

UNITED STATES OF AMERICA  
BEFORE THE  
FEDERAL ENERGY REGULATORY COMMISSION

In the Matter of  
RIO GRANDE LNG, LLC  
RIO BRAVO PIPELINE COMPANY, LLC

CP16-454-000  
CP16-455-000

RENEWED REQUEST FOR SUPPLEMENTAL EIS AND ANSWER TO RIO GRANDE  
LNG'S RESPONSE

On May 30, Defenders of Wildlife, Save RGV from LNG, Shrimpers and Fisherman of the RGV, Sierra Club, and Vecinos para el Bienestar de la Comunidad Costera (collectively, “Commenters”) submitted comments explaining that the FEIS failed to address the full foreseeable output of the proposed Rio Grande LNG export facility. That comment explained that although Rio Grande had previously represented to the Commission that it would not be technically feasible to increase the capacity of the facility beyond 27 MTPA (the capacity that was then analyzed in the NEPA process), Rio Grande has subsequently told investors (but not, until responding to this May 30 comment, the Commission) that the facility would in fact have a capacity of 33 MTPA.

Recent additional statements from Rio Grande to press and investors—but not to FERC—further confirm that Rio Grande expects the terminal to have a capacity of *at least* 33 MTPA, and possibly a capacity of over 35 MTPA. In a press release dated May 28, 2019, Rio Grande’s parent, NextDecade, announced that it had signed contracts for the “engineering, procurement, and construction” of the first three of the six proposed trains, with “[e]ach liquefaction train . . . expected to have capacity up to 5.87 million tons per annum of LNG.”<sup>1</sup> Then, in a “corporate

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<sup>1</sup> <https://investors.next-decade.com/node/8206/pdf>, attached as Exhibit 1.

presentation” dated June 5, 2019, NextDecade stated that the capacity of the proposed liquefaction trains at the Rio Grande site “is expected to be up to 5.87 mtpa [each] with average annual production of up to 5.5 mtpa per train.”<sup>2</sup>

In response to Sierra Club, *et al.*’s, request for a supplemental EIS, Rio Grande asserts that “The technologies selected by RG Developers and filed with FERC in 2015 and 2016, in the pre-filing and application processes, have evolved over the last four years and now have the potential to produce more LNG.” Response at 2 (June 3, 2019).<sup>3</sup> Rio Grande does not identify any filing in which Rio Grande informed FERC of this change.

Whereas Rio Grande previously informed FERC that it *could not*, as a technological matter, export more than 27 MTPA, Rio Grande now represents that it *will not*, at least at the present time. This is a remarkably different argument, and insufficient to support reliance on the current EIS, without supplementation. If Rio Grande does not plan to export more than 27 MTPA, and Rio Grande has selected a liquefaction train design capable of producing at least 5.5 MTPA per train, Rio Grande should build a facility with only five trains, rather than the proposed six. As it stands, the impacts caused by construction of the sixth train are wholly unnecessary and thus unjustifiable; nor can Rio Grande justify the facility footprint, including wetland fill and other impacts, required to construct a superfluous train. On the other hand, under the current design, utilization of the full capacity is, at a minimum, a reasonably foreseeable future action, which much be accounted for in *this* EIS.

The fact that Rio Grande will require further FERC and DOE approval before exporting

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<sup>2</sup> <https://investors.next-decade.com/static-files/dbae3796-a15a-43dc-a218-3ae286f39ae2>, attached as Exhibit 2. Although no date is included in the body of this document, the document name and metadata indicate that it was created on June 5, 2019.

<sup>3</sup> Insofar as this comment constitutes an answer to an answer (Rio Grande’s June 3, 2019), the undersigned seek waiver of 18 C.F.R. § 385.213(a)(2) pursuant to 18 C.F.R. § 385.101(e). *S. Nat. Gas Co.*, 126 FERC ¶ 61246, 62380 (Mar. 19, 2009) (granting such waiver and leave where the “reply provide[s] information that will assist us in our decision-making.”).

more than 27 MTPA does not change the fact that such approval and increase is reasonably foreseeable, and therefore an action that must be addressed now, in this EIS.

“[R]easonably foreseeable future actions need to be considered even if they are not specific proposals.” *N. Plains Res. Council, Inc. v. Surface Transp. Bd.*, 668 F.3d 1067, 1079 (9th Cir. 2011) (quoting EPA, *Consideration of Cumulative Impact Analysis in EPA Review of NEPA Documents*, Office of Federal Activities, 12–13 (May 1999)). In the cases of LNG terminal expansions cited by Rio Grande’s reply, it was not argued that future increases in capacity were foreseeable; the potential for debottlenecking or construction of additional infrastructure arose *after* FERC had reviewed and approved the initial proposals. The cases cited by Rio Grande were the first Gulf Coast export proposals; at the time, it was not how clear equipment would perform in local climate conditions, etc., and thus whether, or the extent to which, debottlenecking and other improvements over nameplate capacity would be available. It is the experience with these projects that led Sierra Club to foresee increases with the Rio Grande project at the time of our 2016 protest.

Here, there is no dispute that Rio Grande intends to build a facility with a capacity far beyond that considered in the FEIS. Even though utilization of this capacity will require additional authorization Rio Grande has not yet applied for, such utilization is reasonably foreseeable. NEPA accordingly requires FERC to consider the impacts of this additional throughput now.

Respectfully submitted June 17, 2019,

/s/ Nathan Matthews

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**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 Oakland, CA this 17<sup>th</sup> Day of June, 2019.



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