



FERC Reauthorizes Texas LNG, Rio Grande LNG Projects

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The Federal Energy Regulatory Commission issued a pair of orders on remand from the Court of Appeals for the District of Columbia Circuit reauthorizing two LNG export projects along the Texas Gulf Coast late on Friday, April 21, 2023. The orders mark the end of almost two years of process before the Commission on a narrow directive from the court for additional environmental analysis, particularly on environmental justice. These orders, for the [Texas LNG](#) and [Rio Grande LNG](#) projects, set the stage for the projects to advance, while introducing what appears to be a novel environmental mitigation condition requiring ongoing air emissions monitoring to mitigate impacts on environmental justice communities. Notably, the Commission issued the orders on a 3-1 vote, with the two Republican commissioners voting with Chairman Phillips to advance the projects, and Commissioner Clements dissenting. Van Ness Feldman represented Texas LNG in this matter.

The Court's Narrow Remand

FERC's recent orders stem from a D.C. Circuit decision remanding Commission orders authorizing construction and operation of both the Texas LNG Project, and the Rio Grande LNG Terminal. The original orders found that construction and operation of the projects were in the public interest.

On remand, the D.C. Circuit directed the Commission to conduct additional analyses on two narrow environmental issues. First, the Court ordered FERC to explain whether or not National Environmental Policy Act regulations required the Commission to apply the social cost of carbon protocol to its analysis of the LNG terminals. The applicable regulation provides that if there are no known means to obtain information relevant to a project's reasonably foreseeable significant adverse impacts, an agency must include in its Environmental Impact Statement an evaluation of such impacts based upon theoretical approaches or research methods that are "generally accepted in the scientific community." The Court held FERC failed to do that with respect to the social cost of carbon tool.

Second, the Court directed FERC to explain why it chose to limit its analysis of the projects' impact on environmental justice communities to within a two-mile radius of the project sites, or, in the alternative, reanalyze the projects' impacts on environmental justice communities using a larger radius, in light of the Environmental Protection Agency's recommendation of a 50-kilometer radius.

FERC Action on Remand

Over the course of twenty months, the Commission conducted a supplemental environmental review issuing numerous data requests to the project proponents in order to address the issues that the Court had found deficient.

Ultimately, the orders (1) addressed the Court's concerns on remand and (2) imposed a new environmental mitigation measure as a condition of the project authorizations, requiring for what appears to be the first time an ongoing air emissions monitoring requirement.

Updated Environmental Analyses. The Commission supplemented its environmental analysis of the proposed projects by addressing the argument regarding the social cost of carbon and updating its analysis of the projects' environmental justice impacts. In its orders on remand, the Commission included the social cost of carbon figures, noting that the inclusion was for informational purposes only because the tool used to analyze such cost was not developed for project level review and would not be a credible basis for determining whether greenhouse gas (GHG) emissions are significant. The Commission also conducted and included a new analysis of the projects' impacts on environmental justice communities surrounding the proposed projects, explaining in detail its basis for using the two-mile radius, and using the recommended 50-kilometer radius in identifying census block groups considered environmental justice communities that may be impacted by the projects.

Additional Mitigation Measure. FERC also determined that the projects' direct and indirect environmental impacts would be reduced to less-than-significant levels if appropriate mitigation

measures are implemented. The Commission, therefore, also imposed a monitoring and mitigation measure, requiring Texas LNG and Rio Grande, before the beginning of construction, to submit detailed plans for monitoring and mitigating emissions of particulate matter (PM_{2.5} and PM₁₀) and nitrogen oxide (NO₂) during construction, commissioning, and operation of the proposed projects. The plan, which must be based on National Ambient Air Quality Standards (NAAQS), must include a monitoring plan, measures to be taken if emissions exceed NAAQS levels, and weekly reports documenting any exceedances and mitigation efforts.

The orders reauthorized the projects and reaffirmed the Commission's original findings that the projects were in the public interest.

Implications

The Commission's orders mark the first time the agency has required long-term, ongoing air emissions monitoring during the operation of an LNG terminal. The Commission explained that imposition of the new mitigation condition was necessary to demonstrate the project would have less than significant air emissions impacts on nearby environmental justice communities. Chairman Phillips hailed the new mitigation condition as an "unprecedented and bipartisan step to protect environmental justice communities from potential concerns about the projects' effects on air quality." But, the condition was not enough to garner Commissioner Clements's vote. In her view the Commission's process—or lack thereof—on remand "represents a gobsmacking departure, frankly, from the lessons I took away from the environmental justice roundtable we held just a month ago."

While the Commission did not announce a new broad mitigation policy in these orders, it will be critical to see whether FERC will impose similar conditions on other FERC-regulated facilities that may be constructed in proximity to environmental justice communities.

For More Information

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