



FERC Reups Support for LNG Export Terminals Immediately Prior to Losing Jurisdiction

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On October 27, 2023, the Federal Energy Regulatory Commission (FERC or the Commission) issued orders on two liquefied natural gas (LNG) export terminal projects sponsored by Rio Grande LNG, LLC (Rio Grande)¹ and Texas LNG Brownsville LLC (Texas LNG)² under development in Brownsville, Texas. The orders reaffirmed FERC's April 2023 decisions³ finding that the terminals' authorizations were not inconsistent with the public interest under section 3 of the Natural Gas Act (NGA) after challenges to those decisions were filed in May. The genesis of the April 2023 decisions was a remand ordered by the U.S. Court of Appeals for the District of Columbia (D.C. Circuit) finding that FERC's initial authorization of the projects in 2019 was legally deficient.

FERC's October orders defended its prior decisions not to subject the LNG terminal projects to further scrutiny beyond the two issues that were the court's remand. Specifically, whether the social cost of greenhouse gases or a similar protocol should be used to determine the significance of the projects' impact on the environment and the sufficiency of FERC's underlying analyses on the projects' impacts on environmental justice communities. FERC also defended its decisions to not issue a supplemental environmental impact statement for either project, either concerning greenhouse gas emissions or environmental justice community impacts, even though the sufficiency of FERC's review of the projects under the National Environmental Policy Act had been called into question by the D.C. Circuit. The extent of FERC's legal obligations concerning these issues was borne out in competing separate statements issued by the Commissioners, including a separate dissent by

Commissioner Clements and concurrences by Acting Chairman Phillips and Commissioner Christie. An additional concurrence by Commissioner Danly is forthcoming.

FERC watchers have been anticipating the release of these orders after Commissioner Danly publicly called for the agency to issue them on September 21, 2023 at the close of FERC's public, open monthly meeting. Commissioner Danly urged FERC to take action before the agency lost jurisdiction to do so, as documented in a prior Akin Speaking Energy [post](#). FERC had already missed the NGA's deadline to issue an order on rehearing within 30 days of a rehearing request being filed with the agency, allowing the challenger to file a lawsuit in federal court seeking judicial review of the underlying FERC order. However, under section 19 of the NGA, FERC had an opportunity to modify or set aside its underlying order before the proceeding's administrative record was filed with the court. FERC filed administrative records with the D.C. Circuit for both cases on October 30, 2023, thereby forfeiting its jurisdiction, making October 27 the last day it was permitted to act.

Additional information on Rio Grande and Texas LNG can be found [here](#).

¹ *Rio Grande LNG, LLC*, 185 FERC ¶ 61,080 (2023).

² *Texas LNG Brownsville LLC*, 185 FERC ¶ 61,079 (2023).

³ See, *Texas LNG Brownsville LLC*, 183 FERC ¶ 61,047 (2023); *Rio Grande LNG, LLC*, 185 FERC ¶ 61,046 (2023).

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