BLANKROME

Energy

MARCH 2019 • NO.2

FERC Commissioners Approve the Venture Global Calcasieu Pass LNG Export Project but Signal Divisions in Approaches to Evaluating GHG Emissions

FERC's order approving the Calcasieu Pass LNG project is its first authorization of a new LNG terminal in two years. Although LNG authorizations have been delayed by disagreements among Commissioners on how to evaluate GHG emissions, Chairman Chatterjee has expressed confidence that the Commission has found a path forward for addressing climate change issues. Nonetheless, given the concerns raised by two of the currently four-member Commission, the LNG industry should closely monitor the Commission's decisions in this area.

INTRODUCTION

On February 21, 2019, the Federal Energy Regulatory Commission ("FERC" or "the Commission") issued an order authorizing Venture Global Calcasieu Pass, LLC ("Calcasieu Pass") to site, construct, and operate a new liquefied natural gas ("LNG") terminal and associated facilities (the "Export Terminal") pursuant to section 3 of the Natural Gas Act ("NGA").[1] The Certificate Order also authorized TransCameron Pipeline, LLC ("TransCameron") to construct and operate a new interstate pipeline under NGA section 7. Although the Certificate Order drew favorable conclusions in its environmental review of the projects, a concurrence by Commissioner LaFleur and a dissent by Commissioner Glick signaled growing dissatisfaction among half of the current Commission with respect to FERC's practice of evaluating a project's greenhouse gas ("GHG") emissions.

THE CERTIFICATE ORDER

The Export Terminal, to be located along the Calcasieu Ship Channel in Cameron Parish, Louisiana, will have a nameplate capacity of 10 million metric tons per annum ("MTPA") and a peak capacity of 12 MTPA under optimal operating conditions. Natural gas will be delivered to the Export Terminal by TransCameron's proposed 23.4-mile, 42-inch diameter interstate pipeline, which will extend from the Grand Chenier Station in Cameron Parish, Louisiana to the Export Terminal and will be able to provide up to 2,125,000 dekatherms per day ("Dth/d") of natural gas transportation service.

LNG export projects are subject to a bifurcated public interest review under section 3 of the NGA, with the Department of Energy ("DOE") evaluating the impacts of LNG exports and FERC considering the effects associated with the siting, construction, and operation of the LNG terminals. FERC reviews proposed pipelines under NGA section 7's public convenience and necessity standard, guided by the factors enumerated in its Certificate Policy Statement. Additionally, both FERC and the DOE have independent obligations to review indirect and cumulative environmental effects under the National Environmental Policy Act ("NEPA").

In its NGA section 3 review of the Export Terminal, the Commission held that the siting, construction, and operation of the project would not be inconsistent with the public interest. The Commission based its conclusion, among other things, on findings in the final environmental impact statement ("EIS") that "most of the direct environmental impacts from construction…are expected to be temporary or short term," that "all impacts from construction and operation…will be reduced to less than significant levels if the projects are constructed and operated in accordance with applicable laws and regulations and the environmental mitigation measures recommended in the final EIS and adopted by this order," and "that reasonably foreseeable indirect or cumulative impacts from operation of [the] Export Terminal will not be significant."[2] Balancing the benefits of the proposed pipeline against "the lack of adverse effects on existing customers, other pipelines and their captive customers, and the minimal adverse effects on landowners and surrounding communities," the Commission also concluded that the proposed pipeline is required by the public convenience and necessary per section 7 of the NGA.[3]

In its NEPA review, the Commission concluded that the projects are "environmentally acceptable," provided they are constructed and operated consistently with environmental conditions recommended in the EIS and incorporated in the Order. The Order noted the EIS' estimate that the Export Terminal may result in annual emissions of 3,906,336 metric tons of carbon dioxide equivalent, comparing this with the Environmental Protection Agency's ("EPA") estimate of 5.8 billion metric tons of carbon dioxide equivalent emissions on a national level in 2016 (representing a 0.7 percent increase from the 2016 national level). The Commission noted that no national targets exist that can be used as benchmarks for comparison. The Commission further pointed to "previou[s] conclu[sions] it could not determine a project's incremental physical impacts on the environment caused by GHG emissions [and] could not determine whether a project's contribution to climate change would be significant."[4] In its cumulative impacts analysis, the Commission relied on the EIS's conclusion that effects of the projects would be minor or insignificant.

CONCURRENCE AND DISSENT

Commissioner LaFleur concurred with the decision to approve the Export Terminal and pipeline, but expressed significant concerns with FERC's review of the potential climate change impacts of LNG projects.[5] While acknowledging the complexities implicit in the DOE's and FERC's dual review of LNG projects, Commissioner LaFleur reiterated FERC's "clear responsibility to disclose and consider the direct and cumulative impacts of [a] proposed LNG export facility."[6] This requires, according to the Commissioner, not only disclosure of direct GHG emissions, but also establishment of a framework under which the Commission can make a determination as to the significance of such emissions. Indeed, the Commissioner expressed an opinion that the "magnitude of the direct GHG emissions from the Calcasieu Pass Project certainly appear to be significant" under NEPA.[7] Despite FERC's opposition to date to using the Social Cost of Carbon, Commissioner LaFleur suggested that the Commission should adopt a similar methodology to assess the significance of GHG emissions, noting that the complexity of such a tool does not excuse the Commission's environmental obligations. The Commissioner also disagreed with FERC's practice of omitting GHG emissions in its cumulative impacts analysis based on the fact that GHG emission effects are measured on a national or global level, as opposed to local or regional level. The Commissioner contended that "at a minimum direct GHG emissions must be disclosed and considered, both cumulatively and with respect to individual facilities."[8] To this end, the Commissioner included with her concurrence a table comparing annual direct carbon dioxide equivalent emissions from FERC projects within 50 kilometers of the Calcasieu Pass LNG Project.

In a strongly worded dissent, Commissioner Glick opposed the Order as failing to satisfy the Commission's obligations under NGA and NEPA.[9] The Commissioner decried what he characterized as a consistent Commission practice of refusing to consider the implications of a project's direct GHG emissions. According to the Commissioner, by failing to assess the significance or potential harm of the project's estimated annual emissions, the Order "effectively writes climate change out of the public interest determination" and similarly fails to satisfy FERC's NEPA review obligations.[10] Like Commissioner LaFleur, Commissioner Glick argues that the lack of a standard methodology for evaluating the significance of GHG emissions does not excuse FERC from taking the required "hard look" into environmental effects required by NEPA. In this regard, the Commissioner advocates the use of the Social Cost of Carbon tool and argues that the Commission's "refusal to monetize the

harms of climate change using the Social Cost of Carbon while simultaneously monetizing the Project's long-term socioeconomic benefits…is arbitrary and capricious."[11]

The separate statements of Commissioners LaFleur and Glick focus on the significance of direct GHG emissions and indicate a rejection of FERC Staff's position that even if the Social Cost of Carbon analysis is deployed, the lack of an agreed upon present discount rate for future costs makes the analysis subject to large swings depending on the rate chosen and the lack of a significance benchmark against which a result can be compared makes the tool of limited value. Commissioner LaFleur appears to acknowledge these difficulties while suggesting that FERC could address those shortcomings in a new analysis of its own that would determine whether GHG emissions were significant. Commissioner Glick's dissent suggests an intention to potentially oppose future LNG decisions on environmental grounds until a significance analysis is adopted or devised, noting that "[a]t the end of the day, no one benefits form the Commission's refusal to take climate change seriously and I will continue to advocate for an approach that gives climate change the consideration that it demands."[12]

For more information, please contact:

Mark R. Haskell
202.420.2654 | mhaskell@blankrome.com

Brett A. Snyder
202.420.2656 | bsnyder@blankrome.com

Lamiya Rahman
202.420.2662 | lrahman@blankrome.com

1. *Venture Global Calcasieu Pass, LLC*, 166 FERC ¶ 61,144 (2019) (the "Certificate Order" or "the Order").
2. Certificate Order at P 16.
3. *Id.* at P 25.
4. *Id.* at P 113.
5. Certificate Order (LaFleur, Comm'r, concurring) ("LaFleur Concurrence").
6. LaFleur Concurrence at P 4.
7. *Id.* at P 6.
8. *Id.* at P 10.
9. Certificate Order (Glick, Comm'r, dissenting) ("Glick Dissent").
10. Glick Dissent at P 6.
11. *Id.* at P 10.
12. *Id.* at P 11.