

UNITED STATES OF AMERICA
DEPARTMENT OF ENERGY
OFFICE OF FOSSIL ENERGY AND CARBON MANAGEMENT

RIO GRANDE LNG, LLC

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DOCKET NO. 15-190-LNG

NOTICE OF RELATED JUDICIAL DECISION

NOVEMBER 23, 2021

On February 10, 2020, the Department of Energy's (DOE) Office of Fossil Energy (now the Office of Fossil Energy and Carbon Management¹) issued DOE/FE Order No. 4492 (Order)² to Rio Grande LNG, LLC (Rio Grande LNG) under section 3(a) of the Natural Gas Act (NGA).³ Under this Order, Rio Grande LNG is authorized to export domestically produced liquefied natural gas (LNG) in a volume equivalent to 1,318 billion cubic feet per year (Bcf/yr) of natural gas by vessel from the proposed Rio Grande LNG Project, to be located in Cameron County, Texas, to any country with which the United States does not have a free trade agreement (FTA) requiring national treatment for trade in natural gas, and with which trade is not prohibited by U.S. law or policy (non-FTA countries).⁴

Previously, on November 22, 2019, the Federal Energy Regulatory Commission (FERC) issued an order (FERC Order) authorizing Rio Grande LNG to site, construct, and operate the proposed Rio Grande LNG Project.⁵ The FERC Order was based on the final environmental impact statement (EIS) for the Rio Grande LNG Project prepared by FERC staff under the National Environmental Policy Act of 1969 (NEPA).⁶ DOE had participated as a cooperating agency in FERC's environmental review of the Rio Grande LNG Project, and had adopted the final EIS.⁷ Thus, in granting Rio Grande LNG's authorization in Order No. 4492 and issuing an accompanying Record of Decision (ROD) under NEPA, DOE relied on both the final EIS and

¹ On July 4, 2021, DOE's Office of Fossil Energy (FE) became the Office of Fossil Energy and Carbon Management (FECM).

² *Rio Grande LNG, LLC*, DOE/FE Order No. 4492, Docket No. 15-190-LNG, Opinion and Order Granting Long-Term Authorization to Export Liquefied Natural Gas to Non-Free Trade Agreement Nations (Feb. 10, 2020), available at: <https://www.energy.gov/sites/prod/files/2020/02/f71/ord4492.pdf>; amended by DOE/FE Order No. 4492-A (Oct. 21, 2020) (extending export term through December 31, 2050).

³ 15 U.S.C. § 717b(a).

⁴ See *Rio Grande LNG*, DOE/FE Order No. 4492, at 59-60 (Ordering Para. A).

⁵ *Rio Grande LNG, LLC & Rio Bravo Pipeline Company, LLC*, Order Granting Authorizations Under Sections 3 and 7 of the Natural Gas Act, 169 FERC ¶ 61,131 (Nov. 22, 2019) [hereinafter FERC Order], *reh'g denied* (Jan. 23, 2020). In the FERC Order, FERC also authorized Rio Grande LNG's affiliate, Rio Bravo Pipeline Company, LLC, to construct and operate related pipelines.

⁶ 42 U.S.C. § 4321 *et seq.*

⁷ See *Rio Grande LNG*, DOE/FE Order No. 4492, at 4.

the FERC Order.⁸ Additionally, DOE imposed as a condition of the Order that Rio Grande LNG “shall ensure compliance with all terms and conditions established by FERC in the final EIS, including the 143 environmental conditions adopted in the FERC Order”⁹

Parties to the FERC proceeding petitioned the U.S. Court of Appeals for the District of Columbia Circuit (D.C. Circuit) for review of the FERC Order. The petitioners argued that the FERC Order violated NEPA, the NGA, and the Administrative Procedure Act (APA). On August 3, 2021, the D.C. Circuit issued a decision in *Vecinos para el Bienestar de la Comunidad Costera v. Federal Energy Regulatory Commission*, 6 F.4th 1321 (D.C. Cir. 2021) (*Vecinos*), in which it granted the petition for review of the FERC Order.¹⁰

The D.C. Circuit held that FERC’s “NEPA analyses of the projects’ impacts on climate change and environmental justice communities were deficient under the APA.”¹¹ In particular, the Court found that FERC “failed to adequately analyze the impact of the projects’ greenhouse gas emissions.”¹² The Court further held that FERC’s “determinations ... under the NGA were ... deficient to the extent that they relied on its NEPA analyses of the projects’ impacts on climate change and environmental justice communities.”¹³ Accordingly, the Court instructed FERC to “revisit its determinations of public interest and convenience under Sections 3 and 7 of the NGA” for the Rio Grande LNG Project and the associated pipelines, respectively.¹⁴

⁸ *See id.* at 4, 65-70 (Appendix: Record of Decision).

⁹ *Id.* at 61 (Ordering Para. H).

¹⁰ The D.C. Circuit consolidated the Rio Grande LNG lawsuit with another petition for review challenging an order issued by FERC to Texas LNG Brownsville LLC (Texas LNG), authorizing the construction and operation of Texas LNG’s proposed LNG project, to be located near the Rio Grande LNG Project on the Brownville Shipping Channel. *See Vecinos*, 6 F.4th at 1325, 1327. DOE is concurrently filing a Notice of Related Judicial Decision in the Texas LNG docket (Docket No. 15-62-LNG). For purposes of this Notice, however, we refer only to Rio Grande LNG.

¹¹ *Vecinos*, 6 F.4th at 1331.

¹² *Id.* at 1329.

¹³ *Id.* at 1331.

¹⁴ *Id.*

The Court declined, however, to vacate the FERC Order. Instead, the Court remanded the FERC Order to FERC “without *vacatur* for further proceedings consistent with this opinion.”¹⁵ In so doing, the Court “[found] it reasonably likely that on remand [FERC] can redress its failure of explanation with regard to its analyses of the projects’ impacts on climate change and environmental justice communities, and its determinations under ... the NGA, while reaching the same result.”¹⁶

DOE takes notice of the *Vecinos* decision and the Court’s instructions to FERC on remand. Because the Court remanded the FERC Order for further proceedings without *vacatur* and because exports from the Rio Grande LNG Project are neither currently occurring nor imminent,¹⁷ DOE takes no further action on Rio Grande LNG’s non-FTA authorization (Order No. 4492, as amended) and the accompanying ROD at this time. DOE will monitor the FERC proceeding, evaluate FERC’s actions on remand, and take appropriate action in this proceeding under both NGA section 3(a) and NEPA consistent with FERC’s actions. DOE will provide additional notice in this docket, as necessary.

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¹⁵ *Id.* at 1332.

¹⁶ *Id.*

¹⁷ Rio Grande LNG is continuing to develop its Project and has not yet commenced construction. See Rio Grande LNG, LLC, Docket No. 15-190-LNG, Semi-Annual Progress Report, at 1 (Oct. 4, 2021), available at: <https://www.energy.gov/sites/default/files/2021-10/Rio%20Grande%20LNG%20--%20DOE%20Semi-Annual%20Report%20%2810-2021%29.pdf>.