

INSIGHTS

As LNG Permitting Delays Continue, PHMSA to Assist FERC

August 28, 2018

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The liquified natural gas (LNG) export boom has strained the resources and technical expertise of the two federal agencies that oversee LNG facility siting, design, construction, and operation: FERC, (the Federal Energy Regulatory Commission) and PHMSA (the Pipeline and Hazardous Materials Safety Administration). Fifteen LNG export terminal applications are currently pending before FERC. In July, FERC Chairman Kevin McIntyre [announced](#) that FERC and PHMSA agreed to a revised process for review of LNG export terminal applications that better leverages each agency's expertise and avoids duplication. A month later, the agencies still have not disclosed whether there is a formal agreement in place. Some project developers nevertheless recently received [letters](#) from PHMSA technical experts advising that it would be evaluating a project's compliance with siting requirements. A more streamlined process that eliminates duplicative reviews will go a long way towards expediting review of LNG export terminal applications. While PHMSA has long participated in LNG design review and oversight, without a simultaneous increase in its budget and staff, an increased role for PHMSA may further hamper an agency with limited resources.

Increased natural gas production in the U.S. has led to a marked increase in applications for regulatory approvals of LNG export facilities (in contrast, prior to 2010, LNG import facilities were under review). Because LNG exports require refrigeration of natural gas to a liquid state, a process that is more complicated than the regasification process associated with LNG imports, design reviews for these facilities have presented new technical and safety concerns, requiring more time to process applications. Because the U.S. has become the world's largest producer of natural gas over the past few years and it is on track to become the largest natural gas exporter by 2020, timely reviews are critical. Permitting delays have caught the eye of Congress who recently [pressed FERC](#) again on the Commission's plans and resource needs to process these applications.

PHMSA and FERC have reviewed ways to improve the permitting process and, according to Chairman McIntyre, the agencies will enter into a new memorandum of understanding (MOU). Specifically, he noted that FERC has achieved "truly significant strides in reforming the permitting process with our federal partners, eliminating duplicative efforts and instituting a streamlined procedure that will significantly reduce our LNG permitting timelines." In announcing the agreement, McIntyre said it will "better leverage each agency's expertise and role in the LNG authorization process." PHMSA Administrator, Skip Elliott [noted](#), "PHMSA is pleased to work with FERC to advance critical infrastructure projects that support our nation's

growing energy dominance in the safest and most efficient way possible.”

FERC has exclusive authority to approve the siting, construction, expansion, and operation of on-shore and near-shore LNG facilities (15 U.S.C. § 717b(e)). PHMSA establishes and enforces its own safety-related requirements in these areas (49 U.S.C. § 60102(a)). Under FERC regulations (18 C.F.R. Part 380.12(o)(14)), applicants seeking approval for LNG facility construction must identify how their project design complies with PHMSA standards at 49 C.F.R. Part 193. PHMSA has always provided technical assistance to FERC in reviewing applications and, once a project is approved, PHMSA inspects LNG facilities and enforces its safety standards during and after construction. Since the late 1970s, PHMSA has regularly participated in preconstruction design review for LNG facilities (and the Agency has been authorized to seek cost recovery or reimbursement for these reviews).

The U.S. currently has two operating LNG export terminals, Cheniere’s Sabine Pass, which began exporting shipments of LNG in 2016, and Dominion’s Cove Point, which started shipping LNG in March of this year. A few other facilities are also nearing completion. Meanwhile, many FERC applications for certificates of necessity remain pending. The details of the “reformed” permitting process are not yet clear, but it appears from the recent letters issued by PHMSA that PHMSA will take on an increased role. While the agency maintains the necessary technical expertise, without an increase in budget it is unclear whether additional responsibilities will strain an agency with numerous outstanding Congressional mandates.