187 FERC ¶ 61,097
UNITED STATES OF AMERICA
FEDERAL ENERGY REGULATORY COMMISSION

Before Commissioners: Willie L. Phillips, Chairman;
Allison Clements and Mark C. Christie.

Rio Grande LNG, LLC
Rio Grande LNG Train 4, LLC
Rio Grande LNG Train 5, LLC

Docket No. CP24-70-000

ORDER AUTHORIZING PARTIAL TRANSFER OF NGA SECTION 3 AUTHORIZATION

(Issued May 23, 2024)

1. On February 22, 2024, Rio Grande LNG, LLC (RGLNG), Rio Grande LNG Train 4, LLC (RGLNG 4), and Rio Grande LNG Train 5, LLC (RGLNG 5) jointly filed an application[1] pursuant to section 3 of the Natural Gas Act (NGA)[2] and Part 153 of the Commission's regulations[3] to partially transfer RGLNG's existing NGA section 3 authorization[4] for the Rio Grande liquefied natural gas (LNG) export facilities to RGLNG 4 and RGLNG 5, to facilitate the continued development of the LNG terminal. For the reasons discussed below, the Commission will authorize the requested partial transfer.

I. Background and Proposal

2. RGLNG is a Texas limited liability company based in Houston, Texas.[5] RGLNG 4 and RGLNG 5 are Delaware limited liability companies based in Texas and are wholly

[1] Rio Grande LNG, LLC February 22, 2024 Application (Application).

[2] 15 U.S.C. § 717b.

[3] 18 C.F.R. pt. 153 (2023).

[4] *Rio Grande LNG, LLC*, 169 FERC ¶ 61,131 (2019), *reh'g denied*, 170 FERC ¶ 61,046 (2020); Division of LNG Facility Reviews and Inspection, Letter Approving Design Change, Docket No. CP16-454-000 (issued Aug. 13, 2020); *Rio Grande LNG, LLC*, 183 FERC ¶ 61,046 (2023) (Order on remand and amending section 7 certificate) *Rio Grande LNG, LLC*, 185 FERC ¶ 61,080 (2023) (Order addressing arguments raised on rehearing of the 2023 remand order) (together, "Authorization Order").

[5] RGLNG is indirectly owned by the following entities: NextDecade Corporation (minimum 20.79% economic interest); GIP V Velocity Acquisition Partners, L.P., a

owned subsidiaries of NextDecade LNG, LLC (NextDecade LNG), a U.S. energy project development and management company.

3. On November 22, 2019, the Commission authorized RGLNG to construct and operate a new liquified natural gas terminal designed to produce up to 27 million metric tons per annum (MTPA) of LNG for export, pursuant to NGA section 3 (Rio Grande LNG Terminal).[6] The project facilities are located on the northern embankment of the Brownsville Ship Channel in Cameron County, Texas, and include five natural gas liquefaction trains, each with a nominal capacity of 5.4 MTPA; four full-containment LNG storage tanks; two LNG carrier loading berths; one 1,500-foot-diameter turning basin; facilities for loading and unloading trucks; and other support facilities. The Rio Grande LNG Terminal is currently under construction.

4. The applicants propose to transfer the existing NGA section 3 authorization associated with Train 4 to RGLNG 4 and the authorization associated with Train 5 to RGLNG 5.[7] They state that a change in corporate structure is required to finance Trains 4 and 5 and facilitate continued development of the already authorized Rio Grande LNG Terminal.[8] RGLNG states that it has entered into long-term, binding contracts with nine off-takers for 16.2 MTPA of LNG from the Rio Grande LNG Project, which contracts support the development of Trains 1-3, and that NextDecade LNG, on behalf of its affiliates, is actively marketing for additional off-takers from the terminal to support the development of Train 4 and Train 5.[9]

limited partnership managed by Global Infrastructure Partners (minimum 46.12% economic interest); Devonshire Investment Pte. Ltd., a Singapore exempt private company (minimum 9.85% economic interest); Global LNG North America Corp., a subsidiary of TotalEnergies SE, a French multinational energy company (16.67% economic interest); and MIC TI Holding Company 2 RSC Limited, an Abu Dhabi Global Market Restricted Scope Company (minimum 6.57% economic interest). Application at 2 n.2; *see also Rio Grande LNG, LLC* March 4, 2024 Supplement to Application (providing organizational chart for RGLNG).

[6] Authorization Order; *see supra* note 4.

[7] Application at 1.

[8] *Id.* at 2.

[9] *Id.* at 5.

5. The applicants aver that the proposed transfers are strictly administrative in nature and will not result in any physical or operational changes to the facilities or authorization.[10]

6. Further, the applicants state that, although Trains 1-3, Train 4, and Train 5 will be separately owned, the terminal will operate as a single facility.[11] They state that to achieve this, RGLNG has entered into a construction advisory services agreement with NextDecade LNG, under which NextDecade LNG will assist RGLNG to maintain and administer all necessary governmental approvals for Trains 1-3, including responding to Commission directives.[12] RGLNG 4 and RGLNG 5 aver that they will also enter into similar agreements with NextDecade LNG to provide the same services for Train 4 and Train 5, respectively, once the final investment decision for each Train is reached.[13]

7. Similarly, the applicants state that RGLNG and certain other affiliates of RGLNG have entered into an operating and maintenance agreement with NextDecade LNG, under which NextDecade LNG will operate and maintain the entire Rio Grande LNG Terminal upon reaching final investment decisions.[14] They state that, after the final investment decisions on Train 4 and Train 5, RGLNG 4 and RGLNG 5 will become a party to the operation and maintenance agreement and delegate all operation and maintenance obligations to NextDecade LNG. The applicants state that once the common shared facilities at the terminal (e.g., storage tanks, marine facilities, etc.) are constructed, ownership of those facilities will be transferred to a newly created legal entity called Rio Grande LNG Common Facilities Company, LLC (Common Facilities Co.).[15] Common Facilities Co. is currently owned wholly by RGLNG, but, upon the launch of Trains 4 and 5, Common Facilities Co. will be proportionately owned by RGLNG, RGLNG 4, and RGLNG 5, and those three entities will have full legal control over

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[10] *Id.* at 2.

[11] *Id.* at 6.

[12] *Id.*

[13] *Id.*

[14] *Id.* at 6-7.

[15] *Id.* at 4; RGLNG April 9, 2024 Response to Data Request (clarifying that the common facilities have not yet been built and that Common Facilities Co. will own but not operate them). We note that transfer of any facilities that are the subject of an authorization under section 3 of the NGA, such as the common facilities, require prior Commission authorization. 18 C.F.R. 153.9(a).

Common Facilities Co.[16] The applicants state that NextDecade LNG will operate the common facilities.[17]

II. Procedural Matters

Public Notice, Interventions, Protests, Comments, and Answers

8. Notice of RGLNG Entities' application was issued on February 27, 2024, and published in the *Federal Register* on March 5, 2024, with interventions, comments, and protests due March 8, 2024.[18] A Notice of Comment Period Extension was issued on March 13, 2024, with interventions, comments, and protests due March 21, 2024. On March 8, 2024, Public Citizen, Inc., South Texas Environmental Justice Network, Carrizo/Comecrudo Tribe of Texas, and Private Equity Stakeholder Project (together, Public Citizen) filed a joint, timely, unopposed motion to intervene.[19] Public Citizen together with the Rainforest Action Network[20] filed a joint protest (Joint Protest);[21] John Young[22] and Molly Smith[23] filed individual comments and protests. The comments and protests raise concerns regarding the upstream ownership of RGLNG and revisit environmental and safety issues previously raised in the orders authorizing the terminal. The comments and protests are addressed below.

9. On March 25, 2024, the applicants filed a motion for leave to answer and an answer to the joint protest of Public Citizen et al. and the individual protests of John Young and Molly Smith. Pursuant to Rule 213(a)(2) of the Commission's Rules of

[16] Application at 4.

[17] *Id.* at 6-7; RGLNG April 9, 2024 Response to Data Request.

[18] 89 Fed. Reg. 15,857 (March 5, 2024).

[19] Timely, unopposed motions to intervene are granted by operation of Rule 214 of the Commission's Rules of Practice and Procedure. 18 C.F.R. § 385.214(c). Public Citizen also filed an individual intervention on February 27, 2024.

[20] The Joint Protest states that the Rainforest Action Network has signed on as a commenter and not an intervenor. Public Citizen March 8, 2024 Intervention and Protest at 3.

[21] Public Citizen March 8, 2024 Intervention and Protest.

[22] John Young March 4, 11, & 18, 2024 Comments.

[23] Molly Smith March 8, 2024 Comment.

Practice and Procedure,[24] answers to protests are prohibited unless otherwise ordered by the decisional authority. Nevertheless, we will accept the company's answer as it provides information that will assist us in our decision-making process.

III. Discussion

10. Commission regulations prohibit the transfer or assignment of authorizations issued to import and export facilities under section 3 of the NGA without prior Commission approval.[25] RGLNG proposes to transfer its authorization for Train 4 to RGLNG 4 and Train 5 to RGLNG 5. Accordingly, the proposed transfer requires prior Commission authorization.

11. The Joint Protest argues that the application is deficient because RGLNG did not list three entities – York Capital Management (York Capital), Bardin Hill Investment Partners (Bardin Hill), and BlackRock Inc. (BlackRock) – as partial owners of RGLNG's upstream owners in Exhibit B of the application.[26] Specifically, Joint Protestors note that York Capital controls 23.8% of NextDecade Corporation's (NextDecade) voting shares, and that a York Capital executive serves on NextDecade's board. They further note that Bardin Hill owns 3.3% of NextDecade's voting shares, and that a Bardin Hill executive sits on NextDecade's board.[27] Finally, they note that BlackRock owns 6.5% of NextDecade's voting shares and plans to acquire Global Infrastructure Partners.[28]

12. In response, the applicants confirm that investment firms York Capital, Bardin Hill, and Black Rock each own a percentage of NextDecade,[29] which is one of RGLNG's five upstream owners. RGLNG notes that the level of detail provided in its Exhibit B is

[24] 18 C.F.R. § 385.213(a)(2); *see also Algonquin Gas Transmission, LLC*, 170 FERC ¶ 61,144, at P 39 (2020) (barring both reply comments and answers in extension of time proceedings).

[25] 18 C.F.R. § 153.9(a) (2023).

[26] Joint Protest at 1-2; *see also* John Young March 4, 2024 Comment at 2-5.

[27] NextDecade holds a 20.79% economic interest in RGLNG. Application at 2.

[28] Global Infrastructure Partners holds a 46.12% economic interest in RGLNG. *Id.*

[29] RGLNG March 25, 2024 Answer at 4; *see also Rio Grande LNG, LLC* March 4, 2024 Supplement to Application (supplementing Exhibit B with a chart detailing the ownership of RGLNG).

consistent with exhibits filed in other similar dockets.[30] The applicants further note that it would not be appropriate to list BlackRock as an partial owner of Global Infrastructure Partners because BlackRock has not yet acquired Global Infrastructure Partners.[31]

13. Commission regulations require that Exhibit B contain a "detailed statement of the financial and corporate relationship existing between applicant and any other person or corporation."[32] The applicants disclosed all their immediate upstream owners[33] as well as listing which upstream owners are directly or indirectly subsidized by foreign governments.[34] The Joint Protest does not state how identification of investors in one of RGLNG's upstream owners and future corporate upstream acquisitions bear on RGLNG's request to partially transfer its section 3 authorization. We find the applicants' Exhibit B sufficiently detailed to allow us to determine whether the proposed transfer is in the public interest.[35]

14. Commenters John Young and Molly Smith raise concerns about how the transfer will affect the safety, and economic and environmental well-being of people in the region.[36] They also express concern that the Emergency Response Plan and Cost Sharing Plan required in the Authorization Order have not been made public.

15. As noted above,[37] the proposal to transfer the authorization as it relates to Trains 4 and 5 is purely administrative in nature – i.e., no change is proposed to the Rio Grande

[30] RGLNG March 25, 2024 Answer at 5.

[31] *Id.* at 4. BlackRock's acquisition is expected to close later this year.

[32] 18 C.F.R. § 153.8(a)(2).

[33] Application at Ex. B; RGLNG March 4, 2024 Supplement to Application.

[34] *Id.* at n.2.

[35] *See e.g. Golden Pass LNG Terminal LLC*, 165 FERC ¶ 61,261 (2018) (authorizing transfer of NGA section 3 authorization with similar level of disclosure of corporate relationships).

[36] John Young March 4, 11, & 18, 2024 Comments; Molly Smith March 8, 2024 Comment.

[37] *See supra* PP 5-7.

LNG Terminal's facilities.[38] Thus, the proposed transfer will have no effect on safety or environmental impacts of the underlying project. To the extent the comments seek to revisit the previous finding on those issues, they are collateral attacks on the underlying Authorization Order that need not be considered further.[39] All requirements of the Authorization Order, including those regarding the Emergency Response and Cost Sharing Plans, remain in force and the transferees will be under the same obligations as the transferor.

16. Under NGA section 3(a), the Commission will authorize proposed export facilities unless it finds a proposal will not be consistent with the public interest. As discussed above, the proposal, which transfers the authority to construct and operate specified facilities from one jurisdictional entity to another, will not result in the construction, modification, or operation of any facilities that have not been previously reviewed and approved. Accordingly, the proposal will not result in any environmental impacts and does not constitute a major federal action significantly affecting the quality of the human environment within the meaning of the National Environmental Policy Act of 1969.[40]

17. We find that the proposed partial transfer of the section 3 authorizations associated with Trains 4 and 5 will not change any of the terms and conditions of the NGA section 3 authorization previously issued to RGLNG. Further, the transfer of the authorizations for Trains 4 and 5 will not involve any change to the existing and approved facilities or their operation. We note that no customers of the applicants have objected to the proposed transfer of authorization. Based on the applicants' uncontested assertion that the proposed transfer will facilitate the continued development of the Rio Grande LNG Terminal, we conclude it is consistent with the public interest to permit RGLNG to transfer authorization of Train 4 to RGLNG 4 and Train 5 to RGLNG 5. Any and all outstanding conditions relating to the construction and operation of the Rio Grande LNG export facilities previously ordered by the Commission shall remain in full force and effect.

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[38] *See* Application at 2 ("This Partial Transfer Application is strictly limited to the administrative changes described herein, and the RGLNG Entities propose no modifications to the Terminal or changes to the Authorization in this filing.").

[39] *Venture Glob. Plaquemines LNG, LLC*, 185 FERC ¶ 61,037 at P 7 & n.13 (2023) (declining to address comments raised in an amendment proceeding that challenged the underlying Authorization Order); *Adelphia Gateway, LLC*, 178 FERC ¶ 61,030, at P 10 (2022) (emphasizing that the Commission will not relitigate whether the Commission properly found the project to be in the public convenience and necessity).

[40] 42 U.S.C. §§ 4321, et seq. *See also* Environmental Assessment Report (March 6, 2024).

IV. Conclusion

18. The Commission, on its own motion, received and made a part of the record in this proceeding all evidence, including the application, and exhibits thereto, and all comments, and upon consideration of the record,

The Commission orders:

RGLNG is authorized to transfer its Rio Grande Terminal section 3 authorization to RGLNG 4 as it relates to Train 4 and transfer its Rio Grande Terminal section 3 authorization to RGLNG 5 as it relates to Train 5.

By the Commission.

(S E A L)

Debbie-Anne A. Reese,
Acting Secretary.