

1993 MOU: DOT and FERC Regarding Natural Gas Transportation Facilities

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

Purpose.

This purpose of this Memorandum of Understanding (MOU) between the Department of Transportation (Department) and the Federal Energy Regulatory Commission (Commission) is to provide guidance and set policy for their respective technical staffs and the regulated natural gas pipeline industry regarding the execution of the agencies respective statutory responsibilities to ensure the safe and environmentally sound siting, design, construction, operations, and maintenance of natural gas transportation facilities.

Background.

The Department, through the Research and Special Programs Administration (RSPA), exercises the authority to promulgate and enforce safety regulations and standards for the transportation of natural gas in or affecting interstate or foreign commerce. RSPA exercises its authority over natural gas facilities under the Natural Gas Pipeline Safety Act of 1968, as amended, (NGPSA) (49 App. USC § 1671, et seq.) and the Hazardous Materials Transportation Act (HMTA) (49 USC § 1801, et seq.).

The Regulations and standards promulgated under these authorities extend, inter alia, to the design, installation, construction, initial inspection, initial testing, operation, and maintenance of facilities used in the transportation of natural gas by pipeline. The Department enforces compliance with these regulations and standards through an inspection program and, when appropriate, the imposition of civil, criminal, or administrative remedies. Under criteria established by NGPSA, states are eligible to assume these regulatory and enforcement functions as they apply to intrastate pipeline transportation. Although intrastate facilities are not subject to this MOU, the regulations and standards governing pipeline transportation promulgated by the Department generally apply to both interstate and intrastate facilities.

The Commission, under Section 7 of the Natural Gas Act (15 USC § 717 et seq.), issues certificates of public convenience and necessity with terms and conditions for facilities proposed for use in the sale for resale or transportation of natural gas in interstate commerce. As required by the National Environmental Policy Act (42 USC § 44321 et seq.), the Commission prepares environmental impact statements or environmental assessments for proposed natural gas transmission facilities in conjunction with the issuance of certificates.

Natural gas pipeline companies may also construct certain natural gas transmission facilities under Section 311 of the Natural Gas Policy Act (15 USC § 3301 et seq.). Facilities constructed under this

section must comply with the environmental requirements of 18 CFR 157.206(d).

In addition, the Secretary of Energy under Section 3 of the Natural Gas Act (15 USC § 717 et seq) has approval authority for the import and export of natural gas. The Secretary of Energy has delegated and assigned Section 3 authority to the Commission to approve gas import and export facilities and their siting.

This MOU acknowledges the Departments exclusive authority to promulgate Federal safety standards for facilities used in the transportation of natural gas. However, under the Natural Gas Act, the Commission exercises the authority over the siting of interstate natural gas transmission facilities and may impose conditions to mitigate the impact of construction or operation on the environment.

Responsibilities.

The Department and the Commission agree to the following program:

1. The Department shall:

- a. Promptly alert the Commission when the Departments safety activities may impact the responsibilities of the Commission.
- b. Establish a means to notify the Commission of major accidents (i.e., fatalities, multiple injuries requiring hospitalization, or property damage exceeding \$50,000) involving pipeline facilities under the jurisdiction of the Commission.
- c. Establish a means to notify the Commission of significant enforcement actions involving pipeline facilities under the jurisdiction of the Commission.
- d. Refer to the Commission, after screening, complaints and inquiries made by state and local governments and the general public involving environmental or certificate matters related to pipelines under the Departments jurisdiction.
- e. When requested by the Commission, review draft mitigation conditions considered by the Commission for potential conflicts with the Departments regulations.

2. The Commission shall:

- a. Promptly alert the Department when the Commission becomes aware of an existing or potential safety problem involving natural gas transmission facilities.
- b. Establish a means to notify the Department of future pipeline construction, such as providing Notices of Applications for construction certification or certificate orders issued to companies that propose pipeline construction.

c. Periodically provide the Department with updates to the environmental compliance inspection schedule, and coordinate site inspections, upon request, with Department headquarters or regional offices.

d. Establish a means to notify the Department when significant safety issues have been raised during the preparation of environmental assessments or environmental impact statements.

e. Refer to the Department, after screening, complaints and inquiries made by state and local governments and the general public involving safety matters related to pipelines under the Commissions jurisdiction.

Administration

The Department and the Commission will designate appropriate staff representatives and will establish joint working arrangements from time to time to administer this MOU.

Effective Date.

This MOU shall take effect upon signing by authorized representatives of the Department and the Commission.

Limitations.

1. Nothing in this MOU is intended to restrict the statutory authority of the Department or the Commission.
2. Nothing in this MOU is intended to replace, supersede, or modify the existing MOU between the Department and the Commission regarding liquefied natural gas facilities published in the Federal Register on May 15, 1978 (50 FR 20275).

Modification and Termination.

The Department and the Commission each reserves the right to suspend, modify, or terminate its respective commitments contained in this MOU upon written notice to the other party at least 30 days prior to exercising this right.

Andrew H. Card, Secretary, US Department of Transportation, December 3, 1992

Martin L. Allday, Chairman, Federal Energy Regulatory Commission, January 15, 1993

Dated: January 15, 1993