with a Corps section 404 permit by filing an application with the Corps as opposed to filing with Oregon DEQ.⁵⁴

28. Additionally, Jordan Cove asserts that, because its certification application materials were "comprehensive of all Project activities" and included "information relevant to water quality outside the Corps' jurisdiction," its request was for a certification that would pertain to all anticipated discharges from the project, including those that would result from the Commission authorizations.⁵⁵ Jordan Cove claims that Oregon DEQ understood its request to be for a certification that would cover both the Corps and Commission authorizations.⁵⁶ Jordan Cove contends that this is why Oregon DEQ requested hard copies of the FERC applications, as well as additional information regarding discharges specific to the FERC authorizations.⁵⁷ Jordan Cove argues this is also why Oregon DEQ stated that its expectation was to "develop a single certification decision . . . that [would] be applicable to both the Corps and FERC decisions on the Project."⁵⁸

⁵² This is especially true as each federal permitting agency may apply a different period of time within in which the state certifying agency must act.

⁵³ Jordan Cove's Petition at 25-28 and 30-35; Jordan Cove's Answer at 8-10.

⁵⁴ Jordan Cove's Petition at 26 and n.17.

⁵⁵ *Id.* at 8, 17, and 30-35.

⁵⁶ *Id.* at 32-34.

⁵⁷ Jordan Cove's Petition at 18-19; Jordan Cove's Answer at 10.

⁵⁸ *Id.* at 33-34 (quoting Oregon DEQ's Sept 7, 2018 Letter to Jordan Cove).

29. Citing the Commission's determination in *Georgia Strait Crossing Pipeline LP (Georgia Strait)*,⁵⁹ Jordan Cove argues that Commission precedent demonstrates that its request was comprehensive of the entire project.⁶⁰ In *Georgia Strait*, Georgia Strait Pipeline Company LP (GSX) filed a petition for declaratory order, requesting that the Commission find, among other things, that the Washington Department of Ecology (Washington DOE) had waived its authority to issue CWA section 401 certification for GSX's Georgia Strait Crossing Pipeline Project.⁶¹ In response, Washington DOE argued that, where it coordinates with the Corps, as it did with GSX's proposal, the Corps' public notice of GSX's section 404 permit application triggers the CWA section 401 review period.⁶² Washington DOE also claimed that the Commission lacked jurisdiction to issue a declaratory order on the matter because the section 401 application GSX submitted to Washington DOE was only for the section 404 permit GSX requested from the Corps.⁶³ The Commission rejected this argument and found that GSX's application materials clearly stated that GSX sought certification for the Georgia Strait Crossing Pipeline Project and that it was "no secret" to Washington DOE that GSX required Commission authorization, as Washington DOE had intervened in the Commission proceeding.⁶⁴

30. Oregon DEQ argues that Jordan Cove copying Oregon DEQ on an email to the Corps requesting a section 404/10 permit is not equivalent to requesting certification for the Commission authorizations.⁶⁵ Oregon DEQ notes that Jordan Cove's October 23, 2017 application was submitted directly to the Corps and that, pursuant to Oregon DEQ's regulations, all requests for certification must be submitted directly to Oregon DEQ except for requests specific for Corps permits; accordingly, Oregon DEQ argues that the October 23, 2017 submittal could not have been for any authorization other than the Corps permit.⁶⁶ Additionally, Oregon DEQ states that, in its filings, Jordan

⁵⁹ 107 FERC ¶ 61,065 (2004).

⁶⁰ Jordan Cove's Petition at 34-35.

⁶¹ 107 FERC ¶ 61,065 at P 1.

⁶² *Id.* P 6.

⁶³ *Id.* P 17.

⁶⁴ *Id.* P 18.

⁶⁵ Oregon DEQ's Protest at 22-25.

⁶⁶ *See id.* at 9-10, 16-17, and 33-37 (citing Oregon Administrative Rule 340-048-0020).

Cove repeatedly referred to its request as a request for certification for the Corps permit.⁶⁷

31. Oregon DEQ asserts that it did not view Jordan Cove's certification request as covering both the Corps permit and the Commission authorizations,⁶⁸ explaining that this is why, nearly five months after Jordan Cove submitted its application to the Corps, Oregon DEQ submitted a letter to the Commission, noting that any certification it might issue with regards to that application might not be a certification with regards to Jordan Cove's applications with the Commission.⁶⁹ Additionally, Oregon DEQ claims that any statements from Oregon DEQ on its intent to issue a single certification are irrelevant.⁷⁰ Oregon DEQ states that, had it received a request for the Commission authorizations and had it decided to issue certification for the Corps permit, it intended to issue a single certification.⁷¹ However, Oregon DEQ explains that it never received a request for the Commission authorizations and it ultimately decided to deny the request for the Corps permit, so those prior statements about its intent to issue a single certification are immaterial.⁷²

32. Oregon DEQ also claims that its mere awareness of Jordan Cove's applications with the Commission is not sufficient for finding that Oregon DEQ received and waived a request for certification specific to the Commission authorizations.⁷³ Oregon DEQ notes that the D.C. Circuit Court of Appeals has held that "the burden of requesting a state water quality certification [is] on the license applicant. Only after a request has been made can a state waive its certification right, and then only by refusing to respond to the request within a reasonable period of time."⁷⁴ Oregon DEQ contends that "[a]bsent a clear, specific request for 401 certification by an applicant for FERC authorizations, a state certifying agency is not on notice of the official commencement of the time period

⁶⁷ Oregon DEQ's Protest at 32.

⁶⁸ *Id.* at 32-44.

⁶⁹ *Id.* at 33.

⁷⁰ *Id.* at 34 and 50-52.

⁷¹ *Id.* at 50-51.

⁷² *Id.* at 51.

⁷³ *Id.* at 44-46 and 48-50.

⁷⁴ Oregon DEQ's Protest at 3 and 38 (quoting *North Carolina v. FERC*, 112 F.3d 1175, 1184 (D.C. Cir. 1997)).

for 401 certification.”⁷⁵ Oregon DEQ states that in recent 401 certification waiver orders, the Commission has explained that states can protect their rights under the CWA by denying certification requests within the one-year review period.⁷⁶ Oregon DEQ claims that states’ rights would not be adequately protected if certification were deemed waived for a request the state never received.⁷⁷

33. Based on the record in this proceeding, we find that Jordan Cove did not specifically request certification for the Commission authorizations. Jordan Cove’s October 23, 2017 application was an application to the Corps for a section 404/10 permit, which, pursuant to Oregon DEQ’s regulations, could serve as a request for certification with respect to that Corps permit. Jordan Cove characterized its February 6, 2018 submittal to Oregon DEQ as a supplement to its Corps permit application. The record does not reflect any other submittal by Jordan Cove to Oregon DEQ that would constitute a request for certification for the Commission authorizations.

34. To the extent our decision is inconsistent with *Georgia Strait*, we clarify here that a state certifying agency’s mere awareness of an application filed with the Commission does not sufficiently establish that the agency received a request for section 401 certification with respect to that application. As noted above, it is essential that an applicant make clear the exact nature of a certification request because the state risks waiving its certification authority if it fails to act within one year of receiving such a request.⁷⁸ Here, nearly five months after filing its section 404/10 permit application, Jordan Cove asserted in a letter to the Commission that its October 23, 2017 submittal was meant to serve as a request for certification for the Commission authorizations as well, but the record does not reflect that it made such a statement to Oregon DEQ when the certification application was filed: this does not constitute requesting certification for the Commission authorizations.

IV. Conclusion

35. Because we find that Jordan Cove was required to request section 401 water quality certification for both the Corps authorization and the Commission authorizations, and because we find that Jordan Cove did not request certification for the Commission authorizations, we need not address Jordan Cove’s arguments that Oregon DEQ waived

⁷⁵ Oregon DEQ’s Protest at 44.

⁷⁶ *See id.* at 45 (citing *Yuba County Water Agency*, 171 FERC ¶ 61,139, at P 25 (2020); *McMahan Hydroelectric, LLC*, 171 FERC ¶ 61,046 (2020)).

⁷⁷ Oregon DEQ’s Protest at 45-46.

⁷⁸ *See supra* P 26.

its authority to issue certification for the Jordan Cove Energy Project. With respect to the Commission authorizations, Oregon DEQ could not have waived its authority to issue certification for a request it never received.⁷⁹ Accordingly, we deny Jordan Cove's petition.

The Commission orders:

Jordan Cove's petition for declaratory order is denied as discussed in the body of this order.

By the Commission.

(S E A L)

Nathaniel J. Davis, Sr.,
Deputy Secretary.

⁷⁹ Whether Oregon DEQ waived its authority to issue certification with respect to the Corps authorizations is not a matter to be decided by the Commission.