

## Federal Court's LNG Decisions Hinder U.S. Natural Gas Infrastructure, Former FERC Chair Says



By [Jacob Dick](#) on September 12, 2024 at 6:12 p.m.

Mounting pressure on FERC to change the way it reviews natural gas projects is making energy investors more nervous and is risking a disruption of the U.S. energy infrastructure buildout, according to former Commission Chairman Neil Chatterjee.

### Rio Grande LNG

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Source: NextDecade Corp.

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Decisions made by the Federal Energy Regulatory Commission have increasingly come under scrutiny by the U.S. Court of Appeals for the District of Columbia (DC) Circuit. The court has particularly taken aim at FERC's process for reviewing LNG terminals, remanding and vacating approval for three projects to date this year.

Chatterjee called this summer's decisions "consequential" for the "country's most significant energy regulator," potentially threatening its ability to remain a bipartisan force of balance for the U.S. energy market.



“It is maddening to try and peg these massive investment decisions to the political pendulum swinging back and forth, because these are not one or two year investments, these are 30-year commitments to energy infrastructure,” Chatterjee said Tuesday at the LDC Gas Forum Mid-Continent in Chicago. “You don't want to be beholden to variable political decision making, and so FERC provides that stability.”

However, the DC Circuit – which handles most of the cases involving appeals to FERC authorizations – has not just pushed back against the Commission approvals on the basis of the projects. It has also accused the Commission of misinterpreting its responsibilities under federal law.



The circuit court’s August decision in the Rio Grande LNG LLC and Texas LNG Brownsville LLC case marked the first time a court had vacated FERC approval of an LNG terminal. In its rulings, the court excoriated FERC and questioned why it did not choose to study some aspects of the projects or explain its reasoning for those decisions.

Chatterjee formerly served on FERC as a commissioner and chairman from 2018-2020. He currently is an environmental and energy attorney at Hogan Lovells in Washington, DC.

## Former FERC Chairman Neil Chatterjee

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Source: FERC

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During his tenure, he said the Commission largely looked for direction from Congress to make any drastic changes to policy. Now, with a major case involving the National Environmental Policy Act before the Supreme Court and at least three export projects stalled, FERC is facing intense pressure to make major decisions on greenhouse gas mitigation policies.

“I think that is going to have implications, quite frankly, that go beyond LNG exports,” Chatterjee said. “I think what the DC Circuit did will have a chilling effect on all infrastructure built out, including transmission lines...”

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On Wednesday, the DC Circuit granted Rio Grande LNG, a subsidiary of developer NextDecade Corp., an extension until October to file for a rehearing. The extension could also give the company more time to advance construction activities at the site in South Texas, which has continued since the court's initial ruling last month.

The court also noted that NextDecade's decision to withdraw a design for a carbon capture and storage project connected to Rio Grande had created additional issues that would require more time to prepare the request.

Despite the opportunity for a rehearing and appeals, Chatterjee said the best option for Rio Grande could be for FERC to pursue an appeal and seek options for work to continue as the legal process plays out.

"I'm hopeful that these cases make it to the Supreme Court and that we get some clarity," Chatterjee said. "...In the interim, it is very dicey now to understand how this Commission is going to respond and what its obligations are in evaluating these critical projects."

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