



TEXAS LNG BROWNSVILLE LLC
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USA

May 24, 2024

Via Electronic Filing

Debbie-Anne A. Reese, Acting Secretary
Federal Energy Regulatory Commission
888 First Street, N.E.
Washington, D.C. 20426

**Re: Texas LNG Brownsville LLC
Docket Nos. CP16-116-000, et al.
Request for Extension of Time**

Dear Ms. Reese:

On November 22, 2019, the Federal Energy Regulatory Commission (“Commission” or “FERC”) authorized Texas LNG Brownsville LLC (“Texas LNG”) to site, construct, and operate facilities for the liquefaction and export of natural gas at a proposed liquefied natural gas terminal on the north side of the Brownsville Ship Channel in Cameron County, Texas (“Project”) pursuant to Section 3 of the Natural Gas Act (“NGA”) and Part 153 of the Commission’s regulations.¹ Ordering Paragraph (B) of the Authorization Order required Texas LNG to complete the authorized construction of the Project facilities and make them available for service within five years from the date of the Authorization Order, i.e., by November 22, 2024.² For good cause shown, Texas LNG is requesting an extension of time until November 22, 2029, to complete construction and place the Project in service.

The Project Has Been Delayed Due to Extenuating Circumstances Outside of Texas LNG’s Control.

The Project has been delayed due to extenuating circumstances outside of Texas LNG’s control, specifically litigation challenging the Commission’s underlying orders authorizing the Project and other permits for the Project. After the Commission denied rehearing on February 21, 2020, Sierra Club petitioned for review of the authorization and rehearing orders at the U.S. Court of Appeals for the District of Columbia Circuit (“D.C. Circuit”). Texas LNG vigorously defended the Commission’s authorization in court. Over a year later, on August 3, 2021, the D.C. Circuit remanded the Commission’s authorization and rehearing orders back to the Commission to re-analyze the Project’s impacts on environmental justice communities and explain why the Commission was not required to use the social cost of carbon protocol tool.³

¹ *Tex. LNG Brownsville LLC*, 169 FERC ¶ 61,130 (2019) (“Authorization Order”), *order on reh’g*, 170 FERC ¶ 61,139, *remanded sub nom., Vecinos para el Bienestar de la Comunidad Costera v. FERC*, 6 F.4th 1321 (D.C. Cir. 2021), *order on remand sub nom., Tex. LNG Brownsville LLC*, 183 FERC ¶ 61,047 (“Remand Order”), *order on reh’g*, 185 FERC ¶ 61,079 (2023), *pet. for review pending sub nom., City of Port Isabel et al. v. FERC*, Nos. 23-1175 and 23-1222 (D.C. Cir.).

² Authorization Order at Ordering Para. (B).

³ *Vecinos*, 6 F.4th at 1331-32.

The D.C. Circuit also required that the Commission reconsider its determination of public interest under Section 3 of the NGA.⁴

The Commission's remand process took almost two years. On remand, Commission staff issued a series of environmental information requests and a request for public comment to fulfill the requirements of the D.C. Circuit's order.⁵ Texas LNG actively pursued an order on remand by promptly responding to each environmental information request.⁶ On April 21, 2023, over 20 months after the D.C. Circuit's decision, the Commission issued the Remand Order.⁷ The Remand Order addressed the issues that the D.C. Circuit identified in *Vecinos*, and affirmed that the Project "is not inconsistent with the public interest."⁸ Sierra Club sought rehearing, which was denied on October 27, 2023.⁹ Sierra Club sued FERC over the Project's authorization in the D.C. Circuit for a second time. Texas LNG continues to actively defend FERC's authorization against persistent legal challenges by Sierra Club at the D.C. Circuit.¹⁰

In addition to the D.C. Circuit litigation, Texas LNG was also forced to defend a challenge to the air permit issued by the Texas Commission on Environmental Quality ("TCEQ"). TCEQ issued permit number 139561 on May 12, 2020, after a contested administrative hearing. The City of Port Isabel and another group appealed TCEQ's decision to the 419th District Texas District Court in Travis County, Texas.¹¹ Texas LNG filed a plea to the jurisdiction seeking dismissal of the case on the basis that federal courts have exclusive jurisdiction over challenges to state agency permits required under the NGA.¹² The trial court denied the plea to the jurisdiction by order dated July 27, 2021.

⁴ *Id.* at 1331.

⁵ Environmental Information Request, Docket No. CP16-116-000 (Feb. 3, 2022); Environmental Information Request, Docket No. CP16-116-000 (Aug. 16, 2022); Notice Seeking Public Comment on Responses to Informational Requests at 2, Docket Nos. CP16-116- 000 and 002 (Sept. 30, 2022); Environmental Information Request, Docket No. CP16-116-000 (Oct. 28, 2022); Environmental Information Request, Docket No. CP16-116-000 (Jan. 6, 2023).

⁶ Texas LNG Brownsville LLC, Response to February 3, 2022 Environmental Information Request, Docket No. CP16-116-000 (Mar. 4, 2022); Texas LNG Brownsville LLC, Supplemental Response to February 3, 2022 Environmental Information Request, Docket No. CP16-116-000 (filed Apr. 29, 2022; filed date May 2, 2022); Texas LNG Brownsville LLC, Response to August 16, 2022 Environmental Information Request, Docket No. CP16-116-000 (Sept. 15, 2022); Texas LNG Brownsville LLC, Supplemental Response to August 16, 2022 Environmental Information Request, Docket No. CP16-116-000 (Sept. 21, 2022); Texas LNG Brownsville LLC, Supplemental Response to August 16, 2022 Environmental Information Request, Docket No. CP16-116-000 (filed Sept. 30, 2022; filed date Oct. 3, 2022); Texas LNG Brownsville LLC, Response to Environmental Information Request, Docket No. CP16-116- 000 (Nov. 7, 2022); Texas LNG Brownsville LLC, Response to FERC's January 6, 2023 Environmental Information Request for the Texas LNG Project, Docket No. CP16-116-000 (Jan. 30, 2023); Texas LNG Brownsville LLC, CD containing Response to FERC's January 6, 2023, Environmental Information Request for the Texas LNG Project, Docket No. CP16-116-000 (Jan. 30, 2023); Texas LNG Brownsville LLC, Response to FERC's February 7, 2023 Additional Information Request for the Texas LNG Project, Docket No. CP16-116-000 (Feb. 23, 2023).

⁷ Remand Order, 183 FERC ¶ 61,047.

⁸ *Id.* at P 2.

⁹ 185 FERC ¶ 61,079 at Order Para. (A).

¹⁰ *See, e.g., Nat'l Fuel Gas Supply Corp.*, 179 FERC ¶ 61,226, at P 15 (2022) ("We find that National Fuel's intervention in NYSDEC's appeal of the Commission's water quality certification waiver in the Second Circuit was part of its efforts to obtain a state authorization and shows its continued interest in the project.").

¹¹ *Vecinos Para El Bienestar De La Comunidad Costera v. TCEQ*, No. D-1-GN-20-004038.

¹² *See* 15 U.S.C. § 717r(d)(1).

Texas LNG appealed the trial court’s decision in August 2021 to the Third Court of Appeals in Austin, Texas.¹³ Although briefing was complete as of January 12, 2022, the appeals court did not set the case for submission until almost 18 months later, on June 23, 2023. On July 21, 2023, the appeals court rendered a decision in Texas LNG’s favor. The appeals court concluded that the “petitions for judicial review [were] within the scope of the [federal] Fifth Circuit’s original and exclusive jurisdiction,”¹⁴ reversed the trial court’s denial of the plea to the jurisdiction and dismissed the case. The appellate mandate issued on October 12, 2023, with no party seeking further review.

These legal challenges and the various uncertainties the challenges caused delayed the Project from multiple perspectives including commercial and marketing, regulatory, and construction and constitute extenuating circumstances outside of Texas LNG’s control. Therefore, Texas LNG requests an extension of time until November 22, 2029, to complete construction of the Project and place the facilities into service, consistent with Commission regulations and precedent.¹⁵

Good Cause Exists for an Extension.

Neither the NGA nor Commission regulations establish a particular time period to complete construction of an authorized natural gas facility. Rather, that time period is set in the Commission’s authorization orders, and the Commission’s regulations provide for extensions of time to comply with conditions set forth in its authorization orders for good cause shown.¹⁶ This flexible framework allows the Commission to respond to delays. Consistent with this framework, the Commission has granted extensions of time in situations when a project sponsor has demonstrated that it has made a good-faith effort to meet a certificate order’s deadline, but has encountered obstacles, such as legal challenges.¹⁷

Texas LNG Has Diligently Pursued Permits for the Project.

Good cause exists to grant Texas LNG’s requested extension of time. Since FERC issued the Authorization Order in 2019, Texas LNG has been in a protracted legal battle over the Authorization Order. Texas LNG’s FERC authorization was appealed to the D.C. Circuit

¹³ Notice of Appeal, Texas Commission on Environmental Quality and Texas LNG Brownsville, LLC v. Vecinos Para El Bienestar De La Comunidad Costera, and City of Port Isabel, Texas, No. 03-21-00395-CV (Tex. 3d Ct. of Appeals Aug. 13, 2021).

¹⁴ Mem. Op. at 15, *Tex. Comm’n on Env’tl. Quality v. Vecinos Para El Bienestar De La Comunidad Costera*, No. 03-21-00395-CV (Tex. 3d Ct. of Appeals July 21, 2023).

¹⁵ 18 C.F.R. § 385.2008 (2024); e.g., *Nw. Pipeline LLC*, 171 FERC ¶ 61,077, at P 10 (2020); *Algonquin Gas Transmission, LLC*, 170 FERC ¶ 61,144, at PP 15 and 32 (2020), *pets. for review denied sub nom., Fore River Residents Against the Compression Station v. FERC*, 77 F.4th 882 (D.C. Cir. 2023); *PennEast Pipeline Co.*, 170 FERC ¶ 61,138, at P 7 (2020); *Constitution Pipeline Co.*, 165 FERC ¶ 61,081, at P 9 (2018), *reh’g denied*, 169 FERC ¶ 61,102, at P 19 (2019).

¹⁶ 18 C.F.R. § 385.2008.

¹⁷ See *Transcon. Gas Pipe Line Co.*, 186 FERC ¶ 61,038, at P 17 (2024) (finding that good cause exists to grant an extension of time because of delays in receiving required permits for the project); *Nat’l Fuel*, 179 FERC ¶ 61,226 at P 21 (granting a 35-month extension of time due to applicant’s litigation delays); *Mountain Valley Pipeline, LLC*, 173 FERC ¶ 61,026, at P 12 (2020) (noting that good cause exists to grant an extension because “[l]egal challenges have affected Mountain Valley’s ability to maintain necessary authorizations”).

and then remanded back to FERC, a process which took a year-and-a-half.¹⁸ On top of that, FERC's remand process took 20 months and has since been challenged again by the Sierra Club. Now, the appeal of the Remand Order is pending before the D.C. Circuit. This legal fight has persisted since the Authorization Order was issued almost five years ago. As the Commission has consistently held, delays caused by litigation involving necessary authorizations are extenuating circumstances outside of the control of the project developer.¹⁹ Moreover, the Commission has found that a project developer's intervention in litigation involving a necessary permit for the project demonstrates continued interest in the project.²⁰ In addition to intervening in Sierra Club's most recent challenge, Texas LNG has consistently defended the Project's authorization order at FERC, is pursuing commercial agreements, and has secured the necessary environmental permits for the Project.

In the time since the Authorization Order, Texas LNG has worked diligently to secure and defend the necessary federal authorizations to begin construction, in compliance with Environmental Condition No. 9 of the Authorization Order.²¹ On January 25, 2024, Texas LNG obtained U.S. Army Corps of Engineers Section 10 and Section 404 permits for the Project, as well as approval from the Railroad Commission of Texas under the Coastal Zone Management Act of 1972, completing the project's permitting efforts required for a final investment decision.²² Texas LNG also has the necessary authorizations from the Department of Energy to export LNG from the Project.²³ These permits and authorizations will allow Texas LNG to complete construction within the requested time frame.

Texas LNG Is Actively Working to Commercialize the Project.

Since its authorization, Texas LNG has been in active discussions and negotiations with buyers of liquefied natural gas ("LNG") and is optimistic about the commercial environment and the opportunity to provide energy security to strategic allies of the United States. Texas LNG executed Heads of Agreements on with EQT Corporation anticipating a definitive 15-year LNG tolling agreement²⁴ and with the Gunvor Group for a 20-year LNG tolling agreement for part of the Project's capacity.²⁵ Despite the protracted litigation, Texas LNG is making significant progress on its commercialization of its Project and is optimistic that the Project will help meet the rising global demand for LNG that is expected to increase significantly

¹⁸ See *Vecinos*, 6 F.4th at 1331-32.

¹⁹ See, e.g., *Algonquin Gas Transmission*, 170 FERC ¶ 61,144 at P 36; *Mountain Valley Pipeline*, 173 FERC ¶ 61,026 at P 4; *Nat'l Fuel*, 179 FERC ¶ 61,226 at P 5.

²⁰ *Nat'l Fuel*, 179 FERC ¶ 61,226 at P 15 ("We find that National Fuel's intervention in NYSDEC's appeal of the Commission's water quality certification waiver in the Second Circuit was part of its efforts to obtain a state authorization and shows its continued interest in the project.").

²¹ Authorization Order at Environmental Condition 9.

²² Press Release, Glenfarne Energy Transition, LLC, *Glenfarne Energy Transition's Texas LNG Updates Commercial Status and Concludes Required Permitting for Final Investment Decision* (Jan. 25, 2024), <http://tinyurl.com/yy6pp2j5>.

²³ *Tex. LNG Brownsville LNG*, DOE/FE Docket No. 15-62-LNG, Order No. 3716 (Sept. 24, 2015); *Tex. LNG Brownsville LNG*, DOE/FE Docket No. 15-62-LNG, Order No. 4489 (Feb. 10, 2020).

²⁴ News Release, PR Newswire, *EQT Announces Tolling Agreement with Texas LNG* (Jan. 11, 2024), <https://www.prnewswire.com/news-releases/eqt-announces-tolling-agreement-with-texas-lng-302033095.html>.

²⁵ News Release, PR Newswire, *Glenfarne Energy Transition's Texas LNG Announces LNG Offtake Agreement with Gunvor Group* (Mar. 18, 2024), <https://www.businesswire.com/news/home/20240317583952/en/Glenfarne-Energy-Transition%E2%80%99s-Texas-LNG-Announces-LNG-Offtake-Agreement-with-Gunvor-Group>.

over the coming decades.²⁶ Texas LNG has the necessary internal and external technical resources committed to the development and construction of the Project, and will continue to pursue and execute commercial agreements.

The Requested Extension Is in the Public Interest.

Providing an extension of time to complete construction of the Project would not alter the public interest finding underlying the Authorization Order. In fact, the Commission very recently reconsidered and affirmed its initial public interest determination under Section 3 of the NGA.²⁷ Texas LNG will continue to follow the environmental conditions laid out in the Authorization Order, as further conditioned in the Remand Order, and will update the Commission on the status of the Project, as required.

The Commission Should Grant the Requested Extension.

Texas LNG has demonstrated that good cause exists to grant the requested extension of time. Texas LNG has made good-faith efforts to meet the construction deadline by diligently pursuing and obtaining necessary environmental permits, executing, and pursuing commercial agreements, and defending its FERC authorization in the D.C. Circuit and on remand to FERC. That litigation is the cause of the delay of construction of the Project.

Accordingly, Texas LNG hereby requests that the Director of the Office of Energy Projects grant Texas LNG an extension of time until November 22, 2029, for Texas LNG to complete the authorized construction of the Project facilities and make the facilities available for service.

Respectfully,

/s/ Oscar J. Lopez

Oscar J. Lopez, P.E

Regulatory & Permitting Manager

Texas LNG Brownsville LLC

cc: Terry Turpin, FERC
John Wood, FERC
Pamela Boudreau, FERC
Andrew Kohout, FERC
Shannon Jones, FERC
Jacqueline S. Holmes, FERC

²⁶ Marwa Rashad, Emily Chow and Ron Bousso, Reuters, *Shell Expects 50% Rise in Global LNG Demand by 2040*, (Feb. 14, 2024), <https://www.reuters.com/business/energy/global-lng-demand-seen-rising-more-than-50-by-2040-shell-report-2024-02-14/>.

²⁷ Remand Order at P 2 (“We reaffirm that the Texas LNG Project, as conditioned in the [Authorization Order], and as modified herein, is not inconsistent with the public interest.”) (internal citation omitted).

CERTIFICATE OF SERVICE

I hereby certify that I have this day served the foregoing document upon each person designated on the official service list compiled by the Secretary in this proceeding.

Dated at this 24th day of May, 2024.

/s/ Claire M. Brennan
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