

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

TEXAS LNG BROWNSVILLE LLC

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DOCKET NO. 15-62-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. 4489 (Order)² to Texas LNG Brownsville LLC (Texas LNG) under section 3(a) of the Natural Gas Act (NGA).³ Under this Order, Texas LNG is authorized to export domestically produced liquefied natural gas (LNG) in a volume equivalent to 204.4 billion cubic feet per year (Bcf/yr) of natural gas by vessel from the proposed Texas LNG Brownsville LLC Liquefied Natural Gas Export Project (Project), to be located at the Port of Brownsville, 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 Texas LNG to site, construct, and operate the proposed Texas LNG Project.⁵ The FERC Order was based on the final environmental impact statement (EIS) for the Texas 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 Texas LNG Project, and had adopted the final EIS.⁷ Thus, in granting Texas LNG's authorization in Order No. 4489 and issuing an accompanying Record

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

² *Texas LNG Brownsville LLC*, DOE/FE Order No. 4489, Docket No. 15-62-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/ord4489.pdf>; amended by DOE/FE Order No. 4489-A (Dec. 10, 2020) (extending export term through December 31, 2050).

³ 15 U.S.C. § 717b(a).

⁴ See *Texas LNG Brownsville LLC*, DOE/FE Order No. 4489, at 55-56 (Ordering Para. A).

⁵ *Texas LNG Brownsville LLC*, Order Granting Authorization Under Section 3 of the Natural Gas Act, 169 FERC ¶ 61,130 (Nov. 22, 2019) [hereinafter FERC Order], *reh'g denied* (Feb. 21, 2020).

⁶ 42 U.S.C. § 4321 *et seq.*

⁷ See *Texas LNG Brownsville LLC*, DOE/FE Order No. 4489, at 3.

of Decision (ROD) under NEPA, DOE relied on both the final EIS and the FERC Order.⁸

Additionally, DOE imposed as a condition of the Order that Texas LNG “shall ensure compliance with all terms and conditions established by FERC in the final EIS, including the 129 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, in relevant part, to “revisit its determination[] of public interest” under NGA section 3 for the Texas LNG Project.¹⁴

⁸ *See id.*; *see also id.* at 60-64 (Appendix: Record of Decision).

⁹ *Id.* at 56 (Ordering Para. H).

¹⁰ The D.C. Circuit consolidated the Texas LNG lawsuit with another petition for review challenging an order issued by FERC to Rio Grande LNG, LLC (Rio Grande LNG), authorizing the construction and operation of Rio Grande LNG’s proposed LNG project, to be located near the Texas 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 Rio Grande LNG docket (Docket No. 15-190-LNG). For purposes of this Notice, however, we refer only to Texas 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 Texas LNG Project are neither currently occurring nor imminent,¹⁷ DOE takes no further action on Texas LNG’s non-FTA authorization (Order No. 4489, 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 Texas LNG is “continu[ing] its efforts to develop the Project” and has not yet commenced construction. See Texas LNG Brownsville LLC, Docket No. 15-62-LNG, Semi-Annual Report Regarding Texas LNG Terminal in Brownsville, Texas, at 6 (Oct. 1, 2021), available at: <https://www.energy.gov/sites/default/files/2021-10/Texas%20LNG%20Brownsville%20LLC%20SAR%20Oct.%202021.pdf>; see also *id.* at 2 (stating that Texas LNG is working on a “variety of fronts, including financing, engineering, pipeline supply, site analysis, and offtake agreement negotiations”).