

1985 MOU: DOT and FERC Regarding LNG Facilities

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

Introduction.

The Department of Transportation (DOT), through the Materials Transportation Bureau (MTB) of the Research and Special Programs Administration (RSPA) and the United States Coast Guard (USCG), exercises the authority to promulgate and enforce safety regulations and standards for the transportation and storage of liquefied natural gas (LNG) in or affecting interstate or foreign commerce. RSPA exercises its authority over LNG 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.) and the USC, under EO 10173, the Magnuson Act (50 USC 191), the Ports and Waterways Safety Act of 1972, as amended (PWSA) (33 USC 1221 et seq.), exercises supplementary safety regulatory authority over LNG facilities which affect the safety of port areas and navigable waterways.

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 LNG by any mode and associated storage of LNG. DOT 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 and associated LNG facilities. Although these intrastate facilities are not subject to this Memorandum, the regulations and standards governing pipeline transportation promulgated by DOT generally apply to both interstate and intrastate facilities.

The Federal Energy Regulatory Commission (FERC), 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, including LNG, in interstate commerce. As required by the National Environmental Policy Act (42 USC § 4321 et seq.), the FERC prepares environmental impact statements for proposed LNG facilities conjunction with the issuance of certificates. The FERC also conducts cryogenic design and technical review of the operational aspects of the jurisdictional LNG facilities both during the certificate process and biennially thereafter. Particular emphasis is placed on operational reliability and assurance of continued service to the public.

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, including LNG.. The Secretary of Energy has delegated and assigned Section 3 authority to the FERC Section 3 authority to approve gas

import and export facilities and their siting.

Purpose.

This agreement acknowledges DOT's exclusive authority to promulgate Federal safety standards for LNG facilities used in the transportation and associated storage of LNG in or affecting interstate or foreign commerce. However, under the Natural Gas Act, the FERC exercises the authority to impose more stringent safety requirements than DOT's standards when warranted by special circumstances at any LNG facility within the FERC's jurisdiction. The FERC also exercises its authority to impose requirements which would ensure or enhance operational reliability of its jurisdictional LNG facilities. Such operational reliability requirements are not subject to this Memorandum of Understanding.

The FERC and DOT agree that this Memorandum of Understanding (MOU) provides guidance and policy for their respective technical staffs and the regulated pipeline industry regarding the execution of the agencies' respective statutory responsibilities to assure the safe siting, design, construction, operation, and maintenance of fixed LNG facilities.

Therefore, the FERC and DOT agree to the following program:

1. The FERC shall:

- a. Invite DOT to participate in FERC-sponsored LNG facility inspections and related technical conferences with facility operators.
- b. Except as provided by paragraph 19e), refer to DOT for its review and comment any FERC proposed corrective action addressing LNG facility safety matters, whether or not in the form of certificate conditions, that differ from or are more stringent than DOT's safety regulations and standards. Proposed corrective actions subject to DOT review under this paragraph may result from FERC review of LNG facility certificate applications, inspection of existing LNG facilities, or otherwise.
- c. Take final action on a matter referred under paragraph 1(b) only after receipt and consideration of comments provided by DOT in accordance with paragraph 2(c).
- d. Provide the following information in writing to DOT when a referral is made to DOT under paragraph 1(b):
 - (i) The nature of the hazard, design deficiency, or operational practice to which the proposed corrective action is addressed;
 - (ii) The extent to which the LNG safety matter appears to be covered by DOT regulations and standards or industry codes;
 - (iii) The corrective action recommended and its estimated cost-benefit impact upon the operator;

(iv) Whether the recommended corrective action appears to differ from or exceed DOT's LNG safety regulations and standards; and

(v) Any discussion pertinent to items (i)-(iv) contained in a Final Environmental Impact Statement (FEIS) for the concerned LNG facility.

e. In those instances when an applicant for an LNG facility certificate or an operator of an existing LNG facility voluntarily agrees to take corrective action on a hazard, design deficiency, or operational practice in accord with recommendations of the FERC staff, the procedures for referral to DOT contained in paragraphs 1(b) through 1(d) do not apply. When such voluntary agreements are reached, the FERC staff will promptly notify DOT of the agreements and provide appropriate background material.

f. Advise the certificate applicant or facility operator of the details of each matter which has been referred to DOT for review under paragraph 1(b), with notice that the applicant or operator may submit written comments on the matter to DOT and the FERC within a period not to exceed 30 days from receipt of the notice. This time period may be extended only by agreement between DOT and the FERC.

g. When a FEIS is required as part of the FERC decisionmaking process on the siting, construction, and operation of LNG facilities, the FERC staff shall, to the extent possible, describe in the FEIS any LNG safety matters and their impact on the environment or facility operations that are considered by the staff to warrant corrective action or further analysis.

2. The DOT shall:

a. Evaluate each matter referred to it by the FERC, under paragraph 1, along with any related comments received from an applicant or operators.

b. Take whatever action DOT considers appropriate in the discharge of its responsibilities in the matter referred by the FERC, including issuing a hazardous facility order or imposing other enforcement remedies as authorized by the NGPSA (paragraph 2(d)) or the PWSA, instituting rulemaking of either general or particular applicability, issuing an interpretation of an existing safety standard, enforcing an existing DOT safety standard, commenting on the appropriateness of a particular safety standard proposed by the FERC with regard to a particular LNG facility or particular circumstances, or deciding that no action is necessary or that the matter is outside DOT jurisdiction.

c. Advise the certificate applicant or facility operator and the FERC of the action contemplated by DOT in each matter referred by the FERC, and the approximate time schedule within which final action will be completed, or advise that the matter is outside the scope of DOT jurisdiction, within a period of 60 days from the date of referral. This time period may be extended only when the time period in paragraph 1(f) is also extended. The date of referral shall be the date when DOT receives the official

request for review and comment in writing from the FERC under paragraph 1(b).

d. Exercise NGPSA or PWSA enforcement authority to effect corrective actions recommended and adopted by the FERC and previously concurred with by DOT.

e. Advise the FERC when DOT is going to inspect an LNG facility under FERC jurisdiction and notify the FERC of its findings.

3. Working Arrangements. The DOT and FERC will designate appropriate staff representatives and will establish joint working arrangements from time to time to administer this Memorandum of Understanding.

4. Effect. This agreement shall take effect upon signing by authorized representatives of DOT and FERC and will apply to LNG facility certificate applications filed after the effective date and to LNG facilities in operation on and after that date.

5. Nothing in this Memorandum of Understanding is intended to restrict the statutory authority of DOT or the FERC.

6. DOT and FERC each reserve the option of suspending, modifying, or terminating their respective commitments contained in this Memorandum of Understanding if any of their respective statutory responsibilities state herein is altered or abolished in the future. Such action must be preceded by written notice to the other party at least 30 days before exercising this option.

Dated: March 29, 1985, Elizabeth H. Dole, Secretary, Department of Transportation

Dated: April 16, 1985, Raymond J. O'Connor, Chairman, Federal Energy Regulatory Commission