

PUBLICATION

More Than a Pipedream: Texas LNG Export Terminals Reauthorized by Federal Energy Regulatory Commission

Authors: Kimberly A. Chojnacki

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On April 21, 2023, the Federal Energy Regulatory Commission (FERC) issued two Orders on Remand, once again giving Texas LNG Brownsville LLC and Rio Grande LNG LLC the green light to proceed with their not-yet-built export terminals.

FERC originally approved both terminals, proposed for the Port of Brownsville, in 2019, but the U.S. Court of Appeals for the District of Columbia remanded the Commission's authorization orders in 2021 due to environmental concerns. Specifically, the D.C. Circuit Court determined FERC failed to adequately consider the terminals' impacts on climate change and the region's minority and low-income residents.

Willie Phillips, acting chairman of FERC, believes the Commission's latest Orders "[strike] an appropriate middle ground and adequately [address] what the court directed the commission to address." However, Commissioner Allison Clements, the lone dissenter on the Orders, believes the Orders are still deficient and will only invite further litigation and delays. Clements' prediction appears correct as the Sierra Club, an environmental organization that also recently challenged the U.S. Department of Energy's approval of two other export terminals on the Gulf Coast, already issued a statement that it would seek a rehearing of the Commission's Orders. The Sierra Club has not applied for a rehearing yet but has until May 21, 2023, to do so. From there, the Commission will have 30 days to respond to the request. Assuming the Commission denies the request, the Sierra Club will have 60 days to petition a U.S. Court of Appeals for review of the Commission's Orders.

Notwithstanding further challenges, both Texas LNG Brownsville and Rio Grande LNG anticipate making their final investment decisions this year with commercial operations slated to commence in 2027. [According to](#) Brendan Duval, the CEO and Founder of Glenfarne Energy Transition, an affiliate of Texas LNG Brownsville LLC, "Texas LNG will bring more than 1,200 new construction jobs and over 100 new full-time jobs to the Rio Grande Valley of which a majority are intended to be hired from the local community. We are eager to begin construction on our facility to be able to safely export clean, environmentally sensible LNG that is 'Green by Design' around the globe providing long-term energy security when it is critically needed." Similarly, NextDecade Corporation, the parent company of Rio Grande LNG, LLC, believes the Rio Grande LNG project is a significant investment in the Rio Grande Valley's future.

While continued opposition to the projects is expected, operators in the upstream, midstream, and downstream sectors of the natural gas market should begin identifying next steps and allocating teams and resources in anticipation of construction, placement, and operations of the facilities in the near term. Baker Donelson's lawyers – including practice groups focused on Energy Transactions, Power and Renewable Energy, and Construction – are dedicated to providing comprehensive counsel throughout the lifecycle of projects like the Texas LNG Brownsville and Rio Grande LNG facilities, including infrastructure development and finance.

Please reach out to [Joe Tirone](#) (Baltimore), [Kimberly A. Chojnacki](#) (Houston), or any member of Baker Donelson's [Energy Group](#) to discuss further.

