

**MEMORANDUM OF UNDERSTANDING BETWEEN
THE DEPARTMENT OF TRANSPORTATION AND
THE FEDERAL ENERGY REGULATORY COMMISSION
REGARDING LIQUEFIED NATURAL GAS TRANSPORTATION FACILITIES**

I. Introduction and Purpose

The Federal Energy Regulatory Commission (FERC) and the Pipeline and Hazardous Materials Safety Administration (PHMSA) within the U.S. Department of Transportation (collectively, Agencies) are responsible for exercising regulatory authority over the siting, design, construction, operation, maintenance, and expansion of liquefied natural gas (LNG) facilities.

The Purpose of this Memorandum of Understanding (MOU) is to improve coordination throughout the LNG permit application process for FERC jurisdictional LNG facilities. It is the intent of the Agencies that improved coordination will maximize the exchange of relevant information, avoid duplication of efforts, and provide for an overall increase in the efficiency and effectiveness of the LNG application review process that will reduce expenses for LNG project applicants and operators and the U.S. taxpayer. Specifically, the Agencies will work together to ensure that safety and security issues are addressed in a coordinated and comprehensive manner. To this end, PHMSA will issue a Letter of Determination, upon which FERC will rely, to determine whether a proposed LNG facility will be capable of complying with Department of Transportation safety standards.

This MOU provides guidance and policy for each Agency's technical staff and for the regulated LNG industry regarding the execution of the Agencies' respective statutory responsibilities to ensure that the siting, design, construction, operation, maintenance, and expansion of LNG facilities meet applicable safety requirements and are otherwise consistent with the public interest.

II. Legal Authority and Roles of Agencies

- A. Federal Energy Regulatory Commission: FERC is responsible for authorizing the siting, construction, expansion, and operation of LNG terminals onshore and in state waters under Section 3 of the Natural Gas Act (NGA) (15 U.S.C. §§ 717b and b-1). FERC issues certificates of public convenience and necessity for LNG and other facilities used for the sale for resale or the transportation of natural gas in interstate commerce under Section 7 of the NGA (15 U.S.C. § 717f). FERC also serves as the lead federal agency for satisfying compliance with the National Environmental Policy Act (NEPA) (42 U.S.C. § 4321 *et seq.*) for LNG facilities subject to its jurisdiction.

- B. Pipeline and Hazardous Materials Safety Administration: PHMSA exercises authority under the Pipeline Safety Act (49 U.S.C. § 60101, *et seq.*) to prescribe minimum safety standards governing the location, design, construction, operation, and maintenance of LNG facilities in or affecting interstate or foreign commerce.

III. Responsibilities of Agencies

A. General Responsibilities

1. FERC:

- a. upon receipt of an application for a proposed LNG project, will provide notification to PHMSA that an application has been made and request review of the proposal;
- b. will notify PHMSA of the estimated issuance date of FERC's final NEPA document;
- c. will notify PHMSA promptly of a decision to reject an application or if an application is withdrawn; and
- d. will accept PHMSA's Letter of Determination as the authoritative determination of a proposed LNG facility's ability to comply with the requirements of Part 193, Subpart B, of Title 49 and disclose receipt of this letter in the public docket for the project.

2. PHMSA:

- a. Review of Location Criteria and Wind Force Design Standards: PHMSA will review LNG applications to determine whether a proposed LNG facility complies with the safety standards contained in Part 193, Subpart B, of Title 49.
- b. Letter of Determination: PHMSA will issue a Letter of Determination to FERC no later than 30 days prior to the estimated issuance date of FERC's final NEPA document. If PHMSA determines it will be unable to complete its review and issue its Letter of Determination 30 days prior, it will notify FERC, describing the reasons for delay and declare a new date to complete its review and letter. The Letter of Determination represents PHMSA's determination on the proposed LNG facility's compliance with the requirements of Part 193, Subpart B. The issuance of the Letter of Determination does not abrogate PHMSA's continuing authority and responsibility over the applicant's compliance with Part 193 during construction and future operation of the facility.

- B. Inspection and Enforcement Activities. The Agencies agree to assist one another by sharing information and inspection findings pertaining to the review of LNG operations to enable each Agency to discharge of its respective responsibilities. Each Agency will seek to keep the other informed of newly discovered or emerging safety issues or concerns, including information relating to any incident investigations or enforcement actions that an Agency may undertake, to the extent permitted by law.
- C. Document Sharing. To ensure expeditious and coordinated efforts during the application review process and throughout the construction and operation of LNG facilities, the Agencies agree to share or provide access to all requested information and data submitted by LNG facility applicants or operators to the extent permitted by law and necessary to allow each agency to meet its regulatory responsibilities.
1. Treatment of confidential information: The Agencies agree to share and protect Critical Energy Infrastructure Information (CEII), Security Sensitive Information (SSI), and privileged information (PRIV). Unless otherwise required by Federal law or Court Order, the Agencies will not disclose any CEII, SSI, or PRIV information provided by any other Agency to any third party without the prior written consent of the other Agency.
 2. FERC will share information with PHMSA subject to PHMSA signing FERC's Acknowledgment and Agreement form.
 3. Freedom of Information Act: The Agencies will refer Freedom of Information Act (5 U.S.C. § 552) requests for any shared information to the agency initially holding the information for a determination.

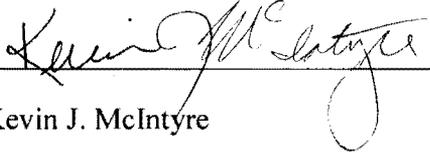
IV. General Provisions

- A. The Agencies agree to enter into an Interagency Agreement whereby FERC will reimburse PHMSA for the direct costs it incurs relating to the Part 193, Subpart B siting review for fiscal year 2019.
- B. This MOU supersedes the 1985 MOU between FERC and the Department of Transportation on LNG facilities.
- C. This MOU does not supersede any provision of the 2004 Interagency Agreement between FERC, PHMSA, and the U.S. Coast Guard.

- D. This MOU is intended only to improve the coordination among federal agencies regarding the siting, construction, expansion, and operation of LNG facilities under NGA Sections 3 and 7. It does not create any substantive or procedural rights enforceable at law or equity by any person or party against the United States, its agencies, its officers, or any other person.
- E. This MOU neither expands nor is in derogation of those powers and authorities vested in the Agencies by applicable law.

V. Effective Date and Duration

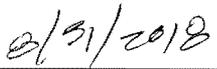
- A. This agreement is effective upon signing by authorized representatives of each Agency.
- B. This MOU may be modified upon written request of an Agency hereto and the subsequent written concurrence of the other Agency. Participation in this MOU may be terminated upon sixty (60) days written notice to, and agreement of, the other Agency.



Kevin J. McIntyre

Chairman

Federal Energy Regulatory Commission



Date



Howard "Skip" Elliott

Administrator, Pipeline and Hazardous

Materials Safety Administration

U.S. Department of Transportation

August 31, 2018

Date